

FONTERRA STANDARD TERMS OF PURCHASE Fonterra Philippines



The following terms and conditions, as amended from time to time, apply to all of our purchases of products unless otherwise agreed in writing. References in these terms and conditions to “you” or “your” refer to the Supplier named on the front page of this Agreement and “us,” “we” or “our” refers to the Purchaser named on the front page of the Agreement. Defined terms used in the front page of this Agreement shall have the same meaning in the rest of this Agreement.

1. Purchase of Products. We shall purchase the Products from you on the terms and conditions below and on the front page(s) of the Purchase Order. The Products shall be free from any liens, charges, security interests or any other encumbrances. You shall be responsible for payment of all freight, financing costs, customs and other charges, costs and expenses related to the supply and delivery of the Products unless otherwise agreed in accordance with the Delivery Terms stated on the front page of the Purchase Order. We shall pay the Price for the Products in accordance with the Payment Terms.

2. Approved Plant. We have the right to approve in writing the plant, factory or other premises used by you in connection with the manufacture of the Products (the “Plant”).

3. Delivery of Products. You shall supply the quantity of Products specified on the Purchase Order to us in accordance with the Delivery Terms and on the Delivery Date(s) specified. Warehouse receiving schedule is from 8:00am to 12 noon and 1:00pm to 4:00pm every Monday to Friday unless otherwise specified. All deliveries must be accompanied by a delivery receipt or sales invoice. Both delivery receipt and sales invoice must reflect the corresponding Purchase Order number. A separate sales invoice must be issued for each purchase order. The original sales invoice, supported by the original copy of the delivery receipt, acknowledged by Fonterra, must be forwarded to Purchasing or Finance for counter receipt (every Thursday from 9am to 4pm). We may refuse to accept delivery of any Products where there is no valid order. You shall notify us as soon as practicable of any circumstances that may have a material effect on your ability to meet the specified delivery requirements or to supply the Products in accordance with the terms of this Agreement. Where you are, or are likely to be, unable to deliver Products in accordance with this Agreement, we may cancel this Agreement (in whole or in part) on notice to you provided such notice is given no less than seven days prior to the estimated date of shipping of the Products, and you will indemnify us for all costs and expenses incurred by us in obtaining the required products from an alternative supplier, to the extent that the total amount we pay for the replacement products exceeds the Price specified on the front page of the Agreement.

4. Title and Risk. Title to the Products and all risk of loss or damage to the Products shall pass from you to us upon delivery in accordance with the Delivery Terms. Where any payment of the price is earlier title passes when those Products (or any component) are appropriated to the order.

5. Supplier Warranties. You warrant that:

- (a) all Products and all packaging supplied by you pursuant to this Agreement shall comply with the Specifications;
- (b) all Products shall be of merchantable quality and fit for the purpose for which they are intended or stated by us to you (including for use with or in products intended for human consumption);
- (c) all Products can be traced as to source and batch in the event of any recall issues arising and adequate Product samples are kept and properly stored in accordance with good manufacturing practice;
- (d) you shall comply with all applicable laws, regulations, and carry out (and maintain all relevant correspondence, documents and records relating to) any necessary regulatory testing relating to manufacture, quality, storage, packing, transportation, export or sale of the Products, or the performance of your obligations under this Agreement;

(e) you shall (at your cost, and with reasonable assistance from us) be responsible for obtaining, and will provide us with, all necessary documents and other information required to ensure that the Products are properly cleared for export and import to enable delivery, and that the Products otherwise meet all relevant export, import and other legal and regulatory requirements (including those relating to consumer product safety), including those that we may have notified to you; and

(f) the supply of the Products or resale by us of the Products shall not infringe the intellectual property of any third party.

These warranties are additional to any other warranties given by you or implied by custom or law, whether statutory or otherwise. You will, to the extent possible, pass on to us the benefit of any warranty received from any other person with the intent that we may have recourse against those persons either directly or through you.

6. Required Information. You will provide audit reports, manufacturing specifications, product analysis certificates and other testing certification and documentary records relevant to the Plant, the Products and the manufacture and sale of the Products as reasonably requested by us from time to time.

7. License to Intellectual Property. You grant us a non-exclusive, non-transferable licence to use your intellectual property (including any trademarks or promotional material) in connection with the use, marketing and sale of the Products by us.

8. Defective Products. We may carry out any reasonable acceptance tests of any Product. You shall take all necessary steps at your cost to rectify any failure of the Products to meet the Specifications or comply with the terms of the Agreement; and any other defect relating to the quality, safety or suitability for use of the Products (each, a “Defect” or “Defective”). If you become aware that any Products (whether delivered or not) are Defective, or do not otherwise meet the relevant Specification or requirements of this Agreement, you shall immediately advise us in writing of all identified issues and their potential impact on us. Without limitation to any other provision of this Agreement, if any Defect which is a breach of warranty results in us not receiving the expected performance of value from the Product, you will at your own cost, as requested by us, either:

- (a) promptly replace the Product (with a full warranty); or
- (b) provide a full refund, in which case we may, at your risk and expense, return the Product.

9. Confidentiality. All confidential information and any intellectual property provided by us to you shall remain our property, be kept confidential by you and shall be used by you solely for the provision of the Products in accordance with the Agreement. All of our confidential information and intellectual property shall be returned to us following the expiry or termination of the Agreement.

10. Indemnity. Except to the extent that the Liability results directly from any act or omission by us, you shall indemnify us and our employees, agents and contractors (each an “Indemnified Party”) against all claims, expenses, losses (whether direct, indirect, consequential, special or otherwise), damages and costs of any kind whatsoever (“Liabilities”) (including all Liabilities arising as a result of damage to a third party's property, injury to or death of any person, or any claim by any third party (including any subsequent purchaser of the Products from us), all legal costs in relation to any Liabilities, and all product recall costs and regulatory fines and penalties) sustained or incurred by any such Indemnified Party arising from:

- (a) any breach of this Agreement by you;
- (b) any Defect;
- (c) any negligent or wrongful act or omission by you or any of your employees, agents or contractors in the course of or related to the performance of, or failure to perform, any of your obligations under the Agreement; or
- (d) any fraud, dishonesty, misrepresentation or wilful default by you.

11. Insurance. You shall take out and maintain public and product liability insurance cover of not less than the coverage amount per event set forth on the front page of this Purchase Order in respect of any potential liability, loss or damage that may arise relating to the performance of your obligations under this Agreement with a reputable insurer who is satisfactory to us. You agree to provide evidence of such insurance to us upon request. You shall, if requested by us, procure our rights and interests to be noted directly on such policy or policies.

12. Notices. Any notice to be given under, or in connection with, this Agreement shall be given in writing to the other party's physical or contact email address and delivered by hand, prepaid post, sent by fax (with the original following by post) or by email to the email address for the other party's contact person.

13. Assignment. You shall not assign or attempt to assign or otherwise transfer or subcontract any right or obligation arising out of the Agreement.

14. Special Terms. In the event that any of the Special Terms, if any, are inconsistent with any term of this Agreement, then the Special Terms shall prevail to the extent of the inconsistency.

15. Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the Philippines. The parties submit to the non-exclusive jurisdiction of the courts of the Philippines. The United Nations Convention on Contracts for the International Sale of Goods 1980 shall not apply to the Agreement.

16. Relationship Between the Parties. Nothing in this Agreement shall create, constitute or evidence any partnership, joint venture, agency, trust or employer/employee relationship between us. Neither of us shall have the authority to act for, or to incur any obligation on behalf of, the other party.

17. Waivers; Modifications. Any modification to or variation or waiver of this Agreement must be in writing and signed by the parties. No failure or delay by any party in exercising any rights, power or privilege under this Agreement shall operate as a waiver, nor shall any single or partial exercise preclude any other or further exercise of any right, power or privilege under this Agreement.

18. Entire Agreement. Severability. This Agreement, including any attachments to it, constitutes the entire agreement and understanding between the parties and supersedes any previous written or oral agreement or understanding between the parties in relation to the subject matter of this Agreement. If any provision of this Agreement is held to be invalid, illegal or unenforceable, it shall be severed and the remainder of this Agreement shall remain in full force and effect.

19. Remedies; Set-Off. All of our remedies contained in this Agreement shall be cumulative and in addition to any rights or remedies we may have under applicable law. We may set off any amount owed by you to us or any of our related companies or any other entity within the wider Fonterra group under this Agreement or any other agreement against any amount owed by us or our Affiliate to you under this Agreement or any other agreement.

20. Sustainability Code of Practice. We have implemented the Sustainability Code of Practice which can be found at <https://www.fonterra.com/nz/en/terms-and-conditions.html>. As a supplier to Fonterra, you must endeavour to align your behaviour and business practices (and those of your subcontractors) with the principles contained in the Sustainability Code of Practice.

21. Survival. The provisions of clauses 3, 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18 and 19 shall survive termination or expiry of this Agreement.