

TERMS & CONDITIONS OF SALE

1. DEFINITIONS

In these terms and conditions:

“**Buyer**” means the party acquiring the Goods from the Seller.

“**Goods**” means the commodity being supplied by the Seller to the Buyer.

“**Parties**” means the Buyer and the Seller.

“**Place of Destination**” means the port to which the Goods are delivered.

“**Seller**” means JBS Australia Pty Ltd trading as Swift and Company Trade Group (ABN 14 011 062 338), and any other “related body corporate” or “subsidiary” of them as defined in the *Corporations Act 2001* (Cth) and includes the Seller’s successors and permitted assigns.

2. TERMS AND CONDITIONS TO APPLY

- (a) The Parties agree that the sale of Goods by the Seller to the Buyer will be subject to these Terms & Conditions, the Seller’s Privacy Policy as published on its website and if applicable the terms contained in any Confirmation of Sale (including rule of Incoterms 2010) and invoice, or otherwise agreed between the Parties, despite any prior agreements, prior offers, dealings or trade usage, or any terms communicated by the Buyer to the Seller (**Terms**).
- (b) The sale of Goods in subclause (a) includes all future sales (including if the Agreement is at any time terminated or paused and recommenced), unless expressly excluded or agreed otherwise between the Parties.
- (c) The Seller in the course of its business obtains trade insurance. The Buyer agrees to the Seller disclosing personal (including credit eligibility) information of the Buyer to any trade insurer or broker for the purpose of assessing and/or processing the Buyer’s application for credit.

3. PRICE AND SPECIFICATIONS

The Buyer agrees to purchase Goods based on the price and specifications set out in any Confirmation of Sale, or invoice or as otherwise agreed between the Parties, in accordance with the Terms (**Agreement**). In the event of any inconsistency as to quantity or weight of Goods to be supplied in any Agreement document, the quantity or weight in the invoice applies.

4. VARIATION

- (a) It is agreed that any credit limit notified by the Seller to the Buyer is for the administrative convenience and sole benefit of the Seller and does not constitute a term upon which Goods are supplied on credit. The credit limit may be varied or cancelled as notified by the Seller to the Buyer without prior notice. The Buyer is liable to pay for all Goods supplied, notwithstanding that the total price of the Goods exceeds the credit limit.
- (b) The Terms may be varied by the Seller from time-to-time when events outside the Seller’s control necessitate it, including small variations as to quantity or weight of Goods to be supplied due to transportation constraints. Reasonable notice will be given to the Buyer of any variation. No requested change in the specifications by the Buyer will be binding unless the Seller agrees in writing.

5. CANCELLATION BY BUYER

The Buyer may only terminate an Agreement with the Seller’s written consent and in that event the Buyer will be liable to pay the Seller any loss, damage or expenses incurred by the Seller in relation to the supply or proposed supply of the Goods.

6. CHARGES AND TAXES

- (a) Unless otherwise expressly stated, the price excludes all storage, transportation, insurance, packing, crating or casing, handling, demurrage, delivery, export, porting, loading/unloading and quarantine charges, tax or excise in connection with the Goods (**charges and taxes**). If the Seller expressly agrees in writing that the price includes any charges or taxes, the price is subject to adjustment for increases in any of those charges or taxes after the date of the Agreement.
- (b) If applicable, charges and taxes will be paid according to the rule of Incoterms 2010 in the Confirmation of Sale or as otherwise agreed between the Parties.
- (c) Subject to subclause (b), the Buyer shall pay and indemnify and hold harmless the Seller for all charges and taxes incurred by it in the supply of the Goods.

7. CONDITIONS OF SUPPLY

This Agreement is conditional on the Seller at all relevant times having all necessary licenses or permits to supply Goods to the Buyer under the laws of Australia and the Place of Destination.

8. PAYMENT

- (a) The Buyer must pay for the Goods pursuant to the terms in the Confirmation of Sale or invoice, or as otherwise agreed in writing between the Parties.
- (b) Invoices not paid in full by the due date will attract interest at the rate of 12% per month (calculated daily) unless otherwise agreed. This will not affect the other rights of the Seller.
- (c) The Seller may at any time set off amounts owed by the Seller to the Buyer from the amounts owed by the Buyer to the Seller.
- (d) The Buyer is not entitled to set off any amounts against amounts owed by the Buyer to the Seller.

9. DELIVERY

- (a) All Goods are delivered Ex Works (EXW) under Incoterms 2010 unless stated otherwise in the Terms.
- (b) The agreed date for delivery or shipment is an estimate only. The Seller will use all reasonable endeavours to deliver Goods on or before the agreed date but:
 - (i) delivery on that date is not guaranteed and it is subject to extension for any delay caused by licence or permit issues, supply chain disruptions, strikes, lockouts, war, breakdowns, accidents, transport, fire or any other cause beyond the reasonable control of the Seller (**Force Majeure events**); and
 - (ii) the Seller will not be liable for any loss, damage or other liability whether in contract, tort, negligence or otherwise and whether directly or indirectly arising from the Goods not being delivered by that date for any reason.
- (c) The Seller may deliver Goods to the Buyer in instalments and in which case the Seller may separately invoice the Buyer for payment for each delivery instalment.
- (d) If the Seller is prevented from performing its obligations due to Force Majeure Events for more than 30 days, the Seller may terminate the Agreement (giving written notice to the Buyer) without further liability.

10. LIABILITY

- (a) The Buyer must satisfy itself as to the truth and accuracy of, and may not rely for any purpose upon, any technical or other advice or information provided by or on behalf of the Seller in connection with Goods or the Terms;
- (b) Subject to clause 11 and except to the extent prohibited by law, the only remedy of the Buyer against the Seller for any loss, damage or liability whether in contract, tort, negligence or otherwise of the Buyer in connection with the Terms or Goods or the Seller’s failure to supply the Goods to the Buyer (or all three) in accordance with the Terms shall be limited to replacement of the Goods; and
- (c) The Seller shall otherwise have no liability to the Buyer whether in contract, tort, negligence or otherwise.

11. DEFECTIVE GOODS and RETURNS

- (a) Within two (2) days after supply of Goods the Buyer shall both inspect the Goods to confirm they comply with requirements of quantity, quality or description (“**the requirements**”) and notify the Seller in writing of the detailed extent to which any Goods do not comply.
- (b) The Buyer shall not use the Goods (other than to the extent reasonably necessary for inspection) before the Buyer satisfies itself that the Goods comply with the requirements or, if the Buyer gives notice to the Seller under (a) above, until the Seller has had a reasonable opportunity to consider and address that notice and inspect the Goods (if required).
- (c) If the Buyer does not comply with this clause, the Buyer shall be taken to have unconditionally accepted the Goods and the Buyer shall lose any right to reject any Goods or claim any remedy (including damages) against the Seller.
- (d) Any Goods returned are only accepted with the prior written approval of the Seller.
- (e) Goods which have been specifically produced by the Seller or altered by the Buyer cannot be returned simply because the Buyer has changed their mind about purchasing the Goods.

- (f) The Goods come with guarantees that cannot be excluded if the Buyer is a 'Consumer' as defined under *Australian Consumer Law (ACL)*. Such a Buyer would be entitled to a replacement if the Goods fail to be of accepted quality or in the case of a major failure replacement or refund and compensation for any other reasonably foreseeable loss or damage.

12. RISK AND PROPERTY IN GOODS

- (a) For the purposes of the *Personal Property Securities Act 2009* (or similar legislation outside of Australia) the term **Goods** used in this clause means any and all present and after acquired Goods supplied by the Seller to the Buyer;
- (b) The Goods shall be entirely at the risk (including loss, damage or deterioration) of the Buyer from the time of 'delivery' in accordance under clause 9(a).
- (c) The Seller retains full title to the Goods until the Seller receives payment in full for the Goods and all other amounts owed by the Buyer to the Seller.
- (d) Until all such monies have been paid:
- (i) the Seller has the right to call for or recover possession of the Goods (for which purpose the Seller's employees or agents may enter onto the Buyer's premises, whether at the site of delivery or otherwise) and the Buyer must deliver up the Goods if directed to do so by the Seller;
 - (ii) the Buyer:
 - (A) agrees that the relationship between the Buyer and the Seller shall be fiduciary and the Buyer shall keep the Goods safely, securely and separately stored, kept in good condition and insured, and marked in a manner which clearly indicates that they belong to the Seller;
 - (B) has the right to sell the Goods in the ordinary course of business as the Seller's fiduciary agent but must not otherwise encumber or dispose of the Goods;
 - (C) shall not mix the Goods with or attach them to other materials or otherwise make them unable to be returned to the Seller in their original state;
 - (D) agrees that if, in breach of this clause, the Goods are incorporated with Goods of the Buyer, the resultant product shall become and be deemed to be the sole property of the Seller. If the Goods are incorporated in any way with the property of a party other than the Buyer, the resultant product shall become and be deemed to be owned in common by the Seller with that other party (or parties) on a pro-rata basis to be calculated by reference to the cost to the Buyer of the incorporated materials; and
 - (E) will hold any proceeds (as that term is defined in the PPSA) of any resale, disposal or other dealing with the Goods or any product incorporating the Goods (including sale or supply to a party other than the Buyer) in breach of this clause in trust for the Seller and shall pay the proceeds into a separate fiduciary account to be held in trust for the Seller until accounted for to the Seller at the demand of the Seller.
- (e) To secure payment of all monies owed by the Seller, the Buyer charges with the due payment of all of those monies all of the Buyer's interest in all personal property owned by the Buyer wherever located both present and future and the Buyer consents to the Seller lodging a security including a financing statement under the PPSA or any similar register outside of Australia.
- (f) It is the intention of the parties by clause 10(d) that there is created for the benefit of the Seller a Purchase Money Security Interest as defined in the PPSA in all unpaid Goods;
- (g) It is the intention of the parties by clause 10(e) that there is created for the benefit of the Seller a Purchase Money Security Interest in all present and after acquired personal property of the Buyer;
- (h) The Buyer agrees that the Seller may register a financing statement of any Purchase Money Security Interest, its general security interest and any other security interest in the Goods created by the Terms & Conditions on the Personal Property Securities Register (**PPSR**) and the Buyer waives its rights to receive a verification statement (as that term is defined in the PPSA) in respect of any financing statement or financing change statement (as those terms are defined in the PPSA) registered by the Seller in respect of any personal property of the Buyer.
- (i) The parties agree that, insofar as the provisions of Chapter 4 of the PPSA are for the benefit of the Buyer or place an obligation

on the Seller, those provisions will apply only to the extent that they cannot be contracted out of or to the extent that the Seller otherwise agrees in writing.

13. DELAY

Where the Seller incurs any extra costs in relation to the supply of Goods, directly or indirectly, as a result of any delay, interruption, suspension or alteration of any work or the supply of the Goods caused by or as a consequence of any act or omission of the Buyer, the Seller shall be entitled to increase the price by the amount of the extra costs incurred.

14. THE BUYER

- (a) The Buyer warrants that the Goods comply with the laws of the Place of Destination.
- (b) Where the Buyer is a trustee of any trust, the Buyer warrants it has full power and authority to enter into the Agreement on behalf of the trust and that it shall be bound by these Terms both personally and as trustee.
- (c) Where the Buyer is comprised of more than one person or entity then each person or entity that comprises the Buyer is bound by these Terms jointly and severally.
- (d) The Buyer may not assign its rights under the Agreement without written consent of the Seller.

15. DEFAULT, INSOLVENCY AND TERMINATION

- (a) If the Buyer:
- (i) commits a substantial breach of the Terms; or
 - (ii) is insolvent, commits an act of bankruptcy, becomes bankrupt, has a receiver, liquidator or external administrator appointed over it or its assets, or is bound by any composition with its creditors,
- the Seller may, without affecting the Seller's other rights:
- (i) immediately terminate the Agreement (at which time all outstanding amounts will become due and payable) without further liability, by notice in writing to the Buyer;
 - (ii) refuse, suspend or withhold any further supply of Goods;
 - (iii) forfeit any deposit paid for Goods; or
 - (iv) if payment in addition to a deposit has been made by the Buyer in respect of any of the Goods, the sale of which is terminated, appropriate that payment to any other debts of the Buyer to the Seller or damages incurred by the Seller as a result of the termination of the sale.
- (b) The Buyer indemnifies the Seller against all its losses, costs and expenses (including legal costs on a solicitor own client basis) that the Seller incurs arising from any substantial breach of the Agreement by the Buyer (including failure to pay on the due date) on a full indemnity basis and are recoverable from the Buyer by the Seller as a liquidated debt..

16. GOVERNING LAW

- (a) The Agreement shall not be governed by the United Nation's Convention on Contracts for the International Sale of Goods 1980.
- (b) The Agreement shall be governed by, and construed in accordance with, the laws of the State of Queensland, Australia. The Parties submit to the exclusive jurisdiction of the Courts in the Central Business District at Brisbane, Australia.

17. NON-WAIVER

The Seller's omission to exercise any right under, or insist on strict performance of, the Terms does not operate as a waiver. Partial exercise of a right does not preclude any fuller exercise of that right.

18. SEVERANCE

If any part of the Terms is or becomes void or unenforceable that part is severed so that all parts which are not void or unenforceable remain in full force and effect and are unaffected by the severance.

19. NOTICES

- (a) Notices required under the Terms are to be delivered by fax or email using the contact details on any Confirmation of Sale or invoice issued by the Seller.
- (b) Notices to the Seller will be taken as delivered when received by the Seller. Notices to the Buyer will be deemed to have been duly delivered once sent by the Buyer.