

1 Agreement

- 1.1 The Vendor must deliver the Goods to, and/or provide the Services at, the Delivery Location for the Price in accordance with the terms of this Agreement.
- 1.2 This Agreement applies to the exclusion of any terms and conditions appearing on or forming part of the Vendor's dockets, invoices or other documentation.

2 Purchase Order and Price

- 2.1 The Price of the Goods and Services as set out in a Purchase Order submitted by SDA must comply with any then-current price list or quotation issued by the Vendor.
- 2.2 The Vendor will be deemed to have accepted a Purchase Order unless it rejects the Purchase Order within 2 Business Days of its receipt.
- 2.3 On acceptance of a Purchase Order (either expressly in writing or deemed under **clause 2.2**) this Agreement will be formed between the parties and become binding on them. Each Purchase Order will comprise a separate Agreement between the parties (unless the parties have entered into a separate, long-form supply agreement, in which case multiple purchase orders may be issued under that single agreement).
- 2.4 The Price is fixed and will not be subject to adjustment for rise and fall, exchange rate variations or any other reason, except as provided in this Agreement or as otherwise agreed in writing by an authorised representative of SDA (as identified by SDA by written notice to the Vendor from time to time).
- 2.5 The Price includes:
 - (a) all taxes, levies and fees (excluding GST) which are payable in relation to the supply of the Goods or provision of Services. For the avoidance of doubt, the Vendor must pay all such taxes, levies and fees; and
 - (b) all costs associated with delivery, including the transport, loading and unloading of the Goods (and, if applicable, the Services).
- 2.6 SDA may pay the Price in any manner agreed in writing by the parties.
- 2.7 All payments by SDA will be on account only and will not be an admission that the Goods or Services comply with this Agreement.

3 Delivery

- 3.1 The Vendor must deliver the Goods to, and or provide the Services at, the Delivery Location by the Delivery Date. SDA is not obliged to accept early delivery of the Goods or provision of the Services.
- 3.2 The Vendor must notify SDA immediately upon the Vendor becoming aware or having reasonable grounds to believe that it will not be able to deliver the Goods to, or provide the Services at, the Delivery Location by the Delivery Date.
- 3.3 If all the Goods are not delivered to, or all of the Services are not provided at, the Delivery Location by the Delivery Date, SDA will be entitled to recover general law damages from the Vendor for any loss, cost, damage or expense suffered or incurred by SDA by reason of the Vendor's delay, unless the failure to deliver the Goods or provide the Services was either (a) caused by a Force Majeure Event, in which case the Vendor will not be liable, or (b) directly caused or contributed to by any negligent act or omission of Saputo, in which case the Vendor will not be liable to the extent such negligent act or omission of Saputo contributed to the Vendor's delay.
- 3.4 Where a Purchase Order provides for a time for delivery of the Goods and/or Services, time is of the essence with respect to that delivery.
- 3.5 SDA may deduct from any amount owing to the Vendor, including any part payment of the Price, any amount which under this Agreement SDA determines (acting reasonably) is or may become payable by the Vendor to SDA.

4 Inspection and Rejection of Goods and Services

- 4.1 SDA may at any reasonable time (and with reasonable notice) enter the premises where the Goods are being manufactured or Services are being provided to inspect, examine or test the Goods and/or Services. SDA will comply with all reasonable directions of the Vendor in respect of such access.
- 4.2 If following any inspection, examination or testing SDA discovers, anticipates or suspects (on reasonable grounds) that the Goods or Services may be defective or otherwise in breach of this Agreement (including any warranty given under **clause 5**), SDA may (without limiting any other right available to it):
 - (a) reject or return any affected Goods or Services;
 - (b) give the Vendor a notice requiring it to, at its cost and within the reasonable time prescribed in the notice, remove, rectify or replace the Goods (at SDA's election) or to make good any defective works in the Goods, or to provide the Services again; or
 - (c) if the Vendor does not remedy a defect in the Goods or Services within the time identified in a notice under **clause 4.2(b)**, rectify or re-supply the Goods or have the Goods or Services rectified or re-supplied and the cost, loss, damage and expense suffered or incurred by SDA will be a debt due from the Vendor to SDA.
- 4.3 If SDA rejects any Goods or Services under **clause 4.2(a)**, the Vendor must pay SDA all amounts paid by SDA for the rejected Goods or Services.
- 4.4 The Vendor must at its cost:
 - (a) comply with any notice under **clause 4.2(b)**; and
 - (b) collect and remove any Goods (and any parts or items supplied as part of a Service) that have been rejected under **clause 4.2(a)**.

5 Warranties, intellectual property and policies

- 5.1 The Vendor warrants that:
 - (a) each Service will be performed promptly, with due diligence, care and skill, by appropriately trained, experienced and supervised persons and to the best industry standards and be fit for the expected purpose;
 - (b) the Goods will be manufactured and delivered in accordance with:
 - (i) this Agreement (including their description in the Purchase Order);
 - (ii) any relevant patterns or specifications;
 - (iii) any quality assurance requirements prescribed in the Purchase Order;
 - (iv) any other warranties or guarantees contained in this Agreement; and
 - (v) all applicable Australian standards and law;
 - (c) the materials and standards of workmanship used to produce the Goods will be of a high quality;
 - (d) the Goods will be fit for their intended purpose and free from defects;
 - (e) the Goods will conform to any sample supplied;
 - (f) the Goods will be suitably packed to avoid damage in transit or storage;

- (g) the Goods (and any parts or items supplied as part of a Service) will be free from all security interests under the PPSA, liens and encumbrances and the Vendor has full title and ownership to sell the Goods;
 - (h) it has the necessary skills, resources and experience to successfully, effectively and efficiently supply the Goods and provide the Services in accordance with this Agreement;
 - (i) all Goods supplied and Services provided will comply with all applicable laws and regulations and the Vendor will, at its cost, hold and maintain in good standing all necessary licences, permits, authorisations and approvals required in order to supply the Goods and provide the Services in accordance with this Agreement; and
 - (j) it has all Intellectual Property necessary to supply the Goods and provide the Services in accordance with this Agreement, and that the supply of the Goods and provision of Services will not infringe any third party's Intellectual Property rights.
- 5.2 The warranties in **clause 5.1** are in addition to any warranties which are or may be implied under any legislation applicable to the Goods and Services (including the Australian Consumer Law).
- 5.3 The Vendor indemnifies SDA against any loss, cost, damage or expense incurred by SDA as a consequence of or in connection with any claim by a third party that it has a right to any Intellectual Property in the Goods or Services.
- 5.4 The Vendor grants to SDA a royalty-free, perpetual and irrevocable licence to use all Intellectual Property in the Goods and Services for any other works which SDA may perform in relation to those Goods and Services in the future. The licence will remain vested in SDA despite the termination of this Agreement and in relation to any such works (or the Goods and/or Services) SDA may assign or sublicense the rights granted by the licence without the consent of the Vendor. Any Vendor Intellectual Property will remain the property of the Vendor and SDA acknowledges that nothing in this Agreement will be construed as transferring title in or ownership of any Vendor Intellectual Property to SDA.
- 5.5 The Vendor must, and must ensure that its Representatives and sub-contractors' Representatives comply with SDA's supplier code of conduct, as amended from time to time, a copy of which has either been provided to the Vendor or is otherwise available at the following link: <http://www.saputo.com/en/our-promise/responsible-sourcing/supply-chain>.

6 Invoicing and Price disputes

- 6.1 On delivery of the Goods or provision of the Services, the Vendor must give SDA a valid tax invoice (**Invoice**) for the Price identified in the Purchase Order. An Invoice must include:
- (a) a reference to this Agreement, including any line item numbers on the order and the Purchase Order number;
 - (b) a detailed description of the Goods delivered or Services provided in respect of which the Invoice relates;
 - (c) an individual reference number for SDA to quote with remittance of payment; and
 - (d) the Price claimed by the Vendor, broken down to reflect the Price component (if any) identified in the Purchase Order to which the Invoice relates.
- 6.2 Unless the parties otherwise agree in writing, the Vendor must (at its own cost and expense):
- (a) register as a user of SDA's nominated e-Procurement Network;
 - (b) accept and comply with the standard terms and conditions relating to the use of the e-Procurement Network; and
 - (c) send all Invoices related to this Agreement via the e-Procurement Network.
- 6.3 If an Invoice provided by the Vendor does not satisfy the requirements of **clause 6.1**, SDA may reject the Invoice and require the Vendor to re-submit an Invoice which meets the requirements of **clause 6.1**.
- 6.4 If SDA requests, the Vendor must provide SDA with all relevant records to calculate and verify the amount set out in any Invoice.
- 6.5 Subject to **clause 6.6**, SDA must pay the Vendor the amount claimed by the Vendor in a valid Invoice which meets the requirements of **clause 6.1** within 60 days of receipt of the Invoice by SDA.
- 6.6 If SDA disagrees with the amount claimed by the Vendor in an Invoice, SDA must determine the value of the Goods delivered or Services provided by the Vendor in accordance with this Agreement and must issue a payment schedule to the Vendor within 10 Business Days of receiving the Invoice under **clause 6.1** stating:
- (a) the amount determined by SDA as the correct Price (having regard to the provisions of this Agreement);
 - (b) the reason why the amount in the payment schedule is different than the amount claimed by the Vendor; and
 - (c) if the reason for the difference is that SDA has deducted, set-off or withheld payment (or proposes to take such action) for any reason, the reason for the deduction, set-off or withholding.

Except to the extent of any manifest error in the payment schedule, the Vendor must, within 5 Business Days of receipt of the payment schedule, provide SDA with a revised Invoice in accordance with **clause 6.1** for the amount assessed as payable in the payment schedule. Nothing in this **clause 6.6** will limit or affect the right of the Vendor to dispute SDA's determination of the value of the Goods delivered or Services pursuant to this **clause 6.6**.

SDA must pay the Vendor the amount determined by SDA pursuant to **clause 6.6** as payable to the Vendor within 60 days in which the revised Invoice is received by SDA.

7 Goods and Services Tax

- 7.1 Unless expressly stated otherwise in this Agreement, the Price does not include GST. SDA is not required to pay the GST component of the Price until SDA receives a *tax invoice* from the Vendor in respect of the *taxable supply*.
- 7.2 If an *adjustment event* occurs, the Vendor must issue an *adjustment note* and a payment must be made as between the parties to reflect the adjusted amount of the GST on the *taxable supply*.
- 7.3 Italicised expressions used in this **clause 7** have the meaning given to them in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

8 Risk and title

- 8.1 Risk in the Goods (and any parts or items supplied as part of a Service) passes to SDA on delivery and acceptance of the Goods or Services by SDA.
- 8.2 Title to the Goods (and any parts or items supplied as part of a Service) passes to SDA when the Goods are paid for in full by SDA.

9 Indemnity

- 9.1 The Vendor shall indemnify SDA and its officers, employees, agents and other contractors against any claim, expense, liability or loss arising out of or in connection with:
- (a) personal injury or death or loss of, or damage to, any other property including, without limitation, SDA's property arising out of or as a consequence of any act or omission of the Vendor (or its agent, other contractors or subcontractors); and/or
 - (b) any breach by the Vendor of this Agreement,

but the indemnity shall be reduced proportionally to the extent that any act or omission of SDA or its agents or other contractors (not being employed by the Vendor) contributed to the claim, expense, liability, loss, injury, death, or damage.

- 9.2 Notwithstanding any other provision of this Agreement, neither SDA or the Vendor will be liable to the other in respect of any indirect, consequential or special damages, loss of profit, loss of revenue, loss of goodwill or loss of business opportunity except to the extent such liability is covered by a policy of insurance obtained by SDA or the Vendor (as applicable).

10 Occupational Health and Safety

10.1 The Vendor is responsible for the health and safety of its employees.

10.2 Without limitation to its other obligations under this Agreement, the Vendor must:

- (a) comply with all requirements under OH&S Legislation;
- (b) comply with any reasonable directions of SDA or its nominee in relation to occupational health and safety at the Delivery Location;
- (c) comply with all SDA's reasonable occupational health and safety, and environmental, requirements relating to the Vendor's conduct at the Delivery Location (as notified by SDA to the Vendor from time to time); and
- (d) cause all of its employees at the Delivery Location to complete such safety or other training or induction as SDA directs (acting reasonably).

11 Insurance

11.1 The Vendor shall effect and maintain for the term of this Agreement with a reputable insurer and on terms reasonably approved in writing by SDA professional indemnity and public liability insurance for not less than \$10 million per occurrence, and appropriate workers compensation and plant and equipment insurance reflecting the nature, value and volume of Goods and Services to be supplied to SDA.

11.2 The Vendor shall provide SDA with evidence of the terms and currency of insurances when requested by SDA.

12 PPSA

12.1 If the Vendor believes that a Security Interest arises under this Agreement, it must notify SDA at least five days before the Vendor takes steps to register such Security Interest on the PPS Register.

12.2 Within ten days of the earlier of:

- (a) payment of the Price; or
- (b) the expiry or termination of this Agreement,

the Vendor will at its cost procure the removal from the PPS Register each Security Interest it has registered in respect of the Goods, and must provide SDA with verification of the removal of the Security Interests pursuant to section 157 of the PPSA.

12.3 The parties agree that for the purposes of section 115 of the PPSA, the following sections of the PPSA will not apply to any Relevant Collateral:

- (a) section 120 (enforcement of liquid assets);
- (b) section 126 (apparent possession); and
- (c) section 128 (secured party may dispose of collateral).

12.4 If, in the opinion of SDA the PPSA applies, or will in the future apply to SDA's rights pursuant to this Agreement, and that the PPSA:

- (a) affects or could affect SDA's security position or the rights or obligations of SDA under or in connection with this Agreement; and
- (b) enables or would enable SDA's security position to be improved,

SDA may give notice to the Vendor requiring the Vendor to do anything (including provide all reasonable assistance to SDA in relation to the registration of a security in respect of SDA's rights, including the execution of documents relating to such registration) that in SDA opinion is necessary or desirable. The Vendor must comply with the requirements of that notice within the time stipulated in the notice.

13 Confidentiality

13.1 Each party must treat this Agreement and all information provided by the other (or on that party's behalf) under or in respect of this Agreement (**disclosing party**) as confidential and must not disclose:

- (a) its existence, the information contained in it or its subject matter to any third party or use it for advertisement, display or publication without the prior written consent of the disclosing party; or
- (b) information about the obligations secured by any Security Interest under this Agreement, the terms of payment or performance in respect of any obligation under this Agreement at any particular time or any information of the kind described in section 275(1) of the PPSA,

except:

- (c) to its officers, employees, legal and other advisers and auditors for the purpose of supplying the Goods;
- (d) with the consent of the disclosing party; or
- (e) to the extent it is necessary for the disclosing party to disclose information to comply with any applicable law, the rules of any securities or stock exchange or an order of a court or tribunal and the disclosing party is given prior notice of the disclosure

13.2 Each party (their employees, agents, directors, partners, shareholders or consultants) shall not disclose to any person, any confidential information relating to the disclosing party or the affairs of others which may have come to its or their knowledge as a result of this Agreement.

14 Suspension and termination

14.1 Upon written notice to the Vendor, SDA may suspend all or part of the delivery of the Goods or provision of Services at any time for any period. The Vendor must comply with such a notice and must recommence delivery of the Goods or provision of the Services when required by further written notice from SDA. The Vendor will be entitled to be paid by SDA the direct, reasonable and demonstrable extra costs incurred by the Vendor as a result of any such suspension, unless the suspension arises as a result or consequence of the Vendor's failure to perform its obligations in accordance with this Agreement, and subject to the Vendor taking all reasonable steps to mitigate the extra costs incurred by it as a result of the suspension.

14.2 Either party may terminate this Agreement with immediate effect by giving written notice to the other if:

- (a) the other party commits a breach of any warranty or material term of this agreement which:
 - (i) is not capable of remedy; or
 - (ii) is capable of remedy but the other party fails to remedy that breach within 10 Business Days from the date of receiving notice in writing requiring it to do so; or
- (b) the other party is subject to an Insolvency Event; or
- (c) a Force Majeure Event has subsisted for a continuous period of 4 weeks.

14.3 If this Agreement is terminated prior to delivery of all of the Goods, SDA will only be liable to pay the Vendor for those Goods delivered to SDA (in accordance with the terms of this Agreement) prior to termination taking effect.

15 Assignment and subcontracting

- 15.1 SDA may assign or deal with its interests under this Agreement without the prior written consent of the Vendor.
- 15.2 The Vendor must not assign or deal with its interests under this Agreement and must not subcontract any part of the Goods or Services without the prior written approval of SDA, which may be given or withheld in SDA's absolute discretion and may be given subject to conditions.
- 15.3 The Vendor will be liable to SDA for the acts, defaults and omissions of the Vendor's subcontractors (and the employees and agents of such subcontractors) as if they were those of the Vendor.

16 General

- 16.1 This Agreement is governed by and is to be construed in accordance with the laws applicable in Victoria. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria.
- 16.2 No waiver by a party of a breach of this Agreement by the other party constitutes a waiver for any subsequent or continuing breach by that other party.
- 16.3 If any of the provisions of this Agreement are held by a court of competent jurisdiction to be invalid or otherwise unenforceable that provision may be severed from this Agreement and the remainder of this Agreement will continue to be effective and valid notwithstanding such severance.
- 16.4 A single or partial exercise or waiver by a party of a right relating to this Agreement does not prevent any other exercise of that right or the exercise of any other right. A party is not liable for any loss, cost or expense of any other party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.
- 16.5 Except as expressly stated otherwise in this Agreement, the rights of a party under this Agreement are cumulative and are in addition to any other rights of that party.
- 16.6 Each party must promptly do whatever the other party reasonably requires of it to give effect to this Agreement and to perform its obligations under it.
- 16.7 This Agreement may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.
- 16.8 This Agreement will not create a partnership, joint venture or agency relationship between the parties.

17 Definitions and interpretation

17.1 In this Agreement, unless the context otherwise requires:

- (a) **Agreement** means the any written agreement entered into between the parties, the Purchase Order, these general conditions and any other documents attached to, or prescribed in, the Purchase Order (except for any document described in clause 1.2) as forming part of this Agreement, which, in the event of any inconsistencies, must be construed in that order of priority.
- (b) **Australian Consumer Law** means Schedule 2 of the *Competition and Consumer Act 2010* (Cth) and the corresponding provisions of the *Fair Trading Act 1999* (Vic).
- (c) **Business Days** means a day other than a Saturday, Sunday or public holiday in the State or Territory where the Delivery Location is located.
- (d) **Collateral** has the meaning given in the PPSA.
- (e) **Delivery Date** means the date for delivery of the Goods or provision of Services identified in the Purchase Order.
- (f) **Delivery Location** means the delivery location of the Goods (or place of provision of the Services) identified in the Purchase Order.
- (g) **Force Majeure Event** means an event beyond the reasonable control of the Vendor including act of God, fire, flood or other physical disaster, disruption to transport infrastructure, supply or production facilities, but does not include industrial action.
- (h) **Goods** means the good described in the Purchase Order.
- (i) **Intellectual Property** means all present and future rights conferred by statute, common law or equity in or in relation to copyright, trade marks, designs, patents, circuit layouts, plant varieties, inventions, and other results of intellectual activity, including moral rights, in the industrial, commercial, scientific, literary or artistic fields whether or not registrable, registered or patentable.
- (j) **Insolvency Event** means any step by any mortgagee or creditor to take possession of the whole or a part of a party's assets, operations, business or undertaking, or 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.
- (k) **SDA** means Saputo Dairy Australia Pty Ltd ACN 166 135 486.
- (l) **OH&S Legislation** means all legislative requirements relating to work health and safety including as is applicable to the Vendor and/or the Goods, applicable in the place where the Delivery Location is located and any other occupational health and safety statutes enacted or which may be enacted in any Australian States and/or Territories (if applicable).
- (m) **PPSA** means the *Personal Property Securities Act 2009* (Cth).
- (n) **PPS Register** means the Personal Property Securities Register established under the PPSA.
- (o) **Price** means the price for the Goods or Services stated in the Purchase Order.
- (p) **Purchase Order** means a purchase order issued by SDA which contains the written order from SDA to the Vendor for the supply of Goods or provision of Services.
- (q) **Relevant Collateral** means Collateral which is the subject of a Security Interest granted under this Agreement.
- (r) **Representatives**, in relation to a party, its employees, officers, representatives, advisers and sub-contractors.
- (s) **Services** mean the services described in the Purchase Order.
- (t) **Vendor** means the supplier of the Goods or Services identified in the Purchase Order.

17.2 In this Agreement, unless the context requires otherwise:

- (a) a word in this Agreement that has a capitalised first letter has the meaning given to it by this Agreement;
- (b) the singular includes the plural and vice versa;
- (c) headings are for reference only and do not affect the interpretation of this Agreement;
- (d) a reference to any legislation includes a reference to any proclamation, order, amendments or modification made under that legislation;
- (e) where the Vendor comprises two or more persons, then the obligations on the Vendor will bind and be observed and performed by those persons jointly and severally;
- (f) "include", "includes" and "including" means "includes without limitation";
- (g) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or benefits from it; and
- (h) a reference to a person includes that person's legal personal representatives, successors, assigns.