

TERMS OF TRADE (DOMESTIC)

These Terms of Trade are applicable to all sales transactions conducted within New Zealand by the Open Country Group of Companies:
Open Country Dairy Limited
Open Country Cheese Company Limited

1. DEFINITIONS

- 1.1 "Company" means Open Country Dairy Limited or Open Country Cheese Company Limited, as the context requires.
- 1.2 "Contract" means any agreement to supply the Goods to the Customer that arises when the Company issues a Sales Contract to the Customer.
- 1.3 "Customer" means the Customer named in any Contract with the Company (and if more than one, jointly and severally).
- 1.4 "Goods" means the goods that are the subject of a Contract.
- 1.5 "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.
- 1.6 "Sales Contract" means the confirmation of a purchase of Goods by a Customer issued by the Company under clause 6.1 of these Terms.
- 1.7 "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.
- 1.8 "Terms" means these Terms of Trade.

2. GENERAL

- 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 GST which shall be the responsibility of the Customer.
- 3.2 The price includes an ullage allowance to cover minor damage to the Goods that may occur after despatch from the factory up to delivery to the Customer.
- 3.3 In the case of palletised shipments, a pallet surcharge will be imposed above the price.

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 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 In the event of late payment, or if the Customer fails to post security by the required date, the Company may charge the Customer interest at a rate equivalent to the bank indicator lending rate applicable to the Company plus 7% pa on the amount outstanding or to be secured (as the case may be) until payment (including after judgment).
- 4.4 The Customer may not withhold payment or make any deduction or set-off from any amount owing to the Company without the Company's prior written consent.

- 4.5 The Company may deduct money that is owing to it by the Customer from money that the Company is owing to the Customer.

5. DELIVERY

- 5.1 The terms of delivery under a Sales Contract will be FIS (Free into Store) to the destination nominated by the Customer 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 If the Contract makes provision for delivery in instalments each instalment is deemed to constitute a separate Contract.
- 5.3 Any time stated for delivery in a Sales Contract is an estimate only of the delivery date of the Goods. The Company shall not be liable for any losses, costs or damages arising due to delay in delivery or shipment of the Goods and no such delay will constitute a right of cancellation.
- 5.4 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.

6. STOCKFOOD/SECONDS

- 6.1 If the Goods are sold to the Customer as stockfood/seconds, the Customer acknowledges that the Goods are not fit for human consumption and is sold on the representation from the Customer that it will only be used or on sold exclusively for the purpose of feeding animals.

7. ORDERING PROCEDURE

- 7.1 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.

8. PACKAGING AND LABELLING

- 8.1 Except where clause 8.2 applies, the Company will use its standard packaging and labelling, as detailed in the Specifications.
- 8.2 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.

9. CUSTOMER OBLIGATIONS

- 9.1 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 by the estimated date of delivery, and in any event must issue instructions for delivery at least 5 working days prior to the estimated date of delivery.
- 9.2 Unless otherwise agreed between the Company and the Customer, the Customer must not sell directly or indirectly any of the Goods to any subsequent customer 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. Except with the Company's express written permission, the Customer may not export to or use the Goods in any market outside New Zealand or sell the Goods to any other party who may do so.

9. CUSTOMER OBLIGATIONS - CONTINUED

9.3 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 agrees with and undertakes to the Company not, without the prior written consent of the Company, to disclose 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.

10. DELAYS

10.1 Without prejudice to cancellation or any other rights, upon the Customer's request, 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 delay the delivery 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 estimated date of delivery and demand immediate payment. The Customer must also pay such fee as the Company reasonably determines to cover storage costs, inventory financing charges, insurance, and such other charges incurred by the Company and relating to the delayed Goods.

11. FORCE MAJEURE

11.1 A 'Force Majeure Circumstance' is any circumstance beyond the reasonable control of the Company which impacts on production. Such circumstances include, without limitation: 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; acts of war; acts of terrorism; government intervention; fire; flood; drought; accident; natural disaster; 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.

12. CANCELLATION

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

12.2 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 seeks relief under any insolvency or bankruptcy law or (c) a Force Majeure Circumstance occurs before a Contract is fully performed.

12.3 In the event that a Contract is fully or partially cancelled or suspended, whether pursuant to clause 10.1 or clause 12.2(a) or (b), without prejudice to any other rights or remedies the Customer must reimburse the Company for any costs incurred as a consequence of such cancellation or suspension, including without limitation, packaging and re-packaging costs, storage costs, financing costs, foreign exchange losses, loss of profits and any diminution in the value of the Goods due to price movements. 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 12.2(c), entirely in its sole discretion.

13. RETENTION OF TITLE

13.1 The Company retains title to the Goods, pending receipt of payment, to the maximum extent permitted by law. The Company

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 a delivery while in transit, 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. The Customer will provide the Company all information required in order to allow it to register a financing statement pursuant to the Personal Property Securities Act 1999 (PPSA).

13.2 The Customer waives any rights to receive a copy of a verification statement or financing charge statement relating to the security interest under these Terms.

13.3 The Customer agrees that sections 14(1)(a), 121 and 131 of the PPSA shall not apply to these Terms.

14. WARRANTY

14.1 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.

14.2 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.

14.3 In the event that the Goods do not conform to the Specification but are still merchantable, the Company may at its sole discretion issue a credit to the Customer to compensate for any diminution in value. The Company's warranty does not cover deterioration of or damages to the Goods occurring after the Goods have been delivered.

14.4 The warranty in clause 14.1 of these Terms is in place of all other warranties, conditions, guarantees and representations, whether express or implied. 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 Customer acknowledges that the Goods are being purchased for business purposes and that the Consumer Guarantees Act 1993 does not apply.

15. TECHNICAL ADVICE

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

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

16. COMPLIANCE WITH LAW

16.1 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.

17. LIABILITY

- 17.1 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 total liability of the Company whether in tort (including negligence), contract or otherwise, for any loss, damage or injury arising directly or indirectly from any defect in the Goods or any other breach of the Company's obligations under any Contract is limited to the price paid by the Customer for the relevant Goods.
- 17.2 Notwithstanding any other provision of any Contract, under no circumstances will the Company be liable for any loss of income or profits or any consequential, indirect or special damage or injury of any kind suffered by the Customer or any other person.

18. CUSTOMER REPRESENTATIONS

- 18.1 The Customer indemnifies, and holds the Company harmless, from and against any and all claims and damages of every kind arising due to the Customer breaching a Contract including but not limited to a breach of section 23 of the Dairy Industry Restructuring Act 2001.
- 18.2 The Customer warrants and represents that it has the benefit of all necessary intellectual property rights in all the Customer's brands, artwork, packaging and formulations used to produce the Goods. The Customer will not make any efficacy claims in relation to the Goods without the prior written consent of the Company (which may be issued at its discretion).
- 18.3 The Customer will take all due care of the Goods and the packaging consistent with best industry practice, will not tamper with or damage the Goods or packaging in any respect, and will comply with any instructions issued by the Customer regarding the required storage conditions for the Goods.

19. INTELLECTUAL PROPERTY

- 19.1 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.

20. GENERAL

- 20.1 New Zealand law governs all transactions between the Customer and the Company. The Customer submits to the exclusive jurisdiction of New Zealand courts. The United Nations Convention on Contracts for the International Sale of Goods is excluded.
- 20.2 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.
- 20.3 The Customer may not assign its rights under any Contract. The change in more than 50% of the composition of the person or persons having management or directorial control of the Customer as at the date of the Contract is deemed to be an assignment for the purposes of this clause.
- 20.4 The Company has the right to assign its rights under any Contract without the consent of the Customer.
- 20.5 In the event that any clause in these Terms 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. However, the balance of these Terms will continue in full force and effect.
- 20.6 The Company reserves the right to change these Terms from time to time. The Company will notify the Customer of any such changes and the varied Terms will apply to all Contracts entered into between the Company and the Customer after such notice is given.
- 20.7 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 Con-

tract are not of the essence and are not essential terms of any Contract.

- 20.8 A Contract may only be amended, supplemented or novated in writing executed by both the Company and the Customer.

21. DEFAULT

- 21.1 If the Customer defaults on its obligations to the Company, without prejudice to any other rights, powers or remedies that the Company may have: a) The Company may cancel all or any part of an order for Goods that has not been performed by the Customer and terminate all other obligations that the Company has under these Terms; b) All amounts owing to the Company become immediately due and payable in their entirety; c) The Company may enforce any existing security interest granted by the Customer in relation to the Goods; d) The Company may invoke the right to repossess the Goods pursuant to clause 13.1 and may recover from the Customer all costs and expenses associated with the repossession of the Goods
- 21.2 The Customer indemnifies the Company for all losses incurred by it as a result of the Company exercising its rights under this clause.

22. SEVERABILITY

- 22.1 If any term within these Terms is held to be void, unenforceable or illegal, the remaining terms shall remain in full force and effect.

23. PRIVACY ACT 1993

- 23.1 The Customer acknowledges that the Company may refuse to allow the Customer credit if it does not authorise the Company to obtain all information reasonably required to assess the Customer's credit worthiness from any third person, and authorise those persons to release that information to the Company.
- 23.2 The Company will only use the Customer's personal information for purposes relating to dealings with the Company, including direct marketing. The Customer authorises the Company to release personal information of the Customer to third parties for these purposes.
- 23.3 All of the Customer's personal information will be held at the Company's business premises where it can be accessed, inspected and corrected by the Customer.

The Customer _____
hereby acknowledges that these Terms shall apply to all Purchase Orders for which a Sales Contract is issued by Open Country Dairy Ltd.

Date Signature (Customer or authorized Representative)