



## BEGA GROUP DOMESTIC BUYER TERMS AND CONDITIONS

### IMPORTANT NOTES

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

If there is a separate written agreement between the Buyer and the Company in relation to the supply of Products, then that separate written agreement will apply. To the extent permitted by law and to the extent the Buyer's terms and conditions are supplied to the Company 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 an Order (even if any representative of the Company signs those terms and conditions or annexes the terms and conditions to an Order).

Please note that these terms and conditions do not apply to any orders for Products placed by customers that are not based in Australia, any orders placed with Peanut Company of Australia Pty Ltd (ABN 34 057 251 091) or any orders placed with the 180 Nutrition, HAPPi or VEGEMITE eCommerce stores. The relevant terms and conditions for these brands can be found here:

**Peanut Company of Australia:** <https://pca.com.au/standardsupplyterms/>

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

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

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

### 1. Definitions

The following definitions apply:

**Agreement** means the Conditions, the Order and any Special Conditions relating to a sale of Products by the Company to the Buyer, including any relevant Incoterms.

**Anti-Corruption Laws** are laws applicable to this Agreement prohibiting or relating to fraud, bribery, corruption, secret commissions, money laundering or sanctions.

**Bega Group** means Bega Cheese Limited ABN 81 008 358 503 and each of its Related Bodies Corporate.

**Buyer** means the purchaser of Products from the Company as identified in the Order.

**Company** means the Bega Group company listed in the Order or that has otherwise accepted the Order.

**Conditions** means these general terms of supply and other terms agreed in writing by the Company and the Buyer.

**Confidential Information** means, in relation to a party (and in respect of the Company includes the Bega Group), 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 formulations and manufacturing processes, the terms of the Agreement and any other information which the party identifies as confidential.



**Consequential Loss** 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.

**Consumer Guarantees** means a right or guarantee the Buyer may have under the Australian Consumer Law under Schedule 2 of the *Competition and Consumer Act 2010* (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.

**Force Majeure** 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.

**GST** means the goods and services tax imposed by or under the GST Law.

**GST Law** has the meaning given to that term in the *A New Tax System (Goods and Services Tax) Act 1999* (as amended) and any regulation made under that Act.

**Incoterms** 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).

**Insolvency Event** means the happening of any of the following events:

- a) in relation to a corporation:
  - i. an application is made to a court for an order, or an order is made, that the corporation be wound-up;
  - ii. an official or provisional liquidator, trustee, administrator (whether voluntary or otherwise) or receiver is appointed in relation to the corporation or any of its assets or any action is taken for the appointment of such a person; or
  - iii. the corporation is, states that it is, or becomes, unable to pay its debts when they fall due or is deemed unable to pay its debts under the *Corporations Act 2001* (Cth); and
- b) in relation to an individual:
  - i. the person is unable to pay his or her debts as they fall due or otherwise becomes insolvent or bankrupt;
  - ii. the person dies; or
  - iii. the person becomes incapable of managing his or her own affairs for any reason.

**Intellectual Property Rights** means all rights held by the Bega Group, including registered patents, trade secrets, Confidential Information, copyrights, trademarks, designs, formulations and all other rights resulting from Bega Group's intellectual endeavours in the industrial, commercial, scientific, literary and artistic fields. It does not include brands or trademarks owned by the Buyer supplied to Bega Group for packaging purposes.

**Non-Perishable Products** means any Product manufactured or supplied by the Company with a remaining shelf life on delivery of at least 30 days.



**Order** means an order from the Buyer to the Company for the supply of Products under the Agreement as set out in one of the following:

- a) a proforma invoice issued by the Company to the Buyer;
- b) an order that has been signed by the Buyer and the Company; or
- c) an order that has been accepted by the Company in whole or in part,

detailing the specific commercial terms relating to a sale of Products and, subject to clauses 4, 5 and 6 of these Conditions, includes any subsequent variations agreed in writing by the Buyer and the Company.

**Perishable Products** means any Product manufactured or supplied by the Company with a remaining shelf life on delivery of less than 30 days.

**PPSA** means the *Personal Property Securities Act 2009* (Cth).

**Price** means the purchase price payable for the sale of Products identified in the Order or otherwise agreed by the parties in writing.

**Proceeds** has the meaning provided under the PPSA.

**Products** means the Perishable and Non-Perishable Products as identified in the Order or as otherwise agreed by the parties in writing.

**Related Bodies Corporate** has the meaning given to that term in section 50 of the *Corporations Act 2001* (Cth).

**Security Interest** has the meaning provided under the PPSA.

**Special Conditions** means any special conditions agreed in writing by the Buyer and the Company relating to a sale of Products by the Company to the Buyer.

**Specifications** means that the Products will be of merchantable quality and of a quality at least equal to the quality of the same Products supplied by the Company to other customers.

## 2. Bega Group

- 2.1 In entering this Agreement, the Company may act for itself and for the members of the Bega Group; and the Company and/or any other member of the Bega Group may be the supplier of the Products. All references to the Company in this Agreement are deemed to be references to the respective Bega Group member that is to supply Products under the Order.
- 2.2 The Buyer acknowledges and agrees that any liability howsoever arising in respect of any Order issued under this Agreement remains the sole responsibility of the relevant Bega Group member that is party to that Order, while the obligations, liabilities, indemnities and warranties assumed by the Buyer under this Agreement are made for the benefit of both the Company and each member of the Bega Group and may be directly relied upon and enforced by the Company and any member of the Bega Group that is party to that relevant Order.

## 3. Contract Terms

- 3.1 The Agreement consists of:
  - a) these Conditions; and
  - b) the Order, including any 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 alternate terms proposed by the Buyer are excluded to the fullest extent permitted by law.

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

#### **4. Orders**

- 4.1 Each Order is subject to acceptance by the Company in writing. The Company may, acting reasonably, accept or decline any Order in whole or in part. The Company reserves the right to accept or reject, acting reasonably, any Orders or offers to purchase for any reason, including without limitation, the Buyer failing to pay for other Products previously ordered, the Buyer failing to comply with a reasonable minimum order value or quantity set by the Company, the unavailability of the Products, an error in the price or the description of the Products, or an error in the Order placed by the Buyer. The acceptance of one Order does not create an obligation to accept any future Orders.
- 4.2 If the Company accepts an Order, the Company agrees to supply, and the Buyer agrees to purchase, the Products in accordance with the terms of the Agreement (unless the Company and the Buyer have entered into a separate written agreement in relation to the supply of Products that expressly overrides this Agreement). Once the Company has accepted an Order, the Buyer cannot change, vary or cancel the Order without the prior written consent of the Company (which must not be unreasonably withheld or delayed).
- 4.3 Any information the Company provides in respect of the Products (including price lists) does not constitute an offer to sell but constitutes an invitation to treat only, and is subject to the availability of the Products, which may change from time to time.
- 4.4 Unless otherwise outlined in the Order (including any Special Conditions), all Products are made to order. All Orders must therefore be received in accordance with the minimum lead times as agreed in writing by the Buyer and the Company.
- 4.5 The Buyer acknowledges and agrees that in order for the Company to offer its customers a short lead time between order and delivery, in certain circumstances Products may not be available or the quantity of the Products may not be sufficient to fulfil an Order. The Company will use all reasonable endeavours to supply the Products in accordance with any Order, however the Company will not be liable for any loss or damage suffered by the Buyer arising from any failure by the Company to meet, in whole or in part, an Order from the Buyer for Products, where the Company is unable to do so.
- 4.6 Changes to the Order requested by the Buyer may be accommodated if they are at no incremental cost to the Company. Where this is not possible, these incremental costs will be notified to the Buyer. This includes delayed Orders where holding costs may be charged. The Company will advise the Buyer of any proposed additional costs under this clause in advance and the Buyer must agree to pay such proposed additional costs before the Order is formally accepted by the Company.
- 4.7 If an Order is cancelled by the Buyer after the Products are manufactured, the Buyer is liable for the whole Price which will be settled no later than the original expected due date, irrespective of whether the Products are shipped or delivered.



## 5. Price and payment

- 5.1 Unless otherwise agreed in writing between the Company and the Buyer, the Price payable for Products will be the Company's current price as at the date of the Order placed by the Buyer (which is inclusive of any delivery charges or other applicable charges payable by the Buyer). The Company 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 invoice. The Company recommends that the Buyer confirm the applicable pricing with the Company prior to placing an Order.
- 5.2 Unless otherwise specified in the Order (including any Special Conditions), the Price for future Orders may be changed by the Company from time to time.
- 5.3 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.
- 5.4 On shipment or delivery (as applicable), the Company will issue a final invoice confirming the details of the Order. This final invoice will reflect the Price and supersedes any previous Agreement to the extent detailed in the final invoice.
- 5.5 Except where expressly agreed otherwise in writing between the Company and the Buyer, payment for Products supplied by the Company to the Buyer in accordance with an Order must be made in accordance with the Order or, if no payment terms are contained in the Order:
  - a) for non-Bega Foods domestic accounts, 30 days from end of month in which the invoice was issued;
  - b) for Bega Foods domestic accounts, 30 days from date of invoice;
  - c) for Bega Foods Foodservice domestic accounts, 30 days from end of month in which the invoice was issued; and
  - d) for Bega Dairy and Drinks domestic accounts, 7 days from end of week in which the invoice was issued.
- 5.6 The Buyer must pay the final invoice issued by the Company (including any GST and other taxes payable in connection with the supply under this Agreement) without set-off by the due date.
- 5.7 Notwithstanding anything else in these Conditions, if the Buyer has failed to pay for the Order or a previous order placed with the Bega Group when due, the Company may by notice to the Buyer in writing:
  - a) refuse to supply the Buyer with further Products; or
  - b) conduct a review of the Buyer's credit arrangements with the Bega Group which may include a variation, suspension or withdrawal of any credit arrangements offered to the Buyer (for example, requiring the Buyer to pay for all future Products in full prior to the Products being supplied to the Buyer).
- 5.8 The Buyer must raise any claim or dispute relating to an invoice within 30 days of receipt. Otherwise, the Buyer is liable to pay the invoice by the due date.
- 5.9 Other than in circumstances of a genuine dispute as outlined in clause 5.8, if:



- a) the Buyer does not pay any amounts payable under this Agreement by their due date; or
- b) the Buyer suffers an Insolvency Event,

then all monies for all Products delivered to the Buyer 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 Buyer until all amounts payable under this Agreement have been paid in full by the Buyer.

- 5.10 If the Buyer owes the Company money for any reason and the Company owes the Buyer money in connection with this Agreement, the Company may set off the amount the Buyer owes the Company against the amount that the Company owes the Buyer.
- 5.11 In the absence of a clear payment direction from the Buyer, the parties agree the Company may apply payments received from the Buyer against any outstanding invoice or liability of the Buyer.

## **6. Delivery**

- 6.1 Delivery instructions are to be set out in the Order or must otherwise be agreed by the Buyer and the Company in writing.
- 6.2 Unless otherwise agreed in writing, the Buyer acknowledges and consents to the Company delivering any Products to the Buyer using a subcontractor or a third party member of Bega Group's distribution network.
- 6.3 Delivery of Products may be delayed or withheld if the Buyer is outside the agreed payment terms for previous Orders.
- 6.4 Products are deemed to be delivered when they arrive at the Buyer's nominated delivery point, which delivery point must be safe and fully accessible.
- 6.5 Any delivery times communicated by the Company to the Buyer are estimates only, and the Buyer is not entitled to refuse to accept delivery of Products due to a delay in delivery. The Buyer acknowledges that Bega Group will use all reasonable endeavours to deliver the Products within a reasonable time of the estimated delivery time communicated to the Buyer but is not liable to the Buyer for any costs or losses that the Buyer suffers or incurs as a result of any late delivery of the Products.
- 6.6 The Company may charge the Buyer reasonable additional fees to cover any delay or storage needed if the Company attempts to deliver the Products to the Buyer in the manner outlined in the Order (or as otherwise agreed by the Buyer and the Company in writing) but cannot for any reason reasonably attributable to the Buyer.

## **7. Risk and title**

- 7.1 Notwithstanding anything to the contrary in the Agreement, risk in the Products passes to the Buyer upon delivery in accordance with the Agreement.
- 7.2 Title to Products remains with Bega Group until the Buyer has paid for the Products in full.
- 7.3 Until the Buyer has paid for the Products in full:
  - a) the Buyer 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 Bega Group;
  - b) the Buyer holds the Products as bailee for the Bega Group;



- c) the Buyer is entitled to sell the Products in the ordinary course of business and must hold any Proceeds of sale in trust for Bega Group and account to Bega Group for those Proceeds of sale; and
- d) the Buyer irrevocably grants to Bega Group the right, on reasonable notice to the Buyer and during business hours, to enter any premises in which the Products are stored or reasonably considered to be stored, for the purposes of Bega Group inspecting the Products and, if the Buyer has breached the Agreement, to retake possession of the Products.

7.4 If this Agreement (or a transaction in connection with it) is or contains a Security Interest for the purposes of the PPSA, the Buyer must upon request do anything which Bega Group considers reasonably necessary for the purposes of ensuring that the Security Interest is enforceable, perfected and otherwise effective, and to enable Bega Group to apply for any registration, give any notification, and to exercise any rights in connection with the Security Interest. Bega Group is not obliged, before exercising a right under this Agreement or conferred by law, to give the Buyer 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, the Buyer 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.

7.5 While the Products remain the property of the Bega Group, the Buyer must not, without the Bega Group's prior written consent, grant or allow another to hold a Security Interest in:

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

## **8. Indemnity**

8.1 The Buyer indemnifies the Company against all loss, liability, damages, costs and expenses, (including third party claims brought against the Company) incurred by the Company as a result of, or in connection with:

- a) any fraudulent, wilful, negligent or unlawful act or omission of the Buyer; and
- b) the Buyer's failure to pay the Price in accordance with the agreed payment terms.

8.2 Any amount claimed by the Company 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 the Company.

8.3 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.

## **9. Non-compliant product claims**

9.1 The Buyer must inspect Perishable Products within 24 hours of such Products being delivered to the Buyer. The Buyer must raise any claim or dispute relating to Perishable Goods within 24 hours of such Products being delivered to the Buyer.

9.2 The Buyer must inspect Non-Perishable Products within 14 days of such Products being delivered to the Buyer. The Buyer must raise any claim or dispute relating to Non-Perishable Products within 14 days of such Products being delivered to the Buyer.



- 9.3 If the Buyer fails to notify Bega Group within the timeframes outlined in clauses 9.1 and 9.2 above, then, to the fullest extent permitted by law, the relevant Products will be treated as having been accepted, and the Buyer must pay for the Products and, to the fullest extent permitted by law, Bega Group will be discharged from any liability in respect of the Products being wrong or defective or short delivered.
- 9.4 In the absence of fraud or manifest error, Bega Group'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 Bega Group authorised representative will be conclusive evidence of the amount by the Buyer owed for the Products.

## **10. Warranties and liability**

- 10.1 With the exception of the Consumer Guarantees, this Agreement excludes any term, condition or warranty that may otherwise be implied into this Agreement. The Buyer acknowledges that they do not rely, and it is unreasonable for the Buyer to rely, on the Bega Group's skill or judgment as to whether the Products supplied are reasonably fit for any purpose for which the Buyer is acquiring them.
- 10.2 If the Products do not comply with the Specifications, the Company's liability to the Buyer is, to the extent permitted by law, limited to either an obligation to supply replacement Products or, at the Company's option, repay to the Buyer the amount paid to the Company for the Products (which may include the Company giving the Buyer a credit note for any price paid or payable for the Products for use against future Orders).
- 10.3 Subject to clause 10.4 and to the extent permitted by law, the maximum liability of the Company to the Buyer for breach of contract, negligence or otherwise in connection with the Products supplied or to be supplied under this Agreement or otherwise at law or in equity is limited to the greater of:
- a) the amount paid or payable by the Buyer for those Products; or
  - b) \$100,000.
- 10.4 The limitation and exclusions of liability outlined in clause 10.3 above do not apply to the Company's liability for any:
- a) wilful misconduct or fraud of the Company; or
  - b) death, personal injury or third-party property damage caused or contributed to by the Company.
- 10.5 To the extent permitted by law, each party excludes all liability to the other for Consequential Losses.
- 10.6 The Buyer must not return or destroy any Products that the Buyer claims are not in accordance with the Agreement unless:
- a) the Buyer advises Bega Group of its intention to return or destroy Perishable Products within 24 hours of delivery of such Products to the Buyer;
  - b) the Buyer advises Bega Group of its intention to return or destroy Non-Perishable Products within 14 days of delivery of such Products to the Buyer;
  - c) Bega Group has given its written approval to the return or destruction of the Products; and





d) the return or destruction of the Products is effected in accordance with Bega Group's instructions, directions or advice and in accordance with all relevant laws.

10.7 The Buyer charges to Bega Group (and its Related Bodies Corporate) any interest that the Buyer 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 Bega Group (and its Related Bodies Corporate) by the Buyer in any capacity, on the Buyer's own account or with others, now or in the future.

10.8 The Buyer irrevocably consents to the lodgement of a caveat or caveats over any real property in respect of any interest of Bega Group (or its Related Bodies Corporate) arising from this Agreement.

10.9 If a withdrawal or recall of the Products is required, the Buyer must do all things reasonably requested by Bega Group and must comply with all applicable laws.

10.10 The Buyer 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 the Bega Group 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. Ownership of Intellectual Property

All Intellectual Property Rights which are owned by, or is proprietary to, the Company at the date of this Agreement shall remain owned exclusively by the Company. 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 the Company. Nothing in this Agreement confers on the Buyer any right or interest in, or licence to use, or permit to be used, any of the Company's Intellectual Property Rights. The Buyer must not use the Company's Intellectual Property Rights (including trade marks) without the Company's prior written consent.

## 12. CONFIDENTIAL INFORMATION

### 12.1 Confidentiality obligation

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 of the disclosing party arising in connection with this Agreement for the purposes of the business relationship between the Buyer and the Company.

### 12.2 Exceptions

A recipient's obligations under the preceding clause do not apply to Confidential Information of the disclosing party that:

- a) is, or has become, part of the public domain otherwise 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;
- 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.

### **12.3 Return of Confidential Information**

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. The return of Confidential Information required by this clause 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.

## **13. Force Majeure**

### **13.1 No breach or Liability**

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.

## **14. Anti-corruption**

14.1 Neither party is obliged to take any action that it reasonably believes would cause it to breach any Anti-Corruption Laws.

14.2 The Bega Group will not tolerate any acts or attempted acts of fraud or corruption in any form whether direct or indirect.

14.3 Each party warrants:

- a) it will not commit any act or omission which could cause it or the other party to breach Anti-Corruption Laws; and
- b) it is not the subject of any sanctions, and it has not been convicted of any offence involving a breach of Anti-Corruption Laws.



14.4 The Bega Group considers that fraud or corruption is a very serious offence and may result in criminal proceedings, other penalties and disciplinary action. Any suspected incidences of breach of Anti-Corruption Laws must be reported to the Bega Group's Whistle Blower hotline.

## 15. General

15.1 The Agreement is governed by and construed in accordance with the law of the State of New South Wales, Australia and the parties submit to the non-exclusive jurisdiction of the courts of that State. The United Nations Convention on Contracts for the International Sale of Goods is excluded in its entirety.

15.2 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 Bega Group 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.

15.3 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.

15.4 The only enforceable obligations and liabilities are those set out in this Agreement. No variation to the Conditions is valid unless signed or otherwise agreed in writing by both the Company and the Buyer.

15.5 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.

15.6 Any obligation imposed on more than one person, binds all of them jointly and each of them severally.

15.7 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 the Company or the Buyer 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.

## 15.8 Assignment

a) The Buyer cannot assign, novate or sub-contract any of its rights or obligations under this Agreement without the prior written consent of the Company.



- b) The Buyer acknowledges and agrees that the Company's consent (referred to in clause 15.8(a)) may be subject to conditions including that the Buyer demonstrates, to the Company'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.
- c) The Company may assign, novate or sub-contract its rights or obligations under this Agreement without the prior written consent of the Buyer to any Related Bodies Corporate of the Bega Group or a bona fide purchaser of the assets or business of the Company. The Company may subcontract the performance of all or any part of the Company's obligations under this Agreement. The Company remains liable and responsible for all acts and omissions of its subcontractors as if they were the acts or omissions of the Company.

15.9 A notice that is signed and sent by fax or any other electronic means will be deemed to be in writing. The Buyer expressly acknowledges and agrees that the Company may provide the Buyer with written notice by direct mail, facsimile, email or any other electronic means of communication.

15.10 The Buyer and Bega Group 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.

15.11 The Buyer further agrees that from time to time the Company may contact the Buyer by direct mail, telephone, facsimile, email or any other electronic means of communication for the purposes of verifying the information the Buyer has provided to the Company or which the Company maintains in its Buyer account records. The Buyer must promptly notify the Company in writing of any changes in their contact information or Buyer account details.

15.12 Unless expressly stated otherwise, this Agreement does not create a relationship of employment, trust, agency or partnership between the parties.

**15.13 Privacy and Spam**

- a) The Buyer can access the personal information that the Bega Group holds about the Buyer 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/>.
- b) The Bega Group may use the Buyer's personal information to obtain and process credit reports about the Buyer, to manage and enforce the Bega Group's rights under these Conditions, to meet the Bega Group's legal obligations to the Buyer and for direct marketing and promotional purposes, and the Buyer consents to such use.
- c) Bega Group may disclose the Buyer's personal information to its contractors or agents on strictly confidential terms, and the Buyer consents to such disclosure.

**15.14 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 the Company or the Buyer, and a reference to the parties is a reference to both the Company and the Buyer.

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