

PURCHASE ORDER TERMS

1 General

- (a) These terms (**terms**) apply to the supply and the shipment of products or related services (**Products**) by the **Supplier** named on the Purchase Order agreed between the parties, to Ausfine Foods International Pty Ltd (**Ausfine**). A Purchase Order may be in any form provided or accepted by Ausfine from time to time. These terms together with the Purchase Order and any terms incorporated under them form a binding contract between the parties, with effect from the time the Purchase Order is exchanged and agreed.
- (b) These terms prevail over any inconsistent terms in any document of the Supplier or a third party, such as a printed consignment note, quotation, bill of lading or terms of sale, including even where one of Ausfine's representatives signs such a document.
- (c) Ausfine does not require a written communication from the Supplier of acceptance of these terms.
- (d) These terms are intended to apply in conjunction with the Incoterms, but if there is any conflict between the provisions of Incoterms and these terms, these terms prevail.
- (e) In these terms, unless the context otherwise requires:
 - (i) Headings - the headings of the various sections and clauses of these terms are for convenience of reference only and do not modify, define, expand or limit any of the terms or provisions of these terms.
 - (ii) Plurals, Genders, Persons - the singular includes the plural and vice versa. Words importing one gender include every gender. A reference to a person includes a corporation and vice versa.
- (f) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (g) A reference to conduct includes an omission, statement and undertaking, whether or not in writing.
- (h) A reference to a right or obligation of any two or more persons confers that right, or imposes that obligation, as the case may be, jointly and severally.

2 Risk and Title to Product

- (a) The risk in Products will pass to Ausfine in accordance with the relevant provision of Incoterms or where Incoterms do not for any reason apply immediately upon delivery of the Products by the Supplier to Ausfine (or Ausfine's nominated recipient for the Products) at the destination for delivery shown in the Purchase Order.
- (b) Title in the Products passes to Ausfine upon payment for the Products.

3 Shipment

- (a) The Supplier must use its best commercially reasonable efforts to comply with the shipment period and other arrangements for delivery set out in the Purchase Order provided to Ausfine and any other shipping requirements, but such periods are estimates only and no guarantee is given.
- (b) It is the responsibility of the Supplier to ensure, and to bear the costs of ensuring, that:
 - (i) the Products comply with applicable laws and regulations at the places of origin and destination, in relation to the nature, condition, packaging, certification, weighing, administrative documents and approvals, Product documents and materials, labelling, palletisation, handling, transportation, storage, stamping and like requirements; and
 - (ii) the Products are packed in a manner having regard to their nature which is adequate to withstand the ordinary risk of handling, storage or carriage, that the Products are accurately described in writing, and the packaging or containers used are in fit and proper condition.
- (c) Ausfine may provide instructions to the Supplier as to the requirements in clause 3(b) (if any) including temperature control for the Products, prior to confirmation of the Purchase Order, or promptly on confirmation. If Ausfine's requirements lead to additional work or costs for the Supplier not accounted for in the agreed Purchase Order, the requirements are subject to agreement.
- (d) The Supplier will use reasonable endeavours to meet Ausfine's requirements in clause 3(b). Ausfine may advise the Supplier of any shortfalls of its requirements in clause 3(b). Where the Supplier has failed to meet agreed requirements in clause 3(b), the Supplier must re-perform the work at no additional charge to Ausfine, and pay any reasonable third party costs incurred by Ausfine arising from the shortfall.

4 Payment of Purchase Price

- (a) The purchase price for the Products, terms of payment and all other related payment provisions are as set out in the Purchase Order.
- (b) Where any agreed changes to the Purchase Order result in a change to the type or volume of Products purchased, the purchase price is adjusted accordingly. The Supplier must not apply any additional charge, penalty, cost recovery, adjustment or cancellation charge in respect of the change to the Purchase Order without the prior written consent of Ausfine.
- (c) Any change to the price of a Product the subject of a Purchase Order must be agreed by the parties in writing.

5 Cargo Insurance

- (a) The requirements in relation to cargo insurance are as set out in the Purchase Order.
- (b) If the Purchase Order does not provide for cargo insurance, the Supplier is responsible for insuring the Products at its own cost.

6 Rights of Ausfine to Terminate

Ausfine may immediately by written notice terminate the purchase of Products from the Supplier, and/or these terms, without prejudice to either party's rights existing immediately prior to termination, if the Supplier:

- (a) fails to observe or comply with anything required to be done by the Supplier under these terms, provided that if the breach is capable of being rectified, Ausfine has provided the Supplier with a breach notice in writing requiring rectification within a reasonable period of at least 10 days, and the breach remains unrectified after that period; or
- (b) becomes affected by one or more Insolvency Events.

7 Rights of Supplier to Terminate

The Supplier may immediately by written notice terminate the sale of Products to Ausfine, and/or these terms, without prejudice to either party's rights existing immediately prior to termination, if Ausfine:

- (a) fails to pay undisputed charges for a period longer than two months after receiving a breach notice requiring it to do so; or
- (b) becomes affected by one or more Insolvency Events.

8 Final and Binding Arbitration

- (a) A dispute that has not been resolved by the parties within 10 Business Days of after one party notifies in writing the other party of a dispute must

be decided by way of arbitration under the *Commercial Arbitration Act 2011* (Vic).

- (b) This clause 8 does not prejudice the rights of a party at any time to seek urgent interlocutory or injunctive, declaratory or other interlocutory relief (including for specific performance) against the other parties in order to protect or preserve its rights under these terms.

9 Notice and Service of Process

- (a) Any notice, consent, instruction or other communication to be given by either the Supplier or Ausfine in connection with these terms will be effective only if given in English and in writing, signed and delivered either:
 - (i) personally;
 - (ii) by post; or
 - (iii) by e-mail,to the recipient's place of business.
- (b) Any notice will be taken to have been received, if:
 - (i) served personally, the same day;
 - (ii) posted, 3 Business Days after it is posted;
 - (iii) emailed, at the time of successful receipt by the recipient (which may be evidenced by the transmission of an automatic electronic read receipt).

10 Supplier Warranty and Guarantees

- (a) The Supplier warrants that:
 - (i) it will comply with all applicable laws, rules, and regulations in the jurisdictions where the Products are sold, dispatched and delivered, including in relation to the nature, condition, packaging, handling, storage, weight, sale, distribution, carriage and transportation of the Products including all laws prescribed by the RSA, and the Heavy Vehicle National Law;
 - (ii) it will comply with quarantine laws (including in Australia under the *Biosecurity Act 2015* (Cth)), food safety requirements (including under the *Imported Food Control Act 1992* (Cth) and the Australia New Zealand Food Standards Code (FSANZ));
 - (iii) it will provide all such assistance, information and documentation that may be necessary to enable Ausfine to comply with any applicable law and regulations for the Products;
 - (iv) the Products match the description set out in the Purchase Order and any documents of the Supplier incorporated by reference, and any samples provided by the Supplier to Ausfine; and

- (v) the Products are of merchantable quality, free of defects, and fit for the purpose for which products of the same kind are commonly supplied or bought and for any other purpose that the Supplier specifies.
- (b) Without limiting any other rights that Ausfine may otherwise have under applicable laws and regulations including the Australian Consumer Law, if any Product which is delivered is defective or does not comply with the warranties at clause 10(a), Ausfine may, at its option, require the Supplier to:
 - (i) replace the Products;
 - (ii) supply equivalent Products; or
 - (iii) pay Ausfine for the cost of replacing the Products or of acquiring equivalent Products,and in each case additionally compensate Ausfine for its reasonable costs incurred in terms of time, resources, internal and out-of-pocket expenses, and delay arising from the defect.

11 Damages and set-off

- (a) Each of Ausfine and the Supplier acknowledges that it must pay to the other party (as applicable) on demand the full cost of any damages arising from or in connection with breach by it of these terms, and indemnifies the other party (as applicable) in full against all loss, damage, claim or expense so arising except to the extent that the loss and damage was directly caused by or in connection with a grossly negligent, unlawful or willful act or omission by the other party (as applicable) or its employees, agents or subcontractors.
- (b) Each of Ausfine and the Supplier is authorized to the fullest extent permitted by law, to set-off and apply any amount owed to it from the other party (as applicable) under any agreement or arrangement, against any amount which it owes to the other party (as applicable).

12 Force Majeure

- (a) If a party is affected, or likely to be affected, by a Force Majeure Event:
 - (i) the affected party must immediately give the other party prompt written notice of that fact including full particulars of the Force Majeure Event and an estimate of its likely duration; and
 - (ii) the obligations of the parties under these terms are suspended to the extent to which they are affected by the relevant Force Majeure Event as long as the Force Majeure Event continues.

- (b) The affected party must use its best endeavours to remove, overcome or minimise the effects of the Force Majeure Event as quickly as possible. However, this does not require the affected party to settle any industrial dispute in any way it does not want to.
- (c) If a Force Majeure Event continues for a period of 30 days or more, then either party may terminate these terms by giving 10 days notice.
- (d) For the purposes of this clause 12, **Force Majeure Event** means any cause(s) beyond the reasonable control of the party affected including but not limited to acts of God, civil disorder, embargoes, quarantine, war, labour disputes, material shortages, damage to plants, equipment or facilities necessary to produce the Product, interruptions to, restrictions or shortages of carriage or transportation, or acts or omissions of public authorities including local, state or federal governments (including changes in laws, statutes or regulations).

13 Taxes

- (a) Ausfine will pay and indemnify the Supplier in respect of goods and services or value added tax and stamp duty applying to the sale and shipment of the Products (**Taxes**).
- (b) If Taxes are assessed against the Supplier, the Supplier may include in its invoice and Ausfine must pay to the Supplier an amount that ensures that the Supplier receives the same amount, after such Taxes, as it would have received had such Taxes not been assessed.
- (c) Other than the Taxes described in clause 13(a), any charges, impost, tariffs, port charges, import or export charges, levies, duties, withholding taxes and other taxes and charges applying to the sale and shipment of the Products are the responsibility of the Supplier, unless a Purchase Order otherwise specifies. If a Purchase Order specifies that Ausfine will pay the Supplier an amount levied against the Supplier, on request the Supplier will provide Ausfine with a certificate evidencing the Supplier's discharge of such Taxes.
- (d) The Purchase Order may vary the terms of this clause.
- (e) Words and expressions used in these terms which have a defined meaning in the *A New Tax System (Goods and Services Tax) Act* (Cth) (**GST Act**), have the same meaning in this clause as in the GST Act. Unless expressly stated otherwise, all consideration to be provided under these terms and the Purchase Order is expressed as exclusive of GST. If GST is payable by a supplier on any supply made under this contract, the recipient will, upon receiving a

tax invoice from the supplier, pay to the supplier an amount equal to the GST payable on the supply without deduction or set off.

road safety regulation of heavy vehicles and Chain of Responsibility legislation and the Heavy Vehicle National Law and the laws governing the carriage of goods by road.

14 Assignment

The Supplier and Ausfine must not assign their benefits or novate their obligations under these terms without the prior written consent of Ausfine or the Supplier (whichever is applicable in the circumstances).

15 Variation

Any variation, cancellation or waiver of these terms must be in writing and signed by an authorised representative of each of Ausfine and the Supplier.

16 Governing Law

These terms) will be governed by and will be construed in accordance with the laws in force in Victoria, Australia.

17 Definitions

Business Day means a day (not being a Saturday, Sunday or public holiday) on which Australian banks (as defined in section 9 of the *Corporations Act 2001* (Cth)) are open for general banking business in the capital city of Victoria, Australia.

Heavy Vehicle National Law means the Heavy Vehicle *National Law Act 2012* (Qld) as enacted in the Queensland Parliament and adopted by the States and Territories, including any Regulations made under that Act and any other legislation enacted by the Commonwealth, a State or a Territory for the purpose of giving effect to the Heavy Vehicle National Law or the Council of Australian Governments' Intergovernmental Agreement on Heavy Vehicle Regulatory Reform dated 25 February 2010.

Insolvency Event means being in liquidation or provisional liquidation or under administration, having a controller or analogous person appointed to it or any of its property, being unable to pay its debts or otherwise insolvent, ceasing to be of full legal capacity or otherwise becoming incapable of managing its own affairs for any reason.

Incoterms means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when these terms are supplied under.

Products means the products, goods and services described on the Purchase Order, and any other products sold by the Supplier to Ausfine.

Purchase Order means the purchase order made under these terms between the Supplier and Ausfine for the Products.

RSA means those State and Commonwealth Government Authorities in Australia responsible for