

Software Terms & Conditions

1. DEFINITIONS

1.1 The definitions and rules of interpretation in this clause apply in this Agreement.

Agreement: these terms and conditions and the sales contract (where applicable).

Authorised Users: those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Services, Software and / or Documentation (as applicable), as agreed by Dairymaster.

Confidential Information: information that is proprietary or confidential to either party including information relating to its know-how, business, Customers, prices, services and sales forecasts or which is clearly labelled as proprietary or confidential or identified as Confidential Information in this Agreement.

Customer Data: the data inputted or imported by the Customer, Authorised Users, or Dairymaster on the Customer's behalf for the purpose of using the Services or facilitating the Customer's use of the Services, excluding Dairymaster Data.

This may also include personal data, it is understood that the customer has ensured that employees consent to the use of this information and that Dairymaster accept no liability for the use of this information.

Dairymaster Data: any data relating to the usage of the Services and / or Software, as may be collected or measured by Dairymaster, including without limitation: any sensor data generated by Dairymaster equipment, or data otherwise generated or recorded by Dairymaster Software.

Documentation: the documentation made available to the Customer by Dairymaster which sets out a description of the Services and / or the Software and user instructions for the Services and / or the Software (as applicable).

Subscription Charges: the charges payable by the Customer to Dairymaster for the provision of the Software (and any Services, as applicable), as set out in the sales contract or otherwise set out by Dairymaster.

Initial Licence Term: the initial term of the licence under this Agreement as may be set out in the sales contract, and where such term is not set out it shall be for a period of one year.

Intellectual Property Rights: means any and all patents, copyright and related rights, trade marks, trade, business and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use and protect the confidentiality of confidential information (including know-how and trade secrets) and all other intellectual property rights, whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist now or will subsist or in the future in any part of the world.

Sales Contract: any agreement under which equipment or any other hardware is provided by Dairymaster to the Customer.

Services: software solution and Dairymaster Data that may be provided by Dairymaster to the Customer under this Agreement and any related services.

Software: the software application(s) provided by Dairymaster as part of the Services or separately under this Agreement.

Term: the term of the Agreement specified in clause 15.1.

Virus: any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; or prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

1.2 The headings contained in this Agreement are inserted for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of any of the terms, conditions or provisions of this Agreement.

2. THE AGREEMENT

2.1 The Provision by Dairymaster to the Customer of any Software and / or Services shall be subject to the terms and conditions of this Agreement.

3. THE SERVICES

3.1 Where Dairymaster provides Services to the Customer, Dairymaster grants to the Customer a non-exclusive, revocable, non-transferable, non-subliceable right to permit the Authorised Users to use the Services and the Documentation during the Term solely for the purpose of accessing the Services.

3.2 The Customer shall not and shall ensure that no Authorised User shall upload, access, store, distribute or transmit any Viruses, or any material during the course of and in relation to its use of the Services that (a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive; (b) facilitates illegal activity; (c) depicts sexually explicit images; (d) promotes unlawful violence; (e) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability, or any other illegal activity; (f) infringes any Intellectual Property Rights or other rights; or (g) causes damage or injury to any person or property. Dairymaster reserves the right, without liability to the Customer, to disable the Customer's and/or any Authorised User's access to the Services in the event of a breach or suspected breach of this clause.

3.3 Dairymaster shall, during the Term, provide the Services and make available the Documentation to the Customer on and subject to the terms of this Agreement.

4. SOFTWARE LICENSE

4.1 Dairymaster grants to the Customer a non-exclusive, non-transferable licence to use the Software and Documentation in accordance with the terms of this Agreement.

4.2 The Customer may: (a) install and use the Software at its premises on such number and types of devices specified and permitted by Dairymaster, solely for the Customer's internal business use by Authorised Users; and (b) use any Documentation in support of the use permitted under clause 4.2(a) above.

5. RESTRICTIONS

5.1 The Customer shall not:

- a) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to

the extent expressly permitted under this Agreement,

- i. attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means; or

- ii. attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software;

- b) access all or any part of the Software, Services or Documentation in order to build a product or service which competes with the Services and/or the Documentation;

- c) use the Software, Services and/or Documentation to provide services to third parties;

- d) license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Software, Services and/or Documentation available to any third party except the Authorised Users; or

- e) attempt to obtain, or assist third parties in obtaining, access to the Software, Services and/or Documentation, other than as provided under this Agreement.

5.2 The Customer shall prevent any unauthorised access to, or use of, the Software, Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify Dairymaster.

6. CUSTOMER DATA

6.1 The Customer shall own all rights, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data. Dairymaster shall have no responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.

6.2 The Customer hereby grants to Dairymaster a perpetual, worldwide, non-exclusive, irrevocable, sub-licensable royalty-free licence to use the Customer Data for the provision of

the Services to the Customer, and for further developments of our product and services.

- 6.3 Dairymaster shall not share the Customer Data with any third party without the consent of the Customer except for the provision of services to the Customer under this Agreement.

7. THIRD PARTY PROVIDERS

- 7.1 The Customer acknowledges that the Software: (i) may rely on or (ii) enable or assist the customer to access systems and services from third parties and that it does so solely at its own risk. Dairymaster makes no representation, warranty or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party system or website, or any transactions completed, with any such third party. Any contract entered into and any transaction completed via any third party is between the Customer and the relevant third party, and not Dairymaster. Dairymaster recommends that the Customer refers to the third party's terms and conditions prior to using the relevant third-party service. Dairymaster does not endorse or approve any third-party service nor the content of any of the third-party service made available via the Software or Services. Where Dairymaster services rely on a third-party provider whether under subcontract to Dairymaster or not the customer acknowledges that the provision of such services are not under Dairymaster direct control and Dairymaster shall not be liable for any losses.

8. USE OF THE SOFTWARE OR SERVICES

- 8.1 Dairymaster:
- (a) does not warrant that the Customer's use of the Software or Services will be uninterrupted or error-free nor that the Software, Services, Documentation and/or the information obtained by the Customer through the Services will always meet the Customer's requirements; including but not limited to interruptions, error or data losses caused by operating systems, software updates,
- (b) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the Internet, or any other third party systems (including web-based services) and the Customer

acknowledges that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities or third-party systems.

- (c) Is not responsible for any compatibility issues relating to third party supplied software, hardware or equipment, or issues relating to incorrect use of software or obsolescence of existing software or equipment.

- 8.2 Except as expressly provided in this Agreement, the entire risk as to the Services provided by Dairymaster is with the Customer, including for quality and performance and for accuracy or quality of any information transmitted, received or otherwise delivered via the Services.

- 8.3 This Agreement shall not prevent Dairymaster from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this Agreement.

9. CUSTOMER OBLIGATIONS

- 9.1 The Customer shall:

- (a) provide Dairymaster with all necessary co-operation in relation to this Agreement and all necessary access to such computers, systems, networks or information as may be required by Dairymaster in order to render the Services, including but not limited to remote dial in access, provision of Customer Data, security access information and configuration services;

- (b) comply with all applicable laws and regulations with respect to its activities under this Agreement;

- (c) permit Dairymaster to update/remote update, rollback/remote rollback software versions, at Dairymaster discretion and provide all necessary access to networks and equipment as is required to carry out these changes.

- (d) carry out all Customer responsibilities set out in this Agreement in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, Dairymaster may adjust any agreed timetable or delivery schedule as reasonably necessary;

- (e) ensure that its Authorised Users use the Services and the Documentation in accordance with the terms and conditions of this Agreement and shall be responsible for any Authorised User's breach of this Agreement;
 - (f) obtain and maintain all licences, consents, and permissions necessary for Dairymaster, its contractors and agents to perform their obligations under this Agreement;
 - (g) ensure that its network, systems and any other Customer hardware comply with any relevant specifications provided by Dairymaster from time to time, including specific operating systems or any other software specified by Dairymaster from time to time; and
 - (h) be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to Dairymaster's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the Internet.
- 9.2 Dairymaster may, in its sole discretion cease the provision of any Services and / or limit the Customer's use of the Software where the Customer is in breach of any of its obligations under clause 9.1.

10. SUBSCRIPTION CHARGES

- 10.1 Unless otherwise expressly stated in the sales contract, the non-refundable Subscription Charges are payable in advance. Where a customer terminates or does not utilise the service before the end of the subscription term, no amounts are refundable for this term.
- 10.2 On receipt of payment, Subscription Charges will be invoiced and may be exclusive of VAT or other applicable sales taxes.
- 10.3 Where the Customer requests additional services, any such services will be subject to additional fees, which shall be agreed in writing before performance or supply by Dairymaster.
- 10.4 Customer may not withhold or "set off" any amounts due to Dairymaster. In the event of late/non-payment of any of the Subscription Charges or any other fees or charges payable under this Agreement, Dairymaster reserves

the right (without liability) to bar the Customer access to all or any part of the Software and/or Services by whatever means it deems appropriate until such time as payment is received in full. Interest on late payments shall accrue from the date when payment became due until the date of actual payment at the rate of 1% per month above the European Central Bank main refinancing rate applicable in the said period (or such other rate as Dairymaster may notify the Customer of in writing) and shall accrue at such rate after judgment as well as before judgment.

11. INTELLECTUAL PROPERTY RIGHTS

- 11.1 The Customer acknowledges and agrees that Dairymaster or its licensors own all Intellectual Property Rights in the Software, Services and Documentation and Dairymaster Data ("**Dairymaster IP**"). Except as expressly stated herein, this Agreement does not grant the Customer any rights to, or in any Dairymaster IP.
- 11.2 Dairymaster may on a case-by-case basis grant to the Customer for the Term a non-exclusive, non-transferable licence to use the Dairymaster Data for academic or commercial research purposes and only in connection with the use by an Authorised User of the Software or the Services, as applicable. All rights and title to all inventions, improvements and/or discoveries, including software, know-how, patent and other intellectual or industrial property that are improvements, derivatives, or inventions based on Dairymaster Intellectual Property whether conceived and/or made solely by one or more employees of the Customer or conceived jointly between the Customer and Dairymaster shall belong to Dairymaster.
- 11.3 To the extent that any Dairymaster IP does not vest in Dairymaster by virtue of this Agreement or by applicable law, the Customer hereby assigns, by way of present and future assignment upon creation, all its right, title and interest in Dairymaster IP to Dairymaster.
- 11.4 To the extent that any Dairymaster IP cannot be assigned under applicable law, the Customer hereby grants to Dairymaster an exclusive, perpetual, irrevocable and royalty-free licence to use Dairymaster IP for any purpose (including without limitation the right to sub-license Dairymaster IP).
- 11.5 The Customer hereby waives (and, where relevant, shall procure the waiver of its

- employees', subcontractors' or agents') moral rights under chapter 7 of the Copyright and Related Rights Act 2000 and any equivalent rights that may exist under foreign law.
- 11.6 Dairymaster hereby grants to the Customer for the Term a non-exclusive, non-transferable licence to use the Dairymaster Data for internal business purposes only and only in connection with the use by an Authorised User of the Software or the Services, as applicable.
- 11.7 The Customer shall do, sign, execute and deliver all such deeds, documents, assurances, acts, instruments and things required, in the opinion of Dairymaster, to give full effect to its obligations in this clause 11.
- 12. CONFIDENTIAL INFORMATION**
- 12.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this Agreement. A party's Confidential Information shall not be deemed to include information that:
- (a) is or becomes publicly known other than through any act or omission of the receiving party;
 - (b) was in the other party's lawful possession before the disclosure;
 - (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure;
 - (d) is independently developed by the receiving party, which independent development can be shown by written evidence; or
 - (e) is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.
- 12.2 Each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this Agreement or as specifically requested by the other party during the provision of the Services.
- 12.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement.
- 12.4 The Customer acknowledges that the Software, Documentation and details of the Services constitute Dairymaster's Confidential Information.
- 12.5 Where the Customer is a Research Performing Organisation intending to publish the results of any research carried out using the Dairymaster Data, the Customer shall furnish a copy of all proposed publications to Dairymaster 30 days in advance. The research results shall not be published or otherwise commercialised without prior written authorisation by Dairymaster.
- 12.6 This clause 12 shall survive termination of this Agreement, however arising.
- 13. INDEMNITY**
- 13.1 The Customer shall defend, hold harmless and, on demand, indemnify Dairymaster against any and all claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's use of the Software, Services and/or Documentation.
- 14. LIMITATION OF LIABILITY**
- 14.1 Except as expressly and specifically provided in this Agreement:
- (a) the Customer assumes sole responsibility for use of and results obtained from the use of the Services and the Documentation by the Customer, and for conclusions drawn from such use. Dairymaster shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to Dairymaster by the Customer in connection with the Services, or any actions taken by Dairymaster at the Customer's direction;
 - (b) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this Agreement; and
 - (c) the Services and the Documentation are provided to the Customer on an "as is" basis.

- 14.2 Nothing in this Agreement excludes or limits any liability that cannot be excluded or limited under applicable law.
- 14.3 Customisations or special integrations are separately chargeable and will be priced accordingly and shall be paid in full by the customer in advance of provision of the customisations. Dairymaster cannot be held liable for any direct or indirect losses resulting from these customisations.
- 14.4 Dairymaster shall not be liable for changes addition/removal of features/services caused by updates/remote updates, rollback/remote rollback of software versions.
- 14.5 Subject to clause 14.2:
- (a) Dairymaster shall not be liable whether in tort (including for negligence) or breach of statutory duty, contract or otherwise for:
- (i) any indirect or consequential loss, damage, costs and / or expenses of any nature whatsoever;
 - (ii) any economic loss, loss of profits, loss of business or loss of goodwill;
 - (iii) any loss of milk, milk yield or milk quality, loss of premiums, ill-health or loss of animals, loss of yield, production or performance, culling in relation to any animals and any resulting expenses or increases in production costs;
 - (iv) damage to any equipment, or losses as a result of damage or malfunction of any equipment;
 - (v) any matter or thing for which Dairymaster has no responsibility or which has not been provided or supplied by Dairymaster; and
 - (vi) loss or corruption of data or information, however, arising out of or under this Agreement; and
- (b) Dairymaster's total aggregate liability in contract, tort (including for negligence) or breach of statutory duty, misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall be limited

to the total Subscription Charges paid by the Customer to Dairymaster for the Software or Service during the 12-month period immediately preceding the date on which the claim arose.

15. TERM AND TERMINATION

- 15.1 This Agreement shall take effect on the date as set out in the sales contract (or where no such date is set out, from the date that the Software is installed on the Customer's equipment) and shall continue for the Initial Licence Term. The renewal of the licence is subject to advance payment on a rolling annual basis until or unless terminated by either party giving to the other written notice not less than 30 days prior to the expiration of the then current annual term, in which case, the Agreement will expire at the end of such term, subject always to earlier termination as specified in this Agreement.
- 15.2 The Subscription Charges terms of payment are full payment in advance. No refunds or credits are granted for part-utilisation of the service.
- 15.3 Notwithstanding any other provisions in this Agreement, and without prejudice to any other rights such party serving notice may have, either party may immediately terminate this Agreement by written notice to the other if any of the following events shall occur:
- (a) if the other party commits a material breach of the terms or conditions of this Agreement including the terms, conditions and provisions of the sales contract (where applicable) and fails to remedy such breach (if capable of remedy) within 30 days after receiving written notice from the party requiring it so to do;
 - (b) if the other party shall become insolvent or have a liquidator, examiner, receiver or administrator appointed of it or over any part of its undertaking or assets or shall pass a resolution for winding up (otherwise than for the purpose of a good faith scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction shall make an order to that effect or if the other party shall enter into any voluntary arrangement with its creditors or suffers or undergoes any analogous or similar process to any of the above anywhere in the world.
- 15.4 Upon termination for any reason:

- (a) all rights granted to the Customer under clauses 3.1, 4 and 11.6 shall cease; and
- (b) the Customer must cease all activities authorised under clauses 3.1, 4 and 11.6.

16. OTHER TERMS

- 16.1 **Force Majeure:** Neither party shall be liable to the other for any delay or non-performance of its obligations under this Agreement arising from any cause beyond its control including without limitation, act of God, act or omission or law of government or regulatory body, war, fire, flood, explosion, epidemic, pandemic or civil commotion, non-performance by suppliers or sub-contractor, industrial action, interruption or failure of network or utility service or any other act or omission whether similar to the foregoing or not. In the event that such an event continues for a period of more than sixty (60) days either party shall have the right to terminate this Agreement immediately upon written notice.
- 16.2 **Waiver & modification:** A waiver of any right under this Agreement will be effective if it is in writing. Unless specifically provided otherwise, rights arising under this Agreement are cumulative and do not exclude rights provided by law. No addition to, or modification of, any provision of this Agreement shall be binding on the parties unless made by a written instrument and signed by a duly authorised representative of each of the parties.
- 16.3 **Severance:** If any provision (or part of a provision) of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, then it shall be deemed to be severed from this Agreement and the remaining provisions or partial provisions shall continue in full force and effect.
- 16.4 **Entire Agreement:** This Agreement, and any documents referred to in it, constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover. Each of the parties acknowledges and agrees that in entering into this Agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this Agreement or not) relating to the subject matter of this Agreement, other than as expressly set out in this Agreement.
- 16.5 **Data Protection:** The parties agree to comply with their obligations under the Data Protection Acts 1988 and 2003 and, from its effective date, Regulation (EU) 2016/679 of the European Parliament and of the Council (General Data Protection Regulation) and any other applicable data protection laws.
- 16.6 **Assignment:** The Customer shall not, without the prior written consent of DairyMaster, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.
- 16.7 **Notices:** All notices which are required to be given under this Agreement shall be in writing and shall be sent to the address of the recipient as set out in this Agreement or such other address as the recipient may designate for this purpose.
- 16.8 **Governing Law:** This Agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by, and construed in accordance with, the laws of Ireland. The parties irrevocably agree that the courts of Ireland have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).