

SALES CONDITIONS

1. APPLICATION OF SALES CONDITIONS

Unless otherwise agreed in writing by the Supplier (including in any formal supply agreement entered into by the Supplier and the Customer):

- (a) these Sales Conditions (as varied from time to time) will govern the supply of Goods by the Supplier to the Customer; and
- (b) if there is any inconsistency (whether expressly referred to or to be implied from these Sales Conditions or otherwise) between the provisions of these Sales Conditions and those of any document of the Customer, the provisions of these Sales Conditions prevail to the extent of the inconsistency.

2. ORDERING OF GOODS

2.1 Method of ordering

The Customer may order Goods from the Supplier either in writing, by telephone, by electronic means or by such other method as the parties may agree from time to time.

2.2 Offer to purchase

An order for Goods constitutes an offer to purchase the Goods by the Customer subject to the Sales Conditions. Each order must nominate a delivery point for the Goods.

2.3 Minimum requirements

The Supplier may require the Customer to order minimum quantities of Goods per delivery and/or minimum order quantities of Goods per week.

2.4 Acceptance of offer

The Supplier may at its absolute discretion decline any order either in whole or in part. Acceptance of an order by the Supplier takes effect on delivery (and not before) by the Supplier of the Goods to the delivery point nominated in the order. Upon delivery an agreement for the supply of Goods comes into existence between the Supplier and the Customer.

3. PRICE OF GOODS

3.1 Prices

Unless otherwise agreed or required by law, the Purchase Price is exclusive of GST (if any) but includes duty or other imposts (other than income tax) on the sale of the Goods.

3.2 Variation of Price

The Supplier may vary the price of the Goods at any time in its discretion but will use its reasonable endeavours to provide the Customer with 20 Business Days' prior written notice of any price increase.

4. DELIVERY

4.1 Method

Unless otherwise agreed in writing by the Supplier and the Customer, the Supplier may select the method of delivery and the carrier.

4.2 Timing

The Customer acknowledges and agrees that time is not of the essence in relation to delivery and that it must accept and pay for Goods even if the Goods are delivered after the requested date and that the Supplier is not liable for any Loss of any kind whatsoever arising from late delivery.

4.3 Instalments

The Supplier may deliver the Goods in instalments and the Customer must pay an amount for that instalment as notified by the Supplier in the Invoice. If the Supplier fails to deliver any instalment the Customer must still accept and pay for the balance of the Goods delivered. If the Customer fails to pay for any instalment the Supplier may at its absolute discretion: refuse to deliver any further instalments until all amounts payable, whether due or not, are paid; or terminate the agreement for the supply of the Goods and recover damages.

4.4 Containers

- (a) Containers owned by the Supplier at all times remain the property of the Supplier. The Supplier retains the right of possession of any containers not owned by it. Property to the Containers does not pass to the Customer in any circumstances.
- (b) All Containers are delivered to the Customer at its risk and the Customer must ensure that the Containers are: kept clean; not damaged; and are returned (at the request of the Supplier) to the Supplier, or such other person as the Supplier may request, in good condition.
- (c) The Supplier will keep a record of the number and type of Containers delivered to the Customer (which the Customer agrees will be conclusive evidence of the number and type) and may charge the Customer for the replacement cost or such lesser amount determined by the Supplier for each Container not returned or damaged by the Customer.
- (d) The Customer indemnifies the Supplier against and must pay the Supplier on demand the amount of all Losses arising out of or in connection with the provision to or possession or use by the Customer of the Containers delivered by the Supplier. For the purpose of this indemnity, the Customer is deemed to be in possession of a Container from the time of delivery by the

Supplier until the Supplier or the owner of the Container physically resumes possession.

5. PAYMENT AND CREDIT

5.1 Cash on Delivery

Subject to condition 5.2, the Customer must pay the Purchase Price for the Goods in advance or cash on delivery.

5.2 Credit Terms

If the Customer has made an application to the Supplier for a credit account and the Supplier has agreed in writing to supply Goods to the Customer on the Credit Terms, the Customer must pay for the Goods within the period of the Credit Term from the date of any Invoice for the Goods. The Credit Term will be notified to the Customer by the Supplier in writing. Unless otherwise agreed by the Supplier, payment must be by telegraphic transfer into a bank account nominated by the Supplier.

5.3 Disputes

If there is any dispute in relation to the Purchase Price, the Customer must provide the Supplier with written detailed reasons for the dispute within 14 days of the date of the Invoice and must pay the undisputed amount of the Purchase Price.

5.4 Resolution of Disputes

The Customer and the Supplier must make a bona fide attempt to resolve the dispute by negotiation within 14 days of the date that the Customer provides its reasons for the dispute before pursuing other remedies but the Supplier may during this period refuse to supply Goods to the Customer. If the Purchase Price stated on the Invoice is found to be correct, the Supplier may charge the surcharge set out in condition 5.6 on the disputed amount from the date that the disputed amount was due to the date it is paid.

5.5 Discounts - Credit to Invoice

Agreed discounts, rebates and allowances to which the Customer is entitled will be credited to the Customer in the Invoice or paid by the Supplier to the Customer by a means nominated by the Supplier. In no circumstances is the Customer permitted to deduct any discount, rebate or allowance from moneys owing by it to the Supplier.

5.6 Late Payment Consequences

If payment is not made when due, the Supplier may: withdraw any credit; not supply further Goods; and charge interest at a rate of 10% per annum which will be payable in addition to the Purchase Price. The Customer shall also pay to the Supplier upon demand an amount equal to any additional GST that may become payable by the Supplier as a result of the Customer's non-payment. Any legal & court fees and/or debt collection agency charges incurred by the Supplier in relation to recovering payment from the Customer shall also be payable by the Customer.

5.7 Supplier's Right of Set Off

The Supplier may set off any amount owed by the Supplier to the Customer from any amount due by the Customer to the Supplier.

5.8 Registration expenses

The Customer must, upon written request from the Supplier, pay the Supplier all registration and enforcement costs and expenses which the Supplier may incur in:

- (a) preparing, lodging or registering any Financing Statement or Financing Change Statement (each as defined in the PPS Act) in relation to any Security Interests that are granted to the Supplier under this Agreement; and
- (b) maintaining those registrations; and
- (c) enforcing any Security Interests granted to the Supplier under this Agreement.

6. Goods and Services Tax

6.1 Payment of GST

If GST is imposed on any Taxable Supply made by the Supplier under or in connection with this agreement, then to the extent that any consideration payable or to be provided by the Customer to the Supplier under any other clause in this Agreement for the Taxable Supply is exclusive of GST, the Customer must pay to the Supplier, in addition to that GST-exclusive consideration (and at the same time that the GST-exclusive consideration is payable), an additional amount for the Taxable Supply calculated by multiplying the prevailing GST rate by the GST-exclusive consideration for the relevant Taxable Supply, without any deduction or set-off.

6.2 Adjustments

If the Supplier determines on reasonable grounds that the amount of GST referable to any Taxable Supply under this Agreement differs for any reason from the amount of GST included in the Purchase Price, the amount of GST payable by the Customer under this clause, the amount of GST paid or payable by the Customer shall be adjusted accordingly and the Supplier shall provide a refund of any overpayment to the Customer. Where an Adjustment Event in relation to any Taxable Supply has occurred, the Supplier must issue an

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Adjustment Note that contains the prescribed information required by GST Law within 28 days.

7. RISK

Risk in the Goods passes to the Customer at the time the Goods are delivered to the Customer at the nominated delivery point.

8. TITLE

8.1 Retention of Title

Subject to condition 8.2, property in the Goods remains with the Supplier and does not pass to the Customer until the time ("Relevant Time") that the Customer has paid all amounts owing by the Customer to the Supplier in connection with those Goods ("Amount Due") and the Supplier has received the Amount Due in cleared funds.

8.2 Sales to Third Parties

Until the Relevant Time the Customer may, in the ordinary course of its business, use the Goods in, or subject the Goods to, any manufacturing, mixing or other value adding process ("Co-Mingled Goods") and/or sell and deliver any Goods or Co-Mingled Goods, as principal, to a third party and the Supplier will have:

- (a) any rights provided for under Part 3.4 of the PPS Act; and
- (b) a right to any Proceeds of the Goods or Co-Mingled Goods.

8.3 Right of Entry

The Customer must permit representatives of the Supplier to enter any premises under the control of the Customer where the Goods are held for the purpose of inspecting the premises and the Goods to check that the Customer is complying with this condition and, in circumstances covered by this condition 8, to retake possession of any relevant Goods.

8.4 Retaking Possession

If:

- (a) the Customer fails to pay any of the Amount Due; or
- (b) the Customer becomes or, in the reasonable opinion of the Supplier, is in danger of becoming, insolvent or bankrupt,

the Supplier may retake possession of the Goods.

8.5 Disposal on Retaking Possession

If the Supplier retakes possession of the Goods, the Supplier may sell or otherwise dispose of the Goods at its absolute discretion.

8.6 PMSI

- (a) The Customer acknowledges that under this condition 8 the Supplier has a Security Interest (for the purposes of the PPS Act) in the Goods and any Proceeds until the Customer has paid for the Goods in full. The Customer acknowledges that the Security Interest over the Goods (or the proceeds) is a "purchase money security interest" ("PMSI") under the PPS Act to the extent that it secures payment of the amounts owing in relation to the Goods. The Customer will do anything reasonably required by the Supplier to enable the Supplier to register the Security Interest, with the priority the Supplier requires, and to maintain the registration.
- (b) The Security Interest arising under this condition 8 attaches to the Goods when the Customer obtains possession of the Goods and the parties confirm that they have not agreed that any Security Interest arising under this condition 8 attaches at any later time.

9. WARRANTIES, LIABILITY, AND INDEMNITY

9.1 Exclusion of implied terms

Any condition or warranty which would be implied by law, including under the Sale of Goods Act 1923 (NSW), as a term of these Sales Conditions (and any agreement for the supply of Goods pursuant to these Sales Conditions) is excluded.

9.2 No Liability

- (a) In no event will the Supplier, its officers, employees or agents be liable for any consequential or indirect loss or damage, any loss of business or revenue, loss of profit, loss of opportunity, loss of goodwill or loss of business reputation arising out of or in connection with the supply of Goods, even if due to the negligence of the Supplier, its officers, employees or agents.
- (b) These Sales Conditions are not intended to exclude, restrict or modify any right which either party has under any Laws which may not be excluded, restricted or modified by agreement.

9.3 Notification of Claims

Where Goods are short delivered, defective or damaged on delivery, the Customer must notify the Supplier immediately on delivery or in writing (including any delivery note number and details of the claim) within 24 hours after delivery (or such other reasonable time agreed by the Supplier), unless there is an immediate danger to the health of consumers in which case the Customer must notify the Supplier immediately by telephone and must follow any product recall or withdrawal directions given by the Supplier. The Customer has no entitlement to return Goods which are outside the "use by" period of those Goods other than in accordance with this condition. The Customer is deemed to have accepted the Goods if they are not rejected in accordance with this condition.

9.4 Warranties by the Customer

The Customer warrants that it:

- (a) has product safety and product recall procedures in place which conform with the requirements of all Laws and the recommendations of the Australian and New Zealand Food Authority;
- (b) will not make any unauthorised use of or any claim to, intellectual or industrial property which pertains to the Goods or is the property of the Supplier;
- (c) will handle and store Goods at all times as directed by the Supplier or in the absence of such direction, in accordance with prevailing industry standards or procure them to be so;
- (d) will handle and store Containers safely, with due care, and in accordance with occupational or public health and safety requirements;
- (e) is acquiring any Goods for resupply or for the purpose of using them up or transforming them, in trade or commerce, in the course of a process of production or manufacture; and
- (f) is not acquiring any Goods wholly or predominantly for personal, domestic or household use or consumption.

10. FORCE MAJEURE

10.1 Force Majeure Events

The Supplier may suspend delivery or reduce the amount to be delivered if the Supplier is unable to deliver the Goods by reason of circumstances beyond its reasonable control, including (without limitation) strikes, lock-outs, accidents, war, fire, flood, explosion, shortage of power, breakdown of plant or machinery, shortage of raw materials from normal source of supply, act of God or any order or direction of any government, government authority or instrumentality.

10.2 Right of Termination

If the effects of the force majeure event continue for more than one calendar month, the Supplier at its absolute discretion may terminate the agreement for supply of Goods to which these terms and conditions apply.

10.3 No Claim

The Customer will have no claim against the Supplier, and the Supplier will not be liable for any Loss arising from any suspension, reduction or failure to deliver arising from the circumstances referred to in condition 10.1 or any termination pursuant to condition 10.2.

11. ALTERATION TO RANGE

The Supplier reserves the right, at its absolute discretion, to add to or remove from the range of products, including the Goods, supplied by the Supplier, and may do so at any time without notice to the Customer.

12. THE VIENNA CONVENTION

The United Nations Convention on Contracts for the International Sale of Goods 1980 does not apply to these Conditions.

13. PERSONAL PROPERTY SECURITY INTERESTS

- (a) The Customer acknowledges that under this agreement the Customer grants Security Interests to the Supplier including without limitation a retention of title in respect of the Goods (in accordance with condition 8).
- (b) The Customer acknowledges that this agreement constitutes a Security Agreement.
- (c) The Customer acknowledges that the Supplier may perfect its Security Interests by lodging a financing statement on the Personal Property Securities Register established under the PPS Act.

14. PPS ENFORCEMENT PROVISIONS

- (a) All of the enforcement provisions of Chapter 4 of the PPS Act apply to all of the Security Interests created under or referred to in these terms, except as excluded by (b).
- (b) The following provisions of the PPS Act will not apply to the enforcement of these terms:
 - (i) section 95 (notice of removal of accession), to the extent that it requires the Supplier to give a notice to the Customer;
 - (ii) subsection 121(4) (enforcement of liquid assets – notice to grantor);
 - (iii) section 130 (notice of disposal), to the extent that it requires the Supplier to give the Customer a notice;
 - (iv) paragraph 132(3)(d) (contents of statement of account after disposal);
 - (v) subsection 132(4) (statement of account if no disposal);
 - (vi) section 135 (notice of retention);
 - (vii) section 142 (redemption of collateral); and
 - (viii) section 143 (reinstatement of security agreement).

15. GENERAL

15.1 Waiver

The non-exercise of or delay in exercising any power or right of a party does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other or further exercise of it or the exercise of any other power or right. A power or

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right may only be waived in writing, signed by the party to be bound by the waiver.

15.2 Severability

Any provision in this agreement which is invalid or unenforceable in any jurisdiction is to be read down for the purposes of that jurisdiction, if possible, so as to be valid and enforceable. Otherwise the provision may be severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions of this agreement or affecting the validity or enforceability of that provision in any other jurisdiction.

15.3 Variation to Sales Conditions

The Supplier may from time to time at its absolute discretion vary the Sales Conditions.

15.4 Governing Law

The Supplier and the Customer accept the law of New South Wales as the proper law of the agreement and agree to submit to the non-exclusive jurisdiction of the Courts in New South Wales and any court hearing appeals from those Courts.

15.5 Assignment

- (a) The Customer's rights arising out of or under these Sales Conditions are not assignable by the Customer without the Supplier's written consent.
- (b) The Supplier may assign its rights under these Sales Conditions, including without limitation to any related body corporate of the Supplier.

15.6 Notice

The Supplier does not need to give the Customer any notice under the PPS Act (including a notice of a Verification Statement) unless the notice is required by the PPS Act and that requirement cannot be excluded.

15.7 Confidentiality

The parties agree that neither party will disclose to an "interested person" (as defined in section 275(9) of the PPS Act) or any other person, any information of the kind described in section 275(1) of the PPS Act. The Customer will not authorise the disclosure of any information of the kind described in section 275(1) of the PPS Act.

16. INTERPRETATION

16.1 Definitions

In this agreement:

"**Account**" means an account within the meaning of the PPSA;

"**Adjustment Event**" has the meaning given in section 195-1 of the GST Act;

"**Adjustment Note**" has the meaning given in section 195-1 of the GST Act;

"**Containers**" means any containers, pallets, palletcons, crates, dollies or tanks used for the delivery of Goods, but excludes any cardboard packaging;

"**Contract**" means any contract between the Customer and the Supplier in relation to the Goods;

"**Customer**" means the purchaser of the Goods as set out in the Invoice or relevant Credit Application;

"**FIS**" means free into the Customer's nominated store in state capital cities;

"**Goods**" means the goods delivered by the Supplier to the Customer and the subject of an order by the Customer;

"**GST**" means goods and services tax and has the same meaning as in section 195-1 of the GST Act;

"**GST Act**" is a reference to A New Tax System (Goods and Services Tax) Act 1999 (Cth) as amended;

"**Invoice**" means the document (including a statement) which may be provided to the Customer on or after delivery of the Goods describing those Goods, their price and which may contain these Sales Conditions in an approved format as set out in section 29-70 of the GST Act;

"**Laws**" means the common law and the laws of the Australian Commonwealth, State or Territory legislation;

"**Loss**" means any liability, loss, cost, expense or damage;

"**PMSI**" means a 'purchase money security interest' as defined in section 14 of the PPS Act;

"**PPS Act**" means the Personal Property Securities Act 2009 (Cth);

"**Proceeds**" means 'proceeds' as defined in section 31 of the PPS Act;

"**Purchase Price**" means the price to be paid for the Goods as shown as the total on the Invoice calculated by reference to the Supplier's current price list for the Customer and such other terms as may be agreed by the Customer and the Supplier from time to time;

"**Security Agreement**" means a security agreement within the meaning of the PPS Act;

"**Security Interest**" means a security interest within the meaning of the PPS Act;

"**Supplier**" means Goodman Fielder Consumer Foods Pty Limited or any related body corporate of that entity that supplies Goods to the Customer from time to time at the request of the Customer;

"**Taxable Supply**" has the meaning given in section 195-1 of the GST Act;

"**Verification Statement**" means a verification statement within the meaning of the PPS Act.