



VIETNAM DAIRY PRODUCTS JOINT STOCK COMPANY

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GENERAL TERMS AND CONDITIONS

Ref. 01/VNM/GTC

ARTICLE 1 - INTERPRETATION

Unless the context otherwise requires, the following terms whenever use in this General Terms and Conditions and in the Contract have the following meanings:

1.1 “Contract Agreement” means the whole contract documents between the Parties including this General Terms and Conditions, the Contract, and the Appendixes, Annexes and Schedules attached thereto.

1.2 “General Terms and Conditions” means this General Terms and Conditions apply to all export sales of goods made by Seller and its buyers.

1.3 “Contract” means the Contract signed by Seller and Buyer which is tailored and customized for each specific buyer.

1.4 “Party” means Seller or Buyer separately; **“Parties”** means Seller or Buyer collectively.

1.5 “Seller” means Vietnam Dairy Products Joint Stocks Company (or Vinamilk) a corporation duly established and operation under the Laws of the Socialist Republic of Vietnam.

1.6 “Buyer” means the person or entity purchasing the Goods from Seller.

1.7 “Goods” means products manufactured and/or provided by Seller to Buyer under the Contract.

1.8 “Force Majeure” means any unforeseen event beyond the reasonable control of the Parties such as, but not limited to any act of God, act of government or any authorities, non-issuance of licenses, hostilities between nations, war, riot, civil war, national emergency, earthquake, fires, explosion, flooding, hurricane, rainstorm or other exceptional weather conditions or natural disaster, acts of terrorism, shortages in material or supply, infectious diseases, epidemics, as well as travel restrictions or travel warnings due to any such events.

1.9 “Confidential Information” means any and all information regarding each Party’s affairs or business or method of carrying out business, and any other materials or information created or developed by either Party in connection with the Contract.

ARTICLE 2 - CHARACTERISTICS OF THE GOODS

2.1 It is agreed that any information relating to the Goods and their use, such as weights, dimensions, capacities, prices, colors and other data contained in catalogues, advertisements, illustrations, price-lists of Seller, shall not take effect as terms of the Contract unless expressly referred to in the Contract.

2.2 The specification, labeling and packaging of the Goods will be specified in the Contract.

ARTICLE 3 - PRICE

The prices for Goods shall be those set forth in the Contract.

ARTICLE 4 - TERM OF DELIVERY AND INSPECT OF GOODS BEFORE SHIPMENT

4.1 Unless expressly stated otherwise in the Contract, all deliveries of Goods shall be CIF in accordance with Incoterms 2010. The risk of loss of or damage to Goods shall pass to Buyer in accordance with the agreed delivery term.

4.2. Seller will take advantage for Buyer to inspect the Goods before shipment. Unless the Parties have agreed otherwise, Seller will notify Buyer at least 03 days before the shipment that the Goods are ready for inspection at Seller’s factory or warehouse.

ARTICLE 5 - TERM OF PAYMENT

5.1 The payment of the price and of any other sums due by Buyer to Seller shall be those set forth in the Contract.

5.2 If Buyer fails to pay any invoice within seven (07) calendar days of the due date of payment, Seller may suspend delivery of any shipment until all outstanding sums have been paid in full. Further, Seller may charge Buyer interest from the due date to the date of payment at the rate of 1% per month.

5.3 Buyer shall not be entitled to make any deductions, set-offs or counterclaims in sums due to Seller, unless confirmed by Seller in writing.

5.4 Unless expressly stated otherwise in the Contract, title to Goods shall not pass to Buyer until the Goods have been paid for in full.

ARTICLE 6–TAXATION AND IMPORT FACILITIES

6.1 Taxation: All taxes or levies imposed by the country of origin having any effect on the Contract are on Seller’s account and his sole responsibility; all taxes or levies imposed by the country of destination having any effect on the Contract are on Buyer’s account and his sole responsibility.

6.2 Import Facilities: Buyer shall have all necessary import licenses or permissions; Buyer bears the sole responsibility of securing all permits, licenses or any other documents required by the government of the importing nation. Seller will bear no responsibility to provide such documentation.

ARTICLE 7 - INTELLECTUAL PROPERTY RIGHTS

Unless expressly stated otherwise in the Contract, all intellectual property rights or other proprietary rights in and to the Goods or related to the Goods, including but not limited to their formula, design, packaging and know-how, and any modifications or developments thereto, as well as the trademarks and trade names under which the Goods are marketed shall remain the sole and exclusive property of Seller

and Buyer acquires no rights, title or license therein or thereto. If Buyer challenges, harms or prejudices the validity or enforceability of such proprietary rights, Seller shall without liability be entitled to immediately terminate the Contract.

ARTICLE 8 - GOODS RECALL

In the event of a recall of the Goods instigated by Seller or a competent authority, Buyer shall, in consultation with Seller and at Seller's cost, take all necessary actions that are appropriate in the circumstances. These may include, without limitation, to stop delivery of the Goods and to recall the Goods from warehouses, distributors and retailers. Buyer shall not interfere with the recall proceedings, which shall be controlled by Seller only, and shall not make public any actual or planned recall of the Goods, except as provided by applicable mandatory law or as instructed by Seller.

ARTICLE 9 - LIMITATION OF LIABILITY

9.1 Seller's liability for its Goods under all theories of liability shall be limited to repairing or replacing those found by Seller to be defective, or at Seller's option, to refunding the purchase price of such Goods.

9.2 Seller shall have no liability for any operating loss, loss of orders, loss of income, loss of profits, loss of public subsidies, loss of goodwill or for any special, indirect or consequential losses or damages whatsoever, howsoever caused.

9.3 Buyer agrees to hold harmless and indemnify Seller, its affiliates and representatives against and from all costs, losses, liabilities, damages and expenses arising out of or resulting from the death of or injury to any person or from any damage to or loss of property due to the acts and/or omissions of Buyer.

ARTICLE 10 - FORCE MAJEURE

10.1 Seller shall not be liable to Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of Seller's obligations in relation to the Goods, if the delay or failure was due to Force Majeure. Where there is Force Majeure, Seller is entitled to an extension of the Shipment Date(s) and/or Delivery Date(s) accordingly.

10.2 Without prejudice to the other provisions of the Contract, where the Force Majeure continues for more than six (6) months, Seller and/or Buyer shall have the right to terminate the Contract. In such a situation, Seller shall be reimbursed for Goods already performed/delivered.

ARTICLE 11 - CONFIDENTIALITY

During the term of the Contract and within two years as from the Contract is terminated or avoided, all the terms and conditions of the Contract and others agreed between the Parties relate to the Contract are absolutely confidential between the Parties and shall not be disclosed to anyone else, except as shall be necessary to effectuate its terms. Any disclosure in violation of this section shall be deemed a material breach of the Contract.

ARTICLE 12 - REPRESENTATIONS AND WARRANTIES

Each Party hereby represents and warrants that they have authority from their respective boards to enter into the Contract Agreement and that the Contract Agreement is valid and binding on each party.

ARTICLE 13 - MISCELLANEOUS

13.1 Unless otherwise confirmed by Seller in writing, the Goods shall comply with the national legal requirements applicable in the country of manufacture. Seller is not liable for the compliance of the Goods with the requirements of statutes, administrative rules and/or regulations applicable in the country of destination (or distribution) and undertakes no risk or liability in respect hereof.

13.2 Buyer shall be responsible for complying with any and all legislation, administrative rules and/or regulations governing the importation of the Goods into the country of destination (or distribution) and the subsequent processing, marketing, distribution, resale and/or use hereof.

13.3 No waiver by Seller of any breach by Buyer, or failure by Seller to insist on Buyer's performance of obligations shall be considered a waiver of any subsequent breach of the same or any other provision.

13.4 Buyer shall hold in confidence and not disclose to any third party any Confidential Information disclosed by Seller. Buyer shall not use such information for Buyer's own benefit or the benefit of any third party.

13.5 Nothing in the relationship between Seller and Buyer shall create an agency, partnership or joint venture between the Parties and in specific Buyer shall not be entitled to make any representation or warranty on behalf of Seller.

ARTICLE 14 - APPLICABLE LAW AND DISPUTE RESOLUTION

14.1 Unless otherwise agreed in writing, the Contract shall be governed by and construed in accordance with the laws of Vietnam.

14.2 The Parties will use their best efforts to negotiate in good faith and settle any dispute that may arise out of or relate to the Contract, including any question regarding its existence, validity or termination.

14.3 In the event any dispute in Article 14.2 is unresolved after sixty (60) days of the commencement of negotiations, such disputes, unless otherwise agreed in writing, shall be finally resolved by the Vietnam International Arbitration Centre at the Vietnam Chamber of Commerce and Industry ("VIAC") in accordance with its Rules of Arbitration. The seat of arbitration shall be Ho Chi Minh City, Vietnam. The arbitral tribunal shall include three (03) arbitrators, unless the Parties have agreed otherwise. The language to be used in the arbitration proceedings shall be English.

ARTICLE 15 - GENERAL

15.1 The Contract Agreement (including this General Terms and Conditions, the Contract, the Appendixes) is the entire agreement between the Parties and may not be changed unless agreed in writing by properly authorized representatives of both Parties.

In case of any discrepancies between the provisions of documents Contract Agreement, the provisions in the Contract and Its Appendixes shall be prevailed, unless the Parties have agreed otherwise.

15.2 If any provision contained in the Contract Agreement should be held to be void or unenforceable, the validity of the other provisions shall not be affected thereby.