

## NEW FOOD COATINGS (NEW ZEALAND) LIMITED (NWF) Terms of Supply (Terms)

**1 Definitions and interpretation** 1.1 **Bulk Goods** means Goods which are packaged, supplied or delivered by NWF in multiple quantities, for any reason, and or in such a way as to make it impracticable for NWF to fulfil exact quantities or volume of the Goods; **CGA** means Consumer Guarantees Act 1993; **Confidential Information** means any trade secrets, know-how, technical, scientific, commercial, financial, product, market or pricing or other information of or about NWF in the Order or to which Customer gains access in connection with this Contract; **Contract** means the contract entered into between NWF and Customer for the Supplies pursuant to an Order and these Terms; **Customer** means the customer nominated in the Contract and any of its officers, employees, agents, contractors or sub-contractors; **FTA** means Fair Trading Act 1986; **Goods** means any goods to be supplied by NWF to Customer; **Intellectual Property** means all intellectual property rights throughout the world, whether present or future, registered or unregistered, including the right to apply for registration of any such rights; **Loss** means any damage, loss, liability, cost, charge, expense, penalty, outgoing or payment (whether direct or indirect, consequential or incidental) and includes any economic loss or damage; loss of reputation; loss in connection with any claim against NWF by any person; loss of revenue or actual or potential profits; any costs of repair; lost opportunity, including the opportunity to enter into or complete an arrangement with a third party; and legal costs and expenses on a full indemnity basis; **Order** means the order for Supplies created or accepted by NWF; **Price** means the price of the Supplies excluding GST; **Services** means any services to be supplied by NWF to Customer; **Product Recall** means recall, either voluntary or as a result of government direction, withdrawal from sale or holding of the Goods or any food containing the Goods; **Specifications** means NWF's specifications for Goods; **Supplies** means the Goods and/or Services (as the case may be). 1.2 Specifying anything after the words "including" or similar expressions does not limit what else is included unless express wording to the contrary.

**2 Orders and Specifications** 2.1 NWF has no obligation to supply Goods and/or Services to Customer except as set out in an Order. No order for Goods or Services submitted by Customer is an Order until confirmed in writing by NWF. 2.2 No Order may be cancelled by Customer except with the written agreement of NWF and on terms that Customer indemnifies NWF against any Loss NWF pays, suffers, incurs or is liable for as a result of cancellation, provided that NWF does not directly cause such Loss. 2.3 Customer agrees that these Terms apply to the Contract to the exclusion of any other terms, including any on printed documents issued by Customer at any time and are in addition to all other rights which NWF may have at law. Any waiver by NWF of any right is not a waiver of any other or future rights NWF may have. 2.4 If Goods are to be manufactured or processed by NWF in accordance with a specification submitted or varied by Customer, Customer indemnifies NWF against any Loss NWF pays, suffers, incurs or is liable for in connection with any claim as a result of NWF's use of such specifications, provided that NWF does not directly cause such Loss. 2.5 NWF may make any changes to the Specifications, the specifications of the Supplies or any packaging to conform to safety or other statutory requirements. 2.6 If an order for Supplies is placed by Customer or its agent outside of any agreed minimum lead time, NWF shall not be obliged to accept such order, but if NWF does accept, Customer is obliged and agrees to pay all additional costs or expenses reasonably incurred by NWF, including those associated with delivery, or increases in pricing.

**3 Price and GST** 3.1 Unless the context indicates otherwise, terms defined or used in the *Goods and Services Tax Act 1985* have the same meaning as in that Act. 3.2 Any rebates, discounts, allowances or other reductions in price calculated by reference to the sales value to which Customer is entitled or which are granted by NWF (**Discounts**) are to be calculated on the Price. 3.3 Unless expressly stated to be inclusive of GST, the consideration for any taxable supply made by a party (**Supplier**) under or in connection with these Terms does not include GST and may be increased by the Supplier by an amount equal to the GST payable on that taxable supply. In the event of a cancellation of supply, a change in Price for the Supplies, the alteration of Price or other consideration, or the return of part or all of a supply (**Adjustment Event**) the Supplier must issue to the recipient an adjustment note which states (a) a description of the difference between the GST paid or liable to be paid on the original supply and what would have been payable had the Adjustment Event been taken into account and includes (b) a credit or debit note as the case may be. The difference between the GST payable on the supply (taking into account any adjustments) and the amount of GST included in the price for the supply must be paid by or refunded to the recipient, as applicable. Any amount to be reimbursed or indemnified in connection with these Terms must be reduced by an amount equal to any input tax credit to which the party being reimbursed is entitled in respect of that amount. 3.4 NWF reserves the right to, at any time before delivery, amend the Price (including for any Goods to be supplied under an agreement to which these Terms apply for the sale, purchase and supply of a quantity of Goods over a period of time and notwithstanding anything contained in such agreement) to reflect any significant change in costs to NWF: of labour, materials, or delivery; or as a result of the increase or imposition of any tax, duty or other levy, any variation in exchange rates, any change of delivery dates, any change in quantities or specifications of the Supplies requested by Customer, or any delay caused by supply or non-supply of instructions of Customer. 3.5 If Customer does not want to accept any amendment to Price, made in accordance with clause 3.4, Customer can cease any or all future orders of Supplies from NWF.

**4 Delivery** 4.1 Delivery of Goods to Customer occurs, in the case of Goods to be collected by Customer from NWF, at the agreed time for collection, or in the case of Goods to be delivered, at the time NWF tendered delivery of the Goods. Any time which NWF quotes for delivery of Supplies is an estimate only. 4.2 Customer bears all costs associated with the provision of the Supplies including any government taxes, duties or imposts, unless stated otherwise in the Order. 4.3 Where Customer fails to collect or take delivery of Supplies at an agreed time NWF may charge Customer a service fee to reflect any associated costs to NWF. 4.4 Any containers used for the delivery of Goods or other equipment of NWF provided for use by Customer (**Equipment**) at all times remains the property of NWF and title does not pass in any circumstances. Customer must keep the Equipment clean and undamaged and return in good condition post delivery of Supplies. 4.5 Customer acknowledges that delivery of Bulk Goods supplied may vary in quantity from the quantity specified under the Order and that it must (up to 5% variation) accept and pay for the quantity actually delivered.

**5 Payment** 5.1 NWF may, but is not obliged to, agree to extend credit to Customer in respect of any Order. If NWF has agreed to extend credit to Customer, Customer may pay for the Supplies in full within 30 days from the end of the month in which the Supplies were supplied, unless otherwise determined by NWF. However, NWF may revoke any offer to extend credit to Customer in respect of any Order and may require Customer to pay cash in full prior to delivery of any Supplies at any time. 5.2 Discounts will be credited to Customer by NWF, Customer cannot deduct any Discounts from moneys owing by it to NWF, Customer must pay NWF in full for Supplies delivered even if a delay in the delivery of the Supplies or Customer disputes the quality, quantity or condition of Supplies delivered or provided. NWF is entitled to set off any sums owed by it to Customer against the Price. 5.3 If Customer has not paid in full by the due date NWF may, without limiting any other rights, charge Customer interest on

the overdue moneys at the official cash rate (displayed about 11.00 am Auckland time on the Reserve Bank of New Zealand website on the date of delivery) plus 2%, from delivery of the Supplies until paid in full, and take action against Customer for the Price for which payment has not been made, even though title in the Goods remains with NWF.

**6 Risk & Title** 6.1 Risk of loss or damage to the Goods passes to Customer on delivery. 6.2 Until Customer has paid for the Goods in full and also paid all other moneys due and payable to NWF, title in the Goods remains with NWF, Customer holds the Goods as bailee of NWF and must ensure the Goods are properly stored, separate from all other goods, protected, readily identifiable, clearly marked as owned by NWF and fully insured for an amount not less than the Price. 6.3 Customer acknowledges that the Contract constitutes a security agreement under the *Personal Property Securities Act 1999 (PPSA)*, that NWF has a security interest in the Equipment, Goods (including any Goods to be supplied in the future) and any proceeds as security for the Equipment and payment for the Goods and any amount owing by Customer to NWF from time to time, NWF's rights in the Goods established under this clause 6 are a 'purchase money security interest' (**PMSI**) and NWF will have a PMSI in the Goods and the proceeds of those Goods. Customer agrees to do anything required by NWF to give effect to these Terms and to ensure that the security interest created under these Terms constitutes and remains a first ranking perfected security interest over the Goods, the Equipment and their proceeds, including by performing any action, providing any information, executing any documents and paying all costs, expenses and other charges incurred by NWF in preparing, lodging or registering any financing statement or financing change statement in relation to any such security interest, maintaining those registrations, and enforcing any security interests. 6.4 Customer shall not consent to or enter into any agreement which permits any supplier or other person to register a security interest in respect of the Equipment or the Goods or their proceeds subject to the Supplier's security interest, which ranks in priority to the Supplier's rights as first-ranking perfected security holder in the Equipment, the Goods and their proceeds. 6.5 If Customer fails to comply with any Terms in this clause 6 then Customer must return any Goods on which there are outstanding amounts owing on request; Customer authorises, and indemnifies for the same purpose, NWF and any person authorised by NWF to enter premises where the Goods or Equipment may be located to take possession of the Goods or Equipment; NWF may retain, sell or otherwise dispose of those goods. 6.6 Customer agrees, to the extent permitted under the PPSA, that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to this Contract and any security interest created in connection with this Contract. Customer waives its rights as debtor in sections 116, 120(2), 121, 125, 126, 127, 129 and 131 of the PPSA and its right to receive any notice under the PPSA (including notice of a verification statement) unless the notice is required by the PPSA and the requirement cannot be excluded.. Customer will notify NWF in writing of any proposed change to its address, contact details or name at least 14 days prior to the date on which such change becomes effective. 6.7 Unless the context indicates otherwise, terms defined or used in the PPSA have the same meaning as in that Act.

**7 Force Majeure** NWF is entitled (without liability to Customer) to delay, vary or cancel the performance of any of its obligations if and to the extent that it is materially or substantially prevented from, hindered or delayed in the performance of any of its obligations by normal route or means of delivery or at costs commercially acceptable to NWF due to any occurrence or circumstances beyond its reasonable control including, without limitation: acts of God, governmental actions, changes to laws, governmental orders, directions or regulations, epidemics, pandemics, strikes or other labour disputes (whether or not relating to NWF's workforce), unexpected cost increases or restraints or delays affecting carriers, lock-outs, accidents, war or national emergency, terrorism or the threat of terrorism, protests, riot, civil commotion, explosion, flood, storm, theft, malicious damage, fire, natural disasters, extreme adverse weather, reduction in or unavailability of energy sources, breakdown of plant or machinery, restrictions or delays affecting delivery of the Supplies, default of suppliers or subcontractors, shortage or unavailability of raw materials from normal sources of supply or the amendment or coming into force of any regulatory provision affecting the import or export of the Supplies or any ingredients or materials for production of the Supplies (each a **Force Majeure Event**).

**8 Shortfall, Damaged and Defective Goods** 8.1 Goods will be considered to have been delivered in full in good condition unless Customer notifies NWF in writing of the shortfall, damage or defect within 5 business days of delivery. 8.2 If Customer gives NWF notice under clause 8.1, it must preserve the Goods in the state in which they were delivered for 14 days after notice and at NWF's option, allow NWF or its representative to inspect the Goods or return some or all Goods to NWF in the same condition as delivered, except in each case for any normal deterioration due to the passing of time. 8.3 NWF is not obliged to accept return of or allow credit for Goods not sold by Customer by the use-by date for the Goods.

**9 Right of Entry, Resale and Termination** 9.1 If Customer (a) enters, takes any step to enter, or threatens to enter into bankruptcy or any form of insolvency process including administration, deed of company arrangement, receivership, liquidation, provisional liquidation, a scheme or arrangement with its creditors, or makes a general assignment for the benefit of creditors; (b) ceases or threatens to cease to carry on all or a material part of its business; (c) breaches any of these Terms in a way that has, or is likely to have, a material adverse impact on NWF's interests; or (d) in NWF's reasonable opinion, fails to perform its obligations in a satisfactory manner, engages in unlawful or dishonest activity or fraud, has a conflict of interest or any other misconduct; NWF may, without affecting its accrued rights and obligations, take possession of and resell the Goods or terminate any Contract immediately by notice to Customer (without liability to Customer) and withhold or suspend any deliveries of Goods or performance of Services pursuant to the Contract, and any obligation of NWF to extend credit to the Customer ceases. 9.2 NWF may terminate any Contract at any time by giving Customer no less than 30 days' notice in writing, or if a Force Majeure Event continues for 30 days or more, on immediate notice to Customer.

**10 Confidential Information and Intellectual Property** 10.1 Customer must keep all Confidential Information secret unless it comes into the public domain (other than because of a breach of this Contract or any law) and must not use Confidential Information except as necessary for the purposes of this Contract. On termination or expiry of this Contract, Customer must promptly return all Confidential Information to NWF, or destroy it if NWF requires. 10.2 Intellectual Property owned by either party at the commencement of the Contract remains the property of that party. Any Intellectual Property developed or created during the performance of the Contract vests in NWF immediately upon its creation and Customer assigns all right, title and interest in such Intellectual Property to NWF and will do any further acts or execute any documents required by NWF to effect such assignment.

**11 Limitation of Liability** 11.1 Customer may have certain rights under the Consumer Guarantees Act 1993, including consumer guarantees that the Goods and Services NWF provides to Customer will be of acceptable quality, fit for the purpose expressly or impliedly made known by the Customer and carried out by NWF with reasonable care and skill. These Terms do not exclude or limit these guarantees or any other statutory rights that Customer may have under applicable laws which cannot be excluded by agreement. 11.2 Where Customer acquires the Goods for the purpose of resupplying the Goods in trade, Customer acknowledges that the CGA and any provisions in relation to consumer contracts or standard form consumer contracts contained in the FTA shall not apply. 11.3 Where Customer does not acquire the Goods for the purpose of resupplying the Goods in trade and this Contract would otherwise be subject to the provisions of the CGA, Customer agrees that it is acquiring

the Goods in trade and that accordingly to the fullest extent permitted by law, and solely to the extent it is fair and reasonable to do so, the CGA does not apply to the supply of the Goods. Furthermore, the Supplier's liability to Customer under the FTA is limited to the fullest extent permitted by law, and Customer agrees that it is fair and reasonable that the parties are bound by the provisions of this Contract. To the fullest extent permitted by law, (a) all other guarantees, conditions and warranties, express or implied, by law, including the Contract and Commercial Law Act 2017, custom or otherwise are excluded; and (b) to the extent any guarantees, conditions and warranties cannot be excluded, the aggregate liability of NWF arising under or in connection with this Contract in any calendar year (whether in contract, tort (including negligence), statute, equity or otherwise) is limited to the Price paid by Customer to NWF in that calendar year, or NZ\$100,000, whichever is the lesser. 11.4 To the fullest extent permitted by law, NWF will not be liable for any Loss which Customer pays, suffers, incurs or is liable for any reason, including as a result of delay, negligence or any act, advice, matter or thing done or permitted or omitted to be done by NWF, its employees or agents in any way connected with or arising out of these Terms. 11.5 Customer indemnifies NWF against any Loss which NWF pays, suffers, incurs or is liable for in connection with any breach of these Terms, or negligence, by Customer or with NWF exercising its rights under these Terms to the extent that such Loss was not caused by an act or omission of NWF.

**12 Product Recall Procedure** 12.1 If the Customer receives any customer complaint in respect of the Goods, the Customer must notify NWF immediately, and as soon as practicable provide NWF with a written summary of the complaint. 12.2 If the complaint is due to a fault in the Goods supplied by NWF, NWF will be responsible for addressing the customer complaint and the instigation and conduct of any Product Recalls. 12.3 The Customer must cooperate with NWF in addressing any customer complaints and must immediately comply with NWF's directions in relation to Product Recalls.

**13 Anti-corruption**

13.1 The Customer will not, and nor will any of its officers, employees, shareholders, representatives or agents, directly or indirectly, either in private business dealings or in dealings with the public sector, offer, give or agree to offer or give (either itself or in agreement with others) any payment, gift or other advantage with respect to any matters which are the subject of these Terms which: (i) would violate any anti-corruption laws or regulations applicable to the Customer or NWF; (ii) is intended to, or does, influence or induce any person to act improperly or reward them for improperly, or which it would otherwise be improper for the recipient to accept; or (iii) is made to or for a public official with the intention of influencing them. 13.2 Without prejudice to clause 9, in the event NWF reasonably suspects there to have been a breach of this clause 13, NWF may terminate these Terms immediately upon written notice to the Customer.

**14 Sanctions Compliance** The Customer shall at all times comply with all economic and/or trade sanctions laws, regulations and any other binding measures of the UK, European Union, the United Nations, the United States of America or any other jurisdiction applicable to the parties.

**15 General** 15.1 Unless otherwise set out in these Terms, NWF may vary these Terms at any time on 30 days' notice to Customer. 15.2 If any part of this Contract is or becomes illegal, void or unenforceable, this does not invalidate the rest of the Contract. 15.3 This Contract is deemed to be made in New Zealand and is governed by and is to be construed in accordance with the laws of New Zealand. Each party irrevocably submits to the non-exclusive jurisdiction of the courts of New Zealand to resolve any dispute which arises out of, is in connection with or which otherwise relates to this Contract. The United Nations Convention on Contracts for the International Sale of Goods is excluded in its entirety.