

## TERMS AND CONDITIONS OF SALE – AUSTRALIAN QUALITY HONEY PTY LTD

The following terms and conditions of sale (“Terms of Sale”) shall apply to and form part of any contract for the supply of goods and services (“Goods”) by Australian Quality Honey Pty Ltd (ABN 97 108 014 473) of 1858 Mawbanna Road, Mawbanna, Tasmania, or any related entities of Australian Quality Honey including Blue Hills Honey (“the Company”) to another party (“the Purchaser”)

### 1 Payment

- 1.1 Payment for goods must be made to the Company in cleared funds before the Goods are dispatched.
- 1.2 All prices quoted are in Australian dollars and payment is to be made in Australia dollars.
- 1.3 The Purchaser is responsible for all charges, duties, taxes, fees or other expenses of any kind incurred in connection with the purchase, export and importation of the Goods.
- 1.4 The extension of credit to the Purchaser by the Company is at the sole discretion of the Company and, where extended, unless otherwise advised in writing by the Company, the Company requires payment in full within 14 days.
- 1.5 Time specified for payment is of the essence.
- 1.6 The Purchaser agrees that the Company is entitled to use the services of a credit agency from time to time to obtain information concerning the Purchaser (and where the Purchaser is a company, its Directors) in order to assess the Purchaser’s credit worthiness.
- 1.7 Unless otherwise stated all prices quoted by the Company are exclusive of any Goods and Services Tax (GST).
- 1.8 Prices quoted are those ruling at the date of issue of quotation and are based on rates of freight, insurance, customs duties, exchange, shipping expenses, sorting and stacking charges, cartage, rate of waste, cost of materials and other charges affecting the cost of production ruling on the date is made and are subject to change.
- 1.9 If the Company makes any alterations to the price of the Goods or to any of their inputs either before acceptance of or during the currency of the contract, these alterations are for the Purchaser’s account.

### 2 Terms and Conditions

- 2.1 These Terms of Sale apply to the Purchaser and to the Company in respect of Goods ordered by the Purchaser and, any terms and conditions set out in the Purchaser’s order will not bind the Company notwithstanding any statement by the Purchaser in its order that its terms and conditions shall prevail over these Terms of Sale.
- 2.2 The Company reserves the right to change the Terms of Sale at any time and the Purchaser acknowledges and agrees that written notice to the Purchaser given in accordance with these Terms of Sale is deemed to be sufficient notice of any change and will bind the Purchaser in respect of any supply of Goods after the date of deemed notification.

### 3 Quotations

- 3.1 Any quotation or estimate or price given by the Company is not an offer to sell or contract, and no order given to the Company following a quotation, estimate or price, or otherwise will bind the Company until it is accepted by the Company in writing, in its absolute discretion.
- 3.2 All quotations, estimates and prices are subject to withdrawal or variation by the Company at any time prior to acceptance of an order by the Company.
- 3.3 The Company will nevertheless endeavour to supply in accordance with prices and conditions of the quotation.
- 3.4 Prices are subject to the Purchaser’s order being for the whole amount mentioned in the quotation.
- 3.5 Prices given in any quotation are application to the quotation only and will not apply in any other instance.

#### 4 Purchase Orders

- 4.1 The Purchaser must place orders with the Company in writing and on order must contain the following
- (a) an order number,
  - (b) full description of the Goods to be purchased,
  - (c) the applicable Incoterm (export only),
  - (d) the quoted price and payment terms,
  - (e) the place of Delivery, and
  - (f) the desired date of Delivery.
- (g) Reference to the Company's quote number to the Purchaser should also be made (where applicable).
- 4.2 A contract for supply of the Goods ordered will only be or be deemed to have been entered into between the Company and the Purchaser when the Purchaser's order has been accepted by the Company in writing.

#### 5 Freight

- 5.1 Any prices quoted and invoiced do not include freight unless specifically stated.
- 5.2 Where the purchase price for the Goods includes freight:
- (a) the Company accepts no responsibility for any delay in transit howsoever caused; and
  - (b) unless the Purchaser has specific requirements agreed in writing by the Company, the Company may arrange shipment of the Goods by any means of transportation which the Company considers appropriate and the Purchaser shall not be entitled to make any claim against the Company for failure to transport by particular means or forms of transportation meeting certain specifications.
- 5.3 Where the purchase price of the Goods does not include freight:
- (a) it is the Purchaser's responsibility to arrange freight and bear all costs in connection with freight, including demurrage (if any);
  - (b) unless otherwise agreed, the Purchaser is to give the Company 14 days' notice, from the date on which the Company advises the Purchaser that the packing of the order of Goods has been completed, of the name of the vessel/freight company upon which the Goods are to be loaded; and
  - (c) subject to receiving notice as required under Clause 5.2(b), the Company will use all reasonable endeavours to enable loading to be carried out by the nominated date of Delivery but shall be under no obligation to provide or secure berthing or loading facilities or suffer detriment to its other operations by reason of the loading requirements of the Purchaser or its agent.
- 5.4 Where the services of a freight consolidator are engaged on behalf of the Purchaser or for the Purchaser's exporter by the Company, no liability is accepted for the service accessed and the Company is acting as a facilitator.

#### 6 Delays

The Company will use reasonable efforts to fill any Order in accordance with the estimated shipping date, but is not responsible for any delays in filling the Order nor is it liable for any losses or damages resulting from such delays, and the Order is not subject to cancellation for such delays.

#### 7 Force Majeure.

- 7.1 The Company is not obliged to perform any obligation pursuant to these Terms of Sale to the extent and for the period that, by reason of any fact, circumstance, matter or thing beyond the Company's control, the Company is unable to perform, in whole or in part, that obligation.
- 7.2 This will include but is not limited to where the performance has been delayed, prevented or

rendered commercially impractical due to accidents, differences with workmen, strikes, shortage of labour, inability to obtain materials, fuel or power from normal sources, fires, floods or other acts of God, acts or omissions of the Purchaser, priorities required, requested or granted for the benefit of any Federal or state government, restrictions imposed by Federal or any state legislation or regulations, or any cause beyond the reasonable control of the Company.

## **8 Inspection, Acceptance or Rejection.**

- 8.1 Inspection, acceptance or rightful rejection of Goods is to be made promptly by the Purchaser after the Purchaser's receipt of the Goods.
- 8.2 The Purchaser is to give written notice to the Company within 48 hours of receipt of the Goods if the Purchaser believes that any of the Goods delivered are properly rejectable and hold such Goods pending response from the Company.
- 8.3 The Purchaser waives any claim for shortage of any Goods delivered if a claim in respect for short delivery has not been lodged with the Company within 48 hours from receipt of the Goods by the Purchaser.

## **9 Loss or damage in transit**

- 9.1 The Company is not responsible to the Purchaser or any person claiming through the Purchaser for any loss or damage to goods in transit caused by any event of any kind by any person (whether or not the Company is legally responsible for the person who caused or contributed to that loss or damage).
- 9.2 The Company must provide the Purchaser with such assistance as may be necessary to press claims on carriers so long as the Purchaser:
  - (a) has notified the Company and the carriers in writing immediately after loss or damage is discovered on receipt of goods; and
  - (b) lodges a claim for compensation on the carrier within 48 hours of the date of receipt of the goods.

## **10 Specification**

The Company's analyses and specifications apply to all orders.

## **11 Termination of Order**

The Purchaser may not terminate an order which has been accepted by the Company without the written consent of the Company. If Company consents, reasonable termination charges computed by Company will apply. These will be assessed by the Company.

## **12 Export / Domestic Licensing**

The Purchaser and the Company will comply with all national and international export and control regulations. The Goods will not be exported, re-sold, diverted, re-exported or disposed of in other than the country of ultimate destination without the prior approval of the Company. The Company assumes no liability in the event that an export license is not approved or later withdrawn by any Government or Government department or agency.

## **13 Delivery**

- 13.1 Delivery of the goods will take place at the Company's premises. If the Purchaser request, and the Company agrees, the goods may be delivered at a place other than at the Company's premises and the Purchaser must then pay all costs and expenses incurred, or to be incurred, in connection with that delivery and the Purchaser agrees to and must indemnify and hold harmless the Company from any claim arising from, in connection with, or as a consequence of such delivery.
- 13.2 The delivery times, if any, made known to the Purchaser are estimates only and the Company is not liable for any loss, damage or delay occasioned to the Purchaser or its Purchasers arising from late delivery or non-delivery.
- 13.3 In cases where the Company accepts responsibility for delivery, the Purchaser will be responsible for immediate examination of the goods after arrival at the destination and in the event of any goods arriving in a damaged condition must report the matter in writing to the Company. No claim for goods damaged in transit will be entertained unless made within 48 hours of arrival at

destination.

13.4 The Company may at its option deliver the goods to the Purchaser in any number of instalments unless there is agreement that the Purchaser will not take delivery by instalments.

13.5 If the Company delivers any of the goods by instalments, and any one of those instalments is defective for any reason:

- (a) it is not a repudiation of the contract of sale; and
- (b) the defective instalment is a severable breach that gives rise only to a claim for compensation.

#### 14 Insurance

Insurance is not included in quotations. In the absence of specific instructions to the contrary, the Company may insure the Goods against transit marine war risk (insofar as cover can be obtained) and the cost of such insurance will be charged to the Purchaser's account

#### 15 Packing

The cost of any special packing and packing materials used in relation to the Goods are at the Purchaser's expense notwithstanding that such cost may have been omitted from any quotation.

#### 16 Packing of orders

16.1 The Company must ensure each order is safely and securely packed for transportation to the Purchaser having regard to:

- (a) the fragility and perishability of the Goods;
- (b) the distance the Goods are likely to travel; and
- (c) the method of transportation used to transport the Goods.

#### 17 Food Standards

17.1 The Company will ensure that the Goods supplied comply with all the requirements of the Australian New Zealand Foods Standards Code at the date of packing of the Goods.

17.2 If the Goods are sold for export outside of Australia and the Company is notified of that in the order the Company will ensure that along with the Goods the following documentation, issued in Australia, will be provided:

- (a) where the Company is the exporter:
  - (A) Australian Quarantine and inspection (DAFF Bio-security) Ex 188B or Ex188 as directed by [www.micor.agriculture.gov.au](http://www.micor.agriculture.gov.au)
  - (B) EU bilingual certificate if necessary
  - (C) Certificate of Origin (Tasmanian Chamber of commerce)
  - (D) Bills of lading 3/3 or Express release on full payment or as instructed
  - (E) Packing list
  - (F) Commercial invoice supplied by the Company
  - (G) Packaging declaration
  - (H) Pallet fumigation certificate.
  - (I) Other documents as requested by importing authority

The documents will be sent to the consignee via Express courier to the consignee unless otherwise notified by the Purchaser

(b) Where the Company is not the exporter (fee for service of documents)

- (A) Australian Quarantine and inspection (DAFF Bio-security) Ex 188B or Ex188 as

directed by [www.micor.agriculture.gov.au](http://www.micor.agriculture.gov.au)

- (B) EU bilingual certificate where necessary
- (C) Certificate of Origin (Tasmanian Chamber of commerce)
- (D) Bills of lading 3/3 or Express release on full payment or as instructed
- (E) Packing list
- (F) Commercial invoice supplied by the exporter
- (G) Packaging declaration
- (H) Pallet fumigation certificate.
- (I) Other documents as requested by the importing authority

Embassy notarisation is the responsibility of the exporter and the documents will be sent to the exporter via registered post for on forwarding to the consignee: unless instructed otherwise.

It is the responsibility of the Purchaser to inform the Company of the documents required for the market into which the Goods are being imported in accordance with the requirement of the importing authority.

- 17.3 Documentation will only be provided under this clause while the Goods are in the Company's control.

## 18 Unsaleable and Unavailable Stock

- 18.1 The Company reserves the right to immediately withdraw from the market, at anytime, any of the Goods that the Company deems to be unsafe, unsaleable or unavailable stock or that are otherwise unavailable for any reason.
- 18.2 Any Goods delivered to the Purchaser must be returned to the Company on notification that the Company has withdrawn the Goods from the market under this clause.
- 18.3 The Company will refund the Price which has been paid by the Purchaser for any of the Goods withdrawn from the market under this clause.

## 19 Limitation of the Company's Liability

- 19.1 Except to the extent implied by law, or as set out elsewhere in these terms, the Company gives no express warranty in relation to the Goods sold and supplied to the Purchaser and the Purchaser acknowledges that it has not relied on any representation or warranty made by or on behalf of the Company.
- 19.2 Certain legislation may imply conditions and warranties into these terms, to the extent that any conditions and warranties can be excluded lawfully, all such conditions and warranties are excluded. The liability of the Company under or arising out of the sale and supply of Goods, for breach of any term, condition or warranty implied in or imposed upon the sale or supply of goods or services by law is limited, at the option of the Company:
- (a) to the replacement of the goods or supply of equivalent goods;
  - (b) to the repair of the goods;
  - (c) to the payment of the cost of replacing the goods or of acquiring equivalent goods; or
  - (d) the payment of the cost of having the goods repaired.
- 19.3 Except as expressly provided above, the Company is not under any liability to the Purchaser in respect of any loss or damage (including in negligence, consequential loss or indirect loss of damage or loss of profits) howsoever caused which may be suffered or incurred or which may arise directly or indirectly in respect of the goods or the failure of the Company to comply with these terms.

## 20 Indemnity

- 20.1 The Purchaser releases, holds harmless, indemnifies and defends the Company, its present and

future officers, directors, officials, employees, agents, subsidiaries, affiliates, successors and assigns from any liability (including without limitation liability for negligence or strict liability) claims, losses, suits, demands, penalties, fines, forfeitures, damages and costs caused by, arising out of or relating to the Goods supplied, or the design of the packages or containers in which Goods are shipped, if such Goods' packages or containers are made in compliance with Purchaser's designs or specifications, or any act or omission of Purchaser or its successors, assigns, agents, representatives or employees.

## **21 Passing of ownership and risk**

- 21.1 Ownership in the Goods sold does not pass to the Purchaser until all monies owing under this Agreement and in respect of all other goods supplied by the Company to the Purchaser and all debts owing by the Purchaser to the Company have been paid for in full.
- 21.2 Risk in any Goods hereby sold shall pass to the Purchaser upon delivery notwithstanding that ownership may not have been passed.

## **22 Personal Properties Security Act**

- 22.1 The Purchaser acknowledges and agrees that it grants the Company a Security Interest in any Goods and their proceeds including any accounts and accession by virtue of clause 21.
- 22.2 The Purchaser agrees that:
- (a) these Terms and Conditions, or subject to the Company giving the Purchaser at least 30 days notice such other terms and condition as we may adopt from time to time, apply to the supply of Goods by the Company to the Purchaser to the exclusion of all other terms and conditions of sale or purchase;
  - (b) No variation to the Company's terms and conditions of sale will be of any effect unless agreed to by the Company in writing;
  - (c) The Goods supplied by the Company secure the payment of the purchase price of those Goods supplied by the Company;
  - (d) The Purchaser will do all the things necessary including providing all information the Company requires to register a Financing Statement or Financing Change Statement on the Personal Properties Securities Register (PPSR) as a Security Interest and a Purchase Money Security Interest pursuant to the PPSA;
  - (e) The Purchaser will not change its name, ACN or ABN and any other details required on the PPSR with out first notifying the Company;
  - (f) The Purchaser waives its rights to receive a verification statement in respect of any Financing Statement or Financing Change Statement in respect of the Security Interest created pursuant to these terms and conditions.
  - (g) The Purchaser must pay the Company's costs of any discharge or necessary amendment of any Financing Statement or Financing Change Statement.
- 22.3 To the maximum extent permitted by law, the Purchaser agrees that the following sections of the PPSA will not apply section 130, section 142 and section 143.
- 22.4 To the maximum extent permitted by law, the Purchaser waives any rights it may have pursuant to and hereby contract out of the following sections of the PPSA, section 95, section 123, section 129(2), section 132, section 134(2) and section 135
- 22.5 Unless otherwise defined in these Terms of Sale the terms and expression used in this clause have the meaning given to them or by virtue of the PPSA
- 22.6 PPSA means the Personal Properties Securities Act 2009

## **23 Natural variations in honey**

- 23.1 The Purchaser acknowledges that honey is a naturally produced product which is subject to variation and natural processes which are beyond the Company control. These include what is described as candying, crystallization and granulation. These processes only affect the appearance of honey and do not affect the honey's taste or purity.

- 23.2 Honey can vary in colour, clarity and texture. These changes can take place at different times in honey's life. These are affected by the nectar and age of the honey. Honey will change at different rates which are beyond the control of the Company.
- 23.3 The Company will not accept any claim or liability for any claim in relation to the Goods supplied that relates to these natural processes and characteristics of honey.
- 23.4 Where honey is supplied in a whipped, creamed or soft candy style/form the honey may return to its liquid form and this change in form does not change the taste or purity of the honey. The Company will not be liable for these changes.
- 23.5 The Purchaser acknowledges that the optimum storage condition for honey is 20 degrees Celsius or below. The Company will not be liable for any Goods stored above 20 degrees Celsius.

## **24 Honey Levy**

Honey levy is calculated on all the Goods. The Company agrees to pay all levy on honey supplied on behalf of the beekeeper producer.

## **25 Arbitration**

- 25.1 All disputes arising in connection with this contract, including a dispute regarding its validity, termination, performance or breach thereof, will be settled by arbitration administered by the International Court of Arbitration of the International Chamber of Commerce (the "ICC") in accordance with the ICC Rules of Arbitration in effect at the time of the arbitration.
- 25.2 The arbitration shall be conducted by three arbitrators appointed in accordance with said rules.
- 25.3 The place of arbitration shall be Tasmania Australia and the proceedings shall be conducted in the English language.
- 25.4 The award rendered by the arbitrator(s) shall be final and binding on the parties and judgment on the award may be entered in any court of competent jurisdiction.

## **26 Confidentiality**

Unless otherwise agreed in writing by the Company, the Purchaser will not disclose the pricing or other terms of this Order or ongoing business to any third party.

## **27 Electronic Commerce**

- 27.1 At the Company's request, the Company and the Purchaser will facilitate business transactions by electronically transmitting data. It is the sole responsibility of the Purchaser to ensure that electronically transmitted data will be acceptable by the importing country.
- 27.2 Any data digitally signed pursuant to this section and electronically transmitted will be as legally sufficient as a written, signed, paper document exchanged between the parties, notwithstanding any legal requirement that the data be in writing or signed.

## **28 Law and jurisdiction**

The Terms and Conditions are governed by and will be construed in accordance with the laws of Tasmania and the parties consent to the jurisdiction of the Courts of Tasmania.

## **29 Severability**

If any part of the Terms and Conditions or any related document is or becomes void or unenforceable that part is severed to the extent that it is void or unenforceable only so that all parts which are not void or unenforceable remain in full force and effect and be unaffected by any such severance.

## **30 Notice**

- 30.1 In addition to effective service pursuant to any statute, any notice or other communication in writing to the Purchaser at the address on this application (or such other address authorised by law) will be deemed to have been duly served on and received by the Purchaser if it is:
- (a) delivered, when it is left at the relevant address;
  - (b) sent by post, 1 day after it is posted;
  - (c) sent by fax, as soon as the Company receives from the Company's fax machine a report of

an error free transmission to the Purchaser's fax number;

(d) sent by email, as soon as the email is received by the Purchaser's mail server.

30.2 Any notice or communication may be effectively given by the Company or its solicitors.

### **31 GST**

31.1 The Purchaser shall pay all government duties, imposts, GST and other indirect taxes in respect to the goods sold or services provided.

31.2 'GST' means GST within the meaning of the A New System (Goods and Services Tax) Act 1999 as amended from time to time.

31.3 Unless specifically stated otherwise all amounts expressed or described are GST exclusive amounts.

31.4 If any GST is payable by the Company in respect of the supply of goods or the provision of services to the Purchaser then the amount expressed or described herein ('Original Amount') is to be increased so that the Company receives an amount ('Increased Amount') which, after subtracting the GST liability of the Company on that Increased Amount, results in the Company retaining the Original Amount after payment of that GST liability.

31.5 The Company will do all things reasonably available to it (including issuing tax invoices) to assist the Purchaser to claim input credits (if any) in respect of the supply of the goods and services

### **32 Interest**

32.1 The Company may charge the Purchaser interest calculated on a daily basis and compounded monthly on overdue amounts from the due date of payment to the date of actual receipt of payment at an interest rate which is 2% above the rate set by the Company's bank as its benchmark rate for overdrafts of \$100,000.00 or more.

32.2 Without in any way limiting the Company's right to require payment in full on the due date, the Company may at its sole discretion, charge interest on overdue accounts. Such interest will be calculated daily and will be made payable by the Purchaser to the Company together with the overdue amount. All payments made by the Purchaser will be first applied to the accrued interest.

### **33 Credit card payments**

All amounts paid by the Purchaser under this Agreement by credit card will incur a credit card service charge. Full details of any credit card service charge will be as set out on the invoice provided to the Purchaser.

### **34 Waiver**

The Company' failure to exercise any right or power does not operate as a waiver and does not preclude any further exercise of the right or power.