



## DEFINITIONS

**“Agreement”** means the Conditions and Particulars relating to a sale of Goods by Bega Group to the Customer, including any relevant Incoterms.

**“Bega Group”** means Bega Cheese Limited ABN 81 008 358 503 and Tatura Milk Industries Limited ABN 66 006 603 970 and each of them.

**“Conditions”** means these general terms of supply and other terms agreed in writing by Bega Group and the Customer.

**“Confidential Information”** means information, however held or recorded, relating to the business or assets of a party or its related bodies corporate but does not include information which is available in the public domain, except where that is a result of a disclosure in breach of this Agreement.

**“Customer”** means the person, body corporate or unincorporated association described as such in the Particulars.

**“Goods”** means the goods identified in the Particulars.

**“GST”** means the goods and services tax imposed in Australia by a New Tax System (Goods and Services Tax) Act 1999.

**“Incoterms”** means the terms of trade described as such in the publication issued by the International Chamber of Commerce titled Incoterms 2000 (but excludes any terms in connection with the procedures for the resolution of disputes).

**“Insolvency Event”** means any of the following events:

- a. a Customer commits an act of bankruptcy;
- b. a liquidator, provisional liquidator, administrator, receiver or trustee is appointed in relation to a Customer’s business or any action is taken for such appointment;
- c. an application is made to or an order is made by account for the winding up of a Customer’s business.

**“Intellectual Property Rights”** means all rights held by the Bega Group, including registered patents, trade secrets, confidential information, copyrights, trademarks, designs, formulations and all other rights resulting from Bega Group’s intellectual endeavours in the



industrial, commercial, scientific, literary and artistic fields. It does not include brands or trademarks owned by the Customer supplied to Bega Group for packaging purposes.

**“Order”** means a written request for Goods given to Bega Group by the Customer.

**“Price”** means the price of Goods as identified in the Particulars or such price as may be agreed by Bega Group to the Customer in accordance with the Conditions.

**“Particulars”** means a proforma invoice or Order that has been signed by the Customer and Bega Group to detail the specific terms relating to a sale of Goods and includes any subsequent variations agreed in writing by the Customer and Bega Group.

## **ORDERS**

Each order is subject to acceptance by Bega Group in writing.

If Bega Group accepts an Order, Bega Group agrees to supply and the Customer agrees to purchase Goods in accordance with that Order and the terms of the Agreement.

All Goods are made to Order. All Orders must therefore be received at least seven weeks before the despatch date requested by the Customer or as otherwise agreed by Bega Group in writing.

Changes to Particulars may be accommodated if they are at no incremental cost to Bega Group. Where this is not possible, these incremental costs will be passed back to the Customer, or the whole Order may be cancelled at Bega Group’s discretion. This includes delayed Orders where holding costs will be charged. If the Order is cancelled after manufacture, the Customer is liable for the whole Price which will be settled no later than the original expected due date, irrespective of whether the product is shipped. Any changes to Orders received in the three weeks prior to shipment date will also incur fees.

## **PRICE AND PAYMENT**

Unless otherwise specified in the Particulars, the price of Goods may be changed by Bega Group from time to time. Bega Group will give the Customer written notice of any price changes.

The Price does not include GST or any other government taxes or duties. If part of any payment under the Agreement is the consideration for a taxable supply or GST becomes



payable, the Customer must pay to Bega Group an additional amount equal to the GST, subject to Bega Group providing a tax invoice. The Customer is responsible for all other local duties and taxes.

On shipment, Bega Group will issue a final invoice confirming the Particulars of the Order. This supersedes any previous Agreement to the extent detailed in the final invoice.

Payment for Goods supplied by Bega Group to the Customer in accordance with an Order must be made:

- a. for deliveries to Australian based Customers; by the end of the month following the month of despatch; or
- b. for deliveries outside Australia; 30 days after the date of importation to the country specified by the Customer as the delivery destination; or
- c. in accordance with the Particulars if not per a. or b. above.

Bega Group may require the Customer to secure payment for Goods by means of a letter of credit issued by an Australian Bank or in such other manner as Bega Group may determine.

The Customer is liable for all bank charges incurred outside Australia and Bega Group may seek repayment of any overseas bank costs incurred.

## **DELIVERY**

Delivery Instructions are to be set out in the Particulars.

Delivery of Goods may be delayed or withheld if the Customer is outside the agreed payment terms for previous Orders.

## **RISK AND TITLE**

Risk in Goods passes to the Customer upon delivery in accordance with the Agreement. Title to Goods remains with Bega Group until the Customer has paid for the Goods in full.

Until the Customer has paid for the Goods in full:

- a. the Customer must store the Goods in a manner which ensures that the quality of the Goods does not deteriorate and enables them to be identified as property of Bega Group.



- b. the Customer holds the Goods as bailee;
- c. the Customer is entitled to sell the Goods in the ordinary course of business and must hold any proceeds of sale in trust for Bega Group and account to Bega Group for those proceeds of sale;
- d. the Customer irrevocably grants to Bega Group the right to enter any premises in which the Goods are stored for the purposes of Bega Group inspecting the Goods and, if the Customer has breached the Agreement, to retake possession of the Goods.

## **INDEMNITY**

The Customer indemnifies Bega Group against all loss, liability, damages, costs and expenses incurred by Bega Group as a result of, or in connection with, any breach of this Agreement by the Customer. Bega Group is entitled to apply all instalments of the Price paid by the Customer towards any amount that Bega Group is entitled to under this indemnity or otherwise for damages incurred by Bega Group as a result of any breach of the Agreement by the Customer.

## **WARRANTIES**

Certain laws imply terms into contracts that cannot be excluded. All terms which are capable of exclusion and are not expressly contained in the Agreement are excluded.

To the extent permitted by law, Bega Group's liability to the Customer in connection with the supply of Goods is limited to the replacement of the Goods or the cost of such replacement. The Customer must not return or destroy any Goods that the Customer claims are not in accordance with the Agreement unless:

- a. the Customer advises Bega Group of its intention to return or destroy the Goods within 10 days of delivery of the Goods to the Customer;
- b. Bega Group has given its written approval to the return or destruction of the Goods; and
- c. the return or destruction of the Goods is effected in accordance with Bega Group's instructions.

## **TERM AND TERMINATION**

Bega Group may terminate this Agreement at any time by giving the Customer not less than two months' prior written notice or any other notice period agreed in writing between the



Customer and Bega Group.

Bega Group may terminate the Agreement immediately by written notice where:

- a. the Customer has committed a breach of the Agreement and has failed to remedy the breach within fourteen days of being given written notice specifying the breach; or
- a. an Insolvency Event occurs in relation to the Customer.

Upon termination of the Agreement all amounts owing by the Customer to Bega Group in connection with the Goods will become immediately due and payable. Bega Group may retake possession of any Goods that have not been paid for.

## **OWNERSHIP OF INTELLECTUAL PROPERTY**

The Customer acknowledges that all Intellectual Property Rights relating to the Goods are the property of Bega Group unless agreed otherwise.

## **CONFIDENTIAL INFORMATION**

Each party acknowledges that Confidential Information of the other party may be disclosed to it and agrees:

- a. to maintain the confidentiality of such Confidential Information;
- b. only use the Confidential Information for the proper purposes of the Agreement or such other purposes as the other party may agree in writing from time to time; and
- c. upon request, return all copies of Confidential Information to the other party or arrange for its secure disposal.

These Conditions do not prevent disclosure of Confidential Information that is required by law or by any governmental body or authority.

## **FRAUD AND CORRUPTION**

The Bega Group will not tolerate any acts of attempted acts of fraud or corruption in any form whether direct or indirect.



The Bega Group considers that fraud or corruption is a very serious offence and may result in criminal proceedings, other penalties and disciplinary action. Any suspected incidences of fraud or corruption must be reported to the Group's Whistle Blower hotline.

## **MISCELLANEOUS**

Bega Group will not be liable for any failure to perform or comply with any term or condition of the Agreement if that failure arises from any circumstances beyond its reasonable control including, without limitation, lockouts, strikes, war, acts of terrorism, riot, civil commotion, government action, earthquake, storm, fire, lightning or other acts of God.

The Agreement is governed by the laws of New South Wales in Australia. The parties submit to the jurisdiction of the courts of New South Wales.

A waiver by Bega Group of any provision or breach by the Customer cannot be construed as a waiver or breach of any other provision.

The only enforceable obligations and liabilities are those set out in this Agreement. No variation to the Conditions or cancellation of an Order is valid unless signed in writing by both Bega Group and the Customer.

If any provision of the agreement is unenforceable or void either in whole or in part, the provision will be deemed to be deleted from the Agreement. Cancellation of an Order within 3 weeks of delivery is only valid if set out in writing signed by both Bega Group and the Customer.

Any obligation imposed on more than one person, binds all of them jointly and each of them severally.

The Customer cannot, without Bega Group's prior written consent, assign any of its rights or obligations under the Agreement.

A notice that is signed and sent by fax or any other electronic means will be deemed to be in writing.

A copy of Bega Group's Privacy Policy is available on its website at [www.begacheese.com.au](http://www.begacheese.com.au).