

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

**1 Definitions and interpretation** 1.1 **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 Customer gains access in connection with this Contract; **Contract** means the contract entered into between GWF and Customer for the Supplies pursuant to a Purchase 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; **Price** means the price of the Supplies excluding GST; **Purchase Order** means the order created by GWF; **Services** means any services to be supplied by GWF to Customer; **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 No order for Goods or Services submitted by Customer is deemed to be accepted by GWF until confirmed in writing by GWF. 2.2 No order which has been accepted by GWF 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. 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. 2.5 GWF may make any changes to the Specifications, the specifications of the Supplies or any packaging including 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 incurred by GWF, including those associated with delivery, increases in pricing or any other.

**3 Price and GST** 3.1 Unless the context indicates otherwise, terms defined or used in the *Goods and Services Act 1985* have the same meaning as in that Act. 3.2 Unless varied by GWF or required by law, Price is exclusive of GST. 3.3 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. 3.4 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. In the event of a cancellation of supply, a change in the purchase price, the alteration of price or other consideration (e.g. because of a discount), or the return of part or all of a supply (**Adjustment Event**), the Supplier must issue an adjustment note to the recipient which states (a) a description of difference between the GST paid or liable to be paid on the original supply and what would have been payable had the Adjustment Event been taken into account and includes (b) a credit or debit note as the case may be. 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. 3.5 GWF reserves the right, at any time before delivery, to increase 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, among other things, reflect any increase in costs to GWF which are due to any factor (including a significant increase in the costs of, or shortages or the unavailability of, labour or materials, the increase or imposition of any tax, duty or other levy, any variation in exchange rates, any change of delivery dates, any change in quantities or specifications of the Supplies requested by Customer, or any delay caused by supply or non supply of instructions of Customer. 3.6 Subject to clause 2.2, if Customer does not want to accept any increase in Price, Customer can elect to 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 Purchase Order. 4.3 Where Customer fails to collect or take delivery of Supplies at an agreed time GWF may charge Customer a service fee. 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 it to GWF in good condition post delivery of Supplies. 4.5 Customer must accept and pay for, in fulfilment of its order, delivery of +/- 5% of the quantity specified in its order and must pay for the quantity actually delivered.

**5 Payment** 5.1 Where GWF has agreed to extend credit to Customer, Customer must pay for the Supplies in full within 30 days from the end of the month in which the Supplies were supplied, unless stated otherwise in the Purchase Order, however GWF may require Customer to pay cash in full prior to delivery 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 it may have, charge Customer interest on the overdue moneys at the official cash rate (displayed about 11.00 am Auckland time on the Reserve Bank of New Zealand 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 and PPSA** 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 by Customer, 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 If Customer sells the Goods or any goods incorporating or processed using the Goods (**Processed Goods**) to customers, Customer in its position as fiduciary assigns to GWF the benefit of any claim against the customers and will hold on trust in a separate identifiable account, and account to GWF for all proceeds of sale or such part of the proceeds of sale as is equivalent to the Price of the Goods incorporated or used in the Processed Goods. GWF has the right to such proceeds whether or not held in a separate identifiable account. 6.4 The Customer grants a security interest to GWF in all present and after acquired Goods (including Processed Goods) and proceeds. 6.5 Customer acknowledges that the Contract constitutes a security agreement under the *Personal Property Securities Act 1999* (**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 and Equipment established under this clause 6 are a 'purchase money security interest' (**PMSI**) and GWF will have a PMSI in proceeds of those Goods and Equipment. 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. 6.6 Customer shall not charge the Goods and Equipment in any way, nor grant or give any security interest in the Goods or Equipment while they remain the property of GWF, nor allow any third party to acquire a security interest in the Goods or Equipment. 6.7 If Customer fails to comply with any of these Terms then Customer must return any Goods or Equipment on which there are outstanding amounts owing on request; Customer authorises GWF and any person authorised by GWF to enter premises where the Goods or Equipment may be located to take possession of the Goods and Equipment. Customer indemnifies GWF against any Loss GWF pays, suffers, incurs or is liable for in connection with GWF retaking possession of the Goods or otherwise exercising its rights under these Terms. GWF may retain, sell or otherwise dispose of those Goods. 6.8 Customer shall notify GWF in writing 14 days before any change in Customer's name and shall immediately notify GWF of any other information GWF may need in order to complete a financing change statement. 6.9 Customer agrees that nothing in sections 133 and 134 of the PPSA shall apply to these Terms. Customer agrees that its rights as debtor in sections 116, 120(2), 121, 125, 126, 127, 129 and 131 of the PPSA shall not apply to these Terms. 6.10 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 prevented from, hindered in or delayed in the performance of any of its obligations by normal route or means of delivery or at costs commercially acceptable to GWF through any circumstances beyond its control including acts of God, governmental actions, strikes or other labour disputes (whether or not relating to GWF's workforce), lock-outs, accidents, war or national emergency, acts of terrorism, protests, riot, civil commotion, explosion, flood, epidemic, fire, natural disasters, earthquakes, 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 2 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 or threatens to enter into bankruptcy or any other form of insolvency, administration, management or receivership or scheme or arrangement with its creditor; (b) ceases or threatens to cease to conduct business; (c) breaches any of these Terms; (d) in GWF's 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; or (e) in GWF's opinion, does anything to place the Goods at risk (as defined in the PPSA); 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. 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** 11.1 The Customer shall be deemed to have acquired the Supplies for the purposes of a business and accordingly the *Consumer Guarantees Act 1993* shall not apply. Where Customer supplies Goods to another person in the course of trading, Customer must not give or make any undertaking, assertion or representation in relation to the Goods without GWF's prior written approval. Customer shall include a provision in its conditions of sale to the effect that the *Consumer Guarantees Act 1993* shall not apply where a customer is acquiring the Goods for the purposes of a business. The Customer agrees to indemnify GWF against any Loss incurred by GWF if the Customer makes such a representation or fails to include such a provision. 11.2 To the extent permitted by law: (a) all guarantees, conditions and warranties, express or implied, by law, custom or otherwise (including an included or referred to in any order, delivery, receipt or other document of Customer) are excluded; and (b) GWF's liability for any Loss arising from a breach of such guarantees, conditions and warranties, or these Terms, is limited to: (1) in the case of Goods, either replacement of the Goods, the supply of products equivalent to the Goods, the repair of the Goods, or the cost of replacing the Goods or acquiring products equivalent to the Goods, or the payment of the cost of having the Goods repaired; and (2) in the case of Services, the supply of the Services again or the payment of the cost of having the Services supplied again. 11.3 To the extent permitted by law, GWF will not be liable for 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. 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.

**12 Anti-corruption** Customer will not directly or indirectly, in private business or public sector dealings, offer, give or agree to offer or give any payment, gift or other advantage with respect to any matters which are the subject of these Terms which would violate any anti-corruption laws or regulations; is intended to, or does, influence or reward any person for acting in breach of an expectation of good faith, impartiality or trust; or which a reasonable person would otherwise consider to be unethical, illegal or improper.

**13 General** 13.1 GWF may vary these Terms at any time by notice to Customer. 13.2 If any part of this Contract is or becomes illegal, void or unenforceable, this does not invalidate the rest of the Contract. 13.3 These Terms are governed by and construed in accordance with the laws of New Zealand and each party irrevocably submits to the exclusive jurisdiction of the courts of New Zealand.