

These Terms of Trade are applicable to all sales transactions conducted by Open Country Dairy Limited for delivery of Goods outside New Zealand:

## 1. DEFINITIONS & INTERPRETATION

1.1. The following terms have the corresponding meanings:

- (a) "Change of Control" in respect of a party, means any person(s) (alone or together with another person(s)) who Controls that party ceasing to Control that party or any person (alone or together with another person(s)) acquiring Control of that Party;
- (b) "Company" means Open Country Dairy Limited;
- (c) "Company Connected Persons" means the Company, its Related Companies and its and their employees, officers, sub-contractors, representatives and agents;
- (d) "Contract" means any agreement to supply the Goods to the Customer that arises when the Company issues a Sales Contract to the Customer, which incorporates the content of each Sales Contract and these Terms;
- (e) "Control" means in relation to a person, the possession by that person, directly or indirectly of:
  - (i) the ability to direct or cause the direction of the affairs of the Customer to be conducted in accordance with that person's instructions, whether through the ownership of voting shares, by contract or otherwise; (ii) the power to appoint a majority of the Customer's board of directors or similar governing body; or (iii) voting rights attached to 50% or more of the voting shares in the share capital of the Customer;
- (f) "Customer" means the Customer named in any Contract with the Company (if more than one, jointly and severally);
- (g) "ETD" or "Estimated Date of Shipment" means the first day of any estimated period of shipment specified in the Sales Contract;
- (h) "Goods" means the goods that are the subject of a Contract;
- (i) "Guarantor(s)" means, if the Sales Contract specifies that a guarantee is required, any guarantor entity(ies) named in the Sales Contract or otherwise agreed between the parties;
- (j) "Intellectual Property" means the Company's proprietary interests in and relating to the Goods, whether arising under statutory or common law, including without limitation: the Company's brands; its patents and patent applications; know-how; specifications; manufacturing methods; formulations; research and development; quality control procedures; technical documentation; and trade secrets;
- (k) "Losses" means any and all costs, damages, charges, injuries, losses, expenses (including legal costs on a solicitor and client basis, other advisor expenses on an as-invoiced basis and any Court or arbitral tribunal costs or fees), claims or penalties, including packaging and re-packaging costs, storage

costs, financing costs, foreign exchange losses, loss of profits, demurrage or detention charges, and any diminution in the value of the Goods due to price movements or degradation;

- (l) "Maximum Age" means the maximum age of the Goods from the date of manufacture to date of shipment from port of loading as specified in the Sales Contract;
- (m) "Related Company" has the meaning given to that term in section 2(3) of the Companies Act 1993 reads as if references to "company" in that section captures any company or body corporate, wherever established or incorporated;
- (n) "Sales Contract" means the confirmation of a purchase of Goods by a Customer issued by the Company under clause 6.1 of these Terms;
- (o) "Specification" means the specifications for Goods published by the Company from time to time varied as necessary to comply with any stipulation in the relevant Sales Contract;
- (p) "Terms" means these Terms of Trade;
- (q) "Trade Sanction" means any laws or measures imposed by a Government, group of Governments, supranational authority or regulatory authority to prohibit, restrict or limit trade with or within a Country or geographical area.

1.2. Unless the context requires otherwise:

- (a) "person" includes a natural person, corporate or unincorporated body, whether or not it has separate legal identity;
- (b) "including" or similar does not imply limitations;
- (c) "dollars" or "\$", in the Sales Contract or these Terms, is a reference to USD;
- (d) "discretion" means the sole and absolute discretion of the Company;
- (e) any reference to legislation shall include that legislation as amended or substituted.

## 2. SCOPE

2.1. All sales by the Company to the Customer shall be subject to these Terms and the terms set out in the relevant Sales Contract. All other terms and conditions are expressly excluded.

2.2. The Company's agents and representatives have no authority to make any oral representations, statements, warranties, conditions or agreements that conflict with these Terms or the terms of any Sales Contract.

## 3. PRICE

3.1. Unless otherwise stated in the Sales Contract, the price does not include any applicable taxes and duties, which shall be the responsibility of the Customer.

3.2. The price includes an ullage allowance of 0.15% of the quantity of the Goods specified in the Sales Contract ("Ullage Allowance") to cover minor damage to or loss of the Goods that may occur after despatch from the

factory up to delivery to the Customer. The Company will not compensate the Customer for any damage to or loss of the Goods below the Ullage Allowance. The Company may in its sole and absolute discretion provide reasonable compensation for damage or loss that is in excess of the Ullage Allowance and for which satisfactory photographic evidence that the damage or loss occurred prior to delivery is provided to the Company within 10 days after the delivery date into the Customer's nominated warehouse location.

- 3.3. In the case of palletised shipments, a pallet surcharge will be imposed above the price.
- 3.4. If the Sales Contract does not specify a destination for the Goods, any costs of delivering to the notified destination, including packing, administration, testing, freight and any other costs shall be payable by the Customer in addition to the price in the relevant Sales Contract.
- 3.5. The Company may round the quantity of the Goods specified in the Contract up or down by up to 5% from the quantity stated in the Sales Contract and the total price the Customer is required to pay for the Goods will be proportionally increased or decreased. Delivery of the rounded quantity of Goods will constitute delivery in satisfaction of the Contract.

## 4. PAYMENT

- 4.1. The Customer will arrange for payments to be made in the manner and at the time(s) set out in the relevant Sales Contract.
- 4.2. Without affecting anything else in a Contract, if the Company requires the Customer to post security for payment the Customer must post such security before the Goods are loaded for shipment.
- 4.3. Where under the Sales Contract:
  - (a) payment by letter of credit (or "LC" or "L/C") is stipulated, payment must be made by irrevocable letter of credit established for the credit of the bank that the Company nominates, and be without recourse and otherwise in the form and having the content satisfactory to the Company, and the Customer must supply a copy of the original letter of credit to the Company (or ensure that a copy is received by the Company through banking channels) at least 21 days prior to the ETD;
  - (b) a deposit (or "dep") is payable, the Customer must pay the deposit amount in full by the specified date. If the Company cancels the Contract under clauses 11.2(a), (b) or (c), then without prejudice to any of the Company's other rights and remedies, the Customer shall forfeit the deposit and the Company may retain the deposit for its own benefit. If for any reason the Company is legally required to refund any amount of the deposit, the Customer agrees that no interest shall accrue and be payable on that amount;
  - (c) a guarantee is required, the Customer must deliver to the Company, at least 21 days prior to the ETD, an original copy of a guarantee duly executed by the Guarantor(s), in such form and having such

content as is approved by the Company in writing. The Company may at any time withdraw any approval it has previously given if it considers, in its discretion, that the Guarantor(s) or the guarantee do not provide adequate comfort, in which case the Customer will, within five days of the Company's request deliver a replacement guarantee signed by an alternative guarantor approved by the Company that otherwise complies with the first sentence of this paragraph (c);

- (d) payment or an action is required to be taken by the Customer by a time referencing "ETD" or the "estimated date of shipment", those terms shall be deemed to refer to the ETD as defined in these Terms.
- 4.4. Regardless of any payment method or security for payment specified in the Sales Contract, the Customer shall be liable as the primary obligor to ensure payment is made in full by the due date.
- 4.5. Any failure by the Customer to comply with this clause 4 (time being of the essence) constitutes a breach of the Contract entitling the Company to cancel or suspend the Contract in accordance with clause 11.
- 4.6. If the Customer fails to pay any amounts under any Contract in full by the due date or breaches any provision of a Contract, the Customer shall pay the Company interest at a rate equivalent to the bank indicator lending rate applicable to the Company plus 7% p.a. ("Default Interest") on any unpaid overdue balance and on any amount of all Losses suffered by the Company. In each case Default Interest shall be applied from the date of the relevant breach until payment in full is received or the relevant breach is remedied in full (including after judgment or arbitration award), notwithstanding earlier termination of any Contract.
- 4.7. The Customer must not withhold payment or make any deduction or set-off from any amount owing to the Company without the Company's prior written consent.
- 4.8. Where there is a dispute between the parties as to the amount owing to the Company, the Customer must not withhold, and must pay without deduction or set-off (and free of any counterclaim), any undisputed portion of the amount owing. Clause 4.6 applies to any undisputed amount not paid by the required date and to any amounts ultimately determined to be, or have been, payable by the Customer to the Company.

## 5. DELIVERY

- 5.1. CIF (Cost Insurance and Freight) (as stated in Incoterms 2020) to the port of destination specified in the Sales Contract are incorporated into these Terms other than to the extent they are expressly overridden by these Terms or by a Sales Contract. The provisions of a Sales Contract will override these Terms but only in respect to that Contract.
- 5.2. When CIF applies to a Contract, the Company will procure marine insurance (on minimum cover) against the Customer's risk of loss of damage to the Goods during shipment.
- 5.3. If the Contract makes provision for delivery in

instalments, each instalment is deemed to constitute a separate Contract.

- 5.4. Any time stated for delivery or shipment in a Sales Contract is an estimate only of the delivery or shipment date of the Goods and the related documentation. The Company shall not be liable for any Losses arising due to delay in delivery or shipment of either the Goods or the related documentation and no such delay will constitute a right of cancellation.
- 5.5. Under normal operations quantities of Goods delivered may vary from the precise quantities stated in an order. The Customer agrees that the quantity of Goods deemed to be in a Sales Contract is that quantity of Goods delivered in accordance with normal operations.
- 5.6. The Company will obtain any export licence and carry out all customs formalities necessary for the export of the Goods. The Customer must obtain at its own risk and expense any import licence or other official authorisation and carry out, where applicable, all customs formalities necessary for the import of the Goods by the date stipulated in the Sales Contract or at least 28 days prior to the ETD. Failure by (or inability of) the Customer to comply with this clause 5.6 constitutes a breach and does not relieve the Customer of any of its obligations under any Contract.

## 6. ORDERING PROCEDURE

- 6.1. The Customer must comply with ordering procedures notified by the Company from time to time. The Company has not accepted an order unless the Customer has received from the Company a written Sales Contract for that order.
- 6.2. Any request by the Customer to reduce the volume of any Goods from that set out in a Sales Contract may be accepted or rejected by the Company in its discretion (and in the absence of express written acceptance shall be considered rejected). Any acceptance by the Company to reduce the volume of Goods required to be purchased by the Customer is conditional on the Customer performing all of its obligations under the proposed amendment by the due date stipulated in the proposed amendment. The volume reduction and proposed amendment to the Sales Contract is not binding on the Company unless and until all conditions have been satisfied by the Customer.

## 7. PACKAGING AND LABELLING

- 7.1. Except where clause 7.2 applies, the Company will use its standard packaging and labelling, as detailed in the Specifications.
- 7.2. The Company shall not be obliged to comply with any special packaging and/or labelling requirements of the Customer except to the extent those requirements are stipulated in a Sales Contract.

## 8. CUSTOMER OBLIGATIONS

- 8.1. If the Sales Contract does not specify a destination for the Goods the Customer must issue instructions for delivery fully and sufficiently in advance to allow the Company to deliver the Goods and/or obtain and

deliver documentation by the ETD, and in any event must issue instructions for delivery at least 28 days prior to the ETD.

- 8.2. The Company may reject any destination which the Company considers may be subject to Trade Sanctions, and the Customer must provide the Company with all reasonable assistance to establish whether delivery would constitute a breach of a Trade Sanction. In the event the Company rejects a destination the Customer must nominate a substitute destination within 10 days of the rejection.
- 8.3. Unless otherwise agreed between the Company and the Customer, the Customer must not sell directly or indirectly any of the Goods knowing or having reason to believe that they would be resold or supplied beyond the agreed subsequent customers as agreed between the Company and the Customer. In the event of any dispute about on selling the Company will have the sole right to determine the matter and its determination will be final and binding on the Customer.
- 8.4. The Customer must claim and collect the Goods at the port of destination immediately upon being entitled to access the same.
- 8.5. Without limiting anything else in the Contract, if the Sales Contract specifies that the Customer's obligation to purchase any Goods is conditional upon the occurrence of any fact or event, the Customer must use its best endeavours to satisfy that condition prior to the ETD. If the Customer has not otherwise notified the Company within that timeframe then the special condition will be deemed to be satisfied.
- 8.6. The Customer acknowledges that from time to time it may have access to certain information (whether written or oral) relating to the Goods or the Intellectual Property of the Company or the affairs of the Company or its customers and which information is not generally known to the public including, without limitation, price quotations, lists of the Company's customers and confidential or commercially sensitive methods and know how. The Customer must not, without the prior written consent of the Company, disclose (or permit the disclosure of) any such information to any third party or use such information for the Customer's own benefit or for the benefit of any other person or in any way exploit such information, nor will the Customer provide any person with a copy of or disclose to any person the contents of any document containing such information.
- 8.7. If any fees, levies, charges, surcharges or any other costs are charged to or imposed on the Company after the Company has entered into a contract of carriage with its nominated carrier for the delivery of the Goods to the port of destination, then the Customer acknowledges and agrees that it is responsible and liable, and will indemnify and reimburse the Company on demand, for the payment of those fees, levies, charges, other costs, and Losses.
- 8.8. The Customer will not use the Goods, or allow the Goods to be used by any person, for any purpose other than the purpose specified in the Specifications or as intended by the Company. Under no circumstances will

the Company be liable to the Customer or any person for any use of the Goods that is inconsistent with the Specifications or not intended by the Company.

8.9. The Company may use and disclose any information disclosed to it by the Customer in connection with the performance of the Company's obligations or exercise of its rights under a Contract. The Company may also disclose any such information to its insurers, advisers, any credit reporting agency or any person to whom the Company assigns rights under a Contract. The Customer will ensure that it obtains all necessary advance consents or authorisation (including the consent of any individual as required under any privacy laws) to this use and disclosure.

8.10. The Customer must take all steps the Company reasonably requests it to take in connection with any recall or removal of the Goods, including following shipment of the same.

## 9. DELAYS

9.1. Without prejudice to cancellation or any other rights of the Company, in the event of a breach by the Customer of any provision in any Contract or where the Company is otherwise hindered to any extent by the Customer in despatching the Goods, the Company may at its sole discretion do any one or more of the following in any combination: (a) despatch Goods that are of an age greater than the Maximum Age at the date of shipment from the port of loading; (b) delay the shipment of Goods (in the case of breach or hindering, until a reasonable date following rectification of the breach or hindering) and invoice the Goods on the original ETD and demand immediate payment; or (c) change the ETD specified in the Sales Contract to a later date and (at its sole discretion) change the price of the Goods to a new price based on the new estimated date of shipment and all costs in connection with the new estimated date of shipment. The Customer agrees and acknowledges that any Sales Contract amended in accordance with clause 9.1(c) by the Company is binding on the Customer.

9.2. Without limiting the Company's rights under clause 9.1, the Customer must also pay such fees as the Company reasonably determines to cover storage costs, detention charges, inventory financing charges (based on the bank bill benchmark rate plus a margin reasonably determined by the Company), container charges, insurance, the cost of preparing new documentation and such other charges incurred by the Company relating to the delayed Goods.

## 10. FORCE MAJEURE

10.1. A 'Force Majeure Circumstance' is any circumstance beyond the reasonable control of the Company which impacts on production, delivery or other obligation, including: unavoidable delays in production; delays by suppliers; delays or shortages caused by seasonal factors; shortages of raw materials; delays by the Customer; strikes and labour unrest; shipping delays; delays in procuring any required import/export documentation; acts of war; acts of terrorism;

government intervention or sanction; fire; flood; drought; accident; natural disaster; epidemic; pandemic; infectious disease; or any other event commonly referred to as an "Act of God". For the purposes of this clause a strike, lockout or other labour unrest, whether direct or indirect, lawful or unlawful, to which the Company is a party is deemed to be beyond the reasonable control of the Company.

## 11. CANCELLATION AND FORCE MAJEURE CONSEQUENCES

11.1. The Customer does not have the right to cancel or suspend any order after the Company has issued a Sales Contract for that order.

11.2. The Company may cancel or suspend a Contract (or any part of a Contract) if: (a) the Customer breaches any provision in any Contract; (b) the Customer, a Guarantor or (where clause 4.3(a) applies) the Customer's bank seeks relief under any insolvency or bankruptcy law or is deemed to be insolvent or unable to pay its debts under any applicable law (or communicates to any person that it is insolvent or unable to pay its debts); (c) the Company has suspended or cancelled any agreement to supply goods to the Customer or a Related Company of the Customer for any reason; or (d) a Force Majeure Circumstance occurs before a Contract is fully performed.

11.3. If a Contract is fully or partially cancelled or fully or partially suspended under clause 11.2(a), (b) or (c), without prejudice to any other rights or remedies:

- (a) the Customer must reimburse the Company on demand for any Losses incurred as a consequence of or in connection with such cancellation or suspension, including Losses suffered by the Company in taking any steps to enforce the Customer's obligations under the Contract following breach of any term of the Contract by the Customer. The Customer expressly acknowledges and agrees the Company has no obligation to obtain the same market price for the on sale of the Goods in this event as other similar products due to the comparative age of the Goods at that point and the circumstances of the cancellation or suspension; and
- (b) if the Customer fails to reimburse the Company for any Losses within 20 days of the Company making a demand under clause 11.3(a), then the Customer shall be required to pay to the Company liquidated damages equal to the greater of: (i) USD100,000; or (ii) 10 per cent of the total amount payable under all affected Sales Contracts. The Customer acknowledges and agrees that this represents a good faith estimate of the Company's additional costs (including cost of any internal resources) in initiating and pursuing a formal claim in accordance with clauses 19.1 and 19.2 of the Terms. The Customer further acknowledges and agrees that any such payment is in addition to any other rights and remedies the Company is entitled to pursuant to the Contract, under law or in equity.

11.4. If a Force Majeure Circumstance arises the Company

may allocate raw materials to production mixes, and select Sales Contracts to partially or fully cancel or suspend in accordance with clause 11.2(d), entirely in its discretion. If the Company in its discretion chooses to continue to perform the Contract when a Force Majeure Circumstance occurs, the Company will be entitled to charge, and the Customer must pay, such additional freight and costs in relation to the Contract as the Company may determine.

11.5. For the purposes of clause 11.2, the Company may suspend a Contract (or any part of a Contract) without notice to the Customer.

## 12. RETENTION OF TITLE

12.1. The Company retains title to all Goods, pending receipt of payment for all Goods supplied from time to time, to the maximum extent permitted by law. The Company reserves all rights and remedies it may have under applicable law to recover any Goods delivered to the Customer if the Customer does not pay for any 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 and the Customer authorises the Company to take any action required to enforce these rights (including but not limited to registering any required notifications of the Company's interests in the Goods). Such rights are cumulative and not in substitution for any other rights that the Company may have in the circumstances.

12.2. The Customer grants the Company a security interest in respect of all Goods (and any proceeds deriving from them) for any amounts owing by the Customer to the Company from time to time under any agreements. The Company may register or otherwise perfect this security interest in any jurisdiction, and the Customer will promptly take such steps as the Company requests to support the Company in doing so (including signing any relevant documents).

## 13. WARRANTY

13.1. The Company warrants that the Goods conform to the Specification at the time of delivery to the Customer. Upon request in writing at the time of ordering, the Company will arrange testing of the Goods by SGS Limited (or such other independent laboratory nominated by the Company), whose determination of whether the Goods conform to Specification will be final. Where the Specification stipulates how testing is to be conducted, the laboratory will be instructed to follow that testing methodology. All costs of testing will be paid for by the Customer, but such costs will be reimbursed by the Company if it is determined that the Goods do not conform to Specification.

13.2. Unless the Customer requests testing of the Goods in writing at the time of ordering, the Goods will be deemed to conform to the Specification.

13.3. Subject to clause 13.2, if certain of the Goods are determined not to conform to Specification and are not merchantable, the Company may at its discretion: (a) reimburse the Customer for those Goods; or (b) replace

those Goods, but in each case the Customer will have no right to cancel the Contract and the Contract will continue to apply in respect of the remainder of the Goods. In the event that the Goods do not conform to the Specification but are still merchantable, the Company may at its sole discretion: (a) issue a credit to the Customer to compensate for any diminution in value; (b) require that the Customer rework the relevant Goods so that those Goods conform to the Specification and reimburse the Customer for the reasonable costs of such rework; or (c) replace the affected Goods, in which case the Customer must first, if the Company so requests, promptly arrange for the affected Goods to be made available for collection on behalf of the Company. The remedies set out in this clause shall be the Customer's sole and exclusive remedy in respect of any non-conformance of the Goods with the Specification.

13.4. The Company's warranty does not cover deterioration of or damage to the Goods occurring after the Goods have passed the ship's rail at the port of shipment.

13.5. The warranty in clause 13.1 of these Terms is in place of all other warranties, conditions, guarantees and representations, whether express or implied (whether by statute (including the Contracts and Commercial Law Act 2017), common law, custom of the trade or otherwise). Specifically, and without limiting the generality of the foregoing, the Company hereby excludes any warranty concerning product efficacy or implied warranties of merchantability or fitness for a particular purpose. The Company does not warrant that the Goods are fit for a particular purpose, even if advised of such purpose. The Customer may not rely upon any oral opinions, interpretations, statements, assurances or representations given by the Company. The parties agree that the Goods are supplied and acquired in trade within the meaning of the Fair Trading Act 1986, that sections 9, 12A and 13 of the Fair Trading Act 1986 will not apply to the agreement between the parties, and that it is fair and reasonable to exclude their application. The parties further agree that the Goods are supplied for the purpose of a business and that the Consumer Guarantees Act 1993 does not apply.

13.6. The Customer warrants, undertakes and guarantees on a continuous basis that:

- (a) the sale of the Goods under the Contract and the shipment of the Goods to the port of destination do not breach any Trade Sanctions or involve any sanctioned person and that the Customer maintains a process that as far as practicable ensures compliance with all applicable Trade Sanctions and keeps records of the same, copies of which will be provided to the Company immediately on the Company's first demand; and
- (b) none of the Customer, its Related Companies or its or their directors, direct or indirect shareholders, officers or employees is the subject of any sanctions or has breached any applicable law relating to sanctions, bribery, corruption, money-laundering or similar laws prohibiting financial

crimes.

13.7. Without limiting clause 5.6, the Customer shall, by the date stipulated in the Sales Contract, or at least 28 days before ETD, obtain all authorisations necessary for the import of the Goods into the country of destination and any other authorisations necessary for the delivery of the Goods to the Customer, other than the obligations that are expressly and clearly stated under the Contract to be performed by the Company.

## 14. ADVICE

14.1. Where the Company gives advice or recommendations it does so to provide helpful suggestions only. The Company assumes no obligation or liability for any advice or recommendation given. The Customer accepts such advice or recommendation entirely at its own risk based on its own judgement and not in reliance upon the Company.

14.2. The Company's technical documentation comprises its Intellectual Property. The Customer may not alter such documentation for any purpose whatsoever.

## 15. COMPLIANCE WITH LAW

15.1. The Customer must comply with all applicable laws and regulations in the countries where the Customer intends to use, distribute or market the Goods. Specifically, and without limiting the generality of the foregoing, the Customer must comply with 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.

15.2. At the time the Customer places its order, it must advise the Company of any legal requirements to the extent they relate to the Specification of the Goods, manufacturing process, labelling, packaging, or documentation. If the Company is able to do so, it will comply with such requirements to the extent set out in the relevant Sales Contract. The Company reserves the right to increase the price to cover the reasonable cost of complying with any such requirements.

15.3. The Customer acknowledges that the Company will be relying entirely upon the Customer to convey any specific requirements that the Customer may have in respect to the Goods, including any legal requirements that apply in the Customer's markets. The Company will not be responsible for failing to satisfy any such requirements unless the Customer advised the Company of such requirements, in writing, on or prior to the date of the Contract and the relevant Sales Contract stipulates that the Company will meet those requirements.

## 16. LIABILITY

16.1. To the extent that the liability of the Company under any Contract is not otherwise limited or excluded and to the extent permitted by law, the maximum liability of the Company under or in connection with a Contract or arising from the parties' relationship, whether in tort

(including negligence), equity, contract, statute or otherwise, shall never exceed the total price paid for the Goods by the Customer under the relevant Contract.

16.2. Without limiting the maximum liability of the Company under clause 16.1:

- (a) in relation to a claim for Goods, the Company's total liability shall never exceed the price paid for the affected Goods; and
- (b) in relation to any and all other claims not covered in 16.2(a), the Company's total liability shall never exceed 10 per cent of the price paid by the Customer under the relevant Contract.

16.3. Notwithstanding any other provision of any Contract, under no circumstances will the Company be liable for:

- (a) any loss of income or profits, harm to reputation or any consequential, indirect or special damage or injury of any kind suffered by the Customer or any other person;
- (b) any claim relating to Goods, if the Customer has not complied with applicable storage guidelines shared by the Company or cannot demonstrate such compliance;
- (c) any claim relating to packaging of Goods unless the Customer notifies the Company of a claim within 30 days of the Customer being entitled to access the Goods;
- (d) any claim if it does not receive a written notice setting out full details of the same within 30 days of the fact, event or circumstance giving rise to that claim.

16.4. The Customer will use reasonable endeavours to mitigate any loss or damage it suffers as a result of any breach by the Company of any Contract or otherwise in connection with any Contract.

16.5. The Customer acknowledges that any Contract is between the Customer and the Company only, and the Customer undertakes that it will not (and will ensure its customers, its Related Companies and its and their employees and representatives will not) make or attempt to make any claim against a Related Company of the Company or against its or their employees, officers or representatives under or in connection with any Contract. Any third party referred to in this clause shall be entitled to rely on this clause for the purposes of Part 2, Subpart 1 of the Contract and Commercial Law Act 2017.

## 17. INDEMNITY

17.1. The Customer indemnifies, and holds each Company Connected Person harmless against any Losses any of them may suffer or incur in connection with:

- (a) other than to the extent that Losses arise due to a breach of the warranty in clause 13.1, claims of whatever nature that arise from the Customer's marketing or sale 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;

- (b) claims of whatever nature that arise from any Company Connected Person's use of any brands, artwork, packaging, formulations, specifications or other intellectual property to produce the Goods at the Customer's request (not being part of the Intellectual Property);
- (c) third party claims related to Goods or a Contract, unless the Customer demonstrates that the claim is a direct result of the actions or omissions of the Company; and/or
- (d) the Customer's breach of any term of a Contract;
- (e) any inaccuracy or incompleteness of any representation or warranty given by the Customer to the Company;
- (f) any claim made by the Customer (or its customers, its Related Companies and its and their employees and representatives) in breach of clause 16.5, in each case, including Losses incurred or suffered by a Company Connected Person in taking any steps to enforce the Customer's obligations under the Contract following breach of any term of the Contract by the Customer.

## 18. INTELLECTUAL PROPERTY

- 18.1. The Customer acknowledges the Company's ownership of the Intellectual Property. The Customer disclaims any interest in the Intellectual Property. The Customer will not challenge the validity of the Intellectual Property. The Customer will not take any action prejudicial to the Intellectual Property. The Customer shall ensure its Related Companies comply with this clause 18.

## 19. GENERAL

- 19.1. New Zealand law governs all transactions between the Customer and the Company and all disputes arising under or in connection with any Contract (including any disputes regarding its existence, validity or termination) ("Disputes").
- 19.2. If the Customer is domiciled:
  - (a) in New Zealand or a country that has a reciprocal enforcement of foreign judgment regime with New Zealand, then the Customer submits to the exclusive jurisdiction of New Zealand courts in respect of any Dispute;
  - (b) elsewhere, then the Customer submits to the exclusive jurisdiction of the Singapore International Arbitration Centre ("SIAC") in respect of any Dispute. The seat of arbitration will be Singapore. The arbitration will be conducted in English, in accordance with the Arbitration Rules of the SIAC for the time being in force. The tribunal will consist of one arbitrator. The Customer consents to any proceedings brought before the SIAC to be conducted by way of Expedited Procedure (as defined by the SIAC rules).
- 19.3. The Company may give notice to the Customer for any matter in relation to the Contract by way of personal delivery, post, or email. Any such notice or other communication to the Customer under these Terms shall be deemed to have been given, when sent by email, at the time sent, unless the sender receives an automated response that delivery of the email was unsuccessful.
- 19.4. The United Nations Convention on Contracts for the International Sale of Goods is excluded.
- 19.5. No failure by the Company to insist upon strict performance of any Contract, including any of these Terms, or any delay in exercising any of its rights or remedies, constitutes a waiver or variation.
- 19.6. The Customer may not assign its rights or obligations under any Contract and any purported assignment is invalid. Any Change of Control of the Customer shall be deemed to be an assignment for the purposes of this clause and the Customer shall immediately inform the Company of any Change of Control.
- 19.7. The Company has the right to assign its rights and obligations under any Contract without the consent of the Customer.
- 19.8. Each Company Connected Person shall be entitled to rely on any provision of these Terms stated as being for its benefit for the purposes of Part 2, Subpart 1 of the Contract and Commercial Law Act 2017 or otherwise at law.
- 19.9. In the event that any clause in these Terms or a Contract is invalid or unenforceable, that clause will be amended, but only to the extent necessary to make it valid and enforceable. If amendment is not possible, that clause will be stricken from these Terms (and/or that Contract, as applicable). However, the balance of these Terms (and/or that Contract, as applicable) will continue in full force and effect.
- 19.10. The Company reserves the right to change these Terms from time to time. The varied Terms will be posted on the Company's website and the varied Terms will apply to all Contracts entered into between the Company and the Customer after the date the varied Terms are posted on the Company's website. It is the Customer's responsibility to regularly check the Company's website to ensure that it is familiar with the latest Terms.
- 19.11. Stipulations as to time for performance by the Customer in a Contract are of the essence and essential terms of that Contract. Stipulations as to time for performance by the Company in a Contract are not of the essence and are not essential terms of any Contract.
- 19.12. A Contract may only be amended, supplemented or novated in writing executed by both the Company and the Customer.
- 19.13. Clauses 1, 2, 4.3, 4.4, 4.5, 4.6, 4.7, 4.8, 5.4, 5.6, 8.3, 8.6, 8.7, 8.8, 8.9, 8.10, 9.2, 11, 12, 13.3, 13.4, 13.5, 14, 15, 16, 17, 18 and 19, together with any other clauses necessary to give effect to them, survive any termination or cancellation of a Contract.
- 19.14. The Contract constitutes the sole and entire agreement between the parties in relation to their subject matter and supersedes all prior negotiations, dealings, agreements and understandings between the parties. Subject to clause 19.10, these Terms cannot be changed unless the change is agreed in writing and signed by the authorised representatives of both parties. No other terms of trade (including any terms the Customer may

attach to any purchase order or otherwise share with the Company) shall apply between the parties in relation to the sale and supply of the Goods.

- 19.15. Any rights and remedies granted in favour of the Company under the Contract apply in addition to any other rights and remedies set out in the Contract or otherwise available at law or in equity.
- 19.16. The Company may deduct and set off amounts owing to it by the Customer or its Related Companies from amounts that the Company owes to the Customer from time to time.
- 19.17. The parties agree that these Terms are intended to create legally binding obligations upon the Customer's receipt of a Sales Contract issued by the Company.