

GENERAL TERMS OF SALE

These are the only contractual provisions that apply between the Customer and NDA concerning the supply of Products and/or Services. Any other pre-existing agreement, arrangement or understanding that exists in relation to the supply of Products (if any) shall be deemed to have expired and been entirely replaced by these terms from the Commencement Date. If any other provision is to be applied or prevails, it must be agreed in writing by NDA.

1. Definitions

In these General Terms of Sale:

ACL means the Australian Consumer Law being Schedule 2 of the *Competition and Consumer Act 2010* (Cth);

Customer or **you** means the person named in the Key Terms or named in a Purchase Order acquiring Products from NDA and includes any agent, contractor or representative;

Deliver means:

- (a) If we are responsible for arranging delivery, when the Products are unloaded from the transport arranged by us at the Delivery Location; or
- (b) If you are responsible for arranging collection; by us making the Products available for loading onto transport at our nominated dispatch point.

Delivery Location means the location for delivery of the Products as specified in the Key Terms.

Forecast Process means any forecast process specified in the Key Terms;

GST means the Goods and Services tax as defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

Key Terms means the schedule of Key Terms agreed, or if a schedule of Key Terms has not been completed, the commercial terms otherwise agreed to in writing by the parties;

Minimum Order Quantity means the minimum order quantity for the Products specified in the Key Terms;

NDA or **us** means Nature's Dairy Australia Pty Ltd

Order Confirmation Process means any order confirmation process specified in the Key Terms;

PPSA means the *Personal Property Securities Act 2009* (Cth);

Price means the price for the Products in the Key Terms;

Products means the products to be manufactured, packaged and delivered by NDA in accordance with the Key Terms;

Purchase Order means purchase orders made by Customer from time to time for the Products;

Services means any services supplied by NDA;

Special Conditions means any special conditions specified in the Key Terms;

Upfront Payment has the same meaning in the Key Terms.

2. General

- 2.1 Unless otherwise agreed in writing by NDA, these terms:

- (a) apply to the provision or supply of all Products and/or Services by us to you under any Purchase Order that is accepted by us;
- (b) supersede and exclude all prior or subsequent discussions, representations (contractual or otherwise) and arrangements; and
- (c) cannot be varied or replaced and will in all circumstances prevail over any other terms (including Customer's terms).

- 2.2 We can amend these terms at any time by notice to you (including by reference to such amended terms being set out on our website) and the amended terms will apply in respect of all Purchase Orders placed by you after you receive that notice.

3. Exclusivity

- 3.1 Subject to clause 3.2, if the Key Terms provides that the supply of Products and/or Services is exclusive, the Customer acknowledges and agrees that it must purchase Products from NDA and will not purchase or otherwise acquire or use in the Customer's business products that are materially the same as or similar to the Products.
- 3.2 If NDA cancels an order in accordance with clause 7.1 or is otherwise unable to supply Products, the Customer may purchase or acquire products that are materially the same as or similar to the Products but only for so long as NDA is unable to supply Products.

4. Pricing and Taxes

- 4.1 Unless otherwise indicated in the Key Terms, the Price excludes:
- (a) GST and any other taxes or duties imposed on or in relation to the Products; and
 - (b) freight costs.
- 4.2 If the Customer requests and NDA accepts any variation to the Key Terms, NDA may increase the Price to account for the variation.
- 4.3 Where there is any change in the costs incurred by NDA in relation to the supply of Products, NDA may vary the Price to take account of any such change, by notice the Customer.
- 4.4 NDA may vary the Price bi-annually and the revised Price will take effect for orders placed 30 days after NDA notifies the Customer of the variation.
- 4.5 In addition to clause 3.4 above, NDA may at any time submit to the Customer written notice for amending the Price for particular Products reflecting an increase in the costs of unique or high value materials.
- 4.6 The Customer acknowledges and agrees that NDA has the right to on-charge all unconsumed and

expired materials purchased by NDA to the Customer at cost plus 10% and disposal fees.

- 4.7 The Customer will pay all taxes, levies, duties and other charges (including GST) in respect of the sale and purchase of Products or the supply of Services.

5. Capital Expenditure

- 5.1 The Customer will pay NDA for any capital expenditure and establishment costs (if any) for the supply of Products as set out the Key Terms. The capital expenditure and establishment costs will only be payable once at the commencement the initial Purchase Order.

6. Forecasts and Purchase Orders

- 6.1 The Customer must provide forecasts of projected orders for Products at the frequency and otherwise in accordance with the Forecast Process.
- 6.2 The Customer must place Purchase Orders for Products in accordance with the Minimum Lead Time and the Order Confirmation Process and are to be made by an authorised representative of the Customer.
- 6.3 Unless otherwise agreed by NDA in writing, all Purchase Orders must be for at least the Minimum Order Quantity of Products and in multiples of the Minimum Order Quantities. NDA may (in its absolute discretion) refuse to accept a Purchase Order if the quantity of Products specified in the purchase order is less than any applicable Minimum Order Quantity. For the avoidance of doubt, NDA is not required to accept a Purchase Order.
- 6.4 NDA is not obliged to accept any requests to change or cancel a Purchase Order once it has been accepted by NDA.
- 6.5 If the Products supplied by NDA comply with the requirements of these terms and are not more than 5% less or 5% in excess of, the Purchase Order quantity, they will be deemed to be accepted by Customer for the purposes of these terms.

7. Cancellation of orders

- 7.1 If NDA is unable to deliver the Products, it may cancel the Customer's Purchase Order (even if it has been accepted) by written notice to the Customer.
- 7.2 Purchase Orders placed by the Customer with NDA cannot be cancelled without the written approval of NDA.
- 7.3 In the event that NDA accepts a request from a Customer to cancel an order, NDA will be entitled to retain the Upfront Payment and charge a reasonable fee for any work done by or on behalf of NDA to the date of cancellation including a fee for the processing and acceptance of the Purchase Order and request for cancellation.

8. Delivery

- 8.1 NDA must manufacture, pack and Deliver the Products ordered in a Purchase Order up to 5 days before or after the agreed time specified in the Purchase Order.
- 8.2 Unless otherwise agreed by NDA in writing, NDA will Deliver the Products to the Customer at the Delivery Location.
- 8.3 The Customer must promptly inspect all Products Delivered and advise NDA within two (2) days of any claimed shortfall, damage or defect in respect of such Products.
- 8.4 The Customer is responsible for all costs associated with Delivery of the Products, including any freight, insurance and other charges.
- 8.5 To the extent permitted by law, the Customer indemnifies NDA against any loss or damage suffered by NDA, its sub-contractors, agents or employees as a result of Delivery.
- 8.6 If Delivery is attempted and is unable to be completed the Customer is deemed to have taken Delivery of the Products. The Customer is liable for storage charges payable monthly on demand.

9. Payment terms

- 9.1 Unless otherwise agreed in writing:
- (a) The Upfront Payment must be made within seven (7) days from the date NDA accepts a Purchase Order;
 - (b) subject to 9.1(c), full payment for the Products must be made by the Customer to NDA within the payment terms specified in the Key Terms; and
 - (c) NDA reserves the right to require payment in full from the Customer on delivery of the Products to the Delivery Location.
- 9.2 Payment terms may be revoked or amended at the sole discretion of NDA on written notice to the Customer.
- 9.3 NDA may set off any amount it owes the Customer against any amount that the Customer owes NDA. The Customer may not set off any amounts it owes NDA against any amount NDA owes the Customer.
- 9.4 The time for payment is of the essence.

10. Payment default

- 10.1 If the Customer defaults in payment by the due date of any amount payable to NDA, then all money which would become payable by the Customer to NDA at a later date on any account, becomes immediately due and payable without the requirement of any notice to the Customer, and NDA may, without prejudice to any of its other accrued or contingent rights:
- (a) Retain all monies paid by the Customer for Products and/or Services which have been Delivered;

- (b) charge the Customer interest on any sum due at the prevailing rate pursuant to the *Penalty Interest Rates Act 1983* (Vic) plus 2% for the period from the due date until the date of payment in full;
- (c) charge the Customer for, and the Customer must indemnify NDA from, all costs and expenses (including without limitation all legal costs and expenses) incurred by it resulting from the default or in taking action to enforce compliance with these terms or to recover any Products;
- (d) cease or suspend supply of any further Products or Services to the Customer;
- (e) by written notice to the Customer, terminate any incomplete Purchase Order with the Customer.

10.2 Clauses 10.1(d) and 10.1(e) may also be relied upon, at NDA's option:

- (a) where the Customer is a natural person and becomes bankrupt or enters into any scheme of arrangement or any assignment or composition with or for the benefit of his or her creditors or any class of his or her creditors generally; or
- (b) where the Customer is a corporation and, it enters into any scheme of arrangement or any assignment or composition with or for the benefit of its creditors or any class of its creditors generally, or has a liquidator, administrator, receiver or manager or similar functionary appointed in respect of its assets, or any action is taken for, or with the view to, the liquidation (including provisional liquidation), winding up or dissolution without winding up of the Customer.

10.3 Without limiting any other provision of these terms, unless the purchase price for the Products and/or Services has been paid in full, the Customer is in default under these terms of sale for the purposes of section 123(1) of the PPSA if any other secured party seizes the Products and/or Services (whether under section 123 of the PPSA or otherwise) for the purposes of enforcement or becomes entitled to seize the Products and/or Services.

11. Risk and Title

- 11.1 Unless otherwise agreed by us in writing, risk in all Products passes to you on Delivery. You are solely responsible for the storage, insurance and application or on-sale of Products on and from Delivery.
- 11.2 The Products are sold to the Customer on the basis that the Customer has obtained all necessary licenses or permits under all relevant laws and regulations in relation to the Products.
- 11.3 Until we receive full payment in cleared funds for all Products supplied by NDA to Customer, as well as all other amounts owing to NDA by the Customer. Until such time:

- (a) the Customer must hold the Products as fiduciary bailee and agent for NDA;
- (b) the Customer must hold any proceeds of sale of the Products on trust for NDA in a separate account with a bank to whom the Customer has not given security however failure to do so will not affect the Customer's obligation as trustee;
- (c) in addition to its rights under the PPSA, NDA may without notice, enter any premises where it suspects the Products are and remove them, notwithstanding that they may have been attached to other Products not the property of NDA, and for this purpose the Customer irrevocably licences NDA to enter such premises and also indemnifies NDA from and against all costs, claims, demands or actions by any party arising from such action.

11.4 Nothing in these terms prevents the Customer from selling the Products to any third party provided that the proceeds of any such sale must be held in trust by the Customer for NDA until NDA has received payment in full for the Products.

12. Personal Property Securities Act

12.1 For the purposes of the PPSA, the Customer acknowledges and agrees that:

- (a) title in any Products does not pass to the Customer until the Price for the Products or other Services has been paid in full, and until then NDA will have a purchase money security interest in all present and future Products supplied by NDA to the Customer and the proceeds of the Products;
- (b) the Customer must do whatever is necessary in order to give a valid security interest over the supplied Products or other Services which are able to be registered by NDA on the Personal Property Securities Register.
- (c) NDA need not give any notice under the PPSA (including a notice of verification statement) or comply with any of the provisions referred to in section 115(1) of the PPSA, unless such obligation cannot be excluded;
- (d) For the purposes of section 275(6) of the PPSA, the parties agree and undertake that these terms and any information pertaining to the sale of Products and/or Services and details of the Products and/or Services must be kept confidential at all times. The Customer must not disclose any information pertaining to the sale of the Products and/or Services, except as otherwise required by law or that is already in the public domain.

13. Liability

13.1 All terms, conditions, warranties and representations expressed or implied by statute, common law, equity, trade, custom or usage are expressly excluded to the maximum extent permitted by law.

13.2 NDA is not liable for any indirect or consequential losses or expenses suffered by the Customer or any third party, howsoever caused, including but not limited to loss of turnover, profits, business or Product will or any liability to any other party.

13.3 The Customer acknowledges that:

- (a) it has not relied on any service involving skill and judgement, or on any advice, recommendation, information or assistance provided by NDA in relation to the Products or their use or application.
- (b) it has not made known, either expressly or by implication, to NDA any purpose for which it requires the Products and it has the sole responsibility of satisfying itself that the Products are suitable for the use of the Customer.

13.4 NDA's liability to the Customer NDA's breach of any non-excludable condition or any express condition or warranty or any negligent act or omission of NDA is limited, at NDA's option, to:

- (a) re-supplying the Products in respect of which the breach or negligent act or omission occurred; or
- (b) refunding the Price paid by Customer.

13.5 You acknowledge and agree that the burden of proof in respect of any alleged defect in or damage to the Products after Delivery rests with you.

13.6 Notwithstanding anything expressly contained in these terms, the parties acknowledge and agree that NDA's total liability will not exceed the Price paid for any Purchase Order in the preceding 12 months period (or if the term has not been 12 months, pro-rated accordingly).

13.7 Nothing in these terms has the effect of excluding, restricting or modifying the application of any applicable state or federal legislation which cannot be excluded, restricted or modified, including under the ACL if it applies.

14. Intellectual Property

The Customer acknowledges that the sale and purchase of Products and/or Services terms does not confer on the Customer any licence or rights under any patent, trademark or copyright which is the property of NDA.

15. Force majeure

NDA is not liable in any way howsoever to the extent that it is prevented from acting by events beyond its reasonable control including, without limitation, industrial disputes, strikes, lockouts, accident, breakdown, import or export restrictions, acts of god, acts or threats of terrorism or war. If an event of force majeure occurs, NDA may suspend or terminate the supply of Products and/or Services by written notice to the Customer.

16. Confidentiality

The Customer must at all times, and ensure its employees and representatives at all times, keep confidential and secure, and not use, any of NDA confidential information made available by, NDA which is commercially sensitive or confidential, including any information disclosed to the Customer by NDA pursuant to or in connection with these terms (including the Price, information about any manufacturing processes or recipes), whether orally or in writing and whether or not it is expressly stated to be commercially sensitive or confidential, except to the extent that the information is already in the public domain other than as a result of a breach by the Customer.

17. Miscellaneous

17.1 The law of Victoria governs the supply of Products and/or Services. The parties agree to the non-exclusive jurisdiction of the courts of Victoria and the Federal Court of Australia.

17.2 Except for variations made to Products and/or Services in accordance with these terms, an amendment or variation is not effective unless it is in writing and signed by the parties.

17.3 NDA may subcontract the supply of Products with the prior written consent of the Customer, which will not be unreasonably withheld.

17.4 NDA may by notice to the Customer assign or novate the supply of Products and/or Services, in which case the Customer agrees to execute all such documents as NDA may reasonably require to formalise such assignment or novation.

17.5 The Customer cannot assign, novate or otherwise transfer its rights or obligations without the prior written consent of NDA.

17.6 If the Customer comprises two or more persons, these terms applies to those persons jointly and each of them individually.

17.7 A failure by NDA to enforce any power or right must not be construed as a waiver of that power or right.

17.8 If a clause is unenforceable it must be read down to be enforceable or, if it cannot be read down, the term must be severed from these terms, without affecting the enforceability of the remaining terms.

17.9 A notice must be in writing and handed personally or sent by email or prepaid mail to the last known address of the addressee. Notices sent by pre-paid post are deemed to be received upon posting. Notices sent by email are deemed received on confirmation of successful transmission.

17.10 Nothing contained or implied in these terms constitutes a party the partner, agent or legal representative of the other party for any purpose, or creates any partnership, employment, agency or trust. Neither party has the authority to bind the other party in any way.