

GEORGE WESTON FOODS (NZ) LIMITED ("GWF") Terms & Conditions of Purchase ("Conditions")

1 Definitions and Interpretation

1.1 In these Conditions, unless the context otherwise requires:

Contract means the contract entered into between GWF and the Seller on the supply of Supplies by the Seller to GWF pursuant to a Purchase Order;

Force Majeure Event means any event or circumstances beyond the reasonable control of any party, and the after-effects of such events or circumstances, including industrial or civil disputes, war, terrorism, governmental action, riot, fire or flood affecting the manufacturing plant where the Supplies are manufactured, act of God, but not including any fault or delay by the Supplier's sub-contractors; failure of supply of raw materials or any materials used in the manufacture or packaging of the Products; any industrial or civil dispute relating to part or all of the Supplier's workforce; any lack of funds suffered by the Supplier; or any failures caused by the Supplier's failure to create or implement proper business interruption plans (whether before, during or after an event).

Goods means any goods to be supplied to GWF by the Seller as requested by GWF;

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; any 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.

Intellectual Property Rights means all intellectual and industrial property rights and interests throughout the world, registered or unregistered;

Price means the price of the Supplies under clause 4;

Purchase Order means a document containing these Conditions for the purchase of Supplies;

Representative means any officer, employee, agent, servant, contractor or authorised sub-contractor of a party but in the case of GWF does not mean the Seller;

Services means services to be supplied by the Seller to GWF;

Site means the site(s) set out in the Purchase Order or otherwise notified by GWF to the Seller;

Specifications means the specifications for the Supplies; and

Supplies means 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 Basis of Purchase

2.1 No responsibility will be accepted by GWF for Supplies unless supplied pursuant to a Purchase Order signed by a GWF Representative. Such a Purchase Order constitutes an offer to acquire the Supplies subject to these Conditions. Supplying the Supplies constitutes acceptance of that offer. No change in quantity, description, Specification, Price, delivery terms for supplying the Supplies or any of these Conditions will bind GWF unless a GWF Representative confirms it in writing.

2.2 The Seller agrees that these Conditions apply to the Contract to the exclusion of any other terms and conditions, including any terms and conditions contained on printed documents issued by the Seller at any time. The Conditions 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.

2.3 GWF may at any time revise these Conditions by notice in writing to the Seller.

2.4 Notwithstanding anything to the contrary in this Agreement, GWF's requirements for the Goods/Products or goods/products the same or similar to the Goods/Products as a result of the new brand launch, business or acquisition will not automatically be sourced from the Supplier and whilst preference may be given to the Supplier, GWF reserves the rights to test the market to ensure the Supplier continues to be commercially competitive.

2.5 GWF is not bound to accept any quotation from the Seller and is not responsible for any Loss which the Seller pays suffers, incurs or is liable for in connection with preparation of a quotation.

2.6 Nothing in this Agreement requires GWF to purchase any minimum or other quantity of Goods/Products from the Supplier (and GWF gives no undertaking or representation in this regard) or prevents GWF from purchasing Goods/Products from any other person, entity or source.

3 Specifications

3.1 Any Specification supplied by GWF to the Seller, or produced by the Seller for GWF in connection with the Contract, together with any Intellectual Property Rights in the Specification or the Supplies resulting from the Specification, are the exclusive property of GWF.

3.2 The Seller must not disclose any Specification except as required for the purposes of a Contract.

3.3 Where any Supplies are supplied by the Seller to GWF pursuant to any Specification under clause 3.1, the Seller must not at any time after the date of the Contract supply such Supplies to any third party.

4 Price

4.1 Subject to clause 4.2, the Price for the Supplies is: (a) as stated on the Purchase Order; (b) on a Free Into Store basis; and (c) inclusive of any government taxes, duties or imposts payable in respect of the Supplies, unless stated otherwise on the front of these Conditions.

4.2 GST

(a) Unless the context indicates otherwise, terms in this clause that are defined or used in the *Goods and Services tax Act 1985* 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.

4.3 Any rebates, discounts, allowances or other reductions in price to which GWF is entitled or which are granted by the 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 the Seller whether or not shown in the Contract.

5 Insurance The Seller must take out and maintain for the duration of any Contract adequate insurance including in respect of product liability in respect of Goods, workers' compensation, property damage, product and public liability for at least \$20,000,000 for each and every Loss.

6 Payment Terms

6.1 The Seller must submit to GWF, at GWF's address set out in the Purchase Order, an invoice setting out the Price and the quantity of Supplies. Subject to the Seller's compliance with these Conditions, GWF will pay correctly rendered invoices on or around the 5th business day of the third month following the month in which the relevant invoice was issued. If GWF disputes the amount of an invoice submitted by the Seller or considers that the Supplies to which the submitted invoice relates have not been provided in accordance with these Conditions, GWF is not obliged to pay the disputed invoice until the dispute is resolved.

6.2 GWF will be entitled to set off against the Price any sums owed to GWF by the Seller in relation to the Contract or otherwise.

7 Supply, Delivery, Risk and Title

7.1 Time is of the essence. The Seller must supply the Supplies with written proof of delivery by the delivery date at the Site and is responsible for all costs associated with the delivery and provision of Supplies.

7.2 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 Conditions.

8 Inspection GWF may inspect all work performed under these Conditions and, where the Supplies are Goods, the Goods before they are dispatched. GWF reserves the right to inspect the Seller's premises and undertake a review of any manufacturing process, packaging or transport facilities used in respect of the Supplies or their

delivery. An inspection does not release the Seller from any obligation imposed by these Conditions or at law.

9 When GWF May Reject Supplies Without prejudice to its rights under clause 7.2, GWF may reject any Supplies which are not supplied by the delivery date or which breach any warranty given in clause 10 or otherwise. The Seller must pay the cost of storing, handling and returning any Goods rejected by GWF. No delay by GWF in rejecting the Supplies will affect GWF's rights under this clause 9.

10 Seller's Warranties

10.1 The Seller warrants that:

(a) the Seller and the Supplies comply with all laws, statutes, regulations, by-laws, orders, New Zealand standards, industry codes of practice, food safety programs and other requirements in any way affecting or applicable to the manufacture, packaging, handling, storage and transportation of the Supplies;

(b) the Supplies do not infringe any Intellectual Property Right of any person;

(c) where the Supplies include Goods, the Supplies:

(1) conform with the description provided by the Seller, the Specifications, the quantities stated in the Purchase Order and any samples submitted;

(2) are of merchantable quality, are fit for the purpose for which they are sold and are free from defects in material, workmanship and design;

(3) are new (unless otherwise specified); and

(4) are delivered free from any lien, bill of sale, charge or other encumbrance, and the Seller has good marketable title to them;

(d) where the Supplies include Services, the Supplies:

(1) will conform with the services listed in the Purchase Order and will be rendered with due care and skill; and

(2) together with any materials supplied with the Supplies, will be fit for GWF's intended purposes, or of a nature and quality that may reasonably be expected to achieve GWF's intended results; and

(e) the Supplies and all tools, materials and systems used by the Seller in performing its obligations under these Conditions will at all times process times, dates and date data accurately.

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

10.3 Nothing in these Conditions will operate to exclude any warranty, guarantee or condition on the part of the Seller implied by law, custom, trade or otherwise or any warranty, guarantee or condition expressly offered by the Seller or the Seller's own suppliers.

11 Cancellation of Orders GWF may cancel an undelivered Purchase Order, wholly or partly, whether or not the Seller has started production to meet that order, if a Force Majeure Event occurs. The Seller has no right to bring any action for any Loss of any nature against GWF arising out of such cancellation.

12 Seller's Indemnity

12.1 The Seller indemnifies GWF against all Loss which GWF pays, suffers, incurs or is liable for in relation to:

(a) breach of any warranty, condition or guarantee (express or implied) given by the 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 made or brought by third parties in relation to damage to property, injury of persons or death due to any defects or alleged defects in the Supplies; and

(c) the performance or breach of these Conditions by the Seller or its Representative, or any negligent act or omission on the part of the Seller or its Representative.

(d) any injury or damage of any kind to person or property, including GWF's employees and property, that occurs as a result of or in connection with the Seller or its Representatives providing the Services.

13 Packaging

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

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

14.2 The 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 for hygiene, health or safety reasons give full details of those circumstances and any action the Seller is taking or proposes to take in response, provide any assistance reasonably required by GWF.

15 Providing Services Where the Supplies provided by the Seller are Services, the Seller must comply with GWF's site rules and policies and all legislative and government requirements and will be solely responsible for workers' compensation insurance, taxation and other liabilities (including fringe benefits tax, PAYE, group and payroll tax, superannuation, insurance and statutory leave entitlements) in relation to itself and its Representatives.

16 Force Majeure

16.1 Neither party will be liable to the other party for its inability to perform, or delay in performing, any one or more obligations under this Agreement to the extent such inability is caused by a Force Majeure Event.

16.2 If a Force Majeure Event occurs, then the party affected will immediately notify the other party of the nature and likely duration of the Force Majeure Event and take all reasonable steps to reduce its effect and duration, including the making of any alternative arrangements for resuming the performance of its obligations which may be practicable.

16.3 If the Force Majeure Event continues for a period of 30 days or more, GWF may terminate this Agreement immediately provided such Force Majeure Event is continuing at the date of termination.

16.4 Unless this Agreement is terminated under clause 16.3, the party affected by the Force Majeure Event will notify the other party as soon as its performance of its obligations under this Agreement is no longer prevented or restricted by the Force Majeure Event.

17 Food and Food Ingredients Where the Supplies include food or food ingredients the 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.

18 Confidential Information

18.1 In this clause, "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 the Seller gains access in connection with these Conditions.

18.2 The Seller must keep all Confidential Information secret unless it comes into the public domain (other than because of a breach of these Conditions or any law) and must not use that Confidential Information except as necessary for the purposes of these Conditions. On termination or expiry of these Conditions, the Seller must promptly return all Confidential Information to GWF or destroy it if GWF asks the Seller to do so.

19 Termination

19.1 GWF may terminate any Contract at any time, by giving the Seller no less than 30 days notice in writing.

19.2 GWF may terminate any Contract by sending the Seller a written notice of that fact if:

(a) the Seller does not perform its obligations under these Conditions in a manner which is satisfactory to GWF;

(b) the Seller enters or threatens to enter into bankruptcy or any other form of insolvency, administration, management or receivership or the Seller enters into any scheme or arrangement with its creditor;

(c) the Seller ceases or threatens to cease to conduct business; (d) the Seller fails to remedy to GWF's satisfaction any breach of these Conditions which in GWF's opinion can be remedied within 14 days after the day on which GWF issues the Seller a written notice requiring the Seller to remedy the breach; or

(e) in GWF's opinion the Seller or any Representative of the Seller is guilty of fraud, dishonesty or any other misconduct.

19.3 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 the Seller and GWF will not be obliged to return to the Seller any Goods unless the Seller has requested GWF to do so and the Seller pays all the costs of returning the Goods.

20 Governing Law These Conditions will be governed by and construed in accordance with the laws of New Zealand from which these Conditions are sent by GWF and each party irrevocably submits to the exclusive jurisdiction of the courts of New Zealand.