

DAVIES FOODS (2006) LIMITED TERMS AND CONDITIONS OF TRADE

Applicable terms and acceptance of order

These terms and conditions of trade between DAVIES FOODS (2006) LIMITED (the "Company") and the company, partnership, trust or person (the "Purchaser") shall apply to all orders for household domestic and food products ("Goods") accepted by the Company from the Purchaser and that in the case of conflict or dispute these terms and conditions shall prevail and take precedence over any document or oral message from the Purchaser. Where the Company fails to enforce any terms or conditions under this contract the Company will not be deemed to have waived these rights with respect to any term or condition or right. Any waiver or consent of the Company will be in writing and will apply only to the specific purpose for which it is given. If any part of these terms and conditions are held to be illegal, invalid or unenforceable the remaining terms and conditions will remain in force and effect.

The Purchaser acknowledges that these terms and conditions of trade constitute a Security Agreement as defined by the Personal Property Securities Act 1999 ("PPSA"). For the purposes of the PPSA, Collateral shall include all and any Goods sold by the Company to the Purchaser and the proceeds thereof. The Purchaser agrees to give the Company a security interest in all of the Purchaser's present and after-acquired property that the Company has supplied and not to allow any person to file a finance statement over any of the Collateral secured by this Security Agreement without the prior written consent of the Company.

Price

The Company shall publish a price list of its Goods ruling at the time of the order and upon receiving an order from the Purchaser and confirming to the Purchaser that shall be deemed as acceptance by the Company of the order.

The Company reserves the right to alter its prices by notification on its website (www.daviesfoods.co.nz) and by giving two (2) weeks notice. Prices include freight but are exclusive of GST, insurance and other handling charges.

No cancellation after 14 days of date the Purchaser order

A Purchaser order to the Company for Goods may only be cancelled within 14 days of the date of order but otherwise cannot be cancelled without the Purchaser paying the full cost of the manufacture or procurement of the Goods to the time of cancellation.

No cancellation for Make to Order Goods

Upon acceptance of a Company price and description of the Goods by the Purchaser or Purchaser order to the Company for Goods that are manufactured or procured specifically for the Purchaser (meaning non standard or

indented to order) and upon approval of art work and trial production; an order cannot be cancelled without the Purchaser paying the full cost of the manufacture or procurement of the Goods to the time of cancellation

Delivery

Delivery by the Company to the site of the Purchaser or where the Purchaser uplifts the Goods from the premises of the Company and to +/- ten per cent (10%) quantity of that declared in the Company quotation or Purchaser order shall constitute delivery. Delivery of Services shall be when Services are completed according to the description of the quotation or Purchaser order.

The Purchaser agrees that any employee or agent of the Purchaser who signs for delivery shall be authorised to accept delivery and the Company will not be held liable for missing Goods where a signature has proven delivery.

If the Purchaser is not ready to accept delivery at the time the Company is ready to supply the Company may charge stand by costs and storage costs.

The Company will make every effort to ensure delivery of Goods on time but will not be liable for any loss or damage or consequential loss to the Purchaser arising from delays in delivery.

Goods may be delivered separately and in such case each delivery will be regarded as a separate contract and subject to the same payment terms. Failure or delay by the Company in making delivery at a specified time shall not cancel or repudiate the contract. Claims for shortages of delivery of Goods must be notified to the Company within seven (7) days of delivery with a copy of the signed delivery dockets recording the quantity of Goods delivered and verified by the Purchaser and the carrier.

Payment

Payment shall be made according to the terms of the order by full payment for Goods by the 20th of the month following the date of invoice OR other terms that shall be declared in the confirmation of order. The Purchaser agrees that the Company has sole discretion to apply payments from the Purchaser to any transaction or Company invoice notwithstanding that the Purchaser may have applied the payment to a particular transaction or invoice.

If at any time the Company reasonably deems the credit of the Purchaser to be unsatisfactory, it may require the Purchaser to provide at the Purchaser's cost, security for payment and/or the Company may suspend performance of its obligations under this contract until security is provided to its satisfaction and the Company may require the Purchaser to pay all costs incurred as a result of suspension and re-commencement of supply including legal and debt collection costs.

Interest for Late Payment

The Company may charge interest on any money's outstanding under this contract on a daily basis at a rate equal to 5% above the bank indicator lending rate of the Company. Interest is payable from the date payment was due until the date the Company receives payment. The right of the Company to charge interest is without prejudice to its other rights or remedies for the Purchaser's default in failing to pay on the due date, and the Company may suspend performance of any of its obligations and secure any Goods it has supplied and in the Purchasers possession until payment is made in full.

Risk, Ownership and Title

The Purchaser agrees to accept risk in the Goods for any loss, theft, damage or deterioration of or to the Goods upon delivery and while in the possession of the Purchaser. This means that the Purchaser agrees to properly store, protect and insure the Goods under its risk policy. Failure by the Purchaser to properly protect and insure the Goods shall not absolve the Purchaser of the legal responsibility to the Company to pay for the Goods in the event of fire or loss damage or theft while under the care and responsibility of the Purchaser.

The Purchaser agrees that the Company has legal and equitable right to title in the Goods (ownership) until the contract price is paid. As long as ownership in the Goods is retained by the Company the Purchaser will store the Goods separately and in such a way that they are identifiable as the property of the Company.

The Company authorises the Purchaser to assign the Goods to a third party in the ordinary course of business only as the fiduciary agent and bailee of the Company and the Purchaser agrees to hold the proceeds of sale in a separate fund of trust for the Company until the Purchaser pays the Company in full without deduction or setoff.

The Company may revoke the authority given to the Purchaser to use the Goods or assign the Goods that have not been paid in full by giving written notice at any time if the Company deems the credit of the Purchaser to be unsatisfactory or if the Purchaser is in default of its obligations under this contract or any other contract between the Company and the Purchaser.

The contract shall be deemed automatically revoked if the Purchaser commits any act of bankruptcy, enter into any composition or arrangement with creditors, or (in the case of a Company) do any act which would render it liable to be liquidated or if a resolution is passed or proceedings commenced for the liquidation of the Purchaser or a Receiver is appointed in respect of all or any assets of the Purchaser.

In any event where Goods remain unpaid by the Purchaser the Company has unreserved right to enter the premises of the Purchaser or its agents during normal business hours and remove Goods relating to the unpaid amount in accordance with the Credit (repossession) Act and may resell all and any of the Goods and apply the proceeds towards payment of the contract price and the Purchaser will not hold the Company responsible for any economic or consequential loss that the Purchaser may suffer as a result, whether the Goods are attached to other goods owned by the Purchaser, or not.

Personal Property Securities Act (PPSA)

Upon signing these terms and conditions of trade the Purchaser acknowledges that:

- (a) these terms and conditions are a Security Agreement for purposes of section 36 of the PPSA and,
- (b) a security interest is taken in all Goods previously supplied to the Purchaser by the Company and in any and all Goods that will be supplied in the future by the Company to the Purchaser during the continuance of the parties relationships.

The Security Agreement is a continuing security and will operate irrespective of any intervening payment or settlement of account until the Company has signed a release. The security interest granted in the Collateral has the same priority in relation to all and any Goods supplied to the Purchaser by the Company at any time.

The Purchaser shall inform its creditors of the terms upon which it buys Goods from the Company including that the Company may create and register a Purchase Money Security Interest over the Goods under the Personal Property Securities Act and that the Purchaser agrees to waive the right to receive a verification statement for purposes of s.148 of the Act and shall also inform any Trustee in Bankruptcy or Liquidator of the Purchaser or any Receiver of the Purchaser's business or assets of the rights of the Company and title to the proceeds of sale.

Intellectual Property of the Company

The Purchaser agrees that where the Company provides written instructions, written technical advice, art work, drawings, designs or samples the ownership (whether they are trade marked or not) shall remain the intellectual property of the Company and the Purchaser agrees that it can only use the intellectual property in the use of the Goods and that it will not give or assign the intellectual property of the Company to any third party.

Purchaser providing Intellectual Property or Specifications for Product Numbering and Colour

Where the Company has followed specifications for art work or drawings, for labels or trade marks, bar codes or product numbering or copyright provided by the Purchaser, the Purchaser shall indemnify the Company against damages, costs and expenses in respect of which the Company may become liable by following such specifications and including those arising from the provision of defamatory information or the infringement of patents, copyrights or trademarks by the Purchaser or contrary to any laws or industry codes or standards.

Where the Purchaser has provided specifications for bar codes or product numbers or markings or symbols or labels and instructions for placing on the Goods the Company will provide the bar code or product numbering or markings or symbols or labels in accordance with EAN verification guidelines (or such other barcode verification authority deemed appropriate by the Company) and the Company will not be liable if a bar code or product number is not readable (whether by a machine or person) or of the correct type, size or in the correct position on the Goods due to incorrect instructions of the Purchaser and the Purchaser shall indemnify the Company against damages, costs and expenses in respect of which the Company may become liable by following such specifications.

Purchaser providing Materials for use in supply of Goods

Materials (ingredients, bottles, closures, labels and cartons) provided by the Purchaser to be used by the Company in its supply of the Goods must be provided at the Purchaser's own risk and in quantities determined by the Company and the Company will not be liable where materials are not in accordance with the specifications or not to standards and tolerances stipulated by the Company.

Company Guarantee & Warranty

The warranty of the Goods shall be for six (6) months as to merchandisable quality and the Company will not be responsible for failure of the Purchaser to satisfy itself as to the fitness of the Goods for purposes intended by the Purchaser. Where the Company accepts liability for damage or defect covered by its guarantee and elects to replace Goods the Company will conduct the replacement at no charge to the Purchaser.

The Company shall not be liable for any economic or consequential loss to the Purchaser arising out of any breach of the obligations of the Company and the liability of the Company whether in contract or pursuant to any cancellation of the contract or in act or otherwise in respect to all claims for loss, damage or injury the Purchaser may regard, shall be linked at the option of the Company to the repair or replacement of the Goods or to the price of the Goods.

The Company shall not be liable for any breach or failure to perform any of its obligations under this contract where such breach or failure is caused by war, bad weather, adverse environmental conditions, civil commotion, hostilities, strike or lock out, act of God, fire, governmental regulations or directions, or reasons force majeure caused beyond its reasonable control. The occurrence of such an event shall not give the Purchaser a right of cancellation of any contract.

Application of the Consumer Guarantees Act

Nothing in these terms is intended to have the effect of contracting out of the provisions of the Consumer Guarantees Act 1993 except to the extent permitted by that Act where the Purchaser acquires the Goods in a business situation for the business purposes of a business and all provisions of these terms shall be read as modified to the extent necessary to give effect to that intention. Where the Goods are purchased from the Company by consumer users or on-sold to consumer users for household or domestic purposes the conditions of the Act shall apply.

Claims for Damaged or Defective or Deteriorated Goods

The Company, at its discretion, will repair or replace any damaged or deteriorated Goods meaning Goods that are not of merchandisable quality provided that:

- the Purchaser makes a claim specifically identifying the damage or defect(s) within seven (7) days of the damage or defect occurring; and
- (b) the Company has reasonable opportunity to investigate the claim.

If the Purchaser does not comply with the above requirements, the Purchaser will be deemed to have accepted the Goods and the Company will not incur any liability whatsoever in relation to the Goods.

The Purchaser agrees that claims shall not be considered in respect of Goods that:

- have been improperly stored or suffered impact or environmental damage or deterioration.
- (ii) have been altered in any way different to the conditions in which they have been supplied.
- have been mixed with or attached to other goods of the Purchaser causing damage or deterioration to the Goods.
- (iv) have been used for purposes other than that declared by the Purchaser order.
- have been sold on tender or in non-standard lots and on a non-refundable basis as declared in the order.

Grounds for Termination by the Company

The Company immediately on written notice to the Purchaser may terminate this contract if an Event of Default of payments due to the Company by the Purchaser occurs for any reason.

Upon the termination of this agreement for any reason, all rights of the Purchaser granted by this agreement shall terminate. Terminations of this contract shall not relieve the Purchaser of its obligations to pay all money owed by it to the Company on any account whatsoever, which money shall be payable immediately notwithstanding that the date for payment of the money may not have arrived. Termination of this contract shall not relieve the Purchaser from liability arising from any antecedent breach of the terms and conditions of this contract.

Applicable Law for Dispute and Arbitration

In the event of any dispute between the Company and the Purchaser arising out of this contract the Purchaser agrees to pay the undisputed amount and the substantive laws of New Zealand shall apply and such dispute shall be referred to a Mediator to be agreed between the parties on a shared cost basis and upon failure to accept the resolution of the Mediator shall be referred to an Arbitrator to be agreed between the parties and upon failure to reach agreement arbitration be conducted in accordance with the New Zealand Arbitration Act 1996.