

GEORGE WESTON FOODS LIMITED (GWF) Terms of Purchase (Terms)

1 Definitions and Interpretation

Confidential Information means any trade secrets, know-how, technical, scientific, commercial, financial, product, market or pricing or other information of or about GWF to which Seller gains access in connection with this Contract;
Contract means the contract entered into between GWF and Seller for Supplies pursuant to a Purchase Order and these Terms;
Goods means any goods, tools or materials to be supplied by Seller to GWF, including systems used by the Seller;
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;
Price means the price of the Supplies under clause 4;
Purchase Order means the order created by GWF;
Services means services to be supplied by Seller to GWF;
Site means the site(s) set out in the Purchase Order or otherwise notified by GWF to Seller;
Specifications means the specifications for the Supplies;
Seller means the seller of the Supplies listed in the Contract and any of its officers, employees, agents, contractors or sub-contractors; and
Supplies means Goods and/or Services (as the case may be).
Specifying anything in these Terms after the words including or includes or similar expressions does not limit what else is included unless expressly stated.

2 Basis of Purchase

2.1 No responsibility will be accepted by GWF for Supplies unless supplied pursuant to a Purchase Order signed by GWF, which constitutes an offer to buy the Supplies subject to these Terms. Supplying the Supplies constitutes acceptance of that offer. No change in quantity, description, Specification, Price, delivery terms or any of these Terms will bind GWF unless GWF confirms it in writing.
2.2 Seller agrees that these Terms apply to the Contract to the exclusion of any other terms, including any terms on any printed documents issued by the Seller. The Terms are in addition to all other rights 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.
2.3 GWF may at any time vary these Terms by written notice to Seller. 2.4 Nothing in this Contract requires GWF to purchase any minimum or other quantity of Supplies from the Seller (and GWF gives no undertaking or representation in this regard) or prevents GWF from purchasing Supplies from any other person, entity or source.

3 Specifications

3.1 Any Specification supplied by GWF to Seller in connection with the Contract, together with any Intellectual Property in that Specification or the resulting Supplies, are the exclusive property of GWF. Any Specification produced or amended by or on behalf of the Seller for GWF in connection with the Contract vests in GWF immediately upon its creation. Seller hereby 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. Seller must not disclose any GWF Specification except with GWF's written consent. Seller must not at any time after the date of the Contract supply Supplies using any GWF Specifications to any third party.

4 Price and GST

4.1 Subject to clause 4.2, the Price for the Supplies is: as stated on the Purchase Order, on a Free Into Store basis and inclusive of any taxes, duties or imposts payable in respect of the Supplies, unless stated otherwise on the Purchase Order or otherwise agreed by both parties in writing.
4.2 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. 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. The recipient need not make any payment for a taxable supply unless the Supplier has first issued a tax invoice. 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.
4.3 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 (or its representative member) is entitled in respect of that amount.
4.4 Any rebates, discounts, allowances or other reductions in price to which GWF is entitled or which are granted by Seller are to be calculated on the GST inclusive Price. GWF will be entitled to any discount for prompt payment, bulk purchase or volume of purchase usually granted by Seller whether or not shown in the Contract.

5 Insurance

For the duration of the Contract the Seller must hold adequate insurance including product liability, workers' compensation, property damage, product and public liability for at least \$20,000,000 for each and every Loss.

6 Payment Terms

6.1 Seller must send to GWF, at its address in the Purchase Order, an invoice setting out the Price and quantity of Supplies. If the Seller has complied with these Terms, GWF will pay correct invoices on or around the 5th business day of the third month following the month of issue of the relevant invoice. If GWF disputes the amount of an invoice or considers that the Supplies to which the invoice relates have not been properly provided, GWF is not obliged to pay the invoice until the dispute is resolved.
6.2 GWF may set off against the Price any sums owed to GWF by Seller.

7 Supply, Delivery, Risk and Title

Time of delivery is of the essence. Seller must supply the Supplies with written proof of delivery by the delivery date at the Site and pay all costs for delivery and provision of Supplies. Risk in and title to the Goods passes to GWF 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 GWF arising under these Terms.

8 Inspection

GWF may inspect: all work performed under these Terms, the Goods before they are dispatched and Seller's premises, and may review any manufacturing process, packaging or transport facilities used in respect of the Supplies. An inspection does not release Seller from any obligation imposed by these Terms or law.

9 When GWF May Reject Supplies

Without prejudice to its rights under clause 7, GWF may reject any Supplies which are not supplied by the delivery date or which breach any warranty. Seller must pay the cost of

storing, handling and returning any Goods rejected by GWF. No delay by GWF in rejecting the Supplies affects GWF's rights under this clause.

10 Seller's Warranties

10.1 Seller warrants that: (a) Seller and the Supplies comply with all laws, regulations, by-laws, orders, Australian standards, industry codes of practice, food safety programs, Intellectual Property Rights and other requirements relevant to the manufacture and supply of the Supplies; (b) all Goods: (1) conform with the description provided by Seller, the Specifications, the quantities stated in the Purchase Order and any samples; (2) are of acceptable quality, fit for the purpose for which they are sold or any purpose represented by the Seller or disclosed by GWF to the Seller, and are free from defects in material, workmanship and design; (3) are new; and (4) are delivered free from any lien, bill of sale, charge or other encumbrance, and Seller has good marketable title to them; (c) all Services: (1) conform with the Purchase Order and will be rendered with due care and skill; and (2) together with any Goods supplied with or resulting from the Services will be fit for GWF's intended purposes and of a nature and quality that may reasonably be expected to achieve GWF's intended results; and (d) the Supplies will process time and date data accurately.

10.2 Seller must notify GWF as soon as it becomes aware of any breach of clause 10.1.

10.3 Nothing in these Terms excludes any warranty, guarantee or condition on the part of Seller implied by law, custom, trade or otherwise or any express warranty, guarantee or condition of Seller or its suppliers.

11 Cancellation of Orders

GWF may, without liability, cancel an undelivered Purchase Order, wholly or partly, whether or not Seller has started production to meet that order.

12 Seller's Indemnity

12.1 Seller indemnifies GWF against all Loss which GWF pays, suffers, incurs or is liable for in relation to: (a) breach of any express or implied warranty, condition or guarantee by Seller in relation to the Supplies or any withdrawal or recall of Goods or product containing the Goods initiated by any person; (b) any claim in relation to property damage, personal injury or death that occurs in connection with the Supplies; and (c) the performance or breach of these Terms by Seller, or any negligent act or omission by Seller.

13 Food, Food Ingredients and Packaging

13.1 Where the Supplies include food or food ingredients Seller must provide: (a) an identifying product code for all Supplies before supply; (b) sufficient details in respect of each constituent to enable GWF 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.

13.2 Goods must be packed to avoid damage during delivery or collection, loading and unloading. 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.

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

14 Withdrawal or Recall of Goods

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

14.2 Seller must notify GWF immediately (and in writing within 24 hours) of any circumstances which may lead to a withdrawal or recall of the Supplies giving full details of the circumstances and any action Seller takes or proposes to take in response and provide any assistance required by GWF.

15 Providing Services

Seller must comply with GWF's site rules and policies and all legal and government requirements and will be solely responsible for workers' compensation insurance, taxation and other liabilities relating to its employees.

16 Confidential Information and Intellectual Property

16.1 Seller 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 that Confidential Information except as necessary for the purposes of these Terms. On termination of the Contract, Seller must promptly return all Confidential Information to GWF, or destroy it at GWF's request asks Seller to do so.

16.2 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. Seller hereby 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.

17 Termination

17.1 GWF may terminate any Contract at any time by giving Seller at least 30 days written notice.

17.2 GWF may terminate any Contract by immediate written notice if:

- (a) Seller does not perform its obligations under these Terms in a manner satisfactory to GWF;
- (b) Seller enters or threatens to enter into bankruptcy or any other form of insolvency, administration, management or receivership or Seller enters into any scheme or arrangement with its creditor;
- (c) Seller ceases or threatens to cease to conduct business;
- (d) Seller fails to remedy to GWF's satisfaction any breach of these Terms which in GWF's opinion can be remedied within 14 days after the day on which GWF issues Seller a written notice requiring Seller to remedy the breach; or
- (e) in GWF's opinion Seller or any representative of Seller engages in unlawful activity or any other misconduct or has a conflict of interest.

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

18 Governing Law

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