



# GENERAL CONDITIONS FOR SUPPLY OF GOODS & SERVICES TO AG WAREHOUSE PTY LTD

(Version: January 2024)

## 1 Agreement

- 1.1 The Vendor must deliver the Goods to, and/or provide the Services at, the Delivery Location for the Price in accordance with the terms of this Agreement.
- 1.2 This Agreement applies to the exclusion of any legal terms and conditions appearing on or forming part of the Vendor's dockets, invoices or other documentation (including, without limitation, any Vendor terms of sale).
- 1.3 This Agreement is made up of and specifically incorporates the Purchase Order, these general conditions, any other documents attached to, or prescribed in, the Purchase Order and any other written agreement between the parties (including via email), but excludes any document described in clause 1.2 unless agreed in writing as specifically incorporated into this Agreement by the parties. In the event of any inconsistency between the documents, the following order of precedence will apply: (a) the Purchase Order; (b) these general conditions; (c) any other documents attached to, or prescribed in, the Purchase Order; and (d) any other written agreement between the parties.

## 2 Purchase Order and Price

- 2.1 The Price of the Goods and/or Services will be set out in the Purchase Order. The Vendor will be deemed to have accepted a Purchase Order unless it rejects the Purchase Order within 2 Business Days of its receipt.
- 2.2 On acceptance of a Purchase Order (either expressly in writing or deemed under clause 2.1), the Vendor will be bound by this Agreement.
- 2.3 The Price is fixed and will not be subject to adjustment for rise and fall, exchange rate variations or any other reason, except as provided in this Agreement or as otherwise agreed in writing by an authorised representative of AGW.
- 2.4 Unless otherwise agreed in writing by both parties, the Price includes:
  - (a) all taxes, levies and fees (excluding GST) which are payable in relation to the supply of the Goods and/or Services. For the avoidance of doubt, the Vendor must pay all such taxes, levies and fees; and
  - (b) all costs associated with delivery to the Delivery Location, including the transport, loading and unloading of the Goods.
- 2.5 Payment by AGW of the Price will not be an admission that the Goods and/or Services comply with this Agreement.

## 3 Delivery

- 3.1 The Vendor must deliver the Goods to, and/or provide the Services at, the Delivery Location by the Delivery Date. AGW is not obliged to accept early delivery of the Goods or provision of the Services.
- 3.2 The Vendor must notify AGW immediately upon the Vendor becoming aware or having reasonable grounds to believe that it will not be able to deliver the Goods to, or provide the Services at, the Delivery Location by the Delivery Date.
- 3.3 Where a Purchase Order provides for a time for delivery of the Goods and/or Services, time is of the essence with respect to that delivery.
- 3.4 AGW may, at any time and without limiting any of its other rights and remedies, set off the Price or any fees or other charges payable to the Vendor under this Agreement against any fee, credit, rebate, debt, damages or other amount owed by the Vendor to AGW.
- 3.5 Goods will be deemed as delivered upon (a) the Goods being safely loaded or unloaded (as applicable) at the delivery bay of the Delivery Location in the presence of an authorised representative of AGW; and (b) a proof of delivery document being provided to AGW that includes the Purchase Order number for the Goods.

## 4 Rejection of Goods and/or Services

- 4.1 If AGW becomes aware or has a reasonable basis to believe that the Goods and/or Services may be defective or otherwise in breach of this Agreement (including any warranty given under clause 5) (**Defective Goods** or **Defective Services**, as applicable), AGW may (without limiting any other right available to it) require the Vendor to do any one or combination of the following:
  - (a) at the Vendor's cost, arrange for the certified destruction of the Defective Goods or removal of the Defective Goods from AGW's premises within a reasonable time notified by AGW;
  - (b) fully refund AGW in respect of any monies paid by AGW for the Defective Goods or Defective Services;
  - (c) at the Vendor's cost, supply replacement Goods or re-perform, rectify or repair Defective Services as soon as possible; or
  - (d) any other action reasonably directed by AGW to deal with the Defective Goods or Defective Services.

## 5 Warranties, intellectual property and policies

- 5.1 The Vendor warrants that:
  - (a) it has all necessary skills, experience, qualifications, resources, technology and know-how to supply the Goods and/or Services in accordance with this Agreement;
  - (b) all Goods and/or Services and the manner of their supply, comply with:
    - (i) all applicable Laws and Australian standards;
    - (ii) this Agreement (including their description in the Purchase Order or other document provided to AGW);
    - (iii) any relevant patterns, designs or specifications;
    - (iv) any quality assurance requirements set out in the Purchase Order or otherwise agreed by the parties in writing (including via email);
    - (v) any description or sample of the Goods and/or Services provided by the Vendor.
  - (c) all Goods will be of merchantable quality, fit for any purpose held out by the Vendor or made known by AGW and free from defects in design, materials and workmanship;
  - (d) the Goods will be suitably packed to avoid damage in transit or storage;
  - (e) the Goods (and any parts or items supplied as part of a Service) will be free from all security interests, liens and encumbrances and the Vendor has full title and ownership to sell the Goods;
  - (f) all Goods and/or Services will be supplied with the level of care, skill and diligence, and to a standard and level of quality that would reasonably be expected from a prudent, appropriately qualified and experienced Australian provider of goods or services similar to the Goods or Services;
  - (g) it holds and complies with all licences, certifications, permissions, authorisations, consents and permits necessary to supply the Goods and/or Services in accordance with this Agreement and in accordance with all Laws; and
  - (h) it has all Intellectual Property necessary to supply the Goods and/or Services in accordance with this Agreement, and that the supply of the Goods and/or Services will not infringe any third party's Intellectual Property rights.
- 5.2 The warranties in clause 5.1 are in addition to any warranties which are implied under the Australian Consumer Law.
- 5.3 The Vendor grants to AGW a royalty-free, perpetual and irrevocable licence to use, reproduce, modify, develop and otherwise exploit all Intellectual Property in the Goods and/or Services for the purpose of enjoying the benefit of the Goods and/or Services. All Vendor Intellectual Property will remain the property of the Vendor and all AGW Intellectual Property will remain the property of AGW. Nothing in this Agreement will assign or transfer title in or ownership of any Vendor or AGW Intellectual Property (as applicable) to other party.

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- 5.4 The Vendor must not use any AGW Intellectual Property, AGW's company name, trade name or business name or any AGW logo, insignia or designs in any way without the prior written consent of AGW.
- 5.5 The Vendor must, and must ensure that its Representatives and sub-contractors' Representatives, comply with Saputo's Supplier Code of Conduct, as amended from time to time, a copy of which has either been provided to the Vendor or is otherwise available at the following link: <https://www.saputodairyaustralia.com.au/en/our-promise/reference-documents>.

**6 Invoicing**

- 6.1 On delivery of the Goods or provision of the Services, the Vendor must give AGW a valid tax invoice (**Invoice**) for the Price. An Invoice must include: (a) a reference to the Purchase Order number; (b) a detailed description of the Goods delivered or Services provided in respect of which the Invoice relates; (c) an individual reference number for AGW to quote with remittance of payment; and (d) the Price claimed by the Vendor, broken down to reflect the Price component (if any) identified in the Purchase Order to which the Invoice relates.
- 6.2 If an Invoice provided by the Vendor does not satisfy the requirements of clause 6.1, AGW may reject the Invoice and require the Vendor to re-submit an Invoice which meets the requirements of clause 6.1.
- 6.3 If AGW requests, the Vendor must provide AGW with all relevant records to calculate and verify the amount set out in any Invoice (including, without limitation, proof of delivery documents).
- 6.4 Subject to clause 6.5, AGW must pay the Vendor the amount claimed by the Vendor in a valid Invoice which meets the requirements of clause 6.1 within 60 days of receipt of the Invoice by AGW.
- 6.5 If AGW has an objection to any Invoice (or part of an Invoice), AGW must pay the undisputed portion of the Invoice and the disputed amount will be resolved in accordance with clause 18. Payment of an Invoice in whole or in part will not preclude AGW from disputing that Invoice (or any part of that Invoice) at a later stage.

**7 GST**

- 7.1 Unless expressly stated otherwise in this Agreement, the Price does not include GST. AGW is not required to pay the GST component of the Price until AGW receives a *tax invoice* from the Vendor in respect of the *taxable supply*.
- 7.2 If an *adjustment event* occurs, the Vendor must issue an *adjustment note* and a payment must be made as between the parties to reflect the adjusted amount of the GST on the *taxable supply*.
- 7.3 Italicised expressions used in clause 7 have the meaning given to them in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**8 Risk and title**

- 8.1 Risk in the Goods (and any parts or items supplied as part of a Service) passes to AGW on delivery and acceptance of the Goods or Services by AGW, but without prejudice to any right of rejection or other rights which may accrue to AGW under this Agreement.
- 8.2 Title to the Goods (and any parts or items supplied as part of a Service), free from any encumbrance, passes to AGW on delivery and acceptance of the Goods or Services by AGW or when the Goods or Services are paid for in full by AGW, whichever occurs first.

**9 Indemnity**

- 9.1 The Vendor indemnifies AGW and its Representatives, on demand, for an amount equal to any loss, damage, liability, charge, expense or cost arising out of or in connection with:
- (a) personal injury or death or loss of, or damage to, any other property (including, without limitation, AGW's property arising out of or as a consequence of any act or omission of the Vendor or its Representatives);
  - (b) any breach by the Vendor of this Agreement;
  - (c) any claim that the Goods and/or Services or the manner of their supply infringes the Intellectual Property rights of a third party;
  - (d) any fraudulent, unlawful or negligent act or omission by the Vendor;
  - (e) any product liability claim against AGW to the extent caused by any Defective Good or Defective Service, or act or omission of the Vendor or its Representatives;
  - (f) any product recall or withdrawal relating to a AGW product to the extent caused or contributed to, by any Defective Good or Defective Service, or act or omission of the Vendor or its Representatives; and
  - (g) any product recall or withdrawal relating to the Goods,
- but the indemnity will be reduced proportionally to the extent that the loss, damage, liability, charge, expense or cost arises directly from AGW's fraud, wilful misconduct or gross negligence.

**10 Compliance with Laws and Directions**

- 10.1 The Vendor must supply the Goods and provide the Services to AGW in accordance with: (a) all applicable Laws, including (without limitation) Laws relating to occupational health and safety and chain of responsibility; and (b) any reasonable directions given by or on behalf of AGW from time to time.

**11 Anti-bribery and anti-corruption**

- 11.1 The Vendor must take all reasonable steps to ensure that it, its Representatives, related bodies corporate, and any other persons who perform services for or on behalf of them: (a) do not commit any act or omission which causes or could cause it or AGW to breach, or commit an offence under, any Laws prohibiting or relating to bribery, corruption, kickbacks, secret commissions, money laundering, financial or economic sanctions or similar (**Anti-Corruption Laws**); and (b) comply with Saputo's anti-corruption policies and procedures, as may be notified in writing to the Vendor by AGW prior to the date of this Agreement.
- 11.2 The Vendor must, to the extent permitted by Law, immediately notify AGW, in writing, if it becomes aware at any time of any known or suspected breaches of Anti-Corruption Laws by it, its Representatives or its related bodies corporate and any other persons who perform services for or on behalf of them.

**12 Modern slavery**

- 12.1 Without limiting the Vendor's other obligations in this Agreement, the Vendor must ensure that it and each of its Representatives (as applicable):
- (a) does all things required or necessary to mitigate or reduce modern slavery risks in its operations and supply chains and maintain compliance with the *Modern Slavery Act 2018* (Cth) and all similar laws, statutes and regulations, policies and procedures applicable to the Vendor (**Modern Slavery Laws**);
  - (b) promptly notifies AGW as soon as it becomes aware of a potential, suspected or actual breach by it or its Representatives of any Modern Slavery Laws in connection with the Agreement; and
  - (c) undertakes any remedial action requested by AGW to rectify any breach of Modern Slavery Laws or to ensure its compliance with Modern Slavery Laws and to minimise the risk of modern slavery within the Vendor's supply and value chains.

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12.2 AGW may from time to time conduct audits of the Vendor's compliance with clause 12.1 and Modern Slavery Laws on no less than 5 Business Days' notice to be conducted during normal business hours (**Modern Slavery Audit**). The Vendor must co-operate in any Modern Slavery Audit, including but not limited to providing information and documents, access to its premises and access to its Representatives, including for the purposes of conducting an interview.

12.3 If the Vendor fails to undertake the remedial action as required in clause 12.1(c) or AGW reasonably suspects that the Vendor has engaged, or is engaging, in any conduct or omission which may contravene any Modern Slavery Laws, then AGW may terminate this Agreement with immediate effect by giving written notice to the Vendor.

**13 Insurance**

13.1 The Vendor must effect and maintain policies of all relevant insurance (with appropriate policy limitations) that a supplier of the Goods and/or Services would reasonably maintain or which are required by Law, including professional indemnity insurance (if applicable) and public liability insurance for not less than \$10 million per occurrence, and appropriate workers compensation and plant and equipment insurance reflecting the nature, value and volume of Goods and/or Services to be supplied to AGW. The Vendor must provide AGW with evidence of the terms and currency of insurances if requested by AGW.

**14 PPSA**

14.1 The Vendor must notify AGW as soon as reasonably practicable if the Vendor intends to register a security interest in respect of the Goods on the PPS Register.

14.2 If the Vendor has registered a security interest in respect of the Goods on the PPS Register and the Vendor's interest in the Goods has ended (including, without limitation, due to AGW paying the Price for the Goods), AGW may request that the Vendor remove the security interest from the PPS Register. As soon as reasonably practicable following such request, the Vendor will at its cost procure the removal of the security interest from the PPS Register.

14.3 If, during the course of the relationship between AGW and the Vendor, AGW provides the Vendor with any assets or equipment of AGW, AGW may give notice to the Vendor requiring the Vendor to provide all reasonable assistance to AGW in relation to the registration of a security in respect of AGW's rights, including the execution of documents relating to such registration. The Vendor must comply with the requirements of that notice within a reasonable amount of time.

**15 Confidentiality**

15.1 The Vendor must keep confidential all Confidential Information of AGW which the Vendor receives or comes across in the process of supplying the Goods and/or Services under this Agreement.

15.2 The obligation of confidentiality under clause 15.1 does not apply to any information:

- (a) that is or becomes generally available to the public (other than by reason of a breach of this Agreement);
- (b) that is disclosed to its Representatives, related bodies corporate and advisers, in accordance with the confidentiality requirements of this Agreement;
- (c) where the Vendor can demonstrate that the Confidential Information was in its possession prior to the time of disclosure by AGW (and is not otherwise subject to obligations of confidence between the parties) or was independently developed without reliance upon AGW's information or document; or
- (d) which is required to be disclosed by any applicable Law.

**16 Suspension and termination**

16.1 Upon reasonable written notice to the Vendor, AGW may suspend all or part of the delivery of the Goods or provision of Services for any reasonable period. The Vendor must comply with such a notice and must recommence delivery of the Goods or provision of the Services within a reasonable time of any written notice from AGW requesting it to do so.

16.2 If a party is prevented from carrying out its obligations under this Agreement (fully or in part) due to a Force Majeure Event, the party will be relieved of that obligation to the extent that the Force Majeure Event prevents performance. A party affected by a Force Majeure Event must immediately notify the other party of the Force Majeure Event in writing and use its best endeavours to remedy or mitigate the effect of the Force Majeure Event.

16.3 Either party may terminate this Agreement with immediate effect by giving written notice to the other if:

- (a) the other party commits a breach of any warranty or material term of this Agreement which: (a) is not capable of remedy; or (b) is capable of remedy but the other party fails to remedy that breach within 10 Business Days from the date of receiving notice in writing requiring it to do so; or
- (b) the other party is subject to an Insolvency Event; or
- (c) a Force Majeure Event has subsisted for a continuous period of 4 weeks.

16.4 If this Agreement is terminated prior to delivery of all of the Goods and/or Services, AGW will only be liable to pay the Vendor for those Goods and/or Services delivered to AGW (in accordance with the terms of this Agreement) prior to termination taking effect.

**17 Assignment and subcontracting**

17.1 Neither party may assign or novate any right, benefit or interest under this Agreement without the other party's written consent, except that AGW may assign or novate any right, benefit or interest under this Agreement to a related body corporate without the Vendor's consent.

17.2 The Vendor must not subcontract any part of the Goods and/or Services without the prior written approval of AGW, which may be given or withheld in AGW's absolute discretion and may be given subject to conditions.

17.3 The Vendor will be liable to AGW for the acts, defaults and omissions of the Vendor's subcontractors (and the employees and agents of such subcontractors) as if they were those of the Vendor.

**18 Dispute resolution**

18.1 If a dispute arises in respect of or in connection with this Agreement (**Dispute**), the Dispute must be determined in accordance with the procedure in this clause 18.

18.2 If a Dispute arises, a party must first give a notice in writing to the other party clearly specifying the particulars of the Dispute.

18.3 As soon as reasonably practicable following notification of the Dispute under clause 18.2, the parties must meet (whether in person or on-line) to discuss in good faith with a view to resolving the Dispute by agreement.

18.4 If the Dispute is not resolved within 10 Business Days of the meeting under clause 18.3, then the parties must procure that their respective senior representatives (or their delegate with authority to resolve the Dispute) promptly meet (whether in person or on-line) with a view to resolving the Dispute within 10 Business Days.

18.5 If, and only after the period of 10 Business Days in clause 18.4 has passed and the parties have not agreed to extend the period for good faith discussions, then either party will be free to commence legal action in relation to the Dispute.

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18.6 The parties to a Dispute will continue to perform their respective obligations under this Agreement, pending resolution of the Dispute under this clause 18.

18.7 Nothing in this clause 18 is taken as preventing any party to a Dispute from seeking urgent injunctive or similar interim relief from a court in respect of such Dispute.

**19 General**

19.1 This Agreement and the transactions contemplated by this Agreement are governed by and are to be construed in accordance with the laws applicable in Victoria, Australia. Each party irrevocably submits to the exclusive jurisdiction of the courts of Victoria, Australia.

19.2 A provision of or a right created under this Agreement may not be waived except in writing signed by the party granting the waiver.

19.3 If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or otherwise unenforceable that provision may be severed from this Agreement and the remainder of this Agreement will continue to be effective and valid notwithstanding such severance.

**20 Definitions and interpretation**

20.1 In this Agreement, unless the context otherwise requires:

- (a) **Agreement** means the written agreement entered into between the parties, which comprises the Purchase Order, these general conditions, any other documents attached to, or prescribed in, the Purchase Order and any other written agreement between the parties (including via email) (excluding any document described in clause 1.2).
- (b) **AGW** means AG Warehouse Pty Ltd ACN 004 515 744.
- (c) **Australian Consumer Law** means Schedule 2 of the *Competition and Consumer Act 2010* (Cth).
- (d) **Business Days** means a day other than a Saturday, Sunday or public holiday in the State or Territory where the Delivery Location is located.
- (e) **Confidential Information** means information however held or recorded relating to AGW, its business or assets, including financial or taxation information, information relating to customers or suppliers, pricing or products, present and future business and marketing plans, particulars of employees or contractors, product formulations and manufacturing processes, the terms of this Agreement and any other information which AGW identifies as confidential.
- (f) **Delivery Date** means the date for delivery of the Goods or provision of Services as set out in the Purchase Order or other document described in clause 1.3.
- (g) **Delivery Location** means the delivery location of the Goods (or place for provision of the Services) as set out in the Purchase Order or other document described in clause 1.3.
- (h) **Force Majeure Event** means (a) an act of God, lightning, earthquake, fire, flood, cyclones, hurricanes, nuclear, chemical or biological contamination; or (b) war, invasion, act of foreign enemy, hostilities between nations, terrorism, riots or civil commotion or military usurped power; or (c) governmental or quasi-governmental restraint, expropriation, prohibition, intervention, direction or embargo; or (d) any nationwide, state-wide or industry-wide strike action, industrial dispute or lockout unless such action or event arises from an employment dispute or general strike action solely aimed at the Vendor.
- (i) **Goods** means the goods described in the Purchase Order or other document described in clause 1.3.
- (j) **Insolvency Event** means any of the following in relation to a party: (a) the party commits an act of bankruptcy or an order is made for the party to be wound up (other than for the purpose of solvent restructuring or amalgamation); (b) a controller, receiver, receiver/manager or administrator or liquidator or provisional liquidator is appointed to the party; (c) the party takes any step such as calling a meeting of its shareholders or creditors or both or an application is made to a court with the aim of effecting one of the circumstances in paragraphs (a) or (b) above; (d) the party is unable to pay its debts when they fall due or ceases or threatens to cease to carry on its business; (e) a judgment is entered against the party and the judgment remains unsatisfied or unappealed for a period of 21 days; or (f) any event analogous to the events listed in paragraphs (a) to (e) above occurs.
- (k) **Intellectual Property** includes copyright (and future copyright), trade marks, service marks, logos, domain names, designs, patents, inventions (whether patentable or not), semiconductor and circuit layout rights, moral rights, know-how, software, rights in respect of trade secrets and other confidential information, and all other rights generally falling within the scope of this term, whether registered or unregistered and whether registrable or not, including applications for the registration or grant of any such rights and any and all forms of protection having equivalent or similar effect anywhere in the world.
- (l) **Law** includes any law or legal requirement, including at common law, in equity, under any statute, regulation, code, rule, or by-law, any condition or any authorisation, and any decision, standard, directive, guidance, guideline or requirements of any government agency.
- (m) **PPSA** means the *Personal Property Securities Act 2009* (Cth).
- (n) **PPS Register** means the Personal Property Securities Register established under the PPSA.
- (o) **Price** means the price for the Goods and/or Services stated in the Purchase Order.
- (p) **Purchase Order** means a purchase order issued by AGW.
- (q) **Representatives** means, in relation to a party, its employees, officers, representatives, advisers and sub-contractors.
- (r) **Saputo** means Saputo Dairy Australia Pty Ltd ACN 166 135 486.
- (s) **Services** mean the services described in the Purchase Order or other document described in clause 1.3.
- (t) **Vendor** means the supplier of the Goods and/or Services identified in the Purchase Order.

20.2 In this Agreement, unless the context requires otherwise:

- (a) a word in this Agreement that has a capitalised first letter has the meaning given to it by this Agreement;
- (b) the singular includes the plural and vice versa;
- (c) headings are for reference only and do not affect the interpretation of this Agreement;
- (d) a reference to any legislation includes a reference to any proclamation, order, amendments or modification made under that legislation;
- (e) where the Vendor comprises two or more persons, then the obligations on the Vendor will bind and be observed and performed by those persons jointly and severally;
- (f) "include", "includes" and "including" means "includes without limitation";
- (g) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or benefits from it; and
- (h) a reference to a person includes that person's legal personal representatives, successors, assigns.