

## **Wilmar Distribution Pte. Ltd.**

### **General Terms and Conditions of Sale**

#### **1. Applicability of these General Terms and Conditions of Sale**

1.1 Subject to clause 1.2 below:

- (a) these General Terms and Conditions of Sale ("**Sales Terms**") shall apply to and govern all sales of food products and other products and services (collectively, "**Products**") by Wilmar Distribution Pte. Ltd. ("**Wilmar**" or "**Seller**") to the person or entity purchasing or receiving the Products from Wilmar ("**Customer**" or "**Buyer**"); and
- (b) these Sales Terms shall apply to, be incorporated into, and form an integral part of, all contracts between Wilmar and Customer for the Products (each, a "**Contract**").

1.2 These Sales Terms do not apply to:

- (a) the sale of Products which are the subject of a separate signed contract entered into between Wilmar and Customer which does not reference or incorporate these Sales Terms; and
- (b) the provision of catering services, which shall be governed by Wilmar's Catering Terms.

#### **2. Customer's Acceptance of these Sales Terms**

- 2.1 Customer, by: (a) placing an order for Products; (b) accepting the Products; and/or (c) making payment for Products, shall be deemed to have accepted these Sales Terms and the incorporation of these Sales Terms into the Contract.
- 2.2 These Sales Terms take precedence over Customer's terms and conditions. Neither Wilmar's acceptance of Customer's order, nor Wilmar's commencement of performance of the Contract, nor Wilmar's delivery of Products, nor any other acts of Wilmar, shall constitute or be deemed or construed as acceptance of Customer's terms and conditions.

#### **3. Orders**

- 3.1 In order to purchase Products, Customer must issue a purchase order to Wilmar ("**Order**") which must: (a) specify the volume and type of Products required, and (b) specify the requested delivery date and location.
- 3.2 Customer must ensure that all Orders are accurate and issued correctly, and Wilmar shall not be liable for any errors or omissions in or relating to the Order.
- 3.3 All Orders are subject to Wilmar's acceptance. Wilmar may in its sole discretion refuse to accept any Order.

#### **4. Price and Payment**

- 4.1 The price of Products ("**Price**") shall be set by Wilmar in its sole discretion and will be notified by Wilmar to Customer from time to time (including without limitation via a price list, sales agreement, sales order, or tax invoice).
- 4.2 The Price is exclusive of Goods and Services Tax (GST) and any other taxes or duties (including customs duties), and Customer shall bear the GST and all other taxes and duties where required.

- 4.3 In consideration for the sale of Products by Wilmar to Customer, Customer shall pay the full Price to Wilmar (as stated on Wilmar's invoice or any other applicable document) without any deduction, withholding, set-off or counterclaim whatsoever. Such payment shall be made in the manner and within the time stipulated by Wilmar. If Customer fails to make payment on or before the due date, Wilmar shall be entitled to: (a) charge interest on all outstanding amounts from the day after the due date for payment until the date on which it is actually paid in full, at the rate of 12% per annum; (b) require Customer to make payment in advance of any delivery not yet made; and/or (c) suspend any further deliveries to Customer. Without prejudice to the foregoing and without prejudice to Wilmar's rights, Customer shall reimburse Wilmar for any costs incurred in collecting any late payments (including without limitation legal fees and expenses).

## **5. Delivery; Duty to Inspect**

- 5.1 Wilmar will deliver, or procure the delivery of, Products to the place stipulated by Customer ("**Delivery Place**") in accordance with the terms agreed between the parties. All delivery dates are estimates only and are not binding on Wilmar, and time shall not be of the essence. Wilmar shall not be liable for any late delivery, nor shall any delay of delivery constitute a breach of the Contract.
- 5.2 Products shall be deemed to have been inspected by Customer on the date of delivery. Any claims relating to missing or incorrect Products or to defects or damage which are apparent on a reasonable inspection of Products must be made to Wilmar within three (3) days from the date of delivery, and any other claims relating to defects or damage which are not apparent on a reasonable inspection of Products must be made to Wilmar within thirty (30) days from the date of delivery. If any such claims are made, Customer shall: (a) preserve the relevant Products in the state in which they were delivered; (b) submit photographs and other evidence of such defects or damage to Wilmar (if applicable) upon Wilmar's request; and (c) if requested by Wilmar, allow Wilmar to inspect the relevant Products at the location of Products and/or return the relevant Products to Wilmar at Wilmar's costs in the same condition as when the relevant Products were first delivered to Customer.
- 5.3 Provided that Customer has fully complied with clause 5.2 and that Wilmar is satisfied with Customer's claim, Wilmar will at its sole discretion either replace the missing, incorrect, defective or damaged Products (as the case may be) or provide a credit for such Products.
- 5.4 Wilmar's liability to Customer in respect of missing, incorrect, defective or damaged Products is limited to replacement or credit in accordance with clause 5.3.
- 5.5 If, for any reason, Customer fails to accept delivery of any Products, or if Wilmar is unable to deliver any Products to the applicable Delivery Place because Customer has not provided appropriate instructions, documents, licenses, or authorizations, then risk of loss to such Products shall pass to Customer, such Products shall be deemed to have been delivered, and Wilmar, at its option, may store such Products until Customer picks them up, in which case Customer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).
- 5.6 The quantity of Products as recorded by Wilmar on dispatch from its place of business or such other location as nominated by Wilmar is conclusive evidence of the quantity received by Customer on delivery, unless Customer can provide conclusive evidence proving the contrary.

## **6. Title and Risk of Loss**

- 6.1 Title. Title to the Products shall pass to Customer upon payment of the applicable Price to Wilmar. Notwithstanding physical delivery of Products to Customer, Wilmar shall be entitled to maintain an action against Customer for any unpaid Price without prejudice to any other right or remedy available to Wilmar.

- 6.2 Risk of loss. If Wilmar and Customer have agreed to apply Incoterms or similar terms to the sale of Products, risk of loss passes to Customer according to the Incoterms or similar terms. If Incoterms (or similar terms) do not apply but parties have reached agreement on the passing of risk, risk of loss passes to Customer as agreed between the parties. If none of the foregoing apply, risk of loss passes to Customer upon delivery of Products to the Delivery Place.

## **7. Customer's Obligations and Restrictions**

- 7.1 Customer shall: (a) immediately notify Wilmar, upon being aware: (i) of any actual or potential defect in any Products; (ii) of any matter concerning any Products which could have an impact on Wilmar; and/or (iii) of all complaints or claims relating to any Products; (b) not admit liability on behalf of Wilmar in respect of any complaint or claim relating to any Products; (c) not resolve or settle any complaint or claim relating to any Products which may result in Wilmar incurring any liability (whether to a customer, Customer or any other person), unless written permission has been given by Wilmar; (d) observe all laws relating to the regulations, codes, use or sale of any Products; (e) support and comply with the requirements of any product recall program initiated by Wilmar or any government agency and all reasonable directions of Wilmar in respect of such product recall program; (f) not alter, obscure, remove, replace, conceal or otherwise interfere with any identifier or batch number applied to any Products by Wilmar for the purpose of tracking the relevant Product; (g) not make any representation, or give any warranty, in relation to any Products not expressly authorised in writing by Wilmar; (h) not engage in any advertising, marketing or promotional activities in relation to Products without the prior written consent of Wilmar; (i) not do anything which might adversely affect the goodwill or reputation of Products and/or Wilmar or any of its products; (j) not make any representation or statement that it is the exclusive or sole distributor or importer of any Products; and (k) not voluntarily initiate any recall without the prior written consent of Wilmar.
- 7.2 Customer shall at all times carry on its business as principal and arrange and conclude sales of Products on its own behalf and in its own name. Wilmar shall not be liable (except as provided at law) to any purchaser of Products from Customer.

## **8. Limitation of Liability**

- 8.1 Exclusion of implied warranty
- (a) Wilmar warrants to Customer that Products will conform substantially to Wilmar's specifications for each Product.
  - (b) Other than the warranty set out in clause 8.1(a):
    - (i) Wilmar makes no other representations or warranties (whether express or implied) whatsoever with respect to Products (including, without limitation, any warranties of merchantability, fitness for a particular purpose, or non-infringement, whether arising by law, course of dealing, course of performance, usage of trade, or otherwise); and
    - (ii) Wilmar hereby specifically disclaims and excludes all representations and warranties (whether express or implied) with respect to Products to the maximum extent permitted by law.
- 8.2 Except for Wilmar's liability to Customer arising from or relating to:
- (a) any term, condition or warranty which cannot be excluded by applicable law;
  - (b) wilful misconduct or fraud on the part of Wilmar; and/or
  - (c) any breach of the Contract or these Sales Terms,
- Wilmar excludes all other liability to Customer in relation to the Products to the maximum extent permitted by applicable law, and the Customer hereby releases, waives and forever discharges Wilmar from any and all such other liability.

- 8.3 To the maximum extent permitted by applicable law, in no event shall Wilmar be liable to Customer or any third party for any: (a) loss of business, sales, contract, opportunity, profit or anticipated profit, income, and/or revenue; (b) consequential, indirect, incidental, special, exemplary, punitive and/or enhanced damages and/or losses; (c) diminution in value; (d) increased costs and/or (e) loss of and/or damage to goodwill or reputation, regardless of whether any of the foregoing items (a) to (e) were foreseeable and whether or not Wilmar was advised of the possibility of any of the foregoing items (a) to (e).
- 8.4 To the maximum extent permitted by applicable law, Wilmar's sole liability, and Customer's sole remedy, for any:
- (a) breach of the Contract or these Sales Terms; and/or
  - (b) breach of any warranty or obligation implied or conferred by law which cannot be excluded by applicable law,
- shall be limited to either one of the following (as determined by Wilmar in its sole discretion):
- (i) the replacement of the applicable Products; or
  - (ii) a refund of the amounts actually paid by Customer to Wilmar under the Contract for the applicable Products.
- 8.5 Wilmar's maximum aggregate liability to Customer for any claim, whether arising out of or related to breach of contract, tort (including negligence), or otherwise:
- (a) where the claim is related to Products, shall not exceed the Price attributable to the relevant Products which are the subject of the claim; and
  - (b) where the claim is not related to Products, shall not exceed the total Price actually received by Wilmar from Customer in the three (3) months preceding the date on which the alleged cause of action arose.
- 8.6 Nothing herein shall have the effect of limiting or excluding Wilmar's liability for fraud, any breach of the obligations implied by law which cannot be excluded, death or personal injury resulting from its own negligence, and/or any other liability (if any) to the extent the same may not be limited or exceeded as a matter of law.
- 8.7 All defect and liability claims howsoever arising are subject to a limitation period of one (1) year from statutory commencement of the limitation period, or where the foregoing is not permissible under the relevant law, for the shortest period permitted thereunder.

## **9. Intellectual Property Rights**

Customer acknowledges and agrees that Wilmar and its licensors are the sole and exclusive owners of all Product IPR. In these Sales Terms, "**Product IPR**" means all intellectual property rights in relation to, embodied in, or in connection with Products, including without limitation all trade marks used in relation to Products. Customer acknowledges and agrees that it does not own, and does not obtain, any right, title or interest in or to any Product IPR and/or any intellectual property rights of Wilmar or its licensors. Customer undertakes not to attack, cancel, revoke, invalidate, remove, permit or cause any act to affect the validity of, question, and/or seek to impeach: (a) any Product IPR; (b) any intellectual property rights of Wilmar or its licensors; (c) any goodwill associated with any Product IPR or any intellectual property rights of Wilmar or its licensors; and/or (d) any goodwill in relation to Products or owned by Wilmar or its licensors, nor permit, authorise or assist any third party to do any of the foregoing acts. Customer undertakes not to apply to register, register, or seek any rights in relation to: (i) any Product IPR; and/or (ii) any intellectual property rights of Wilmar or its licensors. Customer undertakes and agrees to take any steps reasonably required by Wilmar and/or its licensors to maintain the validity and enforceability of any Product IPR or any intellectual property rights of Wilmar or its licensors.

## 10. Indemnity

Customer shall indemnify Wilmar and its officers, directors, employees, agents, affiliates, successors, and permitted assigns (collectively, "**Indemnified Parties**") from and against any and all losses (including first party losses), damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind (including legal fees, costs, the fees of enforcing any right to indemnification under these Sales Terms, and costs of pursuing any insurance providers) incurred by or awarded against any of the Indemnified Parties, relating to, arising out of, resulting from or occurring in connection with: (a) any breach of these Sales Terms and/or the Contract by the Customer; (b) any violation by Customer of applicable laws or regulations; and/or (c) any negligence or wilful misconduct on Customer's part.

## 11. Force Majeure

Wilmar shall not be responsible or liable to Customer for any failure or delay in the performance of any of its obligations under the Contract where, and to the extent that, such failure or delay: (a) arises directly or indirectly from, out of or as a result of, (b) results from, or (c) is caused or contributed to by, any act, circumstance, cause, event and/or situation which is not within the reasonable control of Wilmar, including (without limitation) an act of God, war, epidemic, pandemic, revolution, unlawful act against public order or authority, an industrial dispute including strike or other labour disturbances, a governmental restraint, or a shortage or unavailability of raw materials, production capacity or transportation (each, a "**Force Majeure Event**"). Wilmar will use commercially reasonable efforts to provide the Services within a reasonable time after the cessation of the applicable Force Majeure Event.

## 12. Confidentiality

- 12.1 In these Sales Terms, "**Confidential Information**" means: (a) all information, including trade secrets, know-how, scientific, technical, current and future product, market or pricing information, customer lists, product or service plans, business plans, business activities, supplier lists, marketing plans, equipment types, financial projections, business forecasts, sales and merchandising information, processes, designs, engineering plans, processes, data, prices, costings, strategies, formulae, recipes, raw materials, and operating conditions, relating to Products and/or Wilmar; and (b) all information that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure, disclosed or made available by Wilmar to Customer.
- 12.2 Customer undertakes and agrees: (a) to keep all Confidential Information confidential; (b) not to disclose any Confidential Information to any other person or entity unless expressly permitted in these Sales Terms; (c) not to use any Confidential Information for any purpose other than for or in connection with the performance of its obligations under the Contract; and (d) to forthwith return, on request by Wilmar, any documents or materials containing any Confidential Information.
- 12.3 Customer's confidentiality obligations contained in clause 12.2 shall not apply to any information which: (a) is or becomes part of the public domain through no fault or breach of these Sales Terms by Customer or its employees, agents or representatives; (b) is already in the possession of or known to Customer prior to disclosure to Customer provided that such information is not subject to any confidentiality obligations; (c) is received by Customer by a third party who is not under, or in breach of, any confidentiality obligations in disclosing the same; (d) is independently developed by Customer whether on its own or jointly with a third party without use of or reference to any Confidential Information; (e) is disclosed pursuant to an order of a court of competent jurisdiction provided prompt written notice of such order is given to Wilmar; or (f) Wilmar authorises, in writing, for release.



- 12.4 Customer is permitted to disclose Confidential Information only to its representatives and employees who are required to have access to or be in possession of Confidential Information for the purposes of performing Customer's obligations under the Contract, provided always that: (a) any Confidential Information is disclosed only on need-to-know basis; (b) Customer may only disclose such portion of Confidential Information strictly necessary for the performance of Customer's obligations under the Contract; and (c) Customer must take all necessary precautions and actions to cause and ensure that all such representatives and employees fully comply with the confidentiality obligations imposed on Customer under clause 12.2. Customer shall be and remain liable for any breach of this clause 12 by its representatives and employees.
- 12.5 The confidentiality obligations set out in this clause 12 shall survive the termination of the Contract.
- 12.6 Customer acknowledges and agrees that any breach or threatened breach of this clause 12 may result in substantial, continuing, and irreparable injury to Wilmar. Customer acknowledges and agrees that monetary damages alone would not be an adequate remedy for the breach or threatened breach of this clause 12. Therefore, Customer hereby acknowledges and agrees that, in addition to any other remedy that may be available to Wilmar, Wilmar shall be entitled to seek injunctive relief, specific performance or other equitable relief concerning any breach or threatened breach of this clause 12 without the necessity of proving irreparable harm or injury as a result of such breach or threatened breach.
- 12.7 Nothing in this clause 12 or these Sales Terms shall grant Customer any right or licence over any Confidential Information.

### **13. Termination**

- 13.1 Wilmar may terminate any Contract immediately by written notice to Customer if Customer:
- (a) breaches a material term of such Contract which, in the reasonable opinion of Wilmar, is not capable of being remedied;
  - (b) commits a material breach of such Contract which is capable of being remedied and Customer fails to remedy the breach within 7 days after being required in writing to do so; or
  - (c) becomes insolvent, goes into liquidation whether by voluntary or involuntary action, makes an assignment or composition for the benefit of its creditors, has a receiver or receiver and manager appointed, suspends or ceases its business activities or performs any other act which reasonably suggests that it is insolvent.

Wilmar and Customer each acknowledges and agrees that the Customer's obligation to make payment by the due date constitutes a material term of the Contract (but not the only material term thereof).

- 13.2 Upon termination of any Contract by Wilmar: (a) Customer must within five (5) working days pay for all Products set out in purchase orders which have been accepted by Wilmar as well as any other Products which Customer has ordered and Wilmar has agreed to sell to Customer, and Wilmar will deliver the aforesaid Products to Customer; and (b) Customer must return all Confidential Information and all documents and materials containing any Confidential Information to Wilmar.
- 13.3 Termination of any Contract is without prejudice to and does not affect the accrued rights or remedies of any party thereto arising in any way out of such Contract up to the date of termination.

### **14. General**

- 14.1 Governing law and jurisdiction. These Sales Terms and the Contracts shall be governed by and construed in accordance with the laws of Singapore. The applicability of the 1980 Vienna Convention on the International Sale of Goods is excluded. Wilmar and Customer each irrevocably agrees that the courts of the Republic of

Singapore shall have exclusive jurisdiction to hear, settle and/or determine any dispute, controversy or claim (including any non-contractual dispute, controversy or claim) arising out of or in connection with these Sales Terms and any Contract, including any question regarding their existence, validity, formation or termination. For these purposes, Wilmar and Customer each irrevocably submits to the jurisdiction of the courts of the Republic of Singapore.

- 14.2 **Invalidity.** A provision of, or the application of a provision of, these Sales Terms which is void, illegal or unenforceable in any jurisdiction does not affect the validity, legality or enforceability of that provision in any other jurisdiction or of the remaining provisions in that or any other jurisdiction. If any provision in these Sales Terms is or becomes invalid, unenforceable or illegal for any reason, the relevant provision shall be deemed to be modified to the extent necessary to remedy such invalidity, unenforceability or illegality, or if that is not possible, then such provision shall be severed from these Sales Terms without affecting the remaining provisions of these Sales Terms.
- 14.3 **Independence.** Each party is an independent contractor and not a manager, employee, partner or agent of the other party. Nothing in these Sales Terms or any Contract will create, constitute or evidence any partnership, joint venture, agency, fiduciary obligation, trust or employer-employee relationship between the parties, and a party may not make, or allow to be made, any representation that any such relationship exists between the parties. Unless agreed elsewhere, a party has no power or authority to bind, act for, or to incur any obligation on behalf of the other party, impose any obligation on the other party for the benefit of any third party, or constitute the other party as its commercial agent.
- 14.4 **Third Party Rights.** An entity or person who is not a party shall not have any rights under the Contracts (Rights of Third Parties) Act 2001 or any other applicable legislation to enforce any of the provisions of these Sales Terms or any Contract.
- 14.5 **No Waiver.** The non-exercise of, or delay in exercising, any power or right of a party does not operate as a waiver of that power or right or prevent the subsequent enforcement of that power or right, nor does any single exercise of a power or right preclude any other or further exercise of it or the exercise of any other power or right. No waiver by a party of any power or right under these Sales Terms or any Contract will be effective unless it is in writing and signed by that party.
- 14.6 **Prevalence.** No term or condition contained in any request for quotation, purchase order, acknowledgement or other form of writing issued by Customer (whether printed, typed or handwritten) shall apply to any sale of Products hereunder unless signed by an officer of Wilmar.
- 14.7 **Reference.** In all documents which incorporate or are governed by these Sales Terms and/or which form part of the Contract, Wilmar may be referred to as "Seller" or "Wilmar" and the Customer may be referred to as the "Buyer" or "Customer".

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