

Saputo Dairy Australia Pty Ltd ACN 166 135 486 – Export Terms of Supply (International)

(Version: May 2018)



1. Definitions

In these export terms of supply (**Terms**) the following definitions apply:

Contract Documents has the meaning given in clause 2(b).

Consequential Loss means any liability for loss of profit, loss of revenue, loss of goodwill or credit, loss of business reputation, loss or denial of opportunity, loss of customers, loss of production or loss arising from third party claims (whether in contract, tort (including negligence), equity, statute or otherwise).

Force Majeure Event means an event beyond the reasonable control of a party including act of God, fire, flood or other physical disaster, industrial action and disruption to transport infrastructure, supply or production facilities.

Insolvency Event means (i) any step is taken by any creditor to take possession of the whole or a part of a party's assets, operations, business or undertaking; or (ii) any step is taken to appoint a receiver, administrator, liquidator or other like person to the whole or a part of a party's assets, operations, business or undertaking; or (iii) a party becomes insolvent or unable to pay its debts as they fall due or is adjudicated bankrupt or enters into any scheme or compromise with its creditors.

Product means any product or good supplied by Saputo Dairy Australia to you as described in the Contract Documents.

Sales Offer has the meaning given in clause 2(b)(2).

Saputo Dairy Australia, we and our means Saputo Dairy Australia Pty Ltd (ACN 166 135 486) and any company that, directly or indirectly, is controlled by Saputo Dairy Australia.

you and your means the purchaser of Products under the Contract Documents.

2. Contract documents and order of precedence

- (a) Saputo Dairy Australia may offer Products to you by issuing a Sales Offer. If you accept the terms of the Sales Offer, a valid and binding contract will be formed between Saputo Dairy Australia and you.
- (b) Each contract between Saputo Dairy Australia and you for the sale of Products will comprise the following documents (in decreasing order of priority to the extent of any inconsistency between them):
 - (1) the written supply agreement between Saputo Dairy Australia and you (if any);
 - (2) an export sales offer issued by Saputo Dairy Australia for the supply of Products to you which describes the type, quantity and price of Products, the estimated delivery schedule, applicable Incoterms, method of transport and payment terms (**Sales Offer**);
 - (3) these Terms, which are incorporated in each Sales Offer;
 - (4) your acceptance of the Sales Offer;
 - (5) an export contract issued by Saputo Dairy Australia, which will reflect the terms of the accepted Sales Offer including the incorporated Terms;
 - (6) your purchase order for delivery of Products; and
 - (7) a sales order confirmation issued by Saputo Dairy Australia following receipt of your purchase order for delivery of Products.(together, the **Contract Documents**).
- (c) Unless otherwise agreed in writing:
 - (1) any contract between Saputo Dairy Australia and you for the supply of Products must be effected exclusively through, and is governed solely by, the Contract Documents; and
 - (2) the Contract Documents apply to all purchases of Products by you to the exclusion of any terms and conditions including in your acceptance of the Sales Offer, your purchase order, and any invoice or any other document provided by you.

3. Price and taxes

The price for the Products is specified in the Contract Documents.

The price is exclusive of all duties, fees, levies, charges and taxes in respect of the sale and purchase of the Products, which are your responsibility to pay.

4. Payment and interest

You must pay Saputo Dairy Australia for the Products in accordance with the Contract Documents without claim, counterclaim, withholding or set-off.

Unless otherwise stated in the Contract Documents, payment terms are 30 days from the date of delivery of the Products and interest of 6% per annum (compounding monthly) may be charged by Saputo Dairy Australia at its election on overdue amounts.

5. Delivery

We will use all reasonable endeavours to deliver Products to you in accordance with the estimated delivery schedule specified in the Contract Documents but will have no liability for any loss associated with late shipment or delivery of Products.

6. Title and risk

Risk in the Products passes from Saputo Dairy Australia to you in accordance with the Incoterms specified in the Contract Documents.

Title to the Products will remain with Saputo Dairy Australia until you have paid Saputo Dairy Australia in full for the Products.

7. Warranties

We warrant to you that the Products will:

- (a) be free from defects and be of merchantable quality;
- (b) conform to the relevant Product specifications; and
- (c) be free from encumbrances or other security interests.

8. Liability

Saputo Dairy Australia's liability to you under or in connection with the Contract Documents is limited to a maximum aggregate amount of AUD \$10 million.

Saputo Dairy Australia will not be liable to you for any indirect, incidental, special or Consequential Loss suffered or incurred by you under or in connection with the Contract Documents (except to the extent that such loss may fairly and reasonably be considered as arising naturally, i.e., according to the usual course of things, from the relevant breach or event).

Neither party is liable for any failure or delay in performing an obligation (other than an obligation to pay money) if the failure is due to a Force Majeure Event.

If a product withdrawal or recall is required, which Saputo Dairy Australia may be liable for, you must do all things reasonably requested by Saputo Dairy Australia and comply with all applicable laws while carrying out the product withdrawal or recall.

9. Insurance

Saputo Dairy Australia must maintain a product liability and recall insurance policy for an amount of AUD \$10 million per insurable occurrence and on request must provide you with a certificate of currency in respect of such insurance.

10. Termination

Either party may terminate or suspend the operation of the Contract Documents or any uncompleted proportion thereof with immediate effect by written notice to the other party if:

- (a) the other party breaches a material provision of the Contract Documents and (if such breach is remediable) fails to remedy that breach within 14 days after receiving a written request to do so;
- (b) a Force Majeure Event continues for a period of 30 days or more; or
- (c) the other party is subject to an Insolvency Event.

11. Confidentiality

All information provided by one party to the other in connection with the Contract Documents is confidential and may only be used or disclosed for the purposes of exercising the party's rights or carrying out its obligations under the Contract Documents. The obligation of confidence does not apply to information that is required to be disclosed by law or the requirement of a stock exchange or regulator, or that was in the public domain at the time of disclosure (otherwise than through a breach of confidence owed to a party to the Contract Documents).

12. Intellectual Property Rights

You acknowledge that the sale and purchase of Products under the Contract Documents does not confer on you any licence or rights under any patent, trademark or copyright which is our property.

13. Governing Law

The law of Victoria, Australia governs the Contract Documents and the transactions contemplated by the Contract Documents and each party submits to the non-exclusive jurisdiction of the courts of that State and of the Commonwealth of Victoria.

14. Arbitration

Any dispute arising under or in connection with the Contract Documents may be submitted by either party to binding arbitration by written notice to the other party (**notice of arbitration**). Any dispute or difference whatsoever arising out of or in connection with this contract shall be and is hereby submitted to arbitration in accordance with, and subject to, the [UNCITRAL Arbitration Rules](#). The designating and appointing authority shall be Resolution Institute. There shall be one arbitrator, the language of the arbitration shall be English, the place of the arbitration shall be (nominate the Australian city in which you wish the arbitration to occur). The arbitration shall be administered by the Singapore International Arbitration Centre (**SIAC**) in accordance with the Arbitration Rules of SIAC in force as at the date of the notice of arbitration (**SIAC Rules**). The SIAC Rules are deemed to be incorporated by reference into this clause and the parties agree that: (i) the number of arbitrators shall be one; (ii) the appointing authority shall be the Chairperson of SIAC or his or her nominee; (iii) the seat and venue of the arbitration shall be Singapore; (iv) the language used in the arbitral proceedings shall be English; (v) by selecting the SIAC Rules, the parties do not intend to exclude the operation of the UNCITRAL Model Law on International Commercial Arbitration; and (vi) an award made by the arbitral tribunal is enforceable under the 1958 UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Except as required by law, all arbitration proceedings and related documents and communications shall be private and confidential as between the parties. This clause and any disputes shall be governed by the laws of Victoria, Australia.

15. Anti-Corruption

Neither party is obliged to take any action that it believes would cause it to contravene any laws prohibiting or relating to bribery, corruption, kickbacks, secret commissions, money laundering or sanctions (**Anti-Corruption Laws**). Each party agrees, represents and warrants that:

- (a) it shall not commit any act or omission which could cause it or the other party to breach Anti-Corruption Laws;
- (b) it is not the subject of any sanctions and has not been convicted of (and is not being investigated in connection with) any offence involving a breach of Anti-Corruption Laws, and it will notify the other as soon as the above ceases to be true.

16. Miscellaneous

The Contract Documents may only be amended in writing by the parties. You may not assign your rights or interests under the Contract Documents without our written consent. Nothing in the Contract Documents creates any joint venture, association, partnership, franchise, or other form of business organisation or agency relationship. All terms, conditions, warranties and representations expressed or implied by statute, common law, equity, trade, custom or usage or the general law are expressly excluded from the Contract Documents to the maximum extent permitted by law. If any provision of the Contract Documents is invalid or unenforceable under the law of any jurisdiction, it is to be read down or severed to the extent of the invalidity or unenforceability and that fact will not affect the remaining provisions. A waiver of a right, power or remedy is only binding if given in writing. The Contract Documents constitute the entire understanding and agreement between the parties and supersedes and merges all prior and contemporaneous agreements, oral or written. Clauses 1, 8, 11, 12, 13, 14, and 16 of these Terms survive the expiry or termination of the Contract Documents.