

## GEORGE WESTON FOODS LIMITED (GWF) Terms of Supply (Terms)

**1 Definitions and interpretation** 1.1 **Bulk Goods** means Goods which are packaged, supplied or delivered by GWF in multiple quantities, for any reason, and or in such a way as to make it impracticable for GWF to fulfil exact quantities or volume of the Goods; **Confidential Information** means any trade secrets, know-how, technical, scientific, commercial, financial, product, market or pricing or other information of or about GWF in the Order or to which Customer gains access in connection with this Contract; **Contract** means the contract entered into between GWF and Customer for the Supplies pursuant to an Order and these Terms; **Customer** means the customer nominated in the Contract and any of its officers, employees, agents, contractors or sub-contractors; **Goods** means any goods to be supplied by GWF to Customer; **Intellectual Property** means all intellectual property rights throughout the world, whether present or future, registered or unregistered, including the right to apply for registration of any such rights; **Loss** means any damage, loss, liability, cost, charge, expense, penalty, outgoing or payment (whether direct or indirect, consequential or incidental) and includes any economic loss or damage; loss of reputation; loss in connection with any claim against GWF by any person; loss of revenue or actual or potential profits; any costs of repair; lost opportunity, including the opportunity to enter into or complete an arrangement with a third party; and legal costs and expenses on a full indemnity basis; **Order** means the order for Supplies created or accepted by GWF; **Price** means the price of the Supplies excluding GST; **Services** means any services to be supplied by GWF to Customer; **Product Recall** means recall, either voluntary or as a result of government direction, withdrawal from sale or holding of the Goods or any food containing the Goods; **Specifications** means GWF's specifications for Goods; **Supplies** means the Goods and/or Services (as the case may be). 1.2 Specifying anything after the words "including" or similar expressions does not limit what else is included unless express wording to the contrary.

**2 Orders and Specifications** 2.1 GWF has no obligation to supply Goods and/or Services to Customer except as set out in an Order. No order for Goods or Services submitted by Customer is an Order until confirmed in writing by GWF. 2.2 No Order may be cancelled by Customer except with the written agreement of GWF and on terms that Customer indemnifies GWF against any Loss GWF pays, suffers, incurs or is liable for as a result of cancellation, provided that GWF does not directly cause such Loss. 2.3 Customer agrees that these Terms apply to the Contract to the exclusion of any other terms, including any on printed documents issued by Customer at any time and are in addition to all other rights which GWF may have at law. Any waiver by GWF of any right is not a waiver of any other or future rights GWF may have. 2.4 If Goods are to be manufactured or processed by GWF in accordance with a specification submitted or varied by Customer, Customer indemnifies GWF against any Loss GWF pays, suffers, incurs or is liable for in connection with any claim as a result of GWF's use of such specifications, provided that GWF does not directly cause such Loss. 2.5 GWF may make any changes to the Specifications, the specifications of the Supplies or any packaging to conform to safety or other statutory requirements. 2.6 If an order for Supplies is placed by Customer or its agent outside of any agreed minimum lead time, GWF shall not be obliged to accept such order, but if GWF does accept, Customer is obliged and agrees to pay all additional costs or expenses reasonably incurred by GWF, including those associated with delivery, or increases in pricing.

**3 Price and GST** 3.1 Unless the context indicates otherwise, terms defined or used in *A New Tax System (Goods and Services Tax) Act 1999* have the same meaning as in that Act. 3.2 Any rebates, discounts, allowances or other reductions in price calculated by reference to the sales value to which Customer is entitled or which are granted by GWF (**Discounts**) are to be calculated on the Price. 3.3 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 Terms does not include GST and may be increased by the Supplier by an amount equal to the GST payable on that taxable supply. If an adjustment event occurs 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. Any amount to be reimbursed or indemnified in connection with these Terms must be reduced by an amount equal to any input tax credit to which the party being reimbursed is entitled in respect of that amount. 3.4 GWF reserves the right to, on not less than 7 days' notice prior to delivery, amend the Price (including for any Goods to be supplied under an agreement to which these Terms apply for the sale, purchase and supply of a quantity of Goods over a period of time and notwithstanding anything contained in such agreement) to reflect: (i) any significant change in costs to GWF of labour, materials, or delivery; or (ii) an increase or imposition of any tax, duty or other levy; (iii) any variation in exchange rates; (iv) any change of delivery dates requested by Customer; (v) any change in quantities or specifications of the Supplies requested by Customer; or (vi) any delay caused by supply or non-supply of instructions of Customer. 3.5 If Customer does not want to accept any amendment to Price, made in accordance with clause 3.4, Customer can cease any or all future orders of Supplies from GWF.

**4 Delivery** 4.1 Delivery of Goods to Customer occurs, in the case of Goods to be collected by Customer from GWF, at the agreed time for collection, or in the case of Goods to be delivered, at the time GWF tendered delivery of the Goods. Any time which GWF quotes for delivery of Supplies is an estimate only. 4.2 Customer bears all costs associated with the provision of the Supplies including any government taxes, duties or imposts, unless stated otherwise in the Order. 4.3 Where Customer fails to collect or take delivery of Supplies at an agreed time GWF may charge Customer a service fee to reflect any associated costs to GWF. 4.4 Any containers used for the delivery of Goods or other equipment of GWF provided for use by Customer (**Equipment**) at all times remains the property of GWF and title does not pass in any circumstances. Customer must keep the Equipment clean and undamaged and return in good condition post delivery of Supplies. 4.5 Customer acknowledges that delivery of Bulk Goods supplied may vary in quantity from the quantity specified under the Order and that it must (up to 5% variation) accept and pay for the quantity actually delivered.

**5 Payment** 5.1 GWF may, but is not obliged to, agree to extend credit to Customer in respect of any Order. If GWF has agreed to extend credit to Customer, Customer may pay for the Supplies in full within 30 days from the end of the month in which the Supplies were supplied, unless otherwise determined by GWF. However, GWF may revoke any offer to extend credit to Customer in respect of any Order and may require Customer to pay cash in full prior to delivery of any Supplies at any time. 5.2 Discounts will be credited to Customer by GWF, Customer cannot deduct any Discounts from moneys owing by it to GWF, Customer must pay GWF in full for Supplies delivered even if a delay in the delivery of the Supplies or Customer disputes the quality, quantity or condition of Supplies delivered or provided. GWF is entitled to set off any sums owed by it to Customer against the Price. 5.3 If Customer has not paid in full by the due date GWF may, without limiting any other rights, charge Customer interest on the overdue moneys at the cash rate (displayed about 11.00 am Sydney time on the Reserve Bank of Australia website on the date of delivery) plus 2%, from delivery of the Supplies until paid in full, and take action against Customer for the Price for which payment has not been made, even though title in the Goods remains with GWF.

**6 Risk & Title** 6.1 Risk of loss or damage to the Goods passes to Customer on delivery. 6.2 Until Customer has paid for the Goods in full and also paid all other moneys due and payable to GWF, title in the Goods remains with GWF, Customer holds the Goods as bailee of GWF and must ensure the Goods are properly stored, separate from all other goods, protected, readily identifiable, clearly marked as owned by GWF and fully insured for an amount not less than the Price. 6.3 Customer acknowledges that the Contract constitutes a security agreement under the *Personal Property Securities Act 2009 (PPSA)*, that GWF has a security interest in the Equipment, Goods (including any Goods to be supplied in the future) and any proceeds, GWF's rights in the Goods established under this clause 6 are a 'purchase money security interest' (**PMSI**) and GWF will have a PMSI in proceeds of those Goods. Customer agrees to do anything required by GWF to enable GWF to register the security interest and to maintain the registration including by paying all costs, expenses and other charges incurred by GWF in preparing, lodging or registering any financing statement or financing change statement in relation to any such security interest, maintaining those registrations, and enforcing any security interests. 6.4 Customer shall not charge the Goods in any way, nor grant or give any interest in the Goods while they remain the property of GWF, nor allow any third party to acquire a security interest in the Goods. 6.5 If Customer fails to comply with any Terms in this clause 6 then Customer must return any Goods on which there are outstanding amounts owing on request; Customer authorises GWF and any person authorised by GWF to enter premises where the Goods may be located to take possession of the Goods; GWF may retain, sell or otherwise dispose of those goods. 6.6 Customer agrees to the extent permitted under the PPSA, that the following provisions will not apply when enforcing these Terms: s95 and s130 to the extent it requires GWF to give a notice to Customer; s121(4); s132(3)(d); s132(4); ss135; s142; and s143, unless otherwise agreed by GWF and Customer will not disclose, nor authorise the disclosure of, any information of the kind described in s275(1) to any person. 6.7 Unless the context indicates otherwise, terms defined or used in the PPSA have the same meaning as in that Act.

**7 Force Majeure** GWF is entitled (without liability to Customer) to delay, vary or cancel the performance of any of its obligations if and to the extent that it is materially or substantially prevented from, hindered or delayed in the performance of any of its obligations by normal route or means of delivery or at costs commercially acceptable to GWF due to any occurrence or circumstances beyond its reasonable control including, without limitation: acts of God, governmental actions, changes to federal, state or territory laws, orders or regulations, epidemics, pandemics, strikes or other labour disputes (whether or not relating to GWF's workforce), unexpected cost increases or restraints or delays affecting carriers, lock-outs, accidents, war or national emergency, terrorism or the threat of terrorism, protests, riot, civil commotion, explosion, flood, storm, theft, malicious damage, fire, natural disasters, extreme adverse weather, reduction in or unavailability of energy sources, breakdown of plant or machinery, restrictions or delays affecting delivery of the Supplies, default of suppliers or subcontractors, shortage or unavailability of raw materials from normal sources of supply or the amendment or coming into force of any regulatory provision affecting the import or export of the Supplies or any ingredients or materials for production of the Supplies (each a **Force Majeure Event**).

**8 Shortfall, Damaged and Defective Goods** 8.1 Goods will be considered to have been delivered in full in good condition unless Customer notifies GWF in writing of the shortfall, damage or defect within 5 business days of delivery. 8.2 If Customer gives GWF notice under clause 8.1, it must preserve the Goods in the state in which they were delivered for 14 days after notice and at GWF's option, allow GWF or its representative to inspect the Goods or return some or all Goods to GWF in the same condition as delivered, except in each case for any normal deterioration due to the passing of time. 8.3 GWF is not obliged to accept return of or allow credit for Goods not sold by Customer by the use-by date for the Goods.

**9 Right of Entry, Resale and Termination** 9.1 If Customer (a) enters, takes any step to enter, or threatens to enter into bankruptcy or any form of insolvency, process including administration, deed of company arrangement, receivership, liquidation, provisional liquidation, a scheme or arrangement with its creditors, or makes a general assignment for the benefit of creditors; (b) ceases or threatens to cease to carry on all or a material part of its business; (c) breaches any of these Terms in a way that has, or is likely to have, a material adverse impact on GWF's interests; or (d) in GWF's reasonable opinion, fails to perform its obligations in a satisfactory manner, engages in unlawful or dishonest activity or fraud, has a conflict of interest or any other misconduct; GWF may, without affecting its accrued rights and obligations, take possession of and resell the Goods or terminate any Contract immediately by notice to Customer (without liability to Customer) and withhold or suspend any deliveries of Goods or performance of Services pursuant to the Contract, and any obligation of GWF to extend credit to the Customer ceases. 9.2 GWF may terminate any Contract at any time by giving Customer no less than 30 days' notice in writing, or if a Force Majeure Event continues for 30 days or more, on immediate notice to Customer.

**10 Confidential Information and Intellectual Property** 10.1 Customer must keep all Confidential Information secret unless it comes into the public domain (other than because of a breach of this Contract or any law) and must not use Confidential Information except as necessary for the purposes of this Contract. On termination or expiry of this Contract, Customer must promptly return all Confidential Information to GWF, or destroy it if GWF requires. 10.2 Intellectual Property owned by either party at the commencement of the Contract remains the property of that party. Any Intellectual Property developed or created during the performance of the Contract vests in GWF immediately upon its creation and Customer assigns all right, title and interest in such Intellectual Property to GWF and will do any further acts or execute any documents required by GWF to effect such assignment.

**11 Limitation of Liability and Indemnity** 11.1 Customer may have certain rights under the Australian Consumer Law, which is Schedule 2 to the *Competition and Consumer Act 2010* (Cth) including consumer guarantees that the Goods and Services GWF provides to Customer will be of acceptable quality, fit for the purpose disclosed and carried out by GWF with due care and skill. These Terms do not exclude or limit these guarantees or any other statutory rights that Customer may have under applicable laws which cannot be excluded by agreement. 11.2 Subject to 11.1, to the extent permitted by law: (a) all guarantees, conditions and warranties, express or implied, by law, including Australian Consumer Law, custom or otherwise are excluded; and (b) to the extent such guarantees, conditions and warranties cannot be excluded the aggregate liability of GWF arising under or in connection with this Contract in any calendar year (whether in contract, tort (including negligence), statute, equity or otherwise) is limited to the Price paid by Customer to GWF in that calendar year, or AUD\$100,000, whichever is the lesser. 11.3 To the extent permitted by law, GWF will not be liable for: (a) any Loss which Customer pays, suffers, incurs or is liable for any reason, including as a result of delay, negligence or any act, advice, matter or thing done or permitted or omitted to be done by GWF, its employees or agents in any way connected with or arising out of these Terms; or (b) any loss of profit or any loss which does not arise according to the usual course of things from GWF's breach of this Contract. 11.4 Customer indemnifies GWF against any Loss which GWF pays, suffers, incurs or is liable for in connection with any breach of these Terms, or negligence, by Customer or with GWF exercising its rights under these Terms to the extent that such Loss was not caused by an act or omission of GWF.

**12 Product Recall Procedure** 12.1 If the Customer receives any customer complaint in respect of the Goods, the Customer must notify GWF immediately, and as soon as practicable provide GWF with a written summary of the complaint. 12.2 If the complaint is due to a fault in the Goods supplied by GWF, GWF will be responsible for addressing the customer complaint and the instigation and conduct

of any Product Recalls. 12.3 The Customer must cooperate with GWF in addressing any customer complaints and must immediately comply with GWF's directions in relation to Product Recalls.

**13 Anti-corruption**

13.1 The Customer will not, and nor will any of its officers, employees, shareholders, representatives or agents, directly or indirectly, either in private business dealings or in dealings with the public sector, offer, give or agree to offer or give (either itself or in agreement with others) any payment, gift or other advantage with respect to any matters which are the subject of these Terms which: (i) would violate any anti-corruption laws or regulations applicable to the Customer or GWF; (ii) is intended to, or does, influence or induce any person to act improperly or reward them for improperly, or which it would otherwise be improper for the recipient to accept; or (iii) is made to or for a public official with the intention of influencing them. 13.2 Without prejudice to clause 9, in the event GWF reasonably suspects there to have been a breach of this clause 13, GWF may terminate these Terms immediately upon written notice to the Customer.

**14 General** 14.1 Unless otherwise provided for under these Terms, GWF may vary these Terms at any time on 14 days' notice to Customer. 14.2 If any part of this Contract is or becomes illegal, void or unenforceable, this does not invalidate the rest of the Contract. 14.3 This Contract is deemed to be made in New South Wales and is governed by and is to be construed in accordance with the laws of New South Wales. Each party irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales to resolve any dispute which arises out of, is in connection with or which otherwise relates to this Contract. The United Nations Convention on Contracts for the International Sale of Goods is excluded in its entirety.