

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

**1 Definitions and interpretation 1.1 Code of Conduct** means the code of conduct available at [www.gwf.com.au/supplier-information](http://www.gwf.com.au/supplier-information) as updated from time to time; **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; **CoR Laws** means the Heavy Vehicle National Law and Regulations as they apply in the Australian Capital Territory, New South Wales, Queensland, South Australia, Tasmania and Victoria, *Road Traffic (Administration) Act 2008 (WA)* and *Road Traffic (Vehicles) Act 2012 (WA)* and any other similar laws in any State/Territory (in force from time to time); **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; **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 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 Seller's 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, on 30 days' notice, 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. **3.2** 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. **3.3** 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. **3.4** Seller must not disclose any GWF Specification except with GWF's written consent. **3.5** 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 the contrary, the consideration for any taxable supply made by a party (**Supplier**) under or in connection with these Terms shall include GST. 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. **4.5** The Supplier agrees not to increase the Price for any reason whether for change of input costs, change of law, currency exchange or any other reason. **4.6** The Supplier must make available to GWF and its authorised representatives for inspection and auditing, copies of all books, accounts and records attributable to the Supplies. GWF or its authorised representatives may take and retain copies of the books, accounts and records, provided that GWF must maintain the confidentiality of the Supplier's information which is by its nature confidential. The provisions of this clause shall survive termination of the Contract.

**5 Insurance** For the duration of the Contract the Seller must hold adequate insurance including workers' compensation, property damage for its property and the replacement value of the Goods, and product and public liability for at least \$20,000,000 for each and every loss, unless otherwise agreed with GWF in writing.

**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 within 62 days from the end of the month in which the invoice was received, unless otherwise specified under the Purchase Order or as may be agreed to by GWF in writing. If, acting reasonably, 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 7.1** 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. **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 Terms. **7.3** Without limiting clause 7.2, the Supplier may not claim or register any interests (including security interests) in the Supplies. **7.4** Supplier undertakes to GWF that, notwithstanding that these Terms may constitute a security agreement; and/or GWF may have granted security interests in the Goods to the Supplier (including, without limitation, a PMSI in the Goods pursuant to clause 7.2) it will not, without the prior written consent of GWF, perfect, or take any steps to perfect, any security interest it may have in the Goods. **7.5** Unless otherwise agreed by GWF, the Supplier will not disclose, nor authorise the disclosure of, any information of the kind

described in s275(1) of the Personal Property Securities Act 2009 (Cth) (**PPSA**) to any person. **7.6** Unless the context indicates otherwise, terms defined or used in the PPSA have the same meaning as in that Act.

**8 Inspection** GWF may inspect: all Services 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, acting reasonably, GWF may reject any Supplies which are not supplied by the delivery date or which breach any warranty, provided that GWF does not cause that delay or breach. 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) Seller will comply with GWF's Code of Conduct (and any other applicable policies, procedures or directions of GWF) as updated from time to time; (c) 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 prior to the Purchase Order, 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; (d) 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 (e) 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, including the Australian Consumer 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, provided the Seller has not started production to meet that Purchase Order.

**12 Indemnity and Liability 12.1** Seller indemnifies GWF for any 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 or the Seller's acts or omissions; (c) the performance or breach of these Terms by Seller; or (d) any negligent act or omission by the Seller. **12.2** To the maximum extent permitted by law, including the Australian Consumer Law, 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 GWF to the Seller in that calendar year or AUD\$100,000, whichever is the lesser. **12.3** To the maximum extent permitted by law, GWF shall not be liable to the Seller for 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 **12.4** Nothing in this clause 12 requires Seller to indemnify GWF for Loss that GWF has directly caused.

**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. **13.3** 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. **13.4** Seller must comply with any packaging requirements or specifications required by law, including the Australian Consumer Law, or notified by GWF prior to entering this agreement 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 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 reasonable 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 or contractors.

**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. **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 by Seller for GWF 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. Force Majeure** GWF is entitled to defer the date of Delivery or payment or to cancel any Contract or vary the volume of Supplies ordered if it is materially or substantially prevented from or delayed or hindered in the carrying on of its business due to any occurrence or circumstance beyond its reasonable control including, without limitation: acts of God, governmental actions, changes to federal, state or territory laws, orders or regulations, epidemics, pandemics, terrorism of the threat of terrorism, war or national emergency, riot, civil commotion, fire, explosion, flood, storm, natural disaster, theft, malicious damage, lock-outs, strikes or other labour disputes (whether or not relating to GWF's workforce), unexpected cost increases or restraints or delays affecting carriers, inability or delay in obtaining supplies of adequate or suitable materials, shortages of necessary equipment or labour, breakdown of plant or machinery or the amendment or coming into force of any legal provision adversely affecting GWF in relation to the performance of its obligations.

**18 Chain of Responsibility 18.1** The Seller must at all times during the term of this Contract the and provision or performance of any services under this Contract: (a) identify its obligations under the CoR Laws; (b) comply with its obligations under the CoR Laws and upon request, provide GWF with evidence of such compliance; (c) consult, cooperate and coordinate with GWF in relation to compliance with CoR Laws; and (d) take all reasonable steps to prevent any contravention of the CoR Laws. **18.2** The Seller agrees to cooperate with and do all things necessary to assist GWF or its officers, employees or agents in discharging their obligations under the CoR Laws. This includes cooperating fully with any monitoring activities undertaken by GWF to satisfy itself that the CoR Laws have been complied with and will continue to be complied with.

**19 Termination** 19.1 GWF may terminate any Contract at any time by giving Seller at least 30 days written notice. 19.2 GWF may terminate any Contract by immediate written notice if: (a) Seller does not perform its obligations under these Terms and that has, or is likely to have, in GWF's reasonable opinion, a material adverse impact on GWF's rights and/or interests; (b) Seller enters, takes any steps to enter or threatens to enter into bankruptcy or any form of insolvency process, including, administration, a deed of company arrangement, management or receivership, liquidation, provisional liquidation, a scheme or arrangement with its creditors, or makes a general assignment for the benefit of creditors; (c) ceases or threatens to cease to carry on all or a material part of its business; (d) Seller fails to remedy to GWF's satisfaction a material 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 reasonable opinion Seller or any representative of Seller engages in unlawful commercial activity or any other commercial misconduct or has a conflict of interest. 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 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.

**20 Anti-corruption**

20.1 The Seller is and will remain in compliance with all laws applicable to the services it will perform under these Terms and will comply with the Code of Conduct. 20.2 The Seller has implemented and will enforce adequate and effective policies and procedures commensurate with the nature and scale of the Seller's business, designed to promote and to ensure compliance with this clause. 20.3 The Seller 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 Seller 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. 20.4 Without prejudice to clause 19, in the event GWF reasonably suspects there to have been a breach of this clause 20, GWF may terminate these Terms immediately upon written notice to the Seller.

**21 Governing Law** 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.