

## General Terms & Conditions of Trade

St David Dairy Pty Ltd ABN 84 604 516 529 ACN 604 516 529 (hereinafter referred to as "the Supplier") supplies products on a commercial trade credit basis or otherwise to the party purchasing on a trade credit basis or not (hereinafter referred to as "the Customer") annexed to these conditions:

- (i) The Customer acknowledges & agrees that the following applies to & forms part of any contract for the supply of Goods &/or Services by the Supplier & that these General Terms & Conditions take precedence over any terms & conditions which may be contained in any document provided by the Customer. Any request from the Customer to the Supplier for the supply of Goods & / or Services shall constitute acceptance of these general terms & conditions.
- (ii) The Customer acknowledges that where the Customer consists of more than one party or entity, liability shall be joint & several.
- (iii) These terms & conditions, including any Credit Limits set by the Supplier, are effective from the date of acceptance by the Customer & may be amended or superseded from time to time by notice given by the Supplier by any means. Unless or except specifically excluded herein, The Supplier & the Customer retain any rights & remedies available to them in any prior or pre-existing agreement.
- (iv) "Goods" &/or "Collateral" shall mean all goods &/or services supplied by the Supplier to the Customer, or ordered by the Customer but not yet supplied, & includes goods &/or services described on any quotation, invoice, purchase order or any other document including any recommendations & advice & over which the Supplier may intend to register a Security Interest. "Price" shall mean the cost of the Goods as referred to in the Supplier's price lists, prepared quotes & / or specific arrangements & shall be subject to change from time to time without notice.

### 1. Privacy

1.1 The Customer agrees for the Supplier to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Customer in relation to credit provided by the Supplier.

1.2 The Customer agrees that the Supplier may exchange information about the Customer with those credit providers & with related parties for the following purposes:

- (a) to assess an application by the Customer; &/or
- (b) to notify other credit providers of a default by the Customer; &/or
- (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; &/or
- (d) to assess the creditworthiness of the Customer including the Customer's repayment history in the preceding two (2) years.

1.3 The Customer consents to the Supplier being given a consumer credit report to collect overdue payment on commercial credit.

1.4 The Customer agrees that personal credit information provided may be used & retained by the Supplier for the following purposes:

- (a) the provision of Goods & Services; &/or
- (b) analysing, verifying &/or checking the Customer's credit, payment &/or status in relation to the provision of Goods & Services; &/or
- (c) processing of any payment instructions, direct debit facilities &/or credit facilities requested by the Customer; &/or
- (d) enabling the collection of amounts outstanding in relation to the provision of Goods & Services.

1.5 The Supplier may give information about the Customer to a CRB for the following purposes:

- (a) to obtain a consumer credit report;
  - (b) allow the CRB to create or maintain a credit information file about the Customer including credit history.
- 1.6 The information given to the CRB may include:
- (a) personal information as outlined in 1.1 above;
  - (b) name of the credit provider & that the Supplier is a current credit provider to the Customer;
  - (c) whether the credit provider is a licensee;
  - (d) type of consumer credit;
  - (e) details concerning the Customer's application for credit or commercial credit (e.g. creation &/or closing date of the credit account & the amount requested);
  - (f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies

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which are overdue by more than sixty (60) days & for which written notice for request of payment has been made & debt recovery action commenced or alternatively that the Customer no longer has any overdue accounts & the Supplier has been paid or otherwise discharged & all details surrounding that discharge (e.g. dates of payments);

(g) information that, in the opinion of the Supplier, the Customer has committed a serious credit infringement;

(h) advice that the amount of the Customer's overdue payment is equal to or more than one hundred & fifty dollars (\$150).

1.7 The Customer shall have the right to request (by e-mail) from the Supplier:

- (a) a copy of the information about the Customer retained by the Supplier & the right to request that the Supplier correct any incorrect information; &
- (b) that the Supplier does not disclose any personal information about the Customer for the purpose of direct marketing.

1.8 The Supplier will destroy personal information upon the Customer's request (by e-mail) or if it is no longer required unless it is required in order to fulfill the obligations of this contract or is required to be maintained &/or stored in accordance with the law.

1.9 The Customer can make a privacy complaint by contacting the Supplier via e-mail. The Supplier will respond to that complaint within seven (7) days of receipt & will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Information Commissioner at [www.oaic.gov.au](http://www.oaic.gov.au).

### 2. Personal Property Securities Act (2009)

2.1 In this clause financing statement, financing change statement, security agreement, & security interest has the meaning given to it by the PPSA.

2.2 Upon assenting to these terms & conditions in writing the Customer acknowledges & agrees that these terms & conditions constitute a security agreement for the purposes of the PPSA & creates a security interest in all Materials &/or collateral (account) – being a monetary obligation of the Customer to the Supplier for goods – that have previously been supplied & that will be supplied in the future by the Supplier to the Customer.

2.3 The Customer undertakes to:

- (a) promptly sign any further documents &/or provide any further information (such information to be complete, accurate & up-to-date in all respects) which the Supplier may reasonably require to:

- (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
- (ii) register any other document required to be registered by the PPSA; or
- (iii) correct a defect in a statement referred to in clause 2.3(a)(i) or 2.3(a)(ii);

(b) indemnify, & upon demand reimburse, the Supplier for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Materials charged thereby;

(c) not register a financing change statement in respect of a security interest without the prior written consent of the Supplier;

(d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Materials &/or collateral (account) in favour of a third party without the prior written consent of the Supplier;

(e) immediately advise the Supplier of any material change in its business practices of selling the Materials which would result in a change in the nature of proceeds derived from such sales.

2.4 The Supplier & the Customer agree that sections 96, 115 & 125 of the PPSA do not apply to the security agreement created by these terms & conditions.

2.5 The Customer hereby waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3) (d) & 132(4) of the PPSA.

2.6 The Customer waives its rights as a grantor &/or a debtor under sections 142 & 143 of the PPSA.

2.7 Unless otherwise agreed to in writing by the Supplier, the Customer waives its right to receive a verification statement in accordance with section 157 of the PPSA.

2.8 The Customer shall unconditionally ratify any actions taken by the Supplier under clauses 2.3 to 2.5.

2.9 Subject to any express provisions to the contrary (including those contained in this clause 1) nothing in these terms & conditions is intended to have the effect of contracting out of any of the provisions of the PPSA

### 3. Price & Payment

3.1 At the Supplier's sole discretion the Price shall be either:

- (a) as indicated on invoices provided by the Supplier to the Customer in respect of Services performed; or
- (b) the Price as at the date of delivery of the Goods according to the Supplier's current price list; or
- (c) The Supplier's quoted Price (subject to clause 3.2) which shall be binding upon the Supplier provided that the Customer shall accept the Supplier's quotation in writing within thirty (30) days of the date of the quotation.

3.2 The Supplier is not responsible for any shortfall due to foreign exchange variations between the Customer's local currency & the Australian dollar.

3.3 The Supplier reserves the right to change the price due to increases to the Supplier in the cost of ingredients, materials or labour which are beyond the Supplier's control.

3.4 Time for payment for the services provided, will be payable by the Customer on the date/s determined by the Supplier, which may be:

- (a) on delivery of the goods & services; or
- (b) for approved account holders thirty (30) days following the month of invoice posted or emailed to the Customer's address or address for notices; or
- (c) the date specified on any invoice or other form as being the date for payment; or
- (d) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice issued to the Customer by the Supplier.

3.5 Payment may be made by cheque, bank cheque, electronic/on-line banking, credit card, (a 2.0% surcharge may apply per transaction) debit card, or by any other method as agreed to between the Customer & the Supplier.

3.6 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by The Supplier nor to withhold payment of any invoice because part of that invoice is in dispute.

3.7 Unless otherwise stated the Price does not include GST. In addition to the Price, the Customer must pay to the Supplier an amount equal to any GST the Supplier must pay for any supply by the Supplier under this or any other contract for the sale of goods & services. The Customer must pay GST, without deduction or set off of any other amounts, at the same time & on the same basis as the Customer pays the Price. In addition, the Customer must pay any other taxes & duties that may be applicable in addition to the Price except where they are expressly included in the Price.

### 4. Default & Consequences of Default

4.1. Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of 2.0% per calendar month & interest shall compound monthly at such a rate after as well as before any judgment.

4.2 If the Customer owes the Supplier any money the Customer shall indemnify the Supplier from & against all costs & disbursements incurred by the Supplier in recovering the debt (including but not limited to internal administration fees, collection agents commission, legal costs on a solicitor & own Customer basis, the Supplier's contract fee, & bank dishonour fees).

4.3 Without prejudice to any other remedies the Supplier may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms & conditions the Supplier may suspend or terminate the supply of goods & services to the Customer. The Supplier will not be liable to the Customer for any loss or damage the Customer suffers because the Supplier has exercised its rights under this clause.

4.4 Further to any other rights or remedies the Supplier may have under this contract, if the Customer has made payment to the Supplier, & the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Supplier under this clause 4 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this contract.

4.5 Without prejudice to the Supplier's other remedies at law the Supplier shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled & all amounts owing to the Supplier shall, whether or not due for payment, become immediately payable if:

- (a) any money payable to The Supplier becomes overdue, or in The Supplier's opinion the Customer will be unable to make a payment when it falls due;
- (b) the Customer has exceeded any applicable credit limit provided by The Supplier;
- (c) the Customer becomes insolvent or bankrupt, holds a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of creditors; or
- (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

### 5. Security & Charge

5.1 In consideration of The Supplier agreeing to provide goods & services the Customer charges all of its rights, title & interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms & conditions (including, but not limited to, the payment of any money).

5.2 The Customer indemnifies The Supplier from & against all The Supplier's costs & disbursements including legal costs on a solicitor & own Customer basis incurred in exercising the Supplier's rights under this clause.

5.3 The Customer irrevocably appoints the Supplier & each director of the Supplier as the Customer's true & lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 5 including, but not limited to, signing any document on the Customer's behalf.

### 6. Title

6.1 The Supplier & the Customer agree that ownership of the goods & services shall not pass until:

- (a) the Customer has paid the Supplier all amounts owing to the Supplier; &
- (b) the Customer has met all of its other obligations to the Supplier.

6.2 Receipt by the Supplier of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.

6.3 It is further agreed that until ownership of the goods & services passes to the Customer in accordance with clause 6.1:

- (a) the Customer is only a bailee of the goods & services & unless the goods & services have become fixtures must return the goods & services to the Supplier on request.
- (b) the Customer holds the benefit of the Customer's insurance of the goods & services on trust for the Supplier & must pay to the Supplier the proceeds of any insurance in the event of the goods & services being lost, damaged or destroyed.
- (c) the production of these terms & conditions by the Supplier shall be sufficient evidence of the Supplier's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with the Supplier to make further enquiries.
- (d) the Customer must not sell, dispose, or otherwise part with possession of the goods & services other than in the ordinary course of business & for market value. If the Customer sells, disposes or parts with possession of the goods & services then the Customer must hold the proceeds of any such act on trust for the Supplier & must pay or deliver the proceeds to the Supplier on demand.
- (e) the Customer should not convert or process the goods & services or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of the Supplier & must sell, dispose of or return the resulting product to the Supplier as it so directs.
- (f) unless the goods & services have become fixtures the Customer irrevocably authorises the Supplier to enter any premises where the Supplier believes the goods & services are kept & recover possession of the goods & services.
- (g) the Supplier may recover possession of any goods & services in transit whether or not delivery has occurred.
- (h) the Customer shall not charge or grant an encumbrance over the goods & services nor grant nor otherwise give away any interest in the goods & services while they remain the property of the Supplier.

(i) The Supplier may commence actions to recover the price of goods & services sold notwithstanding that ownership of the goods & services has not passed to the Customer.

7. Risk

7.1 If the Supplier retains ownership of the goods & services under clause 6 then:

- (a) where the Supplier is supplying goods & services only, all risk for the goods & services shall immediately pass to the Customer on delivery & the Customer must insure the goods & services on or before delivery. Delivery of the goods & services shall be deemed to have taken place immediately at the time that either;
- (i) the Customer or the Customer's nominated carrier takes possession of the goods & services at the Supplier's address; or
- (ii) the goods & services are delivered by the Supplier or the Supplier's nominated carrier to the Customer's nominated delivery address (even if the Customer is not present at the address).
- (b) where the Supplier is to both supply & install goods & services then the Supplier shall maintain a contract works insurance policy until the works are

completed. Upon completion of the works all risk for the works shall immediately pass to the Customer.

7.2 Notwithstanding the provisions of clause 7.1 if the Customer specifically requests the Supplier to leave goods & services outside the Supplier's premises for collection or to deliver the goods & services to an unattended location then such goods & services shall always be left at sole risk of the Customer & it shall be the Customer's responsibility to ensure the goods & services are insured adequately or at all. In the event that such goods & services are lost, damaged or destroyed then replacement of the goods & services shall be at the Customer's expense.

7.3 In conjunction with the provisions of clause 7.2 the Customer authorizes the Supplier right to claim insurance monies direct from the Customer's insurer.

**8. Delivery**

8.1 Delivery of the Goods is taken to occur at the time that:

(a) the Customer or the Customer's nominated carrier takes possession of the Goods at the Supplier's address; or

(b) The Supplier (or the Supplier's nominated carrier) delivers the Goods to the Customer's nominated address even if the Customer is not present at the address.

8.2 The cost of delivery is in addition to the Price.

8.3 A timeframe of up to fifteen (15) minutes is allowed for unloading of deliveries. The Customer accepts that if unloading is delayed or exceeds this timeframe due to events beyond the Supplier's control, any costs, losses or expenses incurred by the Supplier as a result of such delay shall be charged to the Customer.

8.4 Any time specified by the Supplier for delivery of the Goods is an estimate only. The Customer must take delivery by receipt or collection of the Goods whenever they are tendered for delivery.

8.5 The Supplier will not be liable for any loss or damage incurred by the Customer as a result of delivery being late. In the event that the Customer is unable to take delivery of the Goods as arranged then the Supplier shall be entitled to charge a reasonable fee for redelivery &/or storage.

**9. Defects, Warranties & Returns, Competition & Consumer Act 2010 (CCA)**

9.1 The Customer must inspect the Goods on delivery & must notify the Supplier in writing within 48 hours of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Customer must notify any other alleged defect in the goods & or services as soon as reasonably possible after any such defect becomes evident. Upon such notification, the Customer must allow the Supplier to inspect & test the goods.

9.2 Under applicable State, Territory & Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees & warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms & conditions (Non-Excluded Guarantees).

9.3 The Supplier acknowledges that nothing in these terms & conditions purports to modify or exclude the Non-Excluded Guarantees.

9.4 Except as expressly set out in these terms & conditions or in respect of the Non-Excluded Guarantees, The Supplier makes no warranties or other representations under these terms & conditions including but not limited to the quality or suitability of the goods. The Supplier's liability in

respect of these warranties is limited to the fullest extent permitted by law.

9.5 If the Customer is a consumer within the meaning of the CCA, the Supplier's liability is limited to the extent permitted by section 64A of Schedule 2.

9.6 If the Supplier is required to replace the Goods under this clause or the CCA, but is unable to do so, the Supplier may refund any money the Customer has paid for the Goods.

9.7 The Supplier may in its absolute discretion accept non-defective goods for return, subject to the best before date being current, in which case the Supplier may require the Customer to pay handling fees of up to twenty five percent (25%) of the value of the returned goods plus any freight costs.

**10. Cancellation**

10.1 The Supplier may cancel any contract to which these terms & conditions apply or cancel delivery of Goods & Services at any time before the delivery by giving written notice to the Customer. On giving such notice the Supplier shall repay to the Customer any sums paid in respect of the Price, less any amounts owing by the Customer to the Supplier for goods already delivered. The Supplier shall not be liable for any loss or damage whatsoever arising from such cancellation.

10.2 The Customer may cancel orders by providing notice in writing to be received and acknowledged by the Supplier prior to 1.00 pm on the day before the scheduled delivery.

10.3 In the event that the Customer cancels any orders the Customer shall be liable for any & all loss incurred (whether direct or indirect) by the Supplier as a direct result of the cancellation (including, but not limited to, any loss of profits).

10.4 Cancellation of orders for goods made to the Customer's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

**11. Intellectual Property**

11.1 Where the Supplier has designed, drawn or developed goods for the Customer, then the copyright in any recipes, designs and drawings and documents shall remain the property of the Supplier. Under no circumstances may such recipes, designs, drawings and documents be used without the express written approval of the Supplier.

11.2 The Customer warrants that all designs, specifications or instructions given to the Supplier will not cause the Supplier to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify the Supplier against any action taken by a third party against the Supplier in respect of any infringement.

11.3 The Customer agrees that the Supplier (at no cost) may use for the purposes of marketing or entry into any competition, all recipes, documents, designs, drawings, plans or products which the Supplier has created for the Customer.

**12. Jurisdiction**

12.1 This agreement shall be construed in accordance with laws of the State of Victoria &, where applicable the Commonwealth of Australia & the Customer submits to the non-exclusive jurisdiction of the Melbourne courts in Victoria.

12.2 The Supplier shall have exclusive right to nominate the Court in which any legal action is to be commenced & conducted.

**13. Acceptance**

13.1 The Customer is taken to have exclusively accepted & is immediately bound, jointly & severally, by these terms & conditions if the Customer places an order for any of the Supplier's goods & services.

13.2 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.

**14. Change in Control**

14.1 The Customer shall give the Supplier not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer &/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address, contact phone or fax number/s, change of trustees or business practice). The Customer shall be liable for any loss incurred by the Supplier as a result of the Customer's failure to comply with this clause.

**15. Compliance with Laws**

15.1 The Customer & the Supplier shall comply with the provisions of all statutes, regulations & by laws of government, local & other public authorities that may be applicable to the Services provided.

15.2 The Customer shall obtain (at the expense of the Customer) all licenses & approvals that may be required for the provision of goods & services.

**16. Service of Notices**

16.1 Any written notice given under this contract shall be deemed to have been given & received:

(a) by handing the notice to the other party, in person;

(b) by leaving it at the address of the other party as stated in this contract;

(c) by sending it by registered post to the address of the other party as stated in this contract;

(d) if sent by facsimile transmission to the fax number of the other party as stated in this contract (if any), on receipt of confirmation of the transmission;

(e) if sent by email to the other party's last known email address.

16.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

**17. Indemnity**

The Customer indemnifies the Supplier & the Supplier's partners, principals, & employees, & hold them harmless from all claims, liabilities, losses, & costs arising in circumstances where there has been a known misrepresentation by a member of the Customer's management,

**18. Lien**

18.1 The Customer acknowledges the Supplier's right to place a lien on all documents, & or monies held by the Supplier on behalf of the Customer whilst any invoices remain unpaid.

18.2 The Supplier is not obligated to release documents belonging to the Customer until all unpaid invoices are satisfied.

18.3 Documents belonging to the Customer will be held by the Supplier for a maximum period of 7 years.

**19. Trusts**

19.1 If the Customer at any time upon or subsequent to entering in to the contract is acting in the capacity of trustee of any trust ("Trust") then whether or not the Supplier may have notice of the Trust, the Customer covenants with the Supplier as follows:

(a) the contract extends to all rights of indemnity which the Customer now or subsequently may have against the Trust & the trust fund;

(b) the Customer has full & complete power & authority under the Trust to enter into the contract & the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Customer against the Trust or the trust fund. The Customer will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity.

(c) the Customer will not without consent in writing of the Supplier (the Supplier will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events;

(i) the removal, replacement or retirement of the Customer as trustee of the Trust;

(ii) any alteration to or variation of the terms of the Trust;

(iii) any advancement or distribution of capital of the Trust; or

(iv) any resettlement of the trust property.

**20. Force Majeure**

Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, pandemic or other event beyond the reasonable control of either party.

**21. General**

21.1 The failure by either party to enforce any provision of these terms & conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms & conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality & enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

21.2 Subject to 10.1 The Supplier shall be under no liability whatsoever to the Customer for any indirect &/or consequential loss &/or expense (including loss of profit) suffered by the Customer arising out of a breach by the Supplier of these terms & conditions.

21.3 The Supplier may licence &/or assign all or any part of its rights &/or obligations under this contract without the Customer's consent.

21.4 The Customer cannot licence or assign without the written approval of the Supplier.

21.5 The Supplier may elect to subcontract out any part of its production process but shall not be relieved from any liability or obligation under this contract by so doing. Furthermore, the Customer accepts that they have no authority to give any instruction to any of the Supplier's sub-contractors without the authority of the Supplier.

21.6 The Supplier acknowledges their compliance to Food Standards Australia New Zealand Act 1991 (Cth) & the Food Act 1984 (Victoria)

21.7 The Customer agrees that the Supplier may amend these terms & conditions by notifying the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes further engagement of the Supplier Services.

21.8 Both parties warrant that they have the power to enter into this contract & have obtained all necessary authorisations to allow them to do so, they are not insolvent & that this contract creates binding & valid legal obligations on them.