

# TERMS AND CONDITIONS OF TRADE – DAIRY ESSENTIALS PTY LTD.

## 1. Definitions

- 1.1. "Dairy Essentials/Seller/us/we/our" means Dairy Essentials Pty Ltd, its successors, assigns or any person acting on behalf of and with the authority of Dairy Essentials Pty Ltd.
- 1.2. "Customer/Buyer/you/your" means the person/s or entity/s buying the Goods specified in any invoice, document or order, and if there is more than one Customer it refers to each Customer jointly and severally.
- 1.3. "Goods" means all Goods or Services supplied from time to time by Dairy Essentials to the Customer at the Customer's request (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.4. "1.4 Price" means the Price payable for the Goods as agreed between Dairy Essentials and the Customer in accordance with clause 4 below.

## 2. Acceptance

- 2.1. The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for Goods, or accepts Delivery.
- 2.2. These terms and conditions may only be amended with Dairy Essentials's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and Dairy Essentials, including any conflicting terms which shall be set aside and negotiated between the Customer and Dairy Essentials separately to this agreement.
- 2.3. Dimensions and specifications contained or referred to in any agreement or in any publications maintained or issued by us are estimates only. Unless otherwise expressly agreed in writing by us, it is not a condition of any agreement that the Goods will correspond precisely with such dimensions and specifications, and customary or reasonable tolerances will be allowed.
- 2.4. Neither Dairy Essentials, nor any of its employees or agents, warrant or guarantee the accuracy or completeness of any information provided to the Customer. The Customer undertakes that all matters relevant to the supply of the Goods hereunder are to the Customer's satisfaction, and in doing so, the Customer acknowledges that in deciding to purchase the Goods hereunder that:
  - a) they have relied on their own skill, inspection and judgement;
  - b) they have not relied on any statement made by Dairy Essentials or its employees or agents;
  - c) they assume the risk of mistake in relation to the information provided.
- 2.5. Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions (Victoria) Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.

## 3. Change in Control

- 3.1. The Customer shall give Dairy Essentials not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in your details (including but not limited to, changes in your name, address, contact phone or fax number/s, or business practice). The Customer shall be liable for any loss incurred by Dairy Essentials as a result of your failure to comply with this clause.

## 4. Price and Payment

- 4.1. At Dairy Essentials's sole discretion the Price shall be either:
  - a) as indicated on any invoice provided by Dairy Essentials to the Customer; or
  - b) Dairy Essentials's quoted price (subject to clause 4.2) which is based upon rates and costs at the date of the quotation, and will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 4.2. Dairy Essentials reserves the right to change the Price:
  - a) if a variation to the Goods which are to be supplied (including any applicable plans or specifications) is requested; or
  - b) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather conditions, limitations to accessing the site, safety considerations, prerequisite work by any third party not being completed, inaccurate structural measurements provided by the Customer, change of design, etc.) which are only discovered on commencement of the Services; or
  - c) in the event of increases to Dairy Essentials in the costs of supply and/or production of the Goods (including fluctuations in currency exchange rates and steel prices, etc.), and/or Delivery, due to circumstances beyond the reasonable control of Dairy Essentials.
- 4.3. At Dairy Essentials's sole discretion, a non-refundable deposit may be required.
- 4.4. Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by Dairy Essentials, which may be:
  - a) on, or before, Delivery;
  - b) by way of instalments/progress payments in accordance with our payment schedule;
  - c) thirty (30) days following the end of the month in which a statement is posted to the Customer's postal or electronic address or address for notices;
  - d) the date specified on any invoice or other form as being the date for payment; or
  - e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by Dairy Essentials.
- 4.5. Payment may be made by cash, electronic/on-line banking, credit card (plus a surcharge of up to two percent (2%) of the Price), or by any other means as agreed to between the Customer and us.
- 4.6. Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to us an amount equal to any GST that we must pay for any supply under this or any other agreement for the sale of the Goods. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.
- 4.7. Receipt by Dairy Essentials of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised, and until then our rights and ownership in respect of the Goods, and this agreement, shall continue.

## 5. Delivery

- 5.1. Delivery of the Goods ("Delivery") is taken to occur at the time that:
  - a) the Customer or the Customer's nominated carrier takes possession of the Goods at our address; or
  - b) Dairy Essentials (or Dairy Essentials's nominated carrier) delivers the Goods to the Customer's nominated site, even if the Customer is not present thereat.
- 5.2. At Dairy Essentials's sole discretion, the cost of Delivery is in addition to the Price.
- 5.3. The Customer must take Delivery by receipt or collection of the Goods whenever they are tendered for Delivery. If the Customer is unable, fails or refuses (or makes any indication of their intention to fail or refuse) to take or accept Delivery within seven (7) days of us advising the Customer that the Goods are ready for Delivery, then the Goods shall be deemed to have been delivered when we were willing to deliver them, and we shall be entitled to charge a reasonable fee for redelivery and/or storage fees. Should we need to store the Goods offsite, the Goods are stored at the Customer's sole risk and we shall not be responsible for any corrosion, water damage or other environmental effects to the Goods.
- 5.4. Dairy Essentials may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 5.5. Any time or date given by Dairy Essentials to the Customer is an estimate only. The Customer must still accept Delivery even if late and we will not be liable for any loss or damage incurred by the Customer as a result of the Delivery being late.

## 6. Risk

- 6.1. Risk of damage to, or loss, or deterioration of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.
- 6.2. If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to the Customer, Dairy Essentials is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by us is sufficient evidence of our rights to receive the insurance proceeds without the need for any person dealing with us to make further enquiries.
- 6.3. If the Customer requests us to leave Goods outside our premises for collection or to deliver the Goods to an unattended location, then such Goods shall be left at the Customer's sole risk. The Customer acknowledges that Goods supplied may exhibit variations in shade, colour, texture, surface and finish. We will make every effort to match batches of product supplied in order to minimise such variations but shall not be liable in any way whatsoever where such variations occur.

- 6.5. The Customer warrants that the structure of the premises or equipment in or upon which these Goods are to be installed or erected is sound and will sustain the installation and work incidental thereto and Dairy Essentials shall not be liable for any claims, demands, losses, damages, costs and expenses howsoever caused or arising should the premises or equipment be unable to accommodate the installation.
- 6.6. Dairy Essentials shall not be liable for any defect or damage resulting from incorrect or faulty installation.
- 6.7. The Customer acknowledges that Dairy Essentials is only responsible for parts that are replaced/supplied by Dairy Essentials and does not at any stage accept any liability in respect of components supplied by any other third party that subsequently fail and are found to be the source of the failure, the Customer agrees to indemnify Dairy Essentials against any loss or damage to the Goods, or caused thereby, or any part thereof howsoever arising.
- 6.8. Where the Customer has supplied materials for Dairy Essentials to complete the Goods, the Customer acknowledges that they accept responsibility for the suitability of purpose, quality and any faults inherent in those materials. Dairy Essentials shall not be responsible for any defects in the Goods, any loss or damage howsoever arising from the use of materials supplied by the Customer.
- 6.9. Any advice, recommendation, information, assistance or service provided by Dairy Essentials in relation to Goods provided is given in good faith, is based on Dairy Essentials's own knowledge and experience and shall be accepted without liability on the part of Dairy Essentials and it shall be the responsibility of the Customer to confirm the accuracy and reliability of the same considering the use to which the Customer makes or intends to make of the Goods.

## 7. Accuracy of Customer's Plans and Measurements

- 7.1. In the event the Customer gives information relating to the Goods (including plans, specifications, measurements, quantities and other information provided by the Customer):
  - a) it is the Customer's responsibility to verify the accuracy of the information before the Customer or Dairy Essentials places an order based on the information. Dairy Essentials accepts no responsibility for any loss, damages, or costs however resulting from the Customer's failure to comply with this clause;
  - b) Dairy Essentials shall be entitled to rely on the accuracy of such information. The Customer acknowledges and agrees that if any of the information provided by the Customer is inaccurate, we accept no responsibility for any loss, damages, or costs however resulting therefrom.

## 8. Dimensions, Plans and Specifications

- 8.1. All customary building industry tolerances shall apply to the dimensions and measurements of the Goods, unless Dairy Essentials and the Customer agree otherwise in writing.

## 9. Compliance and Consents

- 9.1. The Customer and Dairy Essentials shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Goods, including any work health and safety (WHS) laws relating to building/construction sites and any other relevant safety standards or legislation.
- 9.2. The Customer shall obtain (at the expense of the Customer) all licenses and approvals that may be required for the Goods.

## 10. Title

- 10.1. Dairy Essentials and the Customer agree that ownership of the Goods shall not pass until:
  - a) the Customer has paid Dairy Essentials all amounts owing to Dairy Essentials; and
  - b) the Customer has met all its other obligations to Dairy Essentials.
- 10.2. It is further agreed that, until ownership of the Goods passes to the Customer in accordance with clause 10.1:
  - a) the Customer is only a bailee of the Goods and must return the Goods to Dairy Essentials on request.
  - b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for Dairy Essentials and must pay to Dairy Essentials the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
  - c) the Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for Dairy Essentials and must pay or deliver the proceeds to Dairy Essentials on demand.
  - d) the Customer should not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of Dairy Essentials and must sell, dispose of or return the resulting product to Dairy Essentials as it so directs.
  - e) the Customer irrevocably authorises Dairy Essentials to enter any premises where Dairy Essentials believes the Goods are kept and recover possession of the Goods.
  - f) Dairy Essentials may recover possession of any Goods in transit whether or not Delivery has occurred.
  - g) the Customer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of Dairy Essentials.
  - h) Dairy Essentials may commence proceedings to recover the Price notwithstanding that ownership of the Goods has not passed to the Customer.

## 11. Personal Property Securities Act 2009 ("PPSA")

- 11.1. In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 11.2. Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods and/or collateral (account) – being a monetary obligation of the Customer to Dairy Essentials for Services – that have previously been supplied and that will be supplied in the future by Dairy Essentials to the Customer.
- 11.3. The Customer undertakes to:
  - a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Dairy Essentials may reasonably require to;
    - i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
    - ii) register any other document required to be registered by the PPSA; or
    - iii) correct a defect in a statement referred to in clause 11.3(a)(i) or 11.3(a)(ii);
  - b) indemnify, and upon demand reimburse, Dairy Essentials for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any registration made thereby;
  - c) not register a financing change statement in respect of a security interest without the prior written consent of Dairy Essentials;
  - d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of Dairy Essentials;
  - e) immediately advise Dairy Essentials of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 11.4. Dairy Essentials and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 11.5. The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 11.6. The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 11.7. Unless otherwise agreed to in writing by Dairy Essentials, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 11.8. The Customer must unconditionally ratify any actions taken by Dairy Essentials under clauses 11.3 to 11.5.
- 11.9. Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

**12. Security and Charge**

- 12.1. In consideration of Dairy Essentials agreeing to supply Goods, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 12.2. The Customer indemnifies Dairy Essentials from and against all Dairy Essentials's costs and disbursements including legal costs on a solicitor and own Customer basis incurred in exercising Dairy Essentials's rights under this clause.
- 12.3. The Customer irrevocably appoints Dairy Essentials and each director of Dairy Essentials as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 12 including, but not limited to, signing any document on the Customer's behalf.

**13. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)**

- 13.1. The Customer must inspect the Goods on Delivery and must within seven (7) days of such time notify Dairy Essentials in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Customer must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Customer must allow Dairy Essentials to inspect the Goods.
- 13.2. Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions ("**Non-Excluded Guarantees**").
- 13.3. Dairy Essentials acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 13.4. Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, Dairy Essentials makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. Dairy Essentials's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 13.5. If the Customer is a consumer within the meaning of the CCA, Dairy Essentials's liability is limited to the extent permitted by section 64A of Schedule 2.
- 13.6. If Dairy Essentials is required to replace the Goods under this clause or the CCA, but is unable to do so, Dairy Essentials may refund any money the Customer has paid for the Goods.
- 13.7. If the Customer is not a consumer within the meaning of the CCA, Dairy Essentials's liability for any defect or damage in the Goods is:
  - a) limited to the value of any express warranty or warranty card provided to the Customer by Dairy Essentials at Dairy Essentials's sole discretion;
  - b) limited to any warranty to which Dairy Essentials is entitled, if Dairy Essentials did not manufacture the Goods;
  - c) otherwise negated absolutely.
- 13.8. Subject to this clause 13, returns will only be accepted provided that:
  - a) the Customer has complied with the provisions of clause 13.1; and
  - b) Dairy Essentials has agreed that the Goods are defective; and
  - c) the Goods are returned within a reasonable time at the Customer's cost (if that cost is not significant); and
  - d) the Goods are returned in as close a condition to that in which they were delivered as is possible.
- 13.9. Notwithstanding clauses 13.1 to 13.8 but subject to the CCA, Dairy Essentials shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
  - a) the Customer failing to properly maintain or store any Goods;
  - b) the Customer using the Goods for any purpose other than that for which they were designed;
  - c) the Customer continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
  - d) the Customer failing to follow any instructions or guidelines provided by Dairy Essentials;
  - e) fair wear and tear, any accident, or act of God.
- 13.10. Notwithstanding anything contained in this clause if Dairy Essentials is required by a law to accept a return then we will only accept a return on the conditions imposed by that law.

**14. Intellectual Property**

- 14.1. Where Dairy Essentials has designed, drawn or developed Goods for the Customer, then the copyright in any designs, specifications, drawings, other technical information and documents shall remain the property of Dairy Essentials.
- 14.2. The Customer warrants that all designs, specifications or instructions given to Dairy Essentials will not cause us to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify Dairy Essentials against any action taken by a third party against Dairy Essentials in respect of any such infringement.
- 14.3. The Customer agrees that Dairy Essentials may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which Dairy Essentials has created for the Customer.

**15. Default and Consequences of Default**

- 15.1. Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at our sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 15.2. If the Customer owes Dairy Essentials any money the Customer shall indemnify Dairy Essentials from and against all costs and disbursements incurred by Dairy Essentials in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own Customer basis, Dairy Essentials's contract default fee, and bank dishonour fees).
- 15.3. Further to any other rights or remedies Dairy Essentials may have under this agreement, if the Customer has made payment to Dairy Essentials by credit card, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by Dairy Essentials under this clause 15 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this agreement.
- 15.4. Without prejudice to any other remedies Dairy Essentials may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions Dairy Essentials may suspend or terminate the supply of Goods to the Customer. Dairy Essentials will not be liable to the Customer for any loss or damage the Customer suffers because Dairy Essentials has exercised its rights under this clause.
- 15.5. Without prejudice to Dairy Essentials's other remedies at law Dairy Essentials shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to Dairy Essentials shall, whether or not due for payment, become immediately payable if:
  - a) any money payable to Dairy Essentials becomes overdue, or in Dairy Essentials's opinion the Customer will be unable to make a payment when it falls due;
  - b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
  - c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

**16. Cancellation**

- 16.1. Dairy Essentials may cancel any contract to which these terms and conditions apply or cancel Delivery at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice Dairy Essentials shall repay to the Customer any money paid by the Customer for the Goods. Dairy Essentials shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 16.2. In the event that the Customer cancels Delivery the Customer shall be liable for any and all loss incurred (whether direct or indirect) by Dairy Essentials as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 16.3. Cancellation of orders for Goods made to the Customer's specifications, for non-stocklist items, or non-stocked but listed items will definitely not be accepted once production has commenced, or an order has been placed.

**17. Unpaid Seller's Rights**

- 17.1. Where the Customer has left any item with Dairy Essentials for repair, modification, exchange or for Dairy Essentials to perform any other service in relation to the item and Dairy Essentials has not received or been tendered the whole of any moneys owing to it by the Customer, Dairy Essentials shall have, until all moneys owing to Dairy Essentials are paid:
  - a) a lien on the item; and
  - b) the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.
- 17.2. The lien of Dairy Essentials shall continue despite the commencement of proceedings, or judgment for any moneys owing to Dairy Essentials having been obtained against the Customer.

**18. Privacy Act 1988**

- 18.1. The Customer agrees for Dairy Essentials to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Customer in relation to credit provided by Dairy Essentials.
  - 18.2. The Customer agrees that Dairy Essentials may exchange information about the Customer with those credit providers and with related body corporates for the following purposes:
    - a) to assess an application by the Customer; and/or
    - b) to notify other credit providers of a default by the Customer; and/or
    - c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
    - d) to assess the creditworthiness of the Customer including the Customer's repayment history in the preceding two (2) years.
  - 18.3. The Customer consents to Dairy Essentials being given a consumer credit report to collect overdue payment on commercial credit.
  - 18.4. The Customer agrees that personal credit information provided may be used and retained by Dairy Essentials for the following purposes (and for other agreed purposes or required by):
    - a) the provision of Goods; and/or
    - b) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Goods; and/or
    - c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
    - d) enabling the collection of amounts outstanding in relation to the Goods.
  - 18.5. Dairy Essentials may give information about the Customer to a CRB for the following purposes:
    - a) to obtain a consumer credit report;
    - b) allow the CRB to create or maintain a credit information file about the Customer including credit history.
  - 18.6. The information given to the CRB may include:
    - a) personal information as outlined in 18.1 above;
    - b) name of the credit provider and that Dairy Essentials is a current credit provider to the Customer;
    - c) whether the credit provider is a licensee;
    - d) type of consumer credit;
    - e) details concerning the Customer's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
    - f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Customer no longer has any overdue accounts and Dairy Essentials has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
    - g) information that, in the opinion of Dairy Essentials, the Customer has committed a serious credit infringement;
    - h) advice that the amount of the Customer's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
  - 18.7. The Customer shall have the right to request (by e-mail) from Dairy Essentials:
    - a) a copy of the information about the Customer retained by Dairy Essentials and the right to request that Dairy Essentials correct any incorrect information; and
    - b) that Dairy Essentials does not disclose any personal information about the Customer for the purpose of direct marketing.
  - 18.8. Dairy Essentials will destroy personal information upon the Customer's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this agreement or is required to be maintained and/or stored in accordance with the law.
  - 18.9. The Customer can make a privacy complaint by contacting Dairy Essentials via e-mail. Dairy Essentials will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Information Commissioner at [www.oaic.gov.au](http://www.oaic.gov.au).
- 19. Building and Construction Industry Security of Payment Act 2002**
- 19.1. At Dairy Essentials's sole discretion, if there are any disputes or claims for unpaid Goods then the provisions of the Building and Construction Industry Security of Payment Act 2002 may apply.
  - 19.2. Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Building and Construction Industry Security of Payment Act 2002 of Victoria, except to the extent permitted by the Act where applicable.
- 20. General**
- 20.1. Any dispute or difference arising as to the interpretation of these terms and conditions, or as to any matter arising hereunder, shall be submitted to, and settled by, arbitration in accordance with the Arbitration Act 1996 or its replacement(s).
  - 20.2. The failure by Dairy Essentials to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Dairy Essentials's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
  - 20.3. These terms and conditions and any contract to which they apply shall be governed by the laws of Victoria, the state in which Dairy Essentials has its principal place of business, and are subject to the jurisdiction of the courts in that state.
  - 20.4. Subject to clause 13, Dairy Essentials shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by us of these terms and conditions (alternatively our liability shall be limited to damages which under no circumstances shall exceed the Price).
  - 20.5. The Customer shall not, without the prior written consent of Dairy Essentials, be entitled to set off against, or deduct from the Price (by way of counterclaim or other legal or equitable claim), any sums owed or claimed to be owed to the Customer by Dairy Essentials, nor to withhold payment of any invoice because part of that invoice is in dispute.
  - 20.6. Dairy Essentials may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
  - 20.7. The Customer agrees that Dairy Essentials may amend these terms and conditions at any time. If Dairy Essentials makes a change to these terms and conditions, then that change will take effect from the date on which Dairy Essentials notifies the Customer of such change. The Customer will be taken to have accepted such changes if the Customer makes a further request for Dairy Essentials to provide Goods to the Customer.
  - 20.8. Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
  - 20.9. The Customer warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.