

Terms and Conditions of Sale

1. GENERAL

1.1 These Terms and Conditions of Sale (“**Conditions**”), the Market Rules, Bidder Contracting Information and Contract Confirmation (together, the “**Contract**”) govern the supply of all products (“**Products**”) being supplied from any member of Kerry Group (“**Kerry**”) to any winning bidder in a GlobalDairyTrade Trading Event (“**Bidder**”).

1.2 The terms of the Contract apply to the exclusion of any terms and conditions that the Bidder seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

1.3 Any communication or conduct of Bidder which confirms an agreement for the delivery of Products by Kerry, as well as acceptance by Bidder of any delivery of Products from Kerry, shall constitute an unconditional acceptance by Bidder of the Conditions.

1.4 Kerry may perform any of its obligations or exercise any of its rights under the Conditions through any member of Kerry Group.

1.5 Kerry will supply the Products in accordance with the Contract and the agreed specification or the most recent specification used by Kerry at the time of delivery of the Products (“**Specification**”).

1.6 Kerry reserves the right to correct any errors or omissions in any information submitted by Kerry and published on the GlobalDairy Trade Website without liability.

2. CONTRACT CONFIRMATION

2.1 Where a Bidder has submitted a winning bid at a Trading Event, a binding contract is formed between Kerry and the Bidder. Kerry shall issue the Contract Confirmation confirming the details of the bid which terms shall form part of the Contract.

2.2 Except where Kerry gives it prior written consent, a Contract may not be cancelled or amended by the Bidder.

2.3 Within 48 hours of Kerry’s request, the Bidder shall provide any outstanding information or documents requested by Kerry in order to complete the delivery of the Products to the Bidder together with any other information required by the Market Rules.

3. PRICES AND VAT

3.1 Unless otherwise agreed by Kerry and the Bidder in writing, the price for the Products shall be the Winning Price as determined in accordance with the GDT Trading Event Rules. Where the winning bid is not in Euro, Kerry shall be entitled to convert the price into Euro and receive payment in Euro.

3.2 Prices in the Contract Confirmation are exclusive of sales taxes, value added tax or other taxes or duties (“**VAT**”). VAT shall be added to each invoice for payment by Bidder in addition to the price.

4. INVOICING AND PAYMENT TERMS

4.1 The Bidder shall pay the price for the Products as set out in the Contract Confirmation. Unless otherwise agreed by Kerry in writing, the terms of payment shall be cash in advance of shipment.

4.2 The Bidder shall pay all sums due without any discount, deduction or set off.

4.3 If Bidder fails to make a payment by the due date then Kerry may, without limiting any other rights or remedies, charge interest at 2% per annum above Allied Irish Bank plc’s base lending rate. Interest will accrue on a daily basis from the due date until the date of actual payment of the overdue amount.

4.4 If any payment due to Kerry is outstanding, Kerry may suspend the delivery of some or all of the Products until payment has been made in full.

4.5 If Kerry determines that there has been any deterioration in the creditworthiness of the Bidder, Kerry may revoke any credit terms offered to the Bidder on giving notice to the Bidder.

5. RETENTION OF TITLE; RISK OF LOSS

5.1 Title to the Products shall not pass to the Bidder until Kerry has received full payment for the Products.

5.2 Risk of loss or damage to the Products shall pass to the Bidder in accordance with the agreed Incoterm.

6. DELIVERY

6.1 The applicable Incoterm is FCA (Incoterms 2020) or any other Incoterm specifically agreed by Kerry in writing. While the Winning Price from the applicable Trading Event will be stated on a FAS Incoterm basis, the supply of the Products will occur on the basis of the FCA Incoterm (Incoterms 2020) or any other incoterm specifically agreed by Kerry in writing. Provided Kerry has received full payment for the Products in accordance with Clause 4.1, the Products shall be shipped during the relevant Contract Period. Each shipment must comply with the minimum order quantities specified by Kerry. Any shipments for quantities of more or less than a full container load may result in additional delivery costs for which the Bidder shall be liable.

6.2 Subject to the Incoterm specified agreed in accordance with Clause 6.1 of these Conditions, the Bidder shall be solely responsible for meeting all import, customs and other regulatory costs and requirements relating to the shipment of the Products and for any damage occurring to the Products during transit.

6.3 Subject to Clause 6.1, any delivery dates shall be indicative only. Any failure or delay in the delivery of the Products shall not entitle the Bidder to claim from Kerry any losses or damages suffered or to refuse to take delivery of the Products.

7. COMPLAINTS AND INVESTIGATIONS

7.1 The Bidder shall inspect the Products on delivery to satisfy itself that the delivered Products conform to the Specifications and the Contract.

7.2 The Bidder must notify Kerry in writing of any complaints about the Products within two (2) weeks of delivery in respect of any damage, defect or shortage which would be apparent on delivery inspection, and within two (2) weeks from the date on which any other defects are discovered. The Bidder must give Kerry an opportunity to inspect any Products alleged by the Bidder to be non-compliant with the Specifications.

7.3 Failure by the Bidder to give notice to Kerry in accordance with Clause 7.2 shall mean that the Products are deemed fully accepted and in conformance with the Specification and the Contract. After this date, the Bidder forfeits its right to make a claim against Kerry in respect of the Products or to reject the Products.

8. WARRANTY

8.1 Kerry warrants the Products shall at the time of delivery conform: (a) with the Specification in all material respects; and (b) with the laws in the place of manufacture. It is a matter for the Bidder to ensure that the Products comply with the laws of any country to which the Products are to be shipped by Kerry or with any laws of any other country in which the Products are to be used or sold.

8.2 If Products are in breach of the warranty set out in Clause 8.1 and Kerry has received of notice in accordance with Clause 7, Kerry shall at its own option and within a reasonable time either repair or replace the non-conforming Products at no charge to the Bidder or refund the price of such Products to the Bidder.

8.3 The Bidder is not entitled to reject the entire delivery of the Products or refuse to pay for all of the Products in the event of a non-delivery of, or a non-conformity affecting, some of the Products.

8.4 Except for those warranties set out in these Conditions, Kerry disclaims and excludes all other warranties, conditions, representations and other terms of any kind express or implied by statute, common law or custom and practice, including any warranty of merchantability or fitness for purpose.

8.5 Once Kerry has complied with Clause 8.2, Kerry shall have no further liability to the Bidder in respect of any non-conforming Products’ failure to conform with the Specification or the Contract.

9. LIMITED LIABILITY; INDEMNITY

9.1 Kerry Group’s total liability in contract, tort (including negligence), misrepresentation, indemnity or otherwise under or in relation to the Conditions and the Products shall be limited to the value of the Contract.

9.2 Kerry Group shall not be liable to the Bidder for any indirect, special, consequential or economic loss, increased cost of working or damage resulting from late delivery or wasted expenditure, liability for loss or damage of any nature whatsoever suffered by third parties including any loss of use, loss of production, loss from business interruption,

loss of actual or anticipated profit, interest, revenue, anticipated savings or business or damage to goodwill, even if Kerry is advised in advance of the possibility of any such losses or damages.

9.3 Where the Products are supplied with a “best before” or “sell by” date, then Kerry shall not be liable for any Products used or sold after such “best before” or “sell by” date.

9.4 Bidder shall indemnify Kerry against all claims or demands by any third party for any loss, injury or damage caused by the failure on the part of Bidder relating to the Products delivered to Bidder (whether or not incorporated into other products) or the use of specifications supplied by Bidder or to store, display or handle the Products in accordance with Kerry’s instructions or requirements or in any way connected with the performance or the Conditions, provided that this Clause will not require Bidder to indemnify Kerry against any liability for Kerry’s default.

10. FORCE MAJEURE

10.1 Neither party shall be liable to the other party for an event which is outside the reasonable control of the affected party and is shown by the affected party to be the case, including fires, floods, strikes, insurrection, riots, war, explosion, rebellion, terrorism, civil unrest, epidemic, act of God, embargo, accidental or malicious damage, inability to obtain power and raw materials, requirements or regulations of any authority and compliance with any law or governmental order, rule, regulation or direction (“Force Majeure Event”).

10.2 If the Force Majeure Event continues for more than one (1) month, the non-affected party shall be entitled by notice in writing to the affected party to cancel the Contract with immediate effect.

11. ANTI-BRIBERY AND CORRUPTION

11.1 The Bidder shall not, in connection with any activities under or related to any order, directly or indirectly: (a) violate any applicable law prohibiting bribery or corruption; (b) offer, pay, promise to pay, give, authorize to pay or give anything of value (including money) to any government official, political party official, political office candidate, or a political party or to any private person to influence any act or decision or to secure any other improper advantage in order to obtain or retain business for Bidder.

12. EXPORT AND TRADE CONTROLS

12.1 The Bidder shall comply with all applicable trade control laws, such as, but not limited to, embargos, import and export control and sanctioned party lists, associated with its intended use of the Products and will provide Kerry with necessary data to comply with trade control laws.

12.2 The Bidder shall ensure that: (i) the Products are not exported, provided, or made available to any restricted jurisdiction or restricted party; (ii) Bidder employees with access to Kerry technical information or Kerry sites, are not restricted parties or nationals of a restricted jurisdiction; and (iii) Bidder shall not utilize subcontractors that are restricted parties.

13. ASSIGNMENT

13.1 The Bidder shall not assign its rights or obligations under the Contract without the prior written consent of Kerry.

14. SUSPENSION AND TERMINATION

14.1 Without limiting its other rights and remedies, Kerry may suspend or cancel any Contract immediately by giving notice to Bidder if: (a) the Bidder is in default of any of its obligations to Kerry; (b) the Bidder becomes insolvent, goes into liquidation or bankruptcy, enters administration or threatens to do any of the foregoing, or the equivalent in any jurisdiction; or (c) the Bidder is in breach of, or reasonably suspected by Kerry to be in breach of, any laws in force in any jurisdiction.

14.2 Upon the occurrence of any of the events listed in Clause 14.1, Kerry may demand return and take possession of any delivered Products which have not been paid for and all costs relating to the recovery of the Products shall be charged to the Bidder and the Bidder shall immediately pay to Kerry all the outstanding unpaid invoices with respect to the Products delivered to Bidder and not repossessed by Kerry.

15. CONFIDENTIALITY

15.1 All information (including information relating to the Products) provided by Kerry to Bidder is confidential and may not be disclosed by the Bidder to any third party or used by the Bidder for any purpose other than as expressly authorised by Kerry in writing.

16. INTELLECTUAL PROPERTY RIGHTS

16.1 All intellectual property rights in or relating to the Products (including labels, trademarks, logos, confidential records and other information) remains the property of Kerry Group at all times.

16.2 Nothing in the Conditions shall have the effect of granting to the Bidder any right, title or interest in respect of any of the intellectual property rights in or relating to the Products or any of Kerry’s other intellectual property rights.

17. DATA PROTECTION

17.1 Bidder warrants that it shall comply with all applicable data protection and privacy laws. The parties will enter into a separate agreement if Bidder intends to further process personal data.

18. GOVERNING LAW

18.1 The Contract shall be governed by and construed in accordance with the laws of the Republic of Ireland, without regard to the conflict of laws provisions thereof. The United Nations Convention on Contracts for the International Sale of Goods (Vienna 1980) shall not apply.

18.2 The parties submit to the exclusive jurisdiction of the Courts of the Republic of Ireland.

18.3 Notwithstanding the terms of Clauses 18.1 and 18.2, nothing in the Contract shall prevent Kerry from bringing proceedings in the courts of any other country or territory with jurisdiction (in particular to collect a debt due to Kerry in any such country or territory) including, to the extent allowed by law, concurrently in any number of countries or territories.

19. INDEPENDENT CONTRACTORS

19.1 Kerry and the Bidder are independent contractors and nothing in these Conditions shall constitute or be deemed to constitute a partnership, joint venture or principal and agent between the parties.

20. SEVERABILITY

20.1 If any provision of the Conditions (or part of a provision) is found by any court or competent authority to be invalid, unenforceable or illegal, the remaining provisions of the Conditions shall continue to be valid and enforceable to the full extent permitted by law.

21. WAIVER

21.1 A waiver of any right or remedy by Kerry under the Conditions or by law is only effective if given in writing and shall not be deemed to be a waiver of any subsequent breach or default.

22. LANGUAGE

22.1 The English version of the Conditions shall prevail in the event of any conflict or contradiction between the English version and any translation.

23. DEFINITIONS

23.1 “**Bidder Contracting Information**” means the bidder specific information made available to a bidder prior to the Trading Event.

23.2 “**Contract Confirmation**” means the sales acceptance, contract confirmation or other written document issued by Kerry after the Trading Event which confirms, supplements or modifies the details of a Bidder’s winning bid in a Trading Event.

23.3 “**Contract Period**” means as defined under the GDT Trading Event Rules.

23.4 “**GDT Trading Event Rules**” means the Global Dairy Trade GDT Trading Event Rules (For the GDT Trading Platform) (February 2024 Version 8.4) as amended from time to time.

23.5 “**Global Dairy Trade Website**” means www.globaldairytrade.info.

23.6 “**Kerry**” means the member of Kerry Group that accepts the Order from the Bidder.

23.7 “**Kerry Group**” means the group of companies comprising of Kerry Group plc (registered in Ireland under company number 111471) and its subsidiaries worldwide.

23.8 “**Market Rules**” means the rules governing the Trading Platform and Trading Events as published from time to time on the Global Dairy Trade Website.

23.9 “**Trading Event**” means as defined in the GDT Trading Event Rules.

23.10 “**Trading Platform**” means as defined under the GDT Trading Event Rules.

23.11 “**Winning Price**” means as defined under the GDT Trading Event Rules.