

Sales Terms and Conditions**1. Applicability.**

(a) These terms and conditions of sale (these "**Terms**") are the only terms which govern the sale of the goods ("**Goods**") by D. Tyers Foods International Inc., FoodTec Canada Inc., or DairyTrade USA LLC. ("**Seller**") to the buyer named on the Sales Confirmation (as defined herein) ("**Buyer**"). Notwithstanding anything herein to the contrary, if a written contract signed by both parties is in existence covering the sale of the Goods covered hereby, the terms and conditions of said contract shall prevail to the extent they are inconsistent with these Terms.

(b) The accompanying sales confirmation (the "**Sales Confirmation**") and these Terms (collectively, this "**Agreement**") comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. These Terms prevail over any of Buyer's general terms and conditions of purchase regardless of whether or when Buyer has submitted its purchase order or such terms. Fulfilment of Buyer's order does not constitute acceptance of any of Buyer's terms and conditions and does not serve to modify or amend these Terms.

2. Delivery.

(a) Seller shall make delivery in accordance with the Incoterm provided in the Sales Confirmation (the "**Delivery Point**").

(b) Seller will use commercially reasonable efforts to deliver the Goods to the Buyer on or around the delivery date provided in the Sales Confirmation, but Buyer acknowledges that such delivery date is an estimate only and not a guarantee. Buyer must accept and pay for the Goods in full even in the event of a delay or any other variation to the delivery date.

(c) Seller shall not be liable for any delays, loss or damage of the Goods in transit and any such delays, loss or damage shall not entitle the Buyer to repudiate, terminate or cancel this Agreement.

(d) Seller may, in its sole discretion, without liability or penalty, make partial shipments of Goods to Buyer. Each shipment will constitute a separate sale, and Buyer shall pay for the units shipped whether such shipment is in whole or partial fulfilment of Buyer's purchase order.

(e) Unless otherwise agreed in writing by the parties, Seller shall deliver the Goods to the Delivery Point using Seller's standard methods for packaging and shipping such Goods. Buyer shall take delivery of the Goods within two (2) Business Days of Seller's written notice that the Goods have been delivered to the Delivery Point. Buyer shall be responsible for all shipping and loading costs and provide equipment and labour reasonably suited for receipt of the Goods at the Delivery Point. The Buyer acknowledges and agrees that it is liable, and will indemnify and reimburse the Seller, for demurrage, detention or any other charges imposed against the Seller as applicable as a result of the Buyer failing to claim the Goods at the Delivery Point.

"**Business Days**" means any day on which commercial banks are open for business in the city where the Delivery Point is located.

(f) If for any reason Buyer fails to accept delivery of any of the Goods on the date fixed pursuant to Seller's notice that the Goods have been delivered at the Delivery Point, or if Seller is unable to deliver the Goods at the Delivery Point on such date because Buyer has not provided appropriate instructions, documents, licenses or authorizations: (i) risk of loss to the Goods shall pass to Buyer; (ii) the Goods shall be deemed to have been delivered; and (iii) Seller, at its option, may store the Goods until Buyer picks them up, whereupon Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance, as applicable).

(g) If any fees, levies, charges, surcharges or any other costs are charged to or imposed on the Seller after the Seller has entered into a contract of carriage with its nominated carrier for the delivery of the Goods to the Delivery Point, as applicable, then the Buyer acknowledges and agrees that it is responsible and liable, and will indemnify and reimburse the Seller, for the payment of those fees, levies, charges or other costs.

3. Non-Delivery.

(a) The Seller shall not be liable for any non-delivery of Goods unless Buyer gives written notice to Seller of the non-delivery within three (3) days of the date when the Goods would in the ordinary course of events have been received.

(b) Any liability of Seller for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or adjusting the invoice respecting such Goods to reflect the actual quantity delivered.

(c) Buyer acknowledges and agrees that the remedies set forth in Section 3 are Buyer's exclusive remedies for the delivery of Non-Conforming Goods. Except as provided under Section 3(b), all sales of Goods to Buyer are made on a one-way basis and Buyer has no right to return Goods purchased under this Agreement to Seller.

4. **Quantity.** The Buyer acknowledges and agrees that due to the nature of the Goods, the quantity of Goods may fluctuate up or down from the quantity set forth in the Sales Confirmation. Buyer shall not be entitled to object to or reject the Goods or any portion of them by reason of the surplus or shortfall and shall pay for such Goods based on the actual quantity provided by the Seller in the bill of lading based on the Price/KG price set forth in the Sales Confirmation.

5. Title and Risk of Loss - INTERNATIONAL CONTRACTS

(a) The risk in Goods shall pass to the Buyer in accordance with the relevant provision of Incoterms in the Sales Confirmation.

(b) Title in the Goods shall not pass to the Buyer until Seller has received payment in full of the Price. Until then, the Buyer agrees that:

- (i) the Buyer holds the Goods as bailee only;
- (ii) the Buyer must store the Goods supplied in such a way that it is clear that it is Seller's property;
- (iii) the Buyer irrevocably authorizes Seller and its representatives to enter any premises where the Goods are kept and recover the Goods and, if necessary, to use the Buyer's name and to act on the Buyer's behalf to do so;
- (iv) if the Buyer sells the Goods, the sale is by the Buyer as agent for and on behalf of Seller, and the proceeds of sale are held for the benefit of Seller and must first be applied to paying Seller the charges for the Goods; and
- (v) this Section 5 applies in full regardless of any transformation, processing or treatment of the Goods.

(c) The Buyer acknowledges that these terms create a security interest in the Goods and all proceeds of sale of the Goods, from the time of delivery until the time that title passes to the Buyer under this clause. The security is effective under each applicable provincial *Personal Property Securities Act* ("PPSA") for Goods located in such province in Canada, and under applicable laws in other jurisdictions.

(d) The Buyer consents to Seller registering its security interest under the applicable provincial PPSAs in Canada and other applicable laws in other jurisdictions, and the Buyer agrees to provide all assistance required by Seller to facilitate this.

(e) Whether or not Seller registers its security in the Goods, the Buyer must not offer or create any interest in the Goods to the benefit of itself or a third party, and must take all steps necessary to separately manage and hold the Goods and identify them as property of Seller until title passes.

6. Title and Risk of Loss - DOMESTIC CONTRACTS

(a) Title and risk of loss passes to Buyer upon delivery of the Goods at the Delivery Point. As collateral security for the payment of the purchase price of the Goods, Buyer hereby grants to Seller a lien on and security interest in and to all of the right, title and interest of Buyer in, to and under the Goods, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under the Ontario *Personal Property Security Act*.

7. Inspection and Notice of Defect of Products.

(a) Buyer shall inspect the Goods within 48 Hours of receipt ("**Inspection Period**"). Buyer will be deemed to have accepted the Goods unless it notifies Seller in writing of any incomplete, incorrect, faulty or defective Goods during the Inspection Period and furnishes such written evidence or other documentation as required by Seller with reasonable detail (the "**Defect Claim**").

(b) Upon receiving the Defect Claim, Seller will assess it and, if the Defect Claim is established, use its best endeavours to ensure that the default is rectified to the Buyer's reasonable satisfaction, without additional cost to the Buyer. The Buyer agrees to provide information, co-operate and assist Seller in doing so, at no cost to Seller.

(c) To the extent that some Goods are incorrectly delivered, not delivered at all, or that a fault or defect cannot be rectified, Seller shall, in its sole discretion, (i) replace the incorrectly delivered, incomplete, faulty or defective Goods, or (ii) credit or refund the amounts payable by the Buyer in proportion to the incomplete or non-delivery or reduced value attributable to the fault or defect of the said Goods.

(d) Buyer acknowledges and agrees that the remedies set forth in Section 6 are Buyer's exclusive remedies for the delivery of incorrect, incomplete, faulty or defective Goods. Except as provided under Section 6, all sales of Goods to Buyer are made on a one-way basis and Buyer has no right to return Goods purchased under this Agreement to Seller.

8. Price.

(a) Buyer shall purchase the Goods from Seller at the price(s) (the "**Prices**") set forth in the Sales Confirmation. Seller may notify a variation due to a change in the market price of the Goods, freight and other third-party costs, or currency fluctuations at any time before the date of delivery. The Buyer agrees that the change shall not release the Buyer from its obligation to pay the entire amount of the charges for the Goods, including the changed Price.

(b) If there is a change to either party's credit rating, insurance coverage, trading terms or terms of finance, Seller may adjust the payment terms set out in the Sales Confirmation by notifying the Buyer in writing.

(c) All Prices are exclusive of all harmonized sales tax, goods and services tax, provincial sales tax, value added tax, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any governmental authority on any amounts payable by Buyer. Buyer shall be responsible for all such charges, costs and taxes; *provided that*, Buyer shall not be responsible for any taxes imposed on, or with respect to, Seller's income, revenues, gross receipts, personnel or real or personal property or other assets.

9. Payment Terms.

(a) Buyer shall pay all invoiced amounts due to Seller in the timeline and currency provided in the Sales Confirmation.

(b) Buyer shall pay interest on all late payments at the lesser of the rate of ten percent (10%) per annum or the highest rate permissible under applicable law, calculated daily and compounded monthly. Buyer shall reimburse Seller for all costs incurred in collecting any late payments, including, without limitation, legal fees on a full indemnity basis. In addition to all other remedies available under these Terms or at law (which Seller does not waive by the exercise of any rights hereunder), Seller shall be entitled to suspend the delivery of any Goods if Buyer fails to pay any amounts when due hereunder and such failure continues for ten (10) days following written notice thereof.

(c) Buyer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Seller, whether relating to Seller's breach, bankruptcy or otherwise.

10. Buyer Obligations.

(a) The Seller may reject any destination which the Seller considers may be subject to Trade Sanctions, and the Buyer must provide the Seller with all reasonable assistance to establish whether delivery would constitute a breach of a Trade Sanction. In the event the Seller rejects a destination the Buyer must nominate a substitute destination within 10 days of the rejection. "**Trade Sanction**" means any measures imposed by a government or group of governments to prohibit, restrict or limit trade with or within a country.

(b) Unless otherwise agreed between the Seller and the Buyer, the Buyer must not sell directly or indirectly any of the Goods to any subsequent customer knowing or having reason to believe that they would be resold or supplied beyond the agreed subsequent customers as agreed between the Seller and the Buyer. In the event of any dispute with respect to this matter, the Seller will have the sole right to determine the matter and its determination will be final and binding on the Buyer.

(c) The Buyer must use all reasonable endeavours to satisfy any special condition specified in the Sales Confirmation requiring action by it prior to the estimated date of shipment in the Sales Confirmation. If the Buyer has not otherwise notified the Seller within that timeframe then the special condition will be deemed to be satisfied.

11. Compliance with Law.

(a) The Buyer must comply with all applicable laws and regulations in the countries where the Buyer intends to use, distribute or market the Goods. Buyer shall comply with all export and import laws of all countries involved in the sale of the Goods under this Agreement or any resale of the Goods by Buyer. Specifically, and without limiting the generality of the foregoing, the Buyer must comply with all health and safety requirements, labelling requirements, registration and approval requirements, dating requirements, warranty requirements, truth in advertising requirements and country of origin marking requirements.

(b) At the time the Buyer places its order, it must advise the Seller of any legal requirements to the extent they relate to the

specification of the Goods, manufacturing process, labelling, packaging, or documentation. If the Seller is able to do so, it will comply with such requirements to the extent set out in the relevant Sales Confirmation. The Seller reserves the right to increase the price to cover the reasonable cost of complying with any such requirements.

(c) The Buyer acknowledges that the Seller will be relying entirely upon the Buyer to convey any specific requirements that the Buyer may have in respect to the Goods, including any legal requirements that apply in the Buyer's markets. The Seller will not be responsible for failing to satisfy any such requirements unless the Buyer advised the Seller of such requirements, in writing, on or prior to the date of these Terms and the relevant Sales Confirmation stipulates that the Seller will meet those requirements.

12. Indemnity.

(a) The Buyer indemnifies, and holds the Seller, its shareholders, directors, employees, contractors, representatives and agents (collectively, the "**Seller Parties**") harmless, from and against any and all claims and damages of every kind arising out of or in connection with the Buyer's breach of this Agreement.

(b) The Buyer indemnifies, defends and holds the Seller Parties harmless, from and against any and all third party claims and damages of every kind arising out of or in connection with the Goods or this Agreement, unless the Buyer demonstrates that the claim is a direct result of the actions or omissions of the Seller.

13. No Warranty. SELLER MAKES NO CONDITION OR WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS, INCLUDING ANY (a) CONDITION OR WARRANTY OF MERCHANTABILITY; OR (b) CONDITION OR WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; OR (c) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.

14. Limitation of Liability.

(a) IN NO EVENT SHALL SELLER BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, ARISING OUT OF OR RELATING TO ANY BREACH OF THESE TERMS, WHETHER OR NOT THE POSSIBILITY OF SUCH DAMAGES HAS BEEN DISCLOSED IN ADVANCE BY BUYER OR COULD HAVE BEEN REASONABLY FORESEEN BY BUYER, REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

(b) **IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO SELLER FOR THE GOODS SOLD HEREUNDER.**

(c) The limitation of liability set forth in Section 13(b) shall not apply to (i) liability resulting from Seller's gross negligence or wilful misconduct and (ii) death or bodily injury resulting from Seller's acts or omissions.

15. **Insurance.** During the term of this Agreement and until the best before date(s) of the Goods, as applicable, Buyer shall, at its own expense, maintain and carry insurance in full force and effect which includes, but is not limited to, commercial general liability (including product liability) with limits of not less than CAD\$2,000,000 per occurrence and an aggregate limit of not less than CAD\$5,000,000 within any policy year and a deductible not exceeding CAD\$10,000, which includes or is in addition to Products and Completed Operations insurance and Blanket Contractual Liability insurance, and separately, Property Insurance with insurers licensed to underwrite insurance in the jurisdiction of the Buyer's place of work. D. Tyers Foods International Inc., FoodTec Canada Inc. or DairyTrade USA LLC shall be listed as an additional insured on any insurance policy obtained and carried by the Buyer hereunder. Upon Seller's request, Buyer shall provide Seller with a certificate of insurance from Buyer's insurer evidencing the insurance coverage specified in these Terms. Buyer shall provide Seller with thirty (30) days' advance written notice in the event of a cancellation or material change in Buyer's insurance policy. Except where prohibited by law, Buyer shall require its insurer to waive all rights of subrogation against Seller's insurers and Seller.

16. **Termination.** In addition to any remedies that may be provided under these Terms, Seller may terminate this Agreement with immediate effect upon written notice to Buyer, if Buyer: (i) fails to pay any amount when due under this Agreement and such failure continues for fifteen (15) days after Buyer's receipt of written notice of non-payment; (ii) has not otherwise performed or complied with any of these Terms, in whole or in part; or (iii) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors.

17. **Waiver.** No waiver by Seller of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Seller. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

18. **Confidential Information.** All non-public, confidential or proprietary information of Seller, including but not limited to specifications, samples, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Seller to

Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential" in connection with this Agreement is confidential, solely for the use of performing this Agreement and may not be disclosed or copied unless authorized in advance by Seller in writing. Upon Seller's request, Buyer shall promptly return all documents and other materials received from Seller. Seller shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (a) in the public domain; (b) known to Buyer at the time of disclosure; or (c) rightfully obtained by Buyer on a non-confidential basis from a third party.

19. **Force Majeure.** The Seller shall not be liable or responsible to Buyer, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of Seller including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, lockouts, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown or power outage.

20. **Amendments and Modifications.** These Terms may only be amended or modified in writing which specifically states that it amends these Terms and is signed by an authorized representative of each party

21. **Assignment.** Buyer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Seller. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Buyer of any of its obligations under this Agreement.

22. **Relationship of the Parties.** The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

23. **No Third-Party Beneficiaries.** This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.

24. **Governing Law.** All matters arising out of or relating to this Agreement are governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein without giving effect to any choice or conflict of

law provision or rule (whether of the Province of Ontario or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the Province of Ontario. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement.

25. **Choice of Forum.** Any legal suit, action, litigation or proceeding of any kind whatsoever in any way arising out of, from or relating to this Agreement, including all exhibits, schedules, attachments, and appendices attached to this Agreement, and all contemplated transactions, shall be instituted in the courts of the City of Toronto in the Province of Ontario, Canada, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, litigation or proceeding. Service of process, summons, notice, or other document by mail to such party's address set forth herein shall be effective service of process for any suit, action, litigation or other proceeding brought in any such court. Each party agrees that a final judgment in any such suit, action, litigation, or proceeding is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. The parties irrevocably and unconditionally waive any objection to the venue of any action or proceeding in such courts and irrevocably waive and agree not to plead or claim in any such court that any such action or proceeding brought in any such court has been brought in an inconvenient forum.

26. **Notices.** All notices, request, consents, claims, demands, waivers and other communications hereunder (each, a "Notice") shall be in writing and addressed to the parties at the addresses set forth on the face of the Sales Confirmation or to such other address that may be designated by the receiving party in writing. Notices sent in accordance with this Section will be deemed effectively given: (a) when received, if delivered by hand, with signed confirmation of receipt; (b) when received, if sent by a nationally recognized overnight courier, signature required; (c) when sent, if by facsimile or email (in each case, with confirmation of transmission) if sent during the addressee's normal business hours, and on the next business day if sent after the addressee's normal business hours; and (d) on the day after the date mailed by certified or registered mail by the Canada Post Corporation, return receipt requested, postage prepaid.

27. **Severability.** If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

28. **Survival.** Provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Order including, but not limited to, the following provisions: Section 5 (Title and Risk of Loss), only if Seller has not received full payment of the Price from the Buyer, Subsection 9(b) (Buyer Obligations), Subsection 10(a) (Compliance with Law), Section 11 (Indemnity), Section 12 (No Warranty), Section 13 (Limitation of Liability), Section 14 (Insurance), Section 17 (Confidential Information), Section 23 (Governing Law), Section 24 (Choice of Forum), and Section 27 (Survival).