



## TERMS AND CONDITIONS OF SUPPLY – ROGERS & COMPANY FOODS

**Rogers & Co. Foods Pty. Ltd. ACN 007 432 804** as trustee for the **D & H Rogers Family Trust ABN 64 545 853 194**

**Phone:** +61 3 9598 0711

**Email:** [admin@rogersfoods.com.au](mailto:admin@rogersfoods.com.au)

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### 1. Application

- 1.1. The following terms apply to all Orders by you from Rogers & Co. Foods Pty. Ltd. ACN 007 432 804 as trustee for the D & H Rogers Family Trust ABN 64 545 853 194 trading as Rogers & Company Foods (**us, we, our**).
- 1.2. Each Order is a separate agreement between you and us.
- 1.3. If you are not a natural person:
  - a) You warrant that any person that places an Order on your behalf is authorised to do so and will also do so as agent for each of your related entities that use or access our Products; and
  - b) You must procure that your Personnel comply with this Agreement, and you take responsibility for the acts and omissions of your Personnel.
- 1.4. By clicking 'accept' or submitting a Purchase Order or making any payment, you agree that you have read this Agreement and agree to be bound by this Agreement.

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### 2. Quotes

- 2.1. If we provide you with a Quote, unless the Quote states otherwise, it will be valid for 7 days from the date of issue and may be adjusted by us at any time prior to you placing a Purchase Order.
- 2.2. Quotes will contain the proposed Specifications of our Products.
- 2.3. A quoted Price is exclusive of all Taxes unless otherwise specified.
- 2.4. Any quoted times for delivery of Products are an estimate only.

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### 3. Orders

- 3.1. A Purchase Order (read together with this Agreement, whether or not it has been executed) will form a binding agreement when we either accept a Purchase Order in writing or commences work on supplying the Products (**Order**).
- 3.2. You must provide sufficient information with a Purchase Order (including, your name, ABN, email address, delivery address, postal address, home address and the address of your principal place of business).
- 3.3. A Purchase Order will only be accepted by us if it meets our minimum order requirements set

out in the Specifications of a relevant product (if applicable).

- 3.4. We will endeavour to confirm by email as soon as reasonably possible receipt of the Purchase Order.
- 3.5. If we accept the Purchase Order we will provide you with a tax invoice for payment.
- 3.6. We may refuse to accept a Purchase Order (or part of it) at our unfettered discretion.
- 3.7. If you discover that you have made a mistake with your Order, please contact our team immediately via email on [admin@rogersfoods.com.au](mailto:admin@rogersfoods.com.au). Please note we cannot guarantee that we will be able to amend your Order in accordance with your instructions and that additional fees may be applicable to process a change (please refer to clause 5 below).

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### 4. Cancellation of Order

- 4.1. If you cancel your Order less than 24 hours prior to us commencing work to supply the Products to you, we may charge you a cancellation fee and any costs incurred by us due to the cancellation.
- 4.2. If you cancel your Order after 24 hours of our acceptance, you indemnify us against any loss (including reasonable legal costs and expenses) or liability incurred or suffered by us arising from such cancellation.

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### 5. Variation to Order

If you request that we supply different or additional Products to those described in any Order, or if the Products are otherwise modified at your request, then the Price payable to us may need to change (**Change Notice**). We may provide you with a Change Notice, but no such notice will be effective unless accepted by you (which will have the effect of amending the relevant Purchase Order to the extent that it is inconsistent with the accepted Change Notice). If you do not accept the Change Notice, then we will continue to supply the Products specified in the Order unmodified.

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### 6. Price and payment terms

- 6.1. Unless otherwise agreed in writing or in accordance with the terms of your Credit Account, payment of the Price is due as per the payment term detailed on our tax invoice without set-off.
- 6.2. If no payment terms have been provided in our tax invoice, then you are required to make full payment, without set-off, of the Price within 30 days of the Order delivery.



- 6.3. We may change any advertised Price for any Product at any time without prior notice. A Price will not change once a Purchase Order has been accepted by us.

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## **7. GST**

- 7.1. To the extent that a party makes a taxable supply in connection with this Agreement to the other party then, except where express provision is made to the contrary, the amount payable by the recipient of that supply is a GST exclusive amount and the recipient of that taxable supply will pay to the supplier of it the GST payable in respect of that supply in addition to the other consideration payable.
- 7.2. A party's right to payment of the GST is subject to a valid tax invoice being delivered to the party liable to pay for the taxable supply.

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## **8. Failure to pay**

- 8.1. Where you fail to make full payment of the Price by the due date, we may at our option:
- a) Delay the delivery of the Products listed in the Order until full payment is made; and/or
  - b) refuse to supply you with further the Products set out in the Order; and/or
  - c) require you to pay for Products in full prior to delivery; and/or
  - d) impose interest on any overdue amounts at 12% per annum, calculated daily.
- 8.2. Time is of the essence in respect of your obligation to pay the Price in full and without set-off.
- 8.3. If we incur costs of collection of any amount you have failed to pay by the due date you agree to indemnify us against such costs.

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## **9. Delivery**

- 9.1. We will use reasonable endeavours to deliver the Products in the manner specified in the Order to the delivery address you set out in the Purchase Order.
- 9.2. You must provide immediate written notice to change the delivery address. We will endeavour to work with you to amend the delivery address but cannot guarantee a change of delivery address.
- 9.3. The Products will be deemed as delivered at the time the Products are delivered to the delivery address detailed on the Purchase Order or other such address as agreed between you and us.

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## **10. Defects**

- 10.1. You must inspect the Products within 7 days of delivery and provide us with a notice of rejection (if the Products are non-compliant with the Specifications or relevant food safety stands) (**Defective Products**). If you fail to provide such notice to us within 7 days of

delivery, the Products will be deemed to be accepted.

- 10.2. To the maximum extent permitted by law, we will not be liable in any way whatsoever for any defect in any Products dispatched to you or collected by or on your behalf of from our premises unless you give written notice to us specifying the nature of any claim within 24 hours from the date of receipt of goods.
- 10.3. If you notify us of any Defective Product in accordance with clause 10.1, we will (at our election):
- a) refund any Price paid in respect of the Defective Product; or
  - b) replace the Defective Products.

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## **11. Delay**

- 11.1. You acknowledge that we will not be responsible for delays in delivering the Products to the extent we are not directly and solely responsible for the delay or the delay is within our rights under this Agreement.
- 11.2. We will, as soon as practicable, notify you of any actual or anticipated delay in delivery.
- 11.3. If we fail to supply the Products in the manner specified in the Order, we will (at our election):
- a) deliver the Products at a later date, upon notice to you; or
  - b) cancel the Order subject to the delay.
- 11.4. We cannot guarantee the quality of any consumable goods (including food products) and are not liable to replace or refund any consumable goods that experience delayed shipping and delivery times beyond our control.

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## **12. Title and risk**

- 12.1. The title in the Products passes to you on full payment of the Products specified in the Order.
- 12.2. The risk in the Products passes to you on delivery of the Products to the delivery address specified in the Purchase Order.
- 12.3. Upon risk in the Products passing to you, you acknowledge and agree that it is your responsibility to ensure that the Products are properly maintained, stored and protected.
- 12.4. We are not liable for:
- a) any imposed duties, including any customs tax or delivery tax;
  - b) any Orders that are detained by customs in any country, including any orders that are detained indefinitely or delivered outside the estimated timeframes; and
  - c) loss of any Orders due to untraceable consignments numbers.

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## **13. Recall action**

- 13.1. If you become aware that a Recall Action is necessary or desirable because:
- a) the Products pose a risk to health or safety, including death or personal injury;



- b) the Products do not comply with relevant laws and/or any mandatory industry codes or standards;
  - c) the Products are defective or damaged;
  - d) a relevant authority has ordered or directed, or is likely to order or direct, that the Products be the subject of a Recall Action or otherwise withdrawn; or
  - e) for any other reason, you must immediately notify us in writing of that fact
- 13.2. You must cooperate with us and provide all reasonably requested or necessary information and assistance to us in respect of addressing, implementing, and communicating about, any Recall Action.
- 13.3. If you decide to conduct a voluntary Recall Action, that is not otherwise legally mandated, we will not be responsible for any costs associated with conducting such Recall Action.
- 13.4. You must bear all costs associated with and resulting from any Recall Action unless and to the extent a mandatory Recall Action arises directly due to our negligent act or omission.

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#### **14. Credits and refunds**

You can make a claim for a refund or credit if a Product was not provided or there is a defect with a Product.

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#### **15. Set-off**

If you owe money under one Order, we may set-off that money against any money that we owe to you under another Order.

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#### **16. Warranties**

- 16.1. If you are a consumer under the ACL, the Products come with guarantees that cannot be excluded under the ACL, and you are entitled to:
- a) your choice of a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage; or
  - b) our choice of having the Products replaced or refunded if failure does not amount to a major failure. We'll do this within a reasonable time.
- 16.2. To the extent permitted by law, we exclude all other guarantees, warranties, undertakings and representations expressed or implied, whether arising by statute or otherwise, which are not given in this Agreement or any warranty document given at the time of supply.

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#### **17. Your responsibilities**

You are solely responsible for any use of the Products.

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#### **18. Suspension of services**

We may limit, suspend or cancel the provision of Products to you:

- a) in the event of an emergency, where the supply is or likely to be unlawful or in our

reasonable opinion the supply is likely to cause death, injury or damage to property;

- b) if you do not pay us any amounts due for the Products on time; or
- c) if an administrator or receiver is appointed to you or you are unable to pay your debts as and when they fall due.

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#### **19. Liabilities**

- 19.1. Where the ACL applies, and the Services are not of a kind ordinarily acquired for personal, domestic or household use or consumption, our liability under the ACL is limited, to the extent permitted by law (and provided it is fair and reasonable to do so) re-supplying the Products.
- 19.2. Other than as specifically accepted by us above, we are not liable for any other losses or damage you may suffer, including any:
- a) loss caused by you or to the extent it results from your failure to take reasonable steps to avoid or minimise that loss;
  - b) loss caused by events falling outside our reasonable control;
  - c) indirect or consequential losses (including loss of revenue, profits, enjoyment or loss of business), or losses you might suffer as a result of unauthorised access to information we hold.

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#### **20. Indemnity**

You indemnify and keep indemnified, us and our Personnel from and against any loss (including reasonable legal costs and expenses) or liability incurred or suffered by us arising from any claim, demand, suit, action or proceeding by any person against us where such loss or liability arose out of, or in connection with your acts or omissions or breach of this Agreement, or your use of the Products.

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#### **21. Termination**

- 21.1. If you commit an Act of Default which is not remedied within 5 days of us giving written notice to do so, we may terminate this Agreement or suspend supply until you remedy the Act of Default.
- 21.2. If we terminate this Agreement all the amounts payable by you to us will immediately become due and payable notwithstanding that the due date has not yet arisen.
- 21.3. If we commit an Act of Default which is not remedied within 5 days of you giving written notice to do so, you may terminate this Agreement and obtain a refund of any amount of the Price already paid for Services not delivered, less any other amounts due and payable to us.

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#### **22. Variations**



We may amend this Agreement at any time by posting such amendments on the Website. In relation to an Order, you will be bound only to the version of the terms in force at the time of that Order.

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**23. Confidentiality**

All information supplied by a party to the other party will be treated as confidential except to the extent that it becomes public knowledge (otherwise than through a breach of confidentiality) and must not be disclosed to a third party without the prior written consent of the party who originally supplied the information, or as required by law.

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**24. Force majeure**

Neither party will be liable for any delay or failure in the performance of any obligation or the exercise of any right under this Agreement (other than an obligation to pay money due) or for any loss or damage if such performance or exercise is prevented or hindered in whole or in part by reason of an event beyond that party's reasonable control.

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**25. Disputes**

- 25.1. If a dispute arises under this Agreement, the party claiming that a dispute has arisen must give notice to the other party specifying the nature of the dispute and the parties will attempt to negotiate a resolution in good faith.
- 25.2. If a dispute persists for more than 14 days, either party can refer the dispute to mediation before a mediator to be appointed by the Australian Commercial Disputes Centre. The costs of mediation will be shared by the parties equally.
- 25.3. Save for seeking urgent interlocutory or injunctive relief, neither party may issue court proceedings in relation to a dispute until resolution by mediation has been attempted.

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**26. Severability**

If any portion of this Agreement is deemed by a Court of competent jurisdiction to be invalid, then the remainder of this Agreement shall remain in full force and effect and the offending provision or provisions severed.

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**27. Assignment**

Neither party may assign, novate or otherwise transfer any of its rights or obligations arising out of or under this Agreement to another person without the other party's prior written approval (which will not be unreasonably withheld).

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**28. Entire agreement**

- 28.1. If you do not have a Credit Account with us, then this Agreement together with our tax invoice represents the entire agreement between the parties in relation to the supply of

Products and supersedes all prior discussions, negotiations, understandings and agreements.

- 28.2. If you have a Credit Account with us, then this Agreement together with our tax invoice and the Credit Account agreement supersedes all previous agreements, understandings, negotiations and warranties about its subject matter and embodies the entire agreement between us about its subject matter.

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**29. Governing law**

This Agreement will be governed by the Laws of Victoria. Each party irrevocably submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in that jurisdiction.

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**30. Waiver**

A provision of this Agreement, or right, power or remedy created under its terms, may not be varied or waived except as agreed in writing.

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**31. Relationship**

Nothing contained in this Agreement constitutes the relationship of a joint venture, agency, partnership or employment between the parties and it is the parties' express intention to deny such relationships. The parties' only relationship is that of purchaser and supplier.

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**32. Unfair terms to be read down**

- 32.1. If any law making unfair contract terms void or unlawful could apply to a term in this Agreement, the following rules apply to interpreting that term:
- 32.2. if the law would make the term void or unlawful because the term permits us to exercise a right or discretion in a way that would cause detriment to you, the term shall be read down and construed to the extent as not to permit us to exercise the right or discretion in such a way.
- 32.3. if the law would make the term void or unlawful because it authorised us to recover costs or losses or damages to be calculated in a way we chose, the term shall be read down and construed as authorising us to recover the maximum reasonable costs, losses and damages to be calculated in a reasonable way that did not cause the term to be void or unlawful.
- 32.4. If, despite the application of this clause, the law would make the term void or unlawful, the term is to be read down and construed as if it were varied, to the minimum extent necessary, so that the term is not void or unlawful. These reading down rules apply before any other reading down or severance provision in this Agreement.

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**33. Interpretation**

In this Agreement:



- a) headings, bold type and square brackets are for convenience only and will not affect interpretation of this Agreement;
- b) words in the singular include the plural and words in the plural include singular, according to the requirements of the context;
- c) a reference to a legislation or other Law includes delegated legislation and consolidations, amendments, re-enactments or replacements of any of them;
- d) a reference to any of the words "include", "includes" and "including" is read as if followed by the words "without limitation";
- e) terms used that are defined in the GST Act have the meaning given in that Act, unless the context otherwise requires;
- f) a party includes its agents, successors and permitted assigns;
- g) a document includes all amendments or supplements to that document;
- h) a clause, term or party is a reference to a clause or term of, or party, to this Agreement;
- i) a monetary amount is in Australian dollars and all amounts payable under or in connection with this Agreement are payable in Australian dollars;
- j) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this Agreement or any part of it;
- k) to the extent of any of any conflict between this Agreement and the term of your Credit Account, the terms of your Credit Account will prevail.

#### **34. Definitions**

**Agreement** means these terms, together with the Quote and/or Order.

**ACL** means the Australian Consumer Law.

**Act of Default** occurs if either party:

- a) commits a material breach of this Agreement;
- b) is unable to pay its debts as and when they fall due;
- c) commits an act of bankruptcy, enters into any composition or arrangement with its creditors or does anything which would make it liable to be put into liquidation; or
- d) has a receiver, other form of insolvency administrator or statutory or official manager appointed over any of its assets.

**Credit Account** means the agreement between you and us relating to the ongoing credit provided by us in relation to the payment terms for the purchase of Products.

**Defective Product** has the meaning given to that term in clause.

**GST** means GST within the meaning of the GST Act.

**GST Act** means *A New Tax System (Goods and Services Tax) Act 1999* (as amended from time to time).

**Recall Action** means in relation to the Products, any one or more of a recall, market withdrawal, stock recovery, product correction, and/or advisory safety communication, or similar action required by law or otherwise deemed reasonably necessary by us or you.

**Order** has the meaning given to it in clause 3.1.

**Personnel** means a request for the supply of a particular volume of Products issued by you to us in accordance with this Agreement.

**Price** means the amount payable for the Products specified in an Order.

**Purchase Order** means any request for the provision of a Product.

**Quote** means our offer to perform Services for you.

**Products** means all dairy products available on the Website delivered by us to you as identified in an Order.

**Site** means the premises or location in which the Services take place.

**Specifications** means any official specifications or descriptions provided by us regarding the Products.

**Taxes** means taxes, levies, imposts, duties, excise, and charges, deductions or withholdings, however described, imposed by Law or government authority or agency other than Australian GST or any tax imposed on, or calculated having regard to, net income.

**Website** means [www.rogersfoods.com.au](http://www.rogersfoods.com.au).

**Working Hours** means our usual working hours from 9:00 AM to 5:00 PM, Monday to Friday (except public holidays).