

TERMS OF TRADE FOR SUPPLY OF GOODS

1. Definitions

- 1.1. "Contract" means this agreement to supply Goods to the Customer, including Westland's issue of a purchase order confirmation to the Customer or the Customer's acceptance of a sales quotation from Westland.
- 1.2. "Customer" means the Customer named in any Contract with Westland. If more than one person, the obligations upon the Customer in these Terms apply to all such persons, jointly and severally.
- 1.3. "Goods" means the goods that are the subject of a Contract, including accepted specifications and packaging requirements.
- 1.4. "PPSA" means the Personal Property Securities Act 1999, as amended.
- 1.5. "Resolution Institute" a provider of mediation and dispute resolution services in New Zealand, see infony@resolution.institute.
- 1.6. "Terms" means these Terms of Trade.
- 1.7. "Westland" means Westland Dairy Company Limited, of 56 Livingstone Street, Hokitika, New Zealand.

2. General

- 2.1. All sales by Westland to the Customer are subject to these Terms. Unless Westland stipulates otherwise in writing, these Terms supersede and override any other terms and conditions which may contradict them, including any terms on the Customer's purchase order form. The Customer's receipt of the Goods, or acceptance of, will constitute its acceptance of these Terms. Any variation of these Terms must be agreed and in writing.
- 2.2. These Terms incorporate, and should be read with, any appendices attached. Likewise, if attached to another document, these Terms will be deemed a part of such other document.

3. Price

- 3.1. The Customer must pay the Price and GST (if any) to Westland for the Goods in accordance with the Purchase Order or otherwise on the 20th day of the month following the date of invoice.
- 3.2. Any GST chargeable will be added to the Price and paid to Westland provided a valid Tax Invoice has been issued in respect of such Price.
- 3.3. Unless otherwise stated, prices do not include applicable taxes, duties, freight, and insurance.

4. Payment

- 4.1. Westland requires payment, or security for payment to its satisfaction, before delivery or loading for shipment. For approved New Zealand based customers, payment may be within 20 days of Westland's invoice. For export customers, unless

otherwise agreed, Westland will require secure payment by way of irrevocable letter of credit, to Westland's satisfaction before the Goods are loaded for shipment.

- 4.2. In all cases, the payment terms set out in the applicable Purchase Order Confirmation as described in 6.1 below will take precedence over all other terms.
- 4.3. The Customer must make payment by bank transfer to the bank account nominated by Westland. Late payments will bear interest at the New Zealand 90-day bank bill rate plus 7% calculated from due date to actual date of payment.
- 4.4. The Customer may not withhold payment, make deductions or apply off sets without Westland's prior written consent.
- 4.5. If the Customer disputes a charge on an invoice, it must file a claim for credit with Westland. The Customer must furnish Westland with all relevant information to enable Westland to evaluate such claim. Westland will issue a credit to the Customer if Westland accepts the claim. If Westland does not accept the claim, then (a) the undisputed portion of that Tax Invoice will remain payable on the relevant due date, determined in accordance with this Contract; and (b) the Customer will not be obliged to pay the disputed portion of the Tax Invoice until the dispute has been resolved by agreement between the parties or, in the absence of such agreement being reached within 10 Business Days after the dispute is first notified pursuant to this clause, until the dispute is finally determined.
- 4.6. If the Customer does not make payment in accordance with this Contract, then Westland may (in addition to all other rights and remedies that it may have at law): (a) cancel the Contract and any unfulfilled or future orders by the Customer; and/or (b) treat all sums due under the Contract (along with any other sums that may be due to Westland) as a liquidated debt immediately payable at law; and/or (c) institute proceedings for the immediate recovery of all sums due to Westland, by statutory demand, litigation, or otherwise; and/or (d) recover all of the costs incurred in exercising the above rights until payment is made, or Goods recovered, or both.

5. Shipping

- 5.1. Unless otherwise specified in writing, Westland's standard shipping terms are free alongside ship, Port of Lyttelton (i.e. FAS Lyttelton).
- 5.2. If Westland arranges freight and insurance for the Customer, Westland will do so strictly for the risk and account of the Customer and such arrangements will not alter the agreed shipping terms. Westland will

have the right to inspect the Customer's marine insurance where the Customer makes its own freight and insurance arrangements.

- 5.3. The rights and obligations of Westland and the Customer in respect to FAS shipping terms (or in respect to such other shipping terms as the parties may agree), will be as stated in *Incoterms 2020*, which the parties hereby incorporate by this reference. Under FAS shipping terms, the Customer is responsible for all taxes, freight, insurance, duties, and customs clearance procedures at the port of entry. Risk of loss or damage to the Goods will pass from Westland to the Customer in accordance with *Incoterms 2020*.

6. Purchase Order Confirmation

- 6.1. Westland will notify the Customer of Westland's ordering procedures and any changes. Westland will not supply Goods to the Customer unless Westland has received a Customer's purchase order and issued Westland's Purchase Order Confirmation (POC), which may require the Customer to confirm and agree to these Terms in writing.
- 6.2. In Westland's POC, Westland may specify an estimated delivery date. Unless expressly stated in the POC time is not of the essence. A confirmed POC may only be amended by written agreement.
- 6.3. Westland's POC represents a commitment by Westland to supply Goods pursuant to such order but does not impose any obligation upon Westland to confirm any subsequent order, or re-order, for the supply of Goods. No ongoing commitment to supply may be implied or inferred by prior dealings and Westland reserves the right to refuse further orders from a Customer in its discretion.

7. Packaging

The Customer is required to inform Westland of any special packaging and labelling requirements at the time that the Customer places its order. Unless specified in the POC, Westland will use its standard packaging and labelling, as detailed, in the product specifications.

8. Delays

- 8.1. Upon the Customer's request, Westland may agree to delay the shipment of an order. Westland may also delay the shipment of an order pursuant to clause 4.1 or clause 4.2. If Westland holds the Goods for more than 30 days in such circumstances, the Customer agrees to pay all reasonable costs as determined by Westland to cover storage costs, inventory financing charges, container charges, insurance, the cost of preparing new export documentation, and such other charges incurred by Westland and relate to the Goods. If such delay continues for more than 60 days, Westland may, in its discretion, and without prejudice, to its other rights, cancel the Contract.

9. Force Majeure

- 9.1. Westland will not be liable for any failure or delay in delivery resulting from circumstances beyond its direct and reasonable control. Without limitation, such circumstances include: delays or failures by suppliers; refusal or failure by suppliers to provide sufficient

supplies of raw milk for production; unavoidable delays in production; delays caused by seasonal factors affecting supply and/or raw milk production; shortages of raw materials; processing difficulties; delays or failures by the Customer; strikes and labour unrest; shipping delays; delays in procuring any reasonably required import/export documentation; acts of war; acts of terrorism; government action; fire; flood; accident; natural disaster; and/or any other event commonly referred to as an "Act of God".

- 9.2. If Westland invokes force majeure, then: (a) Insofar as the circumstances permit, Westland will take reasonable steps to end the circumstances causing the force majeure and to mitigate any losses; and (b) Westland will be entitled to cancel and terminate any order for Goods in whole or part, and, in that event, then neither party will be liable to the other for any losses incurred.

10. Cancellation

- 10.1. The Customer may request cancellation of a final POC, in which case Westland may grant or deny such request in its sole discretion.
- 10.2. Westland may cancel a Customer's order if: (a) the Customer breaches any provision in the Contract; or (b) the Customer breaches any provision in these Terms; or (c) the Customer seeks relief under any insolvency or bankruptcy law.
- 10.3. If the order is cancelled, whether pursuant to clause 8.1, clause 10.1 or clause 10.2, the Customer agrees to reimburse Westland for any direct costs incurred as a consequence thereof, including packaging and repackaging costs, storage costs, financing costs, and any diminution in the price of the Goods due to price movements.

11. Retention of Title and security

- 11.1. The Customer acknowledges that the purpose of this clause is to protect Westland if the Customer commits or suffers an act of insolvency or default in payment. Westland retains title to the Goods, pending receipt of payment, to the maximum extent permitted by law. Notwithstanding such retention of title until receipt of payment in full, the Customer will be responsible for risk of loss or damage to the Goods according to the relevant shipping terms. Westland reserves all rights and remedies it may have under applicable law to recover the Goods sold and delivered to the Customer if the Customer does not pay for such Goods by the payment due date. This includes the right to divert Goods on the water, or to enter upon the Customer's premises and remove such Goods. Such rights are cumulative and not in substitution for any other rights that Westland may have in the circumstances.
- 11.2. In relation to purchases of Goods for use in New Zealand, the Customer acknowledges that the retention of title in this Agreement gives rise to a security interest (as defined under the PPSA) in all present and after acquired Goods, and all proceeds of such Goods, supplied by Westland to the Customer under this Agreement to secure the Customer's performance of its obligations under this Agreement.
- 11.3. The Customer undertakes to:
 - (a) promptly attend to requests, sign all documents and

- provide any information which Westland may reasonably require to enable Westland to perfect and maintain the perfection of its security interest (including by registering a financing statement);
- (b) give Westland not less than 14 days' prior written notice of any proposed change in its name and/or any other change of its details; and
 - (c) immediately on request by Westland (and at the Customer's expense) obtain from any third party such agreements and waivers of any security interest that third party has in respect of the Goods to ensure that Westland always has a first ranking security interest in the Goods.
- 11.4. The Customer waives its rights to receive a copy of any verification statements under the PPSA and agrees that, as between Westland and the Customer:
- (a) the Customer will have no rights under (or by reference to) sections 114(1)(a), 116, 120(2), 121, 125, 126, 127, 129, 131, 133 and 134 of the PPSA; and
 - (b) where Westland has rights in addition to those in Part 9 of the PPSA, those rights will continue to apply.
- 12. Warranty**
- 12.1. Westland warrants that the Goods will conform to their product specifications at the time of shipment. Upon request, Westland will furnish the Customer a certificate of assay showing that the Goods conform to their product specifications.
- 12.2. The Customer must promptly inspect each shipment upon sight of the shipping documents or the ship's arrival into port, whichever will be the later, and the following will apply: (a) The Customer's right of reasonable inspection of each shipment must be exercised forthwith in accordance with this clause 12.2; and (b) The Customer must notify Westland within 14 days after sight of the shipping documents or the ship's arrival into port, whichever will be the later, in the event that the Customer considers any Goods do not conform to the Product specification therefor.
- 12.3. If the Customer notifies Westland that it does not consider the Goods conform to their specification, whether by reason of defect, or quantum, or packaging damage, then: (a) The Customer must provide full details of any damage to Goods or packaging or failure to conform to specifications or quantity, and must assist Westland by providing such particulars, statements and access to the Goods as will enable Westland to investigate the subject matter of any notification; and (b) Westland may (but shall not be obliged to) accept any notification of failure or defect and issue a credit to the Customer for such quantum of the purchase price as it deems fit; or (c) Westland may reject a notification claim, and (d) If Westland accepts a claim, then the Customer must dispose of the Goods as Westland instructs.
- 12.4. If the parties do not agree how to resolve a warranty claim, Westland will refer the dispute to an independent testing laboratory in New Zealand to assist in resolving the claim. Any unresolved claim must be referred to mediation under clause 18.
- 12.5. Westland's warranty does not cover damage to the Goods occurring after risk of loss passes from Westland to the Customer. The Customer is responsible for proper storage and handling of the Goods in accordance with best industry practice.
- 12.6. The above warranty is in place of all other warranties, whether express or implied. Specifically, and without limiting the generality of the foregoing, Westland hereby excludes any express warranty concerning product efficacy or implied warranties of merchantability or fitness for a particular purpose. It is the Customer's responsibility to determine the suitability of the Goods for its own use.
- 12.7. The Customer is solely liable for any representations or warranties that it may give to its Customers.
- 13. Technical Advice**
- 13.1. Where Westland gives technical advice, it does so to provide helpful suggestions only. Westland has not inquired, nor does it know, all the Customer's unique circumstances to make a professional judgement. Westland assumes no obligation or liability for any technical advice so given. The Customer accepts such technical advice entirely at its own risk. The Customer must use its own judgement and not rely upon Westland's.
- 13.2. Westland's technical documentation may not be altered by the Customer for any purpose whatsoever without Westland's prior written consent.
- 14. Compliance with Law**
- 14.1. The Customer must comply with all applicable laws and regulations in the countries where the Customer intends to use or market the Goods, including all health and safety requirements, labelling requirements, registration and approval requirements, dating requirements, warranty requirements, truth in advertising requirements, and country of origin marking requirements.
- 14.2. At the time the Customer places its order, it must advise Westland of any such legal requirements to the extent they relate to the product specifications, manufacturing process, labelling, packaging, or export documentation in the Customer's markets. Westland will use reasonable endeavours to comply with such requirements. Westland reserves the right to increase the price to cover the reasonable cost of complying with any such requirements.
- 14.3. Westland will not be responsible for failing to satisfy any such requirements unless the Customer advised Westland of such requirements, in writing, on or prior to the date of the Contract and these requirements are included in the POC.
- 15. Liability**
- 15.1. Notwithstanding any other provision of these Terms, Westland is not liable to the Customer or to any other person for:
- (a) any claims relating to the Goods other than a claim by the Customer that the Goods do not conform to their specifications at the time of shipment; or
 - (b) any loss caused by any factors beyond the reasonable control of Westland; or
 - (c) any failure to deliver the Goods by a specified date.

- 15.2. In the event Westland is held to be liable to the Customer for any matter arising under or in connection with these Terms, whether caused by negligence or otherwise, the total liability of Westland to the Customer will be limited to the total price received by Westland for the particular Goods to which the claim or liability relates.
- 15.3. The Customer must carry appropriate insurance against claims for which it assumes responsibility, including product liability insurance.
- 15.4. Neither party will be liable for indirect, special or consequential loss or damages or loss of profits.
- 15.5. The Customer acknowledges that it is acquiring the Goods for the purposes of a business or trade, in terms of section 43(2) of the Consumer Guarantees Act 1993 and will not assert or attempt to assert any rights or claims against Westland under the provisions of that Act.
- 15.6. The Parties further acknowledge that for the purposes of section 5D of the Fair Trading Act 1986 (FTA): the Goods are supplied and acquired in trade; that Parties are in trade; that sections 9, 12A, 13 and 14(1) of the FTA do not apply to this Agreement and that it is fair and reasonable for the Parties to be bound by this clause.

16. Indemnity

- 16.1. The Customer agrees to indemnify, and hold Westland harmless, against any claims of whatever nature that arise from Westland's processing and/or marketing of the Goods, including without limitation: Claims arising from death or personal injury, false efficacy claims, breach of warranty claims and claims arising from health and safety violations.
- 16.2. The above indemnity will not apply in the event that the Goods do not conform to their specifications at the time of shipment.
- 16.3. The Customer agrees to further indemnify, and hold Westland harmless, against any claims of whatever nature that arise from Westland's use of the Customer's brands, artwork, packaging, formulations and specifications to produce the Goods.

17. Intellectual Property

- 17.1. For the purposes of these Terms, "Intellectual Property" means Westland's proprietary interests in the Goods, whether arising under statutory or common law, including without limitation: Westland's brands and trademarks; its patents and patent applications; know-how; specifications; manufacturing methods; formulations; research and development; quality control procedures; technical documentation; and

trade secrets.

17.2 The Customer hereby:

- (a) acknowledges Westland's ownership of the Intellectual Property including technical advice given;
- (b) disclaims any interest in the Intellectual Property;
- (c) agrees not to challenge the validity of the Intellectual Property, and
- (d) undertakes not to take any action prejudicial to the Intellectual Property.

18. Mediation

The parties will endeavour to resolve any dispute between them by means of professional mediation. The parties will mutually agree upon the professional mediator. If the parties are unable to so agree, they will abide by the recommendation of Resolution Institute as to a suitable provider of such mediation services. The place of mediation will be Christchurch, New Zealand. The parties will share the fees of the professional mediator equally. The parties will enter into professional mediation in good faith with the objective being to settle their dispute. The professional mediator will have 30 days within which to facilitate an accord between the parties. If despite their good faith efforts, the parties cannot reach an accord within such 30-day period, either party may then pursue its remedies in court.

19. Governing Law

New Zealand law will govern all transactions between the Customer and Westland. The Customer submits to the jurisdiction of New Zealand courts.

20. Waiver

No failure by a party to insist upon strict performance of the Contract, including any of these Terms, or delay in exercising any of its rights or remedies, will constitute a waiver or variation of the Contract or any such right or remedy.

21. Assignment

21.1 The Customer may not transfer its rights or obligations under any Contract without Westland's consent, which will not be unreasonably withheld.

21.2 Westland will have the right to assign its rights under any Contract without the consent of the Customer.

22. Validity

22.1 If any clause in these Terms is invalid or unenforceable under the laws of the relevant jurisdiction, such clause will be amended, but only to the extent necessary to make it valid and enforceable under such laws. If amendment is not possible, such clause will be stricken from these Terms. However, the balance of these Terms will continue in full force and effect.

22.2 Westland reserves the right to change these Terms. Westland will notify the Customer of any such changes whereupon they will apply to all subsequent orders.