



## TERMS OF SALE

### 1. ORDERS

1.1 **Placing Orders:** The Customer agrees to place orders in accordance with Tegel's ordering procedures as advised by Tegel from time to time.

1.2 **Contract for Sale:** The Customer agrees that each order accepted by Tegel will constitute a separate contract for the sale of goods on these terms of sale. Each order from the Customer is an offer to purchase the relevant goods on such terms, and Tegel may accept or reject the order at its discretion.

### 2. PRICE

2.1 **Prices:** Unless otherwise agreed to in writing by Tegel, Tegel's prices are subject to change without notice and the price for any order of goods is Tegel's current price at the relevant time. If Tegel agrees to fixed pricing or a quotation in writing, Tegel's prices for the applicable goods will be fixed for the agreed period or, if no period is agreed, until the expiry of reasonable notice from Tegel.

2.2 **Taxes:** The price for goods will be increased by the amount of any applicable GST and other taxes and duties, except to the extent that such taxes or duties are expressly included in any quotation or fixed pricing given or agreed by Tegel.

### 3. PAYMENT TERMS

3.1 **Credit sales:** Payment for all goods supplied will be in cash on delivery (in cleared and immediately available funds) of the goods unless other terms are agreed by Tegel and the Customer in writing. Tegel may vary or cancel those terms of credit at any time without prior notice.

3.2 **Payment in full:** The Customer must pay each invoice in full without set-off, counterclaim, deduction or withholding, except as required by law or as specifically agreed in writing by Tegel.

3.3 **Application of Payments:** Tegel may apply any payments received from or on behalf of the Customer in reduction of the Amount Owing in such order as Tegel thinks fit (despite any direction to the contrary from the Customer and whether before or after the occurrence of an Event of Default).

### 4. DELIVERY OF GOODS

4.1 **Domestic Delivery:** Where delivery is to be made in New Zealand Tegel will deliver or arrange delivery of the goods to the place specified in the Customer's order (**Delivery Address**). Unless otherwise stated in the Order Confirmation Tegel agrees to bear the reasonable costs of transportation and delivery of the goods to the Delivery Address during Tegel's normal delivery hours, provided that the Delivery Address is accurate and suitable for the purposes of delivery. Delivery shall be deemed to have occurred when the goods arrive at the Delivery Address ready for unloading. Unloading is to be the Customer's responsibility unless otherwise agreed.

4.2 **International delivery:** Where delivery is to be made outside New Zealand Tegel will arrange delivery of the goods to the overseas port specified in the Customer's

Order. Delivery of the goods shall be deemed to have occurred when the goods are unloaded at the overseas port.

4.3 **Refusal to accept delivery:** If the Customer refuses to accept delivery of goods or delays in doing so, Tegel may charge the Customer for any additional costs or losses incurred as a result, including storage and transportation costs. The Customer will also indemnify Tegel in the manner set out in clause 5 of these terms of sale.

4.4 **Fulfilling Orders:** Tegel will use reasonable endeavours to fulfil orders which have been accepted by Tegel but will not be liable for any failure to deliver or delay in delivery.

4.5 **Delivery Date:** Any date or time given by Tegel for the arrival of the goods is only an estimate and Tegel does not guarantee delivery on that date or at that time.

### 5. RISK AND OWNERSHIP

5.1 **Risk:** Risk of any loss, damage or deterioration of or to the goods passes to the Customer on delivery of the goods to the place or overseas port (as applicable) specified in the Customer's order **provided that** if the Customer wrongfully rejects, refuses to accept or delays acceptance of the goods, risk in the goods will pass to the Customer from such rejection, refusal or delay. If the Customer wrongfully rejects or refuses to accept delivery of goods, the Customer shall indemnify Tegel for any and all losses arising from the Customer's rejection or refusal, including but not limited to any damage or deterioration of the goods. The Customer will insure the goods from the time of delivery and undertakes to provide Tegel with evidence of insurance if so required by Tegel.

5.2 **Ownership:** Despite any period of credit, ownership of the goods remains with Tegel and does not pass to the Customer until the Customer:

- (a) pays the Amount Owing in full; or
- (b) resells the goods pursuant to these terms of sale.

5.3 **Dealing with goods:** While ownership of the goods remains with Tegel:

- (a) the Customer covenants to store them separately in a saleable condition (satisfactory to Tegel) as fiduciary, bailee and agent of Tegel and clearly identify them as belonging to Tegel; and
- (b) the Customer may (until advised to the contrary in writing by Tegel or until an Event of Default occurs), in the ordinary course of its business, use the goods or sell them for full value.

5.4 **Proceeds in trust:** If the Customer resells or uses the goods before ownership in the goods has passed to the Customer, the Customer must hold the proceeds of such sale or use (separately and in identifiable form and to the extent their value does not exceed the Amount Owing) in trust for Tegel, and pay the proceeds into a bank account nominated by Tegel if Tegel requests this in writing.

### 6. WARRANTIES

6.1 **Exclusion:** All warranties, descriptions, representations or conditions whether implied by law or otherwise and, subject to clause 7.2, all other liability of Tegel, whether

in contract, tort (including negligence) or otherwise is, expressly excluded to the fullest extent permitted by law.

6.2 **Consumer Guarantees:** The Customer acknowledges that if the goods acquired from Tegel are for the purposes of business then nothing in the Consumer Guarantees Act 1993 will apply.

6.3 **International Compliance:** Tegel accepts no responsibility for ensuring the goods and delivery thereof comply with local laws and regulations at the place of delivery and any reference to Incoterms in any order or order confirmation shall be deemed amended accordingly. The Customer shall be solely responsible for meeting (at the Customer's sole cost) all regulatory approvals, product registration, licences, consents, costs and other requirements necessary for the lawful importation, distribution and sale of the goods in the relevant territory or territories.

## 7. INSPECTION, CLAIMS AND PRODUCT RECALL

7.1 **No credit for returned goods:** The Customer must not return goods unless Tegel has specifically agreed with the Customer in writing to this effect in advance.

7.2 **Defective Goods:** On the delivery of goods to the Customer, the Customer must immediately inspect the goods in order to satisfy itself as to the goods' merchantable quality, fitness for purpose and compliance with the Customer's order. If the Customer considers that the goods are defective, not of merchantable quality, unfit for their purpose or not in compliance with the Customer's order (**the claimed defect**), the Customer must immediately (and within 48 hours of delivery) advise Tegel in writing of the claimed defect. On receiving such advice from the Customer, Tegel may elect whether to replace the goods or refund the price paid by the Customer for the goods. Tegel will have no liability whatsoever to the Customer for any claimed defect if it has not been advised of the claimed defect within 48 hours of delivery. The Customer will give Tegel the opportunity to inspect the goods and must (at the Customer's cost) store the goods separately and in the state and condition in which they were supplied by Tegel until Tegel's inspection.

7.3 **Product Recalls:** The Customer shall effect any goods recall programme initiated by Tegel or any government agency, authority or instrumentality and maintain appropriate storage facilities to ensure prompt recall of the goods. Subject to clauses 7.2 and 7.4, Tegel will meet the Customer's reasonable direct costs associated with the goods recall programme.

7.4 **Tegel's liability:** The Customer agrees that Tegel will have no liability to the Customer or to any other person for Claims arising from:

- (a) a claimed defect that has been advised to Tegel if Tegel has complied with its obligation to either replace the defective goods or refund the price paid by the Customer for the defective goods;
  - (b) a claimed defect that has not been advised to Tegel in writing within 48 hours of delivery;
  - (c) representations, warranties or agreements purported to be made by an agent or representative of Tegel that have not been confirmed by Tegel in writing;
  - (d) late or non-delivery of goods;
  - (e) inability to fulfil the Customer's order;
  - (f) damage or deterioration to the goods occurring after delivery or deemed delivery of the goods to the Customer;
  - (g) anything the Customer has done which has caused or contributed to the claimed defect;
  - (h) loss of profits, or any indirect or consequential loss or damage;
- and the Customer agrees to indemnify Tegel against any such Claim.

7.5 **Limitation on liability:** If Tegel is liable notwithstanding clauses 6 and 7.2, then notwithstanding any other provision of these terms of sale, to the maximum extent permitted by law Tegel's liability under any Claim made by the Customer or third party will not exceed the price of the goods actually paid by the Customer in respect of which the Claim is made.

## 8. PERSONAL PROPERTY SECURITIES ACT 1999 ("PPSA")

8.1 **Security Interest:** The Customer grants to Tegel a security interest in all goods previously supplied by Tegel to the Customer and all goods that Tegel will supply to the Customer in the future, together with their proceeds to secure the payment of the Amounts Owning. When goods supplied by Tegel to the Customer have become an accession or have been manufactured, processed, commingled or affixed with other property, the Customer will ensure that goods supplied by Tegel and their proceeds will remain identifiable. The Customer acknowledges that Tegel's security interest continues in the accession or the processed or commingled goods and their proceeds.

8.2 **Verification Statement:** The Customer waives its right to receive a copy of any verification statement or a financing change statement in respect of Tegel's security interest.

8.3 **Contracting out:** Tegel and the Customer agree that to the fullest extent permitted by law, nothing in sections 114(1)(a) and 133 of the PPSA shall apply in respect of Tegel and the Customer. The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129 and 131 of the PPSA.

8.4 **Customer undertakings:** The Customer undertakes to:

- (a) Promptly do all things, sign any further documents and/or provide any information which Tegel may reasonably require to enable Tegel to perfect and maintain the perfection of its security interest.
- (b) Give Tegel (addressed to the Financial Controller or equivalent) not less than 14 days prior written notice of any proposed change in the Customer's name and/or any other change in the Customer's details (including, but not limited to, changes in the Customer's address, facsimile number, trading name or business practice).
- (c) Indemnify (and if requested by Tegel reimburse) Tegel for all expenses that Tegel incurs in registering a financing statement or financing change statement.
- (d) The Customer warrants and agrees that any transfer or on-sale of goods will be for fair and reasonable value and the proceeds of sale or transfer of the goods by the Customer shall be retained by the Customer and held separately and on trust for Tegel pursuant to the terms of Tegel's security interest until Tegel has been paid for the goods in full.
- (e) To protect Tegel's security interest, the Customer agrees to notify Tegel in writing before making supplies to connected entities of goods purchased from Tegel on credit where the purchase price remains unpaid. Connected entities include any company associated with the Customer or any of its shareholders or directors.

8.5 **International protection:** The Customer acknowledges that the provisions of clause 8 (with any necessary changes) shall apply in international jurisdictions to the fullest extent possible subject to any variations occasioned by local law.

## 9. SECURITY AND CHARGE

9.1 **Right to register a charge or mortgage:** Despite anything to the contrary contained herein or any other rights which Tegel may have howsoever:

9.2 Where the customer and/or the guarantor is the registered proprietor of land, or any other property capable of being charged, both the customer and/or guarantor agree to mortgage and charge all of their interests in the said land or those assets to Tegel to secure all amounts and other monetary obligations payable to Tegel and will, if called upon to do so, execute in favour of Tegel a registerable Mortgage in such form as Tegel may require. The customer and/or guarantor acknowledge and agree that Tegel shall be entitled to lodge a caveat, which shall be withdrawn once all payments and other monetary obligations payable to Tegel have been met.

9.3 Should Tegel elect to proceed in any manner in accordance with this clause 9 the customer and/or guarantor shall indemnify Tegel from and against all costs and disbursements incurred by Tegel, including legal costs on a solicitor/client basis.

The customer and/or the guarantor agree to irrevocably nominate, constitute and appoint Tegel or Tegel's nominee as their true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 9.

## 10. FACTORING AND SECURITY INTERESTS

The Customer must not factor or otherwise sell its accounts receivable, or grant or permit to continue a security interest over goods purchased from Tegel or their proceeds (other than the security interest granted to Tegel) without Tegel's prior written approval.

## 11. DEFAULT

11.1 **Suspension/Termination:** If an Event of Default occurs:

- (a) Tegel may suspend or terminate any contract between Tegel and the Customer;
- (b) The Amount Owning shall immediately become due and payable notwithstanding that the due date has not arisen;
- (c) Tegel may enforce the security interest; and
- (d) Tegel may (without the consent of the Customer) appoint a receiver in respect of any goods and their proceeds and any receiver is authorised to do anything referred to in these terms of sale and otherwise as may be necessary to exercise all rights and powers conferred on a receiver by law (including, without limitation, the sale of goods and collection of proceeds and accounts receivable in respect of those goods).

11.2 **Possession and sale:** The Customer agrees that, at any time after an Event of Default has occurred or at any time if any goods are at risk, Tegel may:

- (a) Take possession of any goods; and/or
  - (b) Sell or otherwise dispose of any goods,
- in each case in such manner and generally on such terms and conditions as it thinks fit, and, in each case, otherwise do anything the Customer could do in relation to those goods. As the Customer's agent, Tegel (and its employees, agents or appointed receiver) may and is irrevocably authorised to, without prior notice, enter any land or premises where the goods are kept in order to take possession of and/or remove them and for the purpose of facilitating the collection of proceeds and accounts receivable in connection with the goods, without being responsible for any damage caused in doing so. The Customer agrees to procure all other rights (including consents) necessary to enable, and to indemnify Tegel (and its employees, agents or appointed receiver) against any liability incurred in connection with, such entry, taking of possession and removal. Tegel (and its employees, agents or appointed receiver) may resell any of the goods, collect the proceeds from the Customer and apply the proceeds in reduction of the Amount Owning.

11.3 **Default interest:** In an Event of Default, the Customer will compensate Tegel by immediately making payment as liquidated damages (in addition to the amount due) of interest at a rate of 1.5% per month calculated on a daily basis on the unpaid portion of the price from due date until payment in full.

11.4 **Costs and expenses:** The Customer will pay all costs, incurred by Tegel, including legal costs on a solicitor-client basis and debt collectors' costs, in the recovery or attempted recovery of outstanding money and the enforcement of these terms of sale.

## 12. INFORMATION ABOUT CUSTOMER

12.1 **Change of circumstances:** The Customer must notify Tegel of any change in circumstances that may affect the accuracy of the information provided by the Customer to Tegel or any company related to Tegel.

12.2 **Personal or credit information:** Any personal or credit information provided by the Customer or obtained by Tegel will be held by Tegel and may be used by it for any of the following purposes: determining eligibility and terms for the provision of credit to the Customer, supplying the Customer with goods, enforcing debts and other legal obligations owing to Tegel and disclosure to third parties associated with any of those purposes (including a credit reporting agency).

12.3 **Authorisation:** The Customer irrevocably authorises all persons, companies, credit reporting agencies and other entities to provide Tegel with such information as it may at any time request about the Customer (including where applicable, its principals and directors) in relation to any of the purposes listed in clause 12.2 of these terms of sale and/or any directly related purposes.

## 13. MISCELLANEOUS

13.1 **Force Majeure:** Non-performance or partial performance by Tegel of any of its obligations will be excused, without liability, during the time and to the extent that such performance is prevented, wholly or substantially, by any cause beyond the control of a party including but not limited to any order of a government or other authority, strike, lockout, labour dispute, delays in transit, difficulty in procuring goods, embargo, accident, emergency, outbreak of disease or restrictions imposed to prevent or restrict an outbreak of disease, act of God or other contingency. Following such an event Tegel may, at its discretion, reallocate goods between its customers and its own requirements.

13.2 **Notices:** Notices under these terms of sale must (unless otherwise provided) be in writing and will (without limitation) be deemed validly given if posted, delivered by hand or sent by email to the address nominated by the recipient from time to time or the recipient's principal business address.

13.3 **Waiver:** If Tegel exercises or fails to exercise any right or remedy available to it this will not prejudice Tegel's rights in exercising that or any other right or remedy Tegel. Any waiver of any term of these terms of sale must be in writing and signed by an authorised officer of Tegel.

13.4 **Assignment:** The Customer may not transfer its rights in respect of the purchase of goods to any other party without Tegel's prior written consent. Tegel may, without prior notice to the Customer, assign or novate its rights in respect of the purchase of goods to any third party and the Customer agrees to consent to any such assignment or novation.

13.5 **Variation to terms of sale:** Tegel may vary or replace these terms of sale from time to time by notice in writing to the Customer, which may be by email.

13.6 **Invalidity:** Where any provision of these terms of sale is rendered void, unenforceable or otherwise ineffective by

operation of law that will not affect the enforceability or effectiveness of any other provision of these terms of sale.

13.7 **Confidentiality:** The parties agree to keep the existence of and the terms of, the agreement to supply goods confidential to themselves.

13.8 **Governing law and jurisdiction:** This agreement is to be governed by and construed by the laws of New Zealand in English and each of the parties submits to the non-exclusive jurisdiction of the courts of New Zealand.

13.9 **Arbitration:** Any party may give written notice of an unresolved dispute to the other party at any time. If the parties do not resolve the dispute within 10 working days of such notice, then the parties will, on request from either party, within a further five working days appoint one arbitrator to adjudicate on the dispute. If the parties cannot or otherwise do not agree on the arbitrator within that five working day period, the arbitrator shall be appointed by the President of the Auckland branch of the New Zealand Law Society for the time being (or his or her nominee), at the request of either party. The appointment of an arbitrator will be a submission to arbitration for the purposes of the Arbitration Act 1996. The costs of the arbitration will be payable as determined by the arbitrator. The place of arbitration shall be Auckland and the language shall be English. Nothing in this clause shall preclude either party from taking immediate steps to seek urgent equitable relief before a New Zealand Court.

#### 14. DEFINITIONS AND INTERPRETATION

For the purposes of these terms of sale:

14.1 **"Amount Owning"** means at any time, the unpaid price charged by Tegel for goods supplied, and any other sums which Tegel is entitled to charge under these terms of sale or which are otherwise owing by the Customer to Tegel (in whatever capacity).

14.2 **"Claim"** includes any claim, whether in contract, tort, equity or otherwise:

- (a) For damages of any kind, including, but not limited to damages for breach of contract; or
- (b) For loss of profits; or
- (c) For any consequential, indirect or special loss, damage or injury of any kind for compensation, or any other remedy;

arising directly or indirectly from:

- (d) Any breach of Tegel's obligations; or
- (e) Any cancellation of these terms of sale; or
- (f) Any negligence, misrepresentation, breach of warranty or other act or omission by Tegel or its employees, agents or contractors.

14.3 **"Customer"** means the person, partnership or organisation named as the Customer in the attached credit application & terms of trading agreement or other agreement with Tegel incorporating these terms of sale.

14.4 An **"Event of Default"** means an event where:

- (a) The Customer fails to comply with these terms of sale or any other agreement with Tegel; or
- (b) The Customer is subject to any actual or threatened dissolution, winding up, bankruptcy, liquidation, statutory management, insolvency or receivership or any event which generally precedes such an event; or
- (c) An event occurs or information becomes known to Tegel, which in Tegel's opinion might materially affect the Customer's creditworthiness, the value of the goods the subject of the Security Interest or the Customer's ability or willingness to comply with its obligations under these terms of sale or any other agreement with Tegel; or
- (d) Any guarantor of the Customer's obligations under these terms of sale is in default under any agreement with Tegel (in any capacity).

14.5 **"goods"** means all tangible and intangible personal property supplied by Tegel to the Customer (or the Customer's nominated recipient) and includes all accessions, co-mingled goods or any product or mass which the goods subsequently become part of and (unless the context requires otherwise) includes all proceeds of such goods.

14.6 **"security interest"** means the security interest granted in favour of Tegel under these terms of sale or any other agreement between the Customer and Tegel.

14.7 **"Tegel"** means Tegel Foods Limited.

14.8 **Interpretation:** References to the PPSA include such legislation from time to time amended, re-enacted or substituted and any statutory instruments, regulations and orders issued under such legislation.

A reference to the Customer or Tegel under these terms of sale includes that person's successors and permitted substitutes and assigns.

Unless the context otherwise requires, words and phrases have the meanings given to them in, or by virtue of the PPSA.