

FARM PRIDE FOODS LTD

STANDARD TERMS AND CONDITIONS

1 General

1.1 In these terms and conditions

- (a) "ACL" means the Australian Consumer Law Schedule to the *Competition and Consumer Act 2010 (Cth)* as amended;
- (b) "consumer" is as defined in the ACL and in determining if the Purchaser is a consumer, the determination is made if the Purchaser is a consumer under the Contract;
- (c) "Contract" means any agreement for the provision of Goods by the Company to the Purchaser and includes these Terms and the terms and conditions of any Credit Application which applies to the Purchaser in relation to the Goods ;
- (d) "Company" means Farm Pride Foods Ltd (ACN 080 590 030) (ABN 42 080 590 030) and its agents, representatives, assigns and successors;
- (e) "Credit Application" means the Company's standard Application for Credit (a copy of which can be obtained upon request by the Purchaser to the Company) and as amended from time to time by agreement between the parties.
- (f) "Goods" means the products and (if any) services supplied by the Company to the Customer;
- (g) "GST" means the Goods and Services tax as defined in *A New Tax System (Goods and Services Tax) Act 1999* as amended;
- (h) "PPSA" means the *Personal Property Securities Act 2009 (Cth)* as amended;
- (i) "Purchase Price" means the price quoted for the supply of the Goods;
- (j) "Purchaser" means the person, jointly or severally if more than one, acquiring Goods from the Company;
- (k) "Terms" means these terms and conditions.

2 Terms of Sale

- 2.1 Unless otherwise agreed by the Company in writing, these terms and conditions apply exclusively to every Contract and cannot be varied or replaced by any other terms and conditions.
- 2.2 In the event of any inconsistency, these Terms shall prevail over any Credit Application which applies to the Purchaser in relation to the Goods.
- 2.3 Any quotation provided by the Company to the Purchaser for the proposed supply of Goods is:
 - (a) valid for 30 days;
 - (b) an invitation to treat only; and
 - (c) only valid if in writing.
- 2.4 A Contract is accepted by the Company when the Company accepts, in writing or electronic means, an offer from the Purchaser or provides the Purchaser with the Goods.
- 2.5 The Company is entitled to reject any order at its sole and absolute discretion.
- 2.6 The Purchaser must provide the Company with its specific requirements, if any, in relation to the Goods.
- 2.7 The Company may vary or amend these Terms by written notice to the Purchaser at any time. Any variation or amendments will apply to orders placed after the notice date.

3 Delivery

- 3.1 The Purchaser acknowledges that any delivery times indicated to it by the Company, whether in this Contract or otherwise, are estimates only and not contractual commitments. The Company will use its reasonable endeavours to meet any estimated dates for delivery but will not be liable for any loss or damage suffered by the Purchaser or any third party including its customers for failure to meet any estimated dates.
- 3.2 Subject to clause 3.6, the Company will arrange delivery of the Goods to the Purchaser.
- 3.3 The cost of delivery of the Goods, including freight, insurance and other charges, is payable by the Purchaser and, to the extent that any payment is required to be made to the Company in respect of such cost, the Purchaser must make such payment together with the Purchase Price in accordance with clause 6.1
- 3.4 The Company may make part delivery of Goods and the Company may invoice the Purchaser for the Goods provided.
- 3.5 The Purchaser indemnifies the Supplier against loss or damage suffered by the Company, its sub-contractors or employees as a result of delivery.
- 3.6 If agreed that the Purchaser will collect the Goods:
 - (a) the Purchaser must collect the Goods within 7 days of being advised they are ready;
 - (b) if the Purchaser does not collect the Goods within this time, the Purchaser is deemed to have taken delivery of the Goods and is liable for storage charges payable monthly on demand.

4 Inspection of Goods

- 4.1 The Purchaser must inspect the Goods upon taking possession and control of the Goods and within 7 days after taking such possession and control reject the Goods which the Purchaser believes are not in accordance with this Contract, by contacting the Company in writing and stating the relevant invoice number which relate to the Goods, the description of the Goods, the date the Purchaser took possession and control of the Goods and the particulars of the basis upon which the Purchaser alleges the Goods are not in accordance with this Contract ("Alleged Rejection"). Failure to do so by the Purchaser within the said 7 days timeframe constitutes acceptance.
- 4.2 Within a reasonable time of the Company receiving an Alleged Rejection, the Company must notify the Purchaser in writing as to whether it accepts or denies the Alleged Rejection, prior to which time the Purchaser shall permit the Company to inspect the Goods and make any investigations and enquiries it deems necessary (at its sole and absolute discretion), including without limitation speaking to any officer, servant, agent, contractor, employee of the Purchaser, in order to reach a determination and provide full access in order to discharge these obligations.
- 4.3 If the Company accepts the Alleged Rejection, the Purchaser is not liable to pay for the Goods rejected and may, at its own cost and expense return the Goods to the Company on terms to be specified by the Company (at its sole and absolute discretion).
- 4.4 The Company is otherwise not under any obligation to accept any goods returned to the Company by the Purchaser and accordingly, any goods returned to the Company that are not returned in accordance with these terms and conditions shall be sent back by the Company to the Purchaser who will be responsible (and liable to indemnify the Company for, where applicable) freight both ways.

5 Passing of Property and Risk.

- 5.1 Subject to clause 5.3, until the Company receives full payment for all Goods supplied by it to the Purchaser as well as all other amount to the Company by the Purchaser:
- (a) property and title in the Goods remain vested in the Company and do not pass to the Purchaser;
 - (b) The Purchaser must not deal with any goods to which the Company retains property and title in accordance with this clause 5.1 ("Retained Goods") in any way inconsistently with the rights and interests of the Company as owner thereof; and
 - (c) The Purchaser must hold the Retained Goods as fiduciary bailee and agent for the Company, and the Purchaser must store the Retained Goods in such separate place and in such manner such that the Retained Goods are capable of being clearly identified as the property of the Company.
 - (d) In addition to its rights under the PPSA, upon demand by the Company (which demand may be made at any time upon the Purchaser defaulting in its obligations under clause 5.1), the Purchaser must deliver all Retained Goods to the Company at the time and in the manner specified by the Company (at its sole and absolute discretion) or as otherwise directed by the Company.
 - (e) in addition to its rights under the PPSA, the Company or its authorised representatives or agents may, without notice, enter upon any premises where it suspects the Retained Goods are and remove them, notwithstanding that they may have been attached to other Goods not the property of the Company, and for this purpose the Purchaser irrevocably licenses the Company to enter such premises and also indemnifies the Company from and against all costs, claims, demands or actions by any party arising from such action.
- 5.2 The Purchaser must properly insure the Goods until such time as property in the Goods passes to the Purchaser pursuant to this Contract.
- 5.3 If the Goods are sold by the Purchaser, the Purchaser must hold the proceeds of sale on trust for the Company in a separate account with a bank to whom the Purchaser has not given security however failure to do so will not affect the Purchaser's obligation to deal with the proceeds as trustee.
- 5.4 The Purchaser may, in the course of business sell Retained Goods or mix or combine Retained Goods with other goods in the course of a manufacturing process and sell the product or products thereof ("Products") in which case the Purchaser agrees that the Products are commingled goods as defined in the PPSA and the Purchaser must:
- (a) keep separate records of all sales of such Retained Goods or Products; and
 - (b) account to the Company for all proceeds of the sale of such retained Goods or Products (as applicable); and
 - (c) keep a part of such proceeds equal to the total amount outstanding to the Company in relation to all Retained Goods in a separate account with a bank to whom the Purchaser has not given security on trust for the Company and not mix them with any other moneys (including funds of the Purchaser) other than with other moneys held on trust by the Purchaser for the Company, however failure to do so will not affect the Purchaser's obligation to deal with the proceeds as trustee; and
 - (d) Keep a part of such proceeds equal to the total amount owing to the Company by the Purchaser on any account other than the Retained Goods whatsoever in a separate account with a bank to whom the Purchaser has not given security on trust for the Company and not mix them with any other moneys (including funds of the Purchaser) other than with moneys held on trust by the Purchaser for the Company, however failure to do so will not affect the Purchaser's obligation to deal with the proceeds as trustee.

- 5.5 All risk in the Goods and all insurance responsibility for theft, damage or otherwise, unless otherwise agreed in writing by the parties, passes to the Purchaser upon from the time that the Goods are in transit notwithstanding whether the Goods remains in the possession and control of the Company, its servants, agents or employees or any other person on behalf of the Company at the time of transit.
- 5.6 The Purchaser assumes all risk and liability for loss, damage or injury to persons or to property of the Purchaser, or third parties arising out of the use or possession of any of the Goods sold by the Company, unless recoverable under the ACL.

6 Personal Property Securities Act

- 6.1 Notwithstanding anything to the contrary contained in these Terms, the PPSA applies to these Terms.
- 6.2 For the purposes of the PPSA:
- (a) terms used in this clause 6 that are defined in the PPSA have the same meaning as in the PPSA;
 - (b) these Terms are a security agreement and the Company has a Purchase Money Security Interest in all present and future goods supplied by the Company to the Purchaser and the proceeds of the goods;
 - (c) the security interest is a continuing interest irrespective of whether there are monies or obligations owing by the Purchaser at any particular time; and
 - (d) the Purchaser must do whatever is necessary in order to give a valid security interest over the goods and their proceeds which is able to be registered by the Company on the Personal Property Securities Register.
- 6.3 The security interest arising under this clause 6 attaches to the goods when the goods are collected or dispatched from the Company's premises and not at any later time.
- 6.4 Where permitted by the PPSA, the Purchaser waives any rights to receive the notifications, verifications, disclosures or other documentation specified under sections 95, 118, 121(4), 130, 132(3)(d), 132(4), 135 and 157 of the PPSA.
- 6.5 The Company and the Purchaser agree to contract out of and nothing in the provisions of sections 96, 125, 129, 142 and 143 of the PPSA will apply to these Terms.
- 6.6 To the extent permitted by the PPSA, the Purchaser agrees that:
- (a) the provisions of Chapter 4 of the PPSA which are for the benefit of the Purchaser or which place obligations on the Company will apply only to the extent that they are mandatory or the Company agrees to their application in writing; and
 - (b) where the Company has rights in addition to those in Chapter 4 of the PPSA, those rights will continue to apply.
- 6.7 The Purchaser must immediately upon the Company's request:
- (a) do all things and execute all documents necessary to give effect to the security interest created under this Contract; and
 - (b) procure from any person considered by the Company to be relevant to its security position such agreement and waivers (including as equivalent to those above) as the Company may at any time require.
- 6.8 The Company may allocate amounts received from the Purchaser in any manner the Company determines, including in any manner required to preserve any Purchase Money Security Interest it has in goods supplied by the Company.

7 The Purchase Price and Payment of Purchase Price

- 7.1 Subject to clause 4.3, unless otherwise agreed in writing or set out in a Credit Application or invoice, payment for the Goods must be made in full within 14 days of the date of the Company's invoice.
- 7.2 Payment by cheque is not deemed made until the proceeds of the cheque have cleared.
- 7.3 Payment terms may be revoked or amended at the Company's sole discretion upon giving the Purchaser written notice.
- 7.4 The time for payment is of the essence.

- 7.5 The Company may vary the Purchase Price to take account of any change in the costs incurred by the Company in relation to the Goods, by notifying the Purchaser.
- 7.6 If the Purchaser requests any variation to the Contract, the Company may increase the Purchase Price to account for the variation.
- 7.7 All prices quoted in this Contract are net, exclusive of any GST, unless otherwise expressly stated.

8 Non-Payment

- 8.1 Subject to clause 4.3, if any payment is not received by the Company in accordance with clause 7.1 then, all money which would become payable by the Purchaser to the Company at a later date on any account, becomes immediately due and payable without the requirement of any notice to the Purchaser, and the Company may, without prejudice to any of its other accrued or contingent rights:
- (a) charge the Purchaser interest on any sum due at a rate of interest per annum equal to 2% higher than the penalty interest rate under section 2 of the *Penalty Interest Rates Act 1983*(VIC);
 - (b) charge the Purchaser for, and the Purchaser must indemnify the Company from all costs and expenses (including without limitation all legal costs and expenses) incurred by the Company resulting from the default or in taking action to enforce compliance with the Contract or to recover Goods;
 - (c) cease or suspend supply of all future deliveries of Goods or other products to the Purchaser;
 - (d) by written notice to the Purchaser, terminate any uncompleted Contract with the Purchaser.
- 8.2 Clause 8.1 (c) and (d) may also be relied upon, at the Company's option:
- (a) where the Purchaser is a natural person and becomes bankrupt or enters into any scheme of arrangement or any assignment or composition with or for the benefit of his or her creditors or any class of his or her creditors generally; or
 - (b) where the Purchaser is a corporation and, it enters into any scheme of arrangement or any assignment or composition with or for the benefit of its creditors or any class of its creditors generally, or has a liquidator, administrator, receiver or manager or similar functionary appointed in respect of its assets, or any action is taken for, or with the view to, the liquidation (including provisional liquidation), winding up or dissolution without winding up of the Purchaser.

9 Warranties and Liability

- 9.1 Except as the Terms specifically state, or as contained in any express warranty provided in relation to the goods, the Contract does not include by implication any other term, condition or warranty, in respect of the quality, merchantability, acceptability, fitness for purpose, condition, description, manufacture, assembly, design, performance of the Goods or any contractual remedy for their failure.
- 9.2 If the Purchaser is a consumer nothing in these Terms restricts, limits or modifies the Purchaser's rights or remedies against the Company for failure of a statutory guarantee under the ACL.
- 9.3 If the Purchaser on-supplies the Goods to a consumer or transforms or uses up the Goods in the course of trade:
- (a) if the Goods are not of a kind ordinarily acquired for personal, domestic or household use or consumption, then the amount specified in section 276A(1) is the absolute limit of the Company's liability to the Purchaser;
 - (b) otherwise, payment of any amount required under section 274 of the ACL is the absolute limit of the Company's liability to the Purchaser;
- howsoever arising under or in connection with the sale, use of, storage or any other dealings with the Goods by the Purchaser or a third party.
- 9.4 If clauses 8.2 and 8.3 do not apply, then other than as stated in the Terms or any written warranty statement the Company is not liable to the Purchaser in any way arising

under or in connection with the sale, use of, storage or any other dealings with the Goods by the Purchaser or any third party.

- 9.5 The Company is not liable for any indirect or consequential losses or expenses suffered by the Purchaser or any third party, howsoever caused, including but not limited to loss of turnover, profits, business or goodwill or any liability to another party, except to the extent imposed by the ACL.
- 9.6 The Purchaser acknowledges that it has not relied on any service involving skill and judgement, or on any advice, recommendation, information or assistance provided by the Company in relation to the Goods or their use or application.
- 9.7 Nothing in these Terms is to be interpreted as excluding, restricting or modifying or having the effect of excluding, restricting or modifying the application of any State or Federal legislation applicable to the sale of goods or the supply of services which cannot be excluded, restricted or modified.

10 Termination and Cancellation

- 10.1 If a party commits a breach of any provision of this contract, and has not remedied that breach within 14 days of being requested in writing by the other party to do so, then that other party may terminate this Contract immediately by notice in writing to the first party.
- 10.2 If the Company is unable to deliver the Goods, then it may cancel the Purchaser's order (even if it has been accepted) by written notice to the Purchaser.
- 10.3 No purported cancellation or suspension of an order or any part of it by the Purchaser is binding on the Company once the order has been accepted.

11 Storage

If the Purchaser does not provide delivery instructions, where required by the Company, within 14 days of a request by the Company, or if delivery is attempted and is unable to be completed, the Purchaser is deemed to have taken delivery of the Goods. The Purchaser is liable for storage charges calculated daily and payable monthly on demand.

12 Survival of Clauses

To the extent that the context and the law permit, the rights and obligations of the parties under clause 5, 7, 8, 9 and 10 survive termination of these Terms and Conditions howsoever such terminations may occur.

13 Force Majeure

The parties are not liable in any way howsoever arising under the Contract to the extent that they are prevented from acting by events beyond its reasonable control including, without limitation, industrial disputes, strikes, lockouts, accident, breakdown, import or export restrictions, acts of God, acts or threats of terrorism or war. If an event of force majeure occurs, the Company may suspend or terminate the Contract by written notice to the Purchaser.

14 Non-Merger

The covenants, conditions, provisions and warranties contained in these terms and conditions will not merge or terminate upon completion of the transactions contemplated by these terms and conditions, but to the extent that they have not been fulfilled and satisfied or are incapable of having effect will remain in full force and effect.

15 Governing Law

This contract is governed by the laws of Victoria, Australia. The parties unconditionally submit to the jurisdiction of the courts of that State and all courts competent to hear appeals of the decisions of those courts.

16 Miscellaneous

- 16.1 The Company's failure to enforce any of these Terms shall not be construed as a waiver of any of the Company's rights.
- 16.2 If any Term is unenforceable it shall be read down or, if it cannot be read down, the term shall be severed from the Terms without affecting the enforceability of the remaining terms.