



Furst-McNess Company

Credit Application and Sales Agreement

Official Name of Applicant/Buyer:

Name _____

Address _____

City _____ State _____ Zip _____

Telephone _____ Fax _____ Cell Phone _____

Federal ID # or Social Security # _____

Ship To Location (If Different):

Address _____

City _____ State _____ Zip _____

Are you or your organization tax exempt? Yes No
 If yes, please attach a State Tax Exempt Certificate.

Primary Email Address _____

Other:

Is this a (one of these boxes must be checked) Corporation Partnership Sole Proprietorship Other _____

Does Buyer have judgements or legal proceedings currently pending or has Buyer ever filed bankruptcy? Yes No If yes, please attach particulars.

Livestock Type _____ Own _____ Lease _____ Custom Fed _____ Number of Acres Owned _____ Rented _____

Milk/Livestock Shipped To: _____ City: _____ State: _____

Bank/Lender References:

Name _____

Address _____

City _____ State _____ Zip _____

Trade References:

Name _____

Address _____

City _____ State _____ Zip _____

The undersigned warrants that everything stated in this Credit Application and Sales Agreement is true, correct and accurate. Furst-McNess Company is authorized as it deems necessary to obtain or exchange any information required from any source necessary to evaluate this Credit Application and Sales Agreement. Any entity so contacted by Furst-McNess Company is hereby authorized by Applicant to provide Furst-McNess Company with such information. Furst-McNess Company's right to obtain this information is continuing and Furst-McNess Company may obtain information from time to time as in its sole discretion it deems necessary.

BY SIGNING THIS DOCUMENT, THE APPLICANT/BUYER ACKNOWLEDGES THAT THEY HAVE READ AND UNDERSTAND EACH OF THE TERMS AND CONDITIONS OF SALE AS FOUND AT WWW.MCNESS.COM, WHICH MAY BE MODIFIED FROM TIME TO TIME, AND EXPRESSLY AGREE TO EACH AND EVERY TERM THEREIN.

Buyer's Signature (Owner, Principal or Officer) _____

Printed Signature _____

Social Security #/Tax ID# _____

Title or Position _____

Joint Applicants Signature (Partner or Spouse) _____

Printed Signature _____

Social Security #/Tax ID# _____

Title or Position _____

PERSONAL GUARANTEE

In consideration for the credit extended to the above-listed Applicant/Buyer, the undersigned hereby guarantees and agrees to be personally liable for all obligations of the Applicant/Buyer to Furst-McNess Company and acknowledges that it has reviewed, and agreed to be bound by, the provisions of this Credit Application and Sales Agreement.

Signed _____ Date _____

Print _____ SS# _____

NOTICE: TERMS AND CONDITIONS OF SALE (AS MAY BE MODIFIED FROM TIME TO TIME) AS FOUND AT WWW.MCNESS.COM WILL GOVERN YOUR PURCHASES AND OBLIGATIONS.

Terms and Conditions of Sale

Governing Terms

The Applicant (hereinafter "Buyer"), by placing orders with Furst-McNess Company, signifies its agreement to the following terms and conditions in connection with all of its dealings and purchases of goods/feed (hereinafter "Products") and/or services provided. The terms and conditions of sale may be altered only by a written agreement signed by Furst-McNess Company. Buyer represents and warrants that it is able to perform its obligations to Furst-McNess Company, that it is not insolvent, and that the Products are not intended for and will not be used for human consumption or resale in any way. If Applicant on the Credit Application and Sales Agreement is a legal entity, the individual(s) signing that document on behalf of such entity shall be personally liable for payment of all Product and services provided to such entity.

Credit

Furst-McNess Company has full and complete discretion in setting credit terms, including credit limits, all of which are subject to change in Furst-McNess Company's sole discretion. Furst-McNess Company, in its sole discretion, may withhold any shipments, and/or cancel any orders, at any time for any reason or for no reason at all. Furst-McNess Company may require Buyer to provide adequate assurance of performance.

Price

Unless otherwise specified by Furst-McNess Company, all prices are subject to change with or without notice.

Setoffs

Buyer shall have no right to deduct or setoff against amounts owed by Buyer to Furst-McNess Company any amounts which Buyer claims it is owed by Furst-McNess Company. Without limiting Furst-McNess Company's other rights and remedies, Furst-McNess Company has the right to setoff and/or net its obligations against any debt, claims or obligations owed by Buyer to Furst-McNess Company.

Invoicing

Furst-McNess Company will furnish Buyer with an invoice for each shipment or sale made pursuant to this Agreement, which will state the terms of payment for each such sale and when payment is due. Buyer agrees to pay Furst-McNess Company in full pursuant to the terms set forth on the invoice.

Security Interest

To secure Buyer's performance, Buyer hereby grants to Furst-McNess Company a security interest in all goods sold by Furst-McNess Company to Buyer. Buyer hereby authorizes Furst-McNess Company to file financing statements as to Buyer and to take all actions as may be necessary to perfect Furst-McNess Company's security interest.

Taxes and Other Charges

Buyer is responsible for all taxes, duties, fees, and other charges imposed by any governmental entity based on Buyer's purchase of any goods or fees from Furst-McNess Company.

Default

If Buyer fails to pay Furst-McNess Company in accordance with this Agreement, Furst-McNess Company may declare the entire balance of Buyer's account and all unpaid invoices immediately due and payable and may foreclose any security interest or lien which Furst-McNess Company may have been granted by this contract or law to secure Buyer's obligations under this Agreement. If any unpaid balance is referred for collection to an attorney or agency, Buyer agrees to pay, in addition to any damages, fees and finance charges available to Furst-McNess Company under this Agreement or otherwise at law or equity, reasonable attorney or agency fees plus any court costs and expenses incurred by Furst-McNess Company in enforcing this Agreement and any invoices related thereto.

Finance Charges

If Buyer fails to pay any invoice when due, Buyer agrees to pay a **LATE PAYMENT CHARGE** which shall accrue on the unpaid balance of each such unpaid invoice, from each such invoice's date until the respective invoice is paid in full. The **LATE PAYMENT CHARGE** shall accrue at a rate equal to the lesser of an **ANNUAL PERCENTAGE RATE** of **EIGHTEEN PERCENT (18%)**, per annum, or the highest rate allowed by law.

Insufficient Funds and Credit Card Fee

If Buyer presents a payment to Furst-McNess company that is returned due to insufficient funds, a **SERVICE CHARGE** of **\$50** will be assessed. Furst-McNess Company may charge a processing fee of three percent (3%) for all payments made by credit card.

Weights and Units of Sale

Unless otherwise specified on a Product container, all weights of the Product are on a net weight basis. The actual sale quantity shall be evidenced by the weight delivered as specified in Furst-McNess Company's shipping notice/bill of lading and/or invoice.

Duty to Inspect

Buyer has the duty to inspect all Product promptly upon delivery. Buyer shall have two (2) days after receipt of the Product to reject Product. Rejection must be solely on the basis that the Product does not comply with the specifications set forth in the Feed Tag. Any claims of shortage must be made within twenty-four (24) hours of delivery. Allowance for shortage will be at Furst-McNess Company's sole reasonable discretion.

Location for Delivery and Equipment

Product will be delivered to the location specified in the order unless otherwise agreed in writing. It is Buyer's obligation to ensure that a suitable offload location and equipment is available. Furst-McNess Company reserves the right to charge additional fees in the event of a change in delivery location or Buyer's failure to provide suitable equipment and location for offloading. Buyer is solely responsible to offload all Product upon delivery. Furst-McNess Company reserves the right to charge an additional fee in the event Buyer has not completed its offload within a reasonable period following arrival.

Limited Warranty

Furst-McNess Company warrants that the Products will conform to the specifications described on the Feed Tag associated with the Product at the time of delivery. This is a limited warranty and is in lieu of all other warranties. This limited warranty is non-transferrable. **FURST-MCNESS COMPANY MAKES NO OTHER WARRANTY OF ANY KIND OR NATURE AND HEREBY EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY, IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, OR THAT MAY ARISE FROM THE COURSE OF DEALING, COURSE OF PERFORMANCE, OR TRADE USAGE.**

UNLESS OTHERWISE SPECIFIED ON THE FEED TAG, FURST-MCNESS COMPANY DOES NOT WARRANT AND HEREBY EXPRESSLY DISCLAIMS ANY WARRANTY THAT THE PRODUCTS ARE FREE OF OR DO NOT CONTAIN GENETICALLY MODIFIED ORGANISMS OR THAT THEY OTHERWISE QUALIFY AS OR MAY BE CONSIDERED TO BE "NON-GMO" OR "GMO-FREE" OR "ORGANIC."

Dietary Assistance

Furst-McNess Company assumes no obligation or liability for providing dietary services. Buyer shall bear the sole responsibility for selection and specifications of the Products purchased from Furst-McNess Company.

Limitation of Damages

The sole and exclusive remedy for Furst-McNess Company's breach of its limited warranty or any other obligation which Furst-McNess Company may have to Buyer is expressly limited to, at Furst-McNess Company's sole option, replacement of the non-conforming Product or a price adjustment for the non-conforming Product based on the fair market value thereof at the time of the breach, as reasonably determined by Furst-McNess Company. Under no set of circumstances shall Furst-McNess Company be liable to the Buyer or any third party for any loss of business, lost profits, business interruption, damage to goodwill or reputation, special, incidental or consequential damages. The foregoing limitation shall apply to the maximum extent permitted by applicable law.

Permitted Substitutions

Buyer acknowledges that Furst-McNess Company, from time to time, in its sole discretion, may substitute ingredients of reasonably equivalent nutritional value in all Products purchased by Buyer, including all bagged, proprietary, or customer designated custom formula feeds and Buyer expressly agrees to accept all risks with respect to such substitutions (including risks of injury or production losses to its livestock, including without limitation its dairy herd) that may result therefrom. Furst-McNess Company is hereby expressly authorized to make such substitutions without further notice to Buyer.

Severability

All agreements hereunder are severable, and in the event any of them shall be held to be invalid, this Agreement shall be interpreted as if such invalid agreement were not contained therein.

Claims and Controversies

Any Buyer disputes, controversies, claims, disagreements, and/or matters arising out of or relating to the services rendered by Furst-McNess Company or Products sold by Furst-McNess Company, based upon personal or bodily injury or damage to real or personal property, shall be submitted to and finally resolved by arbitration administered under the Arbitration Rules of the National Grain and Feed Association then in effect and the award rendered by the arbitrators shall be final, binding, nonappealable, and may be entered and enforced in any court having jurisdiction thereof. Such arbitration shall take place in Winnebago County, Illinois. The arbitrators shall not have the power or authority to award punitive, exemplary, treble, liquidated, consequential or indirect damages and Buyer's damages are limited as set forth above. Any claims of Buyer not commenced within sixty (60) days of the date on which claims arise are deemed to be waived and forever barred. Any and all disputes, disagreements, controversies, and/or other matters in question as to Furst-McNess Company against Buyer as to fees, accounts, and/or collection of fees are specifically excluded from this Arbitration Agreement. Notwithstanding the foregoing, Furst-McNess Company may, at its option, pursue collection of delinquent accounts in any court having jurisdiction, including, but not limited to, state and federal courts located in Winnebago County, Illinois, and Buyer hereby agrees to the jurisdiction and venue of such courts.

Title, Risk of Loss & Delivery

Title to and risk of loss or damage to the Products will pass to Buyer F.O.B. Furst-McNess Company's facility or as otherwise in writing. Furst-McNess Company may arrange for shipment to Buyer with cost passthrough to Buyer, plus any applicable taxes. Any delivery dates or other schedule of performance by Furst-McNess Company are approximations, and the sole obligation of Furst-McNess Company with respect to the schedule of delivery or performance will be to use commercially reasonable efforts to deliver the Products as specified, or otherwise to perform, consistent with the reasonable demands of its business.

Buyer Indemnity and Breach

Buyer agrees to indemnify Furst-McNess Company from any and all liability, including reasonable attorney's fees, that may arise from the delivery, use, storage, transportation, or resale of the Product and/or services.

Force Majeure

Furst-McNess Company shall not be liable for failure to fulfill any obligation due to causes beyond its control, including, but not limited to, acts of God, natural or artificial disaster, riot, war, strike, acts or omissions of other parties, acts or omissions of civil or military authority, government priorities, changes in law or regulation, embargo delays, material shortages, weather conditions, labor disputes, fire, floods, epidemics, quarantine restrictions, acts of terrorism, delays in or shortage in transportation, fuel or equipment, or inability to obtain labor, materials, Products or supplies or any circumstance or cause beyond the reasonable control of Furst-McNess Company, which shall all be considered events of force majeure excusing Furst-McNess Company from performance and barring remedies for non-performance. Additionally, manufacture, shipment and delivery are subject to any prohibition, restriction, priority allocation regulation or condition imposed by or on behalf of the United States of America or any other governmental body, state or local, with appropriate jurisdiction which may prevent or interfere with fulfillment of any order, which shall be considered force majeure. In the event of a force majeure condition, and at Furst-McNess Company's option, (a) its time for performance shall be extended for a period equal to the time lost as a consequence of the force majeure condition; or (b) it may, at its option, cancel the remaining performance by giving notice of such cancellation to the Buyer; in both circumstances, without any liability or penalty.

Entire Agreement and Termination

This Agreement constitutes the entire agreement among the parties hereto with respect to the subject matter herof and supercedes all prior agreements and understandings, oral or written, among the parties hereto with respect to the subject matter hereof. Furst-McNess Company may terminate any order or any part thereof at any time, with or without cause.

Choice of Law, Venue, and Jury Waiver

This Agreement shall be governed by the laws of the State of Illinois. The parties agree that the purchase and sale of Products and all terms and conditions as set forth herein shall be governed and interpreted in accordance with the laws of the State of Illinois. **THE PARTIES IRREVOCABLY WAIVE THEIR RIGHT TO A TRIAL BY JURY OF ANY CAUSE OF ACTION, CLAIM, COUNTERCLAIM, OR CROSS-COMPLAINT IN ANY ACTION OR OTHER PROCEEDING WITH RESPECT TO ANY MATTER ARISING OUT OF, OR IN ANY WAY CONNECTED WITH, ANY PURCHASES FROM FURST-MCNESS COMPANY, WHETHER BASED ON CONTRACTUAL, STATUTORY, TORTIOUS OR OTHER THEORIES OF LIABILITY.**