

TERMS AND CONDITIONS FOR SALE OF BULK FLUID OTHER THAN RAW MILK

1. **Supply.** Subject to these Terms and Conditions ("**Terms**"), Dairy Farmers of America, Inc. ("**Seller**") shall sell and deliver to the buyer named in the Credit Application ("**Buyer**") at Buyer's receiving plant (the "**Plant**"), and Buyer shall purchase and receive from Seller at the Plant, those volumes of cream, condensed skim milk, or other bulk fluid dairy product ("**Product**") ordered by Buyer and accepted by Seller from time to time. Seller is not obligated to accept any orders and may reject any order in its sole discretion. Seller may, at its discretion, supply Product to the Plant from third party sources. Notwithstanding anything to the contrary contained herein, if there is a separate written agreement between the parties governing the supply of Product to the Plant, such other agreement will apply, and these Terms will have no force or effect.

2. **Prices.** For all Product purchased and sold, Buyer shall pay to Seller the prices agreed by the parties.

3. **Manner of Payment.** Seller shall submit invoices to Buyer. Buyer shall pay Seller the total amount of each invoice in accordance with the payment terms set forth in the Credit Application. Buyer's failure to make prompt and timely payment as required herein shall release Seller of any obligation to sell Product to Buyer. To evaluate Buyer's continued creditworthiness, its financial condition and overall ability to make payments for Product purchased hereunder, upon Seller's request, Buyer shall deliver or cause to be delivered to Seller, a copy of the Buyer's audited or unaudited, as applicable and available, annual financial statements for the immediately preceding fiscal year, which will include a balance sheet, profit and loss statement and reconciliation of surplus of Buyer. Upon Seller's request, Buyer shall provide to Seller, within ten (10) days from the date of such request, a copy of Buyer's most recent unaudited monthly financial statement, prepared on a consistent basis from month to month within each fiscal year. Any and all financial statements furnished to Seller by Buyer shall be certified by Buyer's chief financial officer (or other person reasonably acceptable to Seller) verifying that such financial statement accurately reflects the financial condition and operations of Buyer at the times and for the periods therein stated. If Seller, in the exercise of its sole discretion, determines from any credible source, including the review and examination of the financial information provided hereunder, that Buyer's financial condition and/or performance hereunder warrants different payment terms than those in the agreed order, then after consultation with Buyer, Seller may implement different but reasonable payment terms. Seller reserves the right to request additional financial information and/or security, to modify and adjust the manner and terms of payment as set forth above to fairly address the current financial exposure to Seller for Product sold hereunder, and/or to request adequate assurances of performance from Buyer. Whenever Seller reasonably deems itself insecure, Seller may cancel any outstanding sales or deliveries of Product to Buyer, withhold or revoke any extension of credit, or reduce any unpaid debt by right of offset, if applicable. Upon default of payment for any outstanding invoices, Seller shall reserve the option to deduct the total outstanding invoice and any associated fees from any current letter of credit, to the extent that Buyer has provided Seller with the same. Additionally, Buyer shall, promptly upon receipt of notice from Seller, pay to Seller all costs and expenses (including, without limitation, attorneys' fees or fees paid to a collection agency) incurred by Seller to collect any such overdue balances or charges.

4. **Transportation of Product; Transfer of Title.** Transportation and delivery of Product shall be at the sole risk and expense of the party obligated to transport and deliver as set forth in the accepted order, and such party shall have full control over the method of transportation. In any event, title and risk of loss to all Product shall remain with Seller until such Product is delivered to the Plant. When the Plant's hose is connected to the tanker, and the tanker valve has been opened, title of said Product shall pass to Buyer as it is transferred past the tanker valve through the Plant's hose. Notwithstanding anything to the contrary contained herein, if Buyer is responsible to transport the Product to the Plant, Seller is not responsible for (and Buyer, under Section 6 and otherwise, shall be solely responsible for) loss of or damage to the Product or any failure of the Product to comply with this Agreement to the extent the loss, damage or failure to comply was caused by Buyer or its carrier while the Product was in transit to the Plant (and in such event Buyer will make a claim directly to the carrier).

5. **Quality of Product.** Seller represents and warrants that Seller shall comply with all laws and governmental rules and regulations applicable to the transportation, storage and delivery of Product, and Seller's then-current standard specifications (collectively, the "**Specifications**").

6. **Testing and Rejection of Product.** Before pumping Product into the Plant's first receiving tank, the Plant, through licensed personnel, shall inspect the Product. Prior to title to the Product passing to Buyer as provided above, Buyer shall have the right to reject any and all Product which does not meet the requirements of this Agreement (except as otherwise stated in Section 4 above). Seller shall replace any properly rejected load of Product with a conforming load of Product at no additional cost to Buyer. If Buyer fails to inspect the Product or negligently performs such inspection, Seller shall not be liable to Buyer for any damages incurred by Buyer as a result of receiving Product determined to be nonconforming. In recognition of Buyer's obligation to inspect Product and being in the best position to detect and prevent losses associated with receiving Product that does not comply with the terms of this Agreement, Seller shall not be liable for any costs or damages arising from the Product's failure to meet the Specifications, which are, could have been or should have been, detected by properly performed inspections and, in any event, the maximum amount of Seller's liability hereunder shall be the amount Buyer paid or is obligated to pay Seller for such nonconforming Product. Further, in no event shall Seller be liable for any costs associated with products manufactured by the Buyer with the Product. Seller shall not be liable for any damages that arise due to negligence in the performance or non-performance of inspections, by Buyer's employee or agent. Additionally, Seller will not be held liable for any inspection done by non-licensed personnel employed by Buyer or contracted by Buyer to perform such inspection procedures.

7. **Tanker Washing; Seal Policy.** Buyer at its expense shall properly wash, sanitize, seal and provide a valid wash tag for all tankers following delivery of Product to the Plant. If Buyer fails or refuses to wash and sanitize tankers, then Buyer shall be liable to Seller for all costs that Seller incurs in washing and sanitizing such milk tankers at an alternate location, including, without limitation, any additional transportation or freight charges incurred by Seller. Buyer agrees that prior to leaving the tanker-washing area, Buyer's Plant personnel shall ensure that all tanker openings are sealed with all seal numbers recorded on the back of the wash tag, and any unintended seal breakage will be noted and recorded on the wash tag. Seals are required to be numbered (serialized) and will be used to provide a chain of custody for each Product delivery.

8. **Indemnification and Insurance.** (a) Seller shall defend, indemnify, and hold harmless Buyer and the Plant, Buyer's agents, officers, directors, employees, representatives, successors, and permitted assigns from and against all obligations, liabilities, damages, penalties, fines, violations, claims, causes of action, suits, judgments, costs, and expenses (including, without limitation, reasonable attorneys' fees) (together, "**Losses**") that Buyer and/or the Plant may suffer, arising out of, resulting from or connected with (i) the misconduct of Seller or the negligent acts or omissions of Seller in the supply of Product to the Plant, and/or (ii) Seller's breach of the representations, warranties, or agreements set forth in these Terms. This indemnification is not limited to third party claims.

(b) Buyer, on behalf of itself and the Plant, shall defend, indemnify, and hold harmless Seller, its subsidiaries and its affiliates, and their agents, officers, directors, employees, representatives, successors, and permitted assigns from and against all Losses that any of the foregoing may suffer arising out of, resulting from or connected with (i) the misconduct of Buyer or the negligent acts or omissions of Buyer's employees, agents, or contractors, (ii) the Plant's production and sale of products containing Product purchased by Buyer under these Terms and sold to third parties,

and/or (iii) Buyer's breach of any representations, warranties, or agreements set forth in these Terms. This indemnification is not limited to third party claims. The obligations of Seller and Buyer in this Section shall survive the termination or cancellation of these Terms for any reason whatsoever. Buyer shall maintain insurance at its expense in accordance with the below insurance requirements.

9. Excuse for Nonperformance. If a party's performance of any duty or obligation is rendered impossible due to fire, earthquake, acts of terrorism, drought, acts of God, epidemic or disease, orders, rules or regulations or acts of government relating to national defense or prosecution of war, herd destruction or disqualification of dairy herds, partial or in whole, or other causes beyond the reasonable control and anticipation of such party that were not caused by the acts or omissions of such party, no liability for non-performance caused thereby, during the time or continuance thereof, shall arise or exist. The existence of financial hardship or a change in market demand for Product or products derived from Product will not excuse performance of Buyer. Nothing contained in this Section shall limit Buyer's obligation to pay for Product received by Buyer.

10. Weights and Component Tests. Seller's invoices to Buyer shall set forth all weights and tests of all Product delivered to the Plant. Seller's weights and tests shall be used as the purchase weight and tests.

11. Compliance With All Laws, Rules and Regulations. Buyer and Seller each warrants that it will in every manner of its business comply with and conform to all federal, state and local laws, rules and regulations governing the subject matter of these Terms.

12. Confidentiality. Buyer and Seller each agree to keep confidential and not to disclose without the other party's prior written consent the terms and conditions of these Terms and the information exchanged between the parties in performance of these Terms (including without limitation quantities, weights and prices). Notwithstanding the foregoing, nothing in these Terms shall prevent either party from disclosing the existence or terms of these Terms to its Board of Directors, officers, employees, attorneys, accountants, or other agents as necessary to fulfill such parties duties and obligations hereunder. Further, Seller may disclose the amounts of Product supplied to the Plant pursuant to the terms of these Terms (and the price charged therefore) to those common marketing agencies that Seller participates in, provided that such disclosure is done in strict conformance with the antitrust and other applicable laws of the United States.

13. Miscellaneous.

a. These Terms, Buyer's Credit Application, and accepted orders, set forth the entire understanding between the parties relating to the subject matter hereof, and supersedes all prior negotiations and understandings between the parties relating to the subject matter hereof. No modification of these Terms shall be effective unless made in writing and signed by a duly authorized representative of each party. For the avoidance of doubt, neither party shall be bound by any additional or different terms or conditions contained in any purchase order or other documents or records referencing any order or transaction (and this shall constitute each party's objections to any such terms and conditions under Section 2-207(2)(c) of the Uniform Commercial Code under applicable law). Any such additional or different terms or conditions shall be deemed mere surplusage and shall not alter the terms, conditions and provisions of these Terms.

b. Neither party may transfer, assign or otherwise convey any rights or delegate any duties or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party.

c. The failure of any party hereto at any time to require performance of any provision hereof will in no manner affect such party's right at any later time to enforce such provision. No waiver by either party of any condition or of any breach of any term, covenant or representation or warranty contained in these Terms will be effective unless given in writing, and no waiver in any one or more instances will be deemed to be a further or continuing waiver of any such condition or breach in other instances or waiver of any other condition or breach of any other term, covenant, representation or warranty. The remedies available hereunder are cumulative, and the exercise of any one or more of the remedies provided herein or otherwise available in law or in equity shall not be construed as a waiver of any of the other remedies available.

d. These Terms can be amended only in writing and signed by both parties.

e. These Terms and their application shall be governed by applicable laws of the State of Kansas, without regard to its choice of laws provisions.

f. Any captions to or headings of the Sections of these Terms are solely for the convenience of the parties, are not a part of these Terms, and shall not be used for interpretation or determination of the validity of these Terms or any part thereof.

g. Whenever possible, each provision of these Terms shall be interpreted in such manner as to be effective and valid under applicable law. All provisions of these Terms, and all portions of such provisions, are intended to be, and shall be, independent and severable, and in the event that any provision or portion thereof is determined to be unlawful, invalid or unenforceable, such determination shall not affect the validity or enforceability of any other provision, or portion thereof, of these Terms, and all other provisions and portions thereof shall continue to be valid and enforceable.

h. Nothing contained herein shall be deemed or construed to create any partnership or joint venture between Buyer and Seller.

i. If either party commences an action against the other to enforce any of the terms hereof or because of the breach by either party of any of the terms hereof, the losing or defaulting party shall pay to the prevailing party the costs and expenses incurred in connection with the prosecution or defense of such action, including accountants' fees and reasonable attorneys' fees.

INSURANCE

1. Buyer must maintain the following policies of insurance at its expense:

(a) Commercial General Liability Insurance, on an occurrence basis, including a duty to defend, which must provide coverage for bodily injury and property damage with the following minimum limits of insurance:

- \$1,000,000 Each Occurrence Limit
- \$2,000,000 Aggregate Limit

The policy must contain a contractual liability coverage extension, either within the policy form or by endorsement.

(b) Workers' Compensation Insurance, covering all statutory benefits in the states of operation including Employer's Liability with limits of \$500,000 each accident, \$500,000 disease-each employee, and \$500,000 disease-policy limit.

(c) Business Auto Liability Insurance, with minimum combined single limits of \$1,000,000 per accident for bodily injury and property damage. The policy must include a duty to defend and cover all owned, non-owned, and leased or hired vehicles.

(d) Commercial Umbrella/Follow Form Excess Insurance, with minimum limits of \$3,000,000 per occurrence and in the aggregate, in excess of the underlying policy limits. The policy must provide coverage at least as broad as the underlying policies.

2. The following insurance policy requirements are to be included for each policy:

- Insurance must be placed with insurance companies rated at least A, X (10) by the A.M. Best.

- Buyer's liability policies, including the business auto liability policy, must be endorsed to name Seller, and its officers, directors and employees as additional insured utilizing ISO form CG 20 26 or equivalent.
 - Except to the extent that a waiver would render such policy void or unenforceable, Buyer's insurance shall contain a waiver of subrogation in favor of Seller, its subsidiaries and affiliated entities, and its officers, directors and employees.
 - All insurance policies must be written on a per occurrence basis.
 - Policy renewal dates must be noted, and new certificates must be provided, meeting the requirements noted above.
3. Buyer shall require its insurer to provide certificates of insurance coverage to Seller to show Buyer maintains the insurance required under these Terms. These certificates of insurance shall be sent to Seller as directed by Seller.