

The a2 Milk Company Limited
Standard Terms and Conditions
(Australia)

1 Structure of Agreement

- 1.1 Agreement:** The Agreement consists of the PO, these Terms and any document incorporated into, or attached to, them. In the event of any inconsistency, the part of the Agreement listed first prevails to the extent of the inconsistency.
- 1.2 No exclusivity:** Supplier is not the exclusive supplier of the Goods, Services or Work Product (or any similar goods or services) to any a2MC Group member.
- 1.3 Benefit of Agreement:** a2MC enters into the Agreement in its own right and on trust for each other a2MC Group member.

2 Goods and Services

- 2.1 Supply:** Supplier must supply each Good, Service and any Work Product in accordance with: (a) all applicable Specifications; (b) all applicable Due Dates, or if there are none, in a timely and efficient manner; (c) all applicable laws, including supply chain, animal welfare, anti-corruption, labour and modern slavery laws; and (d) and a2MC Group policies and reasonable directions.
- 2.2 Packaging, Documentation and Delivery:** All Goods delivered must be: (a) packed so as to prevent damage in transit and during handling; and (b) accompanied by a Supplier generated delivery docket and/or invoice, plus any relevant compliance document (e.g. Certificate of Analysis, Certificate of Conformance etc).
- 2.3 Delays:** If Supplier is, or is likely to be, delayed in meeting any Due Date, Supplier must: (a) promptly notify a2MC of the delay; (b) take all reasonable steps to prevent the delay and mitigate its consequences; and (c) if Supplier seeks an extension of time, promptly submit a written claim to a2MC providing, to a2MC's reasonable satisfaction, details of the delay, evidence the delay was caused by an Extension Event, and details of the prevention and mitigation steps taken by Supplier.
- 2.4 Extensions of time:** If Supplier fails to meet any Due Date as a result of a delay caused by an Extension Event, then provided that Supplier has complied with clause 2.2 the Due Date will be extended by a period equal to that delay. An extension of a Due Date is Supplier's sole and exclusive remedy in respect of any Extension Event.
- 2.5 a2MC remedies:** Without limiting any other remedies of a2MC, if Supplier fails to meet any Due Date for any reason other than an Extension Event, a2MC may terminate the Agreement to the extent it relates to the delayed Goods, Services or Work Product with immediate effect, and Supplier must refund all Fees paid for those Goods, Services or Work Product.

3 Inspection and Acceptance

- 3.1 Inspection:** a2MC may conduct, or require Supplier to conduct, inspections or tests of Goods and Work Products to determine compliance with the Agreement.
- 3.2 Rejection:** If a2MC is not satisfied that a Good or Work Product has passed all inspections or tests, a2MC may reject that Good or Work Product and (at its option): (a) require Supplier to rectify all Defects and resubmit the Good or Work Product for further inspections and tests; or (b) terminate the Agreement to the extent it relates to the rejected Good or Work Product with immediate effect, and Supplier must refund all Fees paid for those Goods and Work Products.
- 3.3 Acceptance:** Acceptance of a Good or Work Product occurs: (a) when a2MC notifies Supplier in writing that the Good or Work Product has passed all inspections and tests; or (b) if a2MC does not inspect or test, when a2MC accepts delivery of the Good or Work Product.

4 Risk and title

- 4.1 Risk:** Risk in each Good and Work Product passes from Supplier to a2MC on Acceptance of that Good or Work Product.

- 4.2 Title:** Title to each Good and Work Product passes from Supplier to a2MC on the earlier of a2MC's: (a) Acceptance of that Good or Work Product; and (b) payment of the Fees for that Good or Work Product.

5 Fees, invoicing and payment

- 5.1 Fees:** Fees payable by a2MC for Goods and Services (and any Work Product) are specified in, or to be calculated in accordance with, the PO. The Fees are the only amounts payable by a2MC for the performance of all Supplier's obligations under the Agreement and are inclusive of all taxes, charges, costs and expenses, except: (a) any GST payable on those Fees; and (b) any reasonable expense approved in writing by a2MC prior to it being incurred by Supplier.
- 5.2 Invoicing:** Supplier may invoice a2MC for the Fees at the times set out in the PO. If no times are set out in the PO, then Supplier may only invoice a2MC in respect of a Good, Service or Work Product after Acceptance of that Good, Service or Work Product.
- 5.3 Payment:** a2MC must pay any correctly rendered invoice issued by Supplier under the Agreement within 30 days after the end of the month in which the invoice is received by a2MC, subject to clause 5.4 and 5.5.
- 5.4 Disputed invoices:** If a2MC disputes any invoice, a2MC may withhold the amount in dispute until that dispute is resolved. Any overpayment by a2MC will be refunded by Supplier as a debt due to a2MC within 10 Business Days.
- 5.5 Set-off:** a2MC may set off against the Fees payable under any invoice, any amount owed to a2MC by Supplier.
- 5.6 GST:** If a supply is a taxable supply, all amounts payable must be increased by the amount of GST payable in relation to the supply. GST must be paid at the time any payment for any supply to which it relates is payable (provided a valid tax invoice has been issued for the supply). **GST, tax invoice and taxable supply** have the meanings given to them in the *A New Tax Systems (Goods and Services Tax) Act 1999* (Cth).

6 Intellectual Property Rights

- 6.1 No implied rights:** Nothing transfers or grants to a party any right, title or interest in or to any Intellectual Property Rights owned by the other party, except as set out in this clause 6.
- 6.2 Supplier IP:** Supplier grants a2MC a worldwide, royalty-free, perpetual, irrevocable, non-exclusive licence to use, adapt and enjoy Supplier's Background IP to the extent necessary to enable a2MC to receive, use and enjoy the full benefit of the Goods, Services, Work Products and the Agreement. a2MC may sublicense its rights under this clause to any: (a) a2MC Group member that requires the benefit of the Goods, Services and Work Product; and (b) any Third Party Supplier that requires access to or use of the Goods, Services and Work Products to provide services to a2MC Group.
- 6.3 Developed IP:** All Developed IP vests in a2MC immediately upon creation. If any Developed IP does not vest in a2MC, Supplier hereby assigns, and must procure that its subcontractors and Personnel assign, to a2MC all Developed IP on creation, free of encumbrances and Third Party rights. Supplier must obtain in writing from each individual involved in the creation of any Developed IP an irrevocable and unconditional consent to any act or omission by a2MC Group, their successors in title, and licensees that would otherwise infringe, any moral rights those individuals may have in the Developed IP.

7 Confidentiality

- 7.1 Obligation of confidence:** Each party (**Recipient**) must keep secure and confidential, and not use, copy or disclose, any Confidential Information of the other party (**Discloser**), except as permitted by this clause 7.

- 7.2 Permitted use:** The Recipient may use Confidential Information of the Discloser solely to the extent necessary to exercise its rights and perform its obligations under the Agreement.
- 7.3 Permitted disclosures:** The Recipient may disclose Confidential Information of the Discloser: (a) to the Related Bodies Corporate, subcontractors, Personnel, professional advisers and insurers of the Recipient who need to know the Confidential Information for the purposes of the Agreement and who are subject to binding obligations of confidence at least as stringent as those set out in this clause; (b) to the extent it is required by Law or the rules of any stock-exchange, provided that the Recipient promptly notifies the Discloser of the requirement (unless prohibited from doing so), and provides all assistance reasonably required to enable the Discloser to object to or limit the required disclosure; or (c) with the prior written consent of the Discloser.
- 7.4 Breaches:** The Recipient must immediately notify the Discloser upon becoming aware of any actual or suspected breach of this clause or unauthorised access, use or disclosure of the Confidential Information of the Discloser.
- 7.5 Public statements:** Supplier must not make any public statement or issue any press release concerning or relating to the Agreement or its relationship with a2MC unless it has first obtained the written consent of a2MC as to the form and content of that public statement or press release.

8 Privacy

- 8.1 Privacy Laws:** Supplier must comply with all applicable Privacy Laws in collecting, storing, using, disclosing or otherwise processing any Personal Information in connection with the Agreement.
- 8.2 Processing:** If Supplier becomes privy to any Personal Information comprised in a2MC Data, Supplier must: (a) process that Personal Information solely to the extent necessary to perform the Agreement in accordance with a2MC's reasonable directions (and any a2MC Group public privacy policy); (b) treat that Personal Information as the Confidential Information of a2MC.

9 Warranties and indemnities

- 9.1 General:** Each party represents and warrants that: (a) it has the power and authority to enter into and perform its obligations under the Agreement, and (b) the Agreement constitutes a legal, valid and binding obligation on it, enforceable in accordance with its terms by appropriate legal remedy.
- 9.2 Anti-corruption and modern slavery:** Supplier represents and warrants that: (a) it does not engage in any form of Modern Slavery in supplying any Good, Service or Work Product or otherwise in conducting its business and it is not aware of any person in its supply chain that engages in any form of Modern Slavery; (b) it complies with a2MC's anti-bribery policy and responsible sourcing policy and has not, and is not aware of any person in its supply chain that has, breached any Anti-corruption Laws; and (c) neither Supplier nor any of its Related Bodies Corporate has been convicted of any offence under Anti-corruption Laws or Modern Slavery Laws.
- 9.3 Goods, Services and Work Product:** Supplier warrants that: (a) it will supply all Goods, Services and Work Products with due care and skill, in a professional, efficient and safe manner; (b) all Goods, Services and Work Product will during the Warranty Period be fit for the purpose, be free from Defects and comply with their Specifications; (c) all Goods and Work Product will be new, free from encumbrances and risks to security, health and safety; .
- 9.4 Rectification:** Supplier must rectify any breach of a representation or warranty given by Supplier in clause 9 promptly upon becoming aware of such breach (whether following notification from a2MC or otherwise). In the case of the warranty in clause 9.3(b), Supplier's rectification obligations only apply to the extent that the breach during the applicable Warranty Period.
- 9.5 Indemnities:** Supplier indemnifies a2MC Group against any Claim or Loss which any a2MC Group member pays, suffers, incurs or is liable for arising out of or in connection with any: (a) breach of clauses 6, 7, 8, 9.2 or 12; (b) death, personal injury, loss of or damage to any property (including any Goods, Work Product and a2MC Data); (c) infringement of a person's rights (including Intellectual Property Rights); (d) fraud, dishonesty, recklessness, wilful misconduct or misrepresentation, in each case, to the extent

caused or contributed to by Supplier, its subcontractors or Personnel.

10 Liability and insurances

- 10.1 Exclusion of Indirect Loss:** No party is liable for any Indirect Loss arising out of or in connection with the Agreement.
- 10.2 Limitations of liability:** The aggregate liability of a2MC, whether in contract, tort (including negligence) or any other basis, arising out of or in connection with the Agreement is limited to the Fees paid by a2MC.
- 10.3 Insurance obligations:** Supplier must effect and maintain, for the term of the Agreement, comprehensive insurances commensurate to the potential risks to a2MC in connection with the Supplier fulfilling its obligations under the Agreement and other insurances which are required by law, including public liability and product liability insurance cover with a minimum indemnity value of \$20,000,000 each and every claim made (or such higher amount as a2MC may reasonably require) and professional indemnity cover for the term of the Agreement and 6 years thereafter with a minimum indemnity value of \$10,000,000 each and every claim made, in each case with a reputable insurer with a Standard & Poors rating of no less than "A-". Supplier must provide evidence of these insurances to a2MC on request. The Supplier must ensure that its subcontractors have the benefit of, or effect and maintain insurances similar to, the Supplier insurances.

11 Term and termination

- 11.1 Term:** The Agreement commences on the date set out in the PO and continues until all Goods, Services and Work Product have been supplied in accordance with the Agreement, unless terminated earlier in accordance with its terms.
- 11.2 Termination for convenience:** a2MC may terminate the Agreement for convenience at any time by providing Supplier with at least 30 days' notice in writing.
- 11.3 Termination for cause:** a2MC may terminate the Agreement with immediate effect by providing Supplier with notice in writing if: (a) Supplier commits a breach which is not capable of remedy or not remedied within 14 days of receipt of a notice from a2MC; (b) Supplier, its Related Bodies Corporate or subcontractors commit, or are alleged to have committed, an offence relating to animal welfare; (c) a Change of Control or Insolvency Event occurs in relation to Supplier; (d) a2MC considers that Supplier, its Related Bodies Corporate or subcontractors have brought, or are likely to bring, a2MC Group, their products, Intellectual Property Rights or a2 beta casein protein milk, into disrepute.
- 11.4 Consequences:** On termination or expiry, Supplier must: (a) provide any assistance required by a2MC to transition away from the Goods, Services and Work Product of Supplier; and (b) return to a2MC or destroy (at a2MC's option) all a2MC Data, a2MC Confidential Information or other a2MC property in the possession or control of Supplier.
- 11.5 Survival:** Any clause which is expressed to, or by its nature, survive expiry or termination, will survive expiry or termination of the Agreement.

12 Conflicts and restraints

- 12.1 Conflicts:** For a period of 2 years from the later of the date on which the PO is issued or the commencement date of the PO (if any), Supplier must not either directly or indirectly carry out work which conflicts or may conflict with the interests of an a2MC Group member.

13 General

- 13.1 Governing law:** The Agreement is governed by the laws of the Territory. Each party irrevocably submits to the exclusive jurisdiction of courts which have jurisdiction in the Territory.
- 13.2 Entire agreement:** The Agreement contains the entire agreement between the parties about its subject matter and replaced any prior understanding, agreement, representation or warranty relating to that subject matter. All Supplier terms (even if signed by a2MC) are excluded and do not form part of the Agreement.
- 13.3 Variation:** Any variation of the Agreement must be in writing and signed by both parties.
- 13.4 Notices:** Any notice or communication of a party contemplated by the Agreement must be in writing in English, legible and signed by

the party or its agent and sent by express or registered post, email, or hand delivery, to the recipient.

- 13.5 Assignment and subcontracting:** Supplier must not assign its rights or subcontract its obligations under the Agreement without the prior written consent of a2MC. Supplier remains liable for each act or omission of its subcontractors as though it were an act or omission of Supplier.
- 13.6 Relationship:** The parties are independent contractors and the Agreement does not create an association, joint venture or partnership, or other relationship between the parties.
- 13.7 Waiver:** A party is only bound by a waiver that it gives or confirms specifically in writing.
- 13.8 Severability:** If a provision of the Agreement is void, unenforceable or illegal: (a) the provision is read down to the extent necessary to avoid that result; or (b) if it cannot be read down it is severed, without affecting the validity or enforceability of the remainder of the Agreement.
- 13.9 Costs:** Each party is responsible for its own costs of the negotiation and performance of the Agreement, except to the extent the Agreement provides otherwise.

14 Definitions

The following definitions apply in the Agreement:

a2MC means the purchasing entity identified in the PO.

a2MC Data means all data and information relating to the business or affairs of the a2MC Group, in whatever form such information may exist, and whether or not entered into, stored in, generated by or processed as part of the Goods, Services or Work Products.

a2MC Group means a2MC and its Related Bodies Corporate.

Acceptance means the acceptance of a Good, Service or Work Product in accordance with clause 3.3.

Agreement has the meaning given in clause 1.1.

Anti-corruption Laws means all applicable anti-corruption Laws, including relevant provisions of the *Criminal Code 1995* (Cth) and the *Crimes Act 1961* (NZ), and whether relating to public officials or otherwise.

Background IP means Intellectual Property Rights owned, created or developed by or on behalf of a party or its Related Bodies Corporate independently of the Agreement.

Change of Control means an event which results in a person becoming Controlled by another person (alone or with others) who did not previously Control the first person.

Confidential Information of a party means information relating to the business or affairs of that party or its Related Bodies Corporate that is marked, designated or by its nature confidential and disclosed or otherwise accessed under the Agreement, including: (a) the Agreement; and (b) in the case of a2MC, all a2MC Data and a2MC Assets, but excluding information that is in the public domain other than as a result of a breach of an obligation of confidence.

Control means the power of a person to secure that its affairs are conducted in accordance with the wishes of that person by means of the holding of shares or the possession of voting power in or in relation to that party or any other body corporate or by virtue of any powers conferred by the constitution or any other document regulating that party or any other body corporate.

Defect means any defect, error or omission in the design, materials or workmanship of a Good, Service or Work Product, including non-compliance with the Agreement.

Developed IP means all Intellectual Property Rights developed by or on behalf of Supplier in connection with the Agreement, excluding Background IP.

Due Date means the dates and times for the delivery and Acceptance of the Goods, Services and Work Product in the PO or agreed by the parties in writing.

Extension Event means a Force Majeure Event or breach of the Agreement by a2MC that adversely affects Supplier's ability to perform the Agreement.

Fees means the amounts payable by a2MC for Goods, Services or Work Product to be supplied under the Agreement as specified in the PO.

Force Majeure Event means an event which is outside the reasonable control of Supplier, the adverse effects of which could not have been prevented or mitigated against by Supplier with reasonable diligence or reasonable precautionary measures.

Goods means a standard or commoditised good or product to be supplied by the Supplier.

Indirect Loss means any loss that does not arise naturally and according to the usual course of things as a result of a breach of the Agreement or other event giving rise to the loss, whether or not in the contemplation of both parties, at the time they entered into the Agreement, as the probable result of the breach or other event.

Insolvency Event means the occurrence of any event of insolvency including a winding up application being made and not withdrawn within 21 days, a failure to comply with a statutory demand, the appointment of a provisional liquidator or administrator, the entering into of an arrangement with creditors, a voluntary winding up other than for the purpose of a bona fide corporate reconstruction, any inability to pay debts as and when they fall due, any admission of insolvency, any court order relating to any of the above or anything which occurs under the law of any jurisdiction which has a similar effect to any of the above.

Intellectual Property Rights means all intellectual and industrial property rights and interests throughout the world, whether registered or unregistered, including trademarks, designs, patents, circuit layouts, copyright (including source code) and analogous rights and all other intellectual property rights as defined in Article 2 of the convention establishing the World Intellectual Property Organisation of 14 July 1967.

Modern Slavery means slavery, servitude, forced labour, trafficking in persons (including orphanage trafficking of children), forced marriage, child labour, debt bondage and other slavery-like practices.

Modern Slavery Laws means all applicable modern slavery Laws, including the *Modern Slavery Act 2018* (NSW) and *Modern Slavery Act 2018* (Cth).

Personal Information means any information or opinion about a living identified individual or an individual that is reasonably identifiable.

Personnel means individuals who are the employees, contractors or agents of a party and, in the case of Supplier, includes the employees, contractors and agents of Supplier's subcontractors. To avoid any doubt, a2MC Personnel exclude all Supplier Personnel.

Privacy Law means any Law applicable to the protection and processing of Personal Information, including the *Privacy Act 1988* (Cth) and the *Spam Act 2003* (Cth).

Related Bodies Corporate has the same meaning as in section 50 of the *Corporations Act 2001* (Cth).

Services means the services to be provided by Supplier under the Agreement, including the supply of any Work Product and all ancillary services required for the proper supply of those services.

Specifications means, in respect of a Good, Service or Work Product, the functional, technical, and other specifications set out in: (a) the Agreement; and (b) any manufacturer's specifications.

Supplier means the entity identified as such in the PO.

Territory means the Australian State or Territory in which a2MC issues the PO.

Third Party means any person other than a2MC, Supplier and their respective Related Bodies Corporate.

Warranty Period means, unless agreed otherwise: (a) 36 months from Acceptance for any Good or Work Product that is equipment or other tangible property; (b) 120 days from Acceptance for any Work Product that is a document; and (c) 12 months for Services

Work Product means all information, materials, documents or other work product generated through the provision of the Services (other than Goods).