

TERMS AND CONDITIONS OF CREDIT & SUPPLY VERSION 1.03

BETWEEN: LOTUS & MING PTY LIMITED (ACN 118 546 802) t/a Land of Plenty Food Co, Sydney, NSW ("the Supplier")
AND: THE PARTY SPECIFIED ON PAGE 1 OF THE CREDIT APPLICATION (THE "Client").

1. INTERPRETATION

1.1 In this Agreement and to all goods and/services to which it applies:

- (a) "Act" means the Competition & Consumer Act 2010 (Cth) as amended from time to time and also the applicable laws of any State or Territory of Australia corresponding thereto;
- (b) "ACL" means the Australian Consumer Law contained in Schedule 2 of the Competition & Consumer Act 2010 (Cth).
- (c) "Agreement" means these terms and conditions.
- (d) "Client's Intellectual Property Rights" means all of the Client's intellectual property rights including recipes, processes, copyright works, registered and unregistered trademarks, brands, logos and devices.
- (f) "Person" includes, partnerships, associations, trustees, corporations and governmental and semi-governmental authorities and instrumentalities, whether incorporated or not;
- (g) "Products" means all and any of the goods to be provided by the Supplier specified in the Schedule "A" hereto as varied or added to from time to time in accordance with this Agreement;
- (e) "Supplier's Intellectual Property Rights" means all of the Supplier's intellectual property rights including recipes, processes, ingredients lists, copyright works, registered and unregistered trademarks, brands, logos and devices.
- (g) "Services" means all and any of the services to be provided by the Supplier specified in the Schedule hereto as varied or added to from time to time in accordance with this Agreement;
- (h) the plural includes the singular and vice versa; and
- (i) headings used in this Agreement are for ease of reference only and shall not affect interpretation.
- (j) "Confidential Information" means all information relating to the business dealings, contracts, customers, operations, sales and business plans and financial data of a Disclosing Party [which is stated by that party to be confidential].
- (k) "Disclosing Party" has the meaning given to it in clause 11.1(a).
- (l) "Purchase Order" means a purchase order given by the Client to the Seller under clause 3.
- (j) "Recipient" has the meaning given to it in clause 11.1(a).

2. TERM OF THE AGREEMENT

2.1 This Agreement shall commence or shall be deemed to have commenced on the date of this Agreement (the "Commencement Date") and shall continue, subject to the provisions of this Agreement.

3. SUPPLY OF PRODUCTS AND SERVICES

- 3.1 The Supplier agrees to provide and the Client agrees to accept the Products and Services from the Supplier subject to the provisions of this Agreement.
- 3.2 The Client acknowledges that it is an essential term of this Agreement that it pays for the Products and Services.
- 3.3 The Client agrees that Products are subject to recipe and design change without notice and that the Supplier reserves the right to supply.
- 3.4 The Client may from time to time sign and give to the Supplier written Purchase Orders for the Products, provided that the order contained therein meets the delivery and minimum order terms applicable to the relevant State as set out in their respective current terms.
- 3.5 The Purchase Order must include:

- (a) the quantity of each Product required and its relevant specifications; and
- (b) the time and date for delivery of each Product, which must be at least [10 days] from the date the Purchase Order is received by the Supplier.

- 3.6 A Purchase Order is an offer and when accepted by the Supplier takes effect as a binding contract by the Supplier to sell and by the Client to buy the Product. An accepted Purchase Order cannot be cancelled by one party without the consent of the other party. The Supplier must give the Client notice accepting or declining a Purchase Order within [5] days of receiving it.
- 3.7 The terms and conditions contained in the Purchase Order apply to each contract for the sale of Products, but if this Agreement is inconsistent with the terms contained in the Purchase Order, this Agreement prevails to the extent of the inconsistency.

4. CHARGES AND TERMS OF PAYMENT

- 4.1 The Client agrees to pay the charges set out in the Pricing Schedule applicable to the Client.
- 4.2 The Client acknowledges that from time increases may be warranted and in which event the Supplier will revise its pricing and shall submit to the Client a revised Price List and set a commencement date for the revised Price List.
- 4.3 Payment of the fees and charges are to be made by the payment methods identified on the Supplier's invoices from time to time and in any event within the payment terms set out in the credit application.
- 4.5 If any form of goods and services tax or other similar value added tax ("GST") imposed by or under A New Tax System (Goods and Services Tax) Act 1999 and any other associated or substituted legislation is imposed or levied in respect of any supply made by the Supplier under or in accordance with this Agreement, the amount payable by the Client to the Supplier under this Agreement will be increased by an amount equal to the GST liability properly incurred in making the supply.
- 4.6 All payment made by the Client under this Agreement shall be made free of any set-off or counter claim and shall be made free of any without deduction for or on account of any present or future taxes, withholding, deductions or charges of whatsoever nature.
- 4.7 If the Client has not paid for any Products or Services on or by the date specified in any invoice rendered then, without prejudice to any other right or remedy that the Supplier has:
 - (a) all outstanding money carries interest on daily balances until paid at a rate of interest per annum equal to two percent (2%) in excess of the interest rate charged by National Australia Bank on overdraft accounts for sums up to \$100,000 Australian dollars as is published from time to time;
 - (b) the Supplier may recover the price of the Products and Services together with all interest forthwith from the Client as a liquidated debt in a court or tribunal of competent jurisdiction irrespective of any claim that the Client may have against the Supplier for anything or matter related to the Products and Services provided under this Agreement; and
 - (c) the Supplier may elect and its sole discretion cease supplying the Products and/or performing the Services until the earlier of:

- (i) payment of the outstanding monies is received; or
- (ii) this Agreement being terminated by the Supplier pursuant to Clause 6.2

4.8 If this Agreement is cancelled or terminated for any reason the Supplier shall be entitled to charge the Client for the Products and Services performed up to and including the date of cancellation or termination of this Agreement and the Client must pay the monies outstanding in accordance with clause 4.3.

4.9 Subject to clause 4.8, any party may terminate this agreement by giving the other party 21 days written notice.

5. WARRANTIES & UNDERTAKINGS BY THE CLIENT

5.1 The Client warrants that it is duly authorised to enter into and perform this Agreement.

5.2 The Client warrants the accuracy of any information given to the Supplier and upon which the Supplier may have relied upon in extending credit.

5.3 The Client warrants that it shall comply with all relevant food safety standards to ensure that the integrity of the Products are maintained and the end customer's health is not jeopardised or susceptible to being jeopardised when the Products are resold or supplied to third parties.

6. DEFAULT

6.1 The following matters shall constitute an event of default by the client on the Client's behalf:

- (a) the Client does not pay for any invoiced Products and/or Services by the relevant due date hereof;
- (b) any warranty or representation given by the Client to the Supplier under this Agreement or otherwise being materially false or misleading;
- (c) any undertaking given by the Client to the Supplier under this Agreement or otherwise is not duly performed or observed;
- (d) the Client presents or has presented against it any petition summons or application for bankruptcy liquidation or receivership or passes any resolution to be wound up;
- (e) the Client is adjudicated or declared a bankrupt or insolvent or has appointed to it or over any of its assets or affairs any trustee in bankruptcy, liquidator, provisional liquidator, administrator, receiver or receiver and manager or any other controller;
- (f) the Client enters into any arrangement composition or compromise with or any assignment for the benefit of its creditors or any of them; or
- (g) the Client ceases or suspends carrying on its business;
- (h) If any cheque issued by the Client or by any third party in payment for Products or Services is dishonoured:

6.2 If any event of default occurs in respect of the Client, then the Supplier shall be immediately entitled to do any one or more of the following:

- (a) cancel or suspend this Agreement and/or any credit granted to the Client;
- (b) cancel or suspend the provision of any Service/s and/or the supply of any Products.

6.3 Without limiting the Supplier's other rights and remedies, the Client must indemnify the Supplier and each of its officers, employees, agents and subcontractors (for each whom the Supplier holds the benefit of this indemnity upon trust) from any liabilities, losses, damages, costs and expenses suffered or incurred by the Supplier arising out of, or relating to:

- (a) failure to perform or improper performance of its obligations under this Agreement;
- (b) any injury to or death of any person or any damage to or loss of property connected with the conduct, operations or performance by the Client;
- (c) storage or handing of the Products by the Client;
- (d) misuse of the Products by the Client;
- (e) warranties or representations made by the Client without the authority of the Supplier;
- (f) any negligence, wrongful act or omission, or breach of statutory duty by the Client or by its employees, contractors, officers or agents.

7. RETENTION OF TITLE

The Client agrees that title to the Products shall remain with the Supplier until payment in full has been received by the Supplier in cleared funds and that the Client has no rights whatsoever to ownership of the Products until payment in cleared funds has been received by the Supplier. The parties agree that:

- (a) the Client has no right or claim to any interest in the Products to secure any liquidated or un-liquidated debt or obligation the Supplier owes to the Client;
- (b) the Client cannot claim any lien over the Products;
- (c) the Client will not create any absolute or defeasible interest in the Products in relation to any third party except as may be authorised by the Supplier;

8. RETURNS POLICY

Any issues with goods received or delivered must be brought to the attention of the Supplier, in writing, within 48 hours of receipt. The Supplier will deliver the Products in the quantity to the site delivery point specified in the [Purchase Order] as agreed by the parties. The Supplier will ensure that the Products are protected against damage and deterioration during transportation. Should there be a shortfall in the quantity of Products, or some other non-compliance with the specifications set out in the [Purchase Order] or the Products do not meet any applicable codes of practice or quality standards for the relevant Products as agreed by the Supplier, then the Products may be returned by the Client to the Supplier for assessment. The Client may receive a credit for the amount paid by the Client to the Supplier in relation to those Products. All goods returned for credit are subject to the full and final approval of the Supplier in its sole discretion.

9. LIMITATION OF LIABILITY

Except as expressly provided in clause 8 hereof, the Supplier shall have no further liability to the Client in contract, tort or otherwise arising out of the supply of the Products. The Supplier's maximum potential liability is limited to the purchase price of the Product which gives rise to the relevant claim. Under no circumstances shall the Supplier be liable (whether in contract, tort or otherwise) for any loss of profit (whether direct or indirect) or for any indirect, contingent, special or consequential loss, damage or injury to the Client (including any of its officers, employees, agents and subcontractors).

10. THE SUPPLIER'S INTELLECTUAL PROPERTY

The Client acknowledges that the Supplier has Intellectual Property Rights in its recipes, products, ingredients, product lists, processes, brand, trading name, logos, website content, and devices among other things ("the Supplier's Intellectual Property") and that the Client shall not reproduce any of the Supplier's Intellectual Property without the Supplier's prior written approval.

11. CONFIDENTIALITY

11.1 A party to this Agreement that receives Confidential Information (Recipient) from the other party (Disclosing Party) must not, and must ensure that its employees,

agents and sub-contractors do not, without the prior written consent of the Disclosing Party, either during the term of this Agreement or after expiry or earlier termination of this Agreement, disclose or give to any third party any Confidential Information.

11.2 This clause does not apply to Confidential Information that:

- (a) is in the public domain other than as a result of a breach of this clause;
- (b) was at the time of disclosure already in the lawful possession of the Recipient;
- (c) is required to be disclosed by any applicable law or regulation;
- (d) is not proprietary or confidential in nature or which is not treated by the Disclosing Party as confidential.
- (e) The Recipient must, on demand, immediately return to the Disclosing Party all records and materials, regardless of form, in its possession or control which contain or embody Confidential Information, delete any electronic copies of this information and cease to use this information or any part of it.

11.3 The obligation in this clause survives termination or expiry of this Agreement.

12. GENERAL

12.1 This Agreement shall supersede and replace all previous oral and written proposals, representations, agreements and other communications between the parties. The Client agrees to accept any variations to the terms of this Agreement from time to time upon receiving written notification from the Supplier.

12.2 If any part of this Agreement is rendered invalid by any law or is held to be unenforceable then that part of this Agreement shall be omitted and insofar as the context allows the rights and obligations of the remaining parts of this Agreement shall continue.

12.3 The parties hereto hereby agree that the proper law governing the interpretation and enforcement of this Agreement including all substantive rights and obligations hereunder and the manner of and method of performance shall be the law of New South Wales and Australia and the parties further expressly agree to submit to the non-exclusive jurisdiction of the appropriate courts of New South Wales and Australia in respect of any dispute of any nature whatsoever arising pursuant to or in connection with the provisions of this Agreement.

12.4 All notices or other communications to or by a party to this Agreement must be in writing, signed by the party or a director, secretary, manager or executive of the party and will be deemed to be duly given or made:

- (a) if by delivery in person, when delivered to the addressee;
- (b) if by post, 2 business days from and including the date of postage;
- (c) if by facsimile transmission, when received by the addressee;
- (d) if by email transmission then the date of transmission if during business hours of 9am-5pm or after hours the following business day provided that the sender does not receive notification that email to the recipient was undelivered.

12.5 Clauses 4; 6.3; 9; 10; 11 and clause 12 and other obligations which is expressed to, or by its nature, survive expiry or termination of this agreement, will survive expiry or termination and are enforceable at any time at law or in equity.

13. SPECIAL CONDITIONS

The parties agree that the special conditions (if any) specified in the Annexure hereto marked "A" apply to this Agreement and that each shall be bound by those conditions.

Please see attached annexure "A" – Bespoke Supply Agreement & Manufacturing Terms where applicable

