



Terms and Conditions of Sale

Consumable Goods

In these Terms and Conditions: –

- (a) “**you**” and “**your**” refers to the purchasing party who is purchasing or requesting or offering to purchase the Goods from us, and who is stated in the Quotation or the Purchase Order, and includes the purchasing party’s executors, successors, administrators, managers and/or permitted assigns ; and
“**we**”, “**us**” and “**our**” refers to Columbit Foods Pty Ltd (ACN 082 007 430) of Unit 3/38 Morley Avenue Roseberry NSW 2018 or its related body corporate (as defined in the *Corporations Act 2001 (Cth)*) being the seller of the Goods.
- (b) “**Claims**” means all actions, demands, claims, prosecutions or proceedings.
- (c) “**Goods**” refers to all consumable, perishable, non-reusable and disposable goods including without limitation all foods, materials, utensils, ingredients, pet foods, substances, beverages, additives, colouring, antioxidants, spices, clips, caps, loops, packaging and packaging related materials specified in, or supplied or to be supplied pursuant to the Quotation or the Purchase Order from time to time. For the avoidance of doubt, Goods also means all other good and items supplied by us excluding equipment and machinery and spare parts.
- (d) “**Financing Change Statement**” has the same meaning as set out in section 10 of the PPSA.
- (e) “**Loss**” means all loss, damage, inconvenience, liability, expense, fee and cost (including legal costs on a full indemnity basis), whether direct, indirect, secondary, consequential or incidental, and includes where applicable, loss of business, loss of revenue, loss of profit, loss of contract, loss of production and any lost opportunity costs.
- (f) “**PPSA**” means the *Personal Properties Security Act 2009 (Cth)*.
- (g) “**PPSR**” means the Personal Property Securities Register.
- (h) “**Purchase Order**” means any purchase order submitted by you to us in respect of the supply of Goods by us, whether pursuant to an accepted Quotation or otherwise, and/or a purchase order confirmation provided to you by us confirming your submitted purchase order, and which refers to or attaches and incorporates these Terms and Conditions, including without limitation, any Appendix A and other attachments.
- (i) “**Security Interest**” has the same meaning as set out in section 12 of the PPSA.
- (j) “**Quotation**” means any Quotation issued by us to you in respect of the supply of Goods, whether accepted or not, and which refers to or attaches and incorporates these Terms and Conditions, including without limitation, any Appendix A and other attachments.

1. GOODS AND SERVICES TAX (GST)

The prices quoted are exclusive of any applicable GST, and any Goods (with the exception of some food or consumable items) or services delivered will attract GST at the prevailing rate at time of delivery. Applicable GST will be payable by you at the same time as the contract price.

2. PAYMENT TERMS

Payment terms:- any amount in relation to any Purchase Order is due and payable on or prior to the last day of the calendar month following the calendar month that the Purchaser Order is submitted.

In relation to payment, time shall be of the essence and any payment not made by the due date will accrue interest at the rate of 10% per annum, calculated on a daily basis and payable on demand.

3. APPLICATION OF TERMS AND CONDITIONS

Unless otherwise agreed in writing by us, you acknowledge, accept and agree that these Terms and Conditions will apply to,

is automatically annexed to and is incorporated in all contracts, agreements and transactions relating to the supply of Goods by us, including without limitation, any Quotation, Purchase Order (whether attached to the Purchase Order or not) and other supply agreements. You further acknowledge and agree that any Purchase Order submitted by you to us pursuant to an accepted Quotation which annexes these Terms and Conditions, automatically annexes these Terms and Conditions to that Purchase Order, regardless of whether we confirm that Purchase Order. All other conflicting terms and conditions or other documents not contained herein are deemed null and void.

4. QUOTATION VALIDITY PERIOD

Subject to exchange rate variations and any additional duties or charges, the prices quoted are fixed for Purchase Orders placed within thirty (30) days from the date of the Quotation unless otherwise specified. We reserve the right to reissue an amended Quotation prior to a Purchase Order being accepted as a result of exchange rate variations or additional duties or charges imposed prior to delivery.

5. EXCHANGE RATE VARIATION/FORWARD COVER

The Quotation is based on an exchange rate between the currency in the source country and the Australian Dollar. If applicable, the exchange rate used will be that rate specified in the Quotation or the Purchase Order and as such, the price payable for the Goods will vary. Forward cover can be purchased on request, however the exchange rate used by the bank may vary from the exchange rate used to determine the price in the Quotation. You are responsible for the cost of purchasing forward cover and the risk of any such variation.

6. PRODUCT SPECIFICATIONS

Unless agreed by us in writing, the Goods sold to you will be in accordance with the manufacturer’s and/or supplier’s specifications for those Goods as at the date of the Quotation or the Purchase Order, or at our option, as at the delivery date.

7. INCLUSIONS AND EXCLUSIONS

As per Quotation.

8. DELIVERY AND RETURNS

8.1 The delivery dates or delivery periods set out in the Quotation or the Purchase Order are estimates only and are subject to change. We are not responsible if you fail to collect or take delivery of Goods when the Goods are delivered. You will be liable for any additional delivery fees or charges for failing to collect or take delivery of Goods.

8.2 We also reserve the right to make partial (where appropriate) deliveries pursuant to the Quotation or the Purchase Order, and you must not reject such partial delivery or otherwise any late delivery of Goods. We make no guarantees as to delivery to you and we will not be liable for any Loss (whether direct, indirect or consequential) suffered or incurred by you as a result of late or delayed delivery.

8.3 You acknowledge, accept and agree that we may deliver up to five (5) per cent more or less than the Goods ordered by you and the price of the Goods will be adjusted in accordance with the quantity delivered.

8.4 You must inspect the Goods immediately upon delivery. If you consider that the Goods are not in accordance with the Quotation or the Purchase Order or are otherwise defective, damaged or non-conforming, you must give written notice to us within five (5) Business days of delivery of the Goods, failing which you are deemed to have accepted the Goods in their condition on delivery. Your written notice must contain a detailed report (submitting all information required by us) evidencing the alleged defects, damage or non-conformities of the Goods. Following the written notice and at our discretion, we may elect for our representative(s) to inspect and investigate the alleged defective, damaged or non-conforming Goods at any time during normal Business hours.

8.5 At our discretion, we reserve the right to replace, resupply or exchange Goods which are the subject of a claim as per clause 8.4. If we are responsible for the defective, damaged or non-conforming Goods,

you are entitled to return the Goods for exchange, resupply or replacement.

8.6 Returns will only be accepted by us subject to:

- (a) you keeping the defective, damaged or non-conforming Goods well preserved and in the condition that they were delivered in;
- (b) the carrying out of any inspections required by our representative and your compliance in accordance with the requirements set out in clause 8.4; and
- (c) our written consent prior to accepting the return of the Goods.

8.7 You acknowledge, accept and agree that we will not replace, resupply or exchange any opened, processed, deteriorated or used Goods. In addition, we may, at our discretion, refuse Goods for return for any reasons other than the conditions contained herein.

9. DOCUMENTATION

The quoted price for Goods includes all necessary documentation as determined by us and any other documentation reasonably requested by you, including any Material Safety Data Sheet and Specification sheet (if applicable).

10. BREACH/ DEFAULT/ TERMINATION

If you are in breach of any obligation under these Terms and Conditions and such breach is not remedied within seven (7) days of us notifying you, we reserve the right to cancel and terminate our supply of Goods to you pursuant to the Quotation or the Purchase Order and all amounts owing to us are immediately due and payable. We are also entitled to terminate our supply of Goods to you if:-

- (a) in our reasonable opinion you are unable to meet any payments as and when they fall due; or
- (b) you become insolvent and/or a receiver, liquidator or similar person is to be or has been appointed on your behalf.

11. RISK AND RETENTION OF TITLE

11.1 Risk of loss or damage to the Goods will pass to you when Goods are delivered to you or your authorised representative (point of delivery);

11.2 You must insure the Goods against any Loss of any kind for their full value as from the date of delivery to you;

11.3 Notwithstanding the passing of risk pursuant to clause 11.1, you acknowledge and agree that we retain legal and equitable title and ownership to the Goods supplied to you, until all amounts due to us in respect of those Goods are paid in full.

11.4 Prior to title in the Goods passing to you, you must:

- (a) hold the Goods as our bailee and fiduciary agent and you agree to accept such appointment;
- (b) store the Goods separately from your products and any third party products, and in a manner enabling them to be identified as our Goods; and
- (c) properly protect, store and insure the Goods.

11.5 Prior to title in the Goods passing to you, you must not assign, transfer or otherwise dispose of any of the rights, obligations, benefits or burdens (or part thereof), or grant a Security Interest, in relation to the Goods without our prior written consent.

Notwithstanding this, you may sell or deal with the Goods in the ordinary course of business, subject to the following conditions: -

- (a) any such sale or dealing with the Goods must be on market terms and at commercial arms' length; and
- (b) all proceeds arising from the sale of or dealing with the Goods remains our beneficial property and must be held on trust by you in a separate identifiable account on our behalf, and you must promptly account to us for those proceeds. Such proceeds are payable to us on demand.

11.6 In the event you breach these Terms and Conditions, we reserve the following rights in relation to the Goods:-

- (a) the right to demand that you immediately return the Goods to us. If you do not return the Goods immediately or within the time specified by us, we are entitled (at any time and without further notice) to enter on your premises or such premises where the Goods are located and take all steps necessary to retake possession of the Goods;
- (b) you grant us (and any person authorised by us) an unconditional and irrevocable licence to enter on any premises where the Goods are located for the purpose of retaking possession of the

Goods and thereafter storing or disposing of them (including by way of sale) as we see fit;



- (c) you are liable for all Losses incurred or suffered by us as a result of us exercising our rights under this clause 11.6; and
- (d) you will indemnify us for all Losses incurred or suffered as a result of all Claims brought by or against us in connection with us exercising our rights under this clause 11.6.

11.7 Prior to title in the Goods passing to you, for the purposes of the PPSA, you acknowledge and agree as follows:

- (a) any transaction deriving from the Quotation or the Purchase Order creates a Security Interest for the purposes of the PPSA;
- (b) we are entitled to register the Security Interest on the PPSR and you will not make any objection to such registration;
- (c) the Security Interest applies to all Goods that have previously been supplied by us and to all present and after acquired Goods;
- (d) you will assist with the prompt registration of the Security Interest on the PPSR and will do all things necessary to give effect to such registration, including without limitation, executing all necessary PPSR registration forms and other documents; and
- (e) you will not make or register a Financing Change Statement or make an 'amendment demand' pursuant to section 178 of the PPSA in respect of the Goods, without our prior written consent.

12. WARRANTIES

12.1 We warrant all Goods supplied by us to be in accordance with the standard specifications set out in the Quotation or the Purchase Order as at the date of shipment and in accordance with the manufacturer's/ supplier's warranty period and warranty conditions (if any). For clarity, we only provide to you the manufacturer's/ supplier's warranty and no extended or additional warranty.

12.2 Our warranty obligations in all circumstances are limited to the replacement or exchange of the defective, damaged or non-conforming Goods or part thereof. We will not be liable in any circumstances for any defective, damaged or non-conforming Goods caused in whole or part by improper use, abuse, neglect, fault, carelessness or negligence by you or any third party, the use of the Goods for any other purposes other than its intended purpose, the use of Goods not in accordance with its specifications and any defect, damage or non-conformance caused by any circumstances beyond our control after the Goods have been released from our care and possession.

12.3 In the case where there is a shortage of the Goods supplied, you are only entitled to a reasonable reduction of the contract price to be determined by us.

12.4 Notwithstanding if we are held to be responsible for any defect, damage or non-conformity to the Goods during the warranty period, we will nevertheless be released from all warranty obligations in the following circumstances: -

- (a) you did not grant reasonable time and opportunity for our employees, contractors or agents to do all things necessary to replace or exchange the Goods; and
- (b) domestic or international laws, rules, regulations and controls make it impossible for us to carry out our warranty obligations.

12.5 Except for any conditions, warranties and/or rights:

- (a) set out in these Terms and Conditions;
- (b) expressly agreed by us in writing to apply to the Purchase Order; and
- (c) implied by any law and which cannot be excluded,

all representations, promises, statements, warranties and conditions (whether statutory, express or implied) regarding any Goods supplied by us or on our behalf are expressly excluded.

13. LIMITS ON OUR LIABILITY

13.1 Other than as provided for in these Terms and Conditions, we will not be responsible or liable for any Loss as a result of or in connection

with the use of the Goods or as a result of reliance by you or any third party on the Goods or its results.

13.2 If we are held to be liable to you in contract, in tort, under statute or otherwise for any Loss arising as a result of or in connection with these Terms and Conditions, our liability in all circumstances will be limited to and will not exceed, the aggregate total amount actually paid by you to us under the Quotation or the Purchase Order.

13.3 If we breach these Terms and Conditions or any applicable consumer guarantee under the *Competition and Consumer Act 2010* (Cth) (“CCA”) or are negligent, our liability is limited in all cases and at our discretion to: -

- (a) the replacement, resupply or exchange of the Goods involved or the supply of an equivalent product; and
- (b) the payment of the cost of replacing (or exchanging) the Goods or supplying an equivalent product.

13.4 We will not be responsible or liable to you or the final customer (where applicable) in instances where the Goods do not meet the consumer guarantees in the CCA due to: -

- (a) any act, default or omission of, or representation made by, a third party other than our employees or agents;
- (b) you charging a higher price than the recommended retail price for the Goods involved;
- (c) any circumstances or instances occurring beyond our control after the Goods have been released from our care and possession; and
- (d) you or the final customer (where applicable) being aware of or ought reasonably to have been aware of the defective, damages or non-conforming Goods at the time of delivery or purchase.

The provisions of this clause 13 will not apply to the extent that their application is prevented by CCA.

13.5 Failure to give us written notice of the defective, damaged or non-conforming Goods within seven (7) days of delivery shall be deemed an absolute and unconditional waiver of any Claims in relation to those Goods. If written notice is not provided within the said time period, you are expressly prohibited from commencing any such Claim against us and we will have no liability for any Loss as a result of or in connection with those defective, damaged or non-conforming Goods.

13.6 Any Claim made in connection with these Terms and Conditions must be commenced within twelve (12) months of the cause of action arising.

13.7 We will not be responsible or liable for any act, omission, negligence or default of our contractors (if any) or third-party products or services.

13.8 We will not be responsible or liable for any bodily injuries, material damage, economic losses or any other consequential losses of any nature whatsoever or howsoever.

13.9 You acknowledge, agree and accept that Goods delivered to you from us will be delivered using a third-party carrier and that we are not responsible for and expressly exclude any liability for any Loss caused as a result of breakage, non-conformity as to quantity or quality, damage, expiry, shortage, deterioration, wastage and decomposition of the Goods due to or during delivery by such third party carrier.

13.10 We will not be responsible or liable for any failure to perform or delay in performance of any of our obligations where such failure or delay is due to any cause or circumstance beyond our reasonable control, including without limitation any strikes, lock-outs, labour disputes, fires, acts of God or public enemy, delays in transport, breakdowns in machinery, restrictions or prohibitions by any government authorities or agencies and embargoes.

14. IMPLIED TERMS

14.1 You acknowledge and agree that all warranties expressed or implied by statute, common law, equity or otherwise are to the fullest extent permitted by law expressly excluded, and you accept that:

- (a) the Goods are supplied to you on an “as is” basis;
- (b) we warrant only to supply the Goods with reasonable care and skill;
- (c) we make no express or implied representation or warranty that the Goods supplied are fit for purpose and of a merchantable quality; and
- (d) we make no express or implied representation or warranty that the Goods will not cause harm or injury to any person who uses or otherwise comes in contact with the Goods, whether directly or indirectly.

14.2 Clause 14.1 is subject only to your rights

contained in the CCA or

any other equivalent or similar

federal or state legislation, which cannot be lawfully excluded, restricted or modified.

14.3 We are not liable to you for any Loss which you may suffer or incur or are liable for as a result of or in connection with the use of the Goods.

15. HEALTH AND SAFETY

It is your sole responsibility to ensure that all applicable health and safety regulations are complied with and all appropriate steps are taken in relation to the reception, handling, storage and use of the Goods. This includes informing and distributing to your employees, agents, subcontractors, visitors and every customer, including end customer, any warnings, labels, information, instructions or potential hazards relating to the Goods that we have supplied to you.

16. MODIFICATIONS

You are prohibited, except with our written consent, from interfering with the Goods or changing the composition or appearance of the Goods. Further, you shall not conceal, remove or otherwise interfere with any warnings, instructions, labels, or other markings on or affixed to the Goods.

17. LICENSES AND CONSENTS

Except for the supply of the goods by us to you, you acknowledge, agree and accept that you bear sole responsibility for the obtaining and maintenance in full force and effect of any necessary export or import licenses, authorisations or consents in respect of the Goods and agree that we will not be liable whatsoever for the Goods exported or imported without any necessary licenses, authorisations or consents.

18. PRIVACY

18.1 You acknowledge and agree for us to obtain a credit report from a credit reporting agency containing credit information about you and/or the guarantors (if any) in relation to any credit provided by us. You hereby consent for us to exchange your information with those credit providers specified in your credit application or otherwise in a credit report issued by the credit reporting agency for the following purposes:

- (a) to assess your application for credit including yours (or the guarantors) credit rating and status;
- (b) to notify any credit providers of an application for credit; and
- (c) to ascertain your credit worthiness with other credit providers.

18.2 You agree that your personal data may be used or retained by us for the purposes of verifying your credit status with credit suppliers and agencies, and assisting with the daily operations of your account in relation to the Goods.

19. INDEMNITY

You and the guarantors (if any) indemnify us and our related bodies corporate, shareholders, officers, directors, employees, contractors, agents and assignees from and against any and all Claims or Losses, that we or our related bodies corporate, shareholders, officers, directors, employees, contractors, agents and assignees suffer or incur, as a result of or in connection with:

- (a) your relations with your suppliers, customers or any third parties and affiliates;
- (b) any breach of these Terms and Conditions by you; or
- (c) any act, omission, negligence or default by you or your related bodies corporate, shareholders, officers, directors, employees, contractors, agents and assignees,

except to the extent that such Claims or Losses are directly caused by us (and in such cases, reduced proportionately).

20. EXCLUSION OF CONSEQUENTIAL LOSSES

Except where otherwise stated, neither party will have any liability to each other for fines, penalties, taxes (except GST) and any exemplary, aggravated or punitive damages, liquidated damages or any consequential loss, whether direct or indirect, including but not limited to the loss of revenue, loss of profits, loss of business opportunity, loss of contract and loss of production.



21. GUARANTEES

21.1 Each of your directors (“**Guarantors**”) (if applicable) gives a guarantee and indemnity in favour of us in consideration of us supplying the Goods under these Terms and Conditions and will, if required by us, execute a Deed of Guarantee and Indemnity documenting the same.

21.2 Each Guarantor unconditionally and irrevocably guarantees to us the due and punctual performance by you of your obligations (including the obligation to pay) under these Terms and Conditions.

21.3 The Guarantor unconditionally and irrevocably indemnifies us against all Losses suffered or incurred by us as a result of or in connection with your breach of these Terms and Conditions.

22. INTELLECTUAL PROPERTY RIGHTS

22.1 All drawings, specifications and other documents that have been, and are still to be prepared and provided by us in connection with the Quotation or the Purchase Order, remain our property and are protected by copyright law. Our supply of the Goods to you under these Terms and Conditions shall not be deemed in any way to include any transfer or license to use our intellectual property rights in connection with the Goods, unless expressly provided herein. Additionally, we will be entitled to and will not be prevented from using or developing concepts, applications or processes that have resulted from the supply of the Goods under the Quotation or the Purchase Order, unless there is a prior agreement the contrary.

22.2 You will be granted a non-exclusive, royalty free, non-transferrable, revocable licence for the use of our intellectual property with respect to the Goods and its intended purpose.

22.3 The following intellectual property rights are hereby expressly excluded: -

- (a) any packaging produced with the Goods;
- (b) any third-party approvals necessary for the use and operation of the Goods within the jurisdiction where the Goods are operated; and
- (c) any liability for any infringement of third party rights based on modifications to the Goods made by you or any other third party without our prior approval or instruction.

22.4 In the event that we are held responsible for an intellectual property infringement, our obligations are limited to the provision of the right of a continuous use of the modification of the Goods in a reasonable manner in order to avoid the infringement.

22.5 We will be expressly released from our infringement obligations in the following circumstances:

- (a) you grant us no reasonable time to execute the necessary steps for the provision of the right of a continuous use of modification of the Goods;
- (b) execution of any of our infringement obligations is impossible due to domestic or international laws, rules, regulations and controls; and
- (c) there is no immediate notification by you of our intellectual property infringement.

22.6 If we are held responsible for an intellectual property infringement of a third parties’ rights, your rights will be limited to the following:

- (a) in the event where provision of a continuous use or reasonable modification turns out to be economically unreasonable, cannot be realized in a reasonable period or will be impossible due to any domestic or international laws, rules, regulations and controls, both parties will have the right to cancel the Purchase Order; and
- (b) in the event of minor restrictions in the intended use of the Goods based on such intellectual property infringement including restrictions that do not (or does so insignificantly) affect the operation of Goods in commercial operations or for the intended purpose, your rights will be limited to a reasonable reduction of the contract price to be determined by us.

23. CANCELLATION OF YOUR ORDER

23.1 We are entitled to cancel the Quotation or the Purchase Order or delivery of the Goods at any time before the Goods are delivered by giving written notice to you. We will not be liable for any Loss suffered or incurred by you as a result of or in connection with such cancellation.

23.2 You are not permitted to cancel a Purchase Order under any circumstances, unless you pay us the amount we advise to you, calculated as the aggregate of: –

- (a) the Goods (whether complete or incomplete, in whole or in part) manufactured, supplied or delivered pursuant to the Quotation or the Purchase Order;
- (b) the value of any services performed by us;
- (c) any Losses incurred by us due to the cancellation as at to the date of cancellation, and
- (d) all employee and contractor expenses relating to the Quotation or the Purchase Order as at to the date of cancellation.

24. SPECIAL TERMS, ARRANGEMENTS

Any additional special terms or arrangements set out in the Quotation or the Purchase Order are included in these Terms and Conditions. There may also be special technical or site requirements you will need to comply with.

25. CONTRACT SUBJECT TO ACCEPTANCE OF ORDER

No Purchase Order may be considered binding upon us unless confirmed by us in writing and payment of the first instalment of the contract price made.

26. ENTIRE AGREEMENT, JURISDICTION, SEVERABILITY AND WAIVERS.

These Terms and Conditions constitute the entire terms of the agreement for the Goods we supply to you and is governed by the laws of New South Wales. If any provision of these Terms and Conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions will not be affected, prejudiced or impaired. No failure to exercise nor any delay in exercising any right, power or remedy by us operates as a waiver. A single or partial exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right



