

**GUARANTEE**

In consideration for Stocker agreeing to provide the Customer with services the persons signing this application (the "**Guarantors**") hereby agree that they and each of them jointly and severally personally guarantee due payment of all monies now or at any time hereafter owed to Stocker by the Customer and each of the persons undertake jointly and severally to indemnify Stocker and keep them indemnified against all costs and expenses including legal costs on a solicitor client basis, and losses incurred or suffered in connection with or in relation the supply of services to the Customer.

**UNDERTAKING**

The Customer and the Guarantors and each of them jointly and severally acknowledge and accept that they are bound by and do jointly and severally further undertake to abide by the terms of Stocker's Standard Terms of Trade, and any Contract, and to pay all accounts on the due date.

**PRIVACY ACT**

- a The Customer and the Guarantors expressly authorise Stocker to make any enquiries it considers necessary for confirmation of any information set out on this application.
- b The Customer and Guarantors understand that they have rights under the Privacy Act 1993 to access and correct any information held by Stocker about the Customer and the directors.
- c The signatories confirm that he/she/they is/are authorised to make this application on behalf of the Customer.

**ACKNOWLEDGEMENT**

The undersigned Customer and Guarantors acknowledge:

- a that I/we have had the Standard Terms of Trade explained to us and that we have read and understand them;
- b the above information is true and correct; and
- c by signing this Credit Application Customer agrees to abide by the Standard Terms of Trade and any Contract which includes payment in full by the 20<sup>th</sup> of the month following invoice or payment by the date stated on the invoice. If payment is not made in full by the due date, Stocker will exercise such remedies as is considered necessary to secure payment and the Customer and Guarantors will be held liable for the cost of those measures.

**INTERPRETATION**

In these Terms, the following words have the following special meanings:

"**Customer**" means the person, firm, company or entity buying the Goods and / or Services from Stocker.

"**Goods**" means all Goods that are the subject matter of any contract for purchase between Stocker and the Customer, including where the context permits a resulting product into which the Goods are so incorporated, manufactured or commingled that their identity is lost in the resulting product.

"**PPSA**" means the Personal Property Securities Act 1999.

"**Services**" means all Services that are the subject matter of any contract between Stocker and the Customer.

"**Stocker**" shall mean Stocker Dairy Services Limited and Stocker Dairy Plumb Limited, Stocker Dairy North Limited, and any related companies (as defined in the Companies Act 1993) from time to time or any employee or any person acting of and with the authority of Stocker Dairy Services Limited, Stocker Dairy Plumb Limited or Stocker Dairy North Limited.

"**Supply**" shall mean the supply of Services or Goods by Stocker to the Customer at any time.

**1. CONTRACT**

The Supply of all Goods and Services by Stocker to the Customer will be in accordance with any quotation or estimate provided to the Customer, and in accordance with the following Terms of Trade which shall prevail despite any indication to the contrary by any person, agent or representative acting or purporting to act on behalf of Stocker. Together any quotation, estimate, or prevailing market terms where no quotation or estimate has been provided, along with these Terms of Trade shall form the Contract with the Customer for the Supply.

**2. SUPPLY OF GOODS AND SERVICES**

Goods and Services will be supplied where either direct credit or cheque payment accompanies an order or where a duly authorised Company Purchase Order has been received (whether in writing or verbal) and is charged against an account previously opened with Stocker.

**3. PRICING**

All prices listed in any communication are GST Exclusive unless otherwise stated. Prices are subject to change without notice, unless specifically noted otherwise.

**4. PAYMENT**

- a) The Customer agrees to pay to Stocker in full all invoices by the due date on or before the due date for payment as listed on the invoice;
  - i. On the 20th of the month following invoice for other items; or
  - ii. On the due date as stated in any quotation, estimate, or Contract provided to the Customer.
- b) Where the Customer's account is overdue Stocker may, at its discretion, refrain from supplying any further goods.
- c) The Customer agrees to pay interest on all sums and overdue amounts outstanding at 20% per annum (calculated daily) ("**default interest**") from the due date or date of default as the case may be until payment is made.
- d) The Customer agrees to pay in addition to default interest at 4(c), a monthly administration fee on overdue accounts in the sum of \$25.00 ("**administration fee**") which covers the costs of sending out reminders and statements.
- e) The charging of default interest and administration fee will be without prejudice to any other rights of Stocker under this Agreement.
- f) If a solicitor or debt collector is instructed by Stocker to enforce any rights pursuant to these terms and conditions of trade, then the Customer agrees to reimburse (with all monies due) any liabilities, fees and disbursements as charged to Stocker as a result, on a full indemnity basis.
- g) Stocker may at its discretion apply any payments it receives from the Customer in and towards the satisfaction of any indebtedness of the Customer to Stocker and it shall not be bound by any conditions or qualifications that the Customer may make in relation to such payments.

- h) Pending payment in full for the Goods, the Customer:
  - i. Must not supply any of the Goods to any person outside of its ordinary or usual course of business.
  - ii. Must not allow any person to have or acquire any security interest in the Goods.
  - iii. Must insure the Goods for their full insurable or replacement value (whichever is the higher), with an insurer licensed or authorised to conduct the business of insurance in the place where the Customer carries on business. Risk of any loss, deterioration or damage of or to the Goods shall be borne by the Customer from the time of despatch from the premises of Stocker or their authorised distributors. Stocker will not be held liable for any damage, loss or delay occurring to Goods in transit.
  - iv. Must not remove, deface or obliterate any identifying plate, mark or number on any of the Goods.

**5. COMPLIANCE**

The Customer will comply with terms of any license agreement applicable to any part of the Goods and the Customer shall not copy the Goods in whole or in part except to make copies as are necessary for the purpose of a bona fide system backup and security.

**6. OWNERSHIP**

- a) All Goods shall remain the property of Stocker as legal and equitable owner pending cleared payment in full of all monies due and owing in respect of the Goods owed by the Customer to Stocker.
- b) Despite anything contained in these Terms and Conditions, if the Customer supplies any of the Goods to any person before all monies payable by the Customer have been paid to Stocker, the Customer agrees that:
  - i. It holds the proceeds of resupply of the goods on trust for and as agent for Stocker immediately when they are receivable or are received.
  - ii. It must either pay the amount of the proceeds to resupply to the Stocker immediately when they are received or pay those proceeds into an account with a bank or financial institution or deposit-taking institution as trustee for Stocker.
  - iii. In the event that the Customer uses the Goods in some manufacturing or construction process of its own or some third party, then the Customer shall hold such part of the proceeds of such manufacturing or construction process as relates to the Goods in trust for Stocker. Such parts shall be deemed to be equal in dollar terms to the amount owing by the Customer to Stocker at the time of the receipt of such proceeds.
  - iv. Stocker may at any time enter the premises of the Customer or any other premises that the Customer is authorised to enter, and retake possession of the Goods for the purpose of inspecting, maintaining and testing the Goods, or perfecting the Customers security interest in the Goods.

**7. PERSONAL PROPERTIES SECURITIES ACT 1999**

- a) The Customer grants to Stocker a security interest in the Goods and all the Customer's present and after acquired property supplied by Stocker and their proceeds and accessions to secure payment of the purchase price of the Goods and all outstanding debts and obligations of the Customer to Stocker.
- b) For the avoidance of doubt, the Customer acknowledges and agrees that by agreeing to these Terms the Customer grants a Purchase Money Security Interest to Stocker, as that term is defined in the PPSA, in all goods and/or materials supplied by Stocker to the Customer.
- c) The Customer will provide such information, do such acts and execute such further documents as in Stocker's opinion may be necessary or desirable to enable Stocker to perfect under the PPSA the security interest created by these terms and conditions as a first priority interest or with such other priority as Stocker may agree to in writing.

**7. PERSONAL PROPERTIES SECURITIES ACT 1999** (Continue)

- d) The Customer will supply Stocker within 7 business days of written request copies of all documents granting security interests registered over the Customer's personal property. The Customer authorises Stocker as an agent to request copies of all documents granting security interests registered over the Customer's personal property. The Customer authorises Stocker as an agent to request any information from any secured party relating to any security interest which is held in any personal property which is or has been in the Customer's possession or control.
- e) The Customer will immediately notify Stocker in writing of any change in the Customer's name.
- f) The Customer agrees sections 114(1)(a), 116, 117(1)(c), 119, 120(2), 121, 125 to 127, 129, 131 to 133 of the PPSA shall not apply to these Terms and Conditions or the security created hereunder.
- g) The Customer waives the right to receive a copy of the verification statement confirming registration of a financing statement or a financing change statement relating to the security interest created by these Terms and Conditions.
- h) The Customer must not create, or allow or permit the creation of, a security interest (as defined in the PPSA) in any of the Goods in favour of any person other than Stocker without first obtaining Stocker's written consent, nor may the Customer allow or permit the creation of a lien over any of the Goods.

**8. DELIVERY**

Stocker shall use its best endeavours to arrange prompt delivery of Goods ordered. Dates given by Stocker for delivery shall be deemed to be indicative only, but will not be accepted as a condition of sale. If delivery of the Goods is delayed for any reason whatsoever, Stocker shall not be liable in any way for loss of revenue or profits or any consequential loss or damages for failure to deliver on such a date.

**9. FREIGHT AND HANDLING**

Goods may be delivered to the Customer direct from the stores of distributors of the Goods, or may be delivered via Stocker's premises if required. Any freight and handling charges are to be borne by the Customer. Goods returned for evaluation or warranty claims must be consigned by the Customer's freight pre-paid unless negotiated otherwise.

**10. WARRANTIES**

- a) The warranties, descriptions, representations, or conditions whether implied by law, trade, custom or otherwise are, and all other liability of Stocker, whether in tort (including negligence), Contract or otherwise is, expressly excluded to the fullest extent permitted by law. In particular, where the Supply for the purposes of a business, (as provided in section 2 and 43 of the Consumer Guarantees Act 1993), that Act shall not apply.
- b) In so far as Stocker is able, Stocker will assign all manufacturer / supplier warranties and will assist the Customer in obtaining the benefit of any such all manufacturer / supplier warranties provided that Stocker will not be required to expend funds or commence proceedings against any manufacturer or supplier.
- c) Insofar as Stocker may be liable, notwithstanding anything contained in these terms and conditions, to the extent permitted by law the total liability of the Stocker whether in tort (including negligence), contract or otherwise for any loss, damage or injury arising directly or indirectly out of completion of the Supply or any other breach of Stocker's obligations is limited to the lesser of:
- the Price of goods and/or materials complained of;
  - the cost of completing any necessary repairs/remedial work; or
  - the actual loss or damage suffered by the Customer.
- d) Except where statute expressly requires otherwise, Stocker is not liable in any event for any loss of profits, consequential, indirect or special damage, loss or injury of any kind suffered by the Customer or any other person.
- e) This clause 10 shall survive termination of the Contract.

**11. RETURNS**

The Customer must notify Stocker in writing of products they wish to return. No Goods can be returned without completed and authorised written consent. Goods will only be credited to the Customer's account if returned in the same condition as delivered to the Customer initially and received by Stocker or its authorised distributors within 14 days from the initial delivery Stocker reserves the right to apply a minimum restocking fee of 10% of the invoiced value of the product.

**12. DEFAULT**

- a) In addition to any other provision hereof, the Customer shall be in default if any of the following events occur:
- If the Customer fails to pay any amount due by the due date;
  - If the Customer fails to meet any obligation to Stocker;
  - If the Customer becomes insolvent;
  - If a Receiver, Liquidator, or Official Manager is appointed in respect of the Customer;
  - If a compromise arrangement with the Customer's creditors in made or likely to be made; or
  - If the Customer ceases or threatens to cease carrying on business.
  - If the ownership or effective control of the Customer is transferred, or the nature of the Customer's business is materially altered.
  - If the Customer does or permits any act or thing likely to prejudice or put at risk the Goods of Stocker's rights or interest (including its security interest) in the Goods.
- b) Notwithstanding the foregoing, Stocker shall be entitled at any time in its sole discretion and without notice to the Customer to suspend or terminate any agreement to supply Goods of Services and / or any credit account with the Customer and the Customer shall forthwith deliver the Goods to Stocker at its place of business or at such other place as shall be agreed upon.
- c) All Amounts Owing shall immediately become due and payable notwithstanding that the due date for payment has not arisen; and Stocker may enforce any security interest granted to it by the Customer.
- d) Stocker will not be liable to the Customer for any loss or damage the Customer suffers because Stocker exercises any rights, powers or remedies after the occurrence of any default event.

- e) The Customer agrees that, at any time after a default event has occurred or at any time if any Goods are at risk, Stocker may:
- Take possession of any Goods; and/or
  - Sell or dispose of any Goods in such manner and generally on such terms and conditions as Stocker thinks fit.
  - Stocker may, without prior notice, enter upon any land or premises where Stocker believes the Goods are kept in order to take possession and/or remove them or remove any goods to the value off amount owing. The Customer agrees to procure all other rights (including consents) necessary to enable, and to indemnify Stocker against any liability incurred in connection with, such entry, taking of possession and removal.

**13. PERSONAL GUARANTEE OF COMPANY DIRECTORS**

If the Customer is a company, the director(s) signing this contract, in consideration for Stocker agreeing to supply Goods and grant credit to the Customer at their request, also sign this contract in their personal capacity and jointly and severally personally undertake as principal debtors to Stocker the payment of any and all monies now or hereafter owed by the Customer to Stocker and indemnify Stocker against non-payment by the Customer. Any personal liability of a signatory hereto shall not exclude the Customers in any way whatsoever from the liabilities and obligations contained in this contract. The signatories and Customer shall be jointly and severally liable under the terms and conditions of this contract and for payment of all sums due hereunder.

**14. MORTGAGE**

- a) The Customer agrees that while the Customer owes Stocker any sum under the Contract (whether disputed or otherwise) the Customer shall upon written demand being made by Stocker at any time but before payment in full is made to Stocker, execute a Memorandum of Mortgage ("**Mortgage**") over any real property owned by the Customer from time to time in favour of Stocker (to be prepared by Stocker's solicitors at the Customer's cost), for the amount equivalent to the unpaid balance owing plus any interest and costs owing thereon until paid in full.
- b) The terms of such mortgage shall be collateral to the terms hereof and payment in full of the amounts owing to Stocker hereunder shall operate as a full discharge of the mortgage. Stocker agrees not to make demand on the Customer to execute such a mortgage unless any of the following occur:
- Failures to make payment on the due date;
  - Any composition with creditors, act of bankruptcy, winding up or receivership of the Customer.
- c) The Mortgage referred to in this clause 21 hereof shall be the ADLS form approved by the Registrar General of Land 2007/4237, and the covenants of the said form whether executed by the Customer or not shall be deemed to be included. The Customer hereby authorises Stocker to lodge and maintain a Caveat against the title to the subject property for the protection of the agreement to mortgage described above should Stocker in its absolute discretion consider it necessary to lodge such a Caveat. The Customer hereby grants to Stocker an irrevocable power of attorney in relation to the subject property to execute the mortgage referred to in this clause 21 hereof should the mortgage not be executed by the Customer for any reason whatsoever PROVIDED THAT Stocker will not execute a mortgage as attorney for the Customer unless Stocker has requested in writing that the Customer execute the mortgage pursuant to the terms of this agreement and the Customer has failed to execute such a mortgage within five (5) working days of such request.

**15. ERRORS AND OMISSIONS**

Stocker shall not be liable for any errors or omissions or for incidental or consequential damages arising from the supply or use of any Goods supplied by Stocker where these Goods have been operated or installed by someone other than Stocker authorised staff.

**16. GENERAL**

- a) Nothing in this Agreement shall exclude, restrict or modify any condition, warranty or liability which may at any time be implied by the Fair Trading Act 1986, Consumer Guarantees Act 1993, the Sales of Goods Act 1908, or any other law where to do so would render the above provision of this Agreement void provided that liability is limited as far as possible as provided in Clause 10 hereof.
- b) The Parties agree that this Agreement and the provisions hereof shall be construed in accordance with the Laws of New Zealand.
- c) This Agreement constitutes the entire agreement between the parties and is not transferable without the written consent of Stocker.