



Annexure A

SML Terms of Trade – Sale of Products

1. Definitions in these Terms

Applicable Incoterms means the applicable Incoterms 2020 terms determined in accordance with clause 5.1.

Customer means the purchaser or intended purchaser of the Goods (and includes any agent, contractor, or representative of that purchaser). If the Customer is more than one person, the obligations upon the Customer in these Terms shall apply to all such persons jointly and severally.

Delivery means to deliver the Goods (as evidenced by the transfer of risk in the Goods from Synlait to the Customer occurring in accordance with the Applicable Incoterms).

Duty means any tax, import, charge or levy of an export, customs, excise, import or similar nature applicable to the exportation, importation, transportation, sale, use or ownership of any Goods from time to time under any applicable law.

Goods mean any goods or products supplied to the Customer by Synlait.

Incoterms 2020 means the international rules for the interpretation of trade terms as published by the International Chamber of Commerce, Paris, France, 2020.

Order Confirmation means acceptance in writing by Synlait of a Sales Order.

Sales Contract means a binding agreement between Synlait and the Customer for the sale and purchase of Goods, as per clause 6.

Sales Order means a written order for Goods from the Customer (which comprises an offer to purchase Goods) that complies with Synlait's ordering procedures or is otherwise acceptable to Synlait.

Sales Tax means any tax or levy of a sales, value added or goods and services nature applicable to the sale and/or supply of any Goods from time to time under any applicable law in accordance with these Terms.

Synlait means Synlait Milk Limited, a duly incorporated company having its registered office at Rakaia, New Zealand and such other of its related companies from whom you receive Goods.

Terms means these Terms of Trade.

Working Days mean Monday to Friday, excluding public holidays in Canterbury, New Zealand.

2. Application of these Terms

2.1 Unless the parties expressly agree in writing that these Terms shall not apply:

- (a) all sales of Goods by Synlait to the Customer shall be subject to these Terms, and any terms specified by Synlait in an Order Confirmation (if any); and
- (b) the Customer's placement of a Sales Order with Synlait constitutes acceptance by the Customer that these Terms will apply to any Sales Contract that is subsequently formed with respect to that Sales Order.

2.2 These Terms supersede all prior or subsequent discussions or documentation between the parties in respect of a Sales Contract, and no terms or conditions contained in any Sales Order or other document originated by the Customer (whether provided before or after an Order Confirmation) will apply to any supply of Goods by Synlait.

2.3 If there is any inconsistency between:

- (c) these Terms and any terms specified by Synlait in an Order Confirmation, the Order Confirmation will prevail to the extent of the inconsistency; and
- (d) these Terms and any other signed written agreement between Synlait and the Customer, the other agreement will prevail to the extent of the inconsistency.

2.4 Synlait may change these Terms at any time, and any change will take effect 30 days after written notice is provided to the Customer. Notice may be given by email, or by posting the amended Terms on Synlait's website at www.synlait.com. The amended Terms shall apply to all orders for Goods placed by the Customer after the effective date of the change.

3. Price and taxes

3.1 The price for the Goods and currency of payment will be agreed between Synlait and the Customer and be recorded in the Sales Contract and the Customer will pay for the Goods in the agreed payment currency and at the agreed times.

3.2 If for any reason an amount is paid to Synlait in a different currency from that specified in the Sales Contract, and on conversion into the agreed currency (after deducting any costs or expenses incurred in accepting those funds or their conversion) Synlait realises an amount that is less than the amount due, the Customer must immediately pay such further amounts as are necessary to ensure that Synlait receives the full amount due in the agreed currency (including after taking account of any further conversion that is required).

3.3 Synlait reserves the right to change its prices at any time prior to the date of the Sales Contract. Unless otherwise specified in the Sales Contract or provided for by the Applicable Incoterms, the price does not include any applicable Sales Tax, Duty, other taxes, fees, freight, or insurance.

3.4 The amount to be paid or other consideration to be provided to Synlait for any taxable supply it makes that is governed by or otherwise connected with these Terms must be increased (but without double counting having regard to the Applicable Incoterms) by an amount equal to any Sales Tax and Duty that Synlait is or will become liable to pay in respect of that supply so that Synlait retains after payment of Sales Tax and Duty the amount which it would have been entitled to receive but for its obligations to pay Sales Tax and Duty.

3.5 For the purposes of Section 11(1)(eb) of the Goods and Services Tax Act 1985, where the Customer exports the Goods from New Zealand, the Customer confirms that it is not the Customer's intention to later import the Goods into New Zealand for use other than in making taxable supplies or exempt supplies (as those terms are used in the Goods and Services Tax Act 1985).

4. Payment

4.1 Unless otherwise agreed in writing by Synlait (including in an Order Confirmation for a Sales Contract), the Customer will either pay for the Goods through an initial deposit and the balance by way of irrevocable letter of credit or will prepay for the Goods prior to shipment. The Customer must arrange for any letter of credit which is required to be issued in favour of Synlait not less than 12 days before the Goods are loaded for shipment. Synlait must approve (in its absolute discretion) the form, content and issuing bank of the letter of credit before the Goods are loaded for shipment.



4.2 Where the standard payment terms set out in clause 4.1 are varied in writing by Synlait in respect of a Sales Contract, the variation shall apply only in respect of that Sales Contract.

4.3 The Customer will pay all invoices in full (without deduction, set-off or counterclaim) by the due date for payment and in cleared funds to the bank account nominated by Synlait. If the Customer pays late or fails to post security by the required date, Synlait may impose a charge on the Customer equal to 2.5% of the amount outstanding on a compounding monthly basis. Such charge is deemed to be an increase in the purchase price for the relevant Goods which the Customer agrees to pay by way of compensation to Synlait for its additional costs incurred.

4.4 If the Customer disputes a charge on an invoice, it shall notify Synlait within 10 Working Days of receipt of the invoice and furnish Synlait with all relevant information to enable Synlait to evaluate such claim. The Customer must pay the undisputed amount of the invoice on the due date. Once the dispute is resolved or determined, the Customer must pay the resolved amount due within 10 Working Days. While an invoice remains disputed, Synlait is entitled to withhold or defer any future Delivery pending resolution. Where the dispute is resolved or determined in favour of Synlait, the interest charge specified in clause 4.3 will apply, unless Synlait expressly agrees otherwise in writing.

4.5 If the Customer does not make payment in accordance with any Sales Contract by the due date, then Synlait is entitled to take any or all of the following steps (in addition to all other rights and remedies that it may have under these Terms and/or at law):

- (a) cancel any and/or all unperformed Sales Contracts;
- (b) withhold any and/or all pending Deliveries under any Sales Contracts then in effect;
- (c) retain any initial deposit paid by the Customer in compensation for losses and costs incurred in relation to the manufacture and allocation of Goods to the Customer;
- (d) demand that all sums owing from the Customer in relation to the supply of Goods (along with any other sums that may be due to Synlait) be immediately due and payable (in which case the Customer must immediately pay such sums) and draw any relevant letter of credit or enforce any other security given by the Customer;
- (e) institute such steps or proceedings as Synlait may deem fit for the immediate recovery of all sums due to Synlait, whether by way of negotiation, mediation, statutory demand, litigation or otherwise;
- (f) repossess any Goods in the Customer's possession or under its control; or
- (g) recover all the costs incurred in effecting cancellation and/or making demand and taking action to recover monies or repossessing Goods, or both.

4.6 Synlait will not be liable to the Customer for any costs, losses or damages that the Customer incurs as a result of Synlait exercising any of its rights under this clause 4.

5. Shipping

5.1 The shipping terms that apply to a Sales Contract are the Incoterms 2020 terms specified in the relevant Order Confirmation or, where such terms are not specified in an Order Confirmation, the shipping terms are CFR (cost and freight).

5.2 The rights and obligations of Synlait and the Customer in respect of CFR shipping terms (or such other agreed shipping terms as may be agreed) shall be as stated in Incoterms 2020.

6. Sales contracts

6.1 Synlait will not be under any obligation to supply Goods to the Customer unless Synlait has received a Sales Order from the Customer and Synlait has issued an Order Confirmation in respect of such Sales Order. No Sales Order is binding on Synlait unless and until Synlait has issued its Order Confirmation (which may be by fax or email). These Terms (or any quotations given by Synlait) are not an express or implied offer by Synlait to supply any Goods to the Customer.

6.2 A Sales Order together with an Order Confirmation constitute a binding Sales Contract to which these Terms apply, subject to clauses 2.1 and 2.3.

6.3 An Order Confirmation provided by Synlait only represents a commitment by Synlait to supply Goods pursuant to that particular Sales Contract. The confirmation does not impose any obligation upon Synlait to confirm any subsequent order or re-order from the Customer for the supply of Goods. No on-going commitment to supply shall be implied from any confirmation of one or more orders, from any quotations given or from the course of dealings of the parties. Synlait reserves the right to refuse to confirm any Sales Order submitted by a Customer in Synlait's sole and absolute discretion.

6.4 Synlait may accept a Sales Order in whole or in part and will advise where, how and when Synlait intends Delivery to occur (consistent with the Applicable Incoterms).

6.5 Once received by Synlait, a Sales Order cannot be cancelled or revoked without Synlait's written consent (even if Synlait has not yet accepted the Sales Order).

6.6 Synlait may cancel a Sales Contract with no penalty if the Customer:

- (a) breaches any provision of these Terms, delays any delivery under a Sales Contract which Synlait cannot accommodate (in Synlait's absolute discretion), or delays or threatens to delay any payment when due; or
- (b) becomes insolvent, ceases or halts trading for any reason or, in Synlait's reasonable opinion, is unlikely to be able to pay its debts as they fall due or unlikely to be able to pay the price due under any Sales Contract.

7. Delivery

7.1 Synlait will make reasonable efforts to deliver the Goods to the Customer as advised under clause 6.4. Dates or periods specified for Delivery are not of the essence. If Delivery as advised under clause 6.4 becomes commercially impractical for Synlait (in its reasonable opinion), then Synlait may deliver the Goods to a commercially reasonable substitute Delivery location or using a commercially reasonable substitute method of Delivery selected by Synlait and notified to the Customer. Without limiting the provisions of clause 9, Synlait will not be liable for any cost, loss or damage arising or resulting (directly or indirectly) from a delay in Delivery, failure to Deliver or change in location or method of Delivery or part or multiple Deliveries.

7.2 If the Customer is unable to accept Delivery as, how and where scheduled or arranged by Synlait for any reason (including where the Customer declines to accept all or any part of the Delivery or delays in doing so), Synlait may (without limiting its other rights or remedies):

- (a) charge the Customer any holding costs from that date until Delivery is made to the Customer; and/or
- (b) in its discretion, resell or resupply the Goods to a third party and, should there be a loss on sale, the Customer will be liable for any loss incurred by Synlait on that resale or resupply.



- 7.3** To avoid doubt, if any of the Goods perish, become damaged or tainted, or are otherwise unsaleable (**Damaged**) as a direct or indirect result of the Customer being unable to accept Delivery, the Customer indemnifies Synlait for all costs and expenses incurred by Synlait in connection with the Damaged Goods (including arranging for transport and/or disposal).
- 7.4** The Customer must inspect all Goods Delivered and check all Delivery volumes and advise Synlait within 5 Working Days of being entitled to access the Goods (whether the Customer does inspect them or not) of any claimed defects or other dispute. The Customer acknowledges and agrees that the burden of proof in respect of alleged defects in Goods (or their Delivery) rests with the Customer.
- 7.5** If the Customer does not notify Synlait of any dispute or defect within the relevant period set out in clause 7.4 the Goods are deemed to have been Delivered by Synlait and accepted by the Customer in compliance with these Terms.
- 7.6** Where the Goods are to be Delivered by part or multiple shipments, any failure by Synlait to Deliver any one or more of the shipments or any claim by the Customer in respect of any one or more shipments will not affect Synlait's rights in respect of any Goods already Delivered or that remain to be Delivered.

8. Risk and title

- 8.1** Risk in all Goods passes to the Customer in accordance with the Applicable Incoterms.
- 8.2** Title in all Goods remains with Synlait until such time as full payment is made in cleared funds for all amounts owing by the Customer to Synlait for all Goods Delivered by Synlait from time to time. Synlait and the Customer's respective obligations (if any) with respect to the insurance of Goods will be in accordance with the Applicable Incoterms.
- 8.3** Without limiting clause 8.2, for the purposes of section 36(f)(b) of the PPSA, to secure all of the Customer's obligations to Synlait at any time, the Customer grants a security interest to Synlait in all of the Customer's present and after-acquired property except for those items, or kind, of the Customer's personal property ('excepted property') that have or has not been supplied by Synlait to the Customer (other than excepted property which is or comprises proceeds of any personal property supplied by Synlait).
- 8.4** All payments received by Synlait from the Customer will (regardless of any direction or intention expressed by the Customer in respect of such payments) be applied in such manner as Synlait considers necessary or desirable to preserve Synlait's rights as the secured party under a purchase money security interest to the maximum extent.
- 8.5** The Customer:
- (a)** agrees that nothing in sections 114(f)(a), 133, and 134 of the PPSA applies to these Terms; and
 - (b)** waives its rights under sections 121, 125, 129 and 131 of the PPSA, and the right to receive a copy of a verification statement in respect of any security interest.
- 8.6** The expressions 'after-acquired property', 'financing statement', 'purchase money security interest', 'security interest' and 'verification statement' each have the meanings given to them in the Personal Property Securities Act 1999 ("PPSA").

9. Liability

- 9.1** Notwithstanding any provision to the contrary in these Terms, these Terms do not exclude or limit the application of any law in New Zealand or in any country where such laws apply to the subject matter of these Terms with respect to any Goods where to do so would either contravene that law or cause any part of clause 9 to be void.

- 9.2** The Customer assumes full responsibility for any claims relating to the Goods, except for any claims that the Goods do not conform to their specification at the time of shipment. The Customer will carry appropriate insurance against claims for which it assumes responsibility, including product liability insurance.
- 9.3** Any claim by the Customer that the Goods do not conform to their specification at the time of shipment must be notified to Synlait within 20 Working Days of Delivery. The Customer must keep the relevant Goods stored separately from all others and in the state or condition in which they were Delivered to the Customer until Synlait has an opportunity to inspect them. If Synlait accepts that Synlait is responsible for defective Goods, then the Customer must destroy the Goods or deliver them to (or as directed by) Synlait.
- 9.4** Synlait's sole liability for breach of any express provision of these Terms, any negligence by Synlait (or anyone on behalf of Synlait) in supplying certain Goods or breach of any law that is preserved by clause 9.1 is limited, at Synlait's option, to any combination of the following selected by Synlait:
- (a)** refunding the price of the applicable Goods (or offering credit in lieu of such refund) where payment has been made; or
 - (b)** replacing or reworking the applicable Goods or paying for someone else to do so.
- 9.5** Synlait will not be liable for any failure or delay in complying with any of its obligations to the Customer if such failure or delay results from a cause beyond Synlait's control.
- 9.6** The Customer's sole remedies for any breach of these Terms or cost, loss and damage arising from the subject matter of these Terms are expressly set out in these Terms.
- 9.7** In no circumstances will Synlait be liable to the Customer or any other person:
- (a)** for any loss or damage to persons or property;
 - (b)** for any wasted expenditure or loss of or damage to production, revenue, profits, business, opportunity, good will, or for economic loss or damage of any kind; or
 - (c)** for any consequential, special, punitive, incidental, indirect loss or damage
- and whether by way of damages or indemnity or in respect of liability for breach of contract, tort (including negligence) or otherwise, or any defect in manufacturing/processing, design or information, and regardless of whether the Customer has advised Synlait of the possibility of such losses or damages.
- 9.8** The Customer and Synlait must cooperate in respect of the initiation and conduct of any recall of the Goods with the objective being to optimise the Customer's and Synlait's reputation and goodwill whilst ensuring public health and safety is maintained. Both parties will provide all required co-operation with any regulatory authority in respect of any such recall.
- 9.9** The Customer undertakes to comply with all applicable laws and regulations in the countries where the Customer intends to use, sell or market the Goods. The Customer warrants that any Goods it purchases under these Terms are purchased for use or sale in the country to which the Goods were originally proposed to be exported.



10. Indemnity

- 10.1** The Customer shall indemnify Synlait and hold Synlait, and its officers, agents, contractors and advisers, harmless against any claims, suits, actions, demands, losses, liability, costs and expenses (including full legal costs on a solicitor client basis) of whatever nature incurred by Synlait that arise (directly or indirectly) in connection with a contractual breach by the Customer, or any negligent or wrongful act or omission or breach of any law, including, without limitation, any law applicable to the handling, storage, processing, marketing, use or sale of the Goods (including as incorporated into other goods) by the Customer or any of the Customer's officers, employees, agents or contractors. The Customer shall further indemnify Synlait and hold Synlait, and its officers, agents, contractors and advisers, harmless against any claims of whatever nature that arise from Synlait's use of the Customer's brands, artwork, packaging, formulations and specifications to produce the Goods.
- 10.2** The indemnity in clause 10.1 is a continuing indemnity and is in addition to any statutory or other rights or remedies Synlait may have or exercise against the Customer.

11. Intellectual property, confidential information

- 11.1** Any confidential information or intellectual property provided by Synlait in connection with the Goods, including these Terms and the Sales Contracts, remains at all times Synlait's confidential and proprietary information and must be kept in strict confidence by the Customer. This intellectual property includes the use of Synlait's name, logo, branding, imagery, marketing materials, any specifications, formulae, methods, processes, discoveries or products (including in relation to the Goods themselves) developed by or for Synlait.
- 11.2** The Customer disclaims any interest in Synlait's intellectual property and will not challenge the validity of such intellectual property. The Customer will not take any action that may be prejudicial to Synlait's intellectual property.
- 11.3** Any use of Synlait's confidential information or intellectual property must be separately agreed in writing between the Customer and Synlait and will be subject to such terms of use as may specified by Synlait from time to time.
- 11.4** The Customer shall not portray, advertise or otherwise market (whether explicitly or implicitly, directly or indirectly, formally or informally) that any Goods are derived from, close to or otherwise comparable to products manufactured by Synlait for any other customer.

12. Governing law and disputes

- 12.1** New Zealand law shall govern these Terms, all Sales Contracts and all transactions between the Customer and Synlait arising out of the supply of Goods by Synlait to the Customer. Synlait and the Customer irrevocably and unconditionally submit to the non-exclusive jurisdiction of the New Zealand courts.
- 12.2** The United Nations Convention on Contracts for the International Sale of Goods does not apply to these Terms or to any transaction conducted in accordance with, or pursuant to, these Terms. The Customer acknowledges that the Goods are being acquired for business purposes and the Consumer Guarantees Act 1993 (New Zealand) does not apply. The parties confirm they are in trade and agree, to the extent permitted by section 5D of the Fair Trading Act 1986, to contract out of sections 9, 12A, 13 and (if applicable) 14(1). The parties acknowledge this is fair and reasonable.

- 12.3** Any dispute in connection with these Terms or the supply of Goods to the Customer shall first be referred to a senior executive of Synlait and the Customer for resolution by negotiation for not less than 10 Working Days before legal proceedings may be initiated, although this clause shall not prevent either party from seeking urgent interlocutory relief.

13. Force majeure

- 13.1** Neither party will be liable to the other for any delay or failure to perform its obligations under these Terms and/or any Sales Contract where that delay or failure is caused by an event beyond the affected party's reasonable control (**force majeure event**). A force majeure event includes any:
- (a) natural disaster, war, fire, flood, explosion, theft of material items, epidemic disease causing quarantine, civil commotion, armed hostilities, terrorist act or imminent threat (as declared by the applicable government in the jurisdiction affected) or revolution;
 - (b) industrial or trade dispute to the extent to which those things do not involve employees of the affected party; or
 - (c) any loss or disruption to infrastructure, utilities, or networks.
- 13.2** Where any force majeure event continues for a period of 20 Working Days, then the unaffected party may terminate any Sales Contract without liability.

14. Waiver

- 14.1** No delay or failure by Synlait to exercise any of its rights or remedies will constitute a waiver or variation of any such right or remedy.

15. Assignment

- 15.1** The Customer shall not assign or novate any or all its rights or obligations under these Terms without Synlait's prior written consent (which may be given or withheld in Synlait's complete discretion).
- 15.2** Synlait shall have the right to assign or novate any or all its rights or obligations (including, without limitation, its rights in any receivables in respect of the Customer) under these Terms without the consent of the Customer.

16. Validity

- 16.1** In the event that part or all of any provision of these Terms is illegal or unenforceable, such provision will be interpreted as may be necessary to ensure it is not illegal or unenforceable. If any provision (or part of it) cannot be interpreted in that way, the provision (or part of it) will be severed from these Terms and the remaining provisions will continue in full force and effect.