



JBS Australia

Terms of Trading

(SALE OF GOODS AND/OR SERVICES)

29 February 2012

1. Definitions

In these Terms:

Application for Credit means any application for credit made by the Buyer to JBS Australia;

Buyer means a person who has requested the supply of Goods and/or Services from JBS Australia (and, where these Terms permit, also includes any relevant employee, agent, successor or permitted assign of the Buyer);

Goods means goods of any kind (including meat, meat products and by-products) supplied or intended or requested to be supplied by JBS Australia;

JBS Australia means JBS Australia Pty Ltd (ABN 14 011 062 338) and each *related body corporate* (as defined in the *Corporations Act 2001* (Cth)) of it, and their respective successors and assigns. (Some business names JBS Australia uses include *D R Johnston Group*, *Foodpartners* and *Swift and Company Trade Group*)

PPSA means the *Personal Property Securities Act 2009* (Cth) and all regulations and other subordinate legislation pursuant to it;

Security Interest means a security interest under the PPSA;

Services mean services of any kind supplied or intended or requested to be supplied by JBS Australia (except services such as contract slaughtering, for which JBS Australia has other applicable standard terms and conditions); and

Terms means these terms of trading.

1. General

- 1.1 These Terms apply to Goods and/or Services supplied or requested to be supplied by JBS Australia to the Buyer from the above date, until further notice by JBS Australia. (However, despite anything else in these Terms, if JBS Australia has other standard terms or conditions for the supply by it of particular Goods or Services, those terms and conditions apply instead of these Terms to the extent that they are inconsistent with these Terms).
- 1.2 You agree that these Terms apply, and override any contrary term or condition which you notify to us in any order, confirmation of order, notice of your standard terms, or other document or communication, except to the extent that JBS Australia expressly states in writing that one or more such contrary terms or conditions apply. Merely accepting an order from you will not amount to accepting any contrary terms or conditions you purport to make applicable in respect of an order.
- 1.3 JBS Australia may from time to time amend or replace these Terms. Amended or replaced Terms will then apply to all orders for Goods and/or Services made by the Buyer from the date 7 days after notification to the Buyer of that amendment or replacement.
- 1.4 Any previous terms of trading applying between the Buyer and JBS Australia are replaced by these Terms from the date above.
- 1.5 Where there is more than one Buyer, each of them is jointly and severally liable under these Terms.
- 1.6 JBS Australia may supply Goods and/or Services that vary from the Goods and/or Services ordered by the Buyer and the Buyer must accept them, as long as that variation is not material.
- 1.7 Failure by JBS Australia to insist upon compliance with any of these Terms does not constitute a waiver of that provision and JBS Australia can subsequently require compliance with that provision.



- 1.8 If any provision of these Terms is invalid or unenforceable, then it is taken to be severed, but does not affect the validity or enforceability of any other provision of these Terms.

2. Price

- 2.1 If JBS Australia quotes a fixed price for particular Goods and/or Services, that price will only apply to an order by the Buyer for a period of 24 hours, unless otherwise expressly stated on the quote, from when the price was quoted.
- 2.2 Unless JBS Australia otherwise notifies the Buyer in writing (e.g. by quoting or agreeing a delivered cost, which includes delivery), prices listed or quoted for Goods and/or Services do not include:
- (a) insurance;
 - (b) packing;
 - (c) storage;
 - (d) demurrage;
 - (e) delivery; or
 - (f) goods and services tax, excise or any other tax or duty.
- Should any of the above costs, expenses and charges be relevant to the sale or supply of Goods or the provision of Services, the Buyer must pay them to JBS Australia with the purchase price for the Goods and/or Services, as an additional amount.
- 2.3 Without limiting clause 2.2:
- (a) if a quoted or agreed price does not expressly include GST, but all or part of any payment for the Goods and/or Services is consideration for a taxable supply for GST purposes then, when payment of the price is due the Buyer must also pay JBS Australia an additional amount equal to the payment multiplied by the appropriate rate of GST; and
 - (b) if the Buyer is required to reimburse or indemnify JBS Australia for an amount, the Buyer must pay the relevant amount less any GST input tax credit JBS Australia determines it is entitled to claim in respect of that amount, plus any GST JBS Australia incurs on that net payment.
- 2.4 Where a deposit is specified on a quotation or otherwise required by JBS Australia, the Buyer must pay the deposit when a relevant order is submitted, or JBS Australia will not be obliged to accept the order.

3. Orders

- 3.1 JBS Australia (at its election) may accept an order for Goods and/or Services in any form (whether written – including emails and faxes - verbal, signed or unsigned). JBS Australia may require that a verbal order be confirmed in writing before it is finally accepted by JBS Australia.
- 3.2 Any order for Goods and/or Services must identify the Goods and/or Services ordered, the quantity and specifications required, location for delivery and refer to any quotation pursuant to which the order is made.
- 3.3 If the Buyer cancels an order, the Buyer must pay JBS Australia any loss, damage or expense incurred by JBS Australia as a result.



- 3.4 JBS Australia may decline any order for Goods and/or Services (wholly or partially) at any time prior to the requested delivery time, in which case JBS Australia will be under no obligation in respect of the order declined.
- 3.5 A variation or cancellation of an order will only be effective if agreed to in writing by an officer of JBS Australia to do so.

4. Payment

- 4.1 Unless an Application for Credit is approved (see clause 5.2), subject to clause 4.2, the Buyer must pay JBS Australia in full for:
- (a) Goods no later than the time at which the Goods are invoiced to the Buyer; and
 - (b) Services no later than the time the provision of the Services are invoiced to the Buyer.
- 4.2 If an Application for Credit has been approved by JBS Australia, the Buyer must pay for Goods and/or Services ordered within the credit limit approved at the relevant time, within to-be-approved credit terms from the earlier of:
- (a) date of invoice for the Goods and/or Services; or
 - (b) the date the Goods are delivered and/or Services commenced,
- 4.3 JBS Australia may at any time set-off amounts owed by the Buyer to JBS Australia from the amounts owed to the Buyer by JBS Australia.
- 5.4 The Buyer shall not be entitled to withhold payment of any account by reason of any account query, dispute pending claims or set off except with the agreement of JBS Australia.

5. Termination of Arrangements on Default

- 5.1 If:
- (a) any amount owing by the Buyer to JBS Australia in respect of Goods and/or Services is overdue;
 - (b) the Buyer makes or proposes any compromise, assignment or trust for the benefit of the Buyer's creditors;
 - (c) the Buyer becomes insolvent or unable to pay the Buyer's debts as they fall due; or
 - (d) any proceedings are commenced by or against or action taken in respect of the Buyer alleging bankruptcy or insolvency or involving the appointment or proposed appointment of a trustee, liquidator, provisional liquidator, receiver, receiver and manager or administrator,
- JBS Australia may do any one (or more) of the following (without limiting any other legal rights):
- (e) refuse to supply further Goods and/or Services, or suspend the supply of Goods and/or Services for a period;
 - (f) withhold deliveries of Goods and/or Services already ordered;
 - (g) retake possession of Goods to which title has not passed to the Buyer;
 - (h) terminate or suspend for a period, the Buyer's credit arrangements;
 - (i) to the extent amounts are overdue:
 - (i) charge interest on the overdue amount at the rate of 12% per annum (calculated on daily balances on the amount overdue until payment in full); or



- (ii) require the Buyer to pay any costs, commissions, and legal expenses arising from the collection of any overdue amounts. (Such costs are payable on demand as a liquidated debt.)
- 5.2 If any of the events and circumstances referred to in clauses 5.1(a) to 5.1(d) occur, all amounts owing by the Buyer to JBS Australia will become immediately due and payable to JBS Australia, whether or not demanded.
- 5.3 If an Application for Credit for the Buyer has been approved by JBS Australia or any amount is otherwise outstanding to JBS Australia for the supply of Goods, the Buyer authorises JBS Australia and its agents and employees to enter on any premises at any time to inspect all records relating to any Goods and any subsequent sale of those Goods by the Buyer.

6. Delivery and Title

- 6.1 JBS Australia will endeavour to comply with the time of delivery of Goods or the provision of Services requested by the Buyer (or specified by JBS Australia on an invoice, advice or other document), but delivery on time is not guaranteed nor is it of the essence of the contract of sale of Goods or the provision of Services. The time of delivery or performance is subject to extension to cover delays caused by strikes, lockouts, war, breakdowns, accidents, delays in transport, fire, floods, default of sub-contractors and any other cause beyond the reasonable control of JBS Australia, as well as any variations requested by the Buyer and agreed to by JBS Australia. JBS Australia will not be liable for any loss or damage (whether in contract, tort or otherwise, and whether direct or indirect) arising out of delay in delivery of Goods or the provision of Services.
- 6.2 JBS Australia will deliver the Goods to, and/or provide the Services at, the location specified by the Buyer in an order, or as otherwise agreed by JBS Australia.
- 6.3 All risk of loss or damage to Goods will pass to the Buyer upon delivery of the Goods by JBS Australia to the Buyer, but JBS Australia will retain title to Goods until the earliest of:
 - (a) in the case of Goods which, by their nature, will after delivery be able to be clearly identified as having been delivered in a particular consignment - the time JBS Australia receives payment in full for those Goods;
 - (b) in the case of Goods which will not be clearly so identifiable - the time JBS Australia receives payment in full for those Goods and all other debts owed by the Buyer to JBS Australia (whether due or not) have been paid in full; or
 - (c) the time that those Goods supplied by JBS Australia are resold by the Buyer, or are mixed, attached, processed or otherwise dealt with in such a way that the Goods cannot be separated or distinguished from other property, or are otherwise not able to be restored to JBS Australia substantially in their original state and with a saleable remaining shelf life.
- 6.4 Until title to the Goods passes to the Buyer:
 - (a) the Buyer holds the Goods as bailee for JBS Australia;
 - (b) the Goods must be stored at the Buyer's risk and so that they are readily identifiable from other goods owned by the Buyer or other persons;
 - (c) the Buyer must insure (for its benefit and the benefit of JBS Australia) against all risks associated with the use, possession or disposal of the Goods which a prudent owner of the Goods would insure against, together with all other risks JBS Australia may specify in writing from time to time, and produce evidence of such insurance to JBS Australia on request; and



- (d) the Buyer indemnifies JBS Australia against any claim, action or demand (directly or indirectly) relating in any way to the Goods or the repossession or attempted repossession of the Goods by JBS Australia (including legal costs on a full indemnity basis).
- 6.5 Any sale of Goods by the Buyer before JBS Australia has been paid for them (whether or not the sale is authorised by JBS Australia) will be effected as bailee for JBS Australia, and:
- (a) the proceeds of that sale will be held on trust for JBS Australia;
 - (b) JBS Australia is entitled to, and the Buyer must account to JBS Australia for, the proceeds of that sale or other dealing; and
 - (c) the Buyer will hold those proceeds separate from its own funds and in trust for JBS Australia; and
 - (d) any person authorised by JBS Australia may, without notice, enter any location or premises where the Goods are stored, and repossess them.
- 6.6 JBS Australia has the right to deliver in instalments any Goods ordered, or Services requested, by the Buyer. Instalments may be separately invoiced and must be paid for as billed, without regard to subsequent deliveries.
- 6.7 The Buyer agrees to inspect Goods immediately upon their delivery to it, and to inspect the performance of Services immediately after they are provided, and carry out any tests that a prudent customer would carry out to check them. The Buyer must then give written notice to JBS Australia of any alleged irregularity in quantity or description or any defects (including damage or spoilage prior to delivery) or any other claim in respect of Goods or Services provided by JBS Australia, within 24 hours from:
- (a) the date of the delivery or supply; or
 - (b) if later, the date on which the defect should reasonably have become evident.
- JBS Australia can reject any claim for any alleged irregularity in quantity or description or defect or any other claim in respect of Goods or Services made after such time (except to the extent that law prohibits it from doing so). If Goods have been sold by weight, the records of JBS Australia will be conclusive as to the weight of the Goods delivered to the Buyer pursuant to an order, in the absence of manifest error.

7. Limitation of Liability

- 7.1 Except to the extent that any law (including Schedule 2 of the Competition and Consumer Act 2010 (Cth)) does not permit liability to be excluded:
- (a) all express and implied terms, conditions and warranties on the part of JBS Australia which might otherwise apply to or arise out of the sale of Goods or supply of Services by JBS Australia to the Buyer are excluded,
 - (b) JBS Australia will not be liable in contract, tort (including negligence) or otherwise for any loss of prospective profits or production, wasted overheads or expenses or special, indirect or consequential damages arising out of the supply of Goods and/or Services or failure to supply Goods and/or Services to the Buyer.
- 7.2 To the extent a law does not permit JBS Australia to exclude liability, any liability of JBS Australia for a breach of any condition or warranty expressed or implied by JBS Australia to the Buyer is limited to:
- (a) in the case of Goods:
 - (i) the replacement of the Goods; or
 - (ii) the supply of equivalent Goods; or



- (iii) the payment of the cost of replacing the Goods; or
- (b) in the case of Services:
 - (i) the supplying of the Services again; or
 - (ii) the payment of the cost of having the Services supplied again,
(whichever JBS Australia determines to be appropriate in the circumstances).

7.3 JBS Australia may not rely on this clause 7 to the extent that it is not fair or reasonable pursuant to section 23 and 24 of Schedule 2 the Competition and Consumer Act 2010 (Cth) or any similar applicable State legislation.

8. PPSA

- 8.1 The Buyer must immediately notify JBS Australia in writing if there is a change in its address, or to any of the data relevant to a financing statement under the PPSA in respect of the supply of Goods and/or credit.
- 8.2 JBS Australia may register any Security Interest which it considers arises or will arise out of these Terms or any supply of Goods pursuant to these Terms (even before that Security Interest starts).
- 8.3 The Buyer:
- (a) agrees to promptly do anything (such as obtaining consents, signing documents, getting documents completed and signed and supplying information, and including entering into a subordination or priority agreement with any other secured party) which JBS Australia asks, to:
 - (i) ensure that the Security Interest created under the Terms is perfected, first ranking and otherwise effective;
 - (ii) enable JBS Australia to apply for any registration, or give any notification, in connection with the Security Interest, so that the Security Interest has the priority required by JBS Australia; and
 - (iii) assist JBS Australia to exercise rights in connection with the Security Interest; and
 - (b) irrevocably appoints JBS Australia and each officer and lawyer of JBS Australia severally as its attorney to do all things and sign all documents required by JBS Australia to fully exercise JBS Australia's rights under this clause 8 (and the Buyer must pay JBS Australia on demand any costs incurred by JBS Australia in doing so).
- 8.4 JBS Australia's Security Interest in the Goods arising under the Terms extends to any proceeds (as defined in the PPSA) of the Goods.
- 8.5 The Buyer certifies that the Goods will be held by the Buyer in the furtherance of an enterprise to which an Australian Business Number has been allocated.
- 8.6 The Buyer waives any right it may have at any time, including under sections 144 and 157 of the PPSA, to receive a copy of a verification statement or other notice contemplated in the PPSA.
- 8.7 The Buyer waives its right to receive anything from JBS Australia under section 275 of the PPSA, and agrees not to make any request of JBS Australia under that section.
- 8.8 The Buyer authorises and requests JBS Australia pursuant to section 275(7)(c) of the PPSA to obtain from the holder of any other Security Interest in the Goods any of the information referred to in s275(1) of the PPSA relevant to that Security Interest.



- 8.9 Pursuant to section 115 of the PPSA, the Buyer and JBS Australia contract out of each provision of the PPSA which section 115 permits, except sections 117, 118, 123, 126, 128, 134(1) and 135. (However, sections 117, 118, 123, 128 and 134(1) do not apply to the extent that they would derogate from a right provided for in the Terms on the part of JBS Australia).

9. Notices

Orders and other ordinary communications between the parties in respect of orders can be given by means stated in clause 3.1.

Any formal notice or demand to be given or any document in a court action to be served by JBS Australia in relation to the supply of Goods or Services will be taken to have been given or served by delivering it or by sending it by email, fax or ordinary post to the relevant address of the Buyer last known to JBS Australia at the time.

10. Statement of Debt

A Certificate signed by a Director, Secretary, Financial Controller or Credit Manager of JBS Australia shall be prima facie evidence of the amount of indebtedness of the Buyer to JBS Australia at that time.

11. Governing Law

- 11.1 These Terms and any transaction contemplated by them are governed by the law of Queensland.
- 11.2 The Buyer agrees to submit to the jurisdiction of courts in Queensland in respect of any dispute arising out of or relating to the supply of Goods or Services.

12. Trusts

The Buyer warrants and represents to JBS Australia, that if it is the trustee of a trust (the *Trust*):

- (a) it has the power to execute any Application for Credit (if relevant) and accept the Terms;
- (b) in executing any Application for Credit it has properly performed its obligations to the beneficiaries of the Trust;
- (c) it has taken all necessary action required under its trust deed to authorise unconditional execution and delivery of and performance and observance of its obligations under the Terms and the Application for Credit (if relevant);
- (d) it is the only trustee of the Trust;
- (e) no action has been taken to remove it as trustee of the Trust or to appoint an additional trustee of the Trust;
- (f) it has a right to be fully indemnified out of all the property of the Trust in relation to the payment of all amounts and the compliance with all obligations owed under the Terms, and:
 - (i) it has not released or disposed of its equitable lien over the property of the Trust which secures that indemnity; and
 - (ii) the property of the Trust is sufficient to satisfy that indemnity;
- (g) it has not defaulted in the performance and observance of its obligations as trustee of the Trust;
- (h) no action has been taken to terminate the Trust;



- (i) the Trust is duly constituted and is not void, voidable or otherwise unenforceable; and
- (j) it will not cause or permit:
 - (i) any other trustee of the Trust to be appointed;
 - (ii) the Trust to be terminated or its terms to be varied;
 - (iii) it to be removed or replaced as trustee of the Trust;
 - (iv) the property of the Trust to be resettled; or
 - (v) the exercise of any power of variation, appointment or delegation under the Trust deed without JBS Australia's prior written consent.