

Short Code: _____



NUTRINZA - APPLICATION FOR CREDIT

Please note that this form is to be fully and clearly completed on all pages without alteration

Legal Entity Name: _____

Type of Entity: Sole Trader Company Partnership Trust Other

Company Number: _____ Estimated Purchases (per month): \$ _____

Phone No: _____ Mob: _____ Dairy Supply Number: _____

Email(s) for order confirmation/invoice/statements: _____

Postal Address: _____ Code _____

Delivery Address: _____

No. of Hectares: _____ Farm Consultant: _____

Full name and address of Directors/Partners/Proprietors/Trustees

1. Name _____ Address _____
Phone _____ Title/Position _____
2. Name _____ Address _____
Phone _____ Title/Position _____
3. Name _____ Address _____
Phone _____ Title/Position _____

Commercial Trade References of similar value (Please do not refer to Fonterra, Wrightson's, LIC, Farmlands, Ravensdown)

1. _____ Phone Number _____
2. _____ Phone Number _____
3. _____ Phone Number _____

Credit Terms:

I hereby request you to open a credit account in the above name and I agree:

1. That I am authorised to open this account and accept that I am liable for payment of this account.
2. To pay for all purchases by the due date, namely the 20th day of the month following purchase or earlier if agreed.
3. To pay interest at 10% per annum above Nutrinza's authorised bank overdraft rate on all monies owing from the due date until actual payment.
4. To pay any or all legal or other recovery costs including solicitor/client expenses incurred by Nutrinza Limited in obtaining full settlement of the account after due date.
5. To allow Nutrinza's staff in terms of the Privacy Act 1993 to:
 - Obtain credit information from third parties regarding the applicant's credit worthiness.
 - Make disclosures to third parties in respect of the applicant's credit worthiness.
6. That ownership of the goods does not pass until the goods have been paid for in full.
7. **In the case of a Company:** We, the directors of _____ Limited personally guarantee payment of the account of Nutrinza Limited.

As the authorised Company Officer or business proprietor/partner, I/we acknowledge, confirm and accept the General Terms and Conditions of this credit account (see overleaf). Your attention has been specifically drawn to items 1 to 7 above and you certify that you/we are authorised to complete this Credit Application and that the information provided is true and correct.

Please tick applicable boxes below		Please initial agreement	
I agree to receive promotional communications from Nutrinza	Text Message	I agree to commit to contract agreements via txt. (Subsequent physical contract to be signed at earliest).	
	Email		

Signature of authorised person(s), directors, partners or trustees:

Name _____ Signature _____

Title _____ Date _____

Name _____ Signature _____

Title _____ Date _____

Office use: TSR: _____ REGION: _____



Nutrinza Limited – Terms of Trade

These terms are to be applied together with the sale contract (**Sale Contract**) and Credit Terms. If there is any conflict between these Credit Terms, the Terms of Trade and the Sale Contract, the Sale Contract shall prevail.

1. Payment and Invoices

Subject to Credit Approval: Nutrinza will not be required to supply or sell any Goods to the Buyer until the Buyer has successfully completed (to Nutrinza's satisfaction) Nutrinza's credit approval process and Nutrinza has opened a credit account for the Buyer. The Buyer agrees that Nutrinza may collect information about the Buyer from the Buyer and third parties (such as credit reporting agencies), and may also use and disclose such information, for the purposes of assessing the Buyer's creditworthiness and opening a credit account for the Buyer any other purposes specified in Nutrinza's Privacy Policy (a copy of which is available at <https://www.nutrinza.com/intelact-group-privacy-policy/>)

1.1 **Payment:** Unless otherwise agreed in writing, payment in full of:

- (a) the Instalment Price is due on the 20th day of the month immediately following the month relating to the relevant Instalment set out in the Monthly Instalment Schedule; and
- (b) all other amounts (including storage charges and freight) are due on the 20th day of the month following the month of issue of an invoice by the Seller to the Buyer in respect of those amounts.

1.2 **GST:** Unless otherwise agreed in writing, GST payable in connection with, any supply under the Sale Contract is payable by the Buyer in addition to the prices and amounts set out in the Sale Contract.

1.3 **Method of payment:** Payments from the Buyer to the Seller under the Sale Contract or these terms shall be paid to the bank account of the Seller specified on the invoice.

1.4 **Payments to be free and clear:** Amounts payable by the Buyer under the Sale Contract or these terms shall be paid free and clear of any restriction or condition, deduction or withholding, on account of any tax (except to the extent required by law), or deduction or withholding on account of any other amount, whether by way of set-off, counterclaim or otherwise.

1.5 **Collection costs:** If the Seller incurs any costs or expenses in respect of collection of any amount due but unpaid under the Sale Contract or these terms, the Buyer agrees to pay to the Seller all such costs incurred.

1.6 **Default interest payable:** If the Buyer fails to pay any amount payable by it under the Sale Contract or these terms on its due date, default interest shall accrue on the overdue amount from the date of invoice to, and including, the date of payment but without prejudice to the Seller's other rights or remedies in respect of the Buyer's default in failing to make payment on the due date. The default interest rate shall be **19.8%** per annum and shall be immediately payable by the Buyer on demand by the Seller.

1.7 **Use of merchants:**

- (a) If and to the extent that the Buyer instructs a merchant to assist them with the purchase of Goods from the Seller, they acknowledge and agree to instruct and authorise that merchant to provide the Buyer with any necessary documentation (including any order number(s)), promptly on request by the Seller, to facilitate the prompt payment by the Buyer or that merchant on the Buyer's behalf, and/or the on-charging to the Buyer by that merchant, of: (i) the purchase price of any Goods; (ii) any storage charges; and (iii) any other amounts, in each case payable by the Buyer to the Seller under the Sale Contract.
- (b) Notwithstanding sub-clause (a) above and the Buyer's use of a merchant to facilitate the purchase of any Goods or other services from the Seller, the Buyer acknowledges and agrees that the Buyer remains liable directly to the Seller for the prompt payment of all amounts under, and the performance of, the Sale Contract.

2. Delivery and Risk

2.1 **Delivery terms:** Delivery of the Goods shall be to the Delivery Location and on the terms set out in the Sale Contract. If the Buyer has instructed the Seller to deliver an Instalment and fails or refuses to take or accept delivery, the Buyer will be liable to pay for the relevant Instalment notwithstanding non-delivery in accordance with the "take or pay" regime set out in clause 1 of the Sale Contract.

2.2 **Freight:** The Seller may employ any reasonable means of freight and/or delivery.

2.3 **Passing of risk:** Risk in respect of the Goods shall pass to the Buyer at Collection Location or on deposit of the Goods by the Seller at the Delivery Location specified in the Sales Order.

2.4 **Freight costs additional:**

- (a) **Plus, freight:** Where the Sale Contract specifies that the Price is "Plus freight" the Buyer shall pay for all reasonable freight costs (including fuel consumption, road user charges and other transport taxes) incurred by the Seller, or charged to the Seller by its freight service providers, in relation to the freight of the Goods to the Delivery Location. These additional costs will be added to the Price.
- (b) **Including freight:** Where the Sale Contract specifies that the Price is "Including freight" the Buyer remains liable for all additional costs incurred by the Seller as a result of any Fuel Adjustment Factor, Road User Charges, transport taxes and levies, and any other freight related costs, incurred by the Seller, or charged to the Seller by its freight service providers, in relation to the freight of the Goods to the Delivery Location. These additional costs will be added to the Price.

3. Non-conformity of goods

3.1 **No representation or liability:** To the extent that it is permitted by law, all liability of the Seller in respect of the Goods arising from any duties, warranties, guarantees, or conditions implied by statute or otherwise is excluded, and the Seller makes no representations nor gives any warranties whether express or implied in relation to the Goods. The Seller also has no liability whatsoever to the Buyer for, and the Buyer must not make any claim in respect of, special, indirect or consequential loss or damage under or in connection with this contract, or for loss or damage in the nature of loss of profit, loss of opportunity, loss of production (including loss of production of crops), loss of performance of, or impact on, any animals consuming the Goods, loss of business or analogous economic loss.

3.2 **Buyer inspection and acceptance:** The Buyer shall examine each Instalment delivered to the Delivery Location as soon as possible (and in any case within 1 day) after each Instalment arrives at the Delivery Location (**Date of Inspection**). If the Buyer considers that the Goods delivered do not conform to the Sale Contract, the Buyer must advise the Seller within 1 day of the Date of Inspection (**Final Inspection Date**) and provide the Seller access to the Delivery Location to inspect the Goods and investigate the nonconformity. The Seller's determinations as to weight, quantity, quality or other characteristics of the Goods are final except to the extent of manifest error. Following any inspection of the Goods by the Seller, the Seller may at the Seller's option and in its discretion:

- (a) compensate the Buyer for the defect complained of;
- (b) replace the whole or any part of the Goods delivered; or
- (c) accept return of the Goods in which case the paid price by the Buyer will be refunded provided the Goods are returned in the same condition as delivered.

The Buyer agrees that any failure to inspect the Goods or report any non-conformity to the Seller by the Final Inspection Date will constitute acceptance by the Buyer of the Goods.

3.3 **Instalments:** Failure by the Seller to deliver, or defective delivery by the Seller of, one or more Instalments shall not entitle the Buyer to cancel or repudiate the Sale Contract.

3.4 **Consumer Guarantees Act 1993 (CGA):** The Buyer undertakes that it acquires the Goods for the purposes of a business and accordingly, to the extent permitted by law, the guarantees contained in the CGA are excluded.

3.5 **Excluded material:** Any information relating to the Goods and their use, such as weights, dimensions, prices and colours contained in catalogues, circulars, advertisements, illustrations or price lists of the Seller shall not take effect as terms of the Sale Contract unless expressly referred to in the Sale Contract.

4. Force Majeure Events

4.1 **Force majeure:** The Seller shall not be responsible to the Buyer for any loss resulting from delay in delivery of the Goods (or any part thereof) occasioned by an act of God, fire, flood, wind, explosion, power failure, war, embargo, act of government, strike (including dock and/or shipping strike), lock-out, combination of workers, or civil commotion which is not due to the Seller's own acts or negligence (**Force Majeure Event**). If the grounds of relief under this clause continue for more than 10 days, or if and as soon as performance becomes impossible, the Seller shall be entitled to terminate the Sale Contract by written notice to the Buyer.

5. Security and Title

- 5.1 **PPSA:** The terms in this clause have the meanings given to those terms under, or in the context of, the Personal Property Securities Act 1999 (PPSA).
- 5.2 **Retention of title:** Legal and beneficial ownership of the Goods remains with the Seller until payment of all amounts owing by the Buyer to the Seller under the Sale Contract are made in full.
- 5.3 **Buyer to keep Goods separate:** Until legal and beneficial ownership of Goods has passed to the Buyer, the Buyer will store the Goods separately from any other goods and ensure the Goods remain identifiable and ascertainable from any other goods.
- 5.4 **Security interest in Goods:** The Buyer grants a security interest to the Seller in the Goods as security for payment of each Instalment Price, for any other amounts owing by the Buyer to the Seller, and for the performance by the Buyer of all the Buyer's other obligations to the Seller from time to time (**Buyer's indebtedness and obligations**).
- 5.5 **Security interest in property:** For the purposes of section 36 of the PPSA the Buyer grants to the Seller, as security for the Buyer's indebtedness and obligations, a security interest in all of the Buyer's present and after-acquired property, except for property in or to which the Buyer has rights and which have not been supplied by the Seller to the Buyer (other than property which is proceeds of any of that present and after-acquired property which has been supplied by the Seller to the Buyer).
- 5.6 **Security interest to subsist:** The Buyer agrees to do anything that the Seller reasonably requires to ensure that the Seller has a perfected security interest in all property supplied by the Seller to the Buyer and a purchase money security interest in the Goods to the extent of their purchase price.
- 5.7 **Seller may preserve purchase money security interest:** The Seller may, at any time, and at its discretion, allocate any payment received from the Buyer towards any sum owed by the Buyer to the Seller, including in such manner as preserves the maximum value of any purchase money security interest the Seller may have in the Goods. The Seller may do so at the time of receipt of that payment or at any time thereafter.
- 5.8 **Change of details:** The Buyer agrees to give the Seller not less than 14 days' prior written notice of any change in the Buyer's name and/or any other changes in the Buyer's details (including, but not limited to, change in the Buyer's address (including the Delivery Location), phone or email address, trading name or business practice).
- 5.9 **Waivers:** The Buyer agrees that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to the Sale Contract or these terms, or the security created under the Sale Contract or these terms, and waives the Buyer's rights under sections 120(2), 121, 125, 129 and 131 of the PPSA. The Buyer waives the right to receive a copy of any verification statement confirming registration of a financing statement or financing change statement relating to the security interest under the Sale Contract and these terms.

6. Cancellation:

- 6.1 **Buyer's acknowledgement (no cancellation):** The Buyer acknowledges it is not entitled to terminate, and must comply with its obligations under this contract in all respects including in respect of ordering, acceptance of the Goods and payment, even if there are changes in market conditions after the date of this contract that impact on the ability of the Buyer to use or on-sell the Goods or the underlying profitability of the Buyer's business. The Seller commits to acquire the contracted Instalments from its own suppliers and will suffer significant loss if the Sale Contract is not performed by the Buyer.
- 6.2 **Seller's remedies:** If an Enforcement Event occurs then at any time after that Enforcement Event occurs the Seller may:
- (a) withhold or refuse delivery of any Goods or Instalment until the Enforcement Event has been remedied or ceases to the Seller's satisfaction. If the Seller does so, the Buyer will still be liable to pay the applicable Instalment Price and storage charges for the Goods or Instalment in accordance with clause 1;
 - (b) cancel the Sale Contract; and/or
 - (c) invoice the Buyer for all monies payable by the Buyer to the Seller under the Sale Contract whether due for payment or not (including all ancillary costs including storage costs); and/or
 - (d) invoice the Buyer for liquidated damages being an amount equal to the undelivered contract quantity of the Goods multiplied by the difference between the contract price and the price the Seller can at that time sell the undelivered Goods (as determined by the Seller in its discretion), plus 25%. The Buyer acknowledges that the liquidated damages are reasonable and not intended as a penalty and they are a genuine pre-estimate of the anticipated or actual loss that the Seller will or may suffer if an Enforcement Event occurs. If for any reason the liquidated damages payable in accordance with this clause are held by a court of competent jurisdiction, or are otherwise determined under or in connection with this contract, to constitute a penalty or are otherwise unenforceable for any other reason, the Seller may claim any loss suffered or incurred by the Seller in damages under law as a result of an Enforcement Event; and/or
 - (e) sue the Buyer for specific performance of the Sale Contract.
- 6.3 **Rights reserved:** If an Enforcement Event occurs:
- (a) the Seller reserves the right, and the Buyer hereby irrevocably provides consent to the Seller, to enter (whether forcibly or otherwise), by its employees or authorised agents, onto the Buyer's premises, or onto any premises where Goods owned by the Seller are reasonably thought to be stored and repossess and subsequently resell such Goods;
 - (b) the Seller may appoint any person to be a receiver of all or any of the Goods. In addition to, and without limiting or affecting any other powers and authorities conferred on a receiver (whether under the Receiverships Act 1993 or at law or otherwise), a receiver has the power to do all things in relation to the Goods as if the receiver has absolute ownership of the Goods; and
 - (c) the rights and remedies of the Seller under clauses 6.2 and 6.3 are cumulative and are in addition to any rights, powers or remedies provided by law.
- 6.4 **Seller's cancellation:** In addition to all other rights of the Seller provided for in these conditions or otherwise, the Seller will be entitled to cancel the Sale Contract by notice to the Buyer if the Seller is refused any requisite import permit in respect of the Goods. If the Seller cancels the Sale Contract under this clause 6.4 the Buyer has no further rights against the Seller other than those rights accruing in the period prior to any such cancellation. For the avoidance of doubt, the Seller will have no obligation to deliver any Goods to the Buyer after any such cancellation occurs.

7. Privacy

Our Privacy Policy is available at <https://www.nutrinza.com/intelact-group-privacy-policy/> and sets out how we collect, store, use and disclose your personal information. Our Privacy Policy is subject to change at our discretion. By placing an order for Goods or otherwise providing your personal information, you consent to our collection, storage, use and disclosure of your personal information in accordance with our Privacy Policy.

8. Miscellaneous / Definitions

- 8.1 **Entire agreement:** The Sale Contract and these terms (including any schedule thereto) are the entire agreement between the parties and replace all representations, agreements and other communications made by the Seller and the Buyer.
- 8.2 **No assignment:** The Buyer may not assign its rights and/or obligations under this contract without the Seller's prior written consent.
- 8.3 **Set-off:** The Seller may set-off, net-off or reduce any monetary obligation owed to the Buyer against any claim the Seller may have against the Buyer on any account whatsoever.
- 8.4 **Governing law:** The Sale Contract and these terms shall be governed by, and construed in accordance with, the laws of New Zealand, and the parties hereby submit to the jurisdiction of the courts of New Zealand.
- 8.5 **Definitions:**

Buyer has the meaning given to that term in the Sale Contract.

Enforcement Event means the Buyer defaults in respect of any material term of the Sale Contract or these terms, repudiates the Sale Contract or these terms, any amount payable by the Buyer to the Seller is not paid when due (including by reason of a Force Majeure Event) or the Buyer becomes insolvent, commits an act of bankruptcy, has a receiver appointed over all or any part of the assets of the Buyer, makes or is likely to make an arrangement with its creditors, has a liquidator (provisional or otherwise) appointed or is placed under statutory or official management.

GST means goods and services tax chargeable in accordance with the Goods and Services Tax Act 1985.

Instalment Price means, in respect of an Instalment, the price of that Instalment, in each case calculated by reference to the relevant volumes and the per metric tonne price set out in the Sale Contract.

Seller means Nutrinza Limited.

- 8.6 **Sale Contract definitions:** Unless otherwise defined in these terms or if the context otherwise requires, terms defined in the Sale Contract shall have the same meaning or construction in these terms.