

Interpretation: “**Amount Owing**” has the same meaning given in clause 6(a); “**Customer**” means the entity purchasing Products under these Terms; “**GST**” means goods and services tax as defined in the *Goods and Services Tax Act 1985* as amended; “**Insolvency Event**” means where the Customer is unable to pay its debts as they fall due or otherwise takes any corporate action, or any steps are taken, or legal proceedings are started for: (i) its winding-up, dissolution, liquidation, or re-organisation, other than to reconstruct or amalgamate while solvent on terms approved by Seller; (ii) the appointment of a controller, receiver, administrator, official manager, trustee or similar officer of it or of any of its revenues and assets; or (iii) seeks protection or is granted protection from its creditors, under any applicable legislation; “**Products**” means the goods supplied by Seller under these Terms; “**Seller**” means Bluebird Foods Limited (Company No. 163343) of 124 Wiri Station Road, Manukau, Auckland 2104, and “**Terms**” means these terms and conditions of sale, as may be amended from time to time by Seller.

1. **General:** These Terms apply to, and are incorporated into, any quote or order between the Customer and Seller, to the exclusion of the Customer’s conditions of purchase or any other document or terms.
2. **Supply:** Seller agrees to supply to the Customer and the Customer agrees to purchase from Seller the Products in accordance with these Terms.
3. **Purchase Orders:** To obtain supply of the Products, the Customer must issue a written purchase order to Seller in the form requested by Seller (unless otherwise agreed by Seller). The purchase order must specify the quantity (and comply with any minimum order sizes specified by Seller) and nature of the Products required by the Customer, and the requested delivery date and address. Seller may, in its absolute discretion, accept or reject a purchase order. A purchase order is not binding until it is accepted by Seller. A purchase order may only be amended or cancelled with the written consent of Seller, this amendment or cancellation to be on the terms (including fees) specified by Seller in its discretion.
4. **Delivery:** Seller will use reasonable commercial efforts to deliver the Products to the delivery address on the date specified in the purchase order, unless the date specified is less than 4 business days after the date on which the purchase order is received, in which case Seller will deliver the Products as soon as practicable after receipt of the purchase order. Unless otherwise agreed in the purchase order, the Products will be transported using Seller’s preferred carriers or agents. Seller will not be liable for penalties, loss or damages (direct or indirect) or compensation for late delivery or failure to deliver Products, either in whole or in part. Where the Customer does not take delivery when the Products are ready, Seller is entitled to store the Products without liability and at the Customer’s cost and risk.
5. **Loss or damage during transit:** Seller bears the loss or damage to Products in transit where delivery is by Seller’s nominated carrier and delivery charges are included in the price of the Products. In all other cases, the Customer is responsible for loss or damage occurring in transit. “*Delivery*” occurs:
 - (a) when Seller’s nominated carrier delivers the Products to the nominated delivery address; and
 - (b) in all other cases, when the Products leave Seller’s premises.
6. **Risk, title and security:** Risk of loss, destruction or damage to the Products passes to the Customer on Delivery.
 - (a) Ownership of each unit of the Products will remain with the Seller until all amounts owing by the Customer to the Seller on any account whatsoever (including the purchase price for the Products) (**Amounts Owing**) have been paid.
 - (b) Until the Amounts Owing have been paid, the Customer:
 - (i) may, subject to paragraph (c), take possession of the Products and hold them as trustee and agent for the Seller;
 - (ii) must ensure that the Products are insured and stored or identified so that they are readily distinguishable from other goods held by the Customer or other persons.
 - (c) Until the Amounts Owing have been paid, the Customer has the right to move, sell and otherwise use the Products in the ordinary course of its business, subject to the following:
 - (i) the Customer may sell the Products, but must hold the proceeds it receives from any sale of the Products as trustee for the Seller; and
 - (ii) without limiting the foregoing, all accounts relating to any sale of the Products are owned by the Seller and any rights of the Customer in respect of such accounts are transferred to the Seller.

Despite clause 6(c)(i), the Customer must not represent to any third parties that it is acting as agent of the Seller and the Seller will not be bound by any contracts with third parties to which the Customer is a party.
 - (d) If the Customer fails to comply with any of these Terms in relation

to the payment of any Amount Owing, the Customer it will be in default. If the Customer defaults, then the Seller has the right to terminate this Agreement immediately.

- (e) The Customer must not assign or grant a security interest in respect of any accounts owed to it in relation to the Products without the Seller’s prior written consent. The Seller has a security interest in all such accounts to secure the Amounts Owing.
 - (f) Without limiting the meaning of Amounts Owing, if the Customer makes a payment to the Seller at any time whether in connection with these Terms or otherwise the Seller may apply that payment as it sees fit.
7. **Prices:** The prices for the supply of the Products during the Term are as set out in Seller’s price list, as varied by Seller from time to time by notice to the Customer effective from the date of the notice. The prices are exclusive of GST and other taxes, duties and levies (“together **Taxes**”). These Taxes will be payable by the Customer in addition to the price at the same time and in the same manner as the price. The Customer must keep confidential all prices, rebates and other discounts offered or paid by Seller.
 8. **Invoicing and payment:**
 - (a) Seller will provide a GST invoice to the Customer in respect of each Delivery of the Products. The Customer must pay the amount of all invoices in full, without set off, on any one of the following terms as notified by Seller to the Customer: (i) cash on Delivery; (ii) within 7 days of the date of invoice; (iii) by the 20th of the month following the date of Delivery, or such other payment terms agreed by the parties. Payment shall be made by cash (payment to the contract partner), direct debit or on account. If payment is not made when due, Seller may, without limiting its rights: (i) vary or withdraw any credit at its discretion; (ii) withhold further supply until Seller receives full payment of all amounts due from the Customer (whether in connection with a supply under these Terms or pursuant to any other contract between Seller and the Customer); (iii) charge interest at Seller’s banker’s current bank overdraft rate plus (2%) pa on all overdue monies calculated on a daily basis from the due date until payment in full; and (iv) require immediate payment in full of all amounts payable to Seller.
 - (b) Seller may, in its discretion, make payment of any rebates or discounts agreed with the Customer by either: (i) applying the rebate or discount to the invoiced amount prior to issuing an invoice; or (ii) by making a separate payment to the Customer.
 - (c) Seller may offset any amount due by the Customer against any amount payable by Seller to the Customer.
 - (d) The Customer is liable for, and expressly undertakes to pay, all fees for all costs incurred as a result of any electronic banking transaction being dishonoured for whatever reason.
 - (e) Should it be considered necessary by Seller to incur legal and/or any other expenses, including expenses to any debt collection agency, in obtaining, or attempting to obtain, payment for any amount due by the Customer, the Customer shall be liable for all such expenses.
 9. **Returns:** Products damaged or spoiled before Delivery must be notified to Seller within 24 hours of Delivery and confirmed in writing to Seller. Only damaged, spoiled or incorrect Products notified to Seller in accordance with this clause 9 may be returned to Seller, upon Seller providing its written agreement to accept the returned Products. If the Seller wishes to inspect the alleged damaged or spoiled products, the Customer, within a reasonable time following delivery, grant Seller reasonable access to inspect the Products. Should the Customer fail to notify Seller that Products are damaged or spoiled within 24 hours of Delivery, then to the maximum extent permitted by law, the Products shall be deemed to be in compliance with the purchase order and free from any defect whatsoever.
 10. **GST:** Seller will provide tax invoices that are necessary to ensure that the Customer can claim any input tax credit in relation to any GST payable in respect of any supply.
 11. **Intellectual Property ownership:** All intellectual property rights in the Products (including the formulations and specifications for the Products) are owned by Seller. Nothing in this Agreement transfers ownership of the intellectual property rights in the Products from Seller to the Customer.
 12. **Confidential Information:** Each party acknowledges that it may acquire confidential information from the other party. Each party must treat all confidential information received from the other party as confidential and must not use or exploit that confidential information, or disclose it to any person (except the parties may disclose confidential information to its related bodies corporate, employees, officers, contractors, representatives and advisors (and those of its related bodies corporate), and then only to the extent required to enable that party to comply with these Terms)), unless that party

obtains the specific prior written consent of the other party. These obligations as to confidentiality survive the expiry or termination of these Terms.

13. Exclusions and Limitation of Liability:

The Customer agrees that:

- (a) the Products supplied under these Terms are supplied and acquired in trade within the meaning of the *Fair Trading Act 1986* and the *Consumer Guarantees Act 1993*;
- (b) everything supplied under these Terms is acquired by the Customer solely for the Customer's business purposes;
- (c) the following legislation will not apply to these Terms or to any Products supplied to the Customer under these Terms: The *Consumer Guarantees Act 1993*; and Sections 9, 12A, and 13 of the *Fair Trading Act 1986*;
- (d) it is fair and reasonable to exclude the application of that legislation; and
- (e) the Customer acknowledges that the Customer has had a reasonable opportunity to review these Terms, discuss these Terms with Seller, and receive advice from legal advisors, if the Customer wished to do so.
- (f) Except as expressly set out in these Terms, and subject to any terms, warranties or conditions that by law may not be excluded or modified, all conditions, warranties, terms, and obligations expressed or implied by law or otherwise relating to the performance of Seller's obligations under these Terms, or any goods supplied, or to be supplied, by Seller under these Terms, are excluded to the maximum extent permitted by law.
- (g) Subject to clause 13(f), where any terms, conditions or warranties may not be excluded, restricted or modified, or may be excluded, restricted or modified only to a limited extent, the liability of Seller to the Customer under those terms, conditions and warranties is limited, at the option of Seller, to the replacement of the Products, or payment of the cost of replacing the Products.
- (h) In no event will Seller, its officers, employees or agents be liable for any consequential, incidental, special or indirect loss or damage, any loss of business or revenue, loss of profit, increased financing costs, loss of opportunity, loss of expected saving, loss of goodwill, loss of business reputation, or remote loss or damage, whether in tort (including negligence), contract (including any deliberate breach of contract), under an indemnity, breach of statutory duty, equity, in debt, by warranty, or any other basis in law or equity and of any nature arising out of or in connection with the agreement or the supply or delivery of the Products.
- (i) To the maximum extent permitted by law, the Customer hereby indemnifies the Seller from all loss, damage, cost or expense caused or contributed to by any breach of these Terms by the Customer or any negligent or wilful act or omission or arising from or in connection with these Terms or the supply or delivery of the Products. The Customer's obligation to indemnify Seller under this clause is reduced proportionately to the extent that the loss, damage, cost or expense is caused or contributed to by a negligent act or omission of Seller.

14. Recalls: If the Customer is directed to assist in any suspension of supply or recall of Products for any reason by Seller or an authority, the Customer must cooperate and comply with all such reasonable directions to ensure the most effective response to the suspension or recall. The sole cost and expense of the suspension or recall will be borne by: (a) Seller, to the extent the costs and expenses are reasonable and necessary where the reason for the suspension or recall is fault in the manufacture of the Products; and (b) the Customer where the reason is its act or omission.

15. Force Majeure Events: Seller may suspend delivery or reduce the amount to be delivered if Seller is unable to deliver the Products by reason of circumstances beyond its reasonable control, including (without limitation) strikes, lock-outs, accidents, war, fire, flood, explosion, shortage of power, breakdown of plant or machinery, shortage of raw materials from normal source of supply, act of God or any order or direction of any government, government authority or instrumentality. If the effects of the force majeure event continue for more than one calendar month, Seller at its absolute discretion may terminate any purchase order affected by the force majeure event. The Customer will have no claim against Seller, and Seller will not be liable for any loss arising from any suspension, reduction or failure to deliver arising from the circumstances referred to in this clause 15 or any termination pursuant to this clause 15.

16. Alteration to range: Seller reserves the right, in its absolute discretion, to add to or remove from the range of the Products supplied by Seller, by written notice to the Customer with immediate effect.

17. Default and Termination:

- (a) If an Insolvency Event occurs in relation to the Customer, or any other event occurs which gives Seller reasonable grounds for doubting the financial standing of the Customer, Seller may by notice to the Customer, at its option and without prejudice to any other right it may have, suspend or terminate these Terms or require payment before or on Delivery of the Products (notwithstanding the terms of payment applicable to the Products), or cancel any undelivered or uncompleted purchase orders, and may retain any money paid by the Customer in relation to a purchase order and apply that money against any loss or damage incurred by Seller in relation to the default by the Customer.
- (b) Seller may, at its absolute discretion, cancel the supply and delivery of Products by giving notice to the Customer by any means. Upon cancellation, Seller shall not be liable for any loss, damage, including any consequential loss or damage in connection with such cancellation. The Customer will not be entitled to any form of compensation from Seller whatsoever in respect of such cancellation.
- (c) The Customer may cancel the supply and delivery of Product at any time before Delivery by giving notice to Seller in writing. In the event that the Customer cancels supply and delivery of Product, the Customer shall be liable for all costs incurred by Seller up to the time of the cancellation.

18. Anti-bribery: The Customer must comply with all applicable laws, rules and regulations relating to anti-bribery laws. The Customer agrees that it will not corruptly make any offer, payment, promise of gifts or money or any other thing of value to any government official or employee, political party or political candidate ("**Government Official**") for the purpose of influencing any act or decision of the Government Official, inducing the Government Official to act in violation of his or her lawful duty or securing any improper advantage.

19. Governing Law: These Terms are to be governed and construed in accordance with the laws of New Zealand. The parties submit to the non-exclusive jurisdiction of the courts of New Zealand.

20. Waiver: Seller's acceptance of payment, or delay or failure to act, will not prejudice its rights or constitute a waiver.

21. Assignment: The Customer's rights arising out of or under these Terms may only be assigned with the prior written consent of Seller. Seller may assign its rights or obligations (or both) at any time by giving written notice of this to the Customer.

22. Amendment: These Terms may be varied by Seller by giving 30 days' writing in notice to the Customer.

23. Equipment: Any equipment supplied to Customer by Seller remains Seller's property and must be returned to Seller once this Agreement expires or is terminated.

24. Clauses surviving termination: Clauses 6, 8, 11, 12, 13, 19, 20, 21, 22 and 23 survive termination or expiry of this agreement as do any other clauses that are by their nature intended to survive the termination or expiry of this Agreement.

25. Miscellaneous:

- (a) The Customer acknowledges that where the Customer consists of more than one party or entity, liability shall be joint and several.
- (b) Seller accepts no responsibility for changes in any law which may affect the supply of Products.
- (c) The invalidity or unenforceability of any provision of these Terms shall not affect the validity or enforceability of the remaining provisions.