

Set out below are the Terms and Conditions of Sale (“the terms and conditions”) for all goods purchased by you (“the Purchaser”) from Multikraft New Zealand Limited (“the Seller”).

1 APPLICATION OF THESE CONDITIONS

Unless expressly altered or modified in writing by the Seller, the terms and conditions apply to all sales of goods by the Seller to the Purchaser, and on acceptance of an order by the Seller the terms and conditions shall be deemed to be incorporated in, and form part of, the contract of sale.

2 DEFINITIONS

The following words have the following meanings in these conditions:

Contract means the contract between the Purchaser and the Supplier for the supply of goods, as described in clause 1.

Goods means all goods and services ordered in the Purchase Order.

GST has the same meaning as in the GST law.

GST Law means the NZ Goods and Services Tax Act 1985.

Loss means any loss, liability, damage, expense or cost whatsoever and includes (without limitation) indirect or consequential loss or damage, loss of profits, or business opportunity, and damage to equipment or property.

MPNZ means the company identified in the invoice as Multikraft Probiotics New Zealand Ltd (NZBN 9429041525883, Company number 5521197)

Payment must be made before delivery unless the Supplier has agreed to supply goods under the credit terms set out in this document.

Personal Information has the meaning set out in the NZ Privacy Act 2020.

PPSA means the NZ Personal Property Securities Act 1999.

Privacy Law means the NZ Privacy Act 2020, including (without limitation) the 13 New Zealand Privacy Principles (NZPPs) in the NZ Privacy Act 2020 and all relevant New Zealand privacy laws, including the NZ Health Information Privacy Code.

Purchase Order means a purchase order issued by the Purchaser to the Supplier.

Purchaser means the Purchaser (including its successors, personal representatives and permitted assigns) who acquires the Goods from the Supplier.

Related Bodies Corporate has the meaning given to it in the NZ Companies Act 2013.

Supplier means the company identified in the invoice.

3 INCONSISTENCIES

Where the supply purports to be made on or subject to terms and conditions other than these conditions, the Purchaser agrees that such other terms and conditions are disregarded and form no part of the Contract unless the Supplier agrees otherwise in writing.

Multikraft New Zealand Limited

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4 ACKNOWLEDGEMENT

The Purchaser acknowledges and agrees that:

- 4.1 The Supplier's liability under these conditions falls solely on the Supplier; and
- 4.2 The obligations the Purchaser accepts, and warranties the Purchaser makes are accepted and made for the benefit of the Supplier and all the Supplier's related bodies corporate.

5 ACCEPTANCE OF PURCHASE ORDERS AND FORECASTS

- 5.1 The Supplier will only accept Purchase Orders that are accompanied by a purchase order number. The Supplier reserves the right to refuse acceptance of any Purchase Order within 5 working days after receipt. Any quotation given by the Supplier lapses if not accepted by the Purchaser within 30 days.
- 5.2 All Purchase Orders supplied by the Purchaser are subject to acceptance by the Supplier and no Contract between the Supplier and the Purchaser comes into existence until the Supplier issues a Sales Confirmation in relation to the Purchase Order.
- 5.3 If the Purchaser has provided the Supplier with a forecast of future requirements it acknowledges that the Supplier will be entitled to rely on the accuracy of such forecast(s) for the purpose of ordering raw materials and arranging its resources to be able to meet those forecast requirements.
- 5.4 If any such forecast is materially inaccurate the Supplier shall be entitled to invoice the Purchaser for all costs, expenses, or losses which result from the Supplier having relied on the inaccurate forecast. Such an invoice will be subject to the normal terms of payment applying to the Purchaser.
- 5.5 In any event, the Supplier shall be entitled to invoice the Purchaser for all finished Goods made to forecast and not ordered by the Purchaser within 3 months of manufacture. Such an invoice will be subject to the normal terms of payment applying to the Purchaser.

6 TERMS OF PAYMENT

- 6.1 Terms of payment are cash with order unless credit has been approved by the Supplier. If credit is satisfactorily established, invoices will be paid on or before the due date specified on the invoice (without deduction or set-off of any kind) unless otherwise agreed to by the Supplier in writing. If payment is not received by the due date the supplier reserves the right to charge interest at the 90-day Bank Bill Swap Bid Rate (as quoted on rbnz.co.nz-wholesale interest rates) plus 15% per annum commencing from the due date of payment in respect of all the Purchaser's indebtedness which is overdue. Any interest so levied shall accrue daily and shall accrue until all monies owing are paid in full. The Purchaser shall also be liable to pay all expenses, debt collectors' costs of collection, legal costs on a solicitor and own client basis, of the Supplier in relation to obtaining remedy of the failure to comply.
- 6.2 Notwithstanding any rights of lien to which the Supplier may otherwise be entitled, the Supplier shall have a specific lien (including a right of sale) over the goods the subject of the Contract, and any goods the subject of any other contract with the Purchaser until the price of the goods has been paid in full. The Purchaser shall not be entitled to make any deduction from the price of the goods in respect of any off-set or counter claims.

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7 DEFAULT

If the Purchaser defaults in payment, or an application is made to a court to wind up the Purchaser, or a receiver or administrator is appointed to manage the affairs of the Purchaser, or the Purchaser is in material breach of the Contract, then the Supplier may terminate the Contract or any Purchase Order immediately and may recover from the Purchaser, at a minimum, reasonable compensation for materials purchased and ordered, labour expended and other expenses incurred such as transport in complying with the Purchase Orders.

8 DELIVERY AND RISK

- 8.1 While the supplier will use all reasonable endeavours to deliver by the date specified in the Purchase Order, it does not, unless otherwise agreed in writing, guarantee delivery on that date and is not liable for any loss resulting from late or early delivery. Delivery of the Goods shall be affected when the Goods are unloaded from the delivery vehicle or placed on the Purchaser's, or the Purchaser's agent's, nominated carrier. If no date for delivery has been specified, then the Goods shall be supplied to the Purchaser and the Purchaser shall receive the Goods as soon as practicable for the Supplier after the Purchase Order has been accepted by the Supplier and the Goods have been manufactured.
- 8.2 Risk in the Goods passes to the Purchaser at the time of delivery. Delivery to the Purchaser is deemed to occur at the time of delivery to the Purchaser, its agent or carrier.
- 8.3 The Purchaser shall notify the Supplier within 3 hours of delivery of any short fall in, or loss or damage to goods delivered. Failure to notify shall, subject to the requirements of any Prescribed Terms, disentitle the Purchaser to any remedy in respect to the shortage, loss or damage.
- 8.4 Delivery may be made in one or more lots and at different times and by separate deliveries or shipments. Each lot must be accepted and paid for, notwithstanding any late delivery or non-delivery of any other lot. If the Supplier allows the Purchaser to nominate a delivery date, such date may not be more than 60 days after the expected date of manufacture of the Goods, as advised by the Supplier to the Purchaser.
- 8.5 The quantity of the Goods delivered by the Supplier under a Purchase Order can vary by up to 5% of the quantity specified by the Purchaser in the Purchase Order, provided the Purchase Order satisfies the minimum run-size requirements of the Supplier.
- 8.6 If the Purchaser is unable or unwilling to accept delivery on or before the nominated delivery date, or if no delivery date is nominated and the Purchaser is unable to accept delivery when the Supplier gives notice that the Goods are available for delivery, then the Supplier will hold the Goods in stock for 45 days after which time it may, at its sole discretion:
 - (a) continue to hold the Goods and charge the Purchaser for storage;
 - (b) invoice the Purchaser and deliver the Goods in accordance with prior arrangements, notwithstanding that the Purchaser's representative or agent is not present or is unwilling to accept the Goods; or
 - (c) treat the Contact as having been repudiated by the Purchaser and invoice the Purchaser for the full Contract price for the Goods and any other costs incurred by the Supplier less any amounts received by the Supplier from a bona fide sale of the Goods to a third party.
- 8.7 The Supplier will deliver the Goods to the Purchaser's nominated store. The Purchaser must unload the Goods at the Purchaser's risk.

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9 PASSING OF PROPERTY

- 9.1 The Supplier's rights under this clause 9 secure:
- (a) the Supplier's right to receive the price of all Goods sold under this contract
 - (b) all other amounts owing to the Supplier under this Contract or any other contract.
- 9.2 All payments received from the Purchaser must be applied in accordance with section 8 (95) of the NZPPSR Act.
- 9.3 The Purchaser agrees that legal title and property in the Goods is retained by the Supplier until payment is received in clear funds from the Purchaser of all sums owing to the Supplier, whether under the Contract or otherwise. The Purchaser must keep the Goods separate from other goods and store the Goods so that they are readily identifiable as those supplied by the Supplier.
- 9.4 The Purchaser must not sell the Goods except in the ordinary course of the Purchaser's business.
- 9.5 If the Purchaser fails to pay by the due date any amount owing to the Supplier, the Supplier may (without prejudice to any of its other rights) recover and resell any of the Goods in which property has not passed to the Purchaser. In addition to any rights the Supplier may have under Part 9 of the NZPPSA, the Supplier may, without notice, enter any premises where it expects the Goods may be located and remove them without committing a trespass, and the Purchaser authorises the Supplier to enter onto the premises where the Goods are kept taking possession of the Goods for that purpose at any time. The Purchaser also indemnifies the Supplier from and against all loss suffered and or incurred by the Supplier because of exercising its rights under this clause 9. If there is any inconsistency between the Supplier's rights under this clause 8 and its rights under Part 9 of the NZPPSA, this clause 8 prevails.
- 9.6 The Purchaser acknowledges and warrants that the Supplier has a security interest (registered with the Personal Properties Securities Register) in the Goods and any proceeds until title passes to the Purchaser in accordance with this clause 9. The Purchaser must do anything reasonably required by the Supplier to enable the Supplier to register its security interest with the priority the Supplier requires to maintain that registration.
- 9.7 The security interest arising under this clause 8 attaches to the Goods when the Purchaser obtains possession of the Goods and the parties confirm that they have not agreed that any security interest arising under this clause 9 attaches at any later time.

10 CANCELLATIONS

Any request by the Purchaser for cancellation of a Purchase Order must be in writing and may be delivered by post, hand delivery, or email. The Purchaser is liable to reimburse the Supplier for the costs it has incurred for labour and materials in fulfilling the Purchase Order up to the date the request for cancellation is received and acknowledged by the Supplier.

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11 FORCE MAJEURE

- 11.1 Neither party is liable for any Loss incurred by the other party because of any delay or failure to observe any of these conditions (other than an obligation to pay money) as a result of any circumstance beyond the party's control, including but not limited to any strike, lock-out, labour dispute, Act of God, fire, flood, accidental or malicious damage or breakdown in machinery. The party affected must notify the other party as soon as possible of such circumstance.
- 11.2 During the continuance of such circumstances the obligations of the party affected, to the extent that they are affected by the circumstance, are suspended, and resume as soon as possible after the circumstance has ceased to have effect.

12 SUPPLIER'S LIABILITY

- 12.1 Nothing in these conditions is to be interpreted as having the effect of excluding, restricting or modifying any statutory guarantee, condition, or warranty, or right or liability implied by any applicable legislation into the Contract. If such exclusion, restriction, or modification would be void or prohibited by the legislation.
- 12.2 To the extent that the Supplier breaches any statutory guarantee, condition or warranty implied into the Contract and which cannot be excluded or modified, the Supplier's liability is limited to, at the Supplier's discretion:
- (a) In the case of Goods:
 - (i) replacement of the Goods or supply of equivalent Goods
 - (ii) payment of the cost of replacing the Goods or acquiring equivalent Goods
 - (iii) repair of the Goods; or
 - (iv) payment of the cost of having the Goods repaired; or
 - (b) In the case of services:
 - (i) supply of the services again: or
 - (ii) payment of the cost of having the services supplied again.
- 12.3 Subject to (a) and (b) above, the Supplier is not liable to the Purchaser (or to any third party claiming through the Purchaser) for any Loss caused by any act or omission of the Supplier, its employees or agents, and whether based on negligence, tort, contract or otherwise. Under no circumstances shall the Supplier be liable for indirect or consequential losses.

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13 INTELLECTUAL PROPERTY

Any technical information, knowledge or processing methods at any time transmitted either orally or in writing by the Supplier to the Purchaser shall remain the property of the Supplier and shall be considered absolutely confidential by the Purchaser who shall not use them for any purpose nor sell, transfer or divulge them in any manner to anyone without the prior written consent of the Supplier. The Purchaser warrants that the use by the Supplier of any designs or instructions supplied by the Purchaser will not infringe the patents, trademarks, designs or copyright ("intellectual property") of any other person and the Purchaser agrees to indemnify the Supplier against any claim relating to or arising from the infringement of any intellectual property of any other person. If at any time a claim is made against the Supplier or the Supplier becomes aware that a claim is likely to be made against the Supplier for infringing any intellectual property or contributing to any such infringement by the Supplier or any other person as a result of supplying Goods, the Supplier may immediately terminate or suspend this Contract.

14 TAX AND DUTIES

The Purchaser is liable for all taxes (including GST), duties, levies, and other government fees and charges in relation to the Goods. Unless specified otherwise, prices quoted do not include such taxes (including GST), duties etc.

15 GOODS AND SERVICES TAX

If, and to the extent, any supply of the Goods under the Contract is a taxable supply within the meaning of the GST Law, the price for the Goods will be increased to include GST payable by the Supplier in respect of the supply. All rebates, discounts or other reductions in price will be calculated on the GST exclusive price. The parties agree that:

- (a) the parties must be registered persons within the meaning of the GST Law;
- (b) the Supplier must provide tax invoices and if applicable adjustment notes to the Purchaser in the form prescribed by or for the purposes of the GST Law; and
- (c) costs required to be reimbursed or indemnified excludes any amount that represents GST for which an input tax credit within the meaning of the GST Law can be claimed.

16 CLAIMS

Any claim by the Purchaser arising out of the Contract must be made in writing and may be delivered by post, hand delivery, or email as soon as practicable after discovery by the Purchaser of the problem and in any event no later than 3 hours after delivery of the Goods. To the extent the Supplier can identify the Goods and the date of manufacture the Purchaser must supply a sample and information if requested. The Supplier has the right at any time within 14 days after receipt of the claim to inspect the relevant Goods. If the Purchaser disposes of any of the Goods within the 14-day period, except with the written consent of the Supplier, all claims in respect of the Goods disposed of are deemed to have been waived by the Purchaser.

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17 CONFIDENTIALITY

Unless required by law or otherwise agreed, the Purchaser must keep confidential all information it receives from the Supplier which relates to the Goods, the Supplier's business or any services the Supplier provides and any of the Supplier's intellectual property (including without limitation any formulations), other products or processes except to the extent that information is in the public domain.

18 INSURANCE

Unless otherwise instructed by the Purchaser in writing or included in a written quotation or price list by the Supplier, insurance cover for the Goods in transit will not be arranged by the Supplier. Instructions for insurance cover will only be accepted in writing at the time the Goods are ordered.

19 TRANSPORT

If the Purchaser requests delivery by means other than the means normally used by the Supplier, then the Purchaser must pay all additional costs associated with the means chosen. If, within 4 weeks after the Goods are available for dispatch, the Supplier is unable or finds it impracticable to transport the Goods by the means chosen, the Supplier may transport the Goods by any means it considers suitable and will advise the Purchaser accordingly.

20 PRODUCT SPECIFICATIONS AND DESIGN CHANGES

The Supplier may make any changes or improvements to the design or specification of the Goods at any time without giving prior written notice to the Purchaser unless otherwise agreed in writing.

21 PAYMENT BY LETTER OF CREDIT

If the Purchaser is not resident in New Zealand or is not a New Zealand company, payment must be made by irrevocable letter of credit. If the Purchaser requires delivery of the Goods outside New Zealand, prices are quoted "free on wharf" free alongside ship, unless otherwise agreed in writing by the Supplier.

22 ASSIGNMENT AND NOVATION

The Purchaser must not assign or novate the Contract or otherwise deal with the benefit of it or a right under it, or purport to do so, without the prior written consent of the Supplier. A change in control of the Purchaser will be deemed an assignment for the purposes of this contract.

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23 RELATIONSHIP OF THE PARTIES

Except as expressly provided in the Contract nothing in the Contract is intended to constitute a fiduciary relationship or an agency, partnership or trust; and no party has authority to bind any other party.

24 SIGNIFICANT REGULATORY CHANGES

Should any significant change in law or regulation (including the introduction of any form of emission or carbon trading scheme or emissions or carbon tax) occur during the Term, the Supplier will, subject to clause 11.1, be entitled, by 10 days' notice in writing to the Purchaser, to increase the price payable by the Purchaser for Products by an amount equal to the increased cost that will be incurred by the Supplier in supplying the Products to the Purchaser as a result of such significant change.

25 ENFORCEMENT OF SECURITY INTEREST

If Part 9 of the PPSA would otherwise apply to the enforcement of the security interest created under this Contract, the Purchaser agrees that the following provisions of the PPSA will not apply; section 129 (notice of removal of accession) to the extent that it requires the Supplier to give a notice to the Purchaser; section 124 (notice of disposal), to the extent that it requires the Supplier to give a notice to the Purchaser; paragraph 116 (contents of statement of account after disposal); section 120 (notice of retention); section 132 (redemption of collateral); and section 133 (reinstatement of security agreement).

26 NOTICES OF PPSA

The Supplier does not need to give the Purchaser any notice under the PPSA (including a notice of verification statement) unless the notice is required by the PPSA, and that requirement cannot be excluded.

27 PRIVACY

The Purchaser must comply with the Privacy Law with respect to any act done or practice engaged in by the Purchaser for the purposes of this Contract, including, without limitation, in relation to the collection, use disclosure, storage, destruction or de-identification of personal information. The Purchaser must also enter into a contractual arrangement to this effect with any subcontractor or third party to which it discloses personal information in connection with this contract.

28 DISPUTE RESOLUTION CLAUSE

Any dispute arising out of the Contract is governed by the laws of New Zealand and the Purchaser submits to the jurisdiction of and agrees to be bound by the Courts of New Zealand.

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29 MISCELLANEOUS

- 29.1 Any of these conditions may be varied in writing by the Supplier unless otherwise agreed between the parties. Any variation to these conditions will only apply to Purchase Orders placed after the condition has been varied.
- 29.2 The Supplier may set-off any amounts owed by it to the Purchaser under the Contract against amounts owed by the Supplier to the Purchaser on any account whatsoever.
- 29.3 The waiver by the Supplier of any provision, or breach of any provision, of the Contract is not to be construed as a waiver of any other provision or a breach of any other provision, or further breach of the same of any other provision of the Contract.
- 29.4 If any provision of the Contract is unenforceable or void either in whole or in part for any reason, then that provision (or part) is deemed to be deleted without in any way affecting the validity or enforceability of any other provision.
- 29.5 The Contract (including details appearing on the Purchase Order) constitutes the entire agreement between the Purchaser and the Supplier and no modification is binding in relation to the Contract unless agreed to in writing by the Supplier.

30 GOVERNING LAW

This contract will be interpreted under and governed by the laws of New Zealand.

The parties submit to the exclusive jurisdiction of the courts of New Zealand, and any courts that may hear appeals from those courts in respect of any proceedings in connection with this contract.

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