

FM GROUP STANDARD TERMS AND CONDITIONS OF SUPPLY

1. DEFINITIONS AND INTERPRETATION

1.1. DEFINITIONS

Applicant means the Applicant as defined in the Application and any entity which is a related entity under Australian Accounting Standard AASB 124 regarded as a member of the Applicant's group;

Application means the Credit Account Application form of FM or any entity which is a related entity under Australian Accounting Standard AASB 124 regarded as a member of the Flavour Makers Group including without limitation Flavour Makers, Flavour Makers Australia Pty Ltd (ABN 61 145 820 220), Passage Foods Pty Ltd (ACN 108 773 217) ATF Passage Foods Unit Trust (ABN 67 518 795 244), Celebrate health Pty Ltd (ACN 139 661 251) ATF Celebrate Health Unit Trust (ABN 78 595 400 153), AOFC Organic Pty Ltd (ABN 57 622 831 270), GriFM Culinary Pty Ltd (ABN 50 603 646 831), Cester Farm Pty Ltd (ABN 24 154 339 778) and Powered by Plants Pty Ltd (ABN 63 605 242 573) completed and signed by the Applicant from time to time;

Flavour Makers means Flavour Makers Pty Ltd (ABN 65 005 953 168) or Flavour Makers Australia Pty Ltd (ABN 61 145 820 220);

FM means 'Supplier' as defined in the Application and any entity which is a related entity under Australian Accounting Standard AASB 124 regarded as a member of the Flavour Makers Group;

Goods means goods, services and assets supplied by FM to the Applicant;

GST Law has the same meaning as it has in the A New Tax System (Goods and Services Tax) Act 1999 and expressions defined in the GST Law and used in this document have the meaning given to them in the GST Law;

GST has the same meaning as it has in the GST Law and includes interest or penalties in addition to GST payable under GST Law;

Insolvency Event has the meaning given to that term in clause 4.1.1;

PPSA means Personal Property Securities Act 2009 (Cth);

Terms means the terms and conditions in this document.

1.2. INTERPRETATION

1.2.1. Nothing in these Terms shall be read or applied so as to exclude, restrict or modify or have the effect of excluding, restricting or modifying any condition, warranty, guarantee, right or remedy implied by law (including the Competition and Consumer Act 2010) and which by law cannot be excluded, restricted or modified.

1.2.2. These Terms (which shall only be waived, varied or cancelled by FM by written notice given to the Applicant):

1.2.2.1. bind the Applicant;

1.2.2.2. apply to the supply of Goods manufactured or supplied by FM to the Applicant from time to time;

1.2.2.3. are deemed to be incorporated in and apply to any order placed by the Applicant with FM and any invoice issued by FM for the provision of Goods by FM to the Applicant; and

1.2.2.4. prevail over all conditions of any and all of the Applicant's orders or other oral or written communications by the Applicant to FM, to the extent of any inconsistency.

1.2.3. These Terms are to be regarded as a master agreement for the ongoing supply of Goods by FM to the Applicant notwithstanding that subsequent invoices or documentation issued to the Applicant by FM may contain terms and conditions including retention of title or similar notifications or provisions. The retention of title clause contained in clause 4 of these Terms will have a continuing and binding effect on all transactions involving sales of Goods by FM to the Applicant and will prevail and or supersede any other provision covering the same or similar subject matter either in subsequent invoices, correspondence or in FM's completed Application signed by the Applicant.

2. PRICES AND PAYMENT

2.1. The Applicant agrees to pay for Goods delivered to the Applicant or ordered by the Applicant within such period as specified in the current written terms of credit extended by FM to the Applicant, or if no such period is specified, within 30 days from date of invoice or such longer or shorter period as FM may specify in writing to the Applicant from time to time.

2.2. Unless otherwise stated, all prices quoted by FM are net, exclusive of GST, and the purchase price for the Goods plus GST must be made in accordance with clause 2.1. The Applicant agrees to be bound by the Australian GST regulations and legislation.

2.3. Prices quoted by FM are those applying at the date of issue of the quotation for a particular order by FM and are based on all costs in connection with manufacturing and delivering the Goods including without limitation rates of freight, cartage, insurance, customs duties, exchange, shipping expenses, sorting and stacking charges, cost of materials and other charges affecting the cost of production applying on the date the quotation is made.

2.4. If the costs referred to in clause 2.3 increase before supply of a particular order, FM may in its absolute discretion, require the Applicant to pay the increased costs provided FM has first given the Applicant prior written notice, and the Applicant accepts that it will be liable for them.

2.5. The Applicant agrees that if it does not pay any amount to FM by or on the due date for payment in accordance with clause 2.1 then FM may charge interest at its banker's bank overdraft rate plus 5% applying from time to time on all overdue monies calculated on a daily basis from the due date until payment in full.

2.6. In consideration of FM granting credit to the Applicant and to secure payment of all monies which may become payable by the Applicant to FM under these Terms, the Applicant hereby charges in favour of FM with the due payment of those monies all of the Applicant's right, title and interest in any real property owned by the Applicant from time to time and the Applicant consents to FM lodging and registering at any time at FM's discretion a caveat or caveats to secure the Applicant's obligations under these Terms.

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3. OUTSTANDING DEBTS

- 3.1. The Applicant agrees that all expenses, costs and disbursements incurred by FM in recovering any outstanding monies from the Applicant, including debt collection agency fees and solicitors costs, will be paid by the Applicant.
- 3.2. The Applicant agrees that FM reserves the right, without notice to the Applicant, to withhold the supply of Goods at any time while there are outstanding monies payable by the Applicant to FM.
- 3.3. In the event of an Application being successful, a fixed credit limit may be determined by FM in its absolute discretion. If the credit limit is fixed and the Applicant exceeds the account balance limit, FM reserves the right, without notice to the Applicant, to withhold the supply of Goods.

4. RETENTION OF TITLE

4.1. DEFINITION

4.1.1. For the purposes of this clause 4, “**Insolvency Event**” means in relation to the Applicant, where the Applicant:

- 4.1.1.1. informs FM or creditors generally that it is insolvent or unable to pay its debts as they fall due or if FM on reasonable grounds suspects that the Applicant is insolvent or unable to pay its debts as they fall due;
- 4.1.1.2. enters into a composition or arrangement with its creditors or calls a meeting of creditors with a view to entering into a composition or arrangement;
- 4.1.1.3. has a mortgagee seeking to exercise a right of possession or control over the whole or a part of its property;
- 4.1.1.4. has execution levied against it by creditors, debenture holders or trustees under a security interest or floating charge;
- 4.1.1.5. being a company:
 - 4.1.1.5.1. takes or has instituted against it an action or proceedings whether voluntary or compulsory which has the object of or which may result in the winding up of the Applicant;
 - 4.1.1.5.2. has a winding up order made against it or passes a resolution for winding up;
 - 4.1.1.5.3. is a party to the appointment of or has an administrator, receiver, provisional liquidator or liquidator appointed to the whole or any part of its property or undertaking;
- 4.1.1.6. being a natural person, dies or commits an act of bankruptcy;
- 4.1.1.7. in FM’s opinion is financially unable to proceed with its obligations under these Terms;

4.2. INTERPRETATION

4.2.1. A term that is used in this clause 4 that is also used in the PPSA has the same meaning as in the PPSA.

4.3. WHEN PROPERTY PASSES

4.3.1. Property in the Goods supplied by FM to the Applicant does not pass to the Applicant until:

- 4.3.1.1. the money owing for those Goods; and
- 4.3.1.2. any other money owing by the Applicant to FM;

has been paid (whether or not the Goods are delivered at different times, are the subject of separate invoices or, after delivery, may be determined by FM to be the subject of a specific invoice).

4.4. OBLIGATIONS OF THE APPLICANT

4.4.1. Until the Goods have been paid for in full, the Applicant:

- 4.4.1.1. must properly store, protect and insure the Goods including storing them separately and in a manner that clearly identifies them as the property of FM;
- 4.4.1.2. must not sell the Goods, other than in the ordinary course of its business;
- 4.4.1.3. may use the Goods in a manufacturing or construction process of its own or a third party in the ordinary course of business; and
- 4.4.1.4. must not sell, assign, charge or otherwise encumber or grant any interest over any debts and other obligations which any third party may owe to the Applicant as a result of the use, manufacture or resale of the Goods.

4.4.2. Nothing in this clause 4 limits or excludes FM’s interest as principal in those debts and other obligations.

4.5. SALE OF THE GOODS

4.5.1. If the Applicant sells any of the Goods while they remain the property of FM, and receives proceeds of the sale or receives any other proceeds, whether tangible or intangible, direct or indirect, of any dealing with the Goods (including any proceeds from insurance claims) the Applicant grants to FM a security interest in every payment to the Applicant for the Goods (both as proceeds of the Goods and as original collateral).

4.6. USE OF GOODS IN MANUFACTURE

4.6.1. If the Applicant uses any of the Goods in a manufacturing or construction process of its own or a third party and sells the product of the manufacturing or construction process, then the Applicant grants to FM a security interest in that portion of every payment to the Applicant for the manufactured product that relates to any Goods sold to the Applicant and which are used in the manufacturing and construction process (both as proceeds of the Goods and as original collateral).

4.7. BALANCE SALE PRICE REMAINS A DEBT

4.7.1. If the sale price of all Goods sold to the Applicant is greater than the sum of all payments actually received by FM in respect of the Goods, the difference remains a debt owing by the Applicant to FM.

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4.8. ALLOCATION OF PAYMENTS FROM THE APPLICANT TO FM

4.8.1. Until the Goods have been paid for in full and any other money owing by the Applicant to FM has been repaid, every payment by the Applicant to FM must be taken to be a payment:

4.8.1.1. firstly, of any amount owed by the Applicant to FM that is not subject to a security interest;

4.8.1.2. secondly, of any amount owed by the Applicant to FM that is subject to a security interest, to the extent that the security interest is not a purchase money security interest; and

4.8.1.3. thirdly, of any amount owed by the Applicant to FM that is subject to a security interest, to the extent that it is a purchase money security interest.

4.8.2. An ordinary acknowledgment by FM to the Applicant that an invoice has been paid is not, and must not be treated as, an agreement by FM to amend the order of priority set out in clause 4.8.1.

4.9. INSOLVENCY OF THE APPLICANT

4.9.1. If the Applicant suffers an Insolvency Event, without prejudice to any other rights of FM:

4.9.1.1. The Applicant's right to sell the Goods in the ordinary course of business and any other rights of the Applicant in respect of the Goods immediately cease; and

4.9.1.2. the Applicant must immediately return to FM the Goods in which title has not passed.

4.10. FM'S AUTHORITY TO INSPECT AND RECLAIM

4.10.1. The Applicant irrevocably authorises FM at any time, to enter any premises upon which the Goods are stored to enable FM to inspect the Goods (including any records pertaining to the Goods) and, if the Applicant has breached these Terms or suffers an Insolvency Event, to reclaim possession of the Goods.

4.10.2. If FM enters any premises for the purpose of reclaiming possession of the Goods, and incurs any liability to any person in connection with the entry or reclamation, the Applicant indemnifies FM against that liability.

4.11. GOODS SUPPLIED ON CREDIT

4.11.1. The provisions of this clause 4 apply despite any arrangement between the parties under which FM grants the Applicant credit. Where FM grants the Applicant credit for a specific period, the credit period is for that period or until the resale of the Goods by the Applicant or their use by the Applicant in a manufacturing or construction process of its own or a third party, whichever is the earlier.

4.11.2. The Supplier may commence legal action against the Applicant if the Goods are not paid for within FM's usual credit terms or any separate arrangement for credit made by FM with the Applicant although property in the Goods has not passed to the Applicant.

4.12. ACKNOWLEDGMENTS

4.12.1. If at any time FM retains legal title to the Goods as contemplated by this clause 4, the Applicant acknowledges and agrees that:

4.12.1.1. these Terms are a security agreement;

4.12.1.2. this clause 4 creates a security interest in all present and after acquired Goods and any proceeds as security for the Applicant's obligations to FM notwithstanding that any document produced by FM in connection with the dispatch, delivery or invoicing of the Goods makes any statement or reference to retention of title to the Goods and the security interest will have a continuing effect and will prevail with full force and effect notwithstanding any such statement or reference;

4.12.2. FM is a secured party in relation to the Goods and any proceeds of the Goods, and is entitled to register its interest on the register as:

4.12.2.1. a security interest; and

4.12.2.2. if applicable, a purchase money security interest; at the discretion of FM;

4.12.3. FM may, by notice to the Applicant, require the Applicant to take all steps that FM considers necessary or desirable to ensure its security interest in the Goods and the proceeds is enforceable, and to perfect, or better secure the position of FM under these Terms;

4.12.4. The Applicant must comply with a notice from FM under this provision at the cost and expense of the Applicant;

4.12.5. The Applicant must promptly inform FM of any change to information that it provides to FM under this provision;

4.12.6. FM is not obliged to give any notice, document or information under the PPSA, including, but not limited to:

4.12.6.1. notice of removal of accession under section 95 of the PPSA;

4.12.6.2. notice of enforcement of liquid assets under section 121(4) of the PPSA;

4.12.6.3. notice of disposal of collateral under section 130 of the PPSA;

4.12.6.4. a statement of account after disposal of collateral containing the information in section 132(3)(d) of the PPSA;

4.12.6.5. a statement of account under section 132(4) of the PPSA;

4.12.6.6. notice of retention of collateral under section 135 of the PPSA; and

4.12.6.7. notice of a verification statement under section 157 of the PPSA;

unless the provision of the notice, document or information is required by the PPSA and cannot be excluded;

4.12.7. The Applicant consents to the waiver of the requirement for notice, copies of documents or information under clause 4.12.6.

4.12.8. To the extent that Chapter 4 of the PPSA would otherwise apply to enforcement by FM of any security interest in the Applicant, the parties agree that the following further provisions of the PPSA are excluded:

4.12.8.1. to the extent section 115(1) of the PPSA allows them to be excluded: sections 125, 142 and 143 of the PPSA; and

4.12.8.2. to the extent section 115(7) of the PPSA allows them to be excluded: sections 129(2) and (3), 132, 133(1)(b) (as it relates to the security interest of FM), 134(2), 136(3)(4) and (5).

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4.13. CONFIDENTIALITY

- 4.13.1. Subject to clause 4.13.2, neither party may disclose any information or documents supplied by another party that is not publicly available, including:
- 4.13.1.1. information of a kind referred to in section 275(1) of the PPSA; or
 - 4.13.1.2. the existence or content of these Terms.
- 4.13.2. A party may disclose information or documents as follows:
- 4.13.2.1. in the case of FM, in assigning or enforcing or seeking to assign or enforce this clause 4 or in a proceeding arising out of or in connection with this document or to the extent that disclosure is regarded by FM as necessary to protect its interests;
 - 4.13.2.2. if required under a binding order of a Government Agency or any procedure for discovery in any proceedings;
 - 4.13.2.3. if required under any law or any administrative guideline, directive, request or policy whether or not having the force of law and, if not having the force of law, the observance of which is in accordance with the practice of responsible bankers or financial institutions similarly situated;
 - 4.13.2.4. as required or permitted by these Terms;
 - 4.13.2.5. to its legal advisers and its consultants; or
 - 4.13.2.6. with the prior consent of the other party, which must not be unreasonably withheld.
- 4.13.3. Each party consents to any disclosure of information or documents made in accordance with clause 4.13.2
- 4.13.4. Clause 4.13.2 does not require FM to disclose any information of the kind referred to in section 275(1) of the PPSA.
- 4.13.5. This clause 4.13 survives the termination of this document.

4.14. NON-SUBORDINATION

- 4.14.1. Nothing in this clause 4 is intended as an agreement to subordinate a security interest arising under these Terms in favour of any person under section 61 of the PPSA or to limit any right of FM under section 53 of the PPSA.

5. ORDERS AND QUOTATIONS

- 5.1. Unless previously withdrawn, FM's quotations from time to time are open for acceptance within the period stated in them or, when no period is so stated, within 30 days only after the date of issue of the quotation.
- 5.2. No order placed by the Applicant may be cancelled except with the consent in writing of FM and on terms which will indemnify FM against all losses.
- 5.3. All Goods to be supplied by FM to the Applicant are as described on the purchase order agreed by FM and the Applicant and the description on such purchase order prevails over all other descriptions including any specification or enquiry of the Applicant.

6. PACKING AND EXCESS GOODS, MATERIALS AND INGREDIENTS

- 6.1. The cost of any packaging, packaging materials, other materials and ingredients used in relation to the Goods which FM reasonably determines to be special or not standard and excess Goods manufactured at the Applicant's request to cover the Applicant's greater than forecast requirements, are at the Applicant's expense.

7. LOSS OR DAMAGE IN TRANSIT

- 7.1. FM is not responsible to the Applicant or any person claiming through the Applicant for any loss or damage to Goods in transit caused by any event of any kind by any person (whether or not FM is legally responsible for the person who caused or contributed to that loss or damage) not notified in writing to FM within seven (7) days from the receipt of the Goods.
- 7.2. FM must provide the Applicant with such assistance as may be necessary to press claims on carriers so long as the Applicant:
- 7.2.1. has notified FM and the carriers in writing immediately after loss or damage is discovered on receipt of Goods; and
 - 7.2.2. lodges a claim for compensation on the carrier within three (3) days of the date of receipt of the Goods.
- 7.3. Subject to clause 10.1, any risk as regards loss, damage or deterioration of Goods shall pass to the Applicant on delivery.

8. DELIVERY

- 8.1. The delivery times made known to the Applicant from time to time are estimates only and FM is not liable for late delivery or non-delivery.
- 8.2. FM is not liable for any loss, damage or delay occasioned to the Applicant or its customers arising from late or non-delivery of the Goods.
- 8.3. FM may at its option deliver the Goods in relation to a particular order to the Applicant in any number of instalments.
- 8.4. If FM delivers any of the Goods by instalments, and any one of those instalments is defective for any reason:
- 8.4.1. it is not a repudiation of the contract of sale formed by these Terms; and
 - 8.4.2. the defective instalment is a severable breach that gives rise only to a claim for compensation subject to clause 10.
- 8.5. FM reserves the right to make a reasonable charge for storage if delivery instructions are not provided by the Applicant within seven (7) days of a request by FM for such instructions. The parties agree that FM may charge for storage from the first day after FM requests the Applicant to provide delivery instructions.
- 8.6. Any property of the Applicant under FM's possession, custody or control is completely at the Applicant's risk as regards loss or damage caused to the property.

9. RETURNED GOODS AND SHORTAGES

- 9.1. FM is not under any duty to accept Goods returned by the Applicant and will do so only on terms to be agreed in writing in each individual case.
- 9.2. If FM agrees to accept returned Goods from the Applicant under clause 9.1, the Applicant must return the Goods to FM at FM's place of business as notified by FM to the Applicant in writing from time to time.
- 9.3. The Applicant waives any claim for shortage of any Goods delivered if a claim in respect for short delivery has not been lodged with FM within seven (7) days from the date of receipt of the Goods by the Applicant.

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10. LIMITATION OF LIABILITY

- 10.1. To the extent permitted by law, FM's liability for Goods manufactured by it is limited to making good any defects by repairing the defects or at FM's option, by replacement, within a period not exceeding, the lesser of twelve (12) calendar months after the Goods have been dispatched and the shelf life period for the Goods as specified by FM from time to time, so long as:
 - 10.1.1. defects have arisen solely from faulty materials or workmanship;
 - 10.1.2. the Goods have not received maltreatment, inattention or interference;
 - 10.1.3. accessories of any kind used by the Applicant are manufactured by or approved by FM;
 - 10.1.4. the seals of any kind on the Goods remain unbroken; and
 - 10.1.5. the defective parts are promptly returned to FM.
- 10.2. If the Goods are not manufactured by FM, the guarantee of the manufacturer of those Goods is accepted by the Applicant and is the only guarantee given to the Applicant in respect of the Goods. FM agrees to assign to the Applicant, on written request made by the Applicant, the benefit of any warranty or entitlement to the Goods that the manufacturer has granted to FM under any contract or by implication or operation of law to the extent that the benefit of any warranty or entitlement is assignable.
- 10.3. FM is not liable for and the Applicant releases FM from any claims in respect of faulty or defective design of any Goods supplied unless such design has been wholly prepared by FM and the responsibility for any claim has been specifically accepted by FM in writing. In any event, FM's liability under this clause 10.3 is limited strictly to the replacement of defective parts in accordance with clause 10.1 of these Terms.
- 10.4. Except as provided in these Terms, all express and implied warranties, guarantees and conditions under statute or general law as to merchantability, description, quality, suitability or fitness of the Goods for any purpose or as to design, specifications, assembly, installation, materials or workmanship or otherwise are expressly excluded. FM is not liable for physical or financial injury, loss or damage or for consequential loss or damage of any kind arising out of the supply or use of the Goods or arising out of FM's negligence or in any way whatsoever.
- 10.5. FM's liability for a breach of a condition or warranty implied by Pt 3-2 Div 1 of the Australian Consumer Law is limited to:
 - 10.5.1. in the case of Goods, any one or more of the following:
 - 10.5.1.1. the replacement of the Goods or the supply of equivalent Goods;
 - 10.5.1.2. the repair of the Goods;
 - 10.5.1.3. the payment of the cost of replacing the Goods or of acquiring equivalent Goods;
 - 10.5.1.4. the payment of the cost of having the Goods repaired; or
 - 10.5.2. in the case of services:
 - 10.5.2.1. the supplying of the services again; or
 - 10.5.2.2. the payment of the cost of having the services supplied again.
- 10.6. FM's liability under s 274 of the Australian Consumer Law is expressly limited to a liability to pay to the Applicant an amount equal to:
 - 10.6.1. the cost of replacing the Goods;
 - 10.6.2. the cost of obtaining equivalent Goods; or
 - 10.6.3. the cost of having the Goods repaired,whichever is the lowest amount.
- 10.7. Any claims by the Applicant against FM arising from Goods sold must be commenced within 1 months of delivery of such Goods or such longer period allowed by law that cannot lawfully be excluded.
- 10.8. The Applicant agrees that subject to clause 1.2.1, all conditions and warranties, provided by statute or otherwise are excluded concerning the Goods.
- 10.9. All specifications and particulars of weights and dimensions submitted by FM to the Applicant are approximate only and any deviation from any of these things does not impair or make void any contract with FM or form grounds for any claim against FM.
- 10.10. The descriptions, illustrations and performances of the Goods contained in catalogues, price lists and other advertising matter do not form part of the contract of sale of the Goods or of the description applied to the Goods.
- 10.11. Where specifications or other particulars are supplied to the Applicant by FM, FM's price is made on estimates of quantities required. If there are any adjustments in quantities above or below the quantities estimated by FM and set out in a quotation, then any such increase or decrease may be adjusted by FM on a unit rate basis according to unit prices set out in the quotation.

11. CHOICE OF JURISDICTION

- 11.1. These Terms are to be construed in accordance with the laws of Victoria, Australia.
- 11.2. The parties submit all disputes arising between them to the courts of Victoria and any court competent to hear appeals from Victorian courts of first instance.

I have read and accept these terms and conditions of supply.

Name: _____

Title: _____

Signed: _____ Date: _____