

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

**1 Definitions and interpretation** 1.1 **Accepted Order** means a Purchase Order as accepted by the Seller under clause 2.1; **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 a party to which the other party gains access in connection with this Contract; **Contract** means the contract entered into between GWF and Seller for Supplies pursuant to an Accepted Order and these Terms; **Contract IP** means Intellectual Property developed or created under clause 16.3; **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); **Excluded Loss** means any indirect or consequential loss, including 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, 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 and legal costs and expenses (calculated on a full indemnity basis), but excludes Excluded Loss; **Modern Slavery** means internationally recognised exploitative practices including human trafficking, slavery, slavery-like practices, servitude, forced labour, forced marriage, debt bondage, the worst forms of child labour, deceptive recruiting for labour services; **Modern Slavery Law** means any law, rule or other legally binding measure of any jurisdiction that (a) creates a reporting or due diligence obligation in connection with Modern Slavery, or (b) criminalises or imposes a penalty for adverse human rights impacts, and that is or becomes applicable to GWF (or the GWF Group, as notified by GWF) or the Seller; **Price** means the price of the Supplies under clause 4; **Purchase Order** means the order created by GWF; **Seller** means the seller of the Supplies listed in the Contract and any of its officers, employees, agents, contractors or approved sub-contractors; **Services** means services to be supplied by Seller to GWF; **Site** means the site(s) set out in the Accepted Order or otherwise notified by GWF to Seller; **Specifications** means the specifications for the Supplies; 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. Acknowledging the acceptance of the Purchase Order to GWF and/or 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 Each party agrees that these Terms supersede all other terms between the parties, including any terms and conditions contained on any printed documents issued by either party at any time, which are hereby terminated and/or excluded, as the case may be. The Terms are in addition to all other rights 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. 2.3 The parties may vary these Terms by written agreement. 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 Accepted 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 Accepted 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* (Cth) 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 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. 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, and then increased in accordance with clause 4.2 where applicable. Termination of these Terms will not affect the operation of this clause 4.3. 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 Price as stated on the Accepted Order cannot be varied except by written agreement between the parties. 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 and in the aggregate in respect of products, unless otherwise agreed with GWF in writing.

**6 Payment Terms** 6.1 Seller must send to GWF, at its address in the Accepted Order, an invoice setting out the Price and quantity of Supplies. 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 Accepted 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 (that are not subject to a bona fide dispute).

**7 Supply, Delivery, Risk and Title** 7.1 The Seller must supply the Supplies the subject of an Accepted Order by the delivery date as specified (unless otherwise agreed by GWF). For the avoidance of doubt, without limiting or modifying the interpretation of any other clause under

these Terms, the Seller's failure to comply with this clause 7.1 is a material breach for the purposes of clause 19.2. Seller must supply the Supplies to the Site with written proof of delivery and pay all costs for delivery and provision of Supplies. 7.2(a) Risk in the Goods will pass to GWF on delivery of the Goods; and (b) Title in the Goods passes to GWF, at the earlier of: (i) the time when the Price is paid for the particular Goods; or (ii) the time immediately prior to GWF using or reselling the Goods in its ordinary course of business (which it is permitted to do so), before the Price is paid for the particular Goods. 7.3 Without limiting clause 7.2, the Seller may not claim or register any interests (including security interests) in the Supplies. 7.4 The Seller 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 Seller (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 Seller 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, on reasonable notice, 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** 9.1 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. 9.2 On rejection of any Supplies by GWF under this clause 9, the risk in any Goods already delivered will immediately revert to Seller and the Seller must pay the cost of storing, handling and returning any Goods rejected by GWF. 9.3 No delay by GWF in rejecting the Supplies affects GWF's rights under this clause. 9.4 If Supplies are rejected under this clause 9, the Seller agrees to, at GWF's reasonable election, promptly: (a) replace or re-supply the rejected Supplies; (b) make good any shortage in the Supplies; or (c) if GWF has paid the Seller for the rejected Supplies, provide GWF with a refund or credit for the monetary value of the rejected Supplies.

**10 Seller's Warranties** 10.1 Seller warrants that: (a) the Seller and the Supplies comply with all laws, regulations, by-laws, orders, Australian standards, industry codes of practice, food safety programs (if relevant), Intellectual Property rights and other requirements relevant to the manufacture and supply of the Supplies, and that it has no conflict of interest; (b) Seller will comply with GWF's Code of Conduct (and any other applicable policies, procedures or reasonable directions of GWF) as updated from time to time, unless otherwise agreed by GWF (acting reasonably); (c) all Goods: (1) conform with the description provided by Seller, the Specifications, the quantities stated in the Accepted 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 Accepted 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; and (d) all Services: (1) conform with the Accepted 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.. 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 Delay and Cancellation of Orders** 11.1 (a) Where the Seller is likely to be delayed in the performance of its obligations and clause 17 is not applicable, the Seller will notify GWF immediately once it becomes aware of the likelihood of the delay (with such notice detailing the anticipated duration of the delay); and (b) within 7 days of GWF's receipt of such notice, where GWF has not caused or contributed to the relevant delay, GWF may in its absolute discretion cancel an Accepted Order if the anticipated duration of the delay is unacceptable to GWF. 11.2 Except as otherwise provided by clauses 11.1, neither party may, without the other party's written consent, cancel an Accepted Order.

**12 Indemnity and Liability** 12.1 Each party indemnifies the other party for any Loss which the party pays, suffers, incurs or is liable for in relation to: (a) breach of any express or implied warranty, condition or guarantee by the other party in relation to the Supplies; (b) any claim as a result of the other party in relation to property damage, personal injury or death that occurs in connection with the Supplies or the other party's acts or omissions; (c) the breach of these Terms by the other party; (d) any negligent act or omission by the other party; or (e) any claim that the party's use of the other party's Intellectual Property and/or Contract IP infringes a third party's Intellectual Property or moral rights. 12.2 To the maximum extent permitted by law, including the Australian Consumer Law, the aggregate liability of each party 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\$2,000,000, whichever is the greater. 12.3 To the maximum extent permitted by law, each party shall not be liable to the other party for any Excluded Loss. 12.4 Nothing in this clause 12 requires a party to indemnify the other party for Loss that the party has directly caused. 12.5 The limitations of liability in clause 12.2 does not apply to a party to the extent that the liability arises: (a) as a result of fraud, wilful misconduct or criminal conduct by the party or its representatives, (b) arises as a result of any claims for infringement of Intellectual Property of any person, breach of privacy or breach of confidentiality; (c) arises as a result of a breach of a warranty by the party; or (d) to the extent the liability is in connection with any damage to property or injury to, illness or death of any person.

**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 the Contract 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. 14.3 Any cost or expenses incurred in connection with a recall or withdrawal of the Supplies (or product containing the Supplies) initiated by any person will be borne by the Seller, except to the extent that the recall or withdrawal was caused by GWF.

**15 Providing Services** 15.1 When providing the 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. 15.2

The Seller must not delegate, sub-contract or assign the Services or any part thereof without GWF's written consent (acting reasonably) and then subject to such reasonable conditions as GWF may impose.

**16 Confidential Information and Intellectual Property** 16.1 Each party 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, for the purposes of obtaining professional advice, or with the prior written consent of the discloser of the Confidential Information. The Seller acknowledges and agrees that GWF may disclose the Seller's Confidential Information to GWF's subsidiaries or any of its affiliates, provided they are notified of the obligation to keep the information confidential. On termination of the Contract, a party must promptly return all Confidential Information and Intellectual Property to the other party, or destroy it at the other party's request. 16.2 Intellectual Property owned by either party at the commencement of the Contract remains the property of that party. 16.3 Any Intellectual Property developed or created by Seller for GWF during the performance of the Contract vests in GWF immediately upon its creation (**Contract IP**). Seller hereby assigns all right, title and interest in such Contract IP to GWF and will do any further acts or execute any documents required by GWF to effect such assignment.

**17. Force Majeure** 17.1 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 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 or 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 the party's workforce) (each a **Force Majeure Event**). 17.2 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 obligations which may be practicable. 17.3 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.

**18 Chain of Responsibility** 18.1 The Seller must at all times during the term of the Contract and the 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 reasonably 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. The Seller is not entitled to any other payments on termination of a Contract under this clause 19.1. 19.2 Either party may terminate any Contract by immediate written notice if: (a) the other party 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; (b) the other party ceases or threatens to cease to carry on all or a material part of its business; or (c) the other party fails to remedy a material breach of these Terms which, if capable of remedy, is not remedied within 14 days of notice requiring it to do so; or (d) materially breaches these Terms and, in the reasonable opinion of the terminating party, the breach cannot be remedied. 19.3. On termination of any Contract, the Seller must immediately, if directed by GWF, complete all outstanding Accepted Orders (in which case, the provisions of these Terms shall survive to the extent required for the Seller to complete and be paid for all outstanding Accepted Orders in accordance with these Terms).

#### **20 Anti-corruption and Modern Slavery**

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 The Seller must comply with any Modern Slavery Laws and use reasonable endeavours to procure that the Seller's personnel and supply chain participants comply with Modern Slavery Laws. The Seller agrees to notify GWF promptly, and in any event, within 72 hours of becoming aware of any actual, alleged or reasonably suspected breach of a Modern Slavery Law. 20.5 The Seller's failure to comply with any or all of this clause 20.1 is a material breach for the purposes of clause 19.2.

**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.

**22 General** 22.1 If any part of the Contract is or becomes illegal, void or unenforceable, this does not invalidate the rest of the Contract. 22.2 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; and (b) the Order(s). 22.3 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. 22.4 The Contract may not be assigned without the consent of both parties. 22.5 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 7, 9, 10, 12, 14, 16, 20, 21 and 22 survive the termination of the Contract.