

**Food & Beverage Innovations Pty Ltd**  
**ABN: 55 602 811 727 ACN: 602 811 727**

## **1. Definitions**

In these conditions:

"ACL" means the Australian Consumer Law Schedule of the Competition and Consumer Act 2010 and its associated Regulations as amended;

"Agreement" means any agreement for the provision of goods and/or services by FBI to the Customer;

"consumer" is as defined in the ACL and in determining if the Customer is a consumer, the determination is made if the Customer is a consumer under the Agreement;

"Customer" means the person, jointly and severally if there is more than one, acquiring goods or services from FBI;

"FBI" means Food & Beverage Innovations Pty Ltd ACN: 602 811 727 Of 110 Enterprise Street, Kunda Park, Qld 4556.

"goods" means goods supplied by FBI to the Customer;

"GST" means the Goods and Services tax as defined in A New Tax System (Goods and Services Tax) Act 1999 as amended;

"Intellectual Property" means all copyright, patents, trade marks, designs, specifications, confidential information, manufacturing processes and all modifications, improvements and derivations (whether registrable or not) owned or licensed by FBI in respect of the goods and services;

"PPSA" means the Personal Property Securities Act 2009 (Cth) and its associated Regulations as amended;

"Price List" means the price list or written quotation issued by FBI from time to time;

"services" means services supplied by FBI to the Customer;

"Terms" means these Terms and Conditions of Sale;

## **2. Basis of Agreement**

2.1 Unless otherwise agreed by FBI in writing, these Terms and Conditions of Sale apply exclusively to every Agreement and cannot be varied or replaced by any other conditions, including the Customer's terms and conditions of purchase (if any).

2.2 Any quotation provided by FBI to the Customer for the proposed supply of goods or services is:

- (a) valid for 30 days; unless specifically noted otherwise.
- (b) an invitation to treat only;
- (c) only valid if in writing.

2.3 The Terms may include additional terms in the FBI quotation, which are not inconsistent with the Terms.

2.4 An Agreement is accepted by FBI when FBI accepts in writing or electronic means an offer from the Customer or provides the Customer with the goods or services.

2.5 FBI in its absolute discretion may refuse to accept any offer.

2.6 It is the Customer's responsibility to provide FBI with its specific requirements in relation to the goods and services.

2.7 FBI may vary or amend these Terms at any time, with any such changes or amendments notified at [www.foodandbeverageinnovations.com.au](http://www.foodandbeverageinnovations.com.au). The Customer acknowledges that they have read the latest Terms prior to placing any order for products.

### **3. Pricing**

3.1 Prices quoted, whether in the Price List, by written quotation or verbally, for the supply of goods and services, exclude GST and any other taxes or duties imposed on or in relation to the goods and services. In addition to payment of the price of goods and services, the Customer must pay any GST and any other taxes or duties imposed on the goods and services.

3.2 If the Customer requests any variation to the Agreement, FBI may increase the price to account for the variation.

3.3 Where there is any change in the costs incurred by FBI in relation to the goods or services, FBI may vary its price to take account of any such change, by notifying the Customer.

### **4. Payment**

4.1 Unless otherwise agreed in writing:

(a) Payment for the goods and/or services must be made within 30 days of the date of the FBI invoice (Account holders only); and

(b) FBI reserves the right to require payment in full prior to the delivery of the goods or completion of the services.

4.2 FBI, at its sole discretion, may offer a discount on the price of goods (excluding freight charges) for cash payment.

4.3 Payment by cheque is not deemed made until the proceeds of the cheque have cleared.

4.4 Merchant or other fees incurred as a result of payment by credit card will be charged to the Customer's account.

4.5 Payment terms may be revoked or amended at the sole discretion of FBI immediately upon giving written notice to the Customer.

### **5. Payment Default**

5.1 If the Customer defaults in payment by the due date of any amount payable to FBI, then all money which would become payable by the Customer to FBI at a later date on any account, becomes immediately due and payable without the requirement of any notice to the Customer, and FBI may, without prejudice to any of its other accrued or contingent rights:

(a) charge the Customer interest on any sum due at the prevailing rate pursuant to the Penalty Interest Rates Act 1983 (Vic) plus 2 per cent for the period from the due date until the date of payment in full;

(b) charge the Customer for, and the Customer must indemnify FBI from, all costs and expenses (including without limitation all legal costs, collection agency costs and expenses) incurred by it resulting from the default or in taking action to enforce compliance with the Terms or to recover any goods;

(c) cease or suspend supply of any further goods or services to the Customer; and

(d) by notice in writing to the Customer, terminate any agreement with the Customer so far as unperformed by FBI.

5.2 Clauses 5.1 (c) and (d) may also be relied upon, at the option of FBI:

(a) where the Customer is a natural person and becomes bankrupt or enters into any scheme

of arrangement or any assignment or composition with or for the benefit of his or her creditors or any class of his or her creditors generally; or

(b) where the Customer is a corporation and, it enters into any scheme of arrangement or any assignment or composition with or for the benefit of its creditors or any class of its creditors generally, or has a liquidator, provisional liquidator, administrator, receiver or receiver and manager appointed, or any action is taken for, or with the view to, the liquidation (including provisional liquidation), winding up or dissolution without winding up of the Customer.

## **6. Passing of Property**

6.1 Until full payment in cleared funds is received by FBI for all goods and services supplied by it to the Customer, as well as all other amounts owing to FBI by the Customer:

- (a) title and property in all goods remain vested in FBI and do not pass to the Customer;
- (b) the Customer must hold the goods as fiduciary bailee and agent for FBI;
- (c) the Customer must keep the goods separate from its goods and maintain the labelling of FBI;
- (d) the Customer is required to hold the proceeds of any sale of the goods on trust for FBI in a separate account with a bank to whom the Customer has not given security however failure to do so will not affect the Customer's obligation as trustee;
- (e) in addition to its rights under the PPSA, FBI may without notice, enter any premises where it suspects the goods may be and remove them, notwithstanding that they may have been attached to other goods not the property of FBI, and for this purpose the Customer irrevocably licences FBI to enter such premises and also indemnifies FBI from and against all costs, claims, demands or actions by any party arising from such action.

## **7. Personal Property Securities Act**

7.1 Notwithstanding anything to the contrary contained in these Terms, the PPSA applies to these Terms.

7.2 For the purposes of the PPSA:

- (a) terms used in clause 7 that are defined in the PPSA have the same meaning as in the PPSA;
- (b) these Terms are a security agreement and FBI has a Purchase Money Security Interest in all present and future goods supplied by FBI to the Customer and the proceeds of the goods;
- (c) The security interest is a continuing interest irrespective of whether there are monies or obligations owing by the Customer at any particular time; and
- (d) the Customer must do whatever is necessary in order to give a valid security interest over the goods which is able to be registered by FBI on the Personal Property Securities Register.

7.3 The security interest arising under this clause 7 attaches to the goods when the goods are collected or dispatched from FBI premises and not at any later time.

7.4 Where permitted by the PPSA, the Customer waives any rights to receive the notifications, verifications, disclosures or other documentation specified under sections 95, 118, 121(4), 130, 132(3)(d), 132(4), 135 and 157 of the PPSA.

7.5 FBI and the Customer agree to contract out of and nothing in the provisions of sections 96, 125, 129, 142 and 143 of the PPSA will apply to these Terms.

7.6 To the extent permitted by the PPSA, the Customer agrees that:

- (a) the provisions of Chapter 4 of the PPSA which are for the benefit of the Customer or which place obligations on FBI will apply only to the extent that they are mandatory or FBI agrees to their application in writing; and
- (b) where FBI has rights in addition to those in Chapter 4 of the PPSA, those rights will continue to apply.

7.7 The Customer must immediately upon FBI request:

- (a) do all things and execute all documents necessary to give effect to the security interest created under this Agreement; and
- (b) procure from any person considered by FBI to be relevant to its security position such agreements and waivers (including as equivalent to those above) as FBI may at any time require.

7.8 FBI may allocate amounts received from the Customer in any manner FBI determines, including in any manner required to preserve any Purchase Money Security Interest it has in goods supplied by FBI.

7.9 For the purposes of section 275(6) of the PPSA, the parties agree and undertake that these Terms and any information pertaining to the sale of goods and details of the goods shall be kept confidential at all times. Neither party may disclose any information pertaining to these Terms or the sale of the goods, except as otherwise required by law or that is already in the public domain.

## **8. Risk and Insurance**

8.1 The risk in the goods and all insurance responsibility for theft, damage or otherwise will pass to the Customer immediately on the goods being delivered to the Customer from FBI premises.

8.2 The goods are sold to the Customer on the basis that the Customer has obtained all necessary licenses or permits under all relevant laws and regulations in relation to the goods.

8.3 The Customer assumes all risk and liability for loss, damage or injury to persons or to property of the Customer, or third parties arising out of the use or possession of any of the goods sold by FBI, unless recoverable from FBI on the failure of any statutory guarantee under the ACL.

## **9. Acknowledgments**

9.1 It has not made known, either expressly or by implication, to FBI any purpose for which it requires the goods or services and it has the sole responsibility of satisfying itself that the goods or services are suitable for the use of the Customer.

9.2 The Customer acknowledges that:

(a) it has not relied on any service involving skill and judgement, or on any advice, recommendation, information or assistance

provided by FBI in relation to the goods or services or their use or application;

(b) any description of the goods provided in a quotation or invoice is given by way of identification only and the use of such description does not constitute a contract of sale by description.

(c) it must provide to FBI full particulars of its requirements, including but not limited to, its ABN, order number, quantity and model number and any options required, delivery date, delivery address, insurance instructions and freight instructions, before FBI will accept any order.

## **10. Performance of Agreement**

10.1 Any period or date for delivery of goods or provision of services stated by FBI is intended as an estimate only and is not a contractual commitment. FBI will use its reasonable endeavours to meet any estimated dates for delivery of the goods or completion of the services but will in no circumstances whatsoever be liable for any loss or damage suffered by the Customer or any third party for failure to meet any estimated date.

10.2 A completed drivers manifest or delivery docket whether signed by the driver or by the Customer or its employee or agent will be proof of delivery of goods invoiced.

## **11. Delivery**

11.1 FBI will nominate and coordinate a carrier on the Customer's behalf unless otherwise instructed by the Customer.

11.2 The Customer will inform FBI of all necessary details so that FBI can affect the delivery of the goods.

11.3 The Customer may nominate its own carrier, in which case it must coordinate the delivery with FBI.

11.4 Unless otherwise agreed in writing, the Customer will be responsible for all costs associated with delivery, including any special packaging or required crating, freight, insurance and other charges arising from the point of despatch of the goods to the Customer to the point of delivery.

11.5 The Customer must provide reasonable and proper access to the location specified for delivery.

11.6 Any extra carrier charges due to difficult access, wrong or misleading instructions provided by the Customer, frustrated delivery, or the requirement for extra personnel, will be charged to Customer at cost plus a 10% service fee plus GST charged by FBI.

11.7 The obligation of FBI to deliver goods shall be satisfied by the delivery by FBI of the quantity of goods ordered or if delivery is by instalments, by the delivery of the quantity of goods to be delivered in each instalment (+/- 10%). The Customer shall only be required to pay for the actual quantity of the goods delivered by FBI.

11.8 If FBI does not receive forwarding instructions sufficient to enable it to despatch the goods within 14 days of notification that the goods are ready, the Customer shall be deemed to have taken delivery of the goods from such date. The Customer shall be liable for storage charges payable monthly on demand.

11.9 Where it is necessary for FBI to deliver the goods in other than a fully assembled condition (which facts will be stated in the quotation), the cost

and responsibility of assembly and installation will fall to the Customer.

11.10 The Customer must advise FBI in writing within 3 days of receipt:

- (a) of the non arrival of any or all of the goods;
- (b) if there is damage to the goods;
- (c) that the wrong goods have been received;
- (d) that the quantity of the goods is incorrect; or
- (e) the goods do not meet specifications.

## **12. Returns**

12.1 Goods may only be returned to FBI:

- (a) if the request to return is made in writing to FBI within 3 days of delivery to site, stating reason for the requested return;
- (b) if the goods are not optioned or customised in any way or produced to a specific Customer requirement in part or in whole;
- (c) with the prior written authority of FBI;
- (d) if the Customer pays for all transport and handling costs to the FBI warehouse;
- (e) if the goods are accompanied by a copy of the FBI GRA provided as proof of authorisation in accordance with clause 12.1(c);
- (f) on the acceptance of the application of a restocking and handling charge, such charge being a minimum of 20% of the invoice value, except where the wrong goods were delivered by FBI, in which case there will be no restocking or handling charge; and
- (g) if the goods are in an undamaged and unsoiled condition and in the original packaging, unless with the prior written consent of FBI.

## **13. Cancellation**

13.1 If FBI is unable to deliver or provide the goods or services, then FBI may cancel the Customer's order (even if it has been accepted) by written notice to the Customer.

13.2 No purported cancellation or suspension of an order or any part thereof by the Customer is binding on FBI after that order has been accepted.

13.3 FBI, in its absolute discretion may review, alter or terminate the Customer's credit limit or payment terms without notice.

13.4 If the Customer cancels the order after acceptance by FBI, then FBI will be entitled to damages for breach of contract. This includes, but is not limited to, compensation in accordance with FBI Order Cancellation Policy as in effect at time of Order Confirmation.

## **14. Specifications**

14.1 All specifications, drawings, illustrations descriptive matter and particulars contained in brochures, specification sheets, catalogues, website and marketing documents are indicative only, do not form part of this Agreement, and are not representations or warranties of any kind. Any discrepancy will not entitle the Customer to rescind this Agreement or seek compensation or damages.

14.2 The Customer must not reverse engineer any goods provided to it by FBI.

14.3 All drawings, descriptive matter and particulars supplied, remain FBI property and are to be returned to FBI on demand. The Customer must not publish or communicate any of them to any person or publish or permit them to be copied or communicate them to any other person without FBI prior consent in writing.

## **15. Intellectual Property**

15.1 The Customer acknowledges that it has no proprietary right or interest in the Intellectual Property.

15.2 The Customer must not register or record or attempt to register or record anywhere in the world the Intellectual Property or any part or any patents, inventions, trade marks or designs derived from or similar to the Intellectual Property or aid or abet anyone else in doing so.

15.3 The Customer must not at any time create, sell, manufacture or process any goods or services using or taking advantage of the Intellectual Property.

15.4 Any Intellectual Property provided to the Customer by FBI in connection with the goods and services remains the exclusive property of FBI and must be returned to FBI on demand and must not be copied or communicated to any third party without the express written consent of FBI.

## **16. Liability / Warranty**

16.1 Except as the Terms specifically state, or as contained in any express warranty provided in relation to the goods or services, the Agreement does not include by implication any other term, condition or warranty in respect of the quality, merchantability, acceptability, fitness for purpose, condition, description, assembly, manufacture, design or performance of the goods or services or any contractual remedy for their failure.

16.2 Many products sold by FBI are not designed for nor have the appropriate certifications, licences or accreditations for use in personal, domestic or household applications. The Customer warrants that FBI products will not be used for such applications. To the extent permitted by law, FBI specifically does not warrant its products used in such applications.

16.3 If the Customer is a consumer nothing in these Terms restricts, limits or modifies the Customer's rights or remedies against FBI for failure of a statutory guarantee under the ACL.

16.4 If the Customer on-supplies the goods to a consumer and:

(a) the goods or services are not of a kind ordinarily acquired for personal, domestic or household use or consumption, then the amount specified in section 276A(1) of the ACL is the absolute limit of FBI liability to the Customer;

(b) the goods or services are of a kind ordinarily acquired for personal, domestic or household use or consumption, payment of any amount required under section 274 of the ACL is the absolute limit of FBI liability to the Customer;

howsoever arising under or in connection with the sale, installation, use of, storage or any other dealings with the goods or services by the Customer or any third party.

16.5 If clause 16.2 or 16.4 do not apply, then other than as stated in the Terms or any written warranty statement FBI is not liable to the Customer in any way arising under or in connection with the sale,

installation, use of, storage or any other dealings with the goods or services by the Customer or any third party.

16.6 FBI is not liable for any indirect or consequential losses or expenses suffered by the Customer or any third party, howsoever caused, including but not limited to loss of perishables, loss of turnover, profits, business or goodwill or any liability to any other party except to the extent of any liability imposed by the ACL.

16.7 Nothing in the Terms is to be interpreted as excluding, restricting or modifying or having the effect of excluding, restricting or modifying the application of any State or Federal legislation applicable to the sale of goods or supply of services which cannot be excluded, restricted or modified.

16.8 Where the Customer is a consumer, the following mandatory statement applies: Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.

16.9 FBI, its agents, manufacturers and suppliers warrants, subject to the exclusions and limitations below, the goods will be free from defects in materials and workmanship for the applicable warranty period as determined by each applicable manufacturer/supplier.

16.10 Subject to the remainder of clause 16, FBI, its agents, manufacturers and suppliers, in their reasonable discretion if they deem necessary, will repair or replace any goods to remedy any fault covered by Warranty, provided that:

(a) the goods may have acceptable variance; and

(b) any replacement or repaired goods will only be warranted for the unexpired portion of the Warranty period attached to the original goods.

16.11 Unless stated otherwise, each individual item is covered by its specific manufacturer or suppliers standard warranty period.

16.12 Provision of the Warranty is subject to:

- (a) the Customer not being in breach of these Terms or any additional Agreement as may be in place;
- (b) proof of purchase of the goods being directly from FBI or an authorised distributor or agent of FBI;
- (c) FBI or its representative, at its option, having access to the goods for the purposes of inspection and verification of any claim;
- (d) the Customer accepting an invoice for any replacement parts claimed under Warranty, which will be reimbursed, excluding freight costs, only after confirmation of the claim by FBI;
- (e) The full payment of any invoices rendered by FBI to the Customer for non Warranty work;
- (f) the Customer has not repaired or undertaken to repair the goods without prior authorisation from FBI or the manufacturer / importer of the goods nor altered the goods in any way;
- (g) the Customer uses and maintains the goods in accordance with the manufacturers instructions and in accordance with commonly accepted operating practices;
- (h) the Customer providing written notice within 3 days of delivery of any goods that it believes do not meet specifications or goods that are defective; and
- (i) correct storage, siting and installation of the goods in accordance with manufacturers instructions.

16.13 The following Warranty exclusions apply:

- (a) Any product which FBI publishes as excluded from application of this Warranty;
- (b) Any product for which the Warranty period published by FBI (in advertising material or otherwise) differs from the Warranty period outlined above;
- (c) defects or malfunctions that are the result of incorrect or poor maintenance by the Customer;
- (d) damage or alteration to the goods arising from circumstances outside the direct control of FBI and our suppliers, including, without limitation, power surges, disruptions, flooding, fire or acts of god or where the goods are not used for their intended purpose;
- (e) any part of any goods which has been subject to misuse, neglect, alteration or changed in any manner, incorrect installation or accident that has been caused by the Customer or its invitee;
- (f) the failure of goods that have been supplied to a Customer's specification or design and that failure was caused by a Customer specification or design fault;
- (g) any problem that might arise due to poor installation or siting of the goods, including but not limited to, lack of sufficient fresh air circulation, poor house-keeping & cleanliness, marine or mobile applications;
- (h) any problem that might arise out of the installation of remote refrigeration cabinets, including but not limited to, blockages or leaks in the refrigeration system, replacement refrigerant and components including TX valves, and wiring issues with controllers;
- (i) any third party equipment that the Customer might have specified;
- (j) any installation or removal costs necessary to access or service the goods;
- (k) any time spent on security clearance, inductions and suchlike;
- (l) damage to, or breakage of, glass doors, gaskets, power leads, hinges, lights or plastic components; and
- (m) the failure of gaskets, lights, hinges, locks, TX valves and batteries.

16.14 FBI, its suppliers and manufacturers of goods, reserve the right to replace defective parts of the goods with parts and components of similar quality, grade and composition where an identical part or component is not available.

16.15 Goods presented for repair may be replaced by refurbished goods of the same type rather than being repaired. Refurbished parts may be used to repair the goods.

16.16 The Customer warrants to use the goods in accordance with:

(a) any instructions provided to it by FBI or the manufacturer of the goods, from time to time;

(b) all government and local regulations, including but not limited to all relevant environmental laws and regulations governing the storage, installation, use, handling, maintenance and disposal of the goods.

(c) all necessary and appropriate precautions and safety measures relating to the storage, installation, use, handling and maintenance of the goods.

(d) Approved Warranty work undertaken by authorised service agents is arranged during our normal working hours only (generally Monday – Friday, 8am to 4.30pm, excluding public holidays).

16.17 The Customer bears the cost of making the Warranty claim.

16.18 Approved Warranty repair work will be conducted for free only on the Australian mainland and within 50kms of Authorised service agent premises. If the Customer is located more than 50km away, then any distance will be charged to the Customer on the excess at commercial rates.

16.19 FBI, its suppliers and manufacturers makes no express warranties or representations other than as set out in this clause 16.

16.20 The repair or replacement of the goods or part of the goods is the absolute limit of the manufacturers' liability under the Warranty.

16.21 The benefits of this Warranty are in addition to any rights and remedies imposed by Australian State and Federal legislation that cannot be excluded.

16.22 In the case of goods not manufactured by FBI but are sourced from third parties and supplied by FBI, Warranty will operate to the terms of the original manufacturer of those goods.

16.23 Our contact details are:

Food and Beverage Innovations Pty Ltd

110 Enterprise Street

Kunda Park, Queensland, 4556.

Ph: 07-5445 4466

Email: info@fbinnovations.com.au

## **17. Miscellaneous**

17.1 The law of Queensland from time to time governs the Terms. The parties agree to the non-exclusive jurisdiction of the courts of Queensland, the Federal Court of Australia, and of courts entitled to hear appeals from those Courts.

17.2 Failure by FBI to enforce any of these Terms shall not be construed as a waiver of any of FBI rights.

17.3 If any of the Terms are unenforceable it shall be read down so as to be enforceable or, if it cannot be so read down, the condition shall be severed from these Terms without affecting the enforceability of the remaining conditions.

17.4 A notice must be in writing and handed personally or sent by email or prepaid mail to the last known address of the addressee. Notices sent by pre-paid post are deemed to be received upon posting. Notices sent by email are deemed received upon confirmation of successful transmission.

*FBI STANDARD TERMS AND CONDITIONS OF SALE\_REV 05\_01.04.2020*