

**Spring Gully**  
**Terms and Conditions of Supply**  
**(November 2017)**

1. **Agreement**
  - 1.1 It is agreed that these Terms and Conditions, the Purchase Order and the Special Conditions (if any) will together comprise the Agreement between the parties for the provision of the Goods and/or Services specified in the Purchase Order ('**Agreement**').
2. **Price**
  - 2.1 The price of the Deliverables shall be specified in the Purchase Order and cannot be varied without written agreement of the Company and Supplier ('**Price**').
  - 2.2 Unless otherwise stated in the Purchase Order, the Price is fixed and not subject to variation and includes all expenses incurred by the Supplier in relation to provision of the Deliverables.
  - 2.3 The Price is inclusive of any applicable GST (unless otherwise stated).
3. **Payment**
  - 3.1 The Supplier is entitled to invoice the Company for payment in respect of the Goods and/or Services, when the Goods have been supplied and accepted under clause 4, and the Services have been supplied in accordance with this Agreement.
  - 3.2 Unless otherwise stated in the Purchase Order, the terms of payment are 45 days end of month from receipt of a valid tax invoice for the purposes of GST and receipt and acceptance of the Deliverables by the Company.
  - 3.3 The Company reserves the right to return to the Supplier any invoices not deemed to be correctly rendered and retains the right to offset against any moneys payable to the Supplier against any sums owed by the Supplier to the Company.
4. **Inspection and Testing**
  - 4.1 The Company is entitled to expedite, inspect and witness tests on the Goods at the Supplier's and any subcontractor's premises. The Supplier must allow the Company access at any time to the Supplier's and any subcontractor's premises for this purpose. The Supplier must make this a condition of any subcontract.
  - 4.2 The Goods must be accompanied by a signed certificate of analysis ('**C of A**'), presented at the time of delivery to the Company. The Company may reject Goods not accompanied by a C of A.
  - 4.3 The Company may inspect the Goods and subject the Goods to quality and assurance testing to determine whether to accept or reject the Goods. For the avoidance of doubt, the Company is not required to accept any Goods which do not pass quality and assurance testing.
  - 4.4 The Company must accept the Goods if they conform to the requirements of this Agreement.
  - 4.5 The Goods are deemed to be accepted either:
    - 4.5.1 on delivery, if the Company notifies the Supplier that it accepts the Goods; or
    - 4.5.2 subject to clause 4.6, if no notice is issued by the Company, then 10 Business Days after delivery of the Goods to the place of delivery.
  - 4.6 If the Goods are found to be defective when first used, then the Company may reject the Goods under clause 4.7.
  - 4.7 If the Company rejects the Goods due to non-conformity with the requirements of the Agreement, then the Company must notify the Supplier as soon as possible and require the Supplier at its sole cost, and at the Company's election to either:
    - 4.7.1 resupply the Goods and remove the non-conforming Goods from the place of delivery; or
    - 4.7.2 repair the Goods.
  - 4.8 Acceptance of the Goods does not relieve the Supplier of any of its obligations under this Agreement.
5. **Packaging**

All Goods supplied by the Supplier shall be packed as specified in the Purchase Order and if not specified shall be packed so as to avoid being damaged during transportation, loading and unloading.
6. **Delivery, Risk and Title**
  - 6.1 The Supplier is responsible for the delivery and all costs associated with the delivery of the Goods to the Company's premises or such other location that is specified in the Purchase Order.
  - 6.2 Title to and property in the Goods immediately passes to the Company upon payment or delivery, whichever occurs first, and the Goods must be appropriately marked and identified as the property of the Company.
  - 6.3 Risk in the Goods remains with the Supplier until the Company has accepted the Goods in accordance with clause 4 unless otherwise stated in the Purchase Order.
7. **Delays**
  - 7.1 Time is of the essence in the Supplier's performance of the Purchase Order. Delivery must be made in full and on time.
  - 7.2 If it ever appears that the provision of Deliverables will not be met within the time specified, the Supplier must immediately notify the Company of any anticipated delay, with complete information regarding the cause and the earliest possible delivery date. In such event, the Company may (without prejudice to any other rights) do whatever is necessary to expedite the provision of the Deliverables at the Supplier's expense and may terminate the Purchase Order.
  - 7.3 If delays are not communicated or not communicated in a timely manner or the cause of the delay could have been negated (as determined by the Company) as accepted by clause 7.2 the Company at its discretion may charge the supplier for any losses incurred by the delay
8. **Warranty**
  - 8.1 If Goods are being supplied under this Agreement then the Supplier warrants that it has good and unencumbered title for the Goods and the Goods:
    - 8.1.1 conform with any description applied and any sample provided by the Supplier;
    - 8.1.2 are new (unless otherwise stated);
    - 8.1.3 are free from defects in materials, manufacture and workmanship;
    - 8.1.4 conform to any applicable Australian Standards or other standards nominated in the Agreement;
    - 8.1.5 are of merchantable quality;
    - 8.1.6 are fit for their intended purpose; and
    - 8.1.7 are manufactured and supplied without infringing any person's Intellectual Property Rights.
  - 8.2 If Services are being supplied under the Agreement then the Supplier warrants that the Services will:
    - 8.2.1 comply with the description of the Services in the Agreement;
    - 8.2.2 be provided with due care and skill;
    - 8.2.3 be provided in a timely and efficient manner;
    - 8.2.4 be provided in accordance with the best practices current in the Supplier's industry;
    - 8.2.5 be supplied without infringing any person's Intellectual Property Rights; and
    - 8.2.6 be performed by the Supplier and/or the Supplier's Personnel; and
    - 8.2.7 be supplied in the most cost effective manner consistent with the required level of quality and performance.
  - 8.3 These warranties are in addition to any statutory warranties applicable to the Deliverables.
  - 8.4 If any part or aspect of the Goods fail or becomes defective within 12 months from the date the Goods were supplied to the Company, the Supplier must without delay and at no cost to the Company do all things necessary to remedy the defect or failure in the Goods. This can be by way of repair, replacement, modification or other means

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acceptable to the Company. If the Supplier does not do so, within a reasonable period following notice of the defect from the Company, then the Company will have the right to remedy the defect and recover costs so incurred from the Supplier.

- 8.5 If, during the term of the Purchase Order, and a further term of 12 months following completion of Services, the Company is of the view that the Services do not comply with the requirements of the Purchase Order then the Company may require the Supplier to re-perform the Services at the Supplier's cost within such time as the Company reasonably may request.
- 8.6 The Supplier warrants that all information provided to the Company on the Supplier's quality systems, country of origin for manufacture or packaging, status of approved supplier procedures and information on recall procedures is accurate and that the Supplier will notify the Company of any changes to that information provided as soon as reasonably possible.

#### 9. Insurances

- 9.1 The Supplier shall take out and maintain:
- 9.1.1 comprehensive public liability insurance with a limit of not less than \$10,000,000 per claim;
  - 9.1.2 product liability insurance with a limit of not less than \$10,000,000 per claim, where Goods are provided under the Agreement;
  - 9.1.3 workers compensation insurance as required by law;
  - 9.1.4 insurance covering the Suppliers own property, equipment, materials owned, hired leased or used by the Supplier for the purpose of the Agreement; and
  - 9.1.5 any additional insurance required by any applicable law.
- 9.2 The Supplier will at the request of Company provide copies of all certificates of currency in respect of the insurances required to be taken out by Supplier.

#### 10. Liability and Indemnity

- 10.1 The Supplier must indemnify and keep indemnified, the Company, and its officers, employees and agents against all claims, demands, proceedings, liabilities, costs (including on a solicitor and own client basis), charges and expenses suffered by the Company and its officers, employees and agents arising out of or in connection with:
- 10.1.1 any breach by the Supplier of this Agreement;
  - 10.1.2 a classification of the Goods as either taxable or GST free by the ATO which is different from the Supplier's classification of the Goods under clause 18.3;
  - 10.1.3 any death or injury to a person, and any loss or damage to the Company's real property or that of a third party caused by the Supplier's act or omission.
- 10.2 If a Goods withdrawal or recall occurs (whether the Goods are withdrawn from show or recalled voluntarily or as a result of any governmental direction), the Company will not be liable to the Supplier in respect of the withdrawal or recall, and the Supplier indemnifies the Company on demand for all loss, damage, costs or liability incurred by the Company as a result of the Goods withdrawal or recall, including:
- 10.2.1 the costs to the Company of acquiring and holding the Goods (including storage and freight, if applicable);
  - 10.2.2 reasonable administration fees;
  - 10.2.3 any other costs and losses of the product recall or withdrawal from sale (including loss of profits) and of the return of the Goods to the Supplier or the destruction of the Goods; and
  - 10.2.4 legal costs on a solicitor and own client basis.

- 10.3 Each amount payable by the Supplier to the Company under the indemnity in clause 10.2 is a debt due and payable to the Company on the Company's demand. The Supplier agrees to pay or credit the amount to the Company, at the Company's option, immediately after issue of the demand by the Company.
- 10.4 Any amount claimed by the Company pursuant to the indemnity under clauses 10.1 or 10.2 will be proportionately reduced to the extent that any loss suffered by the Company can be established to have been caused by the Company's own negligence.
- 10.5 The Company will not be liable to the Supplier for any indirect or consequential loss or damage under the Agreement.
- 10.6 The maximum sum, for which the Company may be liable to the Supplier under the Agreement, is limited to the price of the Deliverables.

#### 11. Force Majeure

Neither the Company nor the Supplier shall be liable to the other for default or delay in performing its obligations in respect of the Agreement caused by any occurrence beyond its reasonable control including, without limitation, fire, strike, disturbance, riot, war, Act of God and government order or regulation, provided that the party affected by such occurrence notifies the other party in writing within seven (7) days of the commencement of that occurrence. When the party ceases to be affected by the force majeure event it must immediately recommence performing its obligations under the Agreement and notify the other party accordingly. However, if as a result of any such force majeure event, supply of all or part of the Deliverables is delayed more than 30 days after the delivery date specified in the Purchase Order the Company may, without penalty, cancel the Agreement to the extent it relates to such delayed Deliverables.

#### 12. Termination

- 12.1 If Goods have been offered by the Supplier as, or if they are, standard or stock items the Company can, by notice to Supplier, at any time up to delivery cancel the commitment to buy them. Any other commitment of the Company to receive and pay for Deliverables may be cancelled by the Company and in such instances the Company will reimburse the Supplier for all irrecoverable costs incurred, or unavoidably committed, by the Supplier up to the point of cancellation.
- 12.2 The Company may suspend performance of, or cancel, or suspend and then at any subsequent time cancel, the Purchase Order without any liability to the Supplier if the Supplier breaches its terms, or if the Supplier's business fails. The Supplier's business will be treated for this purpose as having failed if:
- 12.2.1 the Supplier makes any voluntary arrangement with its creditors;
  - 12.2.2 (being an individual or firm) the Supplier become bankrupt;
  - 12.2.3 (being a company) the Supplier becomes subject to an administration order or goes into liquidation;
  - 12.2.4 any third party takes possession of, or enforces rights over, any of the Supplier's property or assets under any form of security;
  - 12.2.5 the Supplier stops or threatens to stop carrying on business;
  - 12.2.6 the Supplier suffers any process equivalent to any of these, in any jurisdiction; or
  - 12.2.7 the Company reasonably believes that any of the events mentioned above is about to occur and the Company notifies the Supplier accordingly.
- 12.3 Any right of cancellation or suspension under this section is additional to any rights available to the Company under the law of any relevant jurisdiction.

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**13. Effect of ending this contract**

- 13.1 Any termination of the Agreement by either party does not affect any accrued right of either party.
- 13.2 Despite termination or completion of the Agreement, this clause 13 and clauses 8, 9, 13, 16 and those Special Conditions that by their nature remain in force, shall survive.

**14. Disputes**

- 14.1 The Company and the Supplier agree to work together to quickly settle disputes or differences that may arise. In the event that any such disputes or differences cannot be negotiated and amicably resolved between the parties within 60 days after the dispute was first raised, then the parties agree that the dispute may be referred to an independent mediation service or commencement of legal action as the case may be.
- 14.2 In the event of any unresolved dispute the Supplier must ensure the continued progress of achieving Deliverables.

**15. Confidentiality**

Any information provided by the Company to the Supplier or the Supplier's Personnel which is noted as confidential, or the Supplier or the Supplier's Personnel ought reasonably to know to be confidential, must not be disclosed to any third party by the Supplier or the Supplier's Personnel without the prior written consent of the Company.

**16. Intellectual Property**

The title to all Intellectual Property Rights in or in relation to providing the Services shall vest upon its creation with the Company. Any intellectual property owned by the Supplier prior to execution of the Services will remain the property of the Supplier.

**17. Assignment and Subcontracting**

- 17.1 The Supplier is not permitted to assign or sub-contract all or any part of its obligations under the Purchase Order without the prior written consent of the Company.
- 17.2 The Supplier remains responsible for obligations performed by any approved subcontractors to the same extent as if such obligations were performed by the Supplier.

**18. GST**

- 18.1 Words defined in the GST Law have the same meaning in these terms and conditions unless specifically defined in this clause.
- 18.2 For each taxable supply under or in connection with the Purchase Order:
- 18.2.1 The Supplier will be entitled to charge the Company for any GST payable by the Supplier in respect of the taxable supply.
- 18.2.2 The Company must pay to the Supplier the amount of the GST at the same time as the relevant charge applicable to the supply becomes payable under the Purchase Order.
- 18.2.3 The Supplier must provide a valid tax invoice (or a valid adjustment note) to the Company in respect of the taxable supply.
- 18.3 The Supplier must inform the Company whether or not the Goods are treated as GST free. The Supplier is aware that the Company will rely on the Supplier's information regarding classification of the Goods as taxable or GST free.

**19. General**

- 19.1 The Agreement comprises the entire agreement between the Company and the Supplier and supersedes all prior agreements, representations, warranties or arrangements.
- 19.2 To the extent of any inconsistency, the terms of the Agreement prevail over the Supplier's terms and conditions (if any).

- 19.3 Unless otherwise stated, the order of precedence of the following documents shall apply:
- 19.3.1 the Purchase Order;
- 19.3.2 the Special Conditions (if any); and
- 19.3.3 these terms and conditions.
- 19.4 Each word, phrase, sentence, paragraph and clause of this Agreement is severable.
- 19.5 Severance of any part of this Agreement will not affect any other part of this Agreement.
- 19.6 Unless otherwise specified, the Agreement will be governed and construed in accordance with the law of the state of South Australia and the parties submit to the exclusive jurisdiction of the courts of the state of South Australia.
- 19.7 The Supplier is not the Company's agent in any way. The Suppliers' Personnel will not under any circumstances be considered employees of the Company for any purpose.
- 19.8 No failure or delay on the part of the Company in exercising any of its rights under the Agreement shall be construed as constituting a waiver of any such rights.
- 19.9 The Purchase Order, or these terms and conditions, do not confer on the Supplier any right to be a sole or exclusive supplier of the Deliverables.
- 19.10 A notice is treated as having been duly given and received when delivered, in writing, to the other party's address. The addresses of the parties are as stipulated in the Purchase Order.

**20. Definitions**

- 20.1 "ATO" means the Australian Taxation Office or any relevant Court or Tribunal (as the case may be).
- 20.2 "Company" means Spring Gully Foods Pty Ltd ACN 007 654 211.
- 20.3 "Deliverables" means the Goods and/or Services to be supplied by the Supplier to the Company as identified in the Purchase Order.
- 20.4 "Goods" means all goods, materials, equipment, parts and any other ancillary activity provided by the Supplier to the Company identified in the Purchase Order.
- 20.5 "GST" means the Goods and Services Tax as defined in A New Tax System (Goods and Services Tax) Act 1999 ('GST Law').
- 20.6 "Intellectual Property Rights" means all intellectual property rights including current and future registered and unregistered rights in respect of copyright, designs, circuit layouts, trademarks, trade secrets, know-how, confidential information, patents, inventions and discoveries and all other intellectual property as defined in article 2 of the convention establishing the World Intellectual Property Organisation 1967.
- 20.7 "Purchase Order" means the purchase order provided to the Supplier by the Company;
- 20.8 "Services" means the services to be provided by the Supplier to the Company identified in the Purchase Order.
- 20.9 "Special Conditions" means the special conditions (if any) attached to the Purchase Order.
- 20.10 "Supplier" means the person supplying the Goods or performing the Services as identified in the Purchase Order.
- 20.11 "Supplier's Personnel" means the Supplier's employees, agents, subcontractors (approved under clause 17.1) and any other person employed or engaged by the Supplier to perform the Agreement.