

1. DEFINITIONS

"Business Day" means any day excluding Saturdays, Sundays and public holidays in Hamilton, New Zealand.

"Confidential Information" means any information relating to the business of either party, including Results, customers, know-how or trade secrets, whether of a technical or business nature.

"Force Majeure Event" means any event or circumstance:

- (a) beyond our reasonable control; and
- (b) that results in or causes our failure to comply with or observe any provision of these Terms,

and includes, but is not limited to:

- (c) any event or circumstance occasioned by, or in consequence of, any act of God being an event or circumstance due to natural causes, directly or indirectly and exclusively without human intervention;
- (d) strikes, lockouts, other industrial disturbances, acts of public enemy, wars, terrorism, blockades, insurrections, riots, epidemics, pandemics or other infectious diseases, aircraft, shortage of labour or civil disturbances;
- (e) the binding order or requirement of any court, any government, or any local authority;

"Goods" means any physical items supplied by us to you, including without limitation RFID tags, trays and containers.

"GST" means goods and services tax as defined in the Goods and Services Tax Act 1985.

"Intellectual Property Rights" includes copyright, and all rights conferred under statute, common law or equity in relation to inventions (including patents), trade marks, designs, domain names, rights in databases, confidential information, trade secrets, tooling design, know-how, specifications, manufacturing processes and all other proprietary rights.

"Order" means an order or submission form submitted by you to us for the supply of Goods and/or Services, whether by email, via our website, in person, by telephone, or by the submission of a Sample.

"Price" means the total amount payable by you for the Goods and/or Services as determined in accordance with clause 3(e), exclusive of GST unless stated otherwise.

"Results" means all data, reports, certificates and analysis produced or provided by us arising from the testing of Samples.

"Sample" or **"Samples"** means any material submitted by you to us for testing.

"Services" means testing and related services supplied or provided by us to you, from time to time.

"Terms" means these Terms of Trade.

"we", "us", "our" means MilkTestNZ LP.

"you" and **"your"** means the customer, being the person or entity/ies submitting Samples or acquiring Goods and/or Services from us.

2. CONTRACT

- (a) These Terms apply and are incorporated into any agreement for the supply of Goods and/or Services by us to you. All other terms and conditions are expressly excluded unless otherwise agreed in writing. If there is any conflict between an Order and these Terms, these Terms prevail.
- (b) Our agents, employees, contractors and representatives have no authority to make any oral representations, statements, warranties, conditions or agreements that conflict with these Terms.
- (c) You are deemed to have accepted these Terms, and a binding contract is formed between us and you, on the earliest of the following to occur:
 - (i) you submit a Sample to us;
 - (ii) you submit an Order, whether by email, via our website, in person, by telephone, or by completing a submission or sales order form (including a standard or recurring order arrangement);
 - (iii) you tick a box, sign, initial, or otherwise indicate agreement to these Terms on a submission form, sales order form, or other document that refers to these Terms, whether that document is completed once, updated periodically, or relied on for repeat or standing orders;
 - (iv) you click to accept or otherwise confirm agreement to these Terms when placing an Order through our website;

- (v) we notify acceptance of your Order by email, in person, or by telephone; or
- (vi) we otherwise act on your Order, including by receipt of a Sample.

Acceptance in any of these ways, including by electronic means such as a tick-box, click-through, or email confirmation, is valid, binding, and admissible evidence of your agreement to these Terms, whether or not these Terms or the relevant Order have been physically signed by you.

- (d) We will treat any person holding him/herself out as your agent, employee, contractor or representative as authorised by you to take any of the actions described in clause 2(c).
- (e) If you are more than one legal person or entity, then your liability is joint and several.
- (f) We may terminate this and/or any other agreement between us, and/or suspend or withhold the supply of Goods, Services or Results, immediately if you do not make payment of any amounts due to us on or before the due date for payment, indicate that you will not pay any sums by the due date, fail to comply with your obligations under these Terms within seven (7) days of the receipt of a notice (or such longer time as specified in the notice) identifying the breach and requiring its remedy (if capable of remedy).
- (g) Either party may terminate this and/or any other agreement between the parties immediately by written notice to the other party if that other party: (i) enters into or is subject to bankruptcy, liquidation, receivership, voluntary administration, or any form of insolvency administration; (ii) is unable to pay its debts as and when they fall due; or (iii) suffers any other insolvency event.
- (h) We comply with the Privacy Act 2020 ("Privacy Act") and the information privacy principles set out in the Privacy Act. You authorise us to collect, retain and use any information about you for the purpose of supplying Goods, Services and Results, assessing your creditworthiness, or enforcing any rights under this agreement. You consent to us disclosing your information with employees, agents, and related bodies corporate and other agencies for these purposes. If you are a natural person, you have the right to access and correct information about you by emailing us at [confirm correct address].

3. SERVICES AND PRICE

- (a) We will provide the Services using reasonable skill and care.
- (b) The primary Service we provide is the testing of Samples submitted by you and the provision of the resulting Results. Certain Goods, including trays, containers and RFID tags, are supplied to you to enable you to submit Samples to us and to facilitate delivery of Goods, Samples and Results between us; those Goods remain subject to clause 6 (Retention of Title, RFID Tags & Trays, and PPSA) whether or not they are supplied in connection with a Sample. Other Goods, including reference samples and calibration standards, may be supplied to and used by you independently of, and without any obligation on your part to submit, a Sample for testing.
- (c) The Services are subject to availability and may be declined or delayed by us due to factors outside our reasonable control.
- (d) We may reject any Sample that does not meet our submission standards, including as to the quality or condition of the Sample.
- (e) Unless otherwise agreed by us, the Price of the Goods and Services will be as set out in our price list current at the time of the Order, or as otherwise specified on our acceptance of your Order. Prices may be varied by us at any time without notice, except where a specific Price has been quoted to you in accordance with clause 3(h). Any price list or quote provided to a specific customer is confidential to that customer, and we reserve the right to change customer-specific pricing at our discretion. The Price is exclusive of GST unless specifically stated otherwise. You will pay all applicable GST in addition to the Price.
- (f) We reserve the right to alter the Price because of circumstances beyond our control (including fluctuations in international monetary exchange rates, shipping rates, shortages, duties, tariffs, and other events). Where we vary the Price pursuant to this clause 3(f), we will notify you of the new Price. Thereafter you may reject the new Price within seven (7) days and terminate the contract for supply without further cost, or any penalty to you (but must pay for all Goods and Services already supplied at the previously agreed Price). If you do not terminate the contract within such seven (7) day period, you agree that the new Price will apply to the contract. For clarity, any termination of the contract for supply under this clause will be without prejudice to payment for any Goods, Services or Results supplied prior to termination.
- (g) All costs associated with delivery of Goods, including but not limited to carriage and freight, will be payable by you in addition to the Price.

- (h) If we provide you with a quote for the Goods and Services, the quotation shall be valid for 30 days from the date the quote was provided to you, unless the quote states otherwise. However, we reserve the right to alter the quotation if exceptional circumstances arise beyond our reasonable control.

4. CREDIT ACCOUNTS AND PAYMENT

- (a) Credit is granted to you once our "account application" form is completed and approved by our finance team, subject to the terms and conditions and credit approval requirements agreed at that time. Where we have approved credit, payment is to be made in full by same day cleared payment on or before the 20th of the month following the date of invoice, unless we agree otherwise. If credit is not approved, payment in advance is required before we will provide the Goods, Services or Results, and Results will be provided upon receipt of payment in full. The method of payment will be as directed by us.
- (b) We may submit progress claims to you at intervals we reasonably determine (but no more frequently than monthly) for Goods delivered, Services performed, or Results provided during the relevant period. Each progress claim will set out the value of the Goods delivered, Services performed and/or Results provided since the last progress claim (or, in the case of the first progress claim, since commencement), together with any other amounts then due under these Terms. Payment of each progress claim is due in accordance with clause 4(a).
- (c) If a deposit is payable, the deposit must be received by the due date we specify and we will not order Goods, commence testing of Samples, or begin any Services on your behalf until such time as the deposit is received.
- (d) Where applicable you must specify an approved delivery method for Goods or specify that you will collect the Goods from us personally, on the Order. If we later agree to change the method of delivery at your request, further charges may apply.
- (e) You must pay all amounts owing to us without set off or deduction. We may, in our discretion, allocate any payment received from you towards any invoice that we determine and may do so at the time of receipt or at any time afterwards. Without prejudice to our other rights and remedies under these Terms or at law, if you fail to make payment of any amount due to us, we may refuse to supply the Goods, Services and/or Results, suspend the Services, and/or charge interest on the amount owing at the rate of 5% above the base rate per annum or part month from the due date for payment until payment is received in full.
- (f) Any expenses, disbursements and legal costs incurred by us in the enforcement of any rights contained in these Terms will be paid by you, including all expenses and disbursements incurred, including, without limitation, incurred on a solicitor and own client basis, or by a debt collection agency.

5. SAMPLES AND DELIVERY

- (a) You must deliver Samples to our designated address in approved containers, accompanied by a completed submission form. Delivery of Goods and performance of Services will otherwise be made by us to the place and by the method specified by you in the Order. If agreed in the Order, you may elect to collect the Goods personally from our nominated address. If collection is not made within 10 days of you being notified that the Goods are available for collection, any payments made to us for the Goods may be retained by us and/or the Goods may be sold or otherwise disposed of at our sole discretion. Results are based on the Sample as received by us and may not represent the full composition of the source material.
- (b) A Result is final and binding on you unless you notify us in writing of a dispute over that Result, setting out the grounds for the dispute, within fourteen (14) days of the date the Result is provided to you (consistent with the claims period in clause 9(c)(iii)). Following such notice, we may, at our sole discretion, agree to retest the Sample (if sufficient Sample remains) or a referee sample, and the cost of any retesting will be borne by you unless the retest confirms a manifest error in the original Result, in which case we will bear the cost. If no Sample or referee sample remains available for retesting, the original Result will stand. Nothing in this clause obliges us to retain any Sample.
- (c) We will use our reasonable endeavours to supply the Goods, Services and Results by the delivery date or turnaround time specified, however any such date or turnaround time is an estimate only and we will not be liable for any costs, losses, damages or claims in relation to any failure or delay in supply, or action or inaction of yours, and you will not be able to terminate this agreement or any Order due to any failure or delay in supply. If we are unable to supply the Goods, Services or Results as agreed, or our performance is delayed, due to any action or inaction of yours then: (i) any agreed timeframes for the delivery of Goods, performance of Services, or provision of Results will be extended by a period equal to the delay caused by your action or inaction; (ii) we will be entitled to recover

from you, and you must pay on demand, all additional costs, expenses and losses incurred by us as a result (including, without limitation, standdown costs, waiting time, storage costs, remobilisation costs, costs associated with rescheduling delivery or performance, and any reasonable fee for re-supplying the Goods, Services or Results at a later time and date); and (iii) we may, at our sole discretion, suspend performance of our obligations until such time as the relevant action or inaction is remedied to our reasonable satisfaction.

- (d) Risk in the Goods will pass from us to you when the Goods are given to a carrier, courier, or other bailee for purposes of transmission to you or when the Goods are available for collection, as the case may be. Ownership of a Sample transfers to us upon its delivery to us.
- (e) We may make delivery of Goods by instalments and perform the Services and may cancel delivery of the Goods or any instalments of the Goods without limiting our rights to recover all money you owe us for deliveries already made as at the date of cancellation.

6. RETENTION OF TITLE, RFID TAGS & TRAYS, AND PPSA

- (a) We will retain ownership of and title to all Goods, including RFID tags and trays, until payment has been made by you in full and, in the case of RFID tags and trays, until they have been returned to us. In the meantime, you will ensure that all Goods are stored in a way that clearly identifies the Goods as our property, and you must return all RFID tags and trays to us if the supply of Services to you ceases.
- (b) Where Goods supplied to you are reference samples, calibration standards, or other materials intended for use in calibrating or verifying testing or measurement equipment, you must store, handle and use those Goods strictly in accordance with any instructions, storage conditions and shelf-life or expiry dates provided by us. We are not liable for any inaccurate Results, equipment calibration failure, or other loss arising from your storage, handling or use of such Goods otherwise than in accordance with those instructions.
- (c) You acknowledge that until full payment is made for the Goods you retain possession of them solely as our bailee. You will hold the proceeds of sale of all Goods that have not yet been paid for in trust for us.
- (d) You agree that we, our agents or employees (on written notice) may enter onto any premises under your ownership or control for the purpose of inspecting and/or repossessing any Goods not paid for in full or any RFID tags or trays not returned to us. Where we have retaken Goods into our possession, we have the right to sell or deal with those Goods, and, if necessary, sell any Goods bearing your name or trade mark, and you hereby grant us an irrevocable licence to do all things necessary to sell those Goods.
- (e) Testing Results remain our property until you have met all applicable payment terms in respect of the Services to which those Results relate. We retain a security interest in RFID tags, trays and Goods until payment is complete and the relevant property is returned to us.

7. CONFIDENTIALITY

- (a) Each party must not at any time (except in the proper course of performing its duties under these Terms) disclose to any person any Confidential Information of, or relating to, the other party, including Results and data, without the prior written approval of that other party. Each party shall ensure that its employees, contractors, officers and agents do not, without the written permission of the other party, use Confidential Information supplied to it for any purpose that is not related to these Terms. Nothing in this clause 7 prohibits disclosure of information which:
- is in the public domain otherwise than as a result of a breach of confidence; or
 - is required to be disclosed by law or any government or governmental body, authority or agency having authority over a party to these Terms.
- (b) Clause 7(a) survives the termination or performance of a contract of which these Terms form part.
- (c) We are entitled to store and use any analysis, Results, reports and other data produced by us, provided that we do not identify you as the source, except where disclosure is required by law.

8. INTELLECTUAL PROPERTY RIGHTS

- (a) Each party will retain ownership of its own Intellectual Property Rights existing at the time these Terms are entered into. We retain all Intellectual Property Rights in our systems, processes and Results.
- (b) You acknowledge and agree that all Intellectual Property Rights created or devised by us in connection with the provision of the Goods or Services (including any improvements, derivatives and modifications thereto), shall be owned by and shall vest in us, as and when created. To the extent that you become the owner of any Intellectual Property Rights arising in connection with the Goods or

Services, you hereby assign and transfer absolutely, and shall procure the assignment of, all rights, title and interest in and to the Intellectual Property to us.

9. WARRANTY AND LIABILITY

- (a) **Nothing in these Terms will restrict, negate, modify or limit any of your rights under the Consumer Guarantees Act 1993 or the Fair Trading Act 1986 where you are not acquiring the Goods and/or Services for the purpose of a business or in trade.**
- (b) To the extent that our liability is not otherwise limited or excluded, and to the maximum extent permitted by law, our aggregate liability to you whether in tort, contract, at law (including for a misrepresentation) or otherwise for any loss, damage or injury in relation to the Goods, Services and/or Results is limited to the Price actually paid by you for the Goods, Services and/or Results giving rise to the claim, whether that claim relates to a testing order, a standalone sale of Goods (including reference samples or RFID tags), or otherwise. In such case we may, at our option, elect to:
 - (i) provide a refund; or
 - (ii) repair the Goods; or
 - (iii) replace the Goods or re-provide the Services.
- (c) Despite anything else contained in these Terms and to the maximum extent permitted by law:
 - (i) to the extent that you have approved any Goods prior to delivery, then you will be deemed to have accepted such Goods if delivered to a corresponding quality;
 - (ii) we will not be responsible or liable for any acts or omissions of any third parties, or for any error, non-performance or breach of our obligations under these Terms to the extent it directly or indirectly results from a cause outside our reasonable control, or from erroneous or faulty information and/or Samples provided to us by you;
 - (iii) Unless otherwise agreed in writing in an Order, no claim relating to the Goods and Services or returns will be considered unless made within (14) days of delivery of the Goods or supply of the Services and must be accompanied by a copy of the original packing slip or invoice. We may make a deduction to cover handling charges or for deterioration in the original quality or appearance of the Goods;
 - (iv) we exclude all warranties in relation to the Goods, Services and Results not expressly stated in these Terms;
 - (v) no Goods will be accepted for return unless they are returned in a resaleable undamaged condition and in the original packaging, with all relevant instruction manuals included;
 - (vi) the parties agree and acknowledge that if the Goods and/or Services supplied by us and acquired by you are supplied or acquired in trade within the meaning of the Fair Trading Act 1986 and/or the Consumer Guarantees Act 1993, that sections 9, 12A, and 13 of the Fair Trading Act 1986 and the provisions of the Consumer Guarantees Act 1993 will not apply to the agreement between us, and that it is fair and reasonable to exclude their application;
 - (vii) the parties agree and acknowledge that the provisions of Part 3 of the Contract and Commercial Law Act 2017 will not apply;
 - (viii) unless these Terms expressly provide or the parties agree otherwise in writing (for example, pursuant to a specific warranty in relation to the Goods, Services or Results), to the fullest extent permissible by law all warranties, conditions or other terms implied by law are excluded; and
 - (ix) **for the purposes of this clause you acknowledge that you had a reasonable opportunity to review these Terms, discuss them with us, and receive advice from your legal advisor, if you wished to do so.**
- (d) To the maximum extent permitted by law, we will not be liable for any loss or damage of any kind whatsoever arising from the supply of Goods, Services and/or Results by us to you, including direct or consequential loss and loss of profits, whether suffered or incurred by you or another person or entity and whether in contract or tort (including negligence) or otherwise and irrespective of whether such loss or damage arises directly or indirectly from Goods, Services or Results provided by us to you.
- (e) To the extent the limitations in this clause 9 do not apply or are not effective in accordance with their terms, in no event will our aggregate liability to you arising from any breach of these Terms, tort (including negligence) or other action or contravention of any statute or otherwise, exceed the total amounts paid by you to us over the 12 months preceding your claim.

10. MISCELLANEOUS

- (a) These Terms constitute the sole understanding of the parties in relation to its subject matter and supersede all prior understandings, written or oral, which will be of no further force or effect. No alteration or variation of these Terms will be binding on us unless authorised by us in writing. These Terms apply specifically to the Order or submission form received by us and any other documentation sent, communicated, or received from us. To the extent permitted by law, we may alter or change these Terms by agreement with you (which may be by email or via conduct in accordance with clause 2).
- (b) These Terms apply to you only where there is no separate agreement signed by both you and us governing the supply of the relevant Goods and/or Services (including, without limitation, a signed calibration services agreement or supply agreement). Where such a signed agreement is in place, that signed agreement will prevail over these Terms to the extent of any inconsistency.
- (c) You must not assign, subcontract or transfer all or any part of your rights or obligations under these Terms (including undergoing an effective change in your management or control) without our prior written consent. We may assign any rights or obligations without your approval as well as subcontract any obligations to third parties.
- (d) If any dispute arises between the parties about these Terms, the Goods provided, the Services performed, or the Results provided, a party must not commence legal proceedings unless and until the party has complied with the requirements of this clause 10(c) and 10(d). Any party claiming that there is a dispute must give notice in writing to the other party describing the nature of the dispute and the remedy sought.
- (e) If the dispute remains unresolved 20 business days after notice has been given under clause 10(c), the parties must seek a resolution through the use of mediation. The Dispute may be referred to mediation by any party by the delivery of written notice ("**Mediation Notice**") to the other parties. The mediation shall be conducted accordance with the procedures of the Resolution Institute and the terms of the Resolution Institute standard Mediation Agreement (NZ version) by a mediator (and at a fee) agreed to by the relevant parties. If the parties fail to agree on a mediator (or on costs) within 5 Business Days following delivery of the Mediation Notice, then the mediator will be selected and the mediator's fee determined by the CEO (or their delegate) for the time being of Resolution Institute (NZ). The mediator will determine the procedure and timetable for the mediation and the costs of the mediation will be shared equally between the disputing parties. Provided your account is not in arrears and you continue to make payment in accordance with these Terms, we will continue processing Samples submitted by you during the resolution of a dispute under this clause 10, provided always that this is subject to our rights to suspend the processing of Samples and the supply of Goods, Services or Results in accordance with clause 4(e); we may otherwise suspend the processing of Samples and the supply of Goods, Services or Results in accordance with clause 4(e).
- (f) Every notice given under these Terms will be sufficiently given if delivered personally, posted or successfully transmitted by email or facsimile to the intended recipient at his/her/its last known address or email address.
- (g) We will not be liable for any delay, failure or loss caused by a Force Majeure Event, which includes an act of God or nature, riot, armed conflict, strikes, government intervention, sanctions, notifiable diseases, pandemics, natural disaster, or any other circumstances beyond our reasonable control. Any measures implemented by us or any third party in response to a disease or pandemic constitute a cause beyond our reasonable control. We will use best endeavours to resume operations and testing as soon as possible following a Force Majeure Event.
- (h) We may subcontract the performance of Services to third parties. These Terms will be deemed to be made in New Zealand and will be construed and governed by the laws of New Zealand. The parties submit to the exclusive jurisdiction of the courts of New Zealand. If any provision in these Terms is held to be invalid, void or illegal or unenforceable, the validity, existence, legality and enforceability of the remaining provisions will not be affected, prejudiced or impaired.