

CREDIT APPLICATION

In account with Westland Dairy Company Limited trading as Westland Milk Products ("Westland")

Type of organisation: Company/ Partnership/ Trust/ Sole Trader/ Other (Delete those that do not apply)

Name of organisation: _____

Trading name: _____

Postal address of business: _____

Delivery address for product: _____

Business phone: _____ Mobile phone: _____

Home phone: _____

Email address: _____

If a company or incorporated society, Incorporation Number: _____

Address of registered office: _____

Any prior business name: _____

How long in this particular business: _____

Exports as a percentage in this particular business: _____

Authorised capital: _____

Paid up capital: _____ No. of shares: _____

Please nominate someone to be the contact person for your organisation: _____

Full name: _____

Postal address: _____

Contact phone: _____ Mobile phone: _____

Email address: _____

Purchases

Expected volume: _____ Value: *per month* _____

Value: *per annum* _____

If a Sole Trader

First name: _____ Middle name: _____

Surname: _____ Date of birth: _____

Important Note:

Should credit be granted, payment for products is due on 20th of the month following the date of invoice and payment must be made in cleared funds to Westland's account.

Directors and Management (details of: ☐ Directors ☐ Partners)*Full Name**Address*

1. _____

2. _____

3. _____

Ownership*Name of major shareholders**Address*

1. _____

2. _____

3. _____

Professional Consultants (optional)

Bank: _____ Branch: _____

Auditors/Accountants: _____

Solicitors: _____

Is there any other material information that we ought to know about which could affect our decision to grant you credit?

I/we confirm that the above information is accurate and complete in all material respects and that it may be held and used by Westland to enable it to: consider this application; administer my/our account (if the application is approved); monitor my/our creditworthiness on an ongoing basis; recover any monies due to Westland by me/us or to assist Westland in the exercise of any of its other rights, powers and remedies.

My/our written assent to, and acceptance of, the attached Terms and Conditions of Trade ("Terms") forming part of each contract (howsoever entered into) in respect of the supply of Product by Westland to me/us is a security agreement which provides for a security interest in favour of Westland in all my/our present personal property and after-acquired property except for any item of personal property which is not supplied by Westland to me/us to secure the payment by me/us to Westland of all amounts I/we may owe Westland from time to time and at any time, including future advances.

I/we am/are aware that the Terms are subject to change at any time by notice to me/us.

I/we agree to make all payments due to Westland by the due date, and if payment is not made by the due date, that (without limiting Westland's other rights, powers and remedies) I/we agree to pay interest specified in the Terms. I/We authorise any person to provide Westland with such information as you may require in response to your credit enquiries and this authorisation may be produced for the purposes of making such enquiries. I/we further authorise you to furnish to any other person details of this application and any subsequent dealings that I/we may have with Westland as a result of this application being accepted by you.

I/we agree to continue to make at all times full and accurate disclosure to Westland of any information that may materially affect Westland's decision to continue granting a credit facility.

I/we warrant that each person's signature appearing on this agreement is duly authorised by

_____ (insert name of customer) to apply for credit and sign this agreement.

Signature of Customer: _____ Date: _____

Name of signatory (please print): _____

Terms and Conditions of Trade

1 General

These Terms and Conditions of Trade ("Terms"), as amended from time to time, apply to all quotations, orders and credit facilities provided by us, unless we agree in writing to change them.

2 Price

The price for the Product is the price agreed with you by or at the date of the order, or the price quoted by us, or if no such agreement is made then the current wholesale price charged by us at the date of delivery.

3 Payment

- 3.1 Unless we have accepted a credit application from you we are not obliged to deliver the Product until we have received payment.
- 3.2 If we have granted you credit, payment for the Product is due on the 20th of the month following the date of invoice. Such payment must be made in cleared funds to our account (details of which will be provided to you) in full, without deduction, set-off or counterclaim.
- 3.3 We may require you to arrange a personal guarantee in respect of your payment obligations under these Terms as part of the credit application.
- 3.4 If you default in payment on the due date we may charge you interest on any moneys due but unpaid upon which interest will be calculated on a daily basis at a rate equal to 5% above our principal bank's indicator lending rate from the date payment is due until the date we receive payment. Our right to charge interest is without prejudice to any of our other rights, powers or remedies arising after such payment default.
- 3.5 If you dispute an invoice you must still make payment of the amount due on any disputed invoice on the due date. If we accept your claim then we will arrange at our option for a credit or refund to the value of the error(s) accepted by us.

4 Quotations and Orders

- 4.1 Quotations will lapse if you have not notified us of acceptance within the period specified on the quotation or, if no period is specified, within 10 working days of the date of the quotation.
- 4.2 All Product orders must be in writing signed by you or on your behalf.
- 4.3 Once you have placed an order you may not cancel or alter that order without our agreement.
- 4.4 Orders become contracts only upon written acceptance by us however if you default in payment on any order we may, at our option, cancel any future orders for product you may have placed and we will not be liable to you for any losses you incur as the result of our exercising our rights under this clause.

5 Cancellations

- 5.1 You may not cancel or alter any Product order without making formal written request for cancellation to Westland, whereupon Westland may in its sole and absolute discretion grant or deny such request.
- 5.2 Westland is also entitled to cancel any Product order in the event that:-
 - 5.2.1 You breach any provision of the Terms; or
 - 5.2.2 You breach any provision of your agreement with Westland (in the event that such agreement varies any of the Terms); or
 - 5.2.3 You seek relief pursuant to the Insolvency Act;
- 5.3 In the event that your Product order is cancelled for any reason, then:-
 - 5.3.1 You shall reimburse Westland for any cost reasonably incurred by Westland, including (without limitation) any packaging and re-packaging costs, storage costs, financing costs and any diminution in the value of the Product due to price changes or movement.
 - 5.3.2 In addition, Westland is entitled to recover any loss of profits, together with any other rights and remedies as it may have at law.

6 Title

- 6.1 The ownership and property in the Product shall not pass upon delivery, but shall remain with us until all monies owing in respect of Product supplied under these Terms have been paid in full (even if you incorporate the Product with other items).
- 6.2 We will be given right of entry to inspect and/or remove the Product from any premises on which the Product is situated prior to title passing, and this shall represent an irrevocable licence.

7 Delivery and Risk

- 7.1 Delivery of the Product will be made at your premises unless the quotation or order provides otherwise.
- 7.2 Delivery is deemed to occur when possession of the Product is taken by you, however, if you fail to take delivery, the Product is deemed to have been delivered when we were willing to deliver it and you shall pay us an amount equal to any extra cost we incur for either transport or storage or both.
- 7.3 All risk in and for the Product passes to you on delivery by us even though we may remain the owner of it.
- 7.4 If any of the Product is damaged or destroyed prior to property in it passing to you, we are entitled, without prejudice to any of our other rights or remedies under these terms and conditions, to receive all insurance proceeds payable for the Product. This applies whether or not the price has become payable.

8 Liability and exclusions

- 8.1 We will not be liable for:
 - 8.1.1 Failure to deliver the Product by a specified date;
 - 8.1.2 Loss caused by any event beyond our reasonable control;
 - 8.1.3 Any loss of profit or indirect or consequential loss or damage however arising.
- 8.2 Despite anything else, our liability to you is limited to the price paid by you for the particular Product supplied by us to

which your claim relates, or direct damages, whichever is less.

8.3 You acknowledge that you are acquiring the Goods for the purposes of a business, 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. 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, sections 9, 12A, 13 and 14(1) of the FTA do not apply to this Agreement and it is fair and reasonable for the Parties to be bound by this clause.

9 Product Shortage

- 9.1 If the Product has been delivered, claims for shortages must be notified to us within 10 working days after delivery and include delivery documents recording the quantity of Product you claim to have been delivered and signed as correct by you or your authorised agents and us or our carrier.
- 9.2 Copies of the signed delivery documents must be given to us before any claim for shortage will be considered, otherwise you will be deemed to have accepted the Product delivered and we will not be liable to you for any shortage.

10 Rejections

- 10.1 For defective Product which you are entitled to reject, our liability is limited to either (at our discretion) replacing the Product or refunding the purchase price.
- 10.2 We are not required to accept responsibility for defective Product if you have not:
 - 10.2.1 Notified us within 10 working days of delivery; and
 - 10.2.2 Included in your notice full details of the Product, the alleged defect, and all documents associated with your order and delivery; and
 - 10.2.3 Assisted us in a full investigation of your claim.
- 10.3 We will not be liable for Product which has been tampered with or which has not been stored or used in a proper manner.
- 10.4 We may (at our discretion) accept the rejected Product for replacement or refund.

11 Invoice Queries

- 11.1 You must give us written notice within 10 working days of receiving our invoice if you believe that the invoice is incorrect.
- 11.2 Your notice will be invalid unless you have included full details of the error(s) claimed by you.
- 11.3 If you have not given us valid notice of the error(s) within the required time, you must treat our invoice as correct.
- 11.4 You must still make payment of the amount due on any disputed invoice on the due date.
- 11.5 If we accept your claim then we will arrange at our option for a credit or refund to the value of the error(s) accepted by us.

12 Warranties

- 12.1 We warrant that the Product supplied is of merchantable quality and free from defects except for defects that we have disclosed to you before delivery.
- 12.2 It is your responsibility to determine the suitability for your own use of the Product.
- 12.3 Any information given by us, our officers, employees and persons authorised by us shall not be deemed a warranty, representation or guarantee concerning the suitability or fitness of Product for a customer's specific purpose.
- 12.4 Where you are buying Product for the purposes of a business the Consumer Guarantees Act 1993 does not apply.
- 12.5 All other warranties and representations in relation to the Product or its supply are excluded except to the extent that we cannot lawfully exclude them.

13 Force Majeure

- 13.1 Westland shall not be liable for any failure or delay in delivery resulting from circumstances beyond its direct and reasonable control. Without limitation, it is specifically provided that such circumstances will 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; 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 intervention; fire; flood; accident; natural disaster; and/or any other event commonly referred to as an "act of God".
- 13.2 In the event that Westland invokes Force Majeure, then the following provisions will apply:-
 - 13.2.1 Insofar as the circumstances permit, then Westland shall take all reasonable steps to end the circumstances causing the Force Majeure and to mitigate any losses; and or
 - 13.2.2 Westland is entitled to cancel and terminate any order for product in whole or part, and in that event, then neither party shall be liable to the other; and
 - 13.2.3 Westland is not liable for any losses which result from the Force Majeure or the cancellation referred to in clause 13.2.2.

14 Trade Marks and use of the Product

- 14.1 You acknowledge that we own the goodwill in our Trade Marks and other intellectual property in the Product and its packaging and that you will not:
 - 14.1.1 Except with our express written permission, export to or use the Product in any market outside New Zealand or sell the Product to any third party who may do so;
 - 14.1.2 Modify or alter in any way our Trade Marks or the Product packaging;
 - 14.1.3 Re-package the Product using our Trade Marks or packaging;
 - 14.1.4 Use any other intellectual property in connection with the Product except by written agreement with us.

15 Governing Law

These Terms will be governed by New Zealand law and the New Zealand courts shall have the exclusive jurisdiction in respect of all claims and actions arising out of these Terms.

16 Other Charges

The quotation may require you to pay all delivery, handling, packaging and insurance charges (if any) related to your order.

17 Taxes and Duties

Unless expressly included prices quoted do not include GST and any other duties charged or levied in connection with the supply of the Product and any incidental services to you, which you must pay in addition to the price.

18 Assignment

18.1 You may not assign any of your rights or obligations under these Terms without our prior written consent.

18.2 We may assign any of our rights under these Terms without your consent.

18.3 You must give us (addressed to the Company Secretary) not less than 10 working days' prior written notice of any proposed change in your name and/or any other change in your details (including, but not limited to, changes in your address, facsimile number, trading name or business practice).

19 Review of Terms

We reserve the right to review any of these Terms at any time and from time to time. If, following any such review, there is any change to these Terms that change will take effect from the date on which we give notice to you of such change.

20 Severability

If any part of these Terms is held to be illegal, void or unenforceable the remaining provisions will remain in full force and effect.

21 Waiver

21.1 All of our rights, powers and remedies remain in force despite any neglect, forbearance or delay in enforcing them.

21.2 We will not be considered to have waived any right, power or remedy unless the waiver is in writing signed by an authorised signatory of us.

22 Executors, Administrators and Assigns

These Terms and all credit and other arrangements we make with you in relation to the Product binds the executors, administrators, successors and lawful assigns of both of us.

23 Jointly and Severally Bound

Where the purchaser of the Product is more than one person, these Terms will bind those persons jointly and severally.

24 Indemnity

24.1 You must indemnify us against all claims of whatever nature that arise from us processing and/or marketing the Product, 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. The foregoing indemnity shall not apply in the event that the Product does not conform to the specification at the time of delivery. You shall further indemnify, and hold us harmless, against any claims of whatever nature that arise from our use of your brands, artwork, packaging, formulations and specifications to produce the Product.

25 Security Interest

25.1 You must, upon request, promptly give us all assistance and information as is necessary to register a financing statement under the Personal Property Security Act 1999 (PPSA) in respect of the Product.

25.2 You agree that sections 114(a), 121, 131 of the PPSA will not apply to the security interests created by these Terms and you waive the right to receive a copy of the verification statement confirming registration of a financing statement or financing change statement relating to the security interest under these Terms.

26 Default

26.1 If an event of default occurs, and without prejudice to any other rights, powers or remedies we may have:

26.1.1 We may suspend or terminate the supply of Product to you and any of our other obligations under these Terms (and any other terms and conditions), or cancel all or any part of any order with you which remains unperformed;

26.1.2 All amounts owing, whether due for payment or not, shall immediately become due and payable;

26.1.3 We may enforce any security interest granted to us by you;

26.1.4 We may reclaim Product in your possession or control and dispose of it for our own benefit to a value equal to what you owe us and may enter the premises where we believe the Product is kept in order to do so;

26.1.5 We may recover from you the cost of repossessing and disposing of the Product or attempting to do so.

26.2 We will not be liable to you for any losses you incur as the result of our exercising any of our rights under this clause.

27 Dispute Resolution

27.1 If a dispute arises between us and we are unable to resolve it between ourselves, the matter shall be referred to professional mediation. The parties agree to abide by the recommendation of New Zealand's Resolution Institute as to a suitable provider of such mediation services. The place of mediation shall be Christchurch, New Zealand. The parties shall share equally the fees of the professional mediator. The professional mediator shall have 30 days within which to facilitate an accord between the parties. If despite their good faith, the parties cannot reach an accord within such 30-day period, either party may then pursue its remedies in court.

27.2 This clause will not apply to an application by either of us for urgent interlocutory relief.

28 Definitions

28.1 "We", "our" and "us" mean, collectively and individually, Westland Dairy Company Limited and includes where the context permits its officers, employees and persons authorised by it.

28.2 "You" and "your" mean the purchaser of the Product from us.

28.3 "Product" means product(s) supplied by us and includes all services supplied by us and, where the context requires, the product packaging.

28.4 "Trade Marks" means any trade names, trade marks or other proprietary marks owned or used by us and applied to the Product including packaging.

Personal Guarantee

The undersigned hereby unconditionally and irrevocably guarantees to Westland Milk Products New Zealand, ("Westland"), a trading division of Westland Dairy Company Limited, the performance of:

_____ ("the Customer")

in meeting the Terms and Conditions of Trade attached ("Terms") and hereby indemnifies Westland from all loss, cost or damage suffered by Westland by virtue of the failure of the Customer to comply with the Terms including the payment of all monies thereunder owing to Westland.

Signed by *insert Guarantor's full name* }

as Guarantor }

in the presence of : }

Signature of guarantor

Signature of witness

Name of witness

Occupation of witness

Address of witness

Dated the _____ day of _____ 2019