

1. CONTRACT

- 1.1 Subject to clause 1.3, these terms and conditions (**Terms**) will apply to any supply of Goods by Kraft Heinz to Purchaser and together with each applicable order for Goods will constitute a legally binding agreement between Kraft Heinz and Purchaser (**Contract**).
- 1.2 Any quotation from Kraft Heinz is not an offer to supply Goods. Kraft Heinz is not bound by any order from Purchaser unless accepted by an authorized officer of Kraft Heinz.
- 1.3 Where Kraft Heinz and Purchaser have a pre-existing written agreement in respect of the supply of Goods which is in force prior to the order of the Goods by Purchaser, the terms of that agreement will prevail.
- 1.4 Subject to clause 1.3, the Contract contains the entire agreement between the parties in respect of its subject matter and supersedes all prior discussions, negotiations, understandings and agreements. Any variation to the Contract must be agreed by both parties in writing.
- 1.5 If Purchaser purports to unilaterally impose upon Kraft Heinz or incorporate into the Contract any additional or varied terms by any means whatsoever, such terms will be void.
- 1.6 The act of completing and submitting an online application to be registered as a Kraft Heinz customer (including ticking a box to indicate acceptance of these Terms) by an authorized officer of Purchaser constitutes acceptance by Purchaser of these Terms.

2. PRICE & PAYMENT

- 2.1 The price payable by Purchaser for the Goods will be Kraft Heinz's price in effect on the date the Goods are ordered, as set out in the applicable order and accepted by Kraft Heinz (**Price**).
- 2.2 Unless otherwise specified by Kraft Heinz, any price quote is based on a full container load of Products, is subject to Product availability, and excludes GST, transport costs and any special Purchaser requirements.
- 2.3 Purchaser must pay the Price of the Goods to Kraft Heinz in full within thirty (30) days of the date of the invoice issued to Purchaser by Kraft Heinz (**Payment Date**).
- 2.4 Purchaser must not deduct or withhold any amount (whether by way of set-off, counterclaim or otherwise) from any money owing to Kraft Heinz.
- 2.5 If Purchaser does not pay Kraft Heinz in full for the Goods by the Payment Date, then Purchaser must upon demand by Kraft Heinz pay Kraft Heinz default interest at the rate of 2 percent per month on the overdue amount calculated on a daily basis from the Payment Date until payment is actually received by Kraft Heinz.
- 2.6 To the extent that the sale of Goods made pursuant to the Contract is subject to goods and services tax, value added tax or similar tax (**GST**):
 - (a) the Price must be adjusted to fully account for the GST liability arising on the sale of the Goods; and
 - (b) Purchaser must pay Kraft Heinz an amount equal to the GST payable in respect of the sale of Goods at the same time and in the same manner as required by clause 2.3.

3. SUPPLY OF GOODS

- 3.1 Kraft Heinz will supply the Goods to Purchaser as an independent contractor on a non-exclusive basis, in accordance with any requirements agreed by both parties in writing (including in the applicable order) and subject to the terms of the Contract.
- 3.2 Kraft Heinz may impose minimum and maximum order and/or delivery levels for Goods or configurations of Goods as notified to Purchaser from time to time. If an order (either in itself or together with other orders placed by Purchaser) does not meet those requirements, Kraft Heinz may refuse to accept the order(s) either in part or in full.
- 3.3 Purchaser confirms that the Goods are sold to Purchaser for re-supply in trade or manufacture.
- 3.4 Delivery of the Goods will occur:
 - (a) in the case of domestic delivery within the same country that the goods originate—when the Goods are unloaded at the agreed delivery point; or
 - (b) in the case of international shipping—when the Goods are unloaded at the agreed shipping port in the country that the Goods originate (in either Australia or New Zealand) (**Delivery Date**).
- 3.5 Kraft Heinz will endeavour to have Goods delivered on the requested delivery dates but will not be liable for late delivery. Late delivery does not entitle Purchaser to cancel any order or part of any order.
- 3.6 Where the Goods are shipped internationally:
 - (a) a bill of lading or shipping receipt is conclusive evidence of the time of shipment and that the Goods were in good order and condition at the time of shipping; and
 - (b) Purchaser must obtain all permits, licenses or other documentation required for the shipment of the Goods to the point of delivery.

4. SALE OR DISPLAY OF DAMAGED GOODS

- 4.1 Any Goods that are damaged, whether in transit or while in Purchaser's possession, must not be sold or displayed under Kraft Heinz's label without the express prior written permission of Kraft Heinz.

5. RISK

- 5.1 The risk of any loss, damage or deterioration to Goods due to any cause whatever will pass to Purchaser **on the Delivery Date, and** Purchaser is solely responsible for insuring the Goods from the Delivery Date.

6. TITLE

- 6.1 Until Kraft Heinz has received, in cleared funds, the full Price of all Goods and all moneys otherwise owing by Purchaser to Kraft Heinz for any reason whatsoever:
 - (a) Kraft Heinz retains full title and ownership in all Goods; and
 - (b) for such time as Purchaser retains possession of the Goods, Purchaser must insure them for the full purchase price, store them securely and in such manner that they may be identified as the property of Kraft Heinz and ensure the Goods are properly maintained in the condition in which they were delivered.
- 6.2 Notwithstanding clause 6.1 above, and subject to clauses 6.3 and 7 below, Purchaser may sell Goods beneficially owned by Kraft Heinz by virtue of clause 6.1 in the ordinary course of its business. Purchaser acknowledges that if it sells Goods pursuant to this clause 6.2, it does so as fiduciary agent for and on behalf of Kraft Heinz.
- 6.3 Purchaser acknowledges and agrees that:
 - (a) it will not enter into a forward sale agreement with any third party in respect of the Goods without express written permission from Kraft Heinz;
 - (b) it will not assign or factor Kraft Heinz Book Debts without express written permission from Kraft Heinz; and
 - (c) Kraft Heinz may, from time to time, enter Purchaser's premises to inspect, copy or take extracts from the books, records and files of any kind of Purchaser relating to the sale or forward sale of the Goods, the identification of sale proceeds from the Goods, or the identification, assignment or factoring of Kraft Heinz Book Debts.

7. DEFAULT

- 7.1 A default event will occur if:
 - (a) Purchaser defaults in paying any sums due to Kraft Heinz;
 - (b) Purchaser ceases to carry on business for any reason or becomes bankrupt, enters into liquidation whether compulsorily or voluntarily, becomes subject to the appointment of a receiver of all or part of its assets, or enters into any composition, scheme or arrangements with its creditors;
 - (c) there is a change in ownership, directors or partners in Purchaser, unless Kraft Heinz has consented to the change in writing; or
 - (d) any of the following occurs and Kraft Heinz gives notice to Purchaser that it considers a default event has occurred:
 - (i) Kraft Heinz is of the opinion that there is a material risk that Purchaser will be unable pay any amounts owing to Kraft Heinz or perform any other obligation under the Contract;
 - (ii) Purchaser has judgment entered against it in any court or an arbitration award given against it; or
 - (iii) a secured creditor seizes or takes possession of any collateral in the possession of Purchaser.
- 7.2 If a default event occurs, then:
 - (a) all moneys accrued or owing by Purchaser to Kraft Heinz will become immediately due and payable without the need for any demand by Kraft Heinz;
 - (b) Purchaser must not sell or otherwise deal with any of the Goods in its possession;
 - (c) Purchaser irrevocably authorises Kraft Heinz and/or any agent of Kraft Heinz to enter any premises, by the use of reasonable force if necessary, where Kraft Heinz reasonably suspects the Goods are kept, to use the name of Purchaser and to act on its behalf to seize the Goods; and
 - (d) Kraft Heinz may cease performance of and cancel any unperformed contract for the sale of Goods, reserving all of Kraft Heinz's rights and remedies against Purchaser, without being liable for any loss suffered by Purchaser as a result of the cancellation of such contract(s).

8. INDEMNITY

- 8.1 Purchaser indemnifies Kraft Heinz and its officers, employees, agents and Affiliates against all liability, loss, damages and costs (including legal costs on a full indemnity basis) suffered or incurred by them arising out of or in connection with:
 - (a) any breach by Purchaser of the Contract; and
 - (b) Kraft Heinz enforcing any of its rights under the Contract or at law.

9. PPSA

- 9.1 Purchaser acknowledges that the Contract (and, where applicable, any contract for the sale of the Goods) constitutes a security agreement.
- 9.2 Purchaser grants a security interest to Kraft Heinz over all Goods previously supplied by Kraft Heinz to Purchaser (if any) and all Goods that may be supplied in the future by Kraft Heinz, and any related proceeds, securing the performance by Purchaser of its obligations to Kraft Heinz under the Contract or otherwise.
- 9.3 Purchaser must:
 - (a) ensure that no security interest is created or subsists over the Goods prior to title to the Goods passing to Purchaser, other than a security interest arising under the Contract;
 - (b) not, without Kraft Heinz's prior consent, allow the Goods to become mixed or commingled with any other property;
 - (c) immediately notify Kraft Heinz if any other person attempts to enforce a security interest in the Goods;

- (d) do all things and provide all information necessary to enable Kraft Heinz to perfect its security interest in the Goods or register any financing statement; and
 - (e) notify Kraft Heinz in writing of any proposed change to the Purchaser's name or details.
- 9.4 Unless otherwise agreed, payments received by Kraft Heinz from or on behalf of Purchaser will be applied in the following order:
- (a) to obligations that are not secured;
 - (b) to obligations that are secured, but not by purchase money security interests;
 - (c) to obligations that are secured by purchase money security interests,
- in each case in the order in which those obligations were incurred.
- 9.5 Where the Goods originate in Australia, to the extent permitted by law, Purchaser and Kraft Heinz contract out of sections 125, 132(3)(d), 142, 143 and (if permitted by section 115(7)) Part 4.3 (other than sections 123(1), 126, 128, 129(1), 133, 134(1), 136(1) and 136(2)) of the PPSA (AU), and Purchaser irrevocably waives any rights under sections 95, 121(4), 130, 132(4) and 135 of the PPSA (AU).
- 9.6 Where the Goods originate in New Zealand, to the extent permitted by law, Purchaser and Kraft Heinz contract out of section 114(1)(a) of the PPSA (NZ) and Purchaser irrevocably waives any rights under sections 107(2)(a), (c) and (d) of the PPSA (NZ).
- 9.7 Purchaser irrevocably waives any rights it may have to receive a verification statement.
- 9.8 Neither Purchaser nor Kraft Heinz will disclose, or authorise the disclosure, to any person of any information comprised in this security agreement (i.e. the Contract), including the amount secured, the terms of payment or the items of property secured, except to the extent (if any) required by law.

10. CLAIMS

- 10.1 Any claim by Purchaser (regardless of how it arises) in relation to the Contract or the Goods (including for damage, short delivery or loss in transit of the Goods prior to arrival at the agreed delivery point) must be in writing and be received by Kraft Heinz within 7 days of the arrival of the Goods at the agreed delivery point.
- 10.2 If Purchaser disputes the price of any Goods set out in an invoice rendered by Kraft Heinz it must notify Kraft Heinz in writing no less than or seven days prior to the Payment Date.
- 10.3 The parties agree that time is of the essence in relation to this clause.

11. LIABILITY

- 11.1 Except as expressly set out in these Terms, all warranties, representations or conditions (whether express or implied and whenever arising) whether originating in law, equity, by statute, trade, custom or otherwise, that would (but for this clause) apply to the Goods or Kraft Heinz's supply of the Goods are excluded to the extent permitted by law.
- 11.2 To the extent permitted by law, any liability of Kraft Heinz to Purchaser at law or in equity or otherwise arising from the Contract is limited at Kraft Heinz's option to an amount equal to either:
- (a) the cost of replacing the Goods; or
 - (b) the cost of obtaining equivalent Goods (if applicable).
- 11.3 Despite clause 11.2, in no circumstances will Kraft Heinz be liable to Purchaser at law, by statute, in equity or otherwise (except to the extent that such liability cannot, by law, be excluded) arising from the relationship between Kraft Heinz and Purchaser for any loss of profits, indirect or consequential damage arising directly or indirectly from the supply, late supply or non-supply of the Goods, or for any breach of Kraft Heinz's obligations under the Contract, or for any other reason which relates to the Contract or the Goods, even where Kraft Heinz has been advised or is aware of the possibility of that loss.
- 11.4 Purchaser confirms that this clause 11 is reasonable having regard to the Price payable for the Goods and their nature.

12. FORCE MAJEURE

- 12.1 A party will not be liable for delay or failure to perform its obligations under the Contract (except any obligation to pay money) due to and for the period of an event that is not reasonably foreseeable and not caused by or under the control of that party including natural disasters, armed conflicts and labour strikes (**Force Majeure**), provided that it:
- (a) notifies the other party in writing of the event within and its expected duration, as soon as reasonably practicable; and
 - (b) uses reasonable efforts to minimise the effects of the event.
- 12.2 A party may immediately terminate the Contract by giving notice to the other party if the other party is delayed or prevented from performing its obligations under the Contract due to Force Majeure for a period of more than 30 days.

13. INTELLECTUAL PROPERTY RIGHTS

- 13.1 Unless otherwise expressly agreed in writing and signed by both parties, and except for any pre-existing Intellectual Property Rights subsisting in the Goods owned by or licensed to Purchaser prior to entering into the Contract, Kraft Heinz retains ownership of all Intellectual Property Rights subsisting in the Goods.
- 13.2 Nothing in the Contract is intended to convey to Purchaser any right, title or interest in any of Kraft Heinz's Intellectual Property Rights.

14. CONFIDENTIALITY

- 14.1 The existence of the Contract, and all information disclosed by either party for the purposes of supplying Goods under the Contract must be treated as confidential, and must not be disclosed to any third parties (other than an Affiliate) without the discloser's written consent unless such disclosure is permitted or required by law.

15. INTERPRETATION & DEFINITIONS

- 15.1 A reference to the singular includes the plural and vice versa.
- 15.2 A reference to a "person" includes a corporation, association, firm, company, partnership or individual.
- 15.3 Terms defined in the PPSA (AU) or PPSA (NZ), as applicable, have the same meaning where used in clause 9.
- 15.4 The following definitions apply:
- (a) **Affiliate** means:
 - (i) a holding company (direct or indirect) of a party; or
 - (ii) a subsidiary (direct or indirect) of a party; or
 - (iii) a subsidiary (direct or indirect) of a holding company (direct or indirect) of a party;
 - (b) **Goods** means all goods supplied by Kraft Heinz to Purchaser whether pursuant to the Contract or otherwise;
 - (c) **Intellectual Property Rights** includes:
 - (i) all existing and future intellectual and industrial property rights throughout the world, including copyright and rights in relation to inventions, patents, registered and unregistered trademarks, registered designs and circuit layouts, and includes rights to apply for the grant or registration of such rights and renewals and extensions of such rights;
 - (ii) all recipes, formulations and product specifications relating to the manufacture and/or supply of the Goods; and
 - (iv) all related goodwill, confidential information and know-how.
 - (d) **Kraft Heinz** means the Kraft Heinz entity incorporated in either Australia or New Zealand from which Purchaser orders the Goods, which may be:
 - (i) H.J. Heinz Company Australia Limited;
 - (ii) Golden Circle Limited;
 - (iii) Cerebos (Australia) Limited;
 - (iv) Heinz Wattie's Limited;
 - (v) Cerebos Gregg's Limited;
 - (vi) an Australian or New Zealand Affiliate of any of (i)-(v) above.
 - (e) **Kraft Heinz Book Debts** means such part of any book debts (being moneys due to Purchaser by third parties on account of sales) as relates to the price of the Goods (including GST);
 - (f) **PPSA (AU)** means the Personal Property Securities Act 2009 (Australia);
 - (g) **PPSA (NZ)** means the Personal Property Securities Act 1999 (New Zealand); and
 - (h) **Purchaser** means the person purchasing the Goods from Kraft Heinz pursuant to the Contract.

16. DISPUTE RESOLUTION

- 16.1 In the event of a dispute or disagreement between the parties in connection with the Contract:
- (a) the party claiming that a dispute has arisen will issue a notice to the other party setting out of the nature of the dispute;
 - (b) the parties' respective contract managers will meet to resolve the dispute by negotiation; and
 - (c) if the parties are unable to resolve the dispute within 2 months of the dispute notice under paragraph (a), the parties may have recourse to litigation and other dispute resolution processes.

17. JURISDICTION

- 17.1 The Contract is governed by:
- (a) where the Goods originate in Australia—the laws of Victoria, Australia; or
 - (b) where the Goods originate in New Zealand—the laws of New Zealand;
- and the parties submit to the non-exclusive jurisdiction of those courts.

18. GENERAL LEGAL TERMS

- 18.1 The invalidity or unenforceability of any provision of the Contract does not affect the validity of any other provisions.
- 18.2 Kraft Heinz may assign or subcontract its rights and/or obligations under the Contract to one or more of its Affiliates without notice to Purchaser.
- 18.3 Rights and obligations of a party are cumulative to and in addition to the rights and obligations otherwise existing at law or in equity.
- 18.4 Any notice, approval or consent provided or required under the Contract must be in writing, and is deemed to take effect from the time it is received unless a later time is specified in the notice.
- 18.5 A party must not rely on the words or conduct (including delay) of the other party as a waiver of any right arising under or in connection with the Contract unless the waiver is in writing and signed by the party granting the waiver.
- 18.6 Without limiting the clauses which by their nature survive expiry or termination, clauses 4, 7, 8, 9, 10, 11, 13, 14, 16, 17 and 18 survive termination or expiry of the Contract.