



# Terms of Sale

## 1. Definitions

In these Terms of Sale the following terms have corresponding meanings:

**Consequential Loss** means any special, indirect or consequential loss or damage and any loss of profits, loss of production, loss of revenue, loss of use, loss of contract, loss of opportunity, loss of goodwill, whether direct or indirect;

**Consumer Law Provisions** means the provisions of the Australian Consumer Law in Schedule 2 to the *Competition and Consumer Act 2010* (Cth) and any other relevant applicable State and/or Commonwealth consumer legislation for the time being in force;

**Customer** means the purchaser or intending purchaser of Goods or Services and includes any agent, contractor or representative;

**Goods** means any product, goods or equipment supplied by Saputo Dairy Australia;

**GST** has the same meaning given to that term in the *A New Tax System (Goods and Services) Act 1999* (Cth);

**Saputo Dairy Australia** means Saputo Dairy Australia Pty Ltd ABN 52 166 135 486 and each of its divisions and Related Bodies Corporate (including Murray Goulburn Trading Pty Ltd ABN 57 004 515 744) and any successors and assigns;

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

**PPS Register** means "the register" as defined in the PPSA;

**Related Entity** has the same meaning given to that term in the *Corporations Act 2001* (Cth);

**Related Body Corporate** has the same meaning given to that term in the *Corporations Act 2001* (Cth); and

**Services** means any services supplied by Saputo Dairy Australia.

The plural includes the singular and vice versa.

## 2. General

Unless otherwise agreed in writing with Saputo Dairy Australia, these Terms of Sale:

- (a) apply to the purchase of all Goods by and supply of all Services to the Customer and are the only terms of sale to which Saputo Dairy Australia and the Customer will be bound and the Customer agrees that these terms will in all circumstances prevail over the Customer's terms and conditions; and
- (b) supersede and exclude all prior and other discussions, representations (contractual or otherwise) and arrangements relating to the supply of the Goods and the supply of the Services including, but not limited to, those relating to the performance of the Goods or Services or the results that ought to be expected from using the Goods or Services.

## 3. Quotations and Purchase Orders

Any brochure, catalogue, price list, quotation or other communication published or provided by Saputo Dairy Australia constitutes only an invitation by Saputo Dairy Australia to the Customer to do business. Any purchase order placed by the Customer constitutes only an offer

to purchase Goods or Services. Saputo Dairy Australia may accept an offer to purchase Goods or Services made by a Customer but, until it commits in writing to make a sale to a Customer, SDA is under no obligation to do so.

## 4. Price and Taxes

Unless Saputo Dairy Australia has agreed in writing to a fixed price or fee (or the basis for determining such), Saputo Dairy Australia's then current list prices and fees at the time of order will apply. At any time the Customer can request Saputo Dairy Australia's current list prices and fees. Saputo Dairy Australia may revise its list prices and fees from time to time without notice in relation to all purchase orders that have not already been accepted. Unless otherwise specified, all prices and fees are exclusive of GST.

The Customer will pay all taxes, levies and other charges including GST in respect of the sale and purchase of the Goods and supply of Services.

## 5. Payment and Interest

Cash purchases must be paid for at the time of the order or prior to delivery, as required by Saputo Dairy Australia. Credit purchases must be paid for by cash, cheque or electronic funds transfer, within 30 calendar days from the date of the invoice, unless otherwise agreed with the Customer by Saputo Dairy Australia, without deduction or deferment on account of any claim, counterclaim or set-off (unless otherwise expressly agreed to in writing by Saputo Dairy Australia). Except as otherwise agreed in writing by the parties, any payment made by the Customer to Saputo Dairy Australia must be applied by Saputo Dairy Australia in accordance with section 14(6)(c) of the PPSA.

Interest may be charged by Saputo Dairy Australia at its election on overdue amounts at up to the rate of 13% per annum or the rate for the time being fixed under section 2 of the *Penalty Interest Rates Act 1983* (Vic), whichever is greater.

Interest will accrue daily and compound monthly from the due date until payment has been received by Saputo Dairy Australia in cleared funds. Payment will be applied first to interest accrued and then to the overdue amount.

## 6. Delivery

Unless otherwise agreed in writing, delivery of Goods by Saputo Dairy Australia to the Customer will occur when the Goods are collected at Saputo Dairy Australia's nominated despatch point by the Customer or uplifted from transport arranged by Saputo Dairy Australia to the Customer.

Saputo Dairy Australia will make all reasonable efforts to have the Goods delivered to the Customer on the date agreed between the parties, but Saputo Dairy Australia will be under no liability for any loss associated with late delivery of the Goods to the Customer.

Customer undertakes to promptly inspect the delivered Goods for any short fall, defect or damage that is reasonably discoverable upon physical inspection of such Goods, and to immediately notify Saputo Dairy Australia of any such detected issues.

## 7. Risk

Unless otherwise agreed in writing, all risks associated with the Goods purchased will pass to the Customer upon delivery to the Customer.



## Terms of Sale (cont.)



### 8. Retention of Title

The Customer acknowledges and agrees that:

- (a) title in any Goods does not pass to the Customer until the purchase price for the Goods has been paid in full, and until then Saputo Dairy Australia will have a purchase money security interest in the Goods and in any proceeds;
- (b) Saputo Dairy Australia may register its security interest in any Goods on the PPS Register in any manner it chooses (including by registering one or more financing statements, with such expiry dates as it determines, subject to any mandatory requirements of the PPSA);
- (c) Saputo Dairy Australia need not give any notice under the PPSA (including a notice of a verification statement) or comply with any of the provisions referred to in section 115(1) of the PPSA, unless such obligation cannot be excluded;
- (d) all information relating to the Goods or these Terms of Sale is subject to a duty of confidence in favour of Saputo Dairy Australia. Separately, and without derogating from the Customer's duty of confidence, Saputo Dairy Australia and the Customer agree that neither of them will disclose information of the kind described by section 275(1) of the PPSA, except as permitted by any other provision of this clause or required by any other law or regulation.

### 9. Liability where the Consumer Law Provisions do not apply

If the Consumer Law Provisions do not apply to the Customer:

- (a) SDA warrants that, except to the extent otherwise agreed with the Customer in writing,:
  - (i) the Goods, as at the time of delivery, are of merchantable quality and comply with all applicable Australian laws; and
  - (ii) the Services, at the time of supply, will be performed with due care and skill; and
- (b) all warranties (other than as provided under clause 9(a) above), liabilities or representations in relation to the Goods and Services are excluded to the maximum extent permitted by law. Saputo Dairy Australia's liability for breach of any of these Terms of Sale is limited to any one of the following, as determined by Saputo Dairy Australia:
  - (i) the replacement or repair of the Goods, the re-supply of the Services, the supply of equivalent Goods or the cost of re-supplying the Services or replacing or repairing the Goods or of acquiring equivalent Goods or Services; or
  - (ii) the refund of the price paid by the Customer for the Goods or Services; and
- (c) Saputo Dairy Australia is not liable to the Customer for any Consequential Loss in connection with these Terms of Sale and/or any related order or contract (whether or not the Consequential Loss was foreseeable).

Any claim by the Customer for short fall in or wrongful delivery of Goods must be promptly notified to Saputo Dairy Australia in writing (including via email) and received within 48 hours of delivery. Any other claims must be notified to Saputo Dairy Australia in writing and received within (i) 7 calendar days of the date of delivery for liquid based Goods; or (ii) 14 calendar days of the date of delivery for all other Goods. Any claim which the

Customer does not notify within that time (time being of the essence) will be taken to have been absolutely waived.

### 10. Liability where Consumer Law Provisions apply

If the Consumer Law Provisions apply to the Customer:

- (a) nothing in these Terms of Sale is to be construed as excluding, restricting or modifying any express or implied guarantee, condition, warranty, right or remedy conferred by any of the Consumer Law Provisions;
- (b) to the extent permitted by law, Saputo Dairy Australia's liability for breach of these Terms of Sale (including breach of any condition or warranty implied into these Terms of Sale by the Consumer Law Provisions) or for breach of a consumer guarantee contained in the Consumer Law Provisions is limited to any one of the following as determined by Saputo Dairy Australia:
  - (i) the replacement or repair of the Goods, the re-supply of the Services, the supply of equivalent Goods or the cost of re-supplying the Services or replacing or repairing the Goods or of acquiring equivalent Goods or Services; or
  - (ii) the refund of the price paid by the Customer for the Goods or Services; and
- (c) Saputo Dairy Australia is not liable to the Customer for:
  - (i) in circumstances where Saputo Dairy Australia has breached a consumer guarantee contained in the Consumer Law Provisions, any loss that was not reasonably foreseeable; and
  - (ii) in all other circumstances, any Consequential Loss arising out of or in connection with these Terms of Sale and/or any related order or contract (whether or not the Consequential Loss was foreseeable).

### 11. Excluded Terms

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 to the maximum extent permitted by law.

### 12. Suitability of Goods and Services

Neither Saputo Dairy Australia nor any person purporting to act on its behalf has made any representation or given any promise or undertaking which is not expressly set out in writing, whether as to the fitness of the Goods and the Services for any particular purpose or any other matter.

### 13. Correct Handling

Saputo Dairy Australia is not responsible or liable for any damage to or defect in any Goods to the extent such damage or defect was either caused or contributed to by the Customer incorrectly or inappropriately utilised, stored, handled or maintained such Goods after delivery to the Customer.

The Customer must ensure that all Goods comply with all applicable requirements of standards and regulatory bodies before use, on-sale or application and must use or apply the Goods in accordance with all manufacturer or Saputo Dairy Australia recommendations and directions and good commercial practice.

### 14. Set Off

Saputo Dairy Australia can set off any amount due which the Customer or any of its Related Entities owe to Saputo Dairy Australia under these



## Terms of Sale (cont.)



Terms of Sale or any related or unrelated order or contract, or on any other account, against any amount which Saputo Dairy Australia owes to the Customer or any of its Related Entities (whether under these Terms of Sale, any related order or contract, in relation to any milk supply payment or otherwise).

### 15. Default

Upon the Customer's breach or default of any of these Terms of Sale, Saputo Dairy Australia may, at its discretion and without prejudice to its other rights:

- (a) retain all monies paid by the Customer for Goods which have been delivered;
- (b) cease further deliveries of Goods (unless the Customer demonstrates to Saputo Dairy Australia (acting reasonably) that the breach or default has been remedied);
- (c) seek to recover from the Customer all direct loss and costs suffered or incurred;
- (d) take possession of any Goods not fully paid for;
- (e) otherwise suspend its obligations under these Terms of Sale; and
- (f) terminate these Terms of Sale (including any related purchase order(s)) if such breach or default is either:
  - (i) incapable of remedy;
  - (ii) a repeated act of breach or default by the Customer; or
  - (iii) is not remedied within the remedial period (which must be at least five business days) specified in a notice from Saputo Dairy Australia to the Customer.
- (g) If the Customer is in breach or default of any related or unrelated order or contract with Saputo Dairy Australia, and Saputo Dairy Australia considers (acting reasonably) that such breach or default relates to:
  - (i) the payment (or non-payment) of any amount(s) due and payable by the Customer to Saputo Dairy Australia; or
  - (ii) conduct by the Customer (including its officers, employees or agents) that may adversely affect the reputation of Saputo Dairy Australia,

then Saputo Dairy Australia may, at its discretion and in addition to its rights under such other related or unrelated order or contract, suspend its obligations under these Terms of Sale until such time as the Customer demonstrates to Saputo Dairy Australia (acting reasonably) that the breach or default has been remedied.

Without limiting any other provision of these Terms of Sale, unless the purchase price for the Goods has already been paid in full, the Customer is in default under these Terms of Sale for the purposes of section 123(1) of the PPSA if any other secured party seizes the Goods (whether under section 123 of the PPSA or otherwise) for the purposes of enforcement or becomes entitled to seize the Goods.

### 16. Insolvency

If the Customer commits or is involved in any act of insolvency, then Saputo Dairy Australia may deem this to be a default under these Terms of Sale and may, at its election and with immediate effect, suspend its obligations under or terminate these Terms of Sale and/or any related order or contract without prejudice to any rights it may have.

An act of insolvency includes bankruptcy, liquidation, receivership, administration, failure to comply with a statutory demand, a suspension of payment of debts or the bringing of a winding up application which is not dismissed within 7 days.

### 17. Variation

Saputo Dairy Australia can amend these Terms of Sale at any time by notice to the Customer (which, for the avoidance of doubt, may be satisfied by the publication of the revised terms of sale on Saputo Dairy Australia's website – [www.mgc.com.au](http://www.mgc.com.au)) and the amended terms will apply in respect of all subsequent purchases made under purchase orders placed by the Customer after receiving that notice.

### 18. Intellectual Property

The Customer acknowledges that the sale and purchase of Goods or Services under these Terms of Sale does not confer on the Customer any licence or rights under any patent, trademark or copyright which is the property of Saputo Dairy Australia.

### 19. Waiver

Failure by a party to insist on strict performance of any term, warranty or condition of these Terms of Sale or any related order or contract will not be taken as a waiver of it or of any rights that party may have and no waiver will be taken as a waiver of any subsequent breach of any term, warranty or condition.

### 20. Severability

Any part of these Terms of Sale being a whole or part of a clause, shall be capable of severance without affecting any other part of these Terms of Sale.

### 21. Jurisdiction

These Terms of Sale shall be governed and construed in accordance with the laws of the State of Victoria. Each party submits to the non-exclusive jurisdiction of courts of the State of Victoria.