

Riverina Fresh Pty Ltd

TERMS AND CONDITIONS OF SUPPLY

1. Definitions

In these terms:

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

Customer means a person who orders Products from Riverina Fresh Pty Ltd;

Delivery Location means the location for delivery of the Products as agreed by the parties;

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

Riverina Fresh means Riverina Fresh Pty Ltd (ABN 45 614 298 314) Trading as Riverina Fresh of 12-20 Hammond Avenue, Wagga Wagga NSW 2650;

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

Price means the price for the Products as specified in a Price List or as otherwise agreed in writing;

Price List means a list of Prices for Products as amended by Riverina Fresh from time to time;

Products means the range of dairy and other products as set out in a Product List; and

Product List means the list of Products as amended by Riverina Fresh from time to time;

2. Engagement

2.1 These terms apply to the order for and supply of Products to a Customer, unless there is another written agreement between the parties, in which case the terms in that agreement apply.

2.2 Any order for Products placed by a Customer constitutes acknowledgement and acceptance of these terms by the Customer.

2.3 These terms may include additional terms in a quotation from Riverina Fresh or other document signed by the parties.

2.4 Riverina Fresh may reject any offer or order for Products.

2.5 Riverina Fresh may vary these terms, including the Price List, by written notice to the Customer. Any variations will apply to orders placed after notice of the variation.

3. Pricing

3.1 Unless otherwise indicated, the Price excludes GST and any other taxes or duties imposed on or in relation to the Products.

3.2 If the supply of Products is a *taxable supply* then, subject to Riverina Fresh providing a valid *tax invoice*, the Customer will pay any GST payable for the *taxable supply*. Any rebates, discounts or other reductions in the Price will be calculated on the GST exclusive price. Any costs to be reimbursed or indemnified exclude any amount of GST for which an *input tax credit* can be claimed. Words in italics in this clause 3.2 have the same meaning as given in the *A New Tax System (Products and Services Tax) Act 1999* (Cth).

4. Orders

4.1 The Customer may order Products by placing orders with Riverina Fresh or its nominated distributor, sub-contractor or agent.

4.2 Unless otherwise agreed Riverina Fresh in writing, all orders must be for at least the minimum order quantity of Products set out in a Product List.

4.3 If Riverina Fresh cannot deliver the Products, it may cancel the Customer's order (even if it has been accepted) by written notice to the Customer.

4.4 Orders placed by the Customer with Riverina Fresh cannot be cancelled without the written approval of Riverina Fresh.

4.5 If Riverina Fresh accepts a request from a Customer to cancel an order, Riverina Fresh may charge a reasonable fee for any work done by or on behalf of Riverina Fresh to cancel, including a fee for the processing and acceptance of the Customer's order and request for cancellation.

5. Payment terms

5.1 Unless the Customer has been granted credit terms, the Customer must pay the Price in full on or before delivery of the Products to the Delivery Location.

5.2 Payment by cheque is not deemed made until the proceeds of the cheque have cleared.

5.3 Credit terms may be amended or revoked at the sole discretion of Riverina Fresh on notice to the Customer. Subject to clause 6, any revocation or amendment to the credit terms will apply to orders placed after notice of the revocation or amendment.

5.4 Time for payment is of the essence.

6. Payment default

6.1 If the Customer defaults in payment by the due date of any amount payable to Riverina Fresh, then all money which would become payable by the Customer to Riverina Fresh at a later date on any account, becomes immediately due and payable without the requirement of any notice to the Customer, and Riverina Fresh may, without prejudice to any of its other accrued or contingent rights:

(a) charge the Customer interest on any sum due at the prevailing rate under the *Penalty Interest Rates Act 1983* (Vic) plus 2% for the period from the due date until payment in full;

(b) charge the Customer for, and the Customer must indemnify Riverina Fresh from, all costs and expenses (including without limitation all legal costs and expenses) incurred by it resulting from the default or in enforcing compliance with these terms or to recover any Products;

(c) cease or suspend supply of any further Products to the Customer;

(d) by written notice to the Customer, terminate any incomplete contract with the Customer.

6.2 Clauses 6.1(c) and 6.1(d) may also be relied upon, at Riverina Fresh's option:

(a) where the Customer is a natural person and becomes bankrupt or enters 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; or

(b) where the Customer is a corporation and, it enters any scheme of arrangement or any assignment or composition with or for the benefit of its creditors or any class of its creditors or has a liquidator, administrator, receiver or manager or similar functionary appointed regarding 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.

7. Passing of title

7.1 Until Riverina Fresh receives full payment in cleared funds for all Products supplied by it to the Customer, and all other amounts owing to Riverina Fresh by the Customer:

- (a) title in the Products remains with Riverina Fresh and does not pass to the Customer;
- (b) the Customer must hold the Products as fiduciary bailee and agent for Riverina Fresh;
- (c) the Customer must keep the Products separate from its Products and maintain all Riverina Fresh labelling and packaging;
- (d) the Customer must hold any proceeds of sale of the Products on trust for Riverina Fresh 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;
- (e) in addition to its rights under the PPSA, Riverina Fresh 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 Riverina Fresh, and for this purpose the Customer irrevocably licences Riverina Fresh to enter such premises and also indemnifies Riverina Fresh against all costs, claims, demands or actions by any party arising from such action.

7.2 Nothing in these terms prevents the Customer from selling the Products to any third party provided that the proceeds of any such sale are deemed to be held in trust by the Customer for Riverina Fresh until Riverina Fresh has received payment in full for the Products.

8. Personal Property Securities Act

8.1 The PPSA applies to these terms.

8.2 For the PPSA:

- (a) terms used in clause 8 that are defined in the PPSA have the same meaning as in the PPSA;
- (b) these terms are a security agreement and Riverina Fresh has a Purchase Money Security Interest in all present and future Products or other goods supplied by Riverina Fresh to the Customer under these terms and the proceeds of the Products or other goods;
- (c) the security interest is a continuing interest irrespective of whether there are monies or obligations owing by the Customer; and
- (d) the Customer must do whatever is necessary to give a valid security interest over the Products or other goods supplied under these terms which can be registered by Riverina Fresh on the Personal Property Securities Register.

8.3 The security interest arising under this clause 8 attaches to the Products and other goods when the Products and other goods are collected or dispatched from Riverina Fresh's premises and not at any later time.

8.4 Where permitted by the PPSA, the Customer waives any rights to receive the notifications, verifications, disclosures or other documentation specified under sections 95, 118, 121(4), 130, 132(3)(d), 132(4), 135 and 157 of the PPSA.

8.5 Riverina Fresh and the Customer agree to contract out of and nothing in sections 96, 125, 129, 142 and 143 of the PPSA will apply to these terms.

8.6 To the extent permitted by the PPSA, the Customer agrees that:

- (a) the provisions of Chapter 4 of the PPSA which are for the benefit of the Customer or which place obligations on Riverina Fresh will apply only to the extent that they are mandatory or Riverina Fresh agrees to their application in writing; and
- (b) where Riverina Fresh has rights in addition to those in Chapter 4 of the PPSA, those rights will continue to apply.

8.7 The Customer must immediately upon request from Riverina Fresh:

- (a) do all things and execute all documents to give effect to the security interest created under these terms; and
- (b) procure from any person considered by Riverina Fresh to be relevant to its security position such agreements and waivers (including as equivalent to those above) as Riverina Fresh may require.

8.8 Riverina Fresh may allocate amounts received from the Customer in any manner Riverina Fresh determines, including in any manner required to preserve any Purchase Money Security Interest it has in Products supplied by Riverina Fresh.

8.9 For section 275(6) of the PPSA, the parties agree and undertake these terms and any information pertaining to the sale of Products and details of the Products must be kept confidential. The Customer must not disclose any information pertaining to these terms or the sale of the Products, except as otherwise required by law or that is already in the public domain.

9. Risk and insurance

9.1 Risk in the Products, including all insurance responsibility for theft, damage or other loss in the Products passes to the Customer immediately on the Products being delivered to the Delivery Location.

9.2 The Products are sold to the Customer on the basis that the Customer has obtained all necessary licenses or permits under all laws and regulations in relation to the Products.

9.3 To the extent permitted by law, the Customer assumes all risk and liability for loss, damage or injury to persons or to property of the Customer, or third parties arising out of the use, installation or possession of any of the Products sold by Riverina Fresh.

9.4 The Customer must mitigate any loss or damage it suffers or may suffer arising in connection with these terms.

10. Performance

10.1 Any period or date for delivery of Products stated by Riverina Fresh is an estimate only and not a contractual commitment.

10.2 Riverina Fresh will use its reasonable endeavours to meet any estimated dates for delivery of the Products but will not be liable for any loss or damage suffered by the Customer or any third party for failure to meet any estimated date.

11. Delivery

11.1 Riverina Fresh will arrange for the delivery of the Products to the Customer at the Delivery Location.

11.2 The Customer is responsible for all costs associated with delivery of the Products to the Delivery Location, including freight, insurance and other charges.

11.3 Riverina Fresh may make part delivery of Products and Riverina Fresh may invoice the Customer for the Products delivered.

11.4 If delivery is attempted and cannot be completed, the Customer is deemed to have taken delivery of the Products. The Customer is liable for storage charges which are payable on demand.

12. Non-compliance

12.1 Subject to clause 12.2 and 12.4, Riverina Fresh will not be liable for any shortages, damage or non-compliance of the Products with these terms unless the Customer notifies Riverina Fresh with full details and description within two days of delivery otherwise the Customer is deemed to have accepted the Products.

12.2 If a claim for damaged or non-compliant Products is accepted by Riverina Fresh, Riverina Fresh may, at its option, replace the Products, or refund the Price paid for the Products.

12.3 Subject to clause 12.4, Riverina Fresh will not under any circumstances accept Products for return that:

- (a) have been specifically produced, imported or acquired to fulfil these terms;
- (b) are discontinued Products or no longer stocked by Riverina Fresh;
- (c) have been altered in any way;
- (d) have been used; or
- (e) are not in their original condition and packaging.

12.4 Nothing in this clause 12 limits any remedy available for a failure of the guarantees under the ACL if the ACL applies.

12.5 Subject to clause 12.4, Riverina Fresh will not be liable for freight costs on Products returned to it by the Customer.

13. Liability

13.1 Except as specifically provided for in these terms, these terms do not include by implication any other term, condition or warranty regarding the quality, merchantability, acceptability, fitness for purpose, condition, description, assembly, manufacture, design or performance of the Products or any contractual remedy for any failure of the Products to comply with any such term.

13.2 To the extent permitted by law, Riverina Fresh is not liable for any indirect or consequential losses or expenses suffered by the Customer or any third party, including but not limited to loss of turnover, profits, business, goodwill or any liability to any other third 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 Riverina Fresh in relation to the Products or their use or application.
- (b) it has not made known, either expressly or by implication, to Riverina Fresh any purpose for which it requires the Products and it must satisfy itself that the Products are suitable for the Customer.

13.4 Nothing in these terms excludes, restricts or modifies the application of any state or federal legislation which cannot be excluded, restricted or modified, including under the ACL if it applies.

14. Warranties and indemnities

14.1 The Customer represents and warrants to Riverina Fresh:

- (a) it has full corporate power to enter and give effect to these terms and the transactions contemplated by these terms;
- (b) it has taken all necessary action to authorise the delivery and performance of these terms;
- (c) at the date of these terms, the delivery and performance of these terms does not contravene any contractual, legal or other obligations that apply to it; and
- (d) the obligations under these terms will be valid, binding and enforceable.

14.2 The Customer warrants and represents that all information, representations, warranties and undertakings made or given by it to Riverina Fresh before these terms are true, complete and accurate.

14.3 To the extent permitted by law, the Customer indemnifies Riverina Fresh against any loss or damage suffered by Riverina Fresh, its sub-contractors, agents or employees as a result of a breach by the Customer of these terms.

15. Termination

15.1 Either party may terminate these terms at any time by giving 10 days' written notice to the other party.

15.2 Riverina Fresh may immediately terminate these terms by written notice to the Customer if the Customer commits a breach of these terms and fails to remedy that breach within a period of two days after being notified in writing to do so.

15.3 On the expiry or termination of these terms for any reason:

- (a) each party retains its rights in respect of a breach by the other party; and
- (b) Local Milk Suppliers reserves the right to cancel orders received prior to termination.

16. Force majeure

Riverina Fresh is not liable under these terms if 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, Riverina Fresh

may suspend or terminate these terms by written notice to the Customer.

17. Confidentiality

The Customer must and ensure its employees and representatives keep confidential and secure, and not use, any of Riverina Fresh confidential information provided by, Riverina Fresh commercially sensitive or confidential, including any information disclosed to the Customer by Riverina Fresh under these terms (including the Price, information about any manufacturing processes or recipes), whether orally or in writing and whether or not it is stated to be commercially sensitive or confidential, except if the information is already in the public domain other than because of a breach by the Customer of these terms.

18. Miscellaneous

- 18.1 The law of Victoria governs these terms. The parties agree to the non-exclusive jurisdiction of the courts of Victoria, the Federal Court of Australia, and of courts entitled to hear appeals from those courts.
- 18.2 Riverina Fresh may subcontract the supply of Products.
- 18.3 Riverina Fresh may by notice to the Customer assign or novate these terms, in which case the Customer agrees to execute all such documents as Riverina Fresh may reasonably require to formalise such assignment or novation.
- 18.4 The Customer cannot assign, novate or otherwise transfer its rights or obligations under these terms without the prior written consent of Riverina Fresh.
- 18.5 If the Customer comprises two or more persons, these terms applies to those persons jointly and each individually.
- 18.6 Riverina Fresh may set off any amount it owes the Customer against any amount that the Customer owes Riverina Fresh. The Customer may not set off any amounts it owes Riverina Fresh against any amount Riverina Fresh owes the Customer.
- 18.7 A failure by Riverina Fresh to enforce any power or right must not be construed as a waiver of that power or right.
- 18.8 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.
- 18.9 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 received five days after posting. Notices sent by email are deemed received on confirmation of successful transmission.
- 18.10 The Customer must comply with the Australian Privacy Principles for any personal information supplied to it for these terms.