



## PRALINE PTY LTD

### Terms and Conditions of Trade

#### Definitions:

**"Australian Consumer Law"** means Schedule 2 to the Competition and Consumer Act 2010(Cth).

**"Company"** means Praline Pty Ltd ABN

**"Customer"** means the party placing the Order with purchasing Products from the company.

**"Order"** means an offer by a Customer to purchase Products from the Company.

**"PPS Act"** means the Personal Property Securities Act 2009 (Cth) and its associated Regulations as varied from time to time.

**"PPSR"** means the Personal Property Securities Register established under the PPS Act.

**"Products"** means packaging products and chocolate confectionery including any other product or service ordered by the Customer from the Company or supplied by the Company on the Order of the Customer.

**"Ts & Cs"** means these Terms and Conditions of Trade as varied and applicable from time to time.

**"Writing"** includes quotes, letters, fax, email and other similar electronic communication methods.

#### 1. Sale Terms

- 1.1 The Ts&Cs apply to all supplies by the Company to the Customer including all Orders or other sales and will prevail over all prior conditions previously agreed between the parties encompassing individual contracts.
- 1.2 The Ts&Cs may be amended from time to time by the Company by notice to the Customer. The amended Ts & Cs will apply to any Order from the date on which the Company notifies the Customer of the change.

#### 2. Order and Acceptance

- 2.1 Any Order submitted to the Company by a Customer will be deemed to be made pursuant to the Ts&Cs. Any Order placed or made by the Customer for the purchase of the Products will be an irrevocable offer and will constitute an unqualified acceptance by the Customer of the Ts&Cs.
- 2.2 The Company may accept any Order in whole or in part by providing confirmation of the Order. Acceptance may be oral, by conduct or in Writing at the Company's discretion.
- 2.3 Delivery by the Company of Products pursuant to an Order made by the Customer (whether by single or multiple delivery) will be taken as acceptance by the Company of the Order to the extent Product or Services are delivered.
- 2.4 Accepted Orders may not be varied or cancelled by the Customer without the Company's written consent and (subject to the conditions set out herein including clause 14.2) there is no right of return.

#### 3. Price

- 3.1 The price of the Products will be as agreed between the parties and where there is no written confirmation of the price, the price will be the amount indicated on invoices provided by the Company to the Customer regarding the Products ordered. The Company reserves the right to issue an amended invoice in the case of genuine error on its part in confirmation, quotation or invoicing.
- 3.2 For all Orders they are deemed to be ex-factory gate unless prior agreement.
- 3.3 Any discount or rebate will only apply if the Customer and the Company agree in Writing.

#### 4. Credit granting and payment

- 4.1 The company may accept an Order allow credit for part or all of its value or may accept an Order and require pre-payment of part or full amount as a condition of acceptance.
- 4.2 Credit approval once granted may be withdrawn at any time. Where credit approval has not been granted, or is withdrawn, payment for all Products supplied is required before delivery (cash or cleared funds). Where credit

has been approved for the Customer, all invoices issued by the Company are due and payable by the date agreed in Writing by the Customer and the Company, but if no agreement in Writing is made, then thirty (30) days from the date of the invoice.

## **5. Credit Policy and Default**

- 5.1** In the event that the Customer fails to make any payment payable pursuant to the Ts&Cs within the payment terms or breaches any of the warranties, obligations or agreements, the Customer will be in default of the Ts&Cs.
- 5.2** The Company may charge interest on all amounts not paid by the Customer by the time required for payment at a rate of 1.5% per calendar month calculated from the due date and accruing monthly thereafter until the date of payment.
- 5.3** If the Customer defaults in payment of any invoice due and payable, the Customer must reimburse and indemnify the Company from and against all expenses, costs and disbursements incurred by the Company in pursuing the debt including all reasonably charged legal costs on a "solicitor and own client" bases and the fees charged to the Company by any mercantile agency. If the Customer fails to pay any amount by the due date, the Company may at its sole discretion:
  - (a) Cancel any provision or credit to the Customer;
  - (b) Reverse any rebates or discounts allowed;
  - (c) Change credit payment terms including by requiring cash pre-payment for any further Products ordered;
  - (d) Provide details of the payment default to a credit reporting agency;
  - (e) Commence legal proceedings against the Customer (and any guarantors) for all outstanding amounts, interests and costs;
  - (f) Decline to supply Products to the Customer and terminate this and any other agreements with the Customer; and
  - (g) Exercise any other rights at law including pursuant to the PPS Act
- 5.4** A certificate of debt signed by a representative of the Company will be prima facie evidence and proof of money owing by the Customer to the Company at the time of the certificate

## **6. GST**

- 6.1** Words used in this clause 6 are defined or used in the A New Tax System (Goods and Services Tax) Act 1999 (Cth) have the same meaning as in that Act unless the context indicates otherwise
- 6.2** Unless expressly included all amounts of consideration expressed or described in any quotation or equal to any applicable GST. The additional amount must be paid when the other consideration is payable or at any earlier time that the Company is obliged to pay or allow credit for the GST
- 6.3** Whenever an adjustment even occurs in relation to any taxable supply which clause 6.2 applies:
  - (a) The supplier must determine the amount of GST component of the consideration payable; and
  - (b) If the GST component of that consideration differs from the amount previously paid, the amount of the difference must be paid by, refunded to or credited to the recipient, as applicable; and (c) The supplier will issue an Adjustment Note to the recipient.
- 6.4** If either party is entitled under an agreement the subject of the Ts&Cs to be reimbursed or indemnified by the other party for a cost or expense incurred in connection with such agreement, the reimbursement or indemnity payment must not include any GST component of the cost or expense to the extent that the cost or expense is the consideration for a creditable acquisition made by the party being reimbursed or indemnified, or by its representative member.
- 6.5** If GST is payable on any taxable supply made by one party (Supplier) to another (Recipient) under an agreement the subject of the Ts&Cs, then the recipient will not be required to pay any amount to the supplier in respect of that taxable supply unless it has first received a tax invoice from the supplier.

## **7. Delivery**

- 7.1** Delivery of the products is deemed to have taken place when:
  - (a) The customer takes possession of the Products at the company's address; or
  - (b) The Products are delivered by the Company or the Company's nominated carrier to the Customer's nominated address; or
  - (c) The Customer's nominated carrier takes possession of the Products in which event the carrier will be deemed to be the Customer's agent.
- 7.2** The Customer's nominated address is the address specified in the Commercial Account Application Form or otherwise notified in Writing by the Customer to the Company from time to time.

- 7.3 Delivery of the Products must not be refused by the Customer after an Order has been accepted by the Company. Where prices are stated as inclusive of delivery, delivery is to the delivery point nominated by the Customer and accepted by the Company.
- 7.4 The Customer must make all arrangements necessary to accept delivery of the Products at the Customer's nominated address.
- 7.5 Delivery of Products to a third party or address nominated in anyway by the Customer is deemed to be delivery to the Customer pursuant to the Ts&Cs as repudiated.
- 7.6 The Company will not be liable to the Customer for any loss or damage or expense arising from failure by the Company to deliver the Products at a specific time, promptly or at all and the failure of the Company to deliver at a specific time or at all will not entitle the Customer to treat an agreement the subject of the Ts&Cs as repudiated.
- 7.7 A Proof of Delivery ("POD") document signed by the Customer or anyone appearing to act on its behalf will be deemed confirmation by the Customer that the delivery of Products is in accordance with the Customer's Order.

## 8. Risk and retention of Title to the Products Pending Payment

- 8.1 The risk (but not title) in respect of Products sold passes to the Customer immediately upon delivery to the Customer, the Customer's agent or courier as the case may be.
- 8.2 Legal and beneficial ownership of the Products will remain with the Company and will not pass to the Customer until the Company has received in full (cash or cleared funds) all sums due to it in respect of the Products and all other sums which are or which may become due to the Company from the Customer on any credit or other account with the Company or pursuant to these Ts&Cs.
- 8.3 Until ownership of the Products has passed to the Customer, the Customer will keep the Products in question as fiduciary agent and bailee for and on behalf of the Company.
- 8.4 If:
  - (a) The Customer fails to pay any amount (whether in part or whole) payable in respect of any Products by the time required for payment; or
  - (b) The Customer is the subject of an insolvency event (such as receivership, administration or liquidation);The Company may, without notice to the customer, enter at any reasonable time any premises where Products are located (or believed by the Company to be located) and take possession of those Products not paid for and any other Products to the value of the amount owing. The Company's permission to enter the Customer's premises for that purpose is irrevocable. The Company is not liable to the Customer in contract, tort or otherwise, for any costs, damages expenses or losses incurred by the Customer as a result of any action taken by the Company under this clause.

## 9. PPS Act

- 9.1 Words in *italic* will have the meaning and definitions set out in the PPS Act.
- 9.2 The Customer acknowledges that by virtue of the Ts&Cs the Company has a *security interest* in the Products and their *proceeds* and to the extent applicable, the PPS Act applies to any agreement pursuant to the Ts&Cs.
- 9.3 The Customer acknowledges that the Company may do anything it considers necessary, including but not limited to registering on the PPSR any security interest in the Products which the Company has and including registration as a *purchase money security interest* (PMSI) in order to *perfect* the Company's security interest as a first priority interest under the PPS Act. The Customer agrees to do all things including signing any document which the Company reasonably requires to assist the Company to undertake the matters set out above.
- 9.4 The Customer waives pursuant to section 157(3)(b) of the PPS Act the right to receive notice of a *financing statement*, *financing change statement* or a *verification statement* in relation to any registration on the PPSR.
- 9.5 The Customer and the Company agree, that pursuant to section 115 of the PPS Act the following provisions in the PPS Act are contracted out of insofar as they require the Company to give any notice or statement or allow any period of time or grant any opportunity to remedy to the Customer:
  - (a) Sections 95 (removal of accession), 96 (retention of accession);
  - (b) Section 125 (obligation to dispose of or to retain collateral);
  - (c) Section 129 (disposal by purchase);
  - (d) Section 130 (notice of disposal), to the extent that it requires the secured party to give a notice to the grantor before disposal;
  - (e) Subsection 132(4) (statement of account if no disposal);
  - (f) Section 135 (notice of retention);
  - (g) Section 142 (redemption of collateral);
  - (h) Section 143 (reinstatement of security agreement).

- 9.6 Solely to preserve their confidentiality, to the extent allowed under this section 275 of the PPS Act, the Customer and Company agree that neither will disclose information if requested by a third party under section 275(1) of the PPS Act.
- 9.7 The customer agrees that any rights of the Company under the document are in addition to and not in substitution for its rights under the PPS Act.
- 9.8 The Customer must not without the Company's consent specify an order of application of payments made to the Company different to that set out in section 14 of the PPS Act or different to any other order specified by the Company at any time.
- 9.9 The Customer undertakes to give the Company not less than 14 days prior notice of any proposed change in the Customer's name or any other change in the Customer's details (including, but not limited to changes in its address, phone or facsimile number and trading name).

## **10. Claims and Returns 10.1**

Subject to clause 14.2:

- (a) The Customer must inspect and check all Products received and within 7 days of receipt notify the Company in Writing of any shortage in quantity, defect, incorrect specifications, damage or Products not in accordance with the Customer's Order. The Customer is responsible for checking that Products correspond with those ordered prior to use. After use or expiry of the time stated herein the Products will be deemed to be free from any defect or damage at delivery;
- (b) The Customer agrees that it will not return any of the Products without first informing the Company. The Company may elect to accept Products for return provided the returned Products are unmarked, in a saleable condition and include the original packaging, accessories, delivery documentation and invoice; The Customer will be liable for a Restocking Fee on all Products accepted for return. The Restocking Fee will now apply to Products returned for being defective, damaged or for failing to comply with the Order. The current Restocking Fee is 15% of the price of the Products returned.
- (c) No credit or replacement will be given unless and until Products so returned have been verified as being valid for return or are defective. The company reserves the right to recover its costs where the returned Products prove not to be valid for return or are not defective. Returned products must be returned to the Company to the address notified by the Company to the Customer from time to time;
- (d) All freight, handling and other charges in relation to returning Products (other than Products not ordered or found to be defective) are the responsibility of the Company:
  - (i) the Company must authorise those costs in Writing to the Customer prior to the Customer returning those Product(s) to the Company; or
  - (ii) the Company may elect to collect the Products from the Customer or nominate its own carrier.

## **11. Disputed Charges**

- 11.1 If the Customer objects to any invoiced item or amount, the Customer may withhold payment of the disputed amount, but only if on or before payment or the due date for payment (whichever occurs first), the undisputed amount of the invoice is paid in full and notice in Writing of the dispute is given to the Company, setting out the details of the amount disputed, the reasons for the dispute, and the basis for calculating the disputed amount.
- 11.2 The Company will investigate all disputes. If the amount is found to be payable (in whole or in part) then the Customer must pay the due amount within 7 days of receiving notice and the basis of the decision.
- 11.3 Invoiced amounts that are not objected to in writing prior to the due date will be deemed to be correctly charged and accepted by the Customer and the Customer waives all claims against the invoice.

## **12. Customer Warranty**

- 12.1 The Customer warrants to the Company that if any Order requires the use of any patent, registered design, trade mark, copyright or other intellectual property right such use does not and will not infringe any right of any other party and the Customer hereby indemnifies the Company against all actions, proceedings, claims, demands, costs and expenses which may be brought against the Company or for which the Company may sustain any loss or cost by reason of such infringement.

## **13. Disclaimer and Limitation of Liability**

- 13.1 Subject to clause 13.2 and except as expressly provided in the Ts&Cs or as set out in the Company's acceptance, and to the extent permitted by law, no guarantee, warranty, condition, undertaking or term, express or implied, statutory or otherwise, as to the condition, quality, performance, aesthetic appearance, merchantability or fitness for purpose of any Products provided pursuant to the Ts&Cs is given or assumed by the Company and all such guarantees, conditions, warranties and liabilities (including liability as to negligence) express or implied relating to such Products are hereby excluded.

**13.2** The Company acknowledges that certain legislation in Australia, including the Australian Consumer Law, provides guarantees and rights which cannot be excluded, restricted or modified or which may in certain cases only be modified or restricted to a limited extent. Nothing in these terms and conditions excludes, restricts or modifies, or is intended to exclude, restrict or modify, any guarantee, condition, warranty, right or liability implied by law (Including any guarantee, condition, right or liability imposed under the Australian Consumer Law) to the extent it can not lawfully be excluded, restricted or modified.

**13.3** Subject to clause 13.2 and to the full extent permitted by law, the liability of the Company in respect of a breach of a guarantee, condition or warranty implied by legislation (other than any non-excludable implied guarantees, conditions or warranties), including liability for any consequential loss which the Customer or any other entity or person may sustain or incur, will be limited, at the Company's option, to: (a) If the breach relates to supply of goods:

- (i) the provision of a refund;
- (ii) replacement of the goods; (iii) repair of the goods; or
- (iv) the payment to the customer of the reasonable cost of having the goods repaired or replaced.

(b) If the breach relates to services:

- (i) the provision of a refund; or
- (ii) re-supply of the services; or
- (iii) the payment to the Customer of the reasonable cost of having the services re-supplied.

**13.4** The Customer acknowledges and agrees that in entering into an agreement the subject of the Ts&Cs it has not relied in any way on the Company's representations and that it has satisfied itself as to the suitability of the Products for the Customer's purposes.

**13.5** Subject to clause 13.2, and to the full extent permitted by law the Company will not be liable to the Customer for any loss or damage including loss of profits or any other indirect or consequential loss or damage, arising directly or indirectly, and whether or not as a result of negligence, in any way in respect of anything done or supplied under the Ts&Cs including:

- (a) The supply to or use by the Customer of any Product; or
- (b) Delayed or non-delivery of the products for any reason including but not limited to loss, damage, theft of the Products whilst in transit; or
- (c) Any breach by the Company of its obligations under an agreement the subject of the Ts&Cs.

#### **14. Allergens**

**14.1** The Company advises that their facility runs an allergen free production line. However, the facility processes other products containing milk products, soy, gluten, tree nuts and peanuts products.

**14.2** If requested by the Customer, the Company is able to perform both internal and external allergen testing within the Customer's item procedure.

**14.3** It is important that such instructions be specifically provided verbally and confirmed in writing prior acceptance and commencement of Customer order.

**14.4** Whilst the Company takes all care when manufacturing your specific products, please be advised that we are unable to assume any legal risk or provide an absolute guarantee that any manufactures product will always be 100% allergen free.

**14.5** The company recommends for all packaging to include an Allergen Advice labelling warning to the following effect:

***Allergen Advice:*** *Be advised that this product was manufactured in a facility that also handles Milk, Soy, Gluten, Tree Nuts and Peanuts.*

#### **15. Returned Cheques**

**15.1** An administration fee of \$55 including GST plus all associated bank charges may be applied to any cheque payment returned unpaid by the bank for whatever reason. This fee may increase without notice to cover the Company's expenses and costs.

#### **16. Set-off and assignment**

**16.1** The Customer is not entitled to set off against or deduct from the price of Products sold any sums owed or claimed to be owed to the Customer by the Company.

**16.2** The Customer must not assign or subcontract any contract for the purchase of Products or its rights or the obligations under an agreement the subject of the Ts&Cs without prior written consent of the Company.

## **17. Force Majeure**

- 17.1** The Company will have no liability to the Customer in relation to any loss, damage or expense caused by the Company's failure to complete an Order or delivery or contract as a result of fire, flood, tempest, earthquake, riot, civil disturbance, theft, crime, strike, lock-out, war or the inability of the Company's suppliers to supply necessary products or any other matter beyond the Company's control.

## **18. Privacy consent**

- 18.1** The Company may give information to third parties about the Customer, its guarantors, directors or proprietors for the following purposes:
- (a) To obtain a consumer credit report about the Customer, its guarantors, directors or proprietors;
  - (b) To allow the credit reporting agency to create or maintain a credit information file containing information about the Customer, its guarantors, directors or proprietors;
  - (c) For registration on the PPSR or other public records or registers; and
  - (d) To obtain commercial credit information about the Customer, its guarantors, directors or proprietors from a credit reporting agency.

## **19. Waiver of terms and agreement**

- 19.1** The failure or indulgences by the Company to exercise, or delay in exercising, any right, power or privilege available to it under an agreement the subject of the Ts&Cs will not operate as a waiver thereof or preclude any other or further exercise thereof or the exercise of any right or power and the Company is entitled to require strict compliance at all times.

## **20. Proper Law**

- 20.1** An agreement the subject of the Ts&Cs is governed by and will be construed in accordance with the laws of the State of New South Wales, Australia.
- 20.2** The parties agree to submit to the non-exclusive jurisdiction of the Courts of the State of New South Wales. If the Local Court has jurisdiction the parties consent to the non-exclusive jurisdiction of the Local Court closest to the Company's place of business.
- 20.3** An agreement formed pursuant to the Ts&Cs will be deemed to have been entered into at the Company's place of business.

## **21. General provisions**

- 21.1** This document represents the entire agreement between the parties and no agreement or understanding varying or extending the terms of the Ts&Cs will be legally binding upon either party unless in Writing and signed by both parties or allowed by the Ts&Cs.
- 21.2** The Company may serve any notice or Court document on the Customer by hand or by forwarding it by post to the address of the Customer last known to the Company, or where a fax number or an email address has been supplied by the Customer, by sending it to that number or address. Such notices will be deemed to be given:
- (a) Where delivered by hand, on the day of delivery;
  - (b) Where sent by post, two(2) business days after the day of posting; and
  - (c) Where sent by facsimile or email on the day of dispatch, provided that a clear transmission report is obtained.
- 21.3** If any term of an agreement the subject of the Ts&Cs will be invalid, void, illegal or unenforceable, it will be severed from the agreement and the remaining provisions will not be affected, prejudiced or impaired by such severance.
- 21.4** The Company may assign or license or subcontract all or any part of its rights and obligations under the Ts&Cs without the Customer's agreement or consent.
- 21.5** If the Customer sells or otherwise disposes of its business (or any part thereof) (Disposal), the Customer must immediately notify the Company in Writing of such Disposal to enable the Customer's account to be closed. If the Customer fails to notify the Company of such Disposal, then the Customer will be jointly and severally liable with the third party acquiring the business (or part thereof) to the Company for the payment of Products subsequently sold to the third party on the Customer's account before the Company received such notice as if the Customer had ordered the Products itself.