

TERMS AND CONDITIONS

Dairy Technology Services Ltd T/A Tru-Test

The Terms and Conditions apply to the Account; Goods supplied or arranged to be supplied by Dairy Technology Services Ltd at the request of the Customer; from 01.10.2017.

Definitions

“Account” means all accounts (however titled) provided by Dairy Technology Services Ltd at the request of the Customer, to record any transaction, purchase of Goods or receipt of Goods prior to payment.

“Address for Service” means:

(a) for the Customer or Guarantor:

(i) (at Dairy Technology Services Ltd election) the Postal or email address last notified in writing to Dairy Technology Services Ltd;

(ii) if it is a company the address for service filed at the NZ Company Office;

(b) for Dairy Technology Services Ltd 38 The Boulevard, Te Rapa, Hamilton.

“Amount Owed” includes any Fee and means the amount specified as the Account closing balance on a Customer Statement (plus any subsequent Default Event costs) to be paid by the Due Date.

“Application” means the application for the Account made by the Customer.

“Customer” means the purchaser of Goods; a User; the person/ legal entity described in the Application who applies for and opens the Account, or who operates the Account to record any transaction; access the Data Service; buy Goods, from or through Dairy Technology Services Ltd.

“Data Service” means any Dairy Technology Services Ltd on line service (either hosted by Dairy Technology Services Ltd or a designated third party) subscribed to by the Customer and includes services accessed via the Dairy Technology Services Ltd website or portal.

“Data Service Terms” means the terms that apply to the Customer use of Data Service.

“Default Event” means an event where:

a) the Customer or Guarantor fails, or in Dairy Technology Services Ltd opinion is likely to fail, to comply with the Terms, or any other contract with Dairy Technology Services Ltd;

b) Dairy Technology Services Ltd enforces or exercises any right to protect its interests under the Terms.

c) the Customer or Guarantor commits an act of bankruptcy;

d) the Customer or Guarantor enters into any composition or arrangement with creditors;

e) if the Customer or Guarantor is a company:

i) does anything which would make it liable to be put into liquidation;

ii) a receiver or statutory or official manager is appointed over any of its assets;

iii) a resolution is passed or an application is made for its liquidation;

iv) the ownership or effective control of the Customer/ Guarantor or the Customer /Guarantor business is transferred or the nature of the Customer/Guarantor business is materially altered.

“Due Date” means the date notified by Dairy Technology Services Ltd to the Customer by which the Amount Owed must be paid and if no date is specified, is the 20th day of the month following the Invoice date or Statement month whichever is the earlier.

“Fee” means the fee charged by and payable to Dairy Technology Services Ltd for the Data Service.

“Goods” means any goods or Services provided by Dairy Technology Services Ltd or arranged through Dairy Technology Services Ltd at the request of the Customer and recorded to the Account or Invoice.

“Guarantor” means any guarantor of a Customer signing a Dairy Technology Services Ltd Deed of Guarantee and Indemnity.

“Invoice” means the Dairy Technology Services Ltd business record of Goods.

“Invoice Date” means the date recorded by Dairy Technology Services Ltd for any Goods debited to the Account.

“Other Account” means any account of a legal entity owned by, related (as defined in the Companies Act 1993) or effectively controlled by the Customer.

“PIN” means the access identification required before a Customer can access the Account or Data Service.

“PPSA” means the Personal Property Securities Act 1999.

“Recommendation” means the best option for a given situation based on sources believed to be accurate.

“Services” includes “Data Service” and all other services provided by Dairy Technology Services Ltd.

“Statement” means the Dairy Technology Services Ltd monthly business record of Account transactions.

“Terms” means these Dairy Technology Services Ltd Terms and Conditions, Data Service Terms and any a) notified amendment; b) additional terms recorded on a document or Invoice.

“Dairy Technology Services Ltd” includes any authorised agent, director, financial controller, and manager.

“User” means any person authorised by the Customer to use the Account or the Data Service.

Amount Owed

01. The Customer shall pay the Amount Owed to Dairy Technology Services Ltd by the Due Date.

02. The Amount Owed may include:

2.1 goods and services tax; any other taxes, duties and levies payable in respect of the Goods at the date of Invoice;

2.2 the amount of any increase in the cost of the Goods (including any change in rates of currency change affecting the cost of production or supply, before the date of supply).

Payment

03. The Customer shall pay the Amount Owed to Dairy Technology Services Ltd in full without any deduction, whether by way of set off, counter claim, or any other equitable legal claim.

04. Dairy Technology Services Ltd may apply any payment:

4.1 received from or on behalf of the Customer;

4.2 due by Dairy Technology Services Ltd to the Customer or Other Account; in reduction of the Amount Owed as Dairy Technology Services Ltd thinks fit to preserve any PPSA security Dairy Technology Services Ltd has in the Goods.

05. The Customer acknowledges:

5.1 Dairy Technology Services Ltd continues to supply and arrange the supply of Goods on condition that all payments received by Dairy Technology Services Ltd from the Customer are valid and made in the ordinary course of the Customer business;

5.2 Dairy Technology Services Ltd receives all payments in the ordinary course of the Customer business and in good faith and in the reasonably held belief as to the validity of those payments;

5.3 the understanding of Dairy Technology Services Ltd towards its business with the Customer shall apply until the Customer gives notice in writing to Dairy Technology Services Ltd of the Customer’s inability to pay due debts and that the Customer purposes in making further payment is to enable Dairy Technology Services Ltd to receive more towards satisfaction of the Amount Owed than it would otherwise have received or have been likely to have received in any liquidation/insolvency of the Customer;

5.4 Dairy Technology Services Ltd has, in accepting each Customer payment, altered its position in reliance on the validity of each payment:

a) by delaying revocation of the authority granted to the Customer in clause 12.2;

b) by the continued supply of Goods before and after the Due Date;

c) for payment received after Due Date by foregoing its right to commence recovery action against the Customer or Guarantor.

Supply

06. Supply of Goods is completed on the earlier of:

- 6.1 despatch from Dairy Technology Services Ltd premises;
- 6.2 despatch/supply from Dairy Technology Services Ltd supplier if supplied direct to the Customer;
- 6.3 the Invoice date.

07. Dairy Technology Services Ltd shall not:

- 7.1 be liable for either failure to supply, refusal to supply, or defective supply of Goods;
- 7.2 guarantee a continuing relationship with any supplier of the Goods.

Risk and Security Interest

08. Risk of any loss, damage or deterioration to the Goods passes to the Customer on supply.

09. Ownership of the Goods remains with Dairy Technology Services Ltd and does not pass to the Customer until the Customer pays the Amount Owed to Dairy Technology Services Ltd.

10. Until payment of the Amount Owed the Customer shall insure the Goods for their full insurable value with Dairy Technology Services Ltd interest noted on the relevant insurance policy.

11. The Customer grants a security interest in the Goods and all present and after acquired property of the Customer to Dairy Technology Services Ltd as security for payment of the Goods, and for any other amounts from time to time owing by the Customer to Dairy Technology Services Ltd, and for the performance by the Customer of all the Customer other obligations to Dairy Technology Services Ltd .

12. While ownership of the Goods remains with Dairy Technology Services Ltd:

12.1 the Customer shall store the Goods separately, not mix them, and identify them as belonging to Dairy Technology Services Ltd.

12.2 Dairy Technology Services Ltd authorises the Customer in the ordinary course of the Customer business to use the Goods or sell them for full consideration. This authority is revoked when:

- a) a Default Event occurs;
- b) Dairy Technology Services Ltd notifies the Customer that the authority is revoked.

12.3 if the Goods (for which payment has not been made) are not kept in a manner so as to enable the Goods to be clearly identified as the property of Dairy Technology Services Ltd, then Dairy Technology Services Ltd may select which goods it has security over and is deemed to be the owner of the quantity of the Goods equivalent to the quantity of the Goods for which payment has not been made.

12.4 the Customer must advise Dairy Technology Services Ltd immediately of a Default Event or any action by third parties (including any of the Customer creditors) affecting Dairy Technology Services Ltd security interest in the Goods.

12.5 Dairy Technology Services Ltd (as the Customer agent and pursuant to an irrevocable licence granted by the Customer) may enter the premises where the Goods are stored and remove them, without being responsible for any damage caused and the Customer shall indemnify Dairy Technology Services Ltd against any claim or costs arising from such action.

12.6 Dairy Technology Services Ltd may resell any of the Goods and apply the net sale proceeds (after payment of any sale costs) in reduction of the Amount Owed.

13. The Customer agrees to promptly do anything that Dairy Technology Services Ltd reasonably requires to:

13.1 ensure that Dairy Technology Services Ltd has a first ranking perfected security interest in all of the Goods (and any sale proceeds);

13.2 enable registration of a financing statement or financing change statement under PPSA.

14. If the Customer resells or uses the Goods before ownership in the Goods has passed to the Customer, the proceeds of such sale or use shall be received and held by the Customer (in whatever form) in trust for both the Customer and Dairy Technology Services Ltd. Dairy Technology Services Ltd interest as beneficiary under that trust shall be equal to the Amount Owed. The balance proceeds (if any) shall be the Customer beneficial interest under that trust

15. Dairy Technology Services Ltd may commence an action for the Amount Owed when ownership of the Goods may not have passed to the Customer.

Contracting out of the PPSA

16. The Customer waives the right to receive a copy of any PPSA verification statement relating to any Dairy Technology Services Ltd security interest registered under the Terms.

17. The Customer:

17.1 shall not register any other PPSA security interest in the Goods without the prior written consent of Dairy Technology Services Ltd;

17.2 waives, contracts out of and agrees that nothing in sections 107, 116 to 134 inclusive of the PPSA shall apply to these Terms, or any security interest under these Terms;

17.3 shall pay all costs, expenses and other charges incurred by Dairy Technology Services Ltd in relation to:

- a) the filing of a financing statement or financing change statement;
- b) any dispute or negotiation with a third party claiming an interest in the Goods.

Liability Limitation

18. The Application signed by the Customer is determination that the Customer acquires the Goods for business purposes (unless there is express written acknowledgement by Dairy Technology Services Ltd to the contrary) and the Consumer Guarantees Act 1993 does not apply.

19. The Customer acknowledges:

19.1 any Recommendation given by Dairy Technology Services Ltd is given in good faith and based on information provided by the Customer;

19.2 the decision to order/use Goods or follow a Recommendation is the decision of the Customer alone;

19.3 the Customer obligation to pay the Amount Owed does not depend on any Dairy Technology Services Ltd representation about the delivery of Data Service or any future Data Service feature or functionality.

20. Except as provided in any express written warranty given and to the extent permitted by law, Dairy Technology Services Ltd:

20.1 excludes any condition, description, Recommendation, representation, warranty for Goods whether implied by custom, law, trade, or otherwise and whether relating to fitness, merchantability, suitability for purpose, or otherwise and all specific conditions even though such conditions may be known to Dairy Technology Services Ltd;

20.2 is not under any circumstance liable to the Customer or any other person, whether in contract, equity, tort (including negligence), or otherwise, for any damage liability or loss whatsoever (for example any event beyond Dairy Technology Services Ltd control where the Services and Data Service cannot be used; defective supply of Goods; inability to use Goods; Recommendation; refusal to supply Goods; use of Goods;) whether consequential, direct, indirect, or special, and the Customer indemnifies Dairy Technology Services Ltd against any such claim.

21. If Dairy Technology Services Ltd cannot rely on the exclusion of liability in 20.2 it states that its maximum liability in respect of the Goods shall be limited to the price of the Goods.

22. If the Customer on-sells the Goods it shall be a term of the sale contract that the Consumer Guarantees Act 1993 does not apply if the Goods are being acquired for business purposes. The Customer indemnifies Dairy Technology Services Ltd against any liability or costs, incurred by Dairy Technology Services Ltd under the Consumer Guarantees Act 1993, as a result of any breach by the Customer of the Terms.

Claims

23. Dairy Technology Services Ltd may at its complete discretion, replace or give credit for the Goods not supplied; incorrectly recorded; or supplied and established to be defective provided that:

23.1 any claim or dispute of a business record on an Invoice or Statement must be notified to Dairy Technology Services Ltd within the month following the date of the business record or delivery of the Goods together with all supporting documentation;

23.2 all claims must specifically identify the incorrect business record or defect;

23.3 the Customer shall take all steps to ensure that Dairy Technology Services Ltd has every opportunity to investigate the claim.

24. Dairy Technology Services Ltd values every Customer relationship and any Customer claim received may include:

24.1 (where necessary) obtaining input from independent experts and reviewers;

24.2 timely communication with the Customer on a co-operative basis;

24.3 ensuring that its decision involving a claim is reached in a fair, objective and reasoned manner.

25. Unless Dairy Technology Services Ltd accepts a correction should be made, the Customer acknowledges that excluding a Default Event each Invoice and Statement is the only business record for the Account.

26. The Customer agrees not to join Dairy Technology Services Ltd as a party to any claim involving a third party and acknowledges that any breach of this term is a Default Event.

Default Event

27. Should a Default Event occur Dairy Technology Services Ltd may at its sole discretion:

27.1 suspend or terminate the Account and Other Account;

27.2 require immediate payment of the Amount Owed notwithstanding that the Due Date has not arrived;

27.3 charge interest at the rate of 1.5% per month (or such other rate as Dairy Technology Services Ltd may notify) in respect of the Amount Owed. Such interest shall accrue on a daily basis from the Invoice Date until payment is made in full and is charged by way of damages for failure to pay and does not imply the granting of, or extension of, credit by Dairy Technology Services Ltd to the Customer;

27.4 reverse any discount recorded on an Invoice or Statement;

27.5 debit any Other Account to pay the Amount Owed;

27.6 require the Customer to pay for all administration collection costs; legal costs of Dairy Technology Services Ltd as between solicitor and client; any collection commissions/costs incurred as a consequence of the Default Event;

27.7 make demand on the Guarantor.

28. If required for the continued operation of the Account or upon the occurrence of a Default Event, Dairy Technology Services Ltd may complete and register an all obligations mortgage (Registrar General of Land approval 1998/2072) or caveat over any property owned by the Customer to secure the Amount Owed and the Customer irrevocably appoints the Group Financial Officer or Group Financial Controller of Dairy Technology Services Ltd as the attorney of the Customer for the purpose of completing such mortgage or caveat whilst the Amount Owed remains unpaid.

Information Use

29. In addition to the Dairy Technology Services Ltd Privacy Policy located at <https://group.tru-test.com/en> the Customer and Guarantor agree that:

29.1 the personal information provided, obtained and retained by Dairy Technology Services Ltd about them (including personal information about Customer/Guarantor directors or trustees) will be held and used for any or all of the following purposes including: determining eligibility for the Account; the supply of Goods; enforcing debt and legal obligations under the Terms; the marketing of Goods including emails and market research by Dairy Technology Services Ltd, or any Dairy Technology Services Ltd supplier; any form of communication; otherwise in carrying on Dairy Technology Services Ltd business;

29.2 the Terms is the Customer and Guarantor irrevocable authority to Dairy Technology Services Ltd to:

a) use any personal information for the purposes in clause 29.1;

b) provide any personal information (along with details of any dealings between the Customer, Guarantor and Dairy Technology Services Ltd) to any third party (including a credit reporter where the personal information is able to be accessed for genuine credit related purposes by other credit inquirers); c) obtain any information concerning the Customer and Guarantor (including personal information about Customer/ Guarantor directors or trustees) from any other source for Dairy Technology Services Ltd business with the Customer and Guarantor.

29.3 they shall give prompt written notice to Dairy Technology Services Ltd of any subsequent change to their Application information.

Account access and PIN

30. The Customer shall not share:

- 30.1 Account;
- 30.2 Data Service; detail or login access with anybody else.

31. The Customer shall:

- 31.1 not use any Account or Data Service detail as a PIN;
- 31.2 keep the PIN secure;
- 31.3 not allow anybody else to use the PIN;
- 31.4 immediately notify Dairy Technology Services Ltd if the PIN is disclosed to anybody else.

Assignment/Cancellation

32. The Customer cannot assign any right or obligation under the Terms.

33. Dairy Technology Services Ltd is entitled to:

- 33.1 assign to any other legal entity all or part of the Amount Owed and the assignee shall be entitled to claim all or part of the Amount Owed and shall have the same rights of recovery as Dairy Technology Services Ltd.
- 33.2 cancel the Account or any part of Terms at any time with or without prior notice. Any such cancellation shall be without prejudice to Dairy Technology Services Ltd rights and remedies including, but not limited to, those which may arise from any breach or non-compliance by the Customer.

34. The Customer:

- 34.1 may close the Account at any time by giving written notice to Dairy Technology Services Ltd that the Account is to be closed and repaying the Amount Owed;
- 34.2 remains liable for the Amount Owed and all Invoices debited to the Account where Dairy Technology Services Ltd has not acknowledged in writing receipt of the Customer instruction to close the Account.

Other Terms

35. If there is any inconsistency between the Terms and any order of the Customer, or any other arrangement between the parties, the Terms shall prevail unless otherwise agreed in writing by the parties.

Waiver

36. If at any time Dairy Technology Services Ltd does not enforce the Terms, or grants the Customer time or other indulgence, Dairy Technology Services Ltd shall not be construed as having waived the Terms or its right to later enforce the Terms.

Terms Separately Binding

37. Each clause of the Terms is separately binding. Where any clause is void, unenforceable or otherwise ineffective by operation of New Zealand law the remaining clauses shall continue to be valid and enforceable.

Changing the Terms

38. By signing the Application or Guarantee; using the Account; having access to the Data Service; the Customer and Guarantor acknowledge that the Terms apply to the Account.

39. A copy of the Terms can be viewed/downloaded from Dairy Technology Services Ltd website <https://group.tru-test.com/en>

40. Dairy Technology Services Ltd may:

- 40.1 add, change or remove clauses in the Terms at any time without obtaining the consent of the Customer;
- 40.2 advise when changes to the Terms are to take effect by notice to the Customer Address for Service.

Sending Bills and Notices and Serving Documents

41. Dairy Technology Services Ltd will send or deliver any document, Invoice, newsletter, notice, Statement to the Address for Service. The Customer and Guarantor agree and acknowledge any:

- 41.1 Invoice, notice or Statement is deemed received 4 days after it has been sent;

41.2 document has been served and received on the date of delivery;

41.3 email is deemed received 1 day after it has been sent.

Returns

42. Where Dairy Technology Services Ltd at its discretion allows the Customer to return Goods (not defective or non complying) Dairy Technology Services Ltd reserves the right to charge, a return fee, in addition to any delivery cost.

Legal Forum

43. The Customer and Guarantor expressly acknowledges that:

43.1 any dispute or legal proceedings between them and Dairy Technology Services Ltd shall be filed in and be heard at either the Dispute Tribunal or the District Court at Auckland Central, or the High Court at Auckland;

43.2 for the purpose of any dispute or proceeding their residence or principal place of business is nearest to either the Dispute Tribunal or the District Court at Auckland Central or the High Court at Auckland;

43.3 for determining the place nearest to where the: a) actions or omissions that led to the claim happened; b) property that is the subject of any claim is located; that place shall be nearest to either the Dispute Tribunal or the District Court at Auckland Central or the High Court at Auckland.

44. The Terms is subject to and governed by New Zealand law. The language of the Terms shall only be 'English'.

Overall Discretion

45. Dairy Technology Services Ltd may at any time in its discretion and without giving notice:

45.1 refuse further credit to the Customer;

45.2 close the Account.