

## **AB Food & Beverages Australia Pty Ltd (ABF) Terms & Conditions of Supply (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 Customer on the supply of Goods or Services by ABF;

**Goods** means any goods to be supplied to the Customer 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;

**Price** means the price of the Supplies excluding GST;

**Services** means services to be supplied by ABF to the Customers; and

**Supplies** means the 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 Orders and Specifications**

2.1 No order for Goods or Services submitted by any Customer is deemed to be accepted by ABF until confirmed in writing, or otherwise by ABF at its discretion.

2.2 The Customer agrees that these Conditions apply to the Contract to the exclusion of any other terms and conditions, including any contained on printed documents issued by the Customer 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 If Goods are to be manufactured and any process is to be applied to Goods by ABF in accordance with a specification submitted by a Customer, the Customer indemnifies ABF against any Loss ABF pays, suffers, incurs or is liable for in connection with any claim as a result of ABF's use of the Customer's specifications.

2.4 ABF may make any changes to the specification of the Supplies to conform to safety or other statutory requirements or, where the Supplies are to be supplied to ABF's specifications, which do not materially affect their quality or performance.

2.5 No order which has been accepted by ABF may be cancelled by the Customer except with the written agreement of ABF and on terms that the Customer indemnifies ABF against any Loss ABF pays, suffers, incurs or is liable for as a result of cancellation.

### **3 Price**

3.1 Unless otherwise agreed in writing or required by law, the Price is as stated on the front of these Conditions and is exclusive of any goods and services tax.

#### **3.2 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.

3.3 Any rebates, discounts, allowances or other reductions in price calculated by reference to the sales value to which the Customer is entitled or which are granted by ABF (**Discounts**) are to be calculated on the Price as stated on the front of these Conditions, that is after excluding any amount in respect of the GST payable by ABF on the relevant sales.

3.4 ABF may vary the Price by giving notice of variation to the Customer.

### **4 Delivery**

4.1 Delivery of Goods to the Customer occurs:

(a) in the case of Goods to be collected by the Customer at ABF's premises, at the agreed time for collection; or

(b) in the case of Goods to be delivered other than at ABF's premises, at the time of delivery, or, if the Customer fails to take delivery of the Goods, the time when ABF tendered delivery of the Goods.

4.2 The Customer will be responsible for all costs associated with the provision of the Supplies including any government taxes, duties or imposts payable in respect of the Supplies, unless stated otherwise on the front of these Conditions.

4.3 Any time which ABF quotes for delivery of the Goods is an estimate only.

4.4 ABF may cancel any order if it determines that it will be unable to deliver the Goods within a reasonable time.

4.5 The Customer must accept, in fulfilment of its order, delivery of plus or minus 10% of the quantity specified in its order and must pay for the quantity actually delivered.

4.6(a) Any containers used for the delivery of the Goods, including any baskets, doleys, pallets, palletcons, crates or tanks (**Containers**) owned by ABF at all times remain the property of ABF and title does not pass in any circumstances.

(b) The Customer must ensure that the Containers are kept clean, not damaged and are returned (at the request of ABF) to ABF in good condition.

### **5 Payment**

5.1 Where ABF has agreed to extend credit to the Customer, the Customer must pay for the Supplies in full within 30 days from the end of the month in which the Supplies were supplied, unless stated otherwise on the front of these Conditions.

5.2 ABF may require the Customer to pay cash in full prior to delivery.

5.3 If the Customer has not paid in full by the due date ABF may, without limiting any other rights it may have:

(a) charge the Customer interest on the overdue moneys at the average bid rate displayed at or about 10.30 am (Sydney time) on the date of delivery on the Reuters screen BBSY page for a term of 90 days plus 2%, from the date of delivery of the Supplies until paid in full; and

(b) pursue an action against the Customer for the Price for which payment has not been made, even though property in the Goods remains with ABF.

5.4 Agreed Discounts will be credited to the Customer by ABF. The Customer cannot deduct any Discounts from moneys owing by it to ABF.

5.5 The Customer must pay ABF in full for the Supplies delivered even if there was a delay in the delivery of the Supplies, or if the Customer disputes the quality, quantity or condition of the Supplies delivered or provided.

5.6 ABF is entitled to set off any sums owed by it to the Customer under a Contract or otherwise against the Price.

### **6 Risk & Title**

6.1 Risk of loss or damage to the Goods passes to the Customer on delivery.

6.2 Until the Customer has paid for the Goods in full and also paid all other moneys due and payable to ABF by the Customer:

(a) property in the Goods remains with ABF;

(b) the Customer holds the Goods as bailee of ABF; and

(c) the Customer must ensure that at all times the Goods are properly stored, separate from all other goods, protected, readily identifiable, clearly marked as owned by ABF and fully insured for an amount not less than the Price payable to ABF.

6.3 If the Customer sells the Goods or any goods incorporating or processed using the Goods (**Processed Goods**) to its customers the Customer, in its position as fiduciary, assigns to ABF the benefit of any claim against the customers and will hold on trust in a separate identifiable account, and account to ABF for, all proceeds of sale (or, in the case of Processed Goods, such part of the proceeds of sale as is equivalent to the Price of the Goods incorporated or used in the Processed Goods).

### **7 Right of Entry, Resale and Termination**

7.1 If the Customer:

(a) (being a natural person) dies or commits an act of bankruptcy;

(b) (being a corporation) does anything which entitles anyone to apply to wind it up or an administrator or receiver or receiver and manager of the Customer is appointed; or

(c) breaches any of these Conditions,

ABF may, without affecting its accrued rights and obligations, take possession of and resell the Goods or terminate, without ABF incurring any liability whatsoever to the Customer, any Contract immediately by notice to the Customer and withhold or suspend any deliveries of Goods or performance of Services pursuant to a Contract.

7.2 The Customer authorises ABF and any person authorised by ABF to enter premises where the Goods may be located to take possession of the Goods. The Customer indemnifies ABF against any Loss ABF pays, suffers, incurs or is liable for in connection with ABF retaking possession of the Goods or otherwise exercising its rights under this clause 7.

7.3 The parties agree that this clause 7 is not intended to create a charge or other form of security interest and that if, and to the extent that, as a matter of law, this clause creates a charge or any other form of security interest, the offending words must be deleted.

### **8 Shortfall, Damaged and Defective Goods**

8.1(a) The Goods will be considered to have been delivered in full in good condition unless the Customer notifies ABF in writing of the shortfall, damage or defect within 2 business days of receiving the Goods.

(b) If the Customer gives ABF notice under clause 8.1(a), it must also:

(1) preserve the Goods in the state in which they were received for 14 days after it gives ABF the notice (except for any normal deterioration due to the passing of time); and

(2) at ABF's option, allow ABF or its authorised representative to inspect the Goods or return some or all of the Goods to ABF (at ABF's expense) in the same condition as when received by the Customer (except for any normal deterioration due to the passing of time).

8.2 ABF is not obliged to accept the return of or allow any credit for Goods not sold by the Customer by the use-by date for the Goods.

### **9 Limitation of Liability**

9.1 Subject to clause 9.2, all conditions and warranties, express or implied, by law, custom or otherwise, and whether as to the condition, suitability, quality, fitness for any purpose or title to the Supplies or included or referred to in any order, delivery, receipt or other document of the Customer, are expressly negated and excluded.

9.2 If the *Trade Practices Act 1974* or any other legislation implies into these Conditions any term, condition or warranty and the legislation avoids or prohibits provisions in a contract excluding or modifying the application of, or liability under, any such term, condition or warranty, such term, condition or warranty will be deemed to be included in these Conditions provided that, to the extent that such legislation permits ABF to limit its liability for a breach of any such term, condition or warranty, then ABF's liability for such breach, will be limited, at ABF's option, to:

(1) in the case of Goods, either replacement of the Goods, the supply of products equivalent to the Goods, or the cost of replacing the Goods or acquiring products equivalent to the Goods; and

(2) in the case of Services, the supply of the Services again or the payment of the cost of having the Services supplied again.

9.3 To the extent permitted by law, ABF will not be liable for any Loss which the Customer pays, suffers, incurs or is liable for, for any reason, including as a result of delay, negligence or any act, matter or thing done or permitted or omitted to be done by ABF, its employees or agents in any way connected with or arising out of these Conditions.

9.4 The Customer indemnifies ABF against any Loss which ABF pays, suffers, incurs or is liable for in connection with any breach of these Conditions, or negligence, by the Customer.

### **10 Variation**

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

### **11 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.