

TERMS AND CONDITIONS OF SALE

Issue date: July 2023

Dunbrae Bakery Solutions Pty Ltd ABN: 83 612 944 591
16 Prime Drive Seven Hills NSW 2147

1. INTERPRETATION

In these terms and conditions, unless the content otherwise requires:

- (a) 'the Seller' means the legal entity stated on top and/or front of this document, its related and subsidiary companies;
- (b) 'the Buyer' means the person (including its successors, personal representatives and permitted assigns) acquiring goods from the Seller and where there is more than one Buyer the covenants on their part contained herein shall be deemed to be joint and several covenants; and
- (c) 'goods' means all goods and/or services supplied by the Seller to the Buyer.

2. GENERAL

These terms and conditions are deemed to be incorporated into all contracts (expressed or implied) for the supply of goods to the Buyer and supersede all terms and conditions previously issued by the Seller. The Seller is only prepared to sell goods upon these terms and conditions, unless their exclusion or modification is agreed to in writing by the Seller. Any order placed by the Buyer is deemed to be an order incorporating these terms and conditions. Where the Buyer places an order for goods which contain terms and conditions different from those herein, subsequent delivery to the Buyer shall be deemed to be the counter offer to supply the goods on these terms and conditions. Such a counter offer shall be deemed to be accepted by the Buyer by acceptance of the goods where delivered.

3. CREDIT

The Buyer authorises the Seller to:

- (a) obtain credit reports from credit reporting agencies and other credit providers concerning the Buyer's credit worthiness, credit standing, credit history and credit capacity for the purpose of assessing an application by the Buyer for credit and the Buyer's credit worthiness.
- (b) disclose reports and information to other credit providers about the Buyer's credit worthiness, credit standing, credit history and credit capacity for the purpose of assessing an application by the Buyer for credit and the Buyer's credit worthiness.

4. PRICING

Prices quoted are subject to exchange rate fluctuations. It is the policy of the Seller that all imported equipment has forward exchange cover unless otherwise agreed in writing with the Buyer. Priced listed are subject to alteration without notice to the Buyer between the date of listing and the date or dates of delivery. All goods will be charged for at the prices ruling at the date or dates of delivery.

5. GOODS AND SERVICES TAX (GST)

All prices quoted are exclusive of GST unless otherwise stated in writing. GST will be added where applicable at the rate ruling on the date of invoice.

6. PAYMENT

- (a) For imported items made to order or goods that are a special purchase, the terms of payment are: A deposit of 50% with the order, the remaining 50% payable by irrevocable letter of credit or bank guarantee on the terms nominated in the Offer document.
- (b) For all the other purchases not incorporated in 6(a) the terms of payment shall be net cash in full on delivery unless a credit facility had been extended by the Seller to the Buyer and advised in writing. The Seller reserves the right to withdraw a credit facility at any time at its sole discretion.
- (c) Without prejudice to any other rights or remedies of the Seller, where any payment is not made on the due date interest at the rate of 4% above the Seller's overdraft rate (as certified by an officer of the Seller) from time to time shall be payable upon the amount outstanding, calculated from the due date of payment until payment is made in full.
- (d) Where the Buyer fails to effect payment as required by sub-paragraph (a) hereof the Seller may at its discretion and without attracting any liability to the Buyer withhold delivery of all other goods for which orders have been placed by the Buyer and accepted by the Seller.
- (e) The Seller reserves the right to set off any amounts owing to a Buyer against amounts owed by a Buyer before settlement of monies outstanding.

7. QUOTATIONS AND ORDER ACCEPTANCE

- (a) Every quotation may be withdrawn or changed at any time until such time the Buyer's order is received and accepted by the Seller. Quotations provided by the Seller are to be construed as an invitation to treat and not as an offer to sell the goods the subject of the quotation by the Seller.
- (b) Unless previously withdrawn by the Seller, a quotation will be deemed to have lapsed 30 days after the date of issue. Orders are subject to written acceptance by the Seller.

8. DELIVERY

- (a) Any times given for delivery are an estimate and for guidance only. The Buyer shall not be relieved of any obligation to accept or pay for the goods by reason of any delay in delivery.
- (b) The Buyer shall not be entitled to terminate the contract in the event of any kind whatsoever and, to maximum extent permitted by law, the Seller shall not be liable in any way whatsoever for or in respect of any loss or damage howsoever arising out of or in connection with limitation or in relation to any failure to deliver or delay in delivery arising from any circumstances of whatsoever nature including, without limitation, delay by alterations to the contract or specifications of the goods or any other act of default on the part of the Buyer or by fire, flood, earthquake, storm, tempest, or other natural phenomenon, acts of riot, civil commotion, or any accident or failure or inability to obtain licences or any order direction or any local, state or federal government or governmental authority or instrumentality.
- (c) If the Seller determines that it is or may be unable to complete its obligations within a reasonable time or at all, the contract may be terminated by the Seller. In the event of termination, the Buyer shall have no claim against the Seller for any damage, loss, cost or expenses whatsoever.
- (d) The goods will be delivered Free-on-Truck at the Seller's store and the costs for delivery beyond this point shall be to the Buyer's account unless otherwise agreed in writing. Where the Buyer requests that the Seller arranges such delivery, the Seller shall select the route and the means of delivery. Delivery shall be made only to ground floor or kerbside areas with an appropriate access and the Buyer shall ensure that appropriate equipment is available for offloading the goods from the transport vehicle.
- (e) The Seller reserves the right to deliver by instalments and each instalment shall be deemed to be sold under a separate contract. Failure of the Seller to deliver any instalment shall not entitle the Buyer to cancel the balance or the order. If the Buyer is in default in respect of any instalments, the Seller may elect to treat the default as a breach of contract relating to each other instalment.

9. TITLE

- (a) Title to the goods shall not pass to the Buyer and the goods shall remain the property of the Seller until such times as the invoice amount thereof and all other sums due from the Buyer to the Seller have been paid in full.
- (b) From the time of delivery and pending payment the Buyer shall hold the goods as the bailee of the Seller
- (c) Notwithstanding any non payment by the Buyer of the invoice amount for the goods the title therein shall pass to the Buyer:
 - i. where the Seller advises the Buyer in writing that Title has passes or
 - ii. where a Summons Writ or other proceedings are issued or instituted by the Seller for recovery of the invoice amount or any part of the invoiced amount or any part of the invoiced amount for the goods.
- (d) If the Buyer shall fail to pay for the goods in full prior to the due date or if the buyer before then becomes bankrupt or commits any act of bankruptcy or compound with its creditors or have judgment entered against if in any Court or go into liquidation whether voluntary or otherwise or have a Receiver or Manager appointed or given any security over its stock or plant, the Seller is irrevocably authorized at any time thereafter to enter upon any premises where the goods are situated and to take possession of and remove same and use the Buyer's name and to act on his behalf in exercising such rights.
- (e) Subject to Clause 9 (a) the Buyer shall be entitled to sell the goods in the ordinary course of its business. In the event that the Buyer uses the goods in some manufacturing or construction process of its own or some third party or on-sells the product, the Buyer shall hold such proceeds of such manufacturing or sale in trust for Seller. Such part or shall be deemed to equal in the dollar terms the amount owing by the Buyer to the Seller at the time of the receipt of such proceeds. The Buyer shall not remove or cover any identifying mark and shall not affix any identifying mark until the payment for the goods has been made in full.
- (f) The Buyer's right to sell the goods in the ordinary course of its business:
 - i. may be revoked at any time by the Seller giving notice to that effect if the Buyer is in default for longer than seven days in the payment of any sum whatsoever due to the supplier.
 - ii. shall automatically cease if a receiver, controller, liquidator or administrator is appointed to the assets, undertaking or property of the Buyer or a winding up order against the Buyer is made or petitioned, or any petition or order in bankruptcy against the Buyer is present or make, or the Buyer goes into voluntary liquidation or calls a meeting or makes arrangements or compositions with its creditors.

10. CANCELLATIONS & RETURNS

(a) Returns

- 1) No Goods listed in the Seller's price list will be accepted for return by the Seller unless a prior request (which may be accepted or refused by the Seller in its sole and absolute discretion) is made and an approval number given by the Seller. A fee of 20% of the price of the relevant goods will be charged upon the return of the goods. All costs for the repackaging, transport and repair of returned goods shall be borne by the Buyer.
- 2) No goods will be accepted for return where the goods are not listed in the Seller's price list.

(b) Cancellations

- 1) In the case of goods listed in the Seller's price list, a fee of 20% of the agreed selling price of the relevant goods will be charged to the Buyer upon cancellation of any order.
- 2) In the case of goods not listed in the Seller's price list, upon cancellation of an order, a fee equal to 150% of the cost incurred and expected to be incurred by the Seller in relation to the goods shall be charged to the Buyer.

11. TECHNICAL SPECIFICATIONS & DESCRIPTIONS

All specifications, drawings and particulars of weights and dimensions submitted by the Seller shall be regarded as approximate only. Descriptions and illustrations contained in catalogues, price lists and other written material shall be treated as merely presenting a general idea of the goods described therein and shall not form part of any contract. The Seller may alter the specifications without notice. Any description of the goods is given by way of identification only and the use of such description shall not constitute the contract a sale by description.

12. FITNESS FOR PURPOSE

The Buyer acknowledges that neither the Seller nor any person purporting to act on its behalf made any representation or given any promise or undertaking which is not expressly set out in writing whether as to the fitness of the goods for any particular purpose or any other matter. The Buyer acknowledges that without relying upon the skill judgment of the Seller or any person purporting to act on behalf of the Seller, it has determined that the goods being acquired shall be fit for its purposes. Any description of the goods is for identification only and shall not constitute a contract for supply of the goods by description. The Buyer is responsible for ensuring that the goods are not used for any purpose for which they are not suitable.

13. STATUTORY RIGHTS OF THE BUYER

- (a) These terms and conditions shall not exclude, limit, restrict or modify the rights, entitlements and remedies conferred upon the Buyer or the liabilities imposed upon the Seller by any condition or warranty implied by any Commonwealth State or Territory Act rendering void or prohibiting such exclusion, limitation, restriction or modification. Except in so far as any such rights entitlements, remedies and liabilities cannot be excluded or limited, all warranties and conditions in relation to the goods whether expressed or implied by statute, common law or trade custom or usage or otherwise are hereby expressly excluded.
- (b) To the maximum extent permitted by law, the Seller's liability to the Buyer in connection with the goods is strictly limited to the provisions of these conditions of sale and any liability on the Seller's part or on the part of its servants or agents for damages for or in respect of any claim arising out of or in connection with the relationship established by the contract or any conduct under it, other than liability which is totally excluded by any other provision or provisions of the contract shall not in any event (and whether or not such liability results from or involves negligence) exceed \$100.

14. IMPLIED TERMS

- (a) All conditions and warranties expressed or implied by statute, the common law, equity, trade, custom or usage or otherwise howsoever are hereby expressly excluded to the maximum extent permitted by law. The United Nations Convention on Contracts for the International Sale of Goods, a copy of which is set out in schedule 1 of the Sale of Goods (Vienna Convention) Act 1987 shall not apply to the sales of the goods by the Seller to the Buyer.
- (b) Where permitted, the liability of the Seller for breach of a condition or warranty that cannot be excluded is limited at the option of the Seller to replacement or repair of the relevant goods or supply of equivalent goods or the cost of replacing or repairing the relevant goods or of acquiring such equivalent goods.

15. RISK

- (a) Risk of loss or damage in the goods shall pass to the Buyer upon delivery of the goods to the Buyer or the agent of the Buyer or to carrier commissioned by the Buyer or by the Seller.
- (b) The Buyer shall, at his/her expense, insure the goods in its name and the name of the Seller against any such loss or damage to, or loss of, the goods for their full replacement value and keep them so insured until the goods are paid for in full.

16. RETENTION OF TITLE AND PPSA

- (a) In this Clause 16, the following definitions apply :-
- (i) "Excluded Interest" any mortgage, charge or other encumbrance over real property or personal property (tangible or intangible) that is not a Security Interest, including non-consensual liens and mortgages over real property.
 - (ii) "PPSA" means the Personal Property Securities Act 2009 (Cth);
 - (iii) "PPS Register" means the Personal Property Securities Register;
 - (iv) "Purchase Money Security Interest" has the same meaning as under the PPSA;
 - (v) "Registration Commencement Time" has the same meaning as under the PPSA; and
 - (vi) "Security Interest" has the same meaning as under the PPSA.
- (b) Property in each of the goods, including any legal or equitable interest does not pass to the Purchaser until the full amount due for those goods has been paid to the Company, despite that :-
- (i) Risk in the goods passes to the Purchaser under Clause 15;
 - (ii) The Company may issue a document to the Purchaser; and
 - (iii) The Purchaser is in possession of the goods.
- (c) Until the full amount due for those goods has been paid to the Company:-
- (i) The Purchaser must store those goods so as to show clearly that it is the property of the Purchaser; and
 - (ii) The Purchaser must insure the goods for their full insurable value against loss or damage by fire, theft, accident and other such risks;
 - (iii) The Purchaser must, at its expense, take all necessary precautions to keep the goods safe and free from damage by fire, water, accident, vermin or reckless or malicious damage;
 - (iv) The Purchaser is bailee of those goods and must not sell, encumber or allow any security interest, including a lien, to be created over those goods without the prior written agreement of the Company and then only in the ordinary course of business.
- (d) If the Purchaser has not received the proceeds, it assigns to the Company all rights against the person owing the proceeds.
- (e) The Purchaser Irrevocably authorises the Company (at any time if there has been a default, or otherwise during business hours) to enter any premises upon which :-
- (i) The Company's goods ordered by the Purchaser are stored:-
 - (a) To inspect the goods; and
 - (b) If the Purchaser has breached these Terms and Conditions, to reclaim possession of the goods.
 - (ii) The Purchaser's records relating to the goods are held, to inspect and copy the records.
- (f) Until the Company has received payment for the goods in full, the Purchaser acknowledges that the Company shall have a Purchase Money Security Interest which attaches over such goods and their proceeds and a Security Interest in relation to other amounts owed by the Purchaser to the Company.
- (g) For the Avoidance of doubt, after the Registration Commencement Time, the company may register its Purchase Money Security interest and Security interest on the PPS Register established by the PPSA and, where necessary, amend the registration.
- (h) The purchaser acknowledges that it must sign a document incorporating these Terms and Conditions and if it does not sign such a document it must adopt these Terms and Conditions by conduct.
- (i) The Purchaser must not grant any other person & Security Interest in respect of the goods.
 - (j) The Purchaser must not allow an Excluded Interest to exist over the goods.
- (k) The Purchaser agrees to do anything (such as obtaining consents, signing and producing documents, producing receipts and getting documents completed and signed) which the Company asks and considers necessary for the purpose of :-
- (i) Ensuring that the Security Interest created under these Terms and Conditions is enforceable, perfected and otherwise effective; or
 - (ii) Enabling the Company to apply for any registration, or give any notification, in connection with a Security Interest created under these Terms and Conditions so that the Security Interest has the priority required by the Company.
- Including anything the Company reasonably asks the Purchaser to do in the connection with the PPSA.
- (l) To the extent permitted by law. If the PPSA applied, the Purchaser irrevocably waives any rights the Purchaser may have to :-
- (i) Receive notices or statements under Sections 95, 121(4), 125, 130, 132(3)(d), 132(4) and 135 of the PPSA;
 - (ii) Redeem the goods under Section 142 of the PPSA;
 - (iii) Reinstate these Terms and Conditions under Section 143 of the PPSA; and
 - (iv) Receive a certification statement (as defined in the PPSA).
- (m) If the Purchaser fails to make full payment for any goods supplied by the Company, the Company is entitled to possessions of those goods and may recover and sell those goods. The Purchaser must place those goods at the disposal of the Company and is entitled to enter upon any premises of the Purchaser and remove those goods.

17. INDIRECT LOSS

- (a) So far as the law permits, the Seller shall be under no liability to the Buyer for any loss or damage to persons or property, or loss of property, for the death or injury caused by or arising out of or in connection with any act, matter, or thing (including negligent acts or omissions) done, omitted or permitted to be done by the Seller, its servants or agents.
- (b) So far as the law permits, the Seller shall not be liable to the Buyer in any way whatsoever for any indirect or consequential loss, loss of profit or any other economic loss including, without limitation, any loss by reason of delay, defective or faulty materials or, workmanship, negligence or any act, matter of thing done, permitted or omitted to be done by the Seller.

18. WARRANTY

- (a) Except for any express warranty given by it, the Seller excludes all conditions, warranties and terms implied by statute, general law or custom, except any implied condition or warranty the exclusion of which would contravene any statute or cause this clause to be void (“Non-excludable Condition”).
- (b) The Seller accepts no liability for any loss or damage direct or indirect of or to any person or property arising from the installation or operation of goods including consequential loss or damage arising from any circumstances whatsoever, except under a Non-excludable Condition.
- (c) Subject to Clause 17(a) and 17(b) the Seller undertakes to repair, place or supply (at the Seller's option) all goods and components thereof supplied by it which the Seller in its sole and absolute discretion deems to be defective in materials or workmanship under proper, normal and recommended conditions of use and maintenance. This undertaking unless otherwise confirmed in writing by the Seller covers the provision of labor and parts for 12 months from the date of commissioning of goods by the Seller's authorised representative or alternatively 30 days after dispatch of the goods from the Seller's store, whichever of these shall occur first. If the goods are not installed in accordance with the manufacturer's written instructions, the Seller may at its sole discretion render the warranty partially or wholly invalid.
- (d) Defective replacement spare parts will be repaired or re-supplied for a period of three (3) months of delivery. This undertaking applies only to state capitals and major provincial towns. Remote areas are not covered by this commitment and special enquiries should be made.
- (e) The Seller's undertaking in paragraph 17(b) does not extend to goods and components thereof manufactured either entirely or substantially of glass or similar substances, light globes, infrared or quartz tubes and electrical controls or elements, neither is it extended to include consumable items such as oils, lubricants, cleaning materials and accessory tools.
- (f) The Seller's undertaking in paragraph 17(b) does not extend to include the repair of damage nor to adjustments to equipment as a result of external influences including but not limited to lightning strikes, electrical distributors, water supply disturbances and drainage faults.
- (g) Training of operators is normally conducted during commissioning of the equipment. Re-training of existing operators and training of newly assigned operators after commissioning is not classified as warranty and may only be carried out on a chargeable basis.
- (h) The liability of the Seller under this warranty is limited to repair or replacement of defective goods or components. All other costs including, without limitation, cartage, carriage and installation shall be borne by the Buyer. Goods or components which fail as a result of operator error, misuse, abuse and inappropriate operation will not be repaired or replaced under warranty.
- (i) While the goods are in the custody of the Seller for investigation or repair, they shall be at risk of the Buyer and no liability shall attach to the Seller, its servants or agents for any damaged occasioned to, or loan, of the goods howsoever arising.
- (j) To obtain the benefit of this warranty, the Buyer must give notice to the Seller immediately upon becoming aware of the alleged defect and in any event before the expiration of the said twelve month period.
- (k) Warranty repairs are carried out during the Seller's normal business hours (usually 07.30 hrs to 16.00 hrs) Monday to Friday excluding designated Public Holidays. Repairs may be available at times other than normal warranty hours but will not be treated as warranty and will be subject to call-out fees and hourly charges, including penalty rates where applicable.

19. COMMISSIONING

- (a) In mainland State capital cities, commissioning is included in the contract price for the supply of the goods. In other areas an additional price may apply. Commissioning by the Seller's authorised representative includes ensuring that the goods have been correctly installed, starting the goods to ensure that they are operating as intended and instructing the designated operator(s) of the goods in the correct and safe operation of the goods.
- (b) Commissioning is possible only if the goods are fully installed. If the Seller's representative attends site at the Buyer's request to commission equipment that has not been fully installed, the costs of that visit at hourly rates plus travelling expenses shall be invoiced to the Buyer.

20. INSTALLATION

If the Buyer requests that the Seller shall install the goods, this shall be the subject of a separate contract from that which governs the supply of the goods. The Seller is not obligated to carry out installation but may elect to provide a quotation after site survey and based on information communicated by the Buyer. Any subsequent change to site conditions or to the information provided by the Buyer shall render the quotation invalid and liable to amendment.

21. SUBCONTRACTING

The Seller reserves the right to sub-contract the supply, delivery, installation or commissioning of the goods where appropriate.

22. INTELLECTUAL PROPERTY

- (a) The sale to and purchase by the Buyer of goods does not confer on the Buyer any licence or right under any copyright, patent, design or trade mark or any other intellectual property right of the Seller.
- (b) All drawings and technical specifications furnished by the Seller to the Buyer are copyright, confidential and supplied for the sole purpose of the particular contract concerned. The Buyer shall not communicate any details of the drawing or technical specifications to any third party without the prior written consent of the Seller and shall not make any copies of or use the drawing or technical specifications for any purpose other than as expressly authorized by the Seller.

23. ASSIGNMENT

The Buyer shall not assign any of its rights or obligations hereunder without the prior written consent of the Seller.

24. LIEN

In addition to any lien to which the Seller may be entitled by statute or common law, the Seller shall, in the event of insolvency of the Buyer or winding up be thereupon entitled to a general lien on all property whatsoever owned by the Buyer and in the possession of the Seller at the time of such lien to cover the unpaid price of any goods supplied by the Seller to the Buyer.

25. WAIVER

Failure by the Seller to insist upon strict performance by the Buyer of any of these terms and conditions shall not be taken to be a waiver of any rights of the Seller in relation hereto and in any event shall not to be taken to be a waiver of these terms and conditions on any subsequent occasion.

26. TERMINATION

If any payment is outstanding for more than seven (7) days after the due date (whether legally or formally demanded or not) or the Buyer fails to observe or perform any of these terms and conditions or a resolution is passed or proposed or a petition is presented or an application filing for the winding up of the Buyer or an administrator, receiver or receiver and manager is appointed in respect of the property or any part of the property of the Buyer or the Buyer (being a Seller) is de-registered or the Buyer makes or proposes to make an arrangement with its creditors or the Buyer is placed under official management or execution is levied upon the assets of the Buyer and is not satisfied within seven (7) days, the Seller may at any time thereafter terminate any contract for the sale of goods summarily by notice in writing the Buyer but without prejudice to the rights of the Seller hereunder including its rights to demand and sue for all outstanding amounts owed by the Buyer to the Seller

27. NOTICE

A notice given by the Seller to the Buyer or the Buyer to the Seller shall be in writing, give the address of the recipient as set out on the reverse hereof or as varied by written notice, be left at or sent by registered post, e-mail or facsimile to that address and be in the English language.

28. SEVERANCE

If one or more provisions of these terms and conditions is or becomes void, voidable or unenforceable for any reason, all other provisions shall remain in full force and effort.

29. GOVERNING LAW

This contract shall be governed and construed in accordance with the laws of the state/territory of Australia in which the Seller and Buyer have signed said contract.

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