

## 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 a party to which the other party gains access in connection with the Contract; **Consumer** has the meaning given to it under the Australian Consumer Law, contained in Schedule 2 of the *Competition and Consumer Act 2010* (Cth); **Contract** means the contract entered into between GWF and the 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; **Equipment** has the meaning given to it in clause 4; **Excluded Loss** means any indirect or consequential loss, including any loss of profits or any Loss which does not arise naturally according to the usual course of things from the other party's breach of these Terms; **Goods** means any goods to be supplied by GWF to the 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 and legal costs and expenses (calculated on a full indemnity basis), but excludes Excluded Loss; **Non-Excludable Rights** means any applicable law that cannot be excluded, restricted or modified by agreement of the parties; **Order** means the order for Supplies created or accepted by GWF in accordance with clause 2.1; **Price** means the price of the Supplies excluding GST as specified in the Order; **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; **Services** means any services to be supplied by GWF to the 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 GWF has no obligation to supply Goods and/or Services to the Customer except as set out in an Order. No order for Goods or Services submitted by the Customer is binding on GWF until accepted in writing by GWF. 2.2 Except as permitted under law: (a) the Customer may not without GWF's consent cancel an Order after GWF has accepted such Order under clause 2.1; (b) if at the time the Customer makes a cancellation request, GWF have incurred or have committed to incurring a cost as part of fulfilling the Customer's Order (including with GWF's suppliers), that GWF cannot otherwise reasonably mitigate if the Order were to be cancelled, GWF may consent to cancellation on the condition that the Customer reimburse GWF for such reasonable direct costs; (c) if GWF consent to cancellation of the Customer's Order, GWF will refund any amounts paid by the Customer in respect of that Order, less any reasonable direct costs where clause 2.2(b) applies; and (d) GWF may cancel an Order after such Order has been accepted, where it is reasonably necessary to do so in response to unanticipated supply disruptions or for health and safety issues, in which case GWF will refund all amounts paid by the Customer in respect of that Order. 2.3 Each party agrees that these Terms supersede all other terms between the parties, including any on printed documents issued by either party at any time and are in addition to all other rights which a party may have at law. Any waiver by a party of any right is not a waiver of any other or future rights that party may have. 2.4 If Goods are to be manufactured or processed by GWF in accordance with a specification submitted or varied by the Customer, the 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, except to the extent directly caused by GWF's negligence, error or omission. 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. The Customer will be notified of any such change. 2.6 If an order for Supplies is placed by the 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, the 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* (Cth) 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 the 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. The recipient need not make any payment for a taxable supply unless the Supplier has first issued a tax invoice for the supply the payment relates to. 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, and then increased in accordance with clause 3.3 where applicable. 3.4 GWF reserves the right to, on not less than 7 days' notice prior to delivery, amend the Price to reflect costs imposed on GWF and beyond its reasonable control as a result of: (i) an increase or imposition of any tax, duty or other levy; (ii) any variation in exchange rates; (iii) any change of delivery dates requested by the Customer; (iv) any change in quantities or specifications of the Supplies requested by the Customer; or (v) any delay caused by supply or non-supply of instructions of the Customer. 3.5 If the Customer does not want to accept any amendment to Price, made in accordance with clause 3.4, the Customer can cease any or all future orders of Supplies from GWF.

**4 Delivery** 4.1 Delivery of Goods to the Customer occurs, in the case of Goods to be collected by the Customer from GWF, at the agreed time for collection, or in the case of Goods to be delivered, at the time GWF presented the Goods at the delivery point. Any time which GWF quotes for delivery of Supplies is an estimate only, however GWF will use its reasonable endeavours to meet such quotes. 4.2 The 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 the Customer fails to collect or take delivery of Supplies at an agreed time, GWF may charge the Customer its direct costs incurred as a result of the Customer's failure. 4.4 Any containers used for the delivery of Goods or other equipment of GWF provided for use by the Customer (**Equipment**) at all times remains the property of GWF and title does not pass in any circumstances. The Customer must keep the Equipment clean and undamaged and ensure that it is in a good condition when it is collected by GWF. 4.5 The 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 the Customer in respect of any Order. If GWF has agreed to extend credit to the Customer, the 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. 5.2 Discounts will be credited to the Customer by GWF, the Customer cannot deduct any Discounts from moneys owing by it to GWF. The Customer must pay GWF in full for Supplies delivered. GWF is entitled to set off any sums owed by it to the Customer against the Price (that are not subject to a bona fide dispute). 5.3 If the Customer has not paid in full by the due date GWF may, without limiting any other rights, charge the 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 the 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 the Customer on collection or delivery (as applicable) of the Goods. 6.2 Until the Customer has paid for the Goods in full, title in the Goods remains with GWF. The Customer holds the Goods and the Equipment 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 The 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 additionally a 'purchase money security interest' (**PMSI**) and GWF will have a PMSI in proceeds of those Goods. The 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 The Customer shall not charge the Goods or the Equipment in any way, nor grant or give any interest in the Goods or the Equipment while they remain the property of GWF, nor allow any third party to acquire a security interest in the Goods or the Equipment. 6.5 If the Customer fails to comply with any Terms in this clause 6 then the Customer must return any Goods in respect of which there are outstanding amounts owing on request and the Equipment. The Customer authorises GWF and any person authorised by GWF, without notice to the Customer, to enter premises where GWF reasonably suspects the Goods or the Equipment may be located to take possession of the Goods and the Equipment, without committing a trespass, even though they may have been attached to other goods or land not the property of GWF, and for this purpose the Customer irrevocably licenses GWF to enter such premises and also indemnifies GWF from and against all Loss suffered or incurred by GWF as a result of exercising its rights this this clause. GWF may retain, sell or otherwise dispose of those Goods and the Equipment. If there is any inconsistency between GWF's rights under this clause and its rights under Chapter 4 of the PPSA, this clause prevails. 6.6 The Customer agrees to the extent permitted under the PPSA and unless otherwise agreed by GWF, 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 the Customer; s121(4); s132(3)(d); s132(4); ss135; s142; and s143. The Customer will not disclose, nor authorise the disclosure of, any information of the kind described in s275(1) of the PPSA 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** 7.1 Neither party is liable for any delay or failure to perform, or delay in performing, any one or more obligations under a Contract to the extent such inability is caused by 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 the party'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**). 7.2 If the Force Majeure Event continues for a period of 30 days or more, either party may terminate any affected Contract immediately provided such Force Majeure Event is continuing at the date of termination.

**8 Shortfall, Damaged and Defective Goods** 8.1 Goods and Services will be considered to have been delivered / performed in full in good condition unless, subject to any Non-Excludable Rights, the Customer notifies GWF in writing of the shortfall, damage or defect within 5 business days of delivery. 8.2 If the Customer gives GWF notice under clause 8.1, it must preserve the Goods or Service deliverables 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 Service deliverables 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. Where the Customer is a Consumer and GWF makes such request to return the Goods, GWF will be responsible for the costs of return, unless GWF reasonably determines following inspection that the returned Goods do not contain obvious defects, in which case the Customer must reimburse GWF for the return costs. #8.3 Subject to any Non-Excludable Rights, GWF is not obliged to accept return of or allow credit for Goods not sold by the Customer by the use-by date for the Goods. 8.4 The process set out in clause 8.2 does not apply to defects that are not obvious or are not able to be detected by a visual inspection of the Goods or Services. For Goods or Services in that category, the Customer must advise GWF of any defects within the period following collection or delivery of the Goods or performance of the Services in which it would be reasonable to expect the relevant defect to become apparent. 8.5 The Customer acknowledges and agrees that, subject to any Non-Excludable Rights, Goods and Services will not be considered defective where the purported defect (a) was disclosed to the Customer as a feature or limitation of the Goods or Services before the date of the Order; (b) was caused by the Customer during the period following collection or delivery in which the Customer had risk in the Goods; or (c) is trivial or insubstantial. 8.6 Subject to these Terms and any Non-Excludable Rights, GWF will not be liable to the Customer for any defective Goods or Services unless the Customer notifies GWF with full details and a description within the relevant period under clauses 8.1 or 8.2, otherwise the Customer is deemed to have accepted the relevant Goods and Services. 8.7 If GWF reasonably determines, following inspection of the Goods or Services, that the Goods or Services are defective, subject to these Terms and any Non-Excludable Rights, GWF may, at our option: (a) in the case of Goods, replace the Goods or refund the price of the Goods; or (b) in the case of Services, re-supply or refund the price of the Services.

**9 Right of Entry, Resale and Termination** 9.1 If a party: (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) fails to remedy a material

breach of these Terms, which is capable of remedy, within 14 days of notice requiring to do so; or (d) materially breaches these Terms and, in the reasonable opinion of the terminating party, the breach cannot be remedied; the terminating party may terminate any Order or the Contract in its entirety by immediate written notice to the other party. 9.2 If an Order or the Contract expires or is terminated for any reason: (a) where GWF is the terminating party, GWF may, without affecting its accrued rights and obligations, take possession of and resell the Goods which it has title to; (b) GWF may, unless it is unreasonable to do so, withhold or suspend any deliveries of Goods or performance of Services pursuant to the Contract (or the relevant terminated Order where applicable); (c) GWF may cease to extend credit to the Customer; (d) any accrued rights and obligations of the parties as at the date of expiration or termination are unaffected; and (e) where the disclosing party requires (and there are no ongoing Orders on foot that would be affected), the other party must promptly return all Confidential Information and Intellectual Property to the other party, or destroy it if the other party requires.

**10 Confidential Information and Intellectual Property** 10.1 Each party must keep all Confidential Information secret unless it comes into the public domain (other than because of a breach of the Contract or any law) and must not use Confidential Information except as necessary for the purposes of the Contract or with the prior written consent of the discloser of the Confidential Information. 10.2 Intellectual Property owned by either party at the commencement of the Contract remains the property of that party. 10.3 Any Intellectual Property developed or created during the performance of the Contract vests in GWF immediately upon its creation and the 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 Nothing in these Terms have the effect of excluding any applicable law that cannot be excluded, modified or restricted by agreement of the parties. 11.2 Subject to 11.1 and to the extent permitted by law: (a) all conditions and warranties, express or implied, by law, including Australian Consumer Law, custom or otherwise are excluded; (b) each party excludes all liability for any Excluded Loss; (c) GWF's liability for any Loss, including for breaches of Non-Excludable Rights, and to the extent permitted by law, is limited to: (i) in the case of goods: (A) the replacement of the Goods or the supply of equivalent goods; or (B) the payment of the cost of replacing the Goods or of acquiring equivalent goods; and (ii) in the case of services: (A) the supplying of the Services again; or (B) the payment of the cost of having the Services supplied again; and (d) for any other Loss, the maximum aggregate liability of each party to the other party arising under or in connection with the Contract in any calendar year (whether in contract, tort (including negligence), statute, equity or otherwise) is limited to the Price paid by the Customer to GWF in that calendar year, or AUD\$2,000,000, whichever is the greater.

**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 reasonable 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 The Customer warrants that it has no conflict of interest. 13.4 The Customer's failure to comply with any or all of this clause 13.1 is a material breach for the purposes of clause 9.1.

**14 Sanctions Compliance** The Customer shall at all times comply with all economic and/or trade sanctions laws, regulations and any other binding measures of the UK, European Union, the United Nations, the United States of America or any other jurisdiction applicable to the parties.

**15 General** 15.1 GWF may, from time to time, vary these Terms at its sole discretion and with immediate effect, provided that any variation to these Terms will not apply to: (a) Orders that remain outstanding prior to the date of such variation; or (b) any exclusive (or minimum volume) contract for a specified term that incorporates the version of these Terms that was applicable as at the date of that contract, which version will continue to apply to such contract.

15.2 If any part of the Contract is or becomes illegal, void or unenforceable, this does not invalidate the rest of the Contract. 15.3 The 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 the Contract. The United Nations Convention on Contracts for the International Sale of Goods is excluded in its entirety. 15.4 If there is an inconsistency between the documents forming the Contract, the inconsistency will be resolved by applying the following order of precedence: (a) these Terms; (b) the Order(s); and (c) the Application for Credit Account. 15.5 The parties are independent contracting parties and nothing in the Contract makes either party the agent or legal representative of the other or grants either party any authority to assume or create an obligation on behalf of the other. 15.6 The Contract may not be assigned without the consent of both parties. 15.7 Without limiting or affecting the continued operation of any clause which as a construction intended to survive the termination or expiry of the Contract, clauses 5, 6, 8, 9, 10, 11, 12, 13 and 15 survive the termination of the Contract.