



## **TERMS AND CONDITIONS OF SALE**

### **Applicability**

These terms and conditions (**'Terms'**) govern the sale or supply of all goods by RTC Foods Pty Limited (**'RTC Foods'**) to any person, business or company (the **'Buyer'**).

These Terms prevail over any oral representations between RTC Foods and the Buyer. Waivers or changes to these Terms will only have effect if made in writing by RTC Foods.

Any purchase order placed with RTC Foods, orally or in writing, will be confirmation of the Buyer's acceptance of these Terms.

### **Prices**

The prices for the goods are the prices quoted to the Buyer by RTC Foods and confirmed by RTC Foods in writing.

RTC Foods will issue to the Buyer a 'Confirmation of Sale' form confirming the goods sold, delivery date, destination and price to be paid by the Buyer. It is the Buyer's responsibility to advise RTC Foods if the price stated is not correct. The agreed price includes the delivery charge unless otherwise stated.

Prices and quotations exclude any Australian or overseas taxes or duties and are exclusive of GST. The Buyer is liable for all taxes and duties, including GST, payable on the goods supplied to the Buyer.

### **Terms of Payment**

Payment must be made in accordance with the Terms of Payment specified in the attached Application for a Commercial Credit Account (**'Application'**).

If the Terms of Payment are not specified in the Application the Buyer will be required to attend to payment immediately on delivery of the goods and receipt of a tax invoice from RTC Foods, unless otherwise agreed.

Payment means receipt by RTC Foods of cash or cleared funds.

Interest is payable by the Buyer on all late payments at the rate of 15% per annum (or any other rate notified in writing by RTC Foods to the Buyer from time to time), calculated daily from the due date until the date of payment.

### **Delivery Date**

RTC Foods will confirm, in writing, the required delivery date (**'the Delivery Date'**) and destination. It is the Buyer's responsibility to advise RTC Foods if the Delivery Date and destination are not correct.

RTC Foods will use all reasonable endeavours to meet the Delivery Date but RTC Foods is not and will not be liable for any loss or damage, however it arises, if the goods are not delivered by the Delivery Date.

RTC Foods reserves the right to deliver the goods in one delivery, or by instalment, unless otherwise agreed in writing. Each instalment will be deemed a separate sale and must be paid for separately by the Buyer.

### **Ownership of Goods**

Notwithstanding delivery of the goods, ownership of goods delivered only passes to the Buyer when the goods are paid for in full. This includes payment of all taxes, duties and delivery charges. Until the Buyer has paid in full for the goods:

- ownership of the goods remains with RTC Foods;
- the Buyer holds the goods as bailee and fiduciary for RTC Foods; and
- the Buyer may only dispose of the goods as RTC Foods's fiduciary and agent and provided that the entire proceeds of the sale of those goods are held by the Buyer on trust for RTC Foods.

In the event of non-payment in accordance with these Terms or should the Buyer enter into administration, bankruptcy, receivership or liquidation then RTC Foods has the right to recover the unpaid for goods and its employees or agents are authorised by the Buyer to

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enter the Buyer's premises to collect the unpaid for goods. The Buyer is obligated to make available all such unpaid for goods if directed to do so in writing by RTC Foods. The Buyer may not revoke this permission. RTC Foods may resell the goods, without incurring any liability to the Buyer or any person claiming through the Buyer.

### **Risk and Insurance**

The risk in the goods will, unless otherwise agreed in writing, pass to the Buyer upon delivery of the goods to the Buyer or its nominated agent.

RTC Foods insures the goods in transit until delivery.

### **Acceptance and Return of Goods**

Any return of goods is to be negotiated directly with RTC Foods. RTC Foods is not obliged to accept the return of any goods for credit.

The Buyer is deemed to have accepted a delivery of goods:

- within forty eight (48) hours after delivery unless prior to that time the Buyer has notified RTC Foods in writing of its rejection of that delivery and the reasons for the rejection are accepted by RTC Foods; or
- immediately upon use or consumption of the goods,

whichever is the earlier. If the goods are used or RTC Foods receives no notification of rejection of the goods within the required time then RTC Foods will be entitled to payment in full for the goods delivered and RTC Foods will not be liable for any claims, loss or damage, that may subsequently arise.

Any goods intended to be returned to RTC Foods must be returned in the same condition as despatched or they will not be accepted. RTC Foods may grant or refuse any such request to return the goods at its sole discretion.

If no satisfactory and accepted reason is provided for the return of the goods and, despite this, RTC Foods agrees to accept the return of goods for credit then the Buyer must pay to RTC Foods a fee of 15% of the price of the goods being returned, as a handling and restocking charge. The Buyer accepts that this cancellation fee or handling and restocking charge is reasonable. RTC Foods will debit this fee to the Buyer's commercial credit account.

### **Default**

The Buyer agrees that if:

- the Buyer fails to pay when due any amount owing to RTC Foods; or
- the Buyer fails to comply with any of these Terms; or
- any step is taken to enter into any arrangement between the Buyer and its creditors; or
- the Buyer ceases to be able to pay its debts as they become due or ceases to carry on business; or
- any step is taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a liquidator, a provisional liquidator, an administrator or other like person over the whole or any part of the Buyer's assets or business; or
- in RTC Foods's opinion, the Buyer's credit standing has materially changed,

RTC Foods may do any or all of the following (in addition to any other rights RTC Foods may have, including termination of this agreement):

- require the Buyer to immediately pay all amounts that are invoiced but unpaid and to pay in advance for any further supply or delivery of goods (even if specified otherwise in any invoice or confirmation of order previously sent to the Buyer by RTC Foods);
- suspend or cease supplying goods to the Buyer (whether or not the Buyer has ordered goods that have not yet been supplied);
- demand that the unpaid for goods be immediately returned to RTC Foods at the Buyer's expense;

- enter the Buyer's premises and repossess goods for which payment is overdue; and
- cancel any other contract(s) with the Buyer or such parts as RTC Foods sees fit.

These rights are without prejudice to any other right or demand available to RTC Foods. The Buyer will be liable to RTC Foods for all costs incurred by RTC Foods, including all legal costs on an indemnity basis, in recovering the unpaid for goods and will be liable to RTC Foods for all costs incurred by RTC Foods arising as a result of the non payment of goods, including costs incurred in legal proceedings.

#### **Warranty and Limitation of Liability**

RTC Foods warrants that the goods supplied are of merchantable quality.

RTC Foods otherwise excludes all conditions and warranties implied by statute, general law or custom except any implied condition or warranty the exclusion of which would contravene any statute (including the Trade Practices Act 1974 (Cth)) or cause any part of this term or condition to be void ('statutory condition').

RTC Foods limits its liability for breach of any express provision of these Terms or any statutory condition (other than an implied warranty of title) at RTC Foods's option.

- in the case of goods, to the replacement of the goods or the payment of the cost of replacing the goods; or
- in the case of services, to the supplying of the services again or the payment of the cost of having the services supplied again.

Except to the extent prohibited by law, RTC Foods excludes all liability for any loss or damage suffered by the Buyer (whether direct, indirect or consequential) arising in any way out of any defective goods or the manufacture, supply, resupply, acquisition, use or possession of the goods, or any negligent act or omission of RTC Foods, its officers, employees, contractors or agents, including but not limited to lost profits and damage sustained or incurred as result of a claim by a third party.

#### **Indemnity**

The Buyer agrees to indemnify RTC Foods and its directors, officers, employees and agents, from and against any and all claims, losses, damages, costs, judgments, expenses and liabilities of any kind (including, without limitation, personal injury or property damage) arising out of or in connection with the Buyer's purchase, marketing, distribution or use of the goods whether in the good's present form or as processed or combined with other materials into another form.

#### **Advice**

Any advice, recommendation, information, assistance or service provided by RTC Foods in relation to goods sold is given in good faith and is believed by RTC Foods to be appropriate and reliable. However, any advice, recommendation, information, assistance or service provided by RTC Foods in relation to any goods supplied by it is provided without liability or responsibility on the part of RTC Foods.

#### **Personal Information**

Any personal information, including personal financial information, that is collected, used or disclosed by RTC Foods for the purposes of the sale or supply of goods to the Buyer is treated as confidential and will only be collected, used or disclosed in the following manner:

- for the purposes of meeting RTC Foods's obligations under this agreement;
- to respond to any queries that the Buyer may have;
- to enquire about the personal financial history and credit worthiness of any individual seeking to establish a commercial credit account, or support a party that is seeking to establish a commercial credit account, with RTC Foods;
- to recover any goods or money owing to RTC Foods; and
- in compliance with the requirements of the *Privacy Act 1988* (Cth).

#### **Force Majeure**

RTC Foods will not be liable for any loss or damage caused by its failure or delay to supply the goods due to anything outside the reasonable control of RTC Foods including but not limited to acts or omissions of the Buyer, breakdown of plant or machinery, shortage of labour, strikes, lockouts, industrial disputes, fire or arson, storm or tempest, floods, theft, vandalism, riots, civil commotions, terrorist actions, wars, government restrictions, intervention and/or control, transport delays, accidents or embargoes of any kind.

#### **Severance**

If any provision of these Terms is or will be illegal, invalid or unenforceable, then that provision will be severed and the validity and enforceability of the remaining provisions will not be affected.

#### **Waiver and Assignment**

No rights of the Buyer may be assigned without the express written consent of RTC Foods.

No waiver by RTC Foods of any default shall be deemed a waiver of any prior or subsequent default.

#### **Governing Law**

These Terms will be governed by and construed in accordance with the laws of the State of New South Wales, in Australia. The parties agree to submit to the non-exclusive jurisdiction of the Courts of New South Wales and the Federal Court of Austral

