

JACOBS DOUWE EGBERTS NZ

Standard Terms and Conditions of Purchase

1. Interpretation

1.1 In these terms and conditions the following words have the following meaning:

Acceptable Quality means Goods that are (a) fit for all the purposes for which goods of that kind are commonly supplied; (b) fit for any particular purpose made known by Company; (c) unflawed in appearance and finish; (d) free from defects; (e) safe for all the purposes for which the Goods might reasonably be expected to be used; and (f) durable having regard to the nature of the Goods, the price of the Goods, any statements made about the Goods by or on behalf of the Supplier and any other relevant circumstances relating to the supply of the Goods.

Goods means the products, materials, equipment and services, if any, as described in an Order

Order means the order for the Goods as set out on the face of this document (overleaf) and any other order to purchase whether it is electronic or otherwise to purchase Goods from the Supplier.

Company means JACOBS DOUWE EGBERTS NZ of 43 Crooks Road, East Tamaki, Auckland 2013, New Zealand.

1.2 Should there be any inconsistency between these Standard Purchase Order Terms and Conditions and the details on the face of the Order or any formal agreement between the parties impacting the same goods, to the extent of any inconsistency the documents shall be interpreted in accordance in the following order of priority:

- the details on the face of this Order;
- any other contract terms arising from an agreement signed by the parties in respect of the same goods; and
- these Standard Purchase Terms and Conditions.

2. General

The acceptance of this Order by the Supplier means acceptance of these terms and conditions as the sole basis of the sale to the exclusion of any other conditions of sale appearing on any document of the Supplier. Modification of these conditions expressed in any document of the Supplier does not apply to this Order unless expressly accepted in writing by the Company. The Company will not be liable to accept or pay for any Goods supplied or work done unless ordered on The Company's official printed Order form submitted by an authorized officer of the Company.

3. Alterations/Over-Supply

No changes to this Order are to be made by the Supplier without the written agreement of the Company. The Supplier will not be paid for any over-supply of the Order, unless otherwise expressly agreed to by the Company in writing.

4. Prices and Payment

- The Price will be as stated in the Order and is inclusive of all charges including delivery of the Goods to the nominated address and all applicable taxes, duties and levies unless otherwise stated, but exclusive of any applicable GST.
- The Supplier must give the Company at least ninety (90) days prior written notice of any price increases.
- The Supplier must quote the Order Number on its invoice which must be in the form of a valid Tax Invoice.
- The Company's payment terms are 60 days from the end of the month following the month in which the Goods were received.

5. Goods to Conform to Specifications

5.1 The Supplier warrants and guarantees that the Goods:

- Comply with the quality, quantity and description specified in:
 - The Order;
 - Any applicable drawings, samples, recipes, descriptions or standards as required by the Company, or any other specifications provided by the Company (or provided by the Supplier and agreed to by the Company) including (without limitation) any Company Policy on genetically modified foods, as advised to the Supplier from time to time;
 - Subject to 5.1 (a) (i) above in the applicable descriptive or technical specifications, drawings, catalogues, illustrations, particulars of weight, volume, count and dimension contained in any quotation or relevant promotional material of the Supplier.
- Comply with all applicable laws, regulations, any applicable industry guidelines, standards or codes of practice or other legal requirements (including relevant New Zealand Standards).
- Are marked and packed in accordance with the Company's instructions and any applicable regulations or requirements of the carrier and in the manner necessary to ensure that they are delivered in an undamaged condition.

5.2 The Company may at any time (both prior to and upon obtaining physical possession of Goods) inspect Goods, components and ingredients thereof, processes of manufacture and packing, labelling or storage of Goods. The Supplier shall provide the Company with reasonable assistance in any and all such inspections.

5.3 In addition to the rights contained in clause 6.4 the Company may at any time (both prior to and upon obtaining physical possession of Goods) reject Goods if the Company considers that the Goods, components or ingredients thereof, safety, quality, processes of manufacture, packaging, labelling or storage:

- do not comply with the Specifications; or
- are damaged in any way when delivered to the Delivery Address.

5.4 The Supplier shall take all steps as are appropriate or necessary to ensure compliance with the Order to the Company's satisfaction including replacing, repairing or paying the cost of replacing or repairing such Goods at no additional cost to the Company and refunding any moneys paid by the Company to the Supplier in respect of such Goods, their transportation and insurance. All rejected Goods shall be returned by the Company to the Supplier at the Supplier's risk and cost.

6. Delivery

6.1 If the delivery requirements as stated in the Order are not complied with by the Supplier, the Company is entitled to immediately terminate the Order in whole or in part.

6.2 If Goods are to be delivered by instalments, the contract formed by acceptance of the relevant Order will be treated as a single contract and not severable.

6.3 The Company may reject any Goods delivered which it considers are not in accordance with the Order and these Conditions (including being delivered in an undamaged condition) and will not be deemed to have accepted any Goods until the Company has had a reasonable time to inspect them following delivery or within a reasonable time after any latent defect in the Goods has become apparent.

6.4 The Company is not obliged to return to the Supplier any packaging or packing materials for Goods, whether or not the Goods are accepted by the Company.

6.5 Appropriate paperwork including but not limited to packing lists, shipping documents and delivery dockets need to accompany delivery of Goods unless a different method or date of dispatch (or both) is agreed by the Company.

7. Passing of Title and Risk

Subject to its right of rejection, pursuant to clauses 5.3 and 6.4, title and risk of damage to or loss of Goods passes to the Company upon delivery as specified.

8. Intellectual Property

8.1 In the event that any of the goods and services which are the subject of this Order are to be manufactured by the Supplier in accordance with any ideas, designs or specifications, the essential, secret or novel features of which originated with the Company, or were developed by the Company, or are owned by or controlled by the Company, the Company will so inform the Supplier, and (1) the Supplier agrees that such essential, secret and novel features are proprietary data and valuable trade secrets of the Company and shall not be used for purposes other than performance of this Order, (2) the Supplier will not disclose any such essential, secret or novel features to anyone, (3) the Supplier will not file, or attempt to file, any application, for a patent thereon or for copyright registration, and (4) the Supplier will, upon the Company's request, execute any document necessary to give effect thereto or to acknowledge title thereto in the Company.

8.2 Goods bearing any registered trade mark or any other marks, brands, logos or designs owned by or licensed to the Company must only be sold to the Company. Where Goods have been rejected or not taken up by the Company, the Supplier must obtain the Company's written consent to sell such Goods to a third party. If such consent is given the Supplier must remove all references to the Company including without limitation all references to the Company's trade marks and any other marks, brands, logos and designs before they are offered for sale to a third party.

8.3 The Supplier agrees that photos and text describing the Goods may be included on an internet site operated by the Company.

8.4 All copyright, design rights or any other intellectual property rights in the specifications given to the Supplier by the Company will remain at all times the property of the Company.

8.5 The Supplier must keep confidential and not use or disclose to any third party any information contained in the specifications except to the extent required for the purposes of fulfilling an Order or if required by law.

9. Supplier's Warranties and Liabilities

9.1 The Supplier hereby warrants that the Goods supplied under this Order are:

- sold free and clear of all liens, claims, securities, charges and encumbrances and that the Supplier has the right to sell such Goods with full title
- of Acceptable Quality
- where services, performed in a professional and workmanlike manner with promptness and diligence
- comply with specifications, the Order and these conditions and are free from defects in design, material and workmanship
- where the Goods are supplied by reference to a sample, in accordance with the sample, and comply with statutory requirements in regulations relating to (1) the safety, packing, labelling, transportation and sale of the Goods and (2) the nature, substance, quality, weight and measurement of the Goods. The Supplier agrees to replace or repair free of charge, F.O.B. to the Company's designated location, promptly without unreasonable delay, any Goods which do not conform to the foregoing warranty.

9.2 Without prejudice to any other remedy, if any Goods are supplied in breach of any warranty or re-presentation given by the Supplier or are otherwise not in accordance with the Order, the Company may:

- at its election require the Supplier to repair the Goods or to supply replacement Goods within seven (7) days; or
- treat the contract resulting from accepting the Order as discharged by the Supplier's breach and require the repayment of any part of the monies paid by the Company.

9.3 The Supplier agrees to indemnify and keep the Company indemnified in full against all liability, loss, damages, costs and expenses (including legal expenses) suffered directly or indirectly (including any GST payable by the Company on amounts paid by the Supplier under this indemnity) awarded against or incurred or paid by the Company as a result of or in connection with any:

- breach of any warranty or representation given by the Supplier in relation to the Goods;
- claim that the Goods infringe, or their importation, use, sale or resale, or that the use of photos or text of the Goods infringes the patent, copyright design, trade mark, or other intellectual property rights of any other person;
- liability under the Competition and Consumer Acts, the Food Acts, the Trade Measurements Acts, the Health Acts, the Goods Acts, the Fair Trading Acts in force in the country of New Zealand in respect of the Goods;
- defect or fault or alleged defect or fault in the Goods;
- claim for loss or damage arising directly or indirectly out of the use or consumption of the Goods.

10. Company Supplier Guidelines

10.1 The Supplier acknowledges that it has received a copy of the Global Guidelines for Business Partners (JACOBS DOUWE EGBERTS NZ Guidelines). The Supplier hereby represents and warrants that it has reviewed and understands the JACOBS DOUWE EGBERTS NZ Guidelines, and that the Supplier is presently in compliance and will remain in compliance with such Guidelines pending completion of this Order.

10.2 The Supplier acknowledges that as a multi-national corporation Supplier is obliged to comply with any anti-corruption and anti-bribery laws (not only with New Zealand legislation but also for instance with the US Foreign Corrupt Practices Act) and that it cannot deal with any company/person who engages in conduct designed to effect a bribe (whether in cash or otherwise) of any government official or other person. Accordingly the Supplier will not engage in any such practices in relation to any activity relating to this agreement.

10.3 The Supplier agrees to notify the Company immediately if the Supplier becomes aware that a violation by the Supplier, or any of its agents, contractors or suppliers, of the standards set forth in the JACOBS DOUWE EGBERTS NZ Guidelines has occurred.

10.4 The JACOBS DOUWE EGBERTS NZ Guidelines are hereby incorporated herein by reference.

11. Advertising

The Supplier must not, without the Company's prior written consent, in any manner advertise or publish the fact that the Supplier has contracted to the Company with regard to the Goods.

12. Rights of Termination

12.1 The Company reserves the right to cancel an Order if:

- the full amount of all Goods ordered is not delivered as specified in an Order;
- the Supplier is in breach of any of its obligations contained in the Order or any other Order between the Company and Supplier; or
- the Supplier threatens to, or goes into, any form of receivership or liquidation or if any secured creditor of the Supplier takes any step to exercise its right in relation to the Supplier's assets or the Supplier assigns any of its property for the benefit of or enters into any arrangement with its creditors or any step is taken to appoint a receiver, receiver and manager, liquidator, provisional liquidator or administrator over all or any part of the Supplier's assets or business.

12.2 The Supplier does not have and may not prosecute any claim whatsoever at law or in equity against the Company if the Company cancels the Order under this clause 12.

12.3 The Supplier must, in addition to any other liability, pay the costs of removing the Goods from the Company's premises, if the Company cancels the Order under this clause 12.

13. Insurance

The Supplier shall effect and maintain an annual General and Products Liability policy of insurance indemnifying the Company against liability for property damage, personal injury or death arising directly or indirectly out of Goods manufactured, distributed or sold by it with an annual cover of not less than \$10 million for any one event (or such other amount as may be agreed between the Company and the Supplier in writing.) The Supplier shall produce on request a Certificate of Insurance to the Company confirming such insurance is in force within fourteen (14) days from the date of such request.

14. Variations and Waiver

14.1 These Conditions are subject to change upon the Company providing the Supplier written notice of such changes. Any variations to these Conditions must be agreed to by the Company in writing.

14.2 Failure of the Company to insist on performance of any Terms and Conditions or requirements of this Order shall not be construed as a waiver of such terms, conditions or requirements and shall not affect the right of the Company thereafter to enforce each and every term and condition of requirement. To be effective, any waiver must be in writing and signed by the Company; provided, however that any such waiver shall be effective only as to the breach specifically described therein and not with any respect to any other or subsequent breach.

15. Assignment

The Supplier shall not assign its rights or obligations under the Order without the prior written approval of the Company. In the event of corporate reconstruction the Company may assign its rights and/or obligations under this Agreement and/or any Order on providing written notice to the Supplier.

16. Set Off

The Supplier agrees that the Company shall have the right to set off against amounts which may become payable by the Company to the Supplier under contract or otherwise, any present or future indebtedness of the Supplier to the Company, whether arising under this Order or otherwise.

17. Dispute Resolution

17.1 A party must not start court proceedings (except proceedings seeking interlocutory relief) in respect of a dispute arising out of this agreement (Dispute) unless it has complied with this clause.

17.2 A party claiming that a Dispute has arisen must notify the other party to the Dispute giving details of the Dispute.

17.3 During the 14 day period after a notice is given under clause 17.2 (or longer period agreed in writing by the parties to the Dispute), each party must use its bona fide best efforts to resolve the Dispute through the involvement of (where applicable) the respective managing directors or their nominees.

17.4 If after 28 days of notice of a Dispute the parties fail to meet or to resolve the Dispute, the parties are at liberty to take any action deemed appropriate in the circumstances.

18. Survival of Provisions

The warranties, remedies and indemnities provided in these Terms and Conditions shall survive delivery, inspection, acceptance and payment hereunder, and shall survive expiration or termination hereof.

19. Governing Law

This Agreement will be governed by and construed in accordance with the laws of the Country of New Zealand. The parties submit to the exclusive jurisdiction of the courts of that jurisdiction.