

WHOLEGRAIN MILLING COMPANY PTY LTD: TERMS OF TRADE

1. DEFINITIONS

The following words have the following meanings in these terms and conditions unless the contrary intention appears:

- (a) **"Company"** means Wholegrain Milling Company Pty Ltd (ABN 91 003 847 210) its successors, assigns, employees, servants and agents.
- (b) **"Consumer"** means a consumer as defined by the *Competition and Consumer Act 2010*.
- (c) **"Customer"** means the entity to whom the Company has supplied goods, either in its own right or as agent under these terms.
- (d) **"Event of Termination"** means when the Customer is served with any originating process in any proceedings under the *Bankruptcy Act 1966* or the winding-up provisions of the *Corporations Act 2001* or similar or replacement legislation or has an Administrator, Liquidator, Provisional Liquidator, Receiver or Receiver and Manager appointed to it.
- (e) **"Goods"** means all goods/products or services agreed to be supplied by the Company to the Customer.
- (f) **"PPSA"** means the *Personal Property Securities Act 2009*.
- (g) **"Privacy Policy"** means the Company's written policy in relation to privacy.

2. GENERAL

- (a) Except as expressly provided in these Terms of Trade, these Terms of Trade constitute an exclusive statement of the agreement between the Company and the Customer with respect to supply of the Goods, despite any provisions to a contrary effect in any of the Customer's order forms or other documents. These Terms of Trade supersede all prior arrangements written or oral.
- (b) The Company may change these Terms of Trade at any time in writing but not so as to affect orders to the extent that delivery has been made.
- (c) The Customer's acceptance of these Terms of Trade in relation to the supply of the Goods is signified by the making of an order for the Goods. In this respect, the Customer, by making the order, acknowledges that the Customer has read these Terms of Trade as disclosed on our website at: www.wholegrainmilling.com.au. This does not exclude acceptance by other means, including signing a credit application or signing any like acknowledgement.
- (d) The supply of the Goods pursuant to these Terms of Trade is to be governed and construed in accordance with the law in effect in New South Wales and the parties accept the non-exclusive jurisdiction of the Courts of New South Wales in relation to any dispute between them.
- (e) Unless otherwise agreed in writing, any Goods supplied by the Company are part of an ongoing supply under these terms and conditions.

3. PRICE

- (a) The Company may vary the price without notice.
- (b) Orders will be supplied at the price prevailing at the date of delivery.
- (c) In addition to the price, the Customer shall pay any GST that is payable thereon and the invoice total is inclusive of GST.
- (d) Unless otherwise stated, all prices quoted are exclusive of freight delivery costs, insurance and other charges in relation to the transfer of the Goods from the premises of the Company to the location designated by the Customer all of which charges shall be payable by the Customer.

4. PAYMENT

- (a) Unless express agreement in writing is otherwise made with the Company and subject to clause 4(g), the price shall be paid on acceptance of order by the Customer in cash, credit card, electronic funds transfer (EFT) or by cheque.
- (b) Credit terms will only be available, at the Company's absolute discretion, upon approval of a written application for this purpose. The application for credit will contain or annex such financial information and documents as the Company may require. The Company will treat this information in a confidential manner and in accordance with its Privacy Policy. As a condition of providing credit, the Company may require the provision of personal guarantees or other forms of security.
- (c) If any payment in respect of the sale of Goods is not made in full within the agreed period, the Company is entitled to:
 - (i) terminate any agreement arising under Terms of Trade and any other contract for sale the Company may have with the Customer;
 - (ii) refuse to make any further delivery of Goods including refusing to deliver Goods ordered by the Customer;
 - (iii) demand and receive immediate payment of any invoice in respect of an agreement arising under these Terms of Trade whether payment is then due or not; and
 - (iv) recover possession of all Goods to which it has retained title under clause 8.
- (d) All losses, expenses and costs, including legal fees on an indemnity basis, consequent upon the Customer's failure to pay on the due date, are recoverable from the Customer by the Company.
- (e) Interest will be charged on overdue accounts at a rate equivalent to the interest rate prescribed by section 100 of the *Civil Procedure Act 2005* (NSW) or any replacement thereof, until payment of the debt plus all costs, charges and expenses which may be incurred by the Company are recovered.
- (f) Payment of any amount by the Customer must be treated as being received in the following order:
 - (i) First, in relation to obligations that are not secured ("secured" in this clause means secured under the PPSA), in the order in which those obligations were incurred;
 - (ii) Second, in relation to obligations that are secured, but not by purchase money security interests, in the order in which those obligations were incurred; then,
 - (iii) Third, in relation to obligations that are secured by purchase money security interests, in the order in which those obligations were incurred.
- (g) In the event that the order is a custom item and the order is accepted by the Company, a 50% non-refundable deposit is required on placement of the order. The remaining 50% is to be paid prior to dispatch of the custom item.
- (h) If payment is made by cheque which is dishonoured, the Company reserves the right to charge the Customer for accounting and bank charges and other fees incurred by it in respect of such dishonour.

5. SECURITY FOR PAYMENT

- (a) Where the Customer is not a Consumer, the Customer as beneficial owner (and where there is more than one person trading together as the Customer, jointly and severally) hereby charges in favour of the Company all freehold and leasehold interests in land which the Customer now has or may acquire with the payment of all money which may become owing to the Company by the Customer.
- (b) The Customer, in such circumstance, further acknowledges that the Company is entitled to register a caveat to protect its interest under such charge.
- (c) In certain circumstances, the Company may, at its absolute discretion, agree to accept a Credit Account Application from a Customer.
- (d) In the event of the Customer in any Credit Account Application purports to be a corporation, each of the persons who have signed the Credit Account Application as Directors/Secretary of and on behalf of the corporation:

- (i) warrants that the corporation has been incorporated;
- (ii) acknowledge that the Credit Account Application is for business purposes solely;
- (iii) guarantee the due performance of the corporation in relation to its obligations pursuant to these Terms of Trade and/or with the Credit Account Application in every aspect and, in the event that the corporation fails to perform its said obligations, agree that they shall be personally liable under these Terms of Trade and/o their Credit Account Application both jointly and severally as if they had been named herein as the Customer;
- (iv) acknowledge that, but for each of those persons so warranting, acknowledging, guaranteeing and agreeing, the Company would not have accepted the said Credit Account Application or any orders placed by the Customer in reliance upon the same.

6. ORDERS

The Company shall be under no obligation to accept the whole or part of any order, unless otherwise agreed by the Company.

7. DELIVERIES

- (a) Unless otherwise agreed, the Customer will bear the costs of delivery of the Goods at premises nominated by the Customer.
- (b) Delivery may be made by the Company or its contractors or agents.
- (c) Delivery shall be deemed to have been made on receipt by the Company's authorised carrier of a delivery note signed by a representative of the Customer or loading onto the Customer's nominated carrier.
- (d) The Customer shall provide secure and suitable off-loading facilities at the premises so as to facilitate the safe and timely off-loading of the Goods.
- (e) Where the Customer is not a Consumer, the Company shall not be liable for any loss or damage, including consequential loss, suffered by the Customer arising from or related to any late delivery or failure to make delivery of an order whether in whole or in part and whether there exists a breach of contract or negligence or breach of any other obligation whatsoever.
- (f) Every endeavour will be made by the Company to complete delivery within the period, if any, stated but no liability can be accepted by the Company for delay in delivery or non-delivery.

8. RISK AND TITLE

- (a) The Goods shall be at the Customer's risk from delivery by the Company or its third party supplier.
- (b) Without limiting the generality of clause 8 (a), all transit/carriage of the Product shall be at the Customer's risk whether from the Company to the Customer or the third party to the Company or the third party to the Customer and whether such transit/carriage is arranged by the Company the third party or the Customer.
- (c) The Customer, within 24 hours of request, shall give the Company instructions as to delivery or collection of the Goods.
- (d) Notwithstanding that the risk in the Goods may have passed to the Customer, the Company and the Customer agree that, where the Customer is not a Consumer, ownership of the Goods shall not pass until:
 - (i) the Customer has paid the Company all amounts owing for the particular Goods; and
 - (ii) the Customer has met all other obligations due by the Customer to the Company in respect of all contracts between the Company and the Customer.
- (e) Receipt by the Company of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Company's ownership or rights in respect of the Goods shall continue.

- (f) It is further agreed that, where the Customer is not a Consumer:
- (i) the Goods shall be kept separate and identifiable until the Company shall have received payment and all other obligations of the Customer are met; and
 - (ii) until such time as ownership of the Goods shall pass from the Company to the Customer, the Company may give notice in writing to the Customer to return the Goods or any of them to the Company. Upon such notice, the rights of the Customer to obtain ownership or any other interest in the Goods shall cease; and
 - (iii) the Company shall have the right of stopping the Goods in transit whether or not delivery has been made; and
 - (iv) If the Customer fails to return the Goods to the Company then the Company or the Company's agent may (as the invitee of the Customer) enter upon and into land and premises owned, occupied or used by the Customer, or any premises where the Goods are situated and take possession of the Goods; and
 - (v) the Customer is only a bailee of the Goods and, until such time as the Company has received payment in full for the Goods, then the Customer shall hold any proceeds from the sale or disposal of the Goods, up to and including the amount the Customer owes to the Company for the Goods, on trust for the Company; and
 - (vi) the Customer shall not deal with the money of the Company in any way which may be adverse to the Company; and
 - (vii) the Customer shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of the Company; and
 - (viii) the Company can issue proceedings to recover the price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Customer; and
 - (ix) until such time that ownership in the Goods passes to the Customer, if the Goods are converted or incorporated into other Goods, the parties agree that the Company's security interest will continue in accordance with the PPSA.

9. WARRANTIES, GUARANTEES AND CONDITIONS

- (a) All implied guarantees, warranties and conditions are excluded to the maximum extent permitted by law.
- (b) To the maximum extent permitted by law, the Company is not liable for:
 - (i) any loss or damage to the Goods resulting from any action or omission on the part of the Company, or the employees, contractors or agents of the Company; or
 - (ii) any special, consequential, direct or indirect loss and damage incurred by the Customer.
- (c) The Customer shall examine the Goods after delivery and immediately inform the Company of any alleged defect in the Goods. To the maximum extent permitted by law, the Company shall have no liability to the Customer for any defect that visual examination would ordinarily reveal unless the Company receives written notification within two (2) business days from the date of delivery.
- (d) If a defect exists in the Goods and that defect occurred before delivery, the Company will repair or replace those Goods free of charge upon the Customer returning the defective Goods.
- (e) To the maximum extent permitted by law, Clause 9(d) constitutes the Customer's sole remedy in the respect of the supply of defective Goods.
- (f) Where the Customer buys the Goods as a Consumer, these Terms of Trade shall be subject to any laws or legislation governing the rights of Consumers and shall not affect the Consumer's statutory rights. The Company refers each such Consumer to the Consumer Guarantee Guide at the following link: http://www.consumerlaw.gov.au/content/Content.aspx?doc=the_acl/guidance.htm and states that nothing in these Terms of Trade is to be taken as seeking to contract out of the Consumer's statutory rights.

- (g) In the event of a breach of an implied guarantee, condition or warranty which cannot by law be excluded or modified, including any guarantee, condition or warranty implied by the *Competition and Consumer Act 2010*, the Company's liability shall at the Company's option be limited to:
 - (i) the repair or replacement of the Goods or the supply of equivalent Goods; or
 - (ii) the cost of such repair, replacement or supply.
- (h) Nothing in these Terms of Trade is intended to have the effect of contracting out of any applicable provisions of the *Competition and Consumer Act 2010* ("CCA") or the *Fair Trading Acts* ("FTA") in each of the States or Territories of Australia (including any substitute to those Acts or re-enactment thereof), except to the extent permitted by those Acts where applicable.
- (i) The Company shall not be responsible for damage or fault in performance arising out of incorrect or inappropriate operation of the Goods by the Customer. The Customer acknowledges that the Company gives no warranty as to fitness of the Goods for its intended application of the Customer and that the Customer has relied entirely upon its own evaluation thereof.
- (j) The Customer warrants that it has not relied upon any representations made by the Company which has not been stated expressly in this agreement or upon descriptions or illustrations or specifications contained in any document including any catalogues or publicity material supplied by the Company.
- (k) To the extent that the Goods or any component part thereof is supplied to the Company by a third party, the warranty offered by the Company in relation to the Goods or the component part thereof (as applicable) shall be limited to the Company's right of redress if any against the third party supplier arising out of any alleged fault/defect in the Goods or component part thereof.
- (l) All Goods sold by the Company carrying a warranty period are subject to the manufacturer's terms and conditions of warranty.

10. CREDIT

- (a) No Goods may be returned to the Company or credit allowed for such return without the prior written approval of the Company.
- (b) Any application by the Customer to return Goods and receive a credit shall be in writing and shall state the reason for the return and the action requested by the Customer on the part of the Company.
- (c) Goods wrongly ordered by the Customer and accepted for credit return by the Company shall be subject to a 15% re-stocking fee.

11. USE OF LOGOS

- (a) The use of any Company logos must be in accordance with the Company's brand guidelines.

12. TERMINATION

- (a) Where the Customer is not a Consumer, the Company may, in addition to any other course of action available to it, elect to terminate any agreement made pursuant to these terms and conditions by notice in writing to the Customer if an Event of Termination occurs.
- (b) On termination, all invoices rendered by the Company are payable immediately.

13. CUSTOMER'S WARRANTIES

Where the Customer is not a Consumer, the Customer warrants that:

- (a) the Customer is a party to any agreement with the Company as a principal in its own right.
- (b) any financial information the Company may require the Customer to give is true and accurate and the Customer will keep the Company informed of any material adverse change.
- (c) the Customer will not make any representations or claims about the Goods to persons to whom it sells the Goods which are false and misleading.
- (d) the Customer shall advise the Company forthwith if it ceases trading or if it commences to trade through a different entity of if there is a material change in its ownership or control.

14. PERSONAL PROPERTY SECURITIES ACT 2009 (“PPSA”)

- (a) This clause only has application where the Customer is not a Consumer.
- (b) In this clause:
 - (i) financing statement has the meaning given to it by the PPSA;
 - (ii) financing change statement has the meaning given to it by the PPSA;
 - (iii) security agreement means the security agreement under the PPSA created between the Customer and the Company by these terms and conditions; and
 - (iv) security interest has the meaning given to it by the PPSA.
- (c) Upon agreeing to these Terms of Trade, the Customer acknowledges and agrees that these Terms of Trade:
 - (i) constitute a security agreement for the purpose of the PPSA; and
 - (ii) create a security interest in:
 - all Goods previously supplied by Company to the Customer (if any);
 - all Goods that will be supplied in the future by the Company to the Customer.
- (d) The Customer undertakes to:
 - (i) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Company may reasonably require to:
 - register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - register any other document required to be registered by the PPSA; or
 - correct a defect in a statement referred to in clause 15(c)(i)i or 15(c)(i)ii;
 - (ii) indemnify, and upon demand reimburse, the Company for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;
 - (iii) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of the Company; and
 - (iv) immediately advise the Company of any material change in its business practices of selling the Goods which would result in a change in the nature of the proceeds derived from such sales.
- (e) The Goods are collateral for the purposes of the PPSA.
- (f) The Company and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions and that neither the Company nor the Customer will disclose information of the kind specified in section 275(1) of the PPSA.
- (g) The Customer hereby waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- (h) The Customer waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- (i) Unless otherwise agreed to in writing by the Company, the Customer waives its right to receive a verification statement in accordance with section 157 of the PPSA.
- (j) The Customer shall unconditionally ratify any actions taken by the Company under clauses 15(c) to 15(e).

15. SEVERANCE

Should any part of these terms and conditions be held to be void or unlawful, these terms and conditions are to be read and enforced as if the void or unlawful provisions had been deleted.