



1. DEFINITIONS

- 1.1 In these terms and conditions of purchase: "Date for Completion" means the date specified in the Order or, if no date is stated, a reasonable time after the date of the Order; "Date of Completion" means the date that the Works are complete; "Defect" means that the Goods or Services: (a) do not conform to the Specifications; (b) have an error, defect or malfunction; (c) are not fit for the purpose made known by the Purchaser or are not of merchantable quality; (d) do not conform with a sample or test item provided by the Supplier; or (e) otherwise do not comply with the requirements of this Contract; "Delivery Duty Paid" has the same meaning as defined by the International Commercial Terms (Incoterms); "Delivery Point" means the address of the Site; "Goods" means the Goods stated in the Order or incidental to the supply of the Services; "GST" "tax invoice" and "taxable supply" have the same meaning as in A New Tax System (Goods and Services Tax) 1999 (Cth); "Order" means the Purchaser's offer to purchase Goods and Services; "Price" means the aggregate of the prices stated in the Order, or the aggregate of such other prices as the parties agree in writing; "Purchaser" means Botanical Foods Company Pty Ltd A.B.N. 47 085 074 282 "Purchaser's Property" means all property owned by the Purchaser including real, personal, and intellectual property; "Services" means the services stated in the Order; "Site" means lands and other places at 80 and 86 Palmwoods-Montville Road, Palmwoods, Queensland 4555 Australia to be made available to the Supplier by the Purchaser for the purpose of this Contract; "Supplier" means the supplier or intending supply of the Goods or Service, identified in the Order, and its directors, employees, agents and contractors; "Variation" means an approved modification to, or omission from, or addition to the Works which may include changes to the character, specified sequence, method or timing; "Warranty Period" means 12 months commencing on the Date of Completion; "Works" means the work which the Supplier is or may be required to carry out and complete to fulfil the Purchaser's specified requirements.

2. INTERPRETATIONS

- 2.1 All references herein to clauses are references to clauses numbered in these terms and conditions and not to those in any other document.
2.2 Words importing the singular only shall also include the plural and vice versa where the context requires.
2.3 Headings are inserted for ease of reference only, and do not affect the interpretation of these terms and conditions.
2.4 These terms and conditions apply to the completion of the Works and supersede and exclude all prior or subsequent discussions, representations and terms or conditions of trade between the Purchaser and the Supplier.

3. CONTRACT

- 3.1 This Contract is made as at 9:00am AEST on the date of the Order and represents the entire agreement in relation to the subject matter and is comprised of these terms and conditions and the Order.
3.2 The Supplier shall complete the Works in accordance with these terms and conditions and the Order.
3.3 The Purchaser will pay the Price to the Supplier in consideration for the Works, subject to these terms and conditions.
3.4 If part or all of any provision of these terms and conditions or its application to any person or circumstance is illegal, void or unenforceable, the provision will be interpreted as may be necessary to ensure it not illegal or unenforceable. If any provision or part of it cannot be interpreted in that way, the provision or part of it will be severed from these terms and conditions and the remaining provisions continue in force.
3.5 A counter-offer by the Supplier on the basis of substituted terms and conditions is not binding on the Purchaser unless the Purchaser accepts the counter-offer in writing. In the absence of a written acceptance, this Contract.

4. ORDERS

- 4.1 All Orders from the Purchaser will be in writing.
4.2 The Purchaser is not responsible for any Goods or Services supplied by the Supplier without an Order.
4.3 Each Order is an offer to purchase Goods or Services (or both) from the Supplier subject to these terms and conditions.
4.4 The Supplier will be deemed to have accepted the Order if the Supplier does not refuse or reject the Order in writing within fourteen (14) days of the date of the Order, or if the Supplier performs any part of the Order before that time.

5. WARRANTIES

- 5.1 The Supplier warrants and represents to the Purchaser that: (a) the Supplier has the right to sell the Goods free from all encumbrances and that the Purchaser will enjoy quiet possession of the Goods and will not, or will not cause the Purchaser to, breach any law; (b) the Goods are new, will be merchantable quality and fit for any purpose which the Purchaser had made known to the Supplier, or for which the Goods are commonly supplied; (c) the Goods will be free from Defect, lien, charge, security interest and encumbrance; (d) the Works meet all legislative requirements specified in clause 25.1; (e) the Supplier has obtained the necessary approvals for the supply of the Goods and Services; (f) the Supplier will supply the Services punctually, with due care, skill and diligence by suitable qualified staff, and otherwise in the manner that the Purchaser reasonably requires; (g) the Supplier has not provided any false or misleading information, has declared any conflict of interest, and will act ethically, honestly and in good faith; (h) where Goods are supplied by reference to a sample, the Goods will correspond with the sample; and (i)

the use of the Goods and/or Services will not infringe the intellectual property rights of any third party.

6. SUPPLY

- 6.1 This terms for delivery of Goods is on Delivery Duty Paid terms to the Delivery Point for all Goods unless otherwise stated in the Order.
6.2 Each delivery of Goods or supply of Services must comply with any packaging, labelling or delivery instructions given by the Purchaser to the Supplier.
6.3 Delivery of the Goods will be deemed to have occurred when the Goods are received and accepted by the Purchaser at the Delivery Point.
6.4 Supply of the Services will be deemed to have occurred when the Purchaser has accepted in writing that the Services conform to the Order or within thirty (30) days after delivery of the Service, whichever occurs first.
6.5 To enable the Goods to be used, the Supplier must deliver to the Purchaser all keys and legible English language operating manuals, instructions, passwords, and reference material about the Goods by the Date of Completion.
6.6 Delivery of Goods to the Delivery Point shall not occur before 8am or after 4pm, nor on any Saturday, Sunday or public holiday at Site.

7. INSPECTIONS

- 7.1 The Supplier shall submit to the Purchaser for review and/or approval such documentation as the Purchaser considers to be necessary, but such approval shall in no way relieve the Supplier of its obligations under this Contract.

8. DELAYS

- 8.1 Unless otherwise agreed by the parties in writing, the Supplier must complete the Works on or before the Date for Completion.
8.2 The Supplier becoming aware of anything which will probably cause delay to the Date of Completion shall promptly give the Purchaser written notice of that cause and the estimated delay.

9. VARIATION AND CANCELLATION

- 9.1 The Supplier must not vary any part of the Order or this Contract except as directed in writing by the Purchaser.
9.2 The Purchaser reserves the right: (a) at any time prior to delivery or supply by the Supplier, to cancel or omit all or any part of an Order by giving notice in writing to the Supplier; and (b) at any time, to correct any errors or omissions in any part of the Order or other documentation issued by the Purchaser.
9.3 The Purchaser will not be in breach of this Contract if it thereafter either performs work itself or employs or engages another person to carry out and execute any of the work pursuant to clause 9.2.
9.4 The Purchaser shall endeavour to minimise any loss to the Supplier arising from any cancellation or omission of work under clause 9.2, but will only pay the Supplier's reasonable costs of work in progress as at the date of cancellation. Payment of such costs of work in progress shall only be due and payable following agreement in writing between the parties.
9.5 The value of any Variation shall be agreed in writing by the parties and shall be determined using the following order of precedence (a) prior agreement; (b) rates or prices in a schedule of rates or schedule of prices to the extent that it is reasonable to use them; and (c) reasonable rates or prices, which shall include a reasonable amount for profit and overheads.

10. PRICE AND TAXES

- 10.1 The Price is fixed and includes all costs incurred by the Supplier in completing the Works including materials, transport and freight, delivery, insurance, export, import, customs, taxes, duties, exchange rates, packing, loading and unloading.
10.2 Unless otherwise agreed by the parties in writing, the Price includes all Government taxes, duties and charges, including GST.

11. INVOICING AND PAYMENT

- 11.1 No payment shall be due or payable by the Purchaser for the Works, or part thereof, until a valid invoice has been generated by the Supplier and received by the Purchaser at the Purchaser's address.
11.2 Unless otherwise specified in the Order, an invoice may not be generated or sent before the Date of Completion.
11.3 If any supply made pursuant to an Order is a Taxable Supply, the Purchaser will pay to the Supplier the GST in respect of that Taxable Supply.
11.4 The Supplier must submit to the Company a valid invoice specifying: (a) the relevant Order number; (b) the Goods supplied and/or the Services performed as at the date of the invoice; (c) the date of performance of the Services and/or delivery of the Goods; and (e) such other particulars as are necessary to enable the Purchaser to obtain input tax credits for the amount of GST payable.
11.5 By submitting an invoice to the Purchaser, the Supplier warrants that: (a) the specified Goods and/or Services have been supplied in accordance with this Contract; and (b) the amounts specified in the invoice are accurate and the Supplier is entitled to payment of the amount claimed.
11.6 Unless otherwise agreed by the parties in writing, payment of invoices will be made by 30 days following the month in which an invoice is received by the Purchaser from the Supplier.
11.7 If the Purchaser, acting reasonably, disputes an invoice, it is not obliged to pay the disputed portion of the invoice until the dispute is resolved. Payment of invoices does not affect the Purchaser's right to dispute invoices or to make claims against the Supplier in respect of Goods or Services.
11.8 Payment is deemed to have been made by the Purchaser when a cheque is put in the mail or amount is electronically transferred from the Purchaser to the Supplier.



- 11.9 The Purchaser may set off money due to the Purchaser from the Supplier, or damages, costs or expenses recoverable by the Purchaser from the Supplier, against money due to the Supplier under this Contract or another contract between the parties.
- 12. RISK AND TITLE**
- 12.1 Risk and title in the Goods and Services passes to the Purchaser after the Purchaser has accepted delivery of the Goods or Services in accordance with clause 6.3 for the supply of Goods or with clause 6.4 for the supply of Services.
- 12.2 If any Goods are returned under clause 13.1, risk will revert to the Supplier upon return, and title will revert to the Supplier upon reimbursement of the Price by the Supplier pursuant to clause 13.2.
- 13. DEFECTS**
- 13.1 If, during the Warranty Period, the Purchaser finds any Defect in the Goods or Services (other than a Defect caused by the negligence of the Purchaser), the Purchaser may: (a) reject the Goods with the Defect and return them to the Supplier, in which case the Supplier must replace the Goods free of charge and reimburse the Purchaser for any expenses incurred; (b) reject the Services with the Defect, in which case the Supplier must reperform the Services free of charge; or (c) re-perform, replace, acquire equivalent Goods or Services or make good or engage another supplier to make good the Defect, in which case the Supplier must reimburse the Purchaser for any expenses incurred.
- 13.2 If the Supplier does not replace the Goods pursuant to clause 13.1 or re-perform the Services pursuant to clause 13.1 and (a) the Purchaser has already paid the Supplier for the Goods or Services with the Defect, the Supplier must repay the Purchaser the Price for those Goods or Services; or (b) the Purchaser has not already paid the Supplier for the Goods or Services with the Defect, the Purchaser is not liable to pay the Supplier for those Goods or Services.
- 13.3 All costs incurred by the Purchaser pursuant to clause 13.1 shall be money due and payable from the Supplier to the Purchaser.
- 14. CONFIDENTIALITY AND INTELLECTUAL PROPERTY**
- 14.1 Unless otherwise specified in the Order, all intellectual property produced by the Supplier under the Contract shall vest in the Purchaser upon creation. The Supplier grants the Purchaser an irrevocable, perpetual, transferable (with the right to assign and sub-license), worldwide and payment free licence to use, reproduce, adapt, modify, distribute and communicate that intellectual property provided by the Supplier.
- 14.2 The Supplier grants to the Purchaser an irrevocable, perpetual, transferable (with the right to assign and sub-license), worldwide and payment free licence to use any intellectual property not vested in the Purchaser that is necessary for the Purchaser to have the benefit of the supply provided under the Contract.
- 14.3 The Supplier indemnifies the Purchaser against any claims made by third parties in respect of the use of intellectual property in connection with any Goods and/or Services supplied under the Contract.
- 14.4 The Supplier must ensure that the Supplier and the Supplier's agents, employees and subcontractors do not disclose any information provided by the Purchaser to the Supplier unless: (a) the information is in the public domain (other than by reason of a breach of this clause); (b) the disclosure (including its form) is approved by the Purchaser in writing; or (c) is required by law.
- 14.5 The Purchaser grants the Supplier a non-exclusive, royalty-free, revocable, nontransferable licence to use the Purchaser's intellectual property to the extent required to perform the Supplier's obligations under the Contract.
- 15. WORK AT SITE**
- 15.1 While carrying out work at Site, the Supplier will comply with all statutory requirements and workplace legislation and must: (a) ensure that all equipment used is maintained in a safe and serviceable condition; and is used and operated safely and competently; (b) provide suitable precautions and safeguards while carrying out work; (c) ensure that the work area is kept clean and tidy and regularly remove rubbish and surplus material; and (d) provide all safeguards and take such other safety measures as required.
- 15.2 The Supplier shall ensure that all persons employed by or under the control of the Supplier and working at Site acquaint themselves and observe and comply with all rules, regulations and directions which may be promulgated or given from time to time by the Purchaser relating to any matter including, but not limited to, the safety of persons, third parties and the preservation of property.
- 15.3 The Purchaser may deny any person who fails to comply with safety regulations or requirements access to the Site.
- 15.4 The Supplier agrees to keep indemnified the Purchaser in respect of any loss, injury or damage suffered by the Purchaser as a result of the failure to observe a statutory duty, whether imposed directly on the Supplier or not. The indemnity extends to include any loss or damage suffered as a result of any inquiry, investigation, prosecution or other proceeding under any applicable legislation.
- 15.5 Unless otherwise agreed by the Purchaser, working hours on Site shall not be before 6am nor after 10pm, nor on any Sunday or public holiday at Site.
- 16. INSURANCE**
- 16.1 The Supplier is to effect and maintain: (a) Public liability insurance of no less than \$20 million; (b) Products liability insurance of no less than \$10 million; and (c) Insurance for death or injury to persons employed by the Supplier (workers compensation).
- 16.2 If the Supplier is supplying Goods, the Supplier is to effect and maintain transit insurance for the full value of the Goods.
- 16.3 If the Supplier is supplying professional Service, the Supplier is to effect and maintain professional indemnity insurance of no less than \$1 million for no less than seven years after the Date of Completion.
- 16.4 If the Supplier's plant and equipment are used on the Site, the Supplier is to effect and maintain plant and equipment insurance against loss, theft, damage or destruction for the full replacement or reinstatement at market value of the plant and equipment.
- 17. INDEMNITY**
- 17.1 The Supplier agrees to indemnify the Purchaser and keep the Purchaser indemnified against all claims, suits, actions, demands, loss, costs, expenses (including legal expenses on a full indemnity basis), judgments and awards made against the Purchaser or incurred by the Purchaser, relating to Goods or Services delivered or supplied by the Supplier and products incorporating the Goods delivered or Services supplied by the Supplier, to the extent that such liability or loss is caused by the Supplier's breach of the Contract, or the Supplier's negligent act or omission.
- 17.2 The indemnity in clause 17.1 is a continuing indemnity and is in addition to any statutory rights or remedies the Purchaser may have or exercise against the Supplier.
- 17.3 The Purchaser is not required to incur expense before enforcing an indemnity.
- 17.4 In conducting any claim or proceeding in respect of which the Supplier indemnifies the Purchaser, the Supplier will, at the Supplier's expense, comply with the Purchaser's reasonable directions.
- 18. FORCE MAJEURE**
- 18.1 Neither party is liable for any failure to perform or delay in performing its obligations under these terms and conditions (other than an obligation to pay money) if that failure or delay is due to anything beyond that party's reasonable control.
- 19. WAIVER**
- 19.1 Any notice given by the Purchaser, or failure by the Purchaser to insist on strict compliance with any contract between the parties or any delay by the Purchaser in exercising the Purchaser's rights under any contract between the parties will not constitute a variation or waiver of any provision of that contract or of any right available to the Purchaser.
- 20. ASSIGNMENT AND SUBCONTRACTING**
- 20.1 The Supplier may not assign, novate, or sub-contract the performance of their obligations under the Contract without the Purchaser's prior written consent.
- 20.2 The Purchaser may assign its interest in this Contract to a third party, in which event the Supplier agrees to be bound by these terms and conditions as if the Contract had been made between the Supplier and that third party.
- 20.3 The Supplier shall be liable to the Purchaser for the acts, defaults and omissions of subcontractors and employees and agents of subcontractors as if they were those of the Supplier.
- 21. INSOLVENCY**
- 21.1 The Supplier is to notify The Purchaser immediately in writing if it ceases to carry on its business or pay its debts as and when they become due and payable, commits an act of insolvency or bankruptcy, has an administrator, controller or liquidator appointed, is declared bankrupt or insolvent or is otherwise unable to continue trading for any reason ('Act of Insolvency').
- 22. TERMINATION**
- 22.1 Without limiting the parties' other rights and remedies, either party may terminate this Contract if: (a) the other party breaches a clause of this Contract which is not capable of remedy; (b) the other party breaches a clause of this Contract that is capable of remedy but that other party fails to remedy the breach within fourteen (14) days after receiving notice requiring it to do so; or (c) the other party commits an Act of Insolvency.
- 23. DISPUTE RESOLUTION**
- 23.1 The parties agree that their employees will act in good faith to attempt to settle a Contract dispute within thirty (30) days or will, without delay, refer the dispute to a mediator selected by the chairperson of an accredited mediation organisation chosen by the Purchaser.
- 23.2 Representatives with the authority to bind the relevant party must attend any mediation pursuant to clause 23.1 and act in good faith to attempt to resolve the dispute. If the dispute is not resolved within thirty (30) days after mediation commences, either party may start legal proceedings.
- 24. GOVERNING LAW**
- 24.1 This Contract is governed by and construed in accordance with the law of Queensland and the parties submit to the jurisdiction of the Courts of Queensland.
- 25. LEGISLATIVE REQUIREMENTS**
- 25.1 The Supplier shall satisfy all Acts, Ordinances, regulations, by-laws, orders, awards and proclamations of the jurisdiction where the Works, or part thereof, is being carried out; and certificates, licences, consents, permits, approvals and requirements of organisations having jurisdiction where the Works, or part thereof, is being carried out.
- 26. GENERAL**
- 26.1 If the Supplier becomes aware of a matter which is likely to affect materially the ability of the Supplier to perform this Contract, it will immediately notify the Purchaser of it.
- 26.2 Unless the Purchaser otherwise agrees in writing, all references to amounts of money are references to amounts in Australian currency and an obligation to pay money is an obligation to pay in Australian dollars.