



BURRA
FOODS AUSTRALIA

Terms and Conditions of Sale

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TERMS AND CONDITIONS OF SALE

1. Contract formation and terms

1.1 Each Contract is formed between Burra and the Buyer on the first to occur of:

- (a) Burra accepting an order for Goods from the Buyer by sending the Buyer an Order Confirmation;
- (b) Burra dispatching the Goods from its warehouse to the Buyer; or
- (c) the Buyer accepting delivery, making any payment or performing any of these Terms, with respect to the Goods

and upon such formation the Buyer is deemed to have accepted these Terms.

1.2 The parties acknowledge and agree that Burra may accept or reject order for Goods in its absolute discretion.

1.3 For each Contract, details of the Goods, the Purchase Price, the Currency, Shipment Terms and the shipment period are as specified in the relevant Order Confirmation.

1.4 By providing the Buyer with a quotation in relation to any Goods, Burra is not making the Buyer an offer to sell those Goods. Burra may withdraw or alter any quotation at any time and without giving the Buyer notice. The Buyer must keep all quotations strictly confidential.

1.5 These Terms prevail over any and all terms imposed or sought to be imposed by the Buyer in relation to the supply of the Goods by Burra to the Buyer (including, without limitation, any terms imposed in any purchase order of the Buyer).

2. Prices and payment

2.1 Unless otherwise specified in a Contract, any price quoted by Burra to the Buyer for the Goods is exclusive of any Taxes. The Buyer must:

- (a) pay any sales tax in respect of the Goods or, where applicable, quote to Burra its sales tax registration number or a sales tax exemption declaration as required by law, in respect of the Goods; and
- (b) indemnify Burra against any Taxes (other than income tax) imposed on Burra in respect of the Goods.

2.2 The Buyer must pay Burra any amount (**GST Amount**) which is payable by Burra on account of goods and services tax, value added tax or any other similar tax (**GST**) as a result of the making of a supply under or in connection with a Contract. The GST Amount will be calculated using the prevailing rate of GST. If at any time an adjustment is made or required to be made on account of any GST paid or payable in connection with a Contract, the GST Amount will be amended accordingly and any corresponding payment necessary to give effect to the adjustment must be made by the Buyer or Burra, as the case may be.

2.3 Unless otherwise specified in a Contract, the Purchase Price and any GST Amount is payable in full in the Currency on the due date on Burra's invoice, free and clear of any deduction, set-off or counterclaim. If no due date is specified, then these amounts are payable within 7 days of the date of Burra's invoice.

- 2.4 As notified by Burra in accordance with the terms of a Contract, the Buyer must also pay any freight, delivery, customs clearing, warehousing, storage or other costs, expenses or disbursements incurred by Burra in respect of the Goods within 7 days from the date of such notice.
- 2.5 The Buyer must ensure that all payments under each Contract are made:
- (a) as specified in the Contract; or
 - (b) otherwise by bank cheque delivered to Burra or in cleared funds to the account specified by Burra from time to time by 11am on the due date.
- 2.6 If the Buyer does not pay any amount in accordance with the terms of a Contract, then (without prejudice to any other right or remedy available to Burra):
- (a) Burra may charge and the Buyer must pay interest at the Prescribed Rate in respect of any monies as may from time to time be overdue until such monies together with interest are paid in full; and
 - (b) Burra may terminate any then existing Contract with the Buyer or suspend further deliveries until payment has been made.
- 2.7 The Buyer must pay Burra all expenses, costs or disbursements incurred in recovering any outstanding monies under a Contract, including (without limitation) debt collection fees and legal costs on a full indemnity basis.
- 3. Delivery, title and risk**
- 3.1 Any date for delivery of the Goods specified in a Contract is the estimated date for delivery only. To the extent permitted by law, Burra is not liable to the Buyer for any damage, expense, loss or liability suffered or incurred by the Buyer in respect of any late delivery of Goods or late provision of services under a Contract. The Buyer must still accept and pay for the Goods even if the delivery is late.
- 3.2 Until all amounts owing by the Buyer to Burra under a Contract are paid in full:
- (a) Burra retains title to all Goods under the Contract;
 - (b) if the Goods are delivered to the Buyer:
 - (i) the Buyer agrees to hold the Goods as bailee for Burra in an area separate from the Buyer's other goods so that the Goods may be readily identifiable by Burra at all times;
 - (ii) Burra may at any time terminate the relevant Contract and the bailment by written notice to the Buyer and may then repossess the Goods; and
 - (iii) the Buyer authorises Burra to:
 - (A) enter any premises owned, leased or otherwise occupied by the Buyer for the purpose of repossessing the Goods; and
 - (B) use all reasonable force to do so,and Burra will not be liable to the Buyer for trespass or for any loss or damage in respect of these actions,
 - (c) if the Goods are used by the Buyer or sold by the Buyer to a third party, the Buyer agrees that the proceeds of such sale or use (in whatever form and including proceeds from insurance

claims) shall be the property of Burra and the Buyer agrees to hold the proceeds of sale and deal with them as Burra directs;

3.3 Unless otherwise specified in a Contract, risk in the Goods under each Contract passes to the Buyer based on the Incoterms meaning of the Shipment Terms specified in the relevant Order Confirmation.

4. Personal Property Securities Act

4.1 If:

- (a) the location of the Goods supplied by Burra to the Buyer is in Australia; or
- (b) the Buyer is an Australian entity

then it is agreed that:

- (i) the Goods are inventory for the purposes of the PPSA;
- (ii) Burra retains a security interest in the Goods;
- (iii) Burra's security interest in the Goods and any proceeds is a Purchase Money Security Interest (PMSI) under the PPSA to the extent that it secures payment of any amount owing in relation to the Goods; and
- (iv) the terms set out in the Schedule will apply in relation to the supply of Goods by Burra to the Buyer.

5. Force Majeure

5.1 If Burra:

- (a) is unable to carry out any obligation under a Contract, whether wholly or in part, due to the occurrence of a Force Majeure Event;
- (b) gives the Buyer prompt notice of the Force Majeure Event with full particulars of that event, and (if known), the probable extent to which Burra will be unable to perform or be delayed in performing the obligation; and
- (c) uses reasonable diligence to remove that Force Majeure Event,

then Burra is relieved from performing the relevant obligation to the extent that it is affected by the Force Majeure Event.

5.2 In the event that the relevant obligation:

- (a) remains suspended for a period of 90 days or longer; and
- (b) is a substantial obligation under a Contract,

then the Buyer may terminate the relevant Contract by giving Burra 30 days written notice.

6. Limitations of liability and claims

6.1 To the extent permitted by law, Burra excludes all liability for breach of any implied term or warranty in connection with the performance of its obligations under these Terms. Where liability for any term implied by law cannot be excluded, and to the extent permitted by law, Burra's liability for any breach of such an implied term is limited to (at Burra's option):

- (a) in the case of services, to supplying the services again or the cost of having the services supplied again; and
- (b) in the case of goods, the lowest of the cost of replacing the goods, acquiring equivalent goods or having the goods repaired.

6.2 Subject to any law that cannot be excluded and despite any other provision of a Contract:

- (a) Burra's total liability to the Buyer for all events and occurrences in respect of a Contract, whether in contract, tort, under statute or otherwise, is limited to the total Purchase Price paid by the Buyer under the Contract;
- (b) Burra is not liable to the Buyer in any circumstances for:
 - (i) any economic loss or damage including (without limitation), any loss of revenue or profits, whether actual or potential;
 - (ii) any loss of business opportunities, contracts or anticipated savings; or
 - (iii) any indirect or consequential loss or damage,and
- (c) Burra's liability in respect of a Contract is reduced to the extent that the relevant loss or damage:
 - (i) was caused or contributed to, by the Buyer; or
 - (ii) arises from inaccurate data or information provided by the Buyer.

6.3 Before making any claim against Burra with respect to a Contract, the Buyer must first take all reasonable action to mitigate any loss suffered by the Buyer in relation to that claim (including claiming under any applicable insurance policy) and any sum recovered will reduce the amount of the claim.

6.4 The Buyer must notify Burra of any potential or actual claim against Burra under a Contract within 14 days of delivery of the Goods under the Contract or the date on which those Goods should have been delivered (and any claim brought outside of that time frame is absolutely barred). The Buyer must provide Burra with all reasonable information requested by Burra to substantiate any such claim.

7. General

7.1 Any dispute, controversy or claim arising out of, relating to or in connection with a Contract, including (without limitation) any question regarding its existence, validity or termination, must be resolved by arbitration in accordance with the *ACICA (Australian Centre for International Commercial Arbitration) Arbitration Rules*. The arbitration will be in English, located in Melbourne, Australia and the number of arbitrators will be one.

7.2 Each Contract constitutes the entire agreement between the parties as to its subject matter and supersedes all prior representations, documents and agreements in connection with that subject matter.

7.3 Any amendments and special conditions applicable to a Contract will be specified by Burra in writing in the relevant Order Confirmation. Otherwise, a Contract may only be amended in writing signed by both parties.

- 7.4 Each party warrants that it has the authority, power and capability to enter into and to perform its obligations under each Contract and that its obligations under each Contract will be binding and enforceable.
- 7.5 Each term of a Contract must be interpreted in such manner as to be effective and valid under applicable law. If any term of a Contract is held to be prohibited by or invalid under applicable law, that term is ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of the Contract.
- 7.6 A term of a Contract may not be waived except in writing signed by the party granting the waiver. The waiver by a party of a breach by the other party of any term of a Contract does not operate as a waiver of another or continuing breach by that party of that term or any other term of a Contract.
- 7.7 The Buyer must not assign or novate any of its rights or obligations under a Contract without Burra's prior written consent (which Burra may withhold in its absolute discretion). Burra may assign or novate any of its rights or obligations under a Contract to any person by notice to the Buyer.
- 7.8 The Buyer has no right of set-off against any payment due to Burra under any Contract.
- 7.9 The application of the *Sale of Products (Vienna Convention) Act 1987 (Vic)* is excluded.
- 7.10 These Terms are governed by the laws applicable in the State of Victoria, Australia. The parties submit to the non-exclusive jurisdiction of the courts of that State.

8. Definitions

Burra means Burra Foods Pty Limited (ACN 007 119 904) and includes its successors and assigns.

Buyer means the buyer of the Goods as specified in a Contract.

Contract means a contract between Burra as seller and the Buyer as buyer, for the sale and purchase of the Goods at the Purchase Price, which incorporates these Terms and any relevant Order Confirmation.

Currency means the currency specified in a Contract.

Goods means the products and, if any, services specified in a Contract.

Force Majeure Event means any cause or event which is beyond Burra's reasonable control.

Incoterms means *Incoterms 2020*, published by the International Chamber of Commerce. The terms used in Incoterms have the same meaning in a Contract unless the context otherwise requires.

Order Confirmation means a written order confirmation issued by Burra to the Buyer in relation to the sale and purchase of Goods.

Prescribed Rate means the rate that is 2% per annum above the rate specified from time to time under section 2 of the *Penalty Interest Rates Act 1983 (Vic)*;

PPSA means the *Personal Property Securities Act 2009 (Cth)* as amended from time to time.

Purchase Price means the purchase price for the Goods specified in a Contract.

Terms means these terms of sale.

Tax means all forms of taxes, duties (including stamp duty), imposts, charges, withholdings, rates, levies or other governmental impositions imposed, assessed or charged by any government agency, together with all interest, penalties, fines, expenses and other additional statutory charges resulting from a failure to pay when due the full amount of any such imposition.

SCHEDULE OF PPSA TERMS (clause 4)

1. Burra takes a security interest in all Goods and/or collateral, being a monetary obligation of the Buyer to Burra for Goods supplied, and that will be supplied in the future, to the Buyer by Burra under these Terms and any proceeds and any accession that secures any money owing or payable by the Buyer to Burra, securing the performance by the Customer of its obligations under the Terms.
2. The Buyer consents to Burra perfecting its interest in any Goods by registration under the PPSA and agrees to do anything reasonably requested by Burra to enable it to do so including, but not limited to, providing accurate information and executing all necessary documents which Burra may reasonably require.
3. The Buyer confirms that Burra's security interest is a continuing interest irrespective of whether there are monies or obligations owing by the Buyer at any particular time.
4. Burra may allocate amounts received from the Buyer in any manner Burra determines, including in any manner required to preserve any PMSI it has in the Goods.
5. The Buyer and Burra agree that nothing in sections 96, 125, 129, 142, 143 of the PPSA will apply to these Terms.
6. The Buyer waives its rights as a debtor to receipt of verifications, notifications, disclosures or other documentation under sections 92, 93, 94, 95, 97, 118, 121, 130, 132, 135, 137, 140 and 157 of the PPSA.
7. Words or phrases used in these Terms that are defined in the PPSA have the same meaning as in the PPSA.