

Chefs Pantry - Terms and Conditions of Sale 2011

1. Definitions

1.1 In these terms and conditions of sale:

- **goods** means any goods supplied by us to you;
- **Chef's Pantry** means Chef's Pantry Pty. Ltd. and its related bodies corporate (as defined in the *Corporations Act 2001*);
- **we or us** means Marleef Pty Ltd (ABN 78 081 561 435), the member of the Chef's Pantry indicated on the invoice we provide to you. Where that member is Chef's Pantry Chef's Pantry acts in its capacity as agent as described in clause 1.2; and
- **you or your** means the person or company whose name and address is set out in a credit application made to us.

1.2 Chef's Pantry acts as agent for and on behalf of:

- Chef's Pantry Hospitality in connection with the sale of hospitality products;
- Chef's Pantry Bakery in connection with the sale of bakery products,
- Chef's Pantry fresh in connection with the sale of fresh cut fruits and vegetables, herbs, and so on.
- Chef's Pantry Distribution Pty Ltd in connection with the sale of gourmet food products including but not limited to specialty cheeses, larder, smallgoods, Asian products and all associated products.

2. Orders and order acknowledgements

2.1 Any information we provide in respect of the goods (including price lists) does not constitute an offer to sell but constitutes an invitation to treat only, and is subject to the availability of the goods, which may change from time to time.

2.2 Your order or offer to purchase is an offer to purchase goods at our current price at the date of delivery (plus any delivery charges or other applicable charges payable by you) and is deemed accepted by us unless we notify you otherwise.

2.3 Your order or offer to purchase goods which is accepted by us and the contract made by that acceptance (**Supply Contract**) are subject to these terms and conditions of sale.

2.4 We reserve the right to accept or reject in our absolute discretion any orders we may receive for any reason, including, without limitation, the rejection of your application for credit, you failing to pay for other goods that you have ordered, the unavailability of goods, an error in the price or the description of goods, or an error in the order placed by you.

2.5 A Supply Contract is not subject to any terms or conditions put forward by you unless we expressly accept in writing those terms and conditions.

2.6 Once a Supply Contract is formed between you and us, the terms and conditions of that Supply Contract can only be amended or varied by written agreement between you and us. However, we may vary these terms and conditions of sale by giving you 7 days written notice specifying the variation to pricing, terms and conditions of sale. Such notice may be given by mail, fax or email.

3. Price

Our prices are subject to alteration without notice. Unless we otherwise agree in writing, the price payable for the goods will be our current price at the date of delivery (plus any delivery charges or other applicable charges payable by you).

4. Goods specifications

We may change the specifications or ingredients of any goods from time to time and we are not required to notify you of such a change.

5. Payment

5.1 You must pay for the goods in the manner reasonably specified by us and on the payment terms we notify to you from time to time. We reserve the right to pass on any costs associated with particular forms of payment (for example merchant fees charged on credit card payments). If payment falls due on a weekend or public holiday, payment is required by the preceding working day.

5.2 If payments are not made on time, we may, in our absolute discretion:

- refuse to supply you with further goods; or
- require you to pay for all goods in full prior to the goods being supplied to you.

5.3 Time is of the essence in respect of your obligation to make payment for goods sold by us to you.

5.4 Any payments you make to us will be applied as follows:

- first, as reimbursement in accordance with clause 6.2(2) for any collection costs and expenses we incur;
- second, in payment of any interest charged to you in accordance with clause 6.2(1); and
- third, in satisfaction or part satisfaction of the oldest portion of your account.

5.5 If an amount is payable by you to us, we are entitled to set-off that amount against any amount payable by us to you.

6. Default

6.1 You will be in default if you breach these terms and conditions or any Supply Contract including if:

- payment in full for the goods is not made by the due date;
- you dispose of or give any security over your business or a material part of your business;
- you attempt to assign or transfer the benefit of these terms and conditions or a Supply Contract without first obtaining our consent in writing;
- if you are a corporation, and you suffer a change in majority control whether by a change in voting shareholders or by a change in directors without first obtaining our consent in writing;
- if you are an individual, and you are declared or commit an act of bankruptcy, enter into an arrangement or composition with your creditors, sign an authority under Part X of the Bankruptcy Act or any execution is levied against your property; or
- if you are a corporation, and you suffer the appointment of controller, administrator, receiver, receiver and manager, provisional liquidator or liquidator, have winding up proceedings initiated against you, have any execution levied against your property or cease or threaten to cease carrying on business.

6.2 If you are in default within the meaning of clause 6.1, we will be entitled to:

- charge interest on all amounts you owe us at the rate of 3% per month calculated daily and payable by you for each day immediately following the due date for payment until payment is made in full;
- be reimbursed for, and recover from you, all costs and expenses incurred by us in seeking to collect amounts owed by you, including, without limitation, the costs of any collection agents we engage, and the legal costs (on a solicitor and client basis) we pay;
- immediate payment for all goods purchased by you from us, the payment of which would otherwise not have been then due and payable;
- terminate or suspend delivery of any order which is the subject of any other sale between you and us; and
- terminate any Supply Contract and cease providing you with goods under these terms and conditions. We will not be obliged to notify you before exercising our rights as outlined above and these rights will be in addition to any other rights that we may have.

7. Delivery

7.1 You must notify us in writing (including sufficient particulars) within 12 hours of delivery if you claim that the goods were defective, short delivered or otherwise not the goods specified in the Supply Contract. If you fail to notify us as set out in this clause, then to the fullest extent permitted by law, the goods must be treated as having been accepted by you, and you must pay for the goods and, to the fullest extent permitted by law, we will be discharged from any liability in respect of the goods being wrong or defective or short delivered.

7.2 Every effort will be made to deliver the goods within the time or times agreed upon, but any time quoted for delivery is an estimate only and failure to deliver by that time will not constitute a breach of contract. We will not be liable for any loss or damage howsoever arising as a result or consequence of any delay in delivery or any failure to deliver. You will not be relieved of any obligation to accept or pay for goods by reason of any delay in delivery.

7.3 Delivery will occur when the goods are first left with you or at your premises or at any other place nominated by you and agreed by us. We will not be required to obtain your signature as proof of delivery. All the risk in the goods passes to you upon delivery.

7.4 Minimum order – Minimum order value applies to all deliveries and are at the discretion of the supplier. Orders under the minimum order amount will incur a delivery fee.

8. Title to goods

8.1 Notwithstanding anything to the contrary in these terms and conditions, property in the goods will remain with us and title will not pass to you until we have received payment in full for the goods and for all sums owing on all of your other accounts with us or under any contract made with us.

8.2 If payment is made by way of cheque or other negotiable instrument, title in the goods will not pass to you until the cheque or other negotiable instrument has been honoured or cleared by our bankers.

8.3 From the time that the goods are delivered to you by us until the time that title passes to you in accordance with clause 8.1, you take custody of the goods and retain them as the fiduciary agent and bailee of us.

8.4 If you fail to pay us for the goods by the due date for payment in accordance with these terms and conditions, you (without prejudice to our full rights and remedies to retake possession of the goods from you and recover the debt in full) hereby agree to deliver up to us upon demand, and consent to us entering premises in which the goods are stored and retaking possession of, those goods for which you have not paid. Thereupon, we will be entitled to sell the goods to a third party.

8.5 The parties acknowledge that by supplying goods on these terms and conditions, it is not intended to create a charge, mortgage or other security interest over any of the goods supplied.

9. Recalls

In the event of a product recall over goods you have acquired from us, you shall give us such assistance as we reasonably require in relation to that recall.

10. Certificates

10.1 In the absence of manifest error, our written records in relation to a delivery of goods will be conclusive evidence of the type and quantity of goods delivered and of the date and time of delivery.

10.2 In the absence of manifest error, certification from our authorised representative will be conclusive evidence of the amount owed for the goods.

11. Exclusion of warranties and liability

11.1 Except as expressly provided in clause 11.5, all conditions and warranties, whether express or implied by law or otherwise, in respect of:

- the state, quality or condition of goods; or
- the advice, recommendations, information or services regarding the goods, their use and/or their application,
- which may apart from this clause be binding on us are excluded to the fullest extent permitted by law. The only conditions and warranties which are binding on us in respect of:
- the state, quality or condition of the goods supplied by us to you; or
- advice, recommendations, information or services supplied by us, our employees, servants or agents to you regarding the goods, their use and/or their application, are those conditions and warranties which cannot lawfully be excluded.

11.2 Our sole liability for any breach of any actual or implied condition or warranty that cannot lawfully be excluded will be limited to, at our election:

- replacement of the goods or the supply of equivalent goods; or
- (2) the payment of the cost of replacing the goods or of purchasing or acquiring equivalent goods.

11.3 You acknowledge that you do not rely, and it is unreasonable for you to rely, on our skill or judgment as to whether the goods supplied are reasonably fit for any purpose for which you are acquiring them.

11.4 Any description of the goods contained in the order or invoice is given by way of identification only and the use of such description will not constitute a contract of sale by description.

11.5 We warrant that we will provide you with good title to the goods and that the goods will be of merchantable quality.

11.6 Except to the extent provided in clause 11.1, 11.5 and such liability as may not otherwise be lawfully excluded or limited, we have no liability (including liability in contract, negligence or under statute) to any person for:

- any loss or damage consequential or otherwise suffered or incurred by that person in relation to the goods or advice, recommendations, information or services in relation to the goods; and
- in particular, but without limiting clause 11.6(1), any loss or damage, consequential or otherwise, suffered or incurred by that person caused by or resulting directly or indirectly from any failure, defect or deficiency of any kind of or in the goods or advice, recommendations, information or services in relation to the goods.

11.7 The application of the United Nations Convention on Contracts for the International Sale of Goods (known as the Vienna Sales Convention 1980) is excluded.

12. Indemnity

12.1 To the fullest extent permitted by law, you indemnify us, and agree to keep us indemnified, against:

- (1) all losses we incur;
- (2) all liabilities we incur; and
- (3) all costs actually payable by us to our own legal representatives (whether or not under a costs agreement) and other expenses we incur in connection with a demand, action, arbitration or other proceeding (including mediation, compromise, out of court settlement or appeal), arising directly or indirectly as a result of or in connection with the supply of goods by us to you;
- (4) except to the extent that we incur such losses, liabilities and/or costs as a result of our breaching the warranties set out in clause 11.5 or a condition or warranty which cannot lawfully be excluded under clause 11.1; or
- (5) unless we incur such losses, liabilities and/or costs due to wilful misconduct on the part of us or any of our employees or agents acting within the scope of their employment.

12.2 You must pay to us all liabilities, costs and other expenses referred to in clause 12.1, whether or not we have paid or satisfied them.

13. GST

13.1 Save for defined terms in this Agreement, capitalised expressions set out in this clause bear the same meaning as those expressions in the A New Tax System (Goods and Services Tax) Act 1999.

13.2 Except where express provision is made to the contrary, and subject to this clause, any amount that may be payable by you to us under these terms and conditions is exclusive of any GST. If we make a Taxable Supply to you under these terms and conditions for a Consideration which represents its Value, then you must also pay, at the same time and in the same manner as the Value is otherwise payable, the amount of any GST payable in respect of the Taxable Supply. Our right to payment under this clause is subject to a valid Tax Invoice being delivered to you.

14. Force majeure

If a party is prevented from or delayed in complying with an obligation (other than to pay money) under these terms and conditions or a Supply Contract by an event beyond its reasonable control, performance by it of that obligation is suspended during the time, but only to the extent that, compliance is prevented or delayed.

15. Miscellaneous

15.1 If you are acting as the trustee of any trust (whether disclosed or not), then you declare that you are entering any Supply Contract both in your own capacity and as trustee of the trust with the ability to bind, and the intention of binding, both parties to the supply agreement.

15.2 If anything in these terms and conditions or a Supply Contract is unenforceable, illegal or void then it is severed and the rest of these terms and conditions or the Supply Contract remains in force.

15.3 These terms and conditions:

- represent the entire agreement and understanding between the parties on everything connected with its subject matter except to the extent that any terms are imposed by law and cannot be excluded; and
- supersede any prior agreement or understanding on anything connected with that subject matter.

15.4 You may not assign or otherwise deal with a Supply Contract without our consent which we may give or withhold at our absolute discretion. We may assign or otherwise deal with a Supply Contract without your consent.

15.5 These terms and conditions and each Supply Contract will be read and construed in accordance with the laws of the State of Victoria and both parties agree to submit to the jurisdiction of the courts and tribunals of that State and of the Commonwealth.

15.6 All of the rights and obligations of each party under these terms and conditions which are expressed as surviving termination and/or expiry, or which by their nature or context must survive termination and/or expiry, will survive the termination and/or expiry of these terms and conditions.