

These Terms and Conditions apply to DairyAmerica's (Seller) supply of all Products Buyer purchases under any circumstances, including purchases made on the GlobalDairyTrade Auction Platform. Buyer expressly agrees to purchase all Products subject to all Terms and Conditions contained herein, which supersede any different terms in Buyer's purchase order or other document or communication pertaining to the goods ordered, including the Market Rules of GlobalDairyTrade. Any supply of Product to Buyer from Seller is on the basis of the acceptance of the Terms and Conditions by Buyer.

I - SALES CONFIRMATION

- 1.1 Sales Contract. After Seller and Buyer have agreed to a sale, Seller will issue to Buyer a Sales Confirmation consisting of the 1) Product Description, 2) Price, 3) Quantity, 4) Incoterms of Sale, 5) Estimated Shipment Schedule, 6) Payment Terms, and 7) Additional notes. The Sales Confirmation provides the terms of the Sale which, in conjunction with these Terms and Conditions, constitute the legal and binding agreement of the Parties.

II - PRICE, TAXES, AND SHIPMENT

- 2.1 Total Price. The amount payable for the Products Supplied shall be the price specified in the invoice as adjusted to incorporate any additional charges or other matters multiplied by the actual quantity of Products Supplied, as rounded in accordance with Section 2.6.
- 2.2 Sales Tax and Duty. Unless otherwise specified in the Sales Confirmation or otherwise included within the Incoterms Basis:
- (a) Any reference to an amount payable or consideration to be provided for DairyAmerica's Shipment of Products is a reference to such amount or consideration net of any applicable Sales Tax and Duty;
 - (b) The amount to be paid or other consideration to be provided to DairyAmerica for Supply of Products shall be increased by an amount equal to any Sales Tax and Duty that DairyAmerica is or will become liable to pay regarding such Supply so that DairyAmerica shall retain, after payment of all Sales Tax and Duty, the amount which DairyAmerica would have been entitled to receive but for its obligations to pay Sales Tax and Duty; and
 - (c) Buyer shall pay any Sales Tax and Duty on the same date that the underlying payment for the related Products (on which the Sales Tax and Duty is levied) is due and payable under these Terms.
- 2.3 Import and Regulatory Costs and Requirements. Unless the Incoterms Basis applicable to a Sales Confirmation provides otherwise, Buyer is solely responsible for meeting, at Buyer's sole cost, all import and other applicable regulatory costs and requirements (including, but not limited to, any consumer product safety requirements) relating to the Products in a Shipment.
- 2.4 Incoterms Basis. All Sales are based on the Incoterms listed in the Sales Confirmation.
- 2.5 Time of Delivery.
- (a) Shipment Schedule. If the Parties have agreed to a separate Shipment Schedule, DairyAmerica shall Supply Products to Buyer in accordance with such Shipment Schedule; provided that DairyAmerica shall Supply the relevant Products no later than 60 days after each specified Shipment Schedule or later depending on the ability of Buyer to supply Seller with all necessary information as required by Seller (and no earlier than 20 days before such date).
- 2.6 Quantity.
- (a) Rounding. DairyAmerica will round the quantity of Products in a Shipment up or down as necessary, in DairyAmerica's sole discretion, to ensure that Buyer receives full container, truck, or railcar loads of the relevant Products (volume per vessel subject to change from time to time and can be confirmed with DairyAmerica). To account for any rounding, DairyAmerica shall proportionately increase or decrease the payment amount specified in the Sales Confirmation and/or Shipment Schedule for such Products. Delivery of such a rounded quantity of Products over or under the amount of a Shipment shall be deemed to constitute Delivery in satisfaction of the amount purchased by Buyer as per Sales Contract.
 - (b) Product Measurements. Unless otherwise agreed in writing by DairyAmerica, reference to weights, quantities, or other measures in relation to Product packaging are references to that weight, quantity, or other measure within a variance of plus or minus 1%.
- 2.7 Multiple Shipments. If DairyAmerica delivers Products in multiple Shipments, any failure by DairyAmerica to make any one or more of the Shipments or any claim by Buyer regarding any one or more Shipments will not affect DairyAmerica's rights regarding any Products already Supplied or that remain to be Supplied under the Sales Confirmation.
- 2.8 Commercially Reasonable Alternatives. If Shipment under the Sales Confirmation and/or Shipment Schedule becomes commercially impractical for DairyAmerica, in its reasonable opinion, then DairyAmerica may, after obtaining Buyer's prior consent, Supply some or all of the Products to a commercially reasonable substitute location or use a commercially

reasonable substitute method of Supply. If Buyer does not consent to a commercially reasonable alternative location, or Supply by commercially reasonable alternate means, DairyAmerica may cancel the relevant Shipment without liability.

- 2.9 Mistaken Delivery. If DairyAmerica Supplies products to Buyer that do not form part of a Shipment or the Sales Confirmation, Buyer agrees to:
- (a) Hold those products for DairyAmerica as bailee;
 - (b) Store those products appropriately and safely, and use its best efforts to ensure those products are kept at the appropriate core storage temperature (and, if necessary, seek instructions from DairyAmerica as to the appropriate storage requirements and core storage temperature for the relevant products); and
 - (c) Return those products to DairyAmerica, or otherwise dispose of or deal with those products, in accordance with DairyAmerica's instructions and at DairyAmerica's cost.

- 2.10 Third Party Supply. DairyAmerica may from time to time enter into agreements with third parties under which those third parties will Supply part or all of the Products referenced in Buyer's Sales Confirmation. In such circumstances, the Products Supplied under these Terms may not have been manufactured in the United States or by DairyAmerica.

III - INVOICING AND PAYMENT

- 3.1 Application of Article. This Article III applies to Buyer only to the extent that the Parties have not separately agreed, in writing, to specific credit terms to the contrary.
- 3.2 Payment Methods. Any payments made pursuant to the methods described in this Section 3.2 shall be made net of any bank charges and must equate to the amount invoiced for the applicable Products.
- (a) Letter of Credit. If Buyer pays for Products by letter(s) of credit ("L/C"), Buyer must arrange for the L/C to be issued in favor of DairyAmerica in a form, content, and from an issuing bank that are all acceptable to DairyAmerica in its sole discretion.
 - (b) Documentary Collection. If Buyer pays for Products by documentary collection, documents must be tendered against payment ("D/P") subject to the ICC Uniform Rules for Collections which are in force from time to time.
 - (c) Cash Against Copy Documents (CACD). If Buyer is granted CACD, Buyer will pay for Product in full against an emailed copy of the Bill of Lading, Certificate of Analysis, and Invoice upon receipt and without delay.
 - (d) Guaranty or Standby Letter of Credit. If Buyer's payment for Products is supported by a bank guaranty or standby L/C, Buyer must provide a first demand bank guaranty or standby L/C in a form and content, and from an issuing bank, that are all acceptable to DairyAmerica in its sole discretion.
 - (e) Deposit. DairyAmerica may also require Buyer to pay a deposit and will specify the deposit amount in the Sales Confirmation and/or individual bidder terms and/or bidder contracting information for purchases made on the GlobalDairyTrade Auction Platform.
 - (f) Prepay; No Credit. If DairyAmerica has not extended credit to Buyer in writing, it will provide an invoice to Buyer for the relevant price and fees applicable to each Shipment, and DairyAmerica will not Supply any Product until it has received payment in full of such invoice.
 - (g) Open Account. DairyAmerica will only extend open credit to customer after obtaining credit insurance. In order to obtain credit insurance, DairyAmerica will require specific financial information from Buyer.

- 3.3 Timing of Payment; Payment in Full.
- (a) DairyAmerica must receive payment of all invoices, in full without deduction (except to the extent required by law), set-off, or counterclaim, on the earlier of (i) the specified due date, or (ii) within 14 days of invoice. DairyAmerica will not Supply any Product described in an invoice to Buyer until it has received payment in full of such invoice. If Buyer is legally required to make any deduction or withholding on account of tax from any sum payable to DairyAmerica under these Terms, then Buyer will increase the sum payable to the extent necessary to ensure that, after making such deduction or withholding, DairyAmerica receives and retains (free of any liability in respect of any such deduction, withholding, or payment) a net sum equal to the sum that DairyAmerica would have received and so retained had Buyer not made such deduction or withholding.
 - (b) Unless DairyAmerica otherwise specifies in writing, DairyAmerica must receive any advance payment, L/C, bank guaranty, standby L/C, or deposit before it will commence processing a Shipment. Notwithstanding the previous sentence, where DairyAmerica has agreed in writing that Buyer will pay for Products based on the bill of lading date for those Products, DairyAmerica must receive payment by that agreed date. DairyAmerica may, without prejudice to its other rights, refuse to Supply any Products unless and until Buyer has complied with all relevant requirements under these Terms.

- (c) If for any reason DairyAmerica does not obtain payment in full (whether under L/C, D/P, or otherwise), Buyer remains liable to pay DairyAmerica the total amount payable for the Products under these Terms and all related charges (including, without limitation, DairyAmerica's costs of recovering any amount due).
 - (d) Buyer is solely responsible for any Supply delays and associated costs incurred by DairyAmerica due to Buyer's failure to timely pay any amounts owing to DairyAmerica.
- 3.4 Disputed Invoices. If Buyer believes that any invoice is incorrect, Buyer must give DairyAmerica written notice within 7 days of receiving such invoice. This notice must include full details of any claimed error. If Buyer has not given DairyAmerica valid notice of any error within 7 days of receiving DairyAmerica's invoice, Buyer agrees and acknowledges that it shall treat such invoice as correct. Buyer must make payment of the undisputed amount due on any disputed invoice by the due date. If an invoice is not disputed and remains unpaid after the due date for payment, or if an invoice is disputed but the undisputed part of that invoice is not paid by the due date for payment, DairyAmerica may withhold or defer any future Shipment pending payment, or Supply only a quantity equal to the paid amount, at its sole discretion. Once any dispute is resolved, Buyer must pay to DairyAmerica the resolved amount due within 14 days.
- 3.5 Payment by Related Company. If DairyAmerica has provided its prior written consent, Buyer may direct one of its related companies to pay for Products under these Terms on its behalf. In such cases, DairyAmerica will seek payment from that related company, and these Terms, including this Article III shall apply to that related company in addition to Buyer. Notwithstanding the foregoing, this paragraph does not relieve Buyer of any of its obligations under these Terms or any related agreement. Without limiting DairyAmerica's other rights under these Terms, if any authorized related company fails to make any payment in accordance with these Terms, Buyer remains fully liable for making such payment within the timeframe prescribed by Section 3.3(a) above.
- 3.6 Interest and Charges.
- (a) Without in any way limiting DairyAmerica's rights, DairyAmerica may charge Buyer interest at 12% APR (subject to subsection (c) below) on any unpaid balance owing to DairyAmerica for delays in shipment and/or late payments. Interest will accrue daily and compound monthly from the due date until full payment has been received by DairyAmerica in cleared funds. Payments by Buyer will be applied first to interest accrued and then to the unpaid balance.
 - (b) Any collection charges, legal expenses (calculated on a full indemnity basis), commissions, and any other expenses incurred by DairyAmerica in attempting to recover from Buyer any payment due to DairyAmerica are payable by Buyer to DairyAmerica on demand by DairyAmerica.
 - (c) Notwithstanding any provision in these Terms to the contrary, no such provision shall require the payment or permit the collection of interest in excess of the maximum rate permitted by applicable laws. If any such interest is determined to be excessive, then in such event: (i) the provisions of this paragraph shall govern and control; (ii) neither Buyer nor Buyer's respective legal representatives, successors, or assigns, or any other party liable for payment under these Terms, shall be obligated to pay the amount of such interest to the extent that is in excess of the maximum amount permitted by law; (iii) any such excess interest that may have been collected shall be, at the option of DairyAmerica, either applied as a credit against Buyer's then unpaid balance owing to DairyAmerica or refunded to Buyer; and (iv) the effective rate of interest shall be automatically reduced to the maximum lawful rate under applicable laws as are now or hereafter construed by a court of competent jurisdiction.
- 3.7 Right to Set Off. If Buyer owes DairyAmerica money for any reason and DairyAmerica owes Buyer money in connection with these Terms, DairyAmerica may set off the amount that Buyer owes to DairyAmerica against the amount that DairyAmerica owes to Buyer.
- 3.8 Review of Credit. DairyAmerica may, at any time, review any grant of credit to Buyer and, at its sole discretion, suspend or cancel such credit or require Buyer to provide security DairyAmerica considers adequate and appropriate, in its sole discretion, and DairyAmerica may suspend any Shipment until such security is provided. Buyer also agrees to supply seller with a copy of the most recent independently audited annual financial statements to facilitate such review.
- 3.9 Currency. All references to amounts of money in these Terms are references to US Dollars unless specifically set out in the Sales Confirmation, and are payable in that currency. DairyAmerica may, at its discretion, accept payment in a different currency and convert such payment into the required currency. However, any costs associated with this conversion, or otherwise incurred by DairyAmerica, shall be borne exclusively by Buyer. If due to any currency exchange, DairyAmerica nets an amount that is less than the amount due, Buyer must immediately pay any further amount necessary to ensure that DairyAmerica receives the full amount due in the relevant required currency.
- 3.10 Electronic Transmissions. If DairyAmerica agrees in writing to electronically transmit to, or receive from, Buyer any documents or information relating to these Terms (including, without limitation, invoices) (collectively "Documents"), the following provisions shall apply:

- (a) All Documents shall be transmitted and received in accordance with standards specified by DairyAmerica from time to time.
- (b) Buyer must, at its own expense: (i) provide and maintain the resources necessary to effectively and reliably transmit and receive Documents, and (ii) implement security procedures which are necessary to ensure that transmissions of Documents are protected against improper access.
- (c) Each Party shall maintain a record of data exchanged pursuant to this Section 3.10 for not less than 12 months following the Supply of Products to which the data relates and allow the other Party reasonable access to that record on request.
- (d) The Parties agree that the Documents shall be governed by the U.S. E-Sign Act and the California Uniform Electronic Transactions Act.
- (e) Nothing in this Section 3.10 precludes the Parties from exchanging paper documents; provided, however, that where a Document is sent in both paper form and electronic form, the electronic form of the Document shall prevail.

IV - RISK, TITLE, AND SECURITY

- 4.1 **Risk.** Unless otherwise agreed by DairyAmerica in writing, ownership and risk of loss in all Products passes to Buyer on Delivery. Buyer is solely responsible for the storage, insurance, and handling of Products at and after Delivery.
- 4.2 **Title.**
- (a) Until such time as title in the Products passes to Buyer, DairyAmerica may require Buyer at any time to immediately deliver the Products to DairyAmerica, or as DairyAmerica may otherwise direct at its discretion.
 - (b) Buyer acknowledges that until such time as title in the Products passes to Buyer, it must:
 - (i) Keep the Products stored separately from all other goods;
 - (ii) Keep the Products insured for their replacement cost; and
 - (iii) Not pledge or in any way charge or encumber the Products by way of security for the indebtedness of Buyer or any other person.
- 4.3 **Security Interest.** Buyer hereby grants DairyAmerica a security interest in each and every part of all Products Supplied (and any proceeds thereof) for any amounts owing by Buyer to DairyAmerica from time to time, and for the full performance by Buyer of all of its obligations to DairyAmerica from time to time. To protect DairyAmerica's security interest, Buyer authorizes DairyAmerica to prepare and file a financing statement (Form UCC-1), or register or otherwise perfect its security interest as permitted by law in any relevant jurisdiction at DairyAmerica's sole discretion. On DairyAmerica's request, Buyer agrees to promptly provide to DairyAmerica all assistance and information (including, but not limited to, signing any documents) as requested by DairyAmerica to enable DairyAmerica to register or otherwise perfect its security interest with the priority it requires. Buyer waives the right to receive from DairyAmerica a copy of any financing statement, financing change statement, or verification statement filed at any time in respect of the security interest granted under these Terms or any renewal or replacement Terms. Buyer shall be entitled to a release or discharge of the security interest granted pursuant to these Terms or any renewal or replacement of these Terms upon Buyer's full performance of these Terms and any Sales Confirmation, individual bidder terms or bidder contracting information for purchases made on the GlobalDairyTrade Auction Platform, or Shipment Schedule, including, without limitation, full payment, performance, and satisfaction of all amounts owing to DairyAmerica under these Terms or any related agreement or any renewal or replacement of these Terms. In the event of any breach of any provision of these Terms or any related agreement, Buyer shall have the right to call all obligations hereunder immediately due and payable and shall have all of the rights and remedies afforded a secured party under the California Uniform Commercial Code and all other remedies allowed under applicable law.

V - DEFECTS AND ACCEPTANCE

- 5.1 **Buyer's Failure to Receive or Accept Products.**
- (a) If (i) DairyAmerica is unable to Supply Products in accordance with the timeframes set out in Section 2.5 (or any other applicable provision of these Terms) as a result of Buyer's acts or omissions, or (ii) if Buyer is unable to accept a Shipment as, how, and where specified in the Sales Confirmation or Shipment Schedule or as otherwise scheduled or arranged by DairyAmerica for any reason (including where Buyer declines to accept all or any part of the Shipment or delays in doing so), then DairyAmerica may cancel the applicable Shipment or any part thereof, or any remaining Shipments under the Sales Confirmation without resulting liability, and resell or resupply the Products to a third party, and Buyer shall be liable for any loss incurred by DairyAmerica on that resale or resupply, as well as any storage, transportation, and other logistics costs, and any other costs incurred by DairyAmerica.

- (b) DairyAmerica may also charge Buyer an additional business administration fee per Shipment affected and an additional warehouse administration fee per full or part container load (the amount of which will be reasonably determined by DairyAmerica).
 - (c) If any of the Products become Damaged as a direct or indirect result of any such delay, or Buyer being unable to accept a Shipment, Buyer shall indemnify DairyAmerica for all costs incurred by DairyAmerica in connection with the Damaged Products (including, without limitation, arranging for transportation and/or disposal). Products for the purposes of this Section 5.1 includes any of Buyer's other property with which, at Buyer's request, DairyAmerica has consolidated or delivered in conjunction with the relevant Shipment.
- 5.2 Inspection: Claims. Buyer is solely responsible for inspecting the quantity and quality of all Products Supplied.
- (a) Accuracy of Quantity. Buyer is solely responsible for checking all volumes Supplied against the Shipment documentation. If Buyer reasonably believes that DairyAmerica Supplied an incorrect volume, Buyer must lodge a claim with DairyAmerica within 30 days of the Product's Delivery (whether Buyer inspects them or not); otherwise Buyer is deemed to accept that volume as correct on Delivery.
 - (b) Defects Apparent upon Initial Access. Within 30 days of Buyer having access to the Products (whether Buyer inspects them or not), Buyer must notify DairyAmerica, in writing, of any claimed defects in any of the Products or any other dispute regarding the quality of the Products, which are, or ought reasonably to have been, apparent at that time.
 - (c) Defects Not Apparent upon Initial Access: Latent Defects. For any claimed defects in any of the Products Supplied which were not reasonably apparent pursuant to subsection (b) above but which Buyer discovers after Delivery, Buyer must notify DairyAmerica, in writing, within 10 days of becoming so aware; but in no event may Buyer lodge such claim with DairyAmerica after 30 days from the Delivery of Product.
- 5.3 Claims Investigation Procedure. If Buyer believes that any Product is defective due to conduct for which DairyAmerica is responsible, Buyer must immediately take the following steps in order to preserve its claim:
- (a) Buyer must keep the relevant Products stored separately from all others and in the state or condition in which they were Supplied until DairyAmerica or its authorized agents have an opportunity to inspect them.
 - (b) Buyer must store the relevant Products at a commercially appropriate core storage temperature.
 - (c) Buyer must provide to DairyAmerica all information it requests as listed in the DairyAmerica Claims Procedure (posted at www.dairyamerica.com/transportation/damaged-goods), or any other information it requests.
 - (d) Buyer must provide all access and assistance that DairyAmerica reasonably requests to assess Buyer's claim.
 - (e) If DairyAmerica acknowledges and accepts that it is responsible for the defective Products, Buyer must, at DairyAmerica's direction and cost, deliver them to (or as directed by) DairyAmerica or destroy the Products.
- 5.4 Deemed Compliance Despite Defects. Buyer agrees and acknowledges that DairyAmerica is not liable for any defect in or damage to Products (or their packaging, storage, or Supply of such Products), or in any other dispute regarding the Products, and those Products will be deemed to have been Delivered and Supplied by DairyAmerica and accepted by Buyer in compliance with these Terms and the Sales Confirmation:
- (a) If Buyer does not provide written notice to DairyAmerica of that issue within the time periods provided in these Terms, and include in such written notice full details of the Products, the alleged defect or damage, and all documents associated with the relevant Shipment;
 - (b) If Buyer fails to comply with any of the inspection procedures set forth in Section 5.3;
 - (c) To the extent Buyer has done anything that caused or contributed to (or reasonably could have caused or contributed to) the claimed defect;
 - (d) If Buyer settles or compromises a claim by a third party concerning such Products without DairyAmerica's involvement and prior written consent;
 - (e) Subject to the Incoterms Basis, if the claimed defect occurred during transit with a third party (whether or not a common carrier) and Delivery or Supply has not occurred (even if DairyAmerica arranged for that third party to transport the Products);
 - (f) If Buyer does not reasonably assist DairyAmerica with its inquiries and investigations concerning Buyer's claim;
 - (g) If the Products have not been stored, cared for, or used in a proper manner, including if the Products have not been properly stored by Buyer at the commercially appropriate core storage temperature;

- (h) If the Products are incorporated into, mixed with, or affixed to any other products, or used in any process; or
 - (i) If the claimed defect or damage arose after the expiration date of the relevant Products.
- 5.5 Recalls. Buyer must fully cooperate with DairyAmerica regarding any recalls or withdrawals from sale of Products for any reason (including, at DairyAmerica's cost, if DairyAmerica delivers a defective Product).
- 5.6 Reworking of Products. Any reworking of the Products shall be effected at such place as DairyAmerica may specify. DairyAmerica may require Buyer to arrange for the transport, at DairyAmerica's cost, of any Products to be reworked or made good.
- 5.7 Inspection by DairyAmerica; Third Party Inspector. Buyer agrees and acknowledges that DairyAmerica and its authorized agents, have the right to inspect, for any reason, any Product Supplied to Buyer at a reasonable place, time, and manner in DairyAmerica's sole discretion. This right includes, but is not limited to: (i) inspecting Products at Buyer's warehouse or any storage facility, port, dock, or loading station at which the Products may be located from time to time; and (ii) requiring Buyer to send samples of Product to DairyAmerica, SGS North America, or any other third party lab or inspection company of DairyAmerica's choosing.

VI - BUYER'S DEFAULT

- 6.1 Events of Default by Buyer. The following will be an Event of Default under these Terms:
- (a) Buyer defaults in any payment due to DairyAmerica (including under these Terms) or DairyAmerica determines that Buyer is likely to default in any payment, including, without limitation: (i) where Buyer is unable, or states that it is unable, to pay its debts as and when they fall due; (ii) where a liquidator, receiver, manager, controller, trustee, or other insolvency administrator is appointed in respect of Buyer or any (or all) of its assets, or a scheme of arrangement is proposed or approved in respect of Buyer; (iv) where a mortgagee enters into possession of any of Buyer's assets; or (v) any similar situation occurs;
 - (b) DairyAmerica determines, in its sole discretion, that (i) Buyer has undergone a Change of Control or other change of circumstance, (ii) Buyer has sold or transferred all or a material part of its business, assets, or undertaking (or agree to do so), or (iii) DairyAmerica would have to deal with a different party or become subject to different commercial considerations if it were to continue dealing with Buyer; and
 - (c) Buyer is otherwise in breach of these Terms, the Sales Confirmation, the Market Rules, the terms and conditions of any credit that DairyAmerica has extended to Buyer (including, without limitation, where Buyer has exceeded its credit limit with DairyAmerica), or any other agreement between the Parties or to which the Parties are bound.
- 6.2 DairyAmerica's Remedies. Upon the occurrence of an Event of Default, all monies owing and outstanding by Buyer to DairyAmerica on any account whatsoever will become immediately due and payable (without any requirement for notice from DairyAmerica to Buyer). Furthermore, without limiting these Terms, the Sales Confirmation, or any credit or such other agreement between the Parties or to which the Parties are bound, or DairyAmerica's other rights, DairyAmerica may, at its sole option:
- (a) Withhold or cancel the relevant Shipment and any subsequent Shipment with notice to Buyer but without prejudice to any other action or remedy which DairyAmerica has or might otherwise have had;
 - (b) Retain any deposit that Buyer may have paid (which shall be forfeited by Buyer) or draw on any relevant L/C, bank guaranty, or standby L/C;
 - (c) Reclaim and resell the Products in Buyer's possession or under Buyer's control, and enter any premises where DairyAmerica believes that Products are held, and recover from Buyer all costs associated with such activities; and
 - (d) Terminate or suspend Buyer's Participation Agreement.
- 6.3 Losses to Buyer Regarding Enforcement. DairyAmerica shall not be liable to Buyer for any loss that Buyer may incur as the result of DairyAmerica exercising any of its rights under this Article VI.

VII - WARRANTIES, REMEDIES, AND LIMITATION OF DAIRYAMERICA'S LIABILITY

- 7.1 Disclaimer of Warranties
- (a) **DAIRYAMERICA WARRANTS ONLY THAT EACH PRODUCT AT THE TIME OF DELIVERY MEETS THE SPECIFICATIONS, AS PER THE AGREEMENT AND SALES CONFIRMATION ISSUED BY DAIRYAMERICA. DAIRYAMERICA MAKES NO OTHER WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, NO WARRANTY OF MERCHANTABILITY, FITNESS FOR ANY PURPOSE, TITLE, FREEDOM FROM SECURITY INTERESTS AND OTHER LIENS AND**

ENCUMBRANCES, OF THE PRODUCT(S) USED SINGLY OR IN COMBINATION WITH OTHER GOODS TO BUYER OR ANY OTHER PERSON OR ENTITY WITH REGARD TO THE PRODUCT.

- (b) **THE USE OF ANY SAMPLE, DESCRIPTION, OR VISUAL REPRESENTATION IN CONNECTION WITH THE PURCHASE OR SUPPLY OF ANY PRODUCT (INCLUDING, WITHOUT LIMITATION, ANY PART OF THE GLOBALDAIRYTRADE SALE AND PURCHASE WEBSITE) IS FOR ILLUSTRATIVE PURPOSES ONLY, IS NOT PART OR BASIS OF THE BARGAIN, AND IS NOT TO BE CONSTRUED AS A WARRANTY THAT ANY PRODUCT WILL CONFORM TO SUCH SAMPLE, DESCRIPTION, OR VISUAL REPRESENTATION.**
- (c) **THE PARTIES AGREE THAT ANY OTHER PURPORTED WARRANTIES, EXPRESS OR IMPLIED IN THESE TERMS, THE SALES CONFIRMATION, ANY SHIPMENT SCHEDULE, ANY CREDIT AGREEMENT, OR ANY OTHER ORAL OR WRITTEN AGREEMENT BETWEEN THE PARTIES OR TO WHICH THE PARTIES ARE BOUND, WILL BE DEEMED INCONSISTENT WITH DAIRYAMERICA'S EXPRESS WARRANTY IN SUBSECTION (a) OF THIS SECTION. NO COMPANY, EMPLOYEE, AGENT, REPRESENTATIVE, OR ANY THIRD PARTY IS AUTHORIZED TO CREATE ANY WARRANTY OF ANY KIND NOT EXPRESSLY MADE BY DAIRYAMERICA IN THESE TERMS.**

7.2 Exclusivity of Remedy; Limitation of Damages. Notwithstanding any other provision in these Terms:

- (a) Delay or Failure to Deliver. Buyer's sole remedy in relation to any delay in Shipment or failure by DairyAmerica to Supply Products to Buyer is a claim for damages pursuant to this Section. DairyAmerica's maximum aggregate liability in respect of claims in connection with such delay in Shipment or failure by DairyAmerica to Supply Products (including the provision of any refunds, credit notes or Product replacements or reworks), whether in contract, tort (including negligence) or otherwise, is limited to:
 - (i) If Buyer's claim relates to a delay by DairyAmerica in Supplying any of the Products in that Shipment to Buyer, an amount equivalent to 5% of the price Buyer has paid (or will pay) for the Products in that Shipment to which the claim relates plus, if (but only if) there is also a defect in the Products or a failure of the Products to comply with their Specifications, the price Buyer has actually paid for the Products in that Shipment which are defective or do not comply with their Specifications; or
 - (ii) If Buyer's claim relates to the total failure by DairyAmerica to Supply any of the Products in that Shipment to Buyer, the price Buyer has actually paid for the Products in that Shipment to which the claim relates, plus an amount equivalent to 5% of the price Buyer has paid (or would have paid) for the Products in that Shipment to which the claim relates.
- (b) Defect; Other Breach. **THE MAXIMUM AGGREGATE LIABILITY OF DAIRYAMERICA AND THE SOLE AND EXCLUSIVE REMEDY OF BUYER FOR ANY DEFECT IN THE PRODUCTS, FAILURE OF THE PRODUCTS TO COMPLY WITH THEIR SPECIFICATIONS, OR BREACH OF ANY PROVISION OF THESE TERMS BY DAIRYAMERICA ARE LIMITED EXCLUSIVELY TO (i) REPLACEMENT OR REWORKING OF THE PRODUCT(S), OR PAYING FOR A THIRD PARTY TO REPLACE OR REWORK THE PRODUCT(S), OR (ii) AT THE OPTION OF DAIRYAMERICA, REFUNDING ALL OR PART OF THE PRICE OF THE PRODUCTS AT ISSUE (OR OFFERING CREDIT WHERE BUYER HAS NOT YET PAID FOR SOME OR ALL OF THE PRODUCTS AT ISSUE).**
- (c) **DAIRYAMERICA SHALL NOT UNDER ANY CIRCUMSTANCES BE SUBJECT TO ANY OTHER OBLIGATIONS OR LIABILITIES, INCLUDING, BUT NOT LIMITED TO, ANY DIRECT, INCIDENTAL, CONSEQUENTIAL, INDIRECT, CONTINGENT, SPECIAL, PUNITIVE, OR OTHER DAMAGES ARISING FROM THESE TERMS, ANY TRANSACTION REGARDING PRODUCTS, OR ANY USE OF PRODUCTS, INCLUDING, WITHOUT LIMITATION, LOST SALES, REVENUES, OR PROFITS; LOSS OF FACILITIES; LOSS OF PROSPECTIVE ECONOMIC ADVANTAGE; LOSS OF GOODWILL OR REPUTATION; UNABSORBED OVERHEAD; LOSS OF MARKET SHARE; OR LOSS OF BRAND VALUE, ALL ARISING FROM CONTRACT, EQUITY, ANY PERFORMANCE OR FAILURE TO PERFORM UNDER THESE TERMS OR ANY RELATED AGREEMENT, STRICT LIABILITY, TORT, NEGLIGENCE, OR OTHERWISE.**
- (d) Notice of Claim Required. DairyAmerica is not and will not in any circumstances be liable for any claim by Buyer under or in connection with these Terms in contract, tort (including, without limitation, negligence) or otherwise unless Buyer gives notice of the claim in writing to DairyAmerica within 30 days the Product's Delivery, or within any other period prescribed in these Terms.
- (e) Other Instances of Non-Liability. As specified elsewhere in these Terms, DairyAmerica is not and will not in any circumstances be liable for any claim by Buyer under or in connection with these Terms for: (i) any of the instances of deemed compliance specified in Section 5.4; (ii) failure to consent to commercially reasonable alternatives under Section 2.8; (iii) failure to receive or accept Products under Section 5.1; or (iv) in exercising its enforcement rights under Article VI (as noted in Section 6.3).
- (f) **BUYER ASSUMES ALL RISK AND LIABILITY FOR RESULTS OBTAINED BY THE USE OF THE PRODUCTS WHETHER USED SINGLY OR IN COMBINATION WITH OTHER PRODUCTS.**

7.3 Force Majeure.

- (a) DairyAmerica shall not be liable to Buyer or any other person for any failure or delay in the performance of any obligation under this Agreement due to events beyond its reasonable control, including, but not limited to, fire, storm, flood, drought, earthquake, explosion, accident, acts of the public enemy, war, terrorism, sabotage, strikes, lockouts, labor disputes, labor shortage, work stoppages, transportation embargoes or delays, failure or shortage of materials, supplies or machinery, acts of God, or acts, resolutions or priorities of the federal, state or local governments or branches or agencies thereof.
- (b) In the event that DairyAmerica is unable to Deliver or Supply Products to Buyer due to events beyond its reasonable control, DairyAmerica will notify Buyer as soon as reasonably practicable, and if the Parties cannot mutually agree to alternative Supply arrangements, DairyAmerica may cancel the relevant Shipment(s) or any part thereof and, without resulting liability, resell the relevant Products and/or allocate the available Products among Buyer and any of DairyAmerica's other buyers as it deems appropriate in its sole discretion. This Section does not excuse Buyer from any obligation to make a payment when due.
- 7.4 Advice and Recommendations. Without limiting Section 7.1, DairyAmerica may from time to time provide advice, recommendations, and statements with respect to the Products. However, DairyAmerica does not warrant or guaranty the accuracy or completeness of such advice, recommendations, or statements, or the results obtained through the use of the Products. DairyAmerica expressly disclaims any liability for any damage to Buyer from reliance on such advice, recommendations, or statements. Buyer relies on such advice, recommendations, and statements at its own risk and Buyer should make other appropriate inquiries regarding the Products with respect to Buyer's own circumstances.
- 7.5 Defense of Third Party Claims. In the event of any third party claim regarding the Products, Buyer irrevocably grants to DairyAmerica the sole control of the defense and all related settlement negotiations and other proceedings, and Buyer shall fully assist and cooperate with DairyAmerica, as requested by DairyAmerica and at Buyer's sole expense.
- 7.6 Defense, Indemnity, and Hold Harmless. To the fullest extent permitted by law, Buyer shall defend, indemnify, and hold harmless DairyAmerica and its directors, officers, employees, agents, and independent contractors, from and against all losses, costs, expenses, demands, damages, penalties, liabilities, interests, recoveries, claims, and judgments, including, without limitation, attorneys' fees and costs and debt recovery agency fees, to defend against any claims, demands, causes of action, suits, charges, or legal or administrative proceedings, caused by, arising out of, or in any way connected with any act or omission of Buyer or Buyer's directors, officers, employees, agents, independent contractors, or volunteers, directly or indirectly related to: (i) Buyer's handling, storage, use, or sale of the Products or (ii) a breach of any law applicable to the handling, storage, use, or sale of the Products (including Products incorporated into another good or service). This obligation to defend, indemnify, and hold DairyAmerica harmless is a continuing obligation and is in addition to any statutory rights or remedies that DairyAmerica may otherwise have or exercise against Buyer.
- 7.7 Insurance. Buyer shall maintain in full force and effect from the date it first bids on any DairyAmerica Product in a Trading Event or agrees to Purchase Products from DairyAmerica until the expiration of at least one year after the last Delivery of all Products hereunder, comprehensive general liability insurance, including coverage for products liability and personal injury, with respect to all claims and damages arising out of the reprocessing, distribution, sale, offering for sale and consumption of the Products. Such insurance policy(ies) shall have aggregate policy limits of not less than five million U.S. dollars (\$5,000,000) per occurrence. Such policy(ies) shall provide that notice be given to Buyer at least 30 days prior to any expiration, cancellation, or material change in the terms of the policy(ies) and shall name DairyAmerica, its affiliates, officers, directors, members, employees, agents, successors, and assigns as additional insured. Copies of certificates evidencing such insurance shall be delivered to DairyAmerica within 10 days after receipt of a Sales Confirmation.
- 7.8 Mitigation. Buyer agrees to mitigate any loss or damage that Buyer may suffer under these Terms or otherwise related to the Products.

VIII - GENERAL

- 8.1 Amendments. No provisions of these Terms may be modified in any manner whatsoever except by an agreement in writing by a duly authorized representative of both Parties; provided, however that DairyAmerica may amend these Terms at any time at its sole discretion and, in accordance with Part C, Sections 1.8 – 1.11 of the Market Rules, and such amended Terms shall supersede these Terms.
- 8.2 Entire Agreement. These Terms and all items incorporated herein, contain all of the agreements of the Parties with respect to the matters contained herein, and no discussions, representations, terms and conditions of trade, and all written or oral agreements, arrangements, and understandings pertaining to any such matter shall be effective for any purpose.
- 8.3 Governing Law. **THESE TERMS AND ALL DOCUMENTS PROVIDED FOR HEREIN, AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES, SHALL BE GOVERNED IN ALL RESPECTS, INCLUDING VALIDITY, INTERPRETATION, AND EFFECT, BY THE LAWS OF THE STATE OF CALIFORNIA (WITHOUT GIVING EFFECT TO ITS CHOICE OF LAW PRINCIPLES), SPECIFICALLY INCLUDING THE PROVISIONS OF THE CALIFORNIA UNIFORM COMMERCIAL CODE. THE RIGHTS AND OBLIGATIONS OF THE PARTIES SHALL NOT BE GOVERNED BY THE 1980 U.N. CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS.**

- 8.4 **Forum.** EXCEPT AS OTHERWISE PROVIDED IN SECTION 8.5 BELOW, ANY ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT SHALL BE RESOLVED EXCLUSIVELY BY THE SUPERIOR COURT OF CALIFORNIA, FRESNO COUNTY, U.S. OR THE U.S. DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA, U.S. AND, IN THE EVENT OF AN APPEAL OR PETITION FOR REVIEW OR CERTIORARI, BY THE COURTS HAVING JURISDICTION TO REVIEW THE DECISIONS OF THE COURTS SPECIFICALLY IDENTIFIED ABOVE. THE PARTIES CONSENT TO IN PERSONAM JURISDICTION AND TO VENUE EXCLUSIVELY IN SAID COURTS; AND BUYER HEREBY APPOINTS THE SECRETARY OF STATE OF CALIFORNIA, U.S. AS ITS AGENT FOR SERVICE OF PROCESS IN CALIFORNIA, U.S.
- 8.5 **Arbitration.** All disputes and controversies between DairyAmerica and Buyer related to or arising out of this Agreement shall be resolved by arbitration. Arbitration shall be final and binding and shall be the exclusive remedy for all claims. Three independent arbitrators, one selected by each Party and the third by the first two arbitrators, shall conduct all arbitrations in accordance with the rules adopted by the American Arbitration Association. In any arbitration, the burden of proof shall be allocated as provided by applicable law. All arbitration hearings under this Agreement shall be conducted in Fresno County, California. The fees of the arbitration (excluding attorneys' fees) shall be split between both Parties equally. The Arbitrators shall have exclusive authority to resolve all arbitration claims, including, but not limited to, any claim that all or any part of this Agreement is void or unenforceable. Notwithstanding the foregoing, either Party may seek injunctive or other equitable relief in any court of competent jurisdiction.
- 8.6 **Attorneys' Fees.** In the event of any controversy, claim, or dispute between the Parties arising out of or relating to the Products, these Terms, or the breach thereof, the prevailing Party shall be entitled to recover from the other Party reasonable expenses, attorneys', paralegals', and other professionals' fees and costs.
- 8.7 **No Additional Rights.** Nothing in these Terms gives Buyer any right, title, or interest in or to any of DairyAmerica's assets or rights other than the Products (excluding any intellectual property rights in or relating to the Products and their packaging and storage, together with any associated goodwill), and then only in accordance with these Terms.
- 8.8 **Confidential Information.** Any confidential information or intellectual property provided by DairyAmerica in connection with the Products, including the Sales Confirmation and Shipment Schedule, remains at all times the confidential and proprietary information of DairyAmerica and may be used by Buyer solely to complete the relevant Shipment and for no other purpose and must otherwise be kept in strict confidence by Buyer. At DairyAmerica's request, Buyer must return to DairyAmerica any confidential information provided to Buyer. Buyer must ensure that its officers, employees, agents, contractors, and advisers comply with this Section. Buyer must not disclose to any third party any information provided by DairyAmerica to Buyer unless (i) the information is in the public domain (other than by reason of breach of any confidentiality obligation owed to DairyAmerica by Buyer or any third party), or (ii) the disclosure (including its form and context) is first approved by DairyAmerica in writing.
- 8.9 **Intellectual Property.** All intellectual property which is owned by, or is proprietary to, DairyAmerica at the date of these Terms shall remain owned exclusively by DairyAmerica. Any new intellectual property which is created as a result of, or in connection with, the provision of the Products, or otherwise in connection with these Terms, shall be owned by DairyAmerica. Nothing in these Terms confers on Buyer any right or interest in, or license to use, or permit to be used, any of DairyAmerica's intellectual property. Buyer must not use DairyAmerica's intellectual property (including, without limitation, any trademarks) without DairyAmerica's prior written consent.
- 8.10 **Personal Information.** Any personal information collected by either Party in connection with these Terms must only be used or disclosed for the purposes of ensuring performance of these Terms, and any related future transactions. This may include disclosure within either Party's organizations and to third parties involved in performing these Terms. The Parties agree to comply with relevant privacy laws regarding any personal information collected in connection with these Terms, any Shipments, and any related future transactions.
- 8.11 **Headings and Construction.** Headings at the beginning of each numbered Article, Section, and Subsection of these Terms are solely for the convenience of the Parties and are not a part of these Terms. In these Terms, another grammatical form of a defined word or expression has a corresponding meaning. All words used in these Terms include the plural as well as the singular number, and vice versa; words used in these Terms in the present tense include the future as well as the present; and words used in these Terms in the masculine gender include the feminine and neuter genders, whenever the context so requires. No provision of these Terms will be interpreted for or against a Party because that Party or its legal representative drafted the provision, and these Terms will be construed as if jointly prepared by the Parties.
- 8.12 **Partial Invalidity.** If any provision of these Terms, the Sales Confirmation or any Shipment Schedule, or any portion of a provision, is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of these Terms, including, without limitation, the portions of any provision not held to be invalid, void, or unenforceable, will nevertheless continue to be in full force and effect without being impaired or invalidated in any way.
- 8.13 **Waiver.** Any waiver of any breach of these Terms or any related agreement between the Parties (including, without limitation, any notice given by DairyAmerica, failure by DairyAmerica to insist on strict compliance, or any delay by DairyAmerica in exercising its rights under any such agreement) shall not constitute a continuing waiver, a waiver of any breach of the same or another provision of these Terms (or any related agreement), or a waiver of any right available to DairyAmerica.

- 8.14 Successors and Assigns. These Terms shall be binding upon and inure to the benefit of the Parties and their successors and assigns; however, Buyer may not assign any rights or interest, or delegate any obligation, under these Terms (or purport to do so) without DairyAmerica's prior written consent, which DairyAmerica may provide or withhold in its complete discretion.
- 8.15 Notices. All notices required or permitted under these Terms or any applicable law shall be in writing, and be either personally served, sent with return receipt requested by certified mail with postage prepaid, sent by nationally recognized overnight courier service, or sent by telecopy or email with an original to be delivered by nationally recognized overnight courier service. Notice given in the foregoing manner shall be deemed sufficiently given for all purposes hereunder on the date the same was personally delivered, deposited with the United States Postal Service, deposited with a nationally recognized overnight courier service, or sent by telecopy or email, except that any notices of changes of address shall not be effective until actual receipt. If notice is received after 4:30 p.m. or on a Saturday, Sunday or legal holiday it shall be deemed received on the next business day. Notwithstanding anything in this Section to the contrary and pursuant to Section 8.1, DairyAmerica may provide notice of any amendment of these Terms in a manner provided in the Market Rules.
- 8.16 Clerical Errors. Clerical errors or omissions, whether in compilation or otherwise, in any information contained in these Terms, Sales Confirmation, Shipment Schedule, acknowledgement, invoice or other such documentation, are subject to correction by DairyAmerica at its discretion.
- 8.17 Authority. Buyer represents and warrants that it has the full authority to purchase the Products and to carry out the obligations under these Terms. Buyer hereby agrees that, for purposes of enforcing these Terms, any Sales Confirmation, or Shipment Schedule, DairyAmerica may rely on the authority of any agent or employee of Buyer signs invoices or documents on behalf of Buyer.
- 8.18 Language. These Terms are in the English language only, which language shall be controlling in all respects, and all versions of these Terms in any other language are for accommodation only and are not binding on the Parties. All notices and communications made or given pursuant to this Agreement, including, without limitation, all arbitration hearings, must be in the English language.
- 8.19 Time. Time is of the essence of these Terms and any related agreement between the Parties.
- 8.20 Allocation of Product. DairyAmerica will deliver Product from whichever manufacturing facility it chooses. Bidders are not able to determine which manufacturing facility the Product will come from.
- 8.21 Export Documentation. Export Documentation will be provided as per the USDEC Dairy Export Guide. Any deviations are subject to DairyAmerica approval and may incur additional charges.
- 8.22 Special Handling. All special handling requirements must be agreed to by DairyAmerica in writing and must be on the original Purchase Order sent by the Buyer. Special handling requirements are subject to additional charges as decided by DairyAmerica at its sole discretion.
- 8.23 Cancelling. DairyAmerica reserves the right to cancel any contract at its sole discretion for any reason.
- 8.24 Supply Chain. DairyAmerica will handle all logistics to the Delivery point as agreed with the Buyer. All export documentation will be provided by DairyAmerica as agreed between the Governments and posted at www.usdec.org.
- 8.25 Shipping Information. Buyer must present Seller all information Seller requests in order to process the shipments within 7 days of the auction date, or any other time specified by Seller at its sole discretion.
- 8.26 Labels. The current costs for labels are \$8/MT for SMP/NFDM, and \$30/MT for Butter.
- 8.27 Processing Time. Seller requires a minimum of 30 days from the date that all requested information is received from Buyer to have product produced and ready to ship. Any delays in this information could result in additional charges which Buyer will assume responsibility for.
- 8.28 Export Documentation. If DairyAmerica is to supply export documentation, all export documentation will be provided by DairyAmerica as agreed between the Governments and posted at www.usdec.org. Any changes to this documentation to be provided must be agreed to before Shipment of Product.
- 8.29 Sales on GlobalDairyTrade. For all sales made on the GlobalDairyTrade Auction Platform, these Terms are in addition to the Market Rules of GlobalDairyTrade, and to the extent of any conflict, these Terms shall prevail and control. All sales made on GlobalDairyTrade are for export only, and DairyAmerica reserves the right to Deliver to Buyer Nonfat Dry Milk instead of any Product; provided that such Nonfat Dry Milk meets all Product Specifications.
- 8.30 Testing of Product. Buyer agrees that Product will not be tested for any other parameter or with any other test method outside of the specification listed in the Sales Confirmation.
- 8.31 Representation of Product. Buyer agrees that product will not be represented with any other warranties or in any other manner than its intended use.

- 8.32 Complaints. Complaints will be handled as per DairyAmerica's claims procedure posted at www.dairyamerica.com/transportation/damaged-goods.
- 8.34 Cancellation. Seller has the right to cancel contracts at any time due to delays by Buyer.
- 8.35 Sales Confirmation. Sales are only confirmed by Sales Confirmation from the DairyAmerica Fresno office. No sale is final until Sales Confirmation is received from Fresno by Buyer.

IX - DEFINITIONS

"Buyer" means the purchaser or intending purchaser of the Products from DairyAmerica and includes any agent, contractor, or representative of Buyer (including its storage service provider, any carrier commissioned by Buyer, or anyone who transports Products for Buyer or on Buyer's behalf, or processes, on-sells, or on-provides goods or services that incorporate or in any way involve the Products).

"Buyer's Participation Agreement" means the Participation Agreement described in Part A, Section 1.2 of the Market Rules and in the form set out in Appendix 1 of the Market Rules.

"Change of Control" means the approval by Buyer's shareholders of a reorganization, merger, or consolidation, in each case, with respect to which persons who were shareholders of Buyer immediately prior to such reorganization, merger, or consolidation do not, immediately thereafter, own more than 50% of the combined voting power entitled to vote generally in the election of directors of Buyer's (as reorganized, merged, or consolidated) then outstanding securities.

"DairyAmerica" means DairyAmerica, Inc., a California nonprofit cooperative marketing association, and its officers, employees, agents, contractors, and representatives.

"Damaged" means the condition of any Product that has perished, become damaged or tainted, or is otherwise unsalable in its present condition. Torn outer packaging will not be deemed as damage.

"Deliver" means to deliver Products to Buyer (as evidenced by the risk transfer from DairyAmerica to Buyer in the Products occurring in accordance with the Incoterms Basis), and "Delivery" and "Delivered" have corresponding meanings.

"Documents" is defined in Section 3.10 of these Terms.

"Duty" means any tax, impost, charge or levy of an export, customs, excise, import, or similar nature applicable to the exportation, importation, transportation, sale, use or ownership of any Product and/or the performance of any incidental service from time to time under any law applicable thereto.

"Event of Default" is defined in Section 6.1 of these Terms.

"Expected Shipment Period" in respect of a Product, means the period between the first expected delivery date and the last expected delivery date specified for the applicable Contract Period as specified in the Sales Confirmation and/or Shipment Schedule for that Product.

"GlobalDairyTrade Auction Platform" means Trading Events conducted by GlobalDairyTrade at www.globaldairytrade.info/en.

"Incoterms 2010" means the international rules for the interpretation of trade terms as published by the International Chamber of Commerce, Paris, France, 2010.

"Incoterms Basis" means, in respect of any Product, the basis for delivery in Incoterms 2010 which is specified in relation to that Product in the Sales Confirmation for that Product, or which is otherwise agreed between the Parties. If no Incoterm is so specified or agreed, then the applicable Incoterm will be at DairyAmerica's sole election.

"Market Rules" means the rules governing the Trading Platform and Trading Events as published on the GlobalDairyTrade Website at www.globaldairytrade.info/en/resources/gdt-market-rules/

"Participation Agreement" means the Participation Agreement described in Part A, Section 1.2 of the Market Rules and in the form set out in Appendix 1 of the Market Rules.

"Parties" means DairyAmerica and Buyer; the Parties are sometimes referred to herein singularly by their individual names or as a "Party."

"Products" means any goods or products of which Buyer is the Winning Bidder in a Trading Event, including, but not limited to, any services supplied or deemed to be Supplied by DairyAmerica incidental to the Products or under these Terms.

"Sales Confirmation" means the Sales Confirmation or other such written documentation or communication issued which confirms, supplements, or modifies the details of Buyer's contract with Seller. If no Sales Confirmation is issued, then the Sales Confirmation will comprise those provisions that DairyAmerica selects to apply, at its sole discretion, to the Supply of the Product. Unless expressly modified or supplemented by DairyAmerica, in writing, the Sales Confirmation shall include these Terms.

“Sales Tax” means any tax or levy of a sales, value added, or goods and service nature applicable to the sale and/or Supply of any Product from time to time under any law applicable thereto and includes stamp duty on these Terms or any transaction contemplated by them.

“Shipment” means a Supply of Products in accordance with the specific volume/delivery date shipment reference forming part of the Shipment Schedule for those Products.

“Shipment Schedule” means the volume/delivery date shipment profile either as a separate schedule or forming part of the Sales Confirmation, as supplemented by any subsequent delivery notices, purchase orders, or such other written communication from Buyer (in each case accepted by DairyAmerica) further specifying or modifying that volume/delivery date shipment profile.

“Specifications,” in respect of a Product, means the product description or specifications listed on the Sales Confirmation and/or Information Website for the Trading Event in which the Product was purchased by Buyer, as confirmed, supplemented or modified by the Individual Bidder Terms, Bidder Contracting Information.

“Supply” means the delivery of a Product to the destination specified in the Sales Confirmation and/or Shipment Schedule for that Product.

“Terms” means these terms and conditions of supply.

“Trading Event” means the GlobalDairyTrade trading events at which DairyAmerica offers dairy products for sale via the Bidding Website in accordance with the Market Rules (www.globaldairytrade.info/en/). It includes the period of time starting from when the Trading Manager opens the Bidding Website for Qualified Bidders to log on to enter their first round quantity bids through to after the last round when all Bidders have exited the Bidding Website.