

# MayfieldGlobal Food and Beverages Terms of Purchase

All Goods and/or Services are purchased by MayfieldGlobal subject to the following conditions which shall prevail over all other terms and conditions, unless a separate agreement in writing has been specifically agreed between the parties. Any conditions to the contrary contained herein are expressly excluded.

## 1. Supply of goods and services

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1.1 The Supplier must supply the Goods and/or Services to MayfieldGlobal in accordance with this Agreement.

## 2. Price for goods and services

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2.1 MayfieldGlobal agrees to pay the Price for the Goods and or Services.

2.2 The Price includes:

- (a) GST, all packaging, transport, customs duty (and any other duties, taxes or levies), insurance, loading, unloading and storage costs, up to the point of delivery; and
- (b) all amounts payable for the use of any intellectual property; and
- (c) all charges for supply of the Goods or the performance of the Services.

## 3. Risk and title in Goods

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3.1 Risk in the Goods passes to MayfieldGlobal upon delivery of the Goods.

3.2 Title in the Goods passes to MayfieldGlobal upon delivery or upon payment by MayfieldGlobal for the Goods, whichever occurs first.

3.3 Delivery occurs when an authorised representative of MayfieldGlobal signs a delivery receipt.

## 4. Conditions as to quality of Goods and Services

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4.1 The Supplier warrants that the Goods and Services:

- (a) comply with all Specifications;
- (b) do not infringe any right of any third party (including, without limitation, any intellectual property right), or applicable law, statute, regulation, code or rule;
- (c) are fit for the purpose which the Supplier has been notified MayfieldGlobal intends to use them or for which they are commonly used;
- (d) correspond with any description or sample the Supplier has previously provided to MayfieldGlobal; and
- (e) comply with all relevant legislation.

4.2 Without limiting clause 4.1, the Supplier warrants that the Goods:

- (a) are new and genuine;
- (b) are not defective and are of merchantable quality;
- (c) are free from all charges and encumbrances and all other adverse interests including Security Interests (as that term is defined in the *Personal Property Securities Act 2009* (Cth)) other than encumbrances which will be released at or before the time title in the Goods passes to MayfieldGlobal) and that MayfieldGlobal will enjoy quiet possession of the Goods;
- (d) where the Goods are intended for human consumption (or are an ingredient to be used in the manufacture of goods intended for human consumption) the Goods:
  - (i) are fit for human consumption;

- (ii) comply in all respects with all relevant provisions of all applicable food, health, trade practices, weights and measures and other legislation in Australia, including without limitation, Food Standards Australia New Zealand (FZANZ) Food Standards Code requirements;

- (iii) are not adulterated or contaminated in any way; and

- (iv) do not comprise and are not derived from any genetically modified organisms or products, except to the extent agreed by MayfieldGlobal.

- (e) where applicable, the Goods will have an appropriate proportion of their standard shelf life remaining on delivery to MayfieldGlobal;

4.3 Without limiting clause 4.1, the Supplier warrants that the Services will:

- (a) be performed by appropriately qualified and trained personnel;

- (b) be performed with due care and skill; and

- (c) comply with all reasonable directives and orders given by MayfieldGlobal representatives or procedures communicated by MayfieldGlobal to the Supplier in respect of the supply of the Goods or the performance of the Services.

4.4 The Supplier warrants and represents that it holds and will comply with all necessary licences, permits and other approvals required for the manufacture, packaging, supply and storage of the Goods and the provision of the Services.

## 5. Delivery

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5.1 Supplier must deliver the Goods and/or Services during normal operating hours and at the date, time and to the delivery location identified in the Purchase Order. The Supplier must notify MayfieldGlobal immediately if it cannot supply the Goods and/or Services within the time stated in the Purchase Order.

5.2 Supplier must pay all delivery charges in connection with the delivery of the Goods including charges for packing, crating, freight and insurance charges, unless the Purchase Order expressly indicates that the Price is inclusive of all delivery charges.

5.3 If the Goods or any item comprising the Goods have not been delivered by the date specified for delivery on the Purchase Order for any reason other than that which is caused by MayfieldGlobal, MayfieldGlobal may:

- (a) require the Supplier to deliver, at its sole expense, such Goods by the most expeditious means of transportation; or

- (b) terminate the Agreement without liability and return, at the Supplier's expense, any items of Goods that may have been delivered and paid for by MayfieldGlobal. The Supplier must promptly refund to MayfieldGlobal the amounts paid for the items of Goods returned.

5.4 Any Goods delivered in error or in excess of the quantity stated on the Purchase Order may be returned to the Supplier at the Supplier's risk and expense.

## 6. Goods and Services which fail to meet standards

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6.1 Without limiting any other remedy MayfieldGlobal may have, if the Goods delivered or Services performed do not meet or exceed the standards required in the Agreement, do not meet or exceed the Specifications or are otherwise unacceptable to MayfieldGlobal upon delivery and in relation to Goods, at any time during their intended useful life (the **Non-conforming Goods and Services**), MayfieldGlobal will not be required to pay for those Non-conforming Goods and/or Services. The Supplier

must, at the Supplier's cost, if MayfieldGlobal requires the Supplier to do so, promptly remove any Non-conforming Goods from MayfieldGlobal's premises. The Supplier must at MayfieldGlobal's election either:

- (a) promptly replace the Non-conforming Goods and/or Services with Goods and/or Services which do meet the relevant standards or Specifications and which are acceptable to MayfieldGlobal;
- (b) promptly repair the Non-conforming Goods and/or Services to meet the relevant standards or Specifications and which are acceptable to MayfieldGlobal; or
- (c) refund to MayfieldGlobal all money paid in respect of the Non-conforming Goods and/or Services.

## 7. Intellectual property

- 7.1 Nothing in the Agreement affects ownership of any intellectual property rights of the Supplier existing as at the date of the Agreement or subsequently arising in relation to the Goods and Services other than as specified in clauses 7.2 and 7.3. The Supplier grants to MayfieldGlobal a non-exclusive, assignable, royalty free, perpetual and irrevocable licence to use the Supplier's intellectual property.
- 7.2 If any of the Goods have been specifically designed for or requested by MayfieldGlobal (the "**Custom Works**") all intellectual property in, and relating to, the Custom Works will be MayfieldGlobal's property.
- 7.3 All intellectual property created by or on behalf of the Supplier in the course of providing the Services to MayfieldGlobal ("**Contract IP**") will be MayfieldGlobal's property.
- 7.4 The Supplier must at its own cost to do all things necessary to give effect to clauses 7.2 and 7.3,
- 7.5 including signing documents and procuring third party licences and consents necessary to assign all right to the intellectual property rights under clauses 7.2 and 7.3 to MayfieldGlobal and reserve all MayfieldGlobal's intellectual property rights in any agreement which the Supplier enters into with any third party in relation to any Custom Works and/or Contract IP.

## 8. Confidentiality

- 8.1 The parties must keep all Confidential Information secret and must not use that Confidential Information except as necessary for the purposes of the Agreement. Each party must store all Confidential Information in a way that minimises the risk of unauthorised access. In this clause 8, "Confidential Information" with respect to a party (a "**Receiving Party**") means:
  - (a) the existence and terms of the Agreement;
  - (b) any technical, scientific, commercial, financial or other information of or about the other party (the "**Discloser**") or any of its products, of which the Receiving Party becomes aware in connection with the Agreement and all information about the Discloser's business and business processes; and
  - (c) any documents, notes, records or other materials which include, identify or are based on anything referred to in sub-clause (a) - (b).
- 8.2 The parties' obligations under this clause 8 do not apply to any information which:
  - (a) is in the public domain as at the date of the Agreement or which subsequently comes into the public domain (other than because of a breach of any obligation of confidence owned to the Discloser); or
  - (b) the Receiving Party can demonstrate by evidence in writing either:

- (i) was in the possession of the Receiving Party's as at the date of the Agreement; or
- (ii) subsequently comes into the possession of the Receiving Party through a third party who does not owe any obligation of confidence to the Discloser in respect of that information; or
- (iii) the Receiving Party is required by law to disclose.

8.3 Where the Supplier is the Receiving Party, the Supplier must promptly return all Confidential Information to MayfieldGlobal or destroy it if MayfieldGlobal asks the Supplier to do so.

## 9. Termination

- 9.1 Without limiting any other rights or remedies the parties may have, each party may terminate the Agreement effective immediately by giving notice to the other party if the other party breaches a material term of the Agreement or an Insolvency Event occurs.
- 9.2 MayfieldGlobal may terminate this Agreement at any other time by providing 2 weeks' notice in writing to the Supplier. MayfieldGlobal's liability is limited to the payment of a fair and reasonable price that will be paid for Goods and Services produced and delivered prior to termination and all agreed work in progress at the time of cancellation and subsequently received by MayfieldGlobal (such price to be determined solely by MayfieldGlobal acting reasonably and in consultation with the Supplier). MayfieldGlobal will not be liable for any loss to the Supplier, including consequential loss.

## 10. Privacy

- 10.1 The Supplier agrees that:
  - (a) it will not collect, use, disclose, store, transfer or otherwise handle personal information or health information (as those terms are defined in the *Privacy Act 1988* (Cth)) that it collects in connection with the Agreement except to the extent that it is reasonably necessary for the performance of its obligations to MayfieldGlobal or under this Agreement and only in accordance with the relevant privacy laws;
  - (b) in respect of any act or practice engaged in by the Supplier in connection with the performance of its obligations to MayfieldGlobal or under this Agreement, it will comply with the Australian Privacy Principles or Information Privacy Principles (as applicable); and
  - (c) for the avoidance of doubt, it will not transfer or disclose any Personal Information collected in connection with this Agreement to any recipient outside of the country it was collected in (Australian or New Zealand, as applicable) or allow or permit any person located outside Australia or New Zealand (as applicable) to access or receive any Personal Information collected in connection with this Agreement, without MayfieldGlobal's prior written consent.
  - (d) The Supplier must immediately notify MayfieldGlobal if the Supplier becomes aware of a breach or possible breach of any of its obligations under this clause 10.

## 11. Variation or termination of a Purchase Order

- 11.1 MayfieldGlobal may by notice in writing immediately terminate a Purchase Order for all or any part of the Goods and/or Services that have not yet been provided and which are the subject of a Purchase Order at any time. Provided the termination is not due to the Supplier's breach of these Terms of Purchase or a Purchase Order, or pursuant to lawful termination under clause 9, MayfieldGlobal will pay the Supplier for:
  - (a) Goods and/or Services actually delivered to MayfieldGlobal prior to such termination;

- (b) Goods that have been manufactured prior to termination and which the Supplier, using reasonable endeavours, is unable to sell to another customer; and
- (c) any of the Goods and/Services for which the Purchase Order is not terminated.

11.2 MayfieldGlobal may at any time prior to the delivery of the Goods and/or Services issue written notice authorising or requiring additions, deletions or alterations to the Purchase Order.

## 12. Terms of payment

12.1 The Supplier must submit an invoice for all Goods and Services provided to MayfieldGlobal in a form acceptable to MayfieldGlobal. All invoices are to be invoiced in Australian dollars, unless otherwise agreed to in writing by the parties. The invoice must specify the Purchase Order number to which the invoice relates. MayfieldGlobal will not be required to pay any invoice that does not specify a Purchase Order number or specifies an invalid Purchase Order number. The Supplier must provide MayfieldGlobal with a valid tax invoice for any taxable supply it makes to MayfieldGlobal under the Agreement. MayfieldGlobal will not be required to pay the Supplier until the Supplier has provided a valid tax invoice to MayfieldGlobal.

12.2 MayfieldGlobal will pay the invoiced amount in accordance with the purchase terms documented in the Purchase Order.

12.3 If at any time MayfieldGlobal disputes the amount of an invoice (“**Disputed Amount**”) MayfieldGlobal will not have to pay the Disputed Amount until the dispute is resolved but must pay any undisputed amounts. The parties will enter into good faith negotiations to resolve any Disputed Amount. The Supplier may not, wholly or partially suspend, cancel or withdraw the supply of the Goods and Services if an invoice is disputed. MayfieldGlobal may deduct any money the Supplier owes it on any account whatsoever from any money which MayfieldGlobal owes the Supplier.

12.4 All invoices must be emailed to [accounts@mayfieldglobal.com.au](mailto:accounts@mayfieldglobal.com.au)

## 13. Insurance

13.1 The Supplier must obtain and continue to hold for the term of this Agreement product liability insurance of not less than AUD\$20 million per event, public liability insurance of not less than AUD\$20 million per event and, if Services are being provided, professional indemnity insurance of not less than AUD\$20 million per event.

13.2 Supplier must provide certificate of insurance on MayfieldGlobal’s request.

## 14. Recalls

The Supplier must notify MayfieldGlobal immediately on becoming aware of any problem encountered in the manufacture, packaging, storage or transport of the Goods that may have an adverse impact on the quality and/or safety of the Goods.

## 15. Indemnity

15.1 Without limiting any of MayfieldGlobal’s other legal rights, then except to the extent that MayfieldGlobal has caused or contributed to the loss, damage, claim, action or expense, the Supplier hereby indemnifies MayfieldGlobal and its Related Bodies Corporate against any loss, damage, claim, action or expense (including, without limitation, legal expense) which MayfieldGlobal or any of its Related Bodies Corporate suffer in connection with any of the following:

- (a) a breach of the Agreement by the Supplier;

- (b) a failure by the Supplier to comply with its obligations implied by law;
- (c) any warranty or guarantee given by the Supplier under the Agreement being incorrect or misleading in any way;
- (d) any product liability claim, product recall or any failure to comply with any safety standard relating to the Goods or Services;
- (e) any infringement or alleged infringement of any intellectual property right relating to the Goods and/or Services;
- (f) any misleading or deceptive conduct by the Supplier;
- (g) any personal injury, death or property damage;
- (h) any negligent act, fraud, wilful default, failure to act or any other omission by the Supplier or any of the Supplier’s employees, agents, officers or contractors;
- (i) any third party claim arising from anything referred to in sub-clauses (a) - (h) above; and
- (j) any act which is not authorised by the Agreement.

15.2 In the event of a claim relating to any actual or alleged infringement of any intellectual property by the Supplier, the Supplier must at the election of the MayfieldGlobal:

- (a) procure for MayfieldGlobal the right to continue using the affected Goods and/or Services free from any infringement;
- (b) modify the Goods and/or Services so that MayfieldGlobal is no longer infringing any intellectual property without causing a loss of functionality or performance;
- (c) promptly replace the Goods and/or Services with other goods and/or services free from infringement of any intellectual property rights which have the same or better performance or functionality capabilities than the original Goods and/or Services; or
- (d) accept the return of the Goods and/or Services at the Supplier’s expense and promptly refund MayfieldGlobal all monies paid in connection with the affected Goods and/or Services.

## 16. Liability

The law implies terms, conditions, warranties or guarantees (“Prescribed Terms”) into contracts for the supply of goods and services and prohibits the exclusion, restriction or modification of certain terms, conditions, warranties or guarantees. Nothing in this Agreement restricts the effect of warranties or conditions which may be implied by law or any other rights or remedies which cannot be excluded, restricted or modified.

## 17. GST

17.1 Where the Agreement requires either party to pay for, reimburse or contribute to any expense, loss or outgoing (“**Reimbursable Expense**”) suffered or incurred by the other party, the amount required to be paid, reimbursed or contributed by the first party will be the sum of:

- (a) the amount of the Reimbursable Expense net of Input Tax Credits (if any) to which the other party is entitled in respect of the Reimbursable Expense; and
- (b) if the other party’s recovery from the first party is a Taxable Supply, any GST payable in respect of that Supply.

## 18. Miscellaneous

18.1 MayfieldGlobal may transfer, assign, novate or otherwise encumber or deal with (“**Dispose of**”) the Agreement, or any right or obligation under it to a Related Body Corporate without the consent of the Supplier. A party must not otherwise Dispose of the Agreement or any right or obligation under it or

subcontract any of its obligations under the Agreement, without the prior written consent of the other party. Supplier will not as a result of any sub-contracting arrangement be relieved from the performance of any obligation under the Agreement and will be responsible and liable for all acts and omissions of a sub-contractor

18.2 The Agreement is governed by the laws of Victoria. The Supplier irrevocably and unconditionally submits to the jurisdiction of the courts of Victoria for determining any dispute.

18.3 If any provision (or part of a provision) of this Agreement is in any way unenforceable, invalid or illegal, it is to be read down so as to be enforceable. If this is not possible, the clause (where possible, the offending part) is to be severed from this Agreement without affecting the enforceability, validity or legality of this Agreement and the remaining clause (or parts of those clauses) which will continue in full force and effect.

18.4 The Supplier shall:

- (a) comply with all applicable anti-bribery and anti-corruption legislation including, without limitation, the *Crimes Act 1914* (Cth) and the *Criminal Code Act 1995* (Cth) or similar laws of other countries that are applicable;
- (b) maintain and enforce its own policies and procedures, including adequate procedures to ensure compliance with all applicable anti-bribery and anti-corruption legislation; and
- (c) use all reasonable endeavours to ensure that its officers, employees and agents comply with this clause. Any breach of this clause shall be deemed a material breach under this Agreement.

## 19. Definitions

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**Agreement** means these terms and conditions and the Purchase Order.

**Australian Privacy Principles** means the set of Australian privacy principles outlined in the *Privacy Act 1998* (Cth).

**Consideration, GST, Input tax credit, Supply, Tax Invoice, and Taxable Supply** have the meanings given to those expressions in the *A New Tax System (Goods and Services Tax) Act 1999*.

**Goods and Services** means the goods and services specified in the Purchase Order to be supplied by the Supplier to MayfieldGlobal.

**Insolvency Event** means the Supplier ceases to be able to pay its debts as they become due, the Supplier ceases to carry on business, any step is taken by a mortgagee to take possession or dispose of any part of the Supplier's assets or business, any step is taken to appoint a receiver, manager, liquidator, trustee in bankruptcy or administrator with respect to the Supplier or any analogous event occurs.

**Price** means the price specified in the Purchase Order.

**Purchase Order** means the purchase order provided by MayfieldGlobal to the Supplier which is subject to these terms and conditions.

**Related Body Corporate** has the meaning given in the *Corporations Act 2001* (Cth).

**MayfieldGlobal** means MayfieldGlobal Pty Ltd (ABN 29 159 219 619)

**Specifications** means all specifications provided by MayfieldGlobal to the Supplier in relation to the Goods or Services including those provided prior to the date of the Agreement.

**Supplier** means the supplier of the Goods and Services named in the Purchase Order.