



GROWTH THROUGH INNOVATION

Terms and Conditions

38 The Boulevard,
Te Rapa Park, Hamilton 3200
PO Box 20502, Te Rapa, Hamilton 3241
New Zealand

Any Account and any Goods supplied or arranged to be supplied by DTS at the request of the Customer shall be subject to the Terms.

Definitions

“Account” means all accounts (however titled) provided by DTS 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 DTS’ election) the postal or email address last notified in writing to DTS;

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

(b) for DTS, 38 The Boulevard, Te Rapa, Hamilton.

“amount owed” includes any fee for the Data Service, taxes, duties or levies, 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.

“Customer”, or “you” 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 DTS.

“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 our opinion is likely to fail, to comply with the Terms, or any other contract with us;

b) DTS 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.

“DTS” or “we”, “us” or “our” means Dairy Technology Services Limited and includes any authorised agent, director, financial controller, and manager.

“Due Date” means the date notified by us 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.

“Goods” means any goods or Services provided by us or arranged through us at your request and recorded to the Account or Invoice.

“Guarantor” means any guarantor of a Customer signing a Deed of Guarantee and Indemnity.

“Invoice” means the DTS business record of Goods sold.

“Invoice Date” means the date recorded by DTS for any Goods debited to the Account.

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

“PPSA” means the Personal Property Securities Act 1999.

“Services” includes “Data Service” and all other services provided by DTS.

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

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

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

Amount Owed

01. You agree to pay any amount you owe to us by the Due Date in full without any deduction, whether by way of set off, counter claim, or any other equitable legal claim.

02. If you have any ongoing subscription services or other regular payment arrangements for Goods DTS may increase the costs of such regular payments where DTS is subject to cost fluctuations in providing the Goods.

Supply

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

- 3.1 despatch from DTS premises;
- 3.2 despatch/supply from DTS' supplier if supplied direct to the Customer;
- 3.3 the Invoice date.

04. DTS Ltd shall not be liable for failure to supply, refusal to supply, or defective supply of Goods.

Risk and Security Interest

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

06. Ownership of the Goods remains with DTS and does not pass to the Customer until the Customer pays all amounts owed to DTS.

07. Until payment of all amounts owed the Customer shall insure the Goods for their full insurable value with DTS' interest noted on the relevant insurance policy.

08. The Customer grants a security interest in the Goods to DTS as security for payment of the Goods, and for any other amounts from time to time owing by the Customer to DTS, and for the performance by the Customer of all the Customer other obligations to DTS.

09. While ownership of the Goods remains with DTS:

09.1 the Customer shall store the Goods separately, not mix them, and identify them as belonging to DTS.

09.2 DTS 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 Default Event occurs or as otherwise notified to you.

09.3 the Customer must advise DTS immediately of a Default Event or any action by third parties (including any of the Customer creditors) affecting our security interest in the Goods.

09.4 DTS (as the Customer's 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 DTS against any claim or costs arising from such action.

10. The Customer agrees to promptly do anything that DTS reasonably requires to enable registration of a financing statement or financing change statement under the PPSA ensuring a first ranking perfected security interest in the Goods (and sale proceeds) is maintained by DTS.

Contracting out of the PPSA

11. The Customer waives the right to receive a copy of any PPSA verification statement relating to any DTS security interest.

12. The Customer:

12.1 shall not register any other PPSA security interest in the Goods without our prior written consent;

12.2 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; and

12.3 shall pay all costs, expenses and other charges incurred by DTS in relation to:

- a) the filing of a financing statement or financing change statement; or

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b) any dispute or negotiation with a third party claiming an interest in the Goods.

Liability Limitation

13. The opening of an Account with us is agreement that the Customer acquires any Goods for business purposes (unless there is express written acknowledgement by us to the contrary) and the Consumer Guarantees Act 1993 does not apply.

14. The Customer acknowledges that the obligation to pay the amount owed does not depend on any representation by us about the delivery of Data Service or any future Data Service feature or functionality.

15. Except as provided in any express written warranty given and to the extent permitted by law, DTS:

15.1 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 us; and

15.2 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 our 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 DTS against any such claim.

16. If we cannot rely on the exclusion of liability in 15.2 the Customer agrees the maximum liability in respect of the Goods shall be limited to the price of the Goods.

Claims

17. DTS 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:

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

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

17.3 the Customer shall take all steps to ensure that DTS has every opportunity to investigate the claim.

18. The Customer agrees that DTS' records shall be definitive when determining any amount in respect to an Invoice or Account.

Default Event

19. Should a Default Event occur DTS may at its sole discretion:

19.1 suspend or terminate the Account;

19.2 require immediate payment of all amounts owed notwithstanding that the Due Date has not arrived;

19.3 charge interest at the rate of 1.5% per month (or such other rate as DTS 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 to the Customer;

19.4 reverse any discount recorded on an Invoice or Statement;

19.5 require the Customer to pay for all administration collection costs; legal costs of DTS as between solicitor and client; any collection commissions/costs incurred as a consequence of the Default Event; or

19.6 make demand on the Guarantor.

Information Use

20. The Customer and Guarantor agree that the personal information provided, obtained and retained by DTS 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; any credit checks with third parties, the marketing of Goods including emails and market research by DTS, or any DTS supplier; any form of communication; otherwise in carrying on DTS business.

21 The Customer and Guarantor irrevocably authorise DTS to:

21.1 use any personal information for the purposes in clause 20;

21.2 provide any personal information (along with details of any dealings between the Customer, Guarantor and DTS) 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);

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21.3 obtain any information concerning the Customer and Guarantor (including personal information about Customer/ Guarantor directors or trustees) from any other source for DTS business with the Customer and Guarantor.

22. The Customer may request details of all personal information held by DTS and is entitled to require correction of any information.

Account access and PIN

23. The Customer shall not share Account or Data Service details or login access with anybody else.

24. The Customer shall:

24.1 keep the PIN secure;

24.2 not allow anybody else to use the PIN;

24.3 immediately notify DTS if the PIN is disclosed to anybody else.

Assignment/Cancellation

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

26. DTS is entitled to:

26.1 assign all or part of the amount owed and the assignee shall be entitled to claim all or part of the amount owed.

26.2 cancel the Account or any part of Terms at any time with or without prior notice. Any such cancellation shall be without prejudice to DTS rights and remedies.

27. The Customer may close the Account at any time by giving written notice to DTS that the Account is to be closed and repaying the Amount Owed. The Customer will remain liable for all amounts owed until written acknowledgement is provided by us that the Account is closed and all amounts have been paid.

Other Terms

28. 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

29. If at any time we does not enforce the Terms, or grants the Customer time or other indulgence, DTS shall not be construed as having waived the Terms or its right to later enforce the Terms.

Terms Separately Binding

30. 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

31. DTS may:

31.1 add, change or remove clauses in the Terms at any time without obtaining the consent of the Customer;

31.2 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

32. DTS will send or deliver any document, Invoice, newsletter, notice, Statement to the Address for Service. The Customer and Guarantor agree and acknowledge any:

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

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

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

Returns

33. Where DTS at its discretion allows the Customer to return Goods (not defective or non-complying) we reserve the right to charge a return fee in addition to any delivery cost.

Overall Discretion

34. DTS may at any time in its discretion and without giving notice refuse further credit to the Customer or, close the Account.

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