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

**1 Supply of goods and services**

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

**2 Price for goods and services**

2.1 SBA agrees to pay the Price for the Goods and /or Services.
2.2 The Price includes GST, all packaging, transport, customs duty (and any other duties, taxes or levies), insurance, loading, unloading and storage costs, up to the point of delivery.

**3 Risk and title in Goods**Risk in the Goods passes to SBA upon delivery of the Goods. Title in the Goods passes to SBA upon delivery or upon payment by SBA for the Goods, whichever occurs first. Delivery occurs when SBA signs a delivery receipt.

**4 Conditions as to quality of Goods and Services**

4.1 The Supplier warrants that the Goods and Services:
(a) comply with all Specifications;

(b) do not infringe any right of any third party (including, without limitation, any intellectual property right), or applicable law, statute, regulation, code or rule;

(c) are fit for the purpose which the Supplier has been notified SBA intends to use them or for which they are commonly used;
(d) correspond with any description or sample the Supplier has previously provided to SBA; and

(e) comply with all relevant legislation.

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

(a) are not defective and are of merchantable quality;

(b) where the Goods are intended for human consumption (or are an ingredient to be used in the manufacture of goods intended for human consumption):

(i) are fit for human consumption;

(ii) comply in all respects with all relevant provisions of all applicable food, health, trade practices, weights and measures and other legislation in Australia;
(iii) are not adulterated or contaminated in any way; and

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

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

(a) be performed by appropriately qualified and trained personnel;
(b) be performed with due care and skill; and

(c) comply with all directives and orders given by SBA representatives or procedures communicated by SBA to the Supplier.

**5 Goods and Services which fail to meet standards**

Without limiting any other remedy SBA may have, if the Goods delivered or Services performed do not meet or exceed the standards required in the Agreement, do not meet or exceed the Specifications or are otherwise unacceptable to SBA upon delivery and in relation to Goods, at any time during their intended useful life (the Non-conforming Goods and Services), SBA will not be required to pay for those Non-conforming Goods and/or Services. The Supplier must, at the Supplier’s cost, if SBA requires the Supplier to do so, promptly remove any Non-conforming Goods from SBA’s premises. The Supplier must at SBA’s election either:

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

**6 Intellectual property**

6.1 Nothing in the Agreement affects ownership of any intellectual property rights of the Supplier existing as at the date of the Agreement or subsequently arising in relation to the Goods and Services other than as specified in clauses 6.2 and 6.3.

6.2 If any of the Goods have been specifically designed for or requested by SBA (the “Custom Works”) all intellectual property in, and relating to, the Custom Works will be SBA’s property.

6.3 All intellectual property created by or on behalf of the Supplier in the course of providing the Services to SBA (“Contract Intellectual Property”) will be SBA’s property.
6.4 The Supplier must at its own cost to do all things necessary to give effect to clauses 6.2 and 6.3, including signing documents and procuring third party licences and consents necessary to assign all right to the intellectual property rights under clauses 6.2 and 6.3 to SBA and reserve all SBA’s intellectual property rights in any agreement which the Supplier enters into with any third party in relation to any Custom Works and/or Contract Intellectual Property.

**7 Confidentiality**

7.1 The parties must keep all Confidential Information secret and must not use that Confidential Information except as necessary for the purposes of the Agreement. Each party must store all Confidential Information in a way that minimises the risk of unauthorised access. In this clause 7, “Confidential Information” with respect to a party (a “Receiving Party”) means:

(a) the existence and terms of the Agreement; and

(b) any technical, scientific, commercial, financial or other information of or about the other party (the “Discloser”) or any of its products, of which the Receiving Party becomes aware in connection with the Agreement and all information about the Discloser’s business and business processes.
7.2 The parties’ obligations under this clause 7 do not apply to any information which:

(a) is in the public domain as at the date of the Agreement or which subsequently comes into the public domain (other than because of a breach of any obligation of confidence owned to the Discloser); or

(b) the Receiving Party can demonstrate by evidence in writing either:

(i) was in the possession of the Receiving Party’s as at the date of the Agreement; or

(ii) subsequently comes into the possession of the Receiving Party through a third party who does not owe any obligation of confidence to the Discloser in respect of that information; or

(iii) the Receiving Party is required by law to disclose.
7.3 Where the Supplier is the Receiving Party, the Supplier must promptly return all Confidential Information to SBA or destroy it if SBA asks the Supplier to do so.

**8 Termination**The Agreement may be terminated immediately by SBA if the Supplier breaches the Agreement, or at any other time by SBA by providing 2 weeks notice in writing to the Supplier. A fair and reasonable price will be paid for all agreed work in progress at the time of cancellation and subsequently received by SBA. SBA will not be liable for any loss to the Supplier, including consequential loss.

**9 Terms of payment**

9.1 The Supplier must submit an invoice for all Goods and Services provided to SBA in a form acceptable to SBA. The invoice must specify the Purchase Order number to which the invoice relates. SBA will not be required to pay any invoice that does not specify a Purchase Order number or specifies an invalid Purchase Order number.
The Supplier must provide SBA with a valid tax invoice for any taxable supply it makes to SBA under the Agreement. SBA will not be required to pay the Supplier until the Supplier has provided a valid tax invoice to SBA.

9.2 SBA will pay the invoiced amount by the end of the final day of the calendar month immediately following the month of invoice.

9.3 All invoices must be sent to Accounts Department, Snack Brands Australia, PO Box 8308, Baulkham Hills, NSW 2153 or via email to accounts.payable@snackbrands.com.au

**10 Insurance**

The Supplier must obtain product liability insurance of not less than A$20 million per event, public liability insurance of not less than A$20 million per event and, if Services are being provided, professional indemnity insurance of not less than A$20 million per event.

**11 Indemnity**11.1 Without limiting any of SBA’s other legal rights, the Supplier hereby indemnifies SBA and its related bodies against any loss, damage, claim, action or expense (including, without limitation, legal expense) which SBA or any of its related bodies corporate suffer in connection with any of the following:

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

(b) any warranty given by the Supplier under the Agreement being incorrect or misleading in any way;

(c) any product liability claim or product recall relating to the Goods;

(d) any negligent act or failure to act by the Supplier or any of the Supplier’s employees, agents, officers or contractors; and

(e) any act which is not authorised by the Agreement.

**12 GST**

12.1 Where the Agreement requires either party to pay for, reimburse or contribute to any expense, loss or outgoing (“reimbursable expense”) suffered or incurred by the other party, the amount required to be paid, reimbursed or contributed by the first party will be the sum of:
(a) the amount of the reimbursable expense net of input tax credits (if any) to which the other party is entitled in respect of the reimbursable expense (“net amount”); and

(b) if the other party's recovery from the first party is a taxable supply, any GST payable in respect of that supply.

**13 Miscellaneous**

13.1 SBA may transfer, assign, novate or otherwise encumber or deal with (“dispose of”) the Agreement, or any right or obligation under it to a related entity without the consent of the Supplier. A party must not otherwise dispose of the Agreement or any right or obligation under it or subcontract any of its obligations under the Agreement, without the prior written consent of the other party. Supplier will not as a result of any sub-contracting arrangement be relieved from the performance of any obligation under the Agreement and will be responsible and liable for all acts and omissions of a sub-contractor

13.2 The Agreement is governed by the laws of New South Wales. The Supplier irrevocably and unconditionally submits to the jurisdiction of the courts of New South Wales for determining any dispute.

13.3 The Supplier shall comply with all relevant occupational health and safety and environment laws and SBA environmental health and safety policies and procedures relevant to the supply of the Goods.

13.4 Upon request by SBA, the Supplier agrees to provide SBA with sufficient information regarding any hazards inherent to its Goods and harm minimisation procedures in the event of such hazards occurring.

**14 Definitions**

Agreement means these terms and conditions and the Purchase Order.

Consideration, GST, Input tax credit, Supply, Tax Invoice, and Taxable Supply have the meanings given to those expressions in the A New Tax System (Goods and Services Tax) Act 1999.
Goods and Services means the goods and services specified in the Purchase Order to be supplied by the Supplier to SBA.

Price means the price specified in the Purchase Order.

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

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

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