

# **AB Food & Beverages Australia Pty Limited (“ABF”) Terms & Conditions of Purchase (“Conditions”)**

## **1 Definitions and Interpretation**

1.1 In these Conditions, unless the context otherwise requires:

**Contract** means the contract entered into between ABF and the Seller on the supply of Supplies by the

Seller to ABF pursuant to a Purchase Order;

**Goods** means any goods to be supplied to ABF by the Seller as requested by ABF;

**Loss** means any damage, loss, liability, cost, charge, expense, penalty, outgoing or payment (whether direct or indirect, consequential or incidental) including legal costs and expenses on a full indemnity basis;

**Intellectual Property Rights** means all intellectual and industrial property rights and interests throughout the world, registered or unregistered;

**Price** means the price of the Supplies under clause 4;

**Purchase Order** means a document containing these Conditions for the purchase of Supplies;

**Representative** means any officer, employee, agent, servant, contractor or authorised sub-contractor

of a party but in the case of ABF does not mean the Seller;

**Services** means services to be supplied by the Seller to ABF;

**Site** means the site(s) set out in the Purchase Order or otherwise notified by ABF to the Seller;

**Specifications** means the specifications for the Supplies; and

**Supplies** means Goods and/or Services (as the case may be).

1.2 Specifying anything in these Conditions after the words “including” or “includes” or similar expressions does not limit what else is included unless there is express wording to the contrary.

## **2 Basis of Purchase**

2.1 No responsibility will be accepted by ABF for Supplies unless supplied pursuant to a Purchase Order signed by a ABF Representative. Such a Purchase Order constitutes an offer to acquire the Supplies subject to these Conditions. Supplying the Supplies constitutes acceptance of that offer. No change in quantity, description, Specification, Price, delivery terms for supplying the Supplies or any of these Conditions will bind ABF unless a ABF Representative confirms it in writing.

2.2 The Seller agrees that these Conditions apply to the Contract to the exclusion of any other terms and conditions, including any terms and conditions contained on printed documents issued by the Seller at any time. The Conditions are in addition to all other rights which ABF may have at law. Any waiver by ABF of any right is not a waiver of any other or future rights ABF may have.

2.3 ABF may at any time revise these Conditions by notice in writing to the Seller.

## **3 Specifications**

3.1 Any Specification supplied by ABF to the Seller, or produced by the Seller for ABF in connection with the Contract, together with any Intellectual Property Rights in the Specification or the Supplies resulting from the Specification, are the exclusive property of ABF.

3.2 The Seller must not disclose any such Specification except as required for the purposes of a Contract.

3.3 Where any Supplies are supplied by the Seller to ABF pursuant to any Specification under clause 3.1, the Seller must not at any time after the date of the Contract supply such Supplies to any third party.

## **4 Price**

4.1 Subject to clause 4.2, the Price for the Supplies is: (a) as stated on the Purchase Order; (b) on a Free Into Store basis; and (c) inclusive of any government taxes, duties or imposts payable in respect of the Supplies, unless stated otherwise on the front of these Conditions.

## **4.2 GST**

(a) Unless the context indicates otherwise, terms in this clause that are defined or used in *A New Tax System (Goods and Services Tax) Act 1999* have the same meaning as in that Act.

(b) Unless expressly stated to be inclusive of GST, the consideration for any taxable supply made by a party (**Supplier**) under or in connection with these Conditions does not include GST and may be increased by the Supplier by an amount equal to the GST payable on that taxable supply. The recipient need not make any payment for a taxable supply unless the Supplier has first issued a tax invoice.

(c) If an adjustment event occurs in relation to any supply made under or in connection with these Conditions the Supplier must issue an adjustment note to the recipient and the difference between the GST payable on the supply (taking into account any adjustments) and the amount of GST included in the price for the supply must be paid by or refunded to the recipient as applicable.

(d) Any amount to be reimbursed or indemnified in connection with these Conditions must be reduced by an amount equal to any input tax credit to which the party being reimbursed (or its representative member) is entitled in respect of that amount.

4.3 Any rebates, discounts, allowances or other reductions in price to which ABF is entitled or which are granted by the Seller are to be calculated on the GST inclusive Price. ABF will be entitled to any discount for prompt payment, bulk purchase or volume of purchase usually granted by the Seller whether or not shown in the Contract.

## **5 Insurance**

The Seller must take out and maintain for the duration of any Contract adequate insurance including in respect of product liability in respect of Goods, workers' compensation, property damage, professional liability and public liability for at least \$10,000,000 for each and every Loss.

## **6 Payment Terms**

6.1 The Seller must submit to ABF, at ABF's address set out in the Purchase Order, an invoice setting out the Price and the quantity of Supplies. Subject to the Seller's compliance with these Conditions, ABF will pay correctly rendered invoices within 60 days from the end of the month of their receipt or, if later, after acceptance of the Supplies by ABF, unless otherwise stated in the Purchase Order. If ABF disputes the amount of an invoice submitted by the Seller or considers that the Supplies to which the submitted invoice relates have not been provided in accordance with these Conditions, ABF is not obliged to pay the disputed invoice until the dispute is resolved.

6.2 ABF will be entitled to set off against the Price any sums owed to ABF by the Seller in relation to the Contract or otherwise.

## **7 Supply, Delivery, Risk and Title**

7.1 Time is of the essence. The Seller must supply the Supplies with written proof of delivery by the delivery date at the Site and is responsible for all costs associated with the delivery and provision of Supplies.

7.2 Risk in and title to the Goods passes to ABF on delivery to the Site and the payment of the whole or any part of the Price is without prejudice to any right of rejection or termination of ABF arising under these Conditions.

## **8 Inspection**

ABF may inspect all work performed under these Conditions and, where the Supplies are Goods, the Goods before they are dispatched. ABF reserves the right to inspect the Seller's premises and undertake a review of any manufacturing process, packaging or transport facilities used in respect of the Supplies or their delivery. An inspection does not release the Seller from any obligation imposed by these Conditions or at law.

## **9 When ABF May Reject Supplies**

Without prejudice to its rights under clause 7.2, ABF may reject any Supplies which are not supplied by the delivery date or which breach any warranty given in clause 10 or otherwise. The Seller must pay the cost of storing, handling and returning any Goods rejected by ABF. No delay by ABF in rejecting the Supplies will affect ABF's rights under this clause 9.

## **10 Seller's Warranties**

10.1 The Seller warrants that:

(a) the Seller and the Supplies comply with all laws, statutes, regulations, by-laws, orders, Australian standards, industry codes of practice, food safety programs and other requirements in any way affecting or applicable to the manufacture, packaging, handling, storage and transportation of the Supplies;

(b) the Supplies do not infringe any Intellectual Property Right of any person;

(c) where the Supplies include Goods, the Supplies:

(1) conform with the description provided by the Seller, the Specifications, the quantities stated in the Purchase Order and any samples submitted;

(2) are of merchantable quality, are fit for the purpose for which they are sold and are free from defects in material, workmanship and design;

(3) are new (unless otherwise specified); and

(4) are delivered free from any lien, bill of sale, charge or other encumbrance, and the Seller has good marketable title to them;

(d) where the Supplies include Services, the Supplies:

(1) will conform with the services listed in the Purchase Order and will be rendered with due care and skill; and

(2) together with any materials supplied with the Supplies, will be fit for ABF's intended purposes, or of a nature and quality that may reasonably be expected to achieve ABF's intended results; and

(e) the Supplies and all tools, materials and systems used by the Seller in performing its obligations under these Conditions will at all times process times, dates and date data accurately.

10.2 The Seller must notify ABF as soon as it becomes aware of any breach of any warranty in clause 10.1.

10.3 Nothing in these Conditions will operate to exclude any warranty, guarantee or condition on the part of the Seller implied by law, custom, trade or otherwise or any warranty, guarantee or condition expressly offered by the Seller or the Seller's own suppliers.

## **11 Cancellation of Orders**

ABF may cancel an undelivered Purchase Order, wholly or partly, whether or not the Seller has started production to meet that order, if a force majeure event (including fire, industrial dispute or any event beyond ABF's control) occurs. The Seller has no right to bring any action for any Loss of any nature against ABF arising out of such cancellation.

## **12 Seller's Indemnity**

12.1 The Seller indemnifies ABF against all Loss which ABF pays, suffers, incurs or is liable for in relation to:

(a) breach of any warranty, condition or guarantee (express or implied) given by the Seller in relation to the Supplies;

(b) any claim made or brought by third parties in relation to damage to property, injury of persons or death due to any defects or alleged defects in the Supplies; and

(c) the performance or breach of these Conditions by the Seller or its Representative, or any negligent act or omission on the part of the Seller or its Representative.

## **13 Packaging**

13.1 Goods must be packed to avoid damage during delivery or collection, loading and unloading. The Seller must mark all hazardous Goods with international danger symbols, show the name of any hazardous material in English and also provide emergency material in English in the form of written instructions, labels or markings.

13.2 The Seller must comply with any packaging requirements or specifications required by law or notified by ABF and ensure that the packaging is clear of all traces of phthalate and adipate plasticiser esters.

## **14 Recall of Goods**

14.1 The Seller must maintain a product recall program and provide a copy of such program to ABF on request.

14.2 The Seller must notify ABF immediately (and in writing within 24 hours) of any circumstances which may lead to a recall of the Supplies for hygiene, health or safety reasons and give full details of those circumstances and any action the Seller is taking or proposes to take in response.

14.3 In the event the Goods or any food stuff containing the Goods is subject to a product recall, the Seller indemnifies ABF against all Loss which ABF pays, suffers, incurs or is liable for in relation to such recall and the Seller must provide ABF at no cost with any assistance reasonably required by ABF relating to the recall.

## **15 Providing Services**

15.1 Where the Supplies provided by the Seller are Services, the Seller must comply with ABF's site rules and policies and all legislative and government requirements and will be solely responsible for workers' compensation insurance, taxation and other liabilities (including fringe benefits tax, group and payroll tax, superannuation and statutory leave entitlements) in relation to itself and its Representatives.

15.2 Without limiting any other provision of these Conditions, the Seller acknowledges that it is liable for, and indemnifies ABF against:

(a) any Loss which ABF pays, suffers, incurs or is liable for in connection with the Seller's failure to comply with its obligations under these Conditions; and

(b) any injury or damage of any kind to person or property, including ABF's employees and property, that occurs as a result of or in connection with the Seller or its Representatives providing the Services.

## **16 Food and Food Ingredients**

16.1 Where the Supplies include food or food ingredients the Seller must provide: (a) an identifying product code for all Supplies before supply; (b) sufficient details in respect of each constituent to enable ABF to comply with the Australia New Zealand Food Standards Code, including any changes, a reasonable time before supply; and

(c) a lot code identifier for all Supplies at the time of supply.

## **17 Confidential Information**

17.1 In this clause, "Confidential Information" means any trade secrets, know-how, technical, scientific, commercial, financial, product, market or pricing or other information of or about ABF to which the Seller gains access in connection with these Conditions.

17.2 The Seller must keep all Confidential Information secret unless it comes into the public domain (other than because of a breach of these Conditions or any law) and must not use that Confidential Information except as necessary for the purposes of these Conditions. On termination or expiry of these Conditions, the Seller must promptly return all Confidential Information to ABF or destroy it if ABF asks the Seller to do so.

## **18 Termination**

18.1 ABF may terminate any Contract by sending the Seller a written notice of that fact if:

(a) the Seller does not perform its obligations under these Conditions in a manner which is satisfactory to ABF;

(b) the Seller enters or threatens to enter into bankruptcy or any other form of insolvency, administration, management or receivership or the Seller enters into any scheme or arrangement with its creditor;

(c) the Seller ceases or threatens to cease to conduct business;

(d) the Seller fails to remedy to ABF's satisfaction any breach of these Conditions which in ABF's opinion can be remedied within 14 days after the day on which ABF issues the Seller a written notice requiring the Seller to remedy the breach; or

(e) in ABF's opinion the Seller or any Representative of the Seller is guilty of fraud, dishonesty or any other misconduct.

18.2 On the termination of any Contract by ABF or rejection of any Supplies by ABF the risk in any Goods already delivered will immediately revert to the Seller and ABF will not be obliged to return to the Seller any Goods unless the Seller has requested ABF to do so and the Seller undertakes to pay all the costs of returning the Goods.

## **19 Governing Law**

These Conditions will be governed by and construed in accordance with the laws of the State from which these Conditions are sent by ABF and each party irrevocably submits to the exclusive jurisdiction of the courts of that State.

## **20 Request for Quotation**

ABF is not bound to accept any quotation from the Seller and is not responsible for any Loss which the Seller pays suffers, incurs or is liable for in connection with preparation of a quotation.