

## PCA STANDARD TERMS AND CONDITIONS OF SUPPLY

### IMPORTANT NOTES

Please be aware that these terms and conditions may change from time to time. The terms and conditions which apply to a Purchase Order placed by you will be those terms and conditions which were published on this website at the time of your Purchase Order. We strongly recommend that you consult and read these terms and conditions carefully each time you propose to place a Purchase Order with PCA or make an offer to purchase any goods from us.

If there is a separate written agreement between the Customer and PCA in relation to the supply of the Products, then that separate written agreement will apply. To the extent permitted by law and to the extent the Customer's terms and conditions are supplied to PCA in respect of the Products (including as printed on consignment notes or other documents), the parties agree that those terms and conditions will be of no legal effect and will not constitute part of a Purchase Order (even if any representative of PCA signs those terms and conditions or annexes the terms and conditions to a Purchase Order).

Please note that these terms and conditions do not apply to any orders for Products placed by Customers with Bega Cheese Limited (ABN 81 008 358 503) or any of its Related Bodies Corporate (other than PCA) or any orders placed with the 180 Nutrition, HAPPi or VEGEMITE eCommerce stores. The relevant terms and conditions for these purchases can be found here:

**Bega Group:** <https://begagroup.com.au/terms-and-conditions/>

**180 Nutrition:** <https://180nutrition.com.au/>

**HAPPi:** <https://happihealth.com.au/>

**VEGEMITE:** <https://vegemite.com.au/>

### 1. Contract terms

1.1 This Agreement is comprised of:

- a) these Standard Conditions; and
- b) the Purchase Order (or, if applicable, the document titled "Customer Contract") which sets out the Particulars and Special Conditions,

and, subject to the paragraphs underneath the 'IMPORTANT NOTES' section above, supersedes all previous written agreements between the parties as to its subject matter. All other terms and conditions, express or implied, including any alternative terms proposed by the Customer are excluded to the fullest extent permitted by law.

1.2 The parties must comply with any Special Conditions set out in the Particulars. If there are any inconsistencies between the Special Conditions and these Standard Conditions, the Special Conditions will prevail to the extent of the inconsistency.

### 2. Supply

2.1 PCA's obligation to supply Products to the Customer is conditional upon PCA accepting a Purchase Order for the Products. The acceptance of one Purchase Order does not create any obligation on PCA to accept any other Purchase Order.

- 2.2 Once PCA has accepted a Purchase Order, the Customer cannot change or cancel the Purchase Order without the prior written consent of PCA (which must not be unreasonably withheld or delayed).
- 2.3 If PCA has notified the Customer that PCA has accepted the Purchase Order then, subject to payment of the Purchase Price:
  - a) PCA must sell to the Customer the Products specified in that Purchase Order in accordance with this Agreement; and
  - b) the Customer must buy from PCA the Products specified in that Purchase Order for the Purchase Price.
- 3. Fees and risk**
  - 3.1 The Customer must pay the Purchase Price for the Products (including any GST and other taxes payable in connection with the supply under this Agreement) in accordance with the Payment Terms unless otherwise agreed by the parties in writing. PCA may pass on any costs associated with particular forms of payment (for example, merchant fees charged on credit card payments) which will be set out in the final invoice.
  - 3.2 Products will be delivered in accordance with the Delivery Requirements. Unless otherwise agreed or specified in the Delivery Requirements, PCA will request a third party to deliver the Products to the address nominated by the Customer in the Purchase Order.
  - 3.3 Risk in the Products will pass to the Customer on delivery.
  - 3.4 Any delivery times communicated by PCA to the Customer are estimates only, and the Customer is not entitled to refuse to accept delivery of Products due to a delay in delivery. The Customer acknowledges that PCA will use all reasonable endeavours to deliver the Products within a reasonable time of the estimated delivery time communicated to the Customer but is not liable to the Customer for any costs or losses that the Customer suffers or incurs as a result of any late delivery of the Products.
  - 3.5 PCA may charge the Customer additional fees to cover any delay or storage needed if PCA attempts to deliver the Products to the Customer in the manner outlined in the Purchase Order or as otherwise agreed by PCA and the Customer in writing but cannot for any reason reasonably attributable to the Customer.
  - 3.6 Notwithstanding anything else in this Agreement, if the Customer has failed to pay the Purchase Order or for a previous order placed with PCA when due, PCA may by notice to the Customer in writing:
    - a) refuse to supply the Customer with further Products; or
    - b) conduct a review of the Customer's credit arrangements with PCA which may include a variation, suspension or withdrawal of any credit arrangements offered to the Customer (for example, requiring the Customer to pay for all future Products in full prior to the Products being supplied to the Customer).
  - 3.7 The Customer must raise any claim or dispute relating to an invoice within 30 days of receipt. Otherwise, the Customer is liable to pay the invoice by the due date.
  - 3.8 Other than in circumstances of a genuine dispute as outlined in clause 3.7, if:
    - a) the Customer does not pay any amounts payable under this Agreement by their due date; or

b) the Customer suffers an Insolvency Event,

then all monies for all Products delivered to the Customer become immediately due and payable (regardless of any agreed credit terms) and the Company is entitled to suspend all further delivery of Products to the Customer until all amounts payable under this Agreement have been paid in full by the Customer.

3.9 If the Customer owes PCA money for any reason and PCA owes the Customer money in connection with this Agreement, PCA may set off the amount the Customer owes PCA against the amount that PCA owes the Customer.

3.10 In the absence of a clear payment direction from the Customer, the parties agree PCA may apply payments received from the Customer against any outstanding invoice or liability of the Customer.

#### **4. Retention of title**

4.1 Title to Products remains with PCA until the Customer has paid for the Products in full.

4.2 Until the Customer has paid for the Products in full:

- a) the Customer must store the Products in a manner which ensures that the quality of the Products does not deteriorate and enables them to be identified as property of PCA;
- b) the Customer holds the Products as bailee for PCA;
- c) the Customer is entitled to sell the Products in the ordinary course of business and must hold any Proceeds of sale in trust for PCA and account to PCA for those Proceeds of sale; and
- d) the Customer irrevocably grants to PCA the right on reasonable notice to the Customer and during business hours, to enter any premises in which the Products are stored or reasonably considered to be stored, for the purposes of PCA inspecting the Products and, if the Customer has breached the Agreement, to retake possession of the Products.

4.3 If this Agreement (or a transaction in connection with it) is or contains a Security Interest for the purposes of the PPSA, the Customer must upon request do anything which PCA considers reasonably necessary for the purposes of ensuring that the Security Interest is enforceable, perfected and otherwise effective, and to enable PCA to apply for any registration, give any notification, and to exercise any rights in connection with the Security Interest. PCA is not obliged, before exercising a right under this Agreement or conferred by law, to give PCA any notice or demand, or allow a lapse of time, that is required by law unless the notice, demand or lapse of time cannot be excluded. To the extent permitted by law, PCA expressly waives any rights they may have under the PPSA (including without limitation section 157 of the PPSA) to be given any such notices or demand.

4.4 Once the Customer takes possession of the Products, the Customer must insure the Products against all usual risks to full replacement value and keep them insured while the Products remain the property of PCA and hold any insurance money received by the Customer for Products on trust for PCA.

4.5 While the Products remain the property of PCA, the Customer must not, without PCA's prior written consent, grant or allow another to hold a Security Interest in:

- a) the Products; or
- b) the Proceeds of the Products.

4.6 If the Customer uses the Products in a manufacturing or value-added process of its own or of a third party, the Customer will account to PCA such part of the Proceeds of the manufacturing or value-added process as relates to the Products. Such part will be deemed to equal in dollar terms the amount owing by the Customer to PCA for those Products at the time of receipt of such Proceeds.

## 5. Confidential Information

5.1 Each party (“**recipient**”) must:

- a) maintain the confidentiality of the Confidential Information of the other party (“**disclosing party**”); and
- b) only use the Confidential Information for the purposes of the business relationship between the Customer and PCA.

5.2 A recipient’s obligations under clause 5.1 do not apply to Confidential Information of the disclosing party that:

- a) is, or has become, part of the public domain other than through a breach of an obligation of confidence owed to the disclosing party;
- b) was in the recipient’s possession prior to disclosure by the disclosing party and was not obtained in breach of an obligation of confidence owed to the disclosing party;
- c) after disclosure by the disclosing party, is received by the recipient from another person in circumstances that do not give rise to a breach of an obligation of confidence owed to the disclosing party; or
- d) is derived or created by the recipient independently of and without reference to the disclosing party’s Confidential Information; or
- e) the recipient is obliged to disclose by law, the rules of a stock exchange or an order of the court.

5.3 Confidential Information of a disclosing party that is within the possession or control of a recipient must be returned to the disclosing party upon request.

5.4 The return of Confidential Information required by clause 5.3 does not include the return of:

- a) any legal advice, internal working papers or legal due diligence reports prepared for the recipient or directors’ papers or board minutes relating to those matters;
- b) any Confidential Information which the recipient is required by law to retain; or
- c) Confidential Information in any electronic files or back-up copies made in the ordinary course of business, to the extent return or destruction of such electronic information is not reasonably practicable,

provided, however, that any such Confidential Information so retained must be held in compliance with the terms of this Agreement.

## 6. Non-compliant product claims

6.1 The Customer must inspect the Products within 7 days of such Products being delivered to the Customer and the Customer must raise any claim or dispute relating to the Products within 7 days of such Products being delivered to the Customer (noting that such claim or dispute must be

raised prior to the Customer using the Products in a manufacturing or value-added process of its own or of a third party).

- 6.2 If the Customer fails to notify PCA within the timeframe outlined in clause 6.1 above or before the Customer uses the Products in a manufacturing or value-added process of its own or of a third party, then, to the fullest extent permitted by law, the relevant Products will be treated as having been accepted, and the Customer must pay for the Products and, to the fullest extent permitted by law, PCA will be discharged from any liability in respect of the Products being wrong or defective or short delivered.
- 6.3 In the absence of fraud or manifest error, PCA's written records in relation to a delivery of Products will be conclusive evidence of the type and quantity of Products delivered and of the date and time of delivery. In the absence of fraud or manifest error, certification from a PCA authorised representative will be conclusive evidence of the amount by the Customer owed for the Products.
- 6.4 Notwithstanding anything to the contrary in this Agreement, the Customer acknowledges and agrees that PCA will not be liable for any defect or issue which arises in the Products after the Customer uses the Products in a manufacturing or value-added process of its own or of a third party.
- 6.5 The Customer must not return or destroy any Products that the Customer claims are not in accordance with the Agreement unless:
  - a) the Customer advises PCA of its intention to return or destroy the Products within 7 days of delivery of such Products to the Customer (noting that such claim must be raised prior to the Customer using the Products in a manufacturing or value-added process of its own or of a third party);
  - b) PCA has given its written approval to the return or destruction of the Products; and
  - c) the return or destruction of the Products is effected in accordance with PCA's instructions, directions or advice and in accordance with all relevant laws.

## **7. Warranties and liability**

- 7.1 With the exception of the Consumer Guarantees, this Agreement excludes any term, condition or warranty that may otherwise be implied into this Agreement. The Customer acknowledges that they do not rely, and it is unreasonable for the Customer to rely, on PCA's skill or judgment as to whether the Products supplied are reasonably fit for any purpose for which the Customer is acquiring them.
- 7.2 If the Products do not comply with the Specifications, PCA's liability to the Customer is, to the extent permitted by law, limited to either an obligation to supply replacement Products or, at PCA's option, repay to the Customer the amount paid to PCA for the Products (which may include PCA giving the Customer a credit note for any price paid or payable for the Products for use against future Purchase Orders).
- 7.3 Subject to clause 7.4 and to the extent permitted by law, the maximum liability of PCA to the Customer for breach of contract, negligence or otherwise in connection with Products supplied or to be supplied under the Agreement or otherwise at law or in equity is limited to the greater of:
  - a) the amount paid or payable by the Customer for those Products; or
  - b) \$50,000.

- 7.4 The limitation and exclusions of liability outlined in clause 7.3 above do not apply to PCA's liability for any:
- a) wilful misconduct or fraud of PCA; or
  - b) death, personal injury or third-party property damage caused or contributed to by PCA.
- 7.5 To the extent permitted by law, each party excludes all liability to the other for Consequential Losses.
- 7.6 The Customer charges to PCA any interest that the Customer may have in any real or personal property (including tangible, intangible, freehold and leasehold property) now or in the future, in any capacity (whether beneficially, as trustee of any trust or otherwise), to secure payment of all monies owed to PCA by the Customer in any capacity, on the Customer's own account or with others, now or in the future.
- 7.7 The Customer irrevocably consents to the lodgement of a caveat or caveats over any real property in respect of any interest of PCA arising from this Agreement.
- 7.8 If a withdrawal or recall of the Products is required, the Customer must do all things reasonably requested by PCA and must comply with all applicable laws.

## **8. Acknowledgement**

The Customer acknowledges and agrees that the Products delivered to the Customer may contain foreign materials as identified in the Specifications.

## **9. Indemnity**

- 9.1 The Customer indemnifies PCA against all loss, liability, damages, costs and expenses (including third party claims bought against PCA), incurred by PCA as a result of, or in connection with:
- a) any fraudulent, wilful, negligent or unlawful act or omission of the Customer; and
  - b) the Customer's failure to pay the Purchase Price as required under clause 3 of these Standard Conditions.
- 9.2 Any amount claimed by PCA pursuant to the indemnity in this clause will be reduced proportionally to the extent the loss, damage, liability, claim or expense is directly caused or contributed to by PCA.
- 9.3 Each party has a duty to mitigate any loss or liability that would otherwise be recoverable from the other party under this Agreement by taking appropriate and commercially reasonable steps to reduce or limit that amount.

## **10. Intellectual Property Rights and Rebranding**

- 10.1 All Intellectual Property Rights which are owned by, or proprietary to, PCA at the date of this Agreement shall remain owned exclusively by PCA. Any new Intellectual Property Rights which are created as a result of, or in connection with, the provision of the Products, or otherwise in connection with this Agreement, shall be owned by PCA. The Customer acknowledges and agrees that nothing in this Agreement grants the Customer any Intellectual Property Rights (including without limitation plant breeder's rights, copyright, trade marks, patents and designs) of PCA. The Customer must not use PCA's Intellectual Property Rights (including trade marks) without PCA's prior written consent.
- 10.2 The Customer must not propagate plant material using the Products.

**10.3** The Customer must:

- a) at all times ensure that its use and resale of the Products does not in any way denigrate, damage the integrity of, or otherwise bring PCA into disrepute; and
- b) not adapt, modify or alter the Products in any way prior to resale to include any defamatory, illegal, offensive material or material which infringes the rights (including the intellectual property rights) of any person or amounts to any passing off or misleading or deceptive conduct.

**11. Force Majeure**

Neither party will be in breach of the Agreement or otherwise be liable to the other party for any delay in performance or the non-performance of any of its obligations under the Agreement (excluding any obligation to pay for the Products), to the extent that the delay or non-performance is due to any Force Majeure. If a party's performance of its obligations under the Agreement is affected by Force Majeure it must notify the other party of the relevant circumstances as soon as reasonably practicable.

**12. Taxes**

12.1 The Price does not include GST or any other government taxes or duties (including, where applicable, container deposit levy fees). If part of any payment under the Agreement is the consideration for a taxable supply or GST becomes payable, the Buyer must pay to the Company an additional amount equal to the GST, subject to the Company providing a tax invoice. The Buyer is responsible for all other local duties and taxes.

**13. Privacy and spam**

13.1 The Customer can access the personal information that the Bega Group holds about the Customer in the manner set out in the Bega Group's privacy policy, a copy of which is available at <https://begagroup.com.au/privacy-policy/>.

13.2 PCA may use the Customer's personal information to obtain and process credit reports about the Customer, to manage and enforce PCA's rights under this Agreement, to meet the Bega Group's legal obligations to the Customer and for direct marketing and promotional purposes, and the Customer consents to such use.

13.3 Bega Group may disclose the Customer's personal information to its contractors or agents on strictly confidential terms, and the Customer consents to such disclosure.

**14. General**

14.1 The laws of Queensland, Australia govern this Agreement. Each party irrevocably submits to the non-exclusive jurisdiction of the courts of Queensland, Australia and courts competent to hear appeals from those courts. The United Nations Convention on Contracts for the International Sale of Goods is excluded in its entirety.

14.2 If the Customer is acting as the trustee of any trust (whether disclosed or not), then the Customer declares, warrants and represents that they are entering into this Agreement with PCA both in its own personal capacity and as trustee of the trust with the ability to bind, and the intention of binding, both and any charge over property will, without limitation, extend to the property of that trust.

14.3 No failure to exercise nor any delay in exercising any right, power or remedy under this Agreement operates as a waiver. A single or partial waiver of the exercise of any right, power or

remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made in writing.

- 14.4 The only enforceable obligations and liabilities are those set out in this Agreement. No variation to the Agreement is valid unless signed or otherwise agreed in writing by both PCA and the Customer.
- 14.5 If any provision of the Agreement is unenforceable or void either in whole or in part, the provision will be deemed to be deleted from the Agreement.
- 14.6 Any obligation imposed on more than one person, binds all of them jointly and each of them severally.
- 14.7 If a dispute arises between the parties in connection with this Agreement (“**Dispute**”), the parties will seek to resolve the Dispute through good faith negotiations in accordance with this clause before commencing any legal action. If PCA or the Customer believes that a Dispute exists, it will give the other party written notice of the Dispute (“**Dispute Notice**”) setting out the nature of the Dispute, its position on the Dispute and the person who will represent it in connection with the Dispute. Within 10 days after receiving a Dispute Notice, the recipient will provide a written response to the other party setting out its position on the Dispute and the person who will represent it in connection with the Dispute. Within 10 days of that response being provided, the nominated representatives of the parties must meet and attempt to resolve the Dispute through good faith negotiations. The representatives of the parties for the purposes of this clause will be a senior manager or other senior representative of that party. If the nominated representatives of the parties have not resolved the Dispute within 10 days or one of the parties has refused to participate in good faith negotiations, either party will be free to commence legal action in relation to the Dispute. This clause does not prevent a party from seeking interlocutory orders or urgent relief from a court to protect property or rights.
- 14.8 A notice that is signed and sent by fax or any other electronic means will be deemed to be in writing. The Customer expressly acknowledges and agrees that PCA may provide the Customer with written notice by direct mail, facsimile, email or any other electronic means of communication.
- 14.9 The Customer and PCA must not do anything (including failing to act) that is likely to adversely affect the other party’s reputation, sales or brands. This clause does not prevent either party from exercising or enforcing its rights under this Agreement or otherwise at law.
- 14.10 The Customer further agrees that from time to time PCA may contact the Customer by direct mail, telephone, email or any other electronic means of communication for the purposes of verifying the information the Customer has provided to PCA or which PCA maintains in its Customer account records. The Customer must promptly notify PCA in writing of any changes in their contact information or Customer account details.
- 14.11 Unless expressly stated otherwise, this Agreement does not create a relationship of employment, trust, agency or partnership between the parties.
- 15. Assignment**
- 15.1 The Customer cannot assign, novate or sub-contract any of its rights or obligations under this Agreement without the prior written consent of PCA.
- 15.2 The Customer acknowledges and agrees that PCA’s consent (referred to in clause 15.1) may be subject to conditions including that the Customer demonstrates, to PCA’s reasonable satisfaction,



that the proposed assignee or sub-contractor is responsible, of sound financial standing, and is able to purchase the Products or perform the relevant obligations in accordance with the terms of this Agreement.

- 15.3 PCA may assign, novate or sub-contract its rights or obligations under this Agreement without the prior written consent of the Customer to any Related Bodies Corporate of the Bega Group or a bona fide purchaser of the assets or business of PCA. PCA may subcontract the performance of all or any part of PCA's obligations under this Agreement. PCA remains liable and responsible for all acts or omissions of its subcontractors as if they were the acts or omissions of PCA.

## 16. Definitions and Interpretation

### 16.1 Definitions

In this Agreement:

<b>Agreement</b>	means the agreement between PCA and the Customer for the sale and purchase of Products constituted in accordance with clause 1.1 of these Standard Conditions.
<b>Bega Group</b>	means Bega Cheese Limited ABN 81 008 503 and each of its Related Bodies Corporate.
<b>Confidential Information</b>	means, in relation to a party, information however held or recorded relating to the party, its business or assets including financial or taxation information, information relating to customers or suppliers, present and future business and marketing plans, particulars of employees or contractors, Product Specifications and manufacturing process, the terms of the Agreement (including the Purchase Price) and any other information which the party identifies as confidential.
<b>Consequential Loss</b>	includes indirect, special or incidental losses, loss of profit, loss of revenue, loss of goodwill or credit, exemplary or punitive damages, economic loss, loss of business reputation, loss or denial of opportunity, loss of customers, loss of sales, loss of production or loss arising from a claim by a third party (including any form of penalty or compensation claim from a third party), whether arising in contract, tort (including negligence), equity, statute or otherwise.
<b>Consumer Guarantees</b>	means a right or guarantee the Buyer may have under the Australian Consumer Law under Schedule 2 of the <i>Competition and Consumer Act 2010</i> (Cth) and any equivalent state or territory legislation or other rights in relation to the supply of goods or services (such as terms implied into a contract) that cannot lawfully be excluded.
<b>Corporations Act</b>	means the <i>Corporations Act 2001</i> (Cth).
<b>Customer</b>	means the customer identified in the Particulars.
<b>Delivery Requirements</b>	means the delivery requirements identified in the Particulars or otherwise agreed by the parties in writing. If the Delivery Requirements refer to terms defined in the Incoterms, the definition of those terms in the Incoterms will apply.

<b>Force Majeure Event</b>	means an event beyond the reasonable control of a party including act of God, fire, flood or other physical disaster, industrial action, epidemic or pandemic, acts of war, riots, government restrictions, shipping or transport delays and disruption to transport infrastructure, raw materials supply or production facilities.
<b>GST</b>	means the goods and services tax imposed by or under the GST Law.
<b>GST Law</b>	has the meaning given to that term in the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (as amended) and any regulation made under that Act.
<b>Incoterms</b>	means the terms of trade described as such in the publication issued by the International Chamber of Commerce titled Incoterms 2010 (but excludes any terms in connection with the procedures for the resolution of disputes).
<b>Intellectual Property Rights</b>	means all rights held by PCA, including registered patents, trade secrets, Confidential Information, copyrights, trademarks, designs, formulations and all other rights resulting from PCA's intellectual endeavours in the industrial, commercial, scientific, literary and artistic fields. It does not include brands or trademarks owned by the Customer supplied to PCA for packaging purposes.
<b>Particulars</b>	means the Particulars set out in the Purchase Order (or, if applicable, the document titled "Customer Contract") relating to the supply of the Products by PCA to the Customer.
<b>Payment Terms</b>	means the payment terms specified the Particulars or otherwise agreed by the parties in writing.
<b>PCA</b>	means Peanut Company of Australia Pty Ltd ABN 34 057 251 091.
<b>PPSA</b>	means the <i>Personal Property Securities Act 2009</i> (Cth).
<b>Proceeds</b>	has the meaning provided under the PPSA.
<b>Products</b>	means the products specified in the Particulars and any other products agreed by the parties in writing from time to time.
<b>Purchase Order</b>	means a purchase order from the Customer to PCA for the supply of Products under the Agreement.
<b>Purchase Price</b>	in respect of a Product means the purchase price and cost of delivery for that Product specified in the Particulars or otherwise agreed by the parties in writing.
<b>Related Body Corporate</b>	has the meaning given to that term by section 9 of the Corporations Act.
<b>Security interest</b>	has the meaning provided under the PPSA.
<b>Specifications</b>	means the specifications for the Products set out in the Particulars or otherwise agreed to by the parties in writing.
<b>Standard Conditions</b>	means these standard terms and conditions of supply.

## 16.2 Interpretation

In this Agreement:

- a) the meaning of any general language is not restricted by any accompanying example, and the words 'includes', 'including', 'such as' or 'for example' (or similar phrases) do not limit what else might be included;
- b) no rule of construction applies in the interpretation of this Agreement to the disadvantage of the party preparing the document on the basis that it put forward this document or any part of it; and
- c) a reference to a party is a reference to PCA or the Customer, and a reference to the parties is a reference to both PCA and the Customer.

**These terms were last updated in April 2024.**