

These Terms & Conditions apply, as further described in clause 1(g), to any purchase orders or any other means of ordering (“**Purchase Order**”) between Buyer and Vendor (each as set out on the Purchase Order) (the “**Parties**”) for the purchase of products for human consumption, goods, materials, equipment, software, and/or all related documents to be supplied (each a “**Good**”) and of services, including design services (the “**Services**”) as specified in the Purchase Order and any part or component thereof and incorporated therein (together “**Deliverables**”).

1. PURCHASE ORDER

a. Conclusion. The Purchase Order shall specify the Deliverables required. The Purchase Order will be issued by Buyer in writing, by fax, electronically or otherwise, depending on the circumstances and will be confirmed by Vendor in writing, by fax, electronically or otherwise pursuant to Buyer’s instruction. The Purchase Order shall be considered as binding on the earlier of (i) 5 days after issuance (unless expressly rejected in writing) and (ii) confirmation in writing, by fax or electronically or as otherwise instructed by Buyer. Confirmation of the Purchase Order by Vendor will constitute Vendor’s unconditional acceptance of the Purchase Order and of these Terms & Conditions. Vendor must notify Buyer as soon as it is aware that it cannot fulfil the Purchase Order.

b. Changes. Buyer reserves the right to make changes in, deductions from, and additions to the Deliverables ordered. In the event such changes, deductions, and/or additions result in a material change in the value of the Purchase Order, the Parties shall make a negotiated change in the Purchase Order price. In order to be valid and binding any change in, deduction from, or addition to the Terms & Conditions or Purchase Order shall be in writing and approved by the Parties. Approval by Buyer of drawings, samples or other proposals will not imply approval of deviations, unless explicit confirmation is given in writing.

c. Termination for default (other than non-payment). Either party may terminate all or any part of a Purchase Order with immediate effect and without compensation for any default by the other party where the default is not capable of remedy, or if capable of remedy, is not remedied within 7 days, including without limitation late delivery. The termination right under this clause 1(c) cannot be exercised for Buyer’s failure to make payment in accordance with clause 2(b) for which a separate right is set out in clause 1(d). If Buyer terminates all or part of a Purchase Order because of any default by Vendor, Buyer may procure, upon such terms and in such manner as Buyer considers appropriate, similar Deliverables from third parties and Vendor shall pay and compensate Buyer for any direct resulting losses and damages incurred by Buyer in procuring or purchasing such similar Deliverables, including but not limited to prepayments and excess costs.

d. Vendor termination for non-payment. Vendor may terminate all or any part of a Purchase Order with immediate effect if Buyer fails to make payment in accordance with clause 2(b) and fails to remedy the non-payment within 21 days after receipt of written notice from Vendor.

e. Termination or suspension for convenience. Buyer may terminate or suspend all or any part of a binding Purchase Order for convenience by written notice to Vendor. In that event:

- i. **for Goods:** (A) Buyer will pay for the Goods that Vendor has already manufactured to meet the Purchase Order as at the date of termination or suspension – unless those Goods are Vendor’s standard merchandise and can be sold to Vendor’s other customers without unreasonable commercial impact on Vendor, and (B) to the extent Vendor has started but not completed manufacture of the Goods which are the subject of the terminated or suspended Purchase Order, Buyer will reimburse Vendor for Vendor’s actual unrecoverable direct costs of manufacturing of those Goods (as at the date of termination or suspension).
- ii. **for Services:** (A) Buyer will pay for the Services that Vendor has already provided to meet the Purchase Order as at the date of termination or suspension, and (B) Buyer will reimburse Vendor for Vendor’s actual unrecoverable direct costs of providing the Services (as at the date of termination or suspension).
- iii. Vendor must take all commercially reasonable steps to minimise any actual unrecoverable direct costs, including by allocating raw materials, work in process, resources or labour costs and other direct cost items to orders for other customers, and Vendor must provide Buyer with written evidence substantiating Vendor’s costs.
- iv. Where Buyer suspends the Purchase Order, Vendor will not be entitled to any payment or compensation during the period of suspension. No other compensation or early termination charge will be payable to Vendor for termination or suspension under this clause unless otherwise agreed between the Parties.
- v. For the avoidance of doubt, the payment or reimbursement for costs set out in subclause (i) and (ii) above do not apply where Buyer terminates or suspends a Purchase Order due to Vendor’s breach of these terms and conditions or under clause 1(f).

f. Termination/cancellation for insolvency. In the event a party or, in the case of Vendor, any of its material suppliers or subcontractors has been declared bankrupt, is in a state of liquidation, has ceased its business, is the subject of a court order or preventative legal scheme of settlement, its commercial activities have been suspended or if it is in any similar situation arising from a procedure of the same nature that exists in the legislation and regulations of that party, prior to delivery of all Deliverables pursuant to the Purchase Order, the other party may at its option terminate the Purchase Order and claim damages.

g. Applicable terms and conditions. These Terms & Conditions apply to the Purchase Order and any specific contract or master agreement under which the Purchase Order is being placed, unless such additional Terms & Conditions are expressly excluded pursuant to such contract or master agreement. Vendor's general conditions however called or wherever referred to shall not be applicable to the Purchase Order, specific contract or master agreement between Buyer and Vendor and are herewith explicitly rejected. In case of conflicting clauses, to the extent necessary to resolve the conflict, the following order of interpretation shall apply: (i) terms on the face of the Purchase Order; (ii) specific contract or master agreement; and (iii) these Terms & Conditions.

2. PRICE/INVOICE/PAYMENT

a. Prices. Vendor shall supply the Deliverables at the price(s) set out in the Purchase Order. Unless otherwise expressly stated, prices in the Purchase Order are fixed and firm, not subject to any changes and inclusive of all taxes, levies, commissions, charges, and costs of packaging and delivery in accordance with the specified Incoterms (International Chamber of Commerce).

b. Payment. Buyer will pay the appropriate, undisputed amount invoiced by Vendor with respect to the Deliverables by bank transfer within 60 days following the date of invoice. Undisputed amounts which one party owes to the other party can be set off by the first party against amounts which Vendor and/or any of its affiliates owe to Buyer and/or any of its affiliates.

3. GOODS

a. Specifications. Vendor represents and warrants (i) that the Goods will be new, free from any and all defects whether latent or patent, and free of all liens, encumbrances, and charges; (ii) the Services will be provided in a good and workmanlike manner and meet the highest industry standards; and (iii) the Deliverables will in all respects meet all specifications: (A) provided by Vendor or Buyer from time to time prior to the Vendor's acceptance of the relevant Purchase Order; (B) set out in the Purchase Order; (C) incorporated by reference or ordinarily supplied therewith; and (d) in any applicable Buyer's Vendor Guide prior to Vendor's acceptance of the relevant Purchase Order (collectively, the "**Specifications**"). Buyer may require Vendor to fill out a specification form for raw materials which shall be approved by Buyer before any delivery takes place. Vendor warrants that the Deliverables will be and remain of merchantable quality and fit for Buyer's purpose and use, which Vendor acknowledges has been made known to it.

b. Regulations. Vendor represents and warrants that the Deliverables and applicable packaging comply with all applicable laws, regulations, codes and standards of the country of manufacture, and destination of the Deliverables.

c. Completeness. Except as expressly agreed, elements of Deliverables not specified in the Purchase Order but necessary for the proper, safe and efficient use, operation, construction or maintenance of the Deliverables and for the fulfillment of Vendor's warranties are deemed to be included in the Purchase Order and shall be supplied and/or executed by Vendor at no extra cost to Buyer.

d. Intellectual Property. Vendor expressly warrants that it has title to or, where applicable, and with Buyer's prior written authorization, a valid and acceptable licence with a right to sublicense, the Deliverables. Vendor further warrants that the supply of the Deliverables and the use, sale, application, maintenance and/or sublicense thereof by Buyer will not result in or give rise to any infringement or misappropriation of any right, patent, copyright, trade mark, design, trade secret, proprietary data or licence and shall procure same from its **Sub-Suppliers** (any person or entity, other than Vendor, having a contract with Vendor for the supply of all or part of the Deliverables).

e. Transfer of ownership and risk. The title of Deliverables supplied under the Purchase Order, and associated risk, shall pass to Buyer in accordance with the applicable Incoterms.

4. DELIVERY

a. Conditions. Vendor warrants and shall procure that the Deliverables are delivered as applicable at the agreed time and place, in the agreed volumes and/or quantities, in appropriate packaging, in accordance with the Purchase Order, and in accordance with all Specifications, Buyer policies and requirements (including any applicable Vendor Guide)

provided to the Vendor prior to Vendor accepting the applicable Purchase Order and provincial, state, national, and/or international statutory requirements. The latest version of Incoterms (International Chamber of Commerce) is applicable to the delivery of Goods. Unless otherwise stated within the Purchase Order, the Goods shall be DDP (Delivered Duty Paid) to the delivery site specified in the Purchase Order.

b. Delivery time. Time is of the essence in respect of the Deliverables. In the event of delay, Buyer is entitled either to cancel all or part of the Purchase Order (not acting unreasonably) or to require continued performance by Vendor, in each case without prejudice to Buyer's rights to claim damages and other remedies at law and in equity.

c. Foreseen delay. Without excusing delay and without prejudice to Buyer's rights, Vendor shall immediately notify Buyer in writing at the moment any delay is foreseen, and promptly submit a proposal indicating the measures Vendor shall take at no cost to Buyer to maintain the agreed delivery time. In the event of a delay with respect to the delivery of raw ingredients for food manufacture, Buyer shall have the right to procure these from a third party and Vendor shall pay any costs and any price differential.

d. Expediting. Vendor shall expedite manufacturing and delivery of the Deliverables within its own organization and shall procure same from its Sub-Suppliers. Buyer reserves the right to enter the premises of Vendor and its Sub-Suppliers at any time.

e. Packaging. Delivery of the Deliverables shall be done in adequate packaging commensurate with the required mode of transportation, handling, and storage of the Deliverables.

5. PERFORMANCE

a. Compliance. Vendor represents and warrants that it shall, and shall procure that its Sub-Suppliers shall, at all times during execution of the Purchase Order, including during manufacture, be in compliance with the Purchase Order, these Terms & Conditions, all Specifications, Buyer policies and requirements (including any applicable Vendor Guide, the Supplier Code of Conduct ([Click HERE for link](#)), and the Requirements (as defined below)) applicable as at the date the Vendor accepts the applicable Purchase Order, and provincial, state, national, and/or international statutory and industry requirements.

b. Modern Slavery. Vendor represents and warrants that: (i) it does not, and will not, engage in any activity that constitutes or involves Modern Slavery (as defined below) in the performance of its obligations under these Terms & Conditions or otherwise; and (ii) it has investigated its practices and those of its affiliates and is satisfied that there are no activities that constitute or could constitute or involve Modern Slavery anywhere in its (and each affiliate's) business, operations or supply chains. Vendor must, on the receipt of a written request from Buyer, provide Buyer with all information reasonably requested by Buyer to assist Buyer to comply with its requirements under applicable Modern Slavery legislation. Vendor agrees that Buyer may take any reasonable actions to monitor, assess, audit and verify Vendor's compliance with its obligations under this clause. If Vendor or an affiliate of Vendor is in breach of any part of this clause 5(b), or Buyer reasonably suspects a breach, without prejudice to any other remedy which Buyer may have, Buyer may immediately terminate any Purchase Order, these Terms & Conditions or any other agreement between the Parties on written notice to Vendor. "Modern Slavery" includes, among other things, any activity, practice or conduct that would constitute an offence in relation to slavery, forced labour, involuntary servitude, debt bondage, human trafficking, and any other slavery-like exploitation as prohibited under all applicable anti-slavery and human trafficking laws, statutes, regulations, and codes from time to time.

c. Licences and permits. Vendor shall obtain in a timely manner any and all licences and permits, required in the country of shipment, origin, transit, and destination to perform the Purchase Order.

d. Inspections and testing. Vendor shall at its own expense carefully and continuously control and test the quality of the materials and the manufacturing operations during the production of the Goods. Buyer is entitled to perform at its own expense tests and inspections at any time on its own premises and the premises of Vendor or elsewhere. Unless Buyer is testing on its own premises or has a reasonable cause to suspect that Vendor has provided or will provide non-compliant Deliverables, Buyer shall provide Vendor three days' advance notice of any inspections or tests. If inspections and tests performed by Buyer prove that the Deliverables fail to meet the requirements set out herein, Vendor shall bear any and all costs related to the inspections and tests.

e. Acceptance. If the Deliverables are not in conformity with the Specifications or the terms hereof, Buyer may, at no cost to Buyer, choose between: (i) correction of the non-conformity by Vendor; (ii) replacement of the Deliverables by Vendor; (iii) replacement of the Deliverables by equivalent deliverables in conformity with the Specifications; and (iv) return of the Deliverables to Vendor for the account and risk of Vendor and cancellation of all or part of the Purchase Order, all without prejudice to Buyer's other rights herein and at law to claim damages and other remedies at law and in equity. Payment, use, or sale of the Deliverables does not imply acceptance of the Deliverables in question by Buyer.

f. Warranty on Deliverables. Vendor warrants that the Deliverables will be in full compliance with all requirements herein, including as set out in clause 5(a), for a period of 2 years after the later of the date of acceptance or the date of being put into operation, and, if in breach of this warranty, at any and every time during this period shall upon notice from Buyer immediately (i) repair or replace any applicable Good or; (ii) re-perform any applicable Service. Repaired or replaced parts of Goods will be warranted for another 2 years from the repair or replacement date. Re-performed Services will be warranted for a further 12 months. The warranty period of the Deliverables will be extended by the same period of time that the Deliverables were out of operation or delayed in implementation. If Vendor fails to comply with its warranty obligations, Buyer is, upon notification to Vendor, entitled, at Vendor's expense, to carry out the repair work itself or by a third party prejudice to Buyer's right to claim damages and other remedies at law and in equity.

g. Warranty on Goods for human consumption. In addition to the warranty in clause 5(f), Vendor warrants that the Goods will be fit for human consumption and, if in breach of this warranty, provided it is (i) feasible; (ii) desirable in Buyer's sole discretion; and (iii) permitted under applicable regulations, Vendor shall immediately at its own expense and to Buyer's full satisfaction arrange for appropriate remedial action. If Vendor fails to comply with its warranty obligations, Buyer is, upon notification to Vendor, entitled, at Vendor's expense, to carry out the work itself or by a third party to make the Goods fit for human consumption, without waiver of Vendor's warranty obligations or prejudice to Buyer's right to claim damages and other remedies at law and in equity. If remedial action is not appropriate for any reason whatsoever, Vendor shall resupply the Goods or, at Buyer's sole option, refund all applicable amounts. Vendor shall be solely and exclusively liable for disposal of the Goods and all associated costs and damages, including storage, shipping and demurrage fees, and any damages suffered by a third party resulting from the disposal of the Goods.

h. Pollution. Vendor shall notify Buyer immediately of any spill or other environmental incident and shall immediately take all measures to clean up, isolate or prevent any environmental damage resulting from such incident.

6. ASSIGNING AND SUBCONTRACTING. Vendor shall not assign all or part of the Purchase Order, or subcontract any part of the Deliverables, without Buyer's prior written consent. If Buyer consents to any subcontract, such consent shall not relieve Vendor of or from any of the obligations or duties under the Purchase Order, and such consent shall be subject to Vendor compliance with all such obligations and duties and to Buyer's rights under the Purchase Order. Vendor warrants that it will (i) procure that all applicable rights and obligations (including those specifically set out in clauses 3(d), 4(a), 4(d), 5(a), 5(b) 5(f), 5(g) and 7(a)-(f)) will apply to each of its Sub-Suppliers; (ii) hold those obligations in trust for Buyer; and (iii) procure and provide evidence of such agreements to Buyer upon request. Buyer shall not assign all or part of the Purchase Order, except to a related body corporate, without Vendor's prior written consent.

7. GENERAL

a. General liability and indemnification. Vendor shall be liable towards Buyer for and hold Buyer and its affiliates and their directors, officers, employees, agents, and contractors, harmless from and indemnify them against any and all actual or contingent damage, loss, personal injury (including death), expense, cost, fine, penalty, claim, including reasonable legal fees and litigation costs, suffered or incurred by or asserted against Buyer and its affiliates and their directors, officers, employees, agents, and contractors, resulting from or connected with (i) a breach of any warranty and of clauses 5 and 6, (ii) Vendor's failure to deliver the Deliverables by the delivery date set out in the applicable Purchase Order, or (iii) any damage to tangible property caused by Vendor when delivering Deliverables to Buyer's sites, except to the extent that such damage, loss, personal injury, expense, cost, fine, penalty or claim is caused or contributed to by Buyer's and/or its affiliates' act or omission. Buyer will act reasonably to mitigate the loss suffered or incurred under the above indemnity. Notwithstanding any other applicable provision or law, neither party nor their respective affiliates shall be liable to the other or, in the case of Vendor, its Sub-Suppliers, for loss of profits or for any indirect, consequential, special or punitive damage arising naturally or directly from any breach, fundamental or otherwise, of these Terms & Conditions or the Purchase Order or from any tortious acts or omissions, except where arising due to a violation or misuse of the other party's intellectual property rights or confidential information or, in relation to Goods, due to the abandonment of supply, whether or not either party or their respective affiliates have been made aware of such breach, acts or omissions.

b. Insurance. Vendor shall maintain and cause its Sub-Suppliers to maintain, each at own expense, insurance policies that are in Buyer's reasonable opinion appropriate to cover the risks during and after the performance of the Purchase Order and in connection with all Deliverables (including product liability, general liability, and environmental damage). At the request of Buyer, Vendor will provide the necessary insurance certificates and keep Buyer informed of any changes.

c. Intellectual Property Rights. Vendor is not entitled to make use of or refer to any trade mark, trade name, patent, design, copyright, or other intellectual property right of Buyer or any of its affiliates, unless it has obtained prior written consent of Buyer.

d. Licence to developments. To the extent Buyer does not own intellectual property rights and know how relating to the Deliverables supplied by Vendor or its Sub-Suppliers under the Purchase Order, Vendor shall, and shall procure that its

Sub-Suppliers shall, grant Buyer and its affiliates a perpetual, world-wide, non-exclusive licence to use such intellectual property rights and know how in the course of its business.

e. Confidentiality. All information, including but not limited to Specifications, drawings, sketches, data or other documentation, shared between the Parties in the context of the Purchase Order will be treated as confidential information of the applicable Party. This Purchase Order and information marked as confidential or disclosed in circumstances of confidentiality will be treated as confidential information. Confidential information shall not be used for any purpose other than for the execution of the Purchase Order, will only be communicated and distributed to those of Vendor's or Sub-Supplier's employees with a need to know, and will not be further disclosed without prior written consent of Buyer.

f. Info Security and Data Privacy. Vendor will fully comply with McCain's privacy policy ([Click HERE for link](#)) and info security requirements ([Click HERE for link](#)), or as may be provided by Buyer upon request, which are incorporated herein and forms part of these Terms & Conditions.

g. Force Majeure. Neither Party shall be liable towards the other Party for any failure to fulfill any term or condition of the Purchase Order if fulfillment thereof has been delayed, interfered with or prevented by any event not reasonably foreseen and beyond the control of the Party concerned, provided that Vendor is not already in default of those obligations under the Purchase Order which are being delayed, interfered with or prevented. The mere fact of late supply of materials, labour unrest or unavailability of utilities to Vendor or Sub-Suppliers shall not be deemed Force Majeure. If a situation of Force Majeure continues for more than 30 days, the party not affected by the Force Majeure shall be entitled to terminate the Purchase Order by written notice.

h. Severability. If a provision(s) hereof or of the Purchase Order should be or become ineffective or invalid for whatever reason, the other provisions will not be affected thereby. The Parties agree to replace the ineffective or invalid provision(s) by an effective and valid arrangement, which achieves as closely as possible the purpose intended by the ineffective or invalid provision(s) (as evidenced by the wording contained herein).

i. Waiver. Failure by either Party to require strict performance by the other Party of any obligation hereunder shall in no way affect its right thereafter to enforce any obligation, nor shall a waiver by either Party of any breach be held to be a waiver of any previous or later breach. No waiver will have any effect unless specific, irrevocable, and in writing.

8. GOVERNING LAW / DISPUTES

a. Governing law. Any legal relation between Buyer and Vendor shall be governed by and interpreted in accordance with the internal laws of the country and state or province where Buyer was incorporated (the "**Local Jurisdiction**"). The United Nations Convention, concluded at Vienna on 11th of April 1980, on contracts for the International Sale of Goods shall not apply.

b. Disputes. Any dispute arising from the Purchase Order shall be submitted exclusively to the competent courts of the Local Jurisdiction. Pending a dispute, neither Party shall be excused from performing any of its obligations under this Agreement, except for obligations directly affected by the dispute.