



# TERMS AND CONDITIONS

Stillone Investment Group Pty Ltd trading as 'Protein Supplies Australia'

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## 1 INTERPRETATION

In these Conditions, unless the contrary intention appears:

- (a) **Supplier / we / us / our** means Stillone Investment Group Pty Ltd ACN 165 877 136 trading as 'Protein Supplies Australia', including (at its discretion) its successors, assigns and agents;
- (b) **Client / you / your** means the person to whom we issue a quote or invoice or who places the Order or, where no quote or invoice is issued, the person to whom we supply or are to supply the Products, including (at our discretion) their successors and assigns;
- (c) **Conditions** means these terms and conditions for the supply of the Products or Services by the Supplier to the Client, as amended or varied from time to time, and which will form part of the Contract;
- (d) **Delivery Date** means the date stipulated in an Order for delivery of Products;
- (e) **Delivery Location** means the point of delivery for the Products, specified in the Order by the Client;
- (f) **Contract** means an agreement between the Supplier and the Client relating to the supply of Products and / or Services, as evidenced by an Order, accepted quote, a supply agreement, tax invoice or otherwise, and which hereby incorporates these Conditions;
- (g) **GST** means Goods and Services Tax as defined by *A New Tax System (Products and Services Tax) Act 1999* (Cth);
- (h) **Intellectual Property Rights** means intellectual property rights at any time protected by statute or common law, including copyright, trade marks, patents and registered designs;
- (i) **Loss** includes losses, damages (including damage to persons or property), fines, claims, liabilities (whether in contract or tort, pursuant to statute or otherwise) and all expenses and costs, legal or otherwise (including fees and disbursements reasonably incurred) of any kind and nature;
- (j) **Order** means a written request from the Client, approved in writing by the Supplier, specifying:
  - (i) the Products and / or Services to be supplied;
  - (ii) the quantity and price of Products to be supplied;
  - (iii) the Delivery Date; and
  - (iv) the Delivery Location;
- (k) **Products** means the products and any related Services the Supplier supplies to the Client under a Contract, provided that:
  - (i) a reference to 'Products' which relates to goods provided by the Supplier to the Client includes the proceeds of such goods; and
  - (ii) for the purposes of the *Personal Property Securities Act 2009* (Cth), where Products are supplied to a Client as inventory, all references to the Products will be to them as inventory only while they are held as inventory by the Client;
- (l) **Services** means the manufacture, packaging and supply to you of Products for wholesale or retail sale.
- (m) **Trade Credit Account** means an approved credit facility with the Supplier under which amounts payable for Products or Services supplied to the Client by the Supplier become due for payment at an agreed later time;

## 2 WHEN WILL THESE CONDITIONS APPLY?

These Conditions apply to all transactions between the Supplier and the Client for the supply or potential supply of Products and / or Services and prevail over any conflicting provision contained in any other document, instrument or agreement, whether or not the Supplier has notice of this.

## 3 CONTRACT MANUFACTURING

The Supplier supplies Products to the Client as an independent third-party contractor at the request of the Client. The parties acknowledge and agree they are not (nor intended to be) the agent, partner or joint-venturer of the other.

## 4 ORDERS

Any Order we receive is deemed to be an offer made by you to us for our acceptance under these Conditions. We reserve our right to decline any Order or part thereof. Any Order or part thereof not accepted is deemed cancelled. An Order accepted by us cannot be cancelled without our prior written consent at our sole discretion.

## 5 CANCELLATION

An Order may only be cancelled, varied or suspended by you with our prior written consent. If we consent to the cancellation, variation or suspension of the Order you undertake to reimburse and indemnify us against any costs, expenses or charges incurred by us in preparing for and performing the Contract, as well as any profit which we may reasonably have been expected to receive. We may by notice in writing, cancel, vary or suspend the Contract and any agreement to supply Products or Services.

## 6 PRICE

- 6.1 The price of Products and Services will be specified in the Order and unless specified otherwise does not include delivery or GST.
- 6.2 We may change the price at which we supply Products or Services from time to time. Prices quoted in any price list or any other place are subject to change at any time without notice.

## 7 PAYMENT

- 7.1 You will pay us without deduction the price payable:
  - (a) On terms we specify in the Order or, if you have a Trade Credit Account, in accordance with clause 7.2; or
  - (b) On such further or different terms we expressly agree to in writing from time to time; or
  - (c) If neither (a) nor (b) applies, on or before we deliver the Products in accordance with clause 8.1 or perform the Services.
- 7.2 Your Trade Credit Account must be paid without deduction on or before the last day of the month in which the Products or Services (or any part thereof) are performed, supplied or delivered.
- 7.3 If we are not paid on the date specified in these Conditions, without prejudice to any other right or remedy we may have:
  - (a) Interest is payable on amounts due at a rate of 12% p.a. accruing daily and compounding monthly from the day after payment is due until we receive payment in full.
  - (b) We may recover the price of the Products and/or Services together with all interest as a liquidated debt, irrespective of any offsetting claim that you may have against us.
  - (c) You indemnify us for any and all Loss, fees or outlay we incur in trying to recover any amounts owed by you.
- 7.4 Time for payment is of the essence of the Contract.

AFTER READING, PLEASE INITIAL THIS PAGE:

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## 8 DELIVERY

- 8.1 Any date quoted for delivery is indicative only and not guaranteed unless a guarantee is given by us in writing.
- 8.2 Delivery will be deemed to be made at such time as any Products are received by you, your servant, agent, client or any other person or carrier nominated by you.
- 8.3 We may deliver Products by more than one delivery, in which case you will not be entitled to terminate the Contract, withhold payment, or reimbursement of any Loss.
- 8.4 If, due to any act, matter or thing beyond our control, delivery cannot be affected we may in our sole discretion store the Products at your risk and expense or take such other steps we consider appropriate.
- 8.5 We reserve our right to withhold a delivery if the terms of payment are not strictly adhered to or we, in our sole discretion, consider this reasonably necessary to protect our interests.

## 9 RISK

Products will be at your risk upon delivery to you, your servants, agents, customers or any person or carrier nominated by you. You bear the sole responsibility for and the risk of unloading.

## 10 RETENTION OF TITLE

- 10.1 Property in Products supplied to you pursuant to these Conditions does not pass to you until all money due and payable to us by you has been fully paid.
- 10.2 Where Products are supplied by us to you without payment in full of all moneys payable in respect of the Products and any Services provided by us in respect of those Products, you:
- (a) are a bailee of the Products until property in them passes;
  - (b) irrevocably appoint us as your attorney to do all acts and things necessary to ensure the retention of title, including registration of a security interest in our favour;
  - (c) must be able to upon demand separate and identify as belonging to us the Products from other goods held by you;
  - (d) must not allow any person to have or acquire any security interest in the Products;
  - (e) agree that we may repossess the Products if payment is not made when due; and
  - (f) grant to the Supplier and its agents an irrevocable licence to enter any premises you may access in order to recover possession of Products and you agree to indemnify us in respect of any Loss or damage which occurs as a result.
- 10.3 Where Products are supplied by us to you without payment in full of all amounts payable and you make a new object from the Products (whether finished or not), mix the Products with other Products or the Products become part of other Products ('**New Products**'), you agree that the ownership of the New Products immediately passes to us. You will hold the New Products on trust for us until payment of all sums owing to us (whether under these Conditions or otherwise) have been made and at our direction we may require you store the New Products in a manner that clearly shows our ownership of them.
- 10.4 For the avoidance of doubt, ownership of New Products passes to us at the beginning of the operation or event by which Products are converted into, mixed with, or become part of other goods.
- 10.5 Notwithstanding clause 10.2 you may transfer, sell or dispose of Products, including New Products, to a third party in the ordinary course of business provided that:
- (a) where you are paid by a third party in respect of Products, you hold the whole of the proceeds of sale less any GST on trust for us, in a separate account, until all amounts owned by you to us have been paid; or
  - (b) where you are not paid by a third party, you agree to assign all of your rights against the third party to us if we give notice in writing to you to that effect and you hereby irrevocably appoint us as its attorney for the purpose of giving effect to that assignment.

## 11 PERSONAL PROPERTIES SECURITIES ACT 2009 ('PPSA')

- 11.1 Terms defined in the PPSA have the same meaning when used in these Conditions.
- 11.2 The parties acknowledge that the Contract constitutes a Security Agreement and gives rise to a Purchase Money Security Interest (PMSI) in our favour over the Products supplied or to be supplied to you, the Grantor, pursuant to these Conditions.
- 11.3 Products supplied or to be supplied under these Conditions fall within the PPSA classification of 'Other Products' acquired by you pursuant to these Conditions.
- 11.4 We, as the Secured Party, are entitled to register our interest in the Products supplied or to be supplied to you, the Grantor, pursuant to this Agreement on the PPS Register as Collateral.
- 11.5 You agree to:
- (a) do all things necessary to assist us to continuously perfect any Security Interest arising under the Contract, including signing any agreements or providing any information we might reasonably request for the purposes of protecting our Security Interest;
  - (b) indemnify us on demand for all reasonable costs and expenses associated with:
    - (i) registration, amendment or discharge of any Financing Statement registered by us or on our behalf; and
    - (i) registration, amendment or discharge of any Financing Statement registered by us or on our behalf; and
    - (ii) enforcement or attempted enforcement of any Security Interest granted to us.
- 11.6 Until such time as title in the Products has passed to you as contemplated by clause 10, you agree not to assign, charge, lease or otherwise deal with the Products in such a manner as to create a Security Interest over the Products in your favour or in favour of any third party. The parties agree this will not prohibit you from selling the Products in the ordinary course of business.
- 11.7 You acknowledge that:
- (a) our Security Interest will continue in any Products supplied to you by us and, if the Products are sold, attaches to the proceeds under section 32(1) of the PPSA;
  - (b) if the Products (or any part thereof) are installed in or affixed to other Products and thereby become an accession to those other Products, our Security Interest continues in the accession under section 88 of the PPSA; and
  - (c) if the Products (or any part thereof) are manufactured, processed, assembled or commingled with other property by you, our Security Interest continues in the product or mass under section 99(1) of the PPSA.
- 11.8 The parties agree the Contract and all related information and documents are confidential information. The parties agree that the Supplier will not need to disclose this information pursuant to a request under section 275(1) of the PPSA.
- 11.9 To the maximum extent permitted by law, the parties agree each of the following requirements or rights under the PPSA do not apply to the enforcement of our Security Interest in the Products or of the Contract:
- (a) Any requirement for us to give you a notice of removal of accession;
  - (b) Any requirement for us to give you a notice of our proposed disposal of the Products;
  - (c) Any requirement for us to include the details of any amounts paid to other secured parties in a Statement of Account after disposal of the Products;
  - (d) Any requirement for us to give you a Statement of Account if we do not dispose of the Products;
  - (e) Any right you have to redeem the Products before we exercise a right of disposal;
  - (f) Any right you have to reinstate this Contract before we exercise a right of disposal of the Products.



**12 PRODUCT STANDARDS**

- 12.1 It is your sole responsibility to ensure Products comply with any standards or requirements of law or as may be required by any statutory authority from time to time ('**Product Standards**').
- 12.2 You agree to make your own enquiries and that you will not in any circumstances rely solely on our skill, advice or judgement in respect of any particular purpose for which the Products are or may be supplied, other than as specified by us to you.

**13 CLAIMS FOR CREDIT**

- 13.1 We are not liable to you for any claim for short delivery of Products unless a claim is made in writing within seven (7) days of delivery in accordance with clause 8.2.
- 13.2 Subject to clause 14 and 16 and to the maximum extent permitted by law, Products returned to us will only be accepted for credit where the Products are defective or supplied in error by us and returned to us within fourteen (14) days of delivery in accordance with clause 8.2. Our prior written approval is required to return Products for credit and will be subject to a restocking fee of at least 15% of the price of Products as specified in the Order.

**14 WARRANTIES**

- 14.1 Subject to clauses 14.2 and 14.3, we warrant that the Products will be free from defects in material and workmanship and fit for the purpose for which they are sold, provided that any defect is notified to us as soon as it becomes known.
- 14.2 In relation to a Contract valued at less than \$40,000: the Products come with guarantees that may not be excluded under the Australian Consumer Law ('**ACL**'). You are entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the Products repaired or replaced if the Products fail to be of acceptable quality and the failure does not amount to a major failure.
- 14.3 In respect of Products sold but not manufactured by us we will to the extent permitted by law extend any manufacturer's warranty to you in full to the exclusion of any other warranty by us.
- 14.4 No other warranty is provided by us unless provided by us in writing, and any implied terms, conditions or warranties are expressly negated to the maximum extent permitted by law.
- 14.5 As we retain ownership of the Products until we are paid for them, we reserve our right to not honour any warranty unless and until we receive payment in full and may in our absolute discretion to the extent permitted by law elect to waive an amount owed to us by you (or part thereof) in lieu of honouring any warranty.

**15 INDEMNITY**

You warrant and irrevocably agree to indemnify and hold us, our employees, agents and any related person or body corporate harmless against any and all Loss whatsoever (including without limitation all actions, proceedings, judgments, legal fees and charges) arising from or in connection with the performance or non-performance of obligations under the Contract, these Conditions or in the manufacture or supply of Products or Services, including without limitation for personal injury, disease, illness or death.

**16 LIMITATION OF LIABILITY**

- 16.1 Our liability in respect of a breach of a consumer guarantee or any warranty under these Conditions for any Products or Services not of a kind ordinarily for personal, domestic or household use is limited, to the extent permissible by law and at our option:
  - (a) in relation to a Product, to: replace the Products or supply equivalent Products; repair the Products; pay the cost of replacing the Products or acquiring equivalent Products; or pay the cost of having the Products repaired.
  - (b) in relation to a Service, to: supply of the Service again; or pay the cost of having the Service supplied again.
- 16.2 Notwithstanding any other provision of the Contract or these Conditions:

- (a) in no circumstances will we be liable to you in contract, tort (including without limitation negligence or breach of statutory duty) or otherwise (whatsoever the cause) or to compensate you for any special, indirect or consequential Loss, including without limitation loss of production, loss of profit, or business interruption;
- (b) the total liability of the Supplier in relation to the Contract or to the Client for any reason is limited to the Contract price.

16.3 Paragraph 16.2(b) does not apply to:

- (a) liability which by law we cannot contract out of;
- (b) liability for fraud or malicious or deliberate criminal acts or omissions on the part of the Supplier;
- (c) liability for any act or failure to act by the Supplier which was intended to cause, or which was in reckless disregard of, or wanton indifference to, the harmful consequences that the Supplier knew, or ought reasonably to have known, that act or failure to act would have on the safety, property or interests of the Customer.

**17 COPYRIGHT AND INTELLECTUAL PROPERTY**

- 17.1 You warrant that you own all Intellectual Property Rights pertaining to your Order or have a licence to authorise us to reproduce or use all copyright works or other materials the subject of Intellectual Property Rights supplied by you to us for the purposes of the Order. You hereby indemnify and agree to keep us indemnified against all Loss in relation to or in any way directly or indirectly connected with any breach of any other Intellectual Property Rights in relation to material supplied by you.
- 17.2 Unless specifically agreed in writing between the parties all Intellectual Property Rights in any works created by us on your behalf vest in us and remain our property, and any Intellectual Property Rights created prior to this Contract will remain vested in the relevant rights holder(s), and you will maintain confidentiality in all such works.
- 17.3 Subject to payment of all amounts owing in respect of any Products or Services supplied to you, we hereby grant to you a revocable, non-exclusive licence to use the works created or produced by us in connection with the provision of Products or Services for the purposes contemplated by the Contract.

**18 CONFIDENTIAL INFORMATION**

- 18.1 In this part, '**Confidential Information**' means any information:
  - (a) relating to the business of the other party;
  - (b) designated by the owner of that information as confidential;
  - (c) of a confidential or sensitive nature and marked or denoted as confidential or which a reasonable person to whom that information is disclosed or to whose knowledge the information comes would consider confidential; or
  - (d) disclosed by either party to the other party, directly or indirectly, or that otherwise comes to the knowledge of that party in relation to or in connection with the Contract, whether that information is in oral, visual or written form or is recorded or embodied in any other medium.
- 18.2 Each party agrees to keep the Confidential Information of the other party confidential and to use such information only for the purposes of performance of their respective obligations under the Contract. A party must:
  - (a) not disclose any Confidential Information of the other party to anyone else except as permitted by these Conditions;
  - (b) limit the disclosure of the Confidential Information within its own organisation only to those of its officers and employees to whom such disclosure is strictly necessary for the purposes of the Contract and who have been made aware of its confidential nature and agreed to keep the information confidential in accordance with the terms of this clause; and
  - (c) not use the name of the other party in publicity releases, advertising or promotion of the party unless the other party has given its prior written consent (which shall not be unreasonably withheld).





- 18.3 The obligations of confidentiality in this part will survive termination of the Contract, but not apply to information which is:
- (a) available in the public domain except where such availability is as a result of a breach of these Conditions;
  - (b) known by the other party prior its disclosure; or
  - (c) required to be disclosed by an applicable law or court order.

## 19 PRIVACY

You authorise us to collect, retain, record, use and disclose your information in accordance with the *Privacy Act 1988* (Cth). You also authorise us to make enquiries with respect to your creditworthiness, to exchange information with other credit providers in respect to any previous commercial and / or consumer defaults, and to notify other credit providers of a commercial and / or consumer default by you.

## 20 TRADE PURCHASE

The parties agree and acknowledge that any Products supplied or to be supplied under the Contract and these Conditions are acquired by you in trade or commerce and are not wholly or predominantly for personal, household or domestic use.

## 21 PURPOSE OF CREDIT

You acknowledge and agree that any credit provided to you by us is applied wholly or predominantly for commercial purposes.

## 22 INSOLVENCY

If you become insolvent, you remain liable under the Contract and these Conditions for payment of all liabilities incurred. You remain liable under these Conditions even if we receive a dividend or payment as a result of you becoming insolvent.

## 23 VARIATION

- 23.1 We reserve the right to amend or vary these Conditions from time to time without needing to give reason.
- 23.2 You will be given notice of any change by the Supplier publishing its amended Conditions ('**Amended Conditions**') on its website or by being sent a copy of the Amended Conditions by email, post or facsimile.
- 23.3 Amended Conditions take effect seven (7) days after the date on which they are published or are sent to you in accordance with clause 23.2, whichever applies and is the earlier, and apply and are incorporated into each and all Contracts from that time.
- 23.4 You may elect not to proceed under the Amended Conditions. If so, you must give notice to us in writing clearly expressing your non-acceptance of the Amended Conditions at any time before they take effect. If no notice is given and in any case by continuing to order Products from us after that time, you are deemed to irrevocably accept the Amended Terms without reservation and are bound by them.
- 23.5 If you elect not to proceed under the Amended Conditions, the Supplier reserves its right not to provide further credit, accept further orders from or supply Products to you. You agree to indemnify and keep us indemnified against all Loss incurred by you or any third party in relation to or in any way directly or indirectly connected with our exercise of this right.
- 23.6 Not initialling these Amended Conditions does not affect their enforceability or incorporation into any Contract.

## 24 FORCE MAJEURE

- 24.1 If circumstances beyond our control prevent or hinder our performance of any obligation under the Contract, we are free from any obligation to perform the obligation while those circumstances subsist. We may elect to terminate this Contract or keep the Contract on foot until such circumstances have ceased.
- 24.2 Circumstances beyond our control include, but are not limited to: unavailability of materials or components, strikes, lockouts, riots, natural disasters, fire, war, acts of God, Government decrees, proclamations or orders, transport difficulties and failures or malfunctions of computers or other technology.

## 25 GENERAL

### 25.1 Jurisdiction

The Contract shall be governed by the law of the State of Queensland. In the event of dispute arising in relation to the Contract or these Conditions the parties agree to submit to the non-exclusive jurisdiction of competent courts of Queensland.

### 25.2 No Waiver

A waiver of any clause or a breach of these Conditions by us must be made in writing by an authorised officer.

### 25.3 Dispute Resolution

If any dispute, controversy or claim arises between the parties, except a claim for payment by us, it must be dealt with in accordance with this clause and the following procedure applies:

- (a) A party claiming that a dispute exists must notify the other (the '**Second Party**') in writing of the nature of the dispute ('**Notice of Dispute**').
- (b) If the dispute is not resolved by agreement within five (5) business days of the Second Party receiving a Notice of Dispute, either party may refer the matter to mediation conducted by a mediator agreed between the parties within a further five (5) business days. The costs of the mediator shall be borne equally between the parties. The chosen mediator shall determine the procedures for the mediation, but will not have the power or authority to make any other determination in relation to the dispute.
- (c) If the parties have not mediated a resolution of the dispute within ten (10) business days of the selection of a mediator or cannot agree on a mediator to appoint, neither is obliged to continue mediation under this clause, and either party may then commence such legal proceedings as it thinks fit.
- (d) The parties must hold confidential, unless otherwise required by law or at the direction of a court, all information relating to the subject matter of the dispute that is disclosed during or for the purposes of dispute resolution.
- (e) In this part, '**business day**' means a day that is not a Saturday, a Sunday or a day that is a public holiday in a place the Supplier is located.

### 25.4 Severance

If any provision of the Contract or these Conditions is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from the Contract and rendered ineffective as far as possible without modifying the remaining provisions of the Contract, and shall not in any way affect any other circumstances of or the validity or enforcement of the Contract.