

## Terms and Conditions of Purchase – New Zealand

1. **Interpretation: "Applicable Laws"** means laws and regulations applicable to the supply of Goods and/or Services pursuant to these Terms; **"Change of Control"** means a change in the identity of the person or persons who is or are able to control an entity; **"Goods"** means the goods purchased under these Terms; **"GST"** means GST as defined in *New Zealand Goods and Services Tax Act 1985 ("GST Act")* or any replacement or other relevant legislation or regulations; **"Insolvency Event"** means circumstances in which the Supplier 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: (a) its winding-up, dissolution, liquidation, or re-organisation, other than to reconstruct or amalgamate while solvent on terms approved by Supplier; (b) the appointment of a controller, receiver, administrator, official manager, trustee or similar officer of it or of any of its revenues and assets; or (c) seeks protection or is granted protection from its creditors, under any Applicable Laws; **"Intellectual Property Rights"** means all intellectual property rights including current and future registered and unregistered rights in respect of copyright, designs, trade marks, trade secrets, know-how, confidential information, patents, invention and discoveries; **"PPSA"** means the *New Zealand Personal Property Securities Act 1999*; **"Purchaser"** means Bluebird Foods Limited or any company from the PepsiCo group set out in the Purchase Order; **"Purchase Order"** means a written order submitted by the Purchaser to the Supplier in any form requesting that the Supplier supply Goods or Services in accordance with these Terms; **"Representatives"** means any director, officer, employee, consultant, adviser, partner, agent, distributor or contractor of a party; **"Services"** means the services performed by the Supplier under these Terms; **"Supplier"** means the entity from whom the Goods and/or Services which are the subject of these Terms, are being ordered; and **"Terms"** means these terms and conditions of purchase.
2. **Application:** These Terms apply to any Purchase Order the Purchaser places with the Supplier, unless otherwise agreed in writing. To the extent that there are any inconsistencies between these Terms and a Purchase Order, the Purchase Order will take precedence. These Terms will not apply where the Purchaser has in place a written supply agreement relating to the supply of the relevant Goods and/or Services by the Supplier. The Purchaser's acceptance of, or payment for, Goods and/or Services will not constitute acknowledgement or acceptance of the Supplier's conditions of sale, which are expressly rejected.
3. **Contract:** The Purchaser will issue the Supplier with a Purchase Order. The Purchase Order constitutes an offer by the Purchaser to purchase the Goods and/or Services detailed in the Purchase Order. The Purchase Order will be deemed to be accepted by the Supplier on the earlier of: (a) the Supplier issuing a written acceptance of the Purchase Order; or (b) the Supplier doing any act consistent with fulfilling the Purchase Order. Once accepted, the Purchase Order will constitute a new contract between the parties incorporating these Terms. The Purchase Order supersedes all previous communications and negotiations between the parties relating to the subject matter of the Purchase Order.
4. **Price and Payment Terms:** Unless otherwise specified in the Purchase Order, payment for the Goods and/or Services will be made to the Supplier within 60 days from the date of the invoice. The price for the Goods and/or Services will be the price specified on the Purchase Order. Unless otherwise agreed in writing, the price will be in New Zealand dollars and includes: (a) all delivery and packaging costs; and (b) GST and any other applicable taxes. No other fees or charges will be payable unless agreed in writing by the Purchaser prior to such expenses being incurred. The price of the Goods and/or Services may only be varied by agreement in writing between the Supplier and Purchaser.
5. **Invoices:** The Supplier must submit an invoice to the Purchaser for each individual Purchase Order. Invoices must be emailed to [apinvoices.bluebird@pepsico.com](mailto:apinvoices.bluebird@pepsico.com) or mailed to Bluebird Foods Ltd AP, Ex 11011, Auckland, New Zealand. Invoices must not be issued prior to delivery of the Goods and/or Services. Invoices must show: (a) the destination to which the Goods and/or Services were delivered; (b) the Purchaser's Purchase Order number; and (c) in the case of Goods, the Supplier's packing slip number. If at any time the Purchaser disputes the amount of an invoice (**"Disputed Amount"**) the Purchaser does not have to pay the Disputed Amount until the dispute is resolved but the Purchaser must pay any undisputed amounts. The parties shall enter good faith negotiations to resolve any Disputed Amount. The Supplier may not, wholly or partially, suspend, cancel or withdraw the provision of the Goods and/or Services or terminate these Terms or a Purchase Order if an invoice is disputed. The Purchaser may deduct any money the Supplier owes to the Purchaser on any account whatsoever from any money which the Purchaser may be liable to pay the Supplier.
6. **GST:** Except where express provision is made to the contrary, and subject to this condition 6, any amount that may be payable under or in connection with these Terms is inclusive of any GST. If the supply of Goods and/or Services under or in respect of these Terms becomes subject to GST, the Purchaser must pay, at the same time and in the same manner, the amount of the GST which is paid or payable for the supply. The Supplier will provide tax invoices that are necessary to ensure that the Purchaser can claim any input tax credit in relation to any GST payable in respect of any supply.
7. **Delivery:** The cost of delivery of the Goods is included in the price of the Goods, unless otherwise stated on the Purchase Order. Any Goods delivered in error or in excess of the quantity stated on the Purchase Order may be returned to the Supplier at the Supplier's risk and expense. The Supplier must deliver the Goods and/or Services in accordance with the Purchase Order, including delivering: (a) on the date specified in the Purchase Order; (b) to the location specified; and (c) during normal operating hours at the delivery location. The Supplier must notify the Purchaser immediately if it cannot supply the Goods and/or Services within the time stated in the Purchase Order.
8. **Acceptance:** Following delivery, the Purchaser may inspect the Goods and/or Services and give notice in writing to the Supplier of any unsatisfactory or defective Goods or Services. Any non-complying Goods may be returned by the Purchaser to the Supplier at the Supplier's expense. The Purchaser's acceptance of delivery or payment for the Goods and/or Services prior to the Purchaser's inspection will not be construed as an acceptance of the non-complying Goods and/or Services.
9. **Risk and title:** Any risk associated with the Goods remains with the Supplier until delivery of the Goods to the Purchaser in accordance with these Terms. Title in the Goods passes to the Purchaser upon delivery of the Goods to the Purchaser. The Goods must be free of encumbrances and all other adverse interests (including any Security Interest, as that term is defined in the PPSA).
10. **Variation or termination of a Purchase Order:** The Purchaser may by notice in writing terminate all or any part of the Goods and/or Services that have not yet been provided and which are the subject of a Purchase Order at any time. Provided the termination is not due to the Supplier's breach of these Terms or a Purchase Order, or pursuant to a right under condition 20, the Purchaser shall pay the Supplier for: (a) Goods and/or Services actually delivered prior to such termination; (b) Goods that have been manufactured prior to termination and which the Supplier, using reasonable endeavours, is unable to sell to another customer; and (c) any of the Goods and/or Services for which the Purchase Order is not terminated. The Purchaser may at any time prior to the delivery of the Goods and/or Services issue written instruction authorising or requiring additions, deletions or alterations to the Purchase Order.
11. **Warranty:** The Supplier warrants and represents that: (a) the Goods are free from all charges and encumbrances and all other adverse interests (other than encumbrances which will be released at or before the time title in the Goods passes to the Purchaser) and that the Purchaser will enjoy quiet possession of the Goods; (b) the Goods are and will remain free from any Security Interest (as that term is defined in the PPSA); (c) the Goods will be of merchantable quality and fit for any purpose which is made known to the Supplier by the Purchaser or for which the Goods are commonly supplied; (d) the Goods will be free from defects in design, material and workmanship; (e) where the Goods are supplied by reference to a sample or description, that the Goods will correspond with the sample or description; (f) where applicable, the Goods will have an appropriate proportion of their standard shelf life remaining on delivery to the Purchaser; (g) the Goods and/or Services comply with the specifications contained in the Purchase Order and with all other specifications supplied by the Purchaser in connection with the Goods and/or Services; (h) the Goods and/or Services do not infringe any Intellectual Property Rights of any other person; (i) the Goods and/or Services will comply with all Applicable Laws, rules, statutes and other legal requirements; (j) the Supplier holds and will comply with all necessary licences, permits and other approvals required for the manufacture, packing, supply and storage of the Goods and the provision of the Services; (k) the Supplier and its personnel are qualified to provide the Services; (l) the Services will be performed using an acceptable level of due care and skill; and (m) the Supplier will perform all of its obligations under these Terms and a Purchase Order in compliance with all Applicable Laws.
12. **Remedies:** Without prejudice to any other remedy available to the Purchaser, if: (a) the Supplier does not deliver the Goods and/or Services by the delivery date (in accordance with condition 7); or (b) the Purchaser discovers that the Goods and/or Services do not meet the standards and requirements set out in these Terms or the relevant Purchase Order; whether after delivery of or payment for the Goods and/or Services and notwithstanding the Purchaser's acceptance of the Goods and/or Services, then, the Purchaser will have the right to any one or more of the following remedies (provided that the Purchaser is not entitled to remedies which would put it in a better position than if these Terms or a Purchase Order had been performed as agreed): (i) terminate these Terms or Purchase Order immediately by giving the Supplier notice in writing; (ii) reject the Goods or Services (in whole or in part) and, return them to the Supplier at the Supplier's own risk and expense; (iii) require the refund of any payment made by the Purchaser in relation to undelivered, rejected and/or returned Goods and/or Services; (iv) require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods; (v) require the Supplier to re-perform the rejected Services, or to provide a full refund of the price of the rejected Services; (vi) require the Supplier to pay for the cost of the repair or replacement of the Goods; (vii) refuse to accept any subsequent delivery of the Goods and/or Services, which the Supplier attempts to make or do; (viii) recover from the Supplier any costs the Purchaser incurs in obtaining substitute Goods and/or Services from a third party; and (ix) claim damages for any other costs, loss or expenses the Purchaser incurs which are in any way attributable to the Supplier's failure to comply with condition 12(a) or 12(b).
13. **Indemnity:** The Supplier indemnifies the Purchaser and must keep the Purchaser's Representatives indemnified against all losses, liabilities, costs, damages, charges and expenses suffered or incurred by the Purchaser arising out of or in connection with: (i) a breach by the Supplier of these Terms or any Applicable Law; (ii) any defect in the Goods or Services, any death or personal injury, or any loss or damage to the Purchaser's or a third party's real or personal property, caused by the Supplier's act or omission; or (iii) any infringement of the Purchaser's or any claim that the Goods or Services infringe a third party's Intellectual Property Rights.
14. **Limitation of Liability:** To the extent permitted by law, in no event will the Purchaser be liable to the Supplier for any loss or damage including loss of profits or other economic loss, indirect, special, consequential, general or other similar damages, arising out of any breach of these Terms or obligations under these Terms.
15. **Recalls:** The Supplier must notify the Purchaser immediately on becoming aware of any problem encountered in the manufacture, packaging, storage or transport of the Goods that may have an adverse impact on the quality and/or safety of the Goods.
16. **Insurance:** The Supplier must maintain appropriate product liability insurance cover for personal injury and property damage caused by the Goods and/or Services in an amount not less than NZ\$20,000,000 (or such other amount agreed in writing by the Purchaser) for any one claim with a reputable insurer and such other insurance cover reasonably requested by the Purchaser. If the Supplier fails to obtain such insurances, the Purchaser may arrange for appropriate insurance and charge the Supplier with the cost. On request, the Supplier must provide the Purchaser with evidence of the Supplier's compliance with this condition 16.
17. **Confidential Information:** Each party acknowledges that it may receive confidential information from the other party. The parties must treat all confidential information as confidential and must not use, exploit or disclose the confidential information to any person (except the parties' Representatives and then only to such extent as may be required to enable the parties to comply with the provisions of these Terms) without the prior written consent of the other party. The parties will use the confidential information only for the purpose for which it has been provided.
18. **Recordkeeping:** The Supplier must keep and produce on request by the Purchaser, records in relation to Purchase Orders and the Goods and/or Services supplied under these Terms (including any documents necessary for tracing purposes) for any period required by Applicable Laws and in any event for at least 7 years.
19. **Intellectual Property Rights:** Neither party transfers any right, title or interest in any Intellectual Property Rights of the respective party to the other. The Supplier must not use any of the Purchaser's Intellectual Property Rights unless authorised by the Purchaser in writing. Neither party will cause or permit any misuse, interference with, damage or endangerment to the Intellectual Property Rights of the other party or their suppliers, or assist or allow others to do so. Each party undertakes to advise the other party immediately if it becomes aware of any unauthorised use, or attempted use, by any person of the other party's Intellectual Property Rights.
20. **Termination:** The Purchaser may terminate these Terms or any Purchase Order immediately after giving the Supplier notice in writing if: (a) the Supplier is in breach of any of these Terms; (b) the Goods and/or Services are delivered after the last date specified for delivery in a Purchase Order; (c) the Goods and/or Services are not supplied in accordance with the Purchase Order; (d) the supply of Goods and/or Services by the Supplier is, in the Purchaser's reasonable opinion, irregular or not available for a period of not less than 6 weeks; (e) the Supplier is in breach of any other agreement it has with the Purchaser; (f) the Supplier undergoes an insolvency event; (g) the Supplier sells, or agrees to sell, its business; or (h) the Supplier is a body corporate and a Change of Control occurs that the Purchaser reasonably believes could materially affect the Purchaser's interests. The Purchaser may terminate these Terms without cause, upon 30 day's written notice to the Supplier.
21. **Assignment:** The Supplier's rights arising out of or under these Terms may only be assigned with the prior written consent of the Purchaser. The Purchaser may assign its rights arising out of or under these Terms at any time without notice so long as the Supplier is not materially disadvantaged as a result of such assignment.
22. **Governing Law:** These Terms are to be governed by and construed in accordance with the laws of New Zealand. The parties submit to the non-exclusive jurisdiction of the courts of New Zealand.
23. **Survival:** Any obligations in these Terms which are of a continuing nature or which are not fully satisfied and discharged on fulfilment or termination of a Purchase Order, will continue to apply.
24. **Anti-bribery:** The Supplier shall comply with all applicable laws, rules and regulations relating to anti-bribery laws. The Supplier 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 such Government Official, inducing such Government Official to act in violation of their lawful duty or securing any improper advantage.
25. **Consumer Guarantees Act:** The parties agree that the Goods are supplied by the Supplier to the Purchaser for business purposes in terms of sections 2 and 43 of the Consumer Guarantees Act 1993 and that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply to the Purchaser.
26. **Supplier Code of Conduct:** These Terms shall be subject to and the Supplier shall adhere to PepsiCo Inc.'s Worldwide Supplier Code of Conduct, available at <http://www.pepsico.com/sustainability/sustainable-sourcing>, as amended from time to time.
27. **Raw Material Quality and Food Safety Policy:** The Supplier must comply with the provisions of the Purchaser's Raw Material Quality and Food Safety Policy, as notified to the Supplier from time to time.
28. **Severance:** If any provision or part provision of these Terms is in any way unenforceable, invalid or illegal, it is to be read down so as to be enforceable, valid and legal. If this is not possible, the clause (or where possible, the offending part) is to be severed from these Terms without affecting the enforceability, validity or legality of these Terms and the remaining clauses (or parts of those clauses) which will continue in full force and effect.