

**ANZCO FOODS LIMITED**  
**STANDARD TERMS OF TRADE (UNITED STATES OF AMERICA AND CANADA)**

- 1 **APPLICATION**  
All products supplied to you (*products*) in the United States of America or Canada by ANZCO Foods Limited or another member of the ANZCO group located within New Zealand (*ANZCO*) are supplied on these terms of trade (*terms*) unless otherwise agreed in writing. By requesting the supply of products from ANZCO, you agree to be bound by these terms.
- 2 **ORDERING PRODUCTS**
- 2.1 You may from time to time request that ANZCO supplies you with products. In your order you will specify the quantity and type of products that you require and comply with any other ordering requirements we may notify to you.
- 2.2 You may not cancel any order for products (whether fully or in part) without ANZCO's written consent in its discretion.
- 2.3 Nothing in these terms requires ANZCO to accept any order for products you submit, and ANZCO may cancel any order you make by written notice to you. This could be for a range of reasons, including supply constraints or your financial circumstances.
- 2.4 You must satisfy yourself as to the suitability for your intended purposes of all products supplied by ANZCO to you.
- 3 **PRICE AND PAYMENT**
- 3.1 The price for all products will be either as agreed by ANZCO with you in writing at the time of order confirmation or, if no such agreement has been reached, at ANZCO's standard charges for products applying at the time of despatch.
- 3.2 The price for the products set out in clause 3.1 does not include any taxes, duties, levies or similar (including any value added tax, goods and services tax or similar) applicable to those products which are payable by you at the same time as the price for the products.
- 3.3 Payment for all products and related charges is due on the 7<sup>th</sup> day following the date of ANZCO's invoice, unless other payment terms have been agreed with ANZCO. You must pay all amounts set out in each ANZCO invoice in the manner set out in the invoice and without set-off or deduction.
- 3.4 If any amount payable by you to ANZCO is not paid by the due date for payment, ANZCO may charge a default fee to you on the unpaid amount at a rate equal to 2% per annum above the prevailing overdraft rate charged by ANZCO's principal bankers, both before and after judgment, calculated on a daily basis from the due date until the date of payment. Interest will be payable on demand. This does not limit any of ANZCO's other rights or remedies.
- 4 **DELIVERY OF PRODUCTS AND CLAIMS**
- 4.1 ANZCO will use its reasonable efforts to supply all products by any estimated delivery date. However, ANZCO will not be liable for any delay or non-performance in supplying products to you, including where there are delays in processing or freight. You have no right to reject any products due to such delay or non-performance. ANZCO may deliver any products in instalments.
- 4.2 All products will be delivered to you on the basis set out in our order confirmation or, where no relevant delivery details are specified, on the basis of Incoterm CIF (Incoterms 2020) delivered to the named place of delivery set out in our order confirmation. Delivery will be completed at that point.
- 4.3 At the time you take possession of any products, and in any event within 48 hours of taking possession of the products, you must inspect the products and notify ANZCO of any damage to or defect in the products. You must give ANZCO written notice of any claim in respect of any products within 24 hours of inspection of those products in order to be able to proceed with your claim.
- 4.4 Notwithstanding clause 4.3, ANZCO may, in its discretion, consider a claim received by ANZCO within three months following delivery. However, ANZCO will not consider any claims received after the date which is three months following delivery.
- 4.5 Any claim in respect of damaged cartons will not be considered by ANZCO after the relevant products have cleared USDA inspection.
- 4.6 Notwithstanding any other provision of these terms, where any claim in respect of any products exceeds USD500, you must make a claim directly under the insurance policy taken out for the relevant products in respect of that claim. ANZCO will not be liable to you in respect of any such claim.
- 4.7 Any claim relating to fat content on CL-rated products will be considered by ANZCO on a case-by-case basis and any amount agreed to be paid by ANZCO will be on a price per lean basis, not utilising an adjustment factor or other mechanism.
- 5 **RISK AND TITLE**
- 5.1 Risk in all products passes to you on delivery of the products to you.
- 5.2 Title to all products will not pass on delivery of the products to you, but will remain with ANZCO until full payment of all monies owing in respect of such products has been made.
- 5.3 Until title to any products passes to you:
- (a) you will hold those products as ANZCO's bailee and so the products can be separately identified from all other products held by you;
  - (b) you will store the products in a way that protects them from damage or deterioration, and insure the products against all risks to their full price; and
  - (c) you may, in the ordinary course of your business, use or sell the products for full consideration, but the proceeds of sale or use will be ANZCO's property (which you will hold on trust for ANZCO and pay as ANZCO directs you).
- 5.4 Because of the retention of title held by ANZCO under clause 5.2, ANZCO holds a security interest (or equivalent) in all products supplied by ANZCO to you under applicable laws. You agree (to the extent permitted by law) with ANZCO:
- (a) to provide all requested information and assistance to allow ANZCO to register, maintain and enforce its first ranking security interest; and
  - (b) to waive, and contract out of, any rights you may have as debtor under such applicable laws in relation to such security interest.
- 5.5 ANZCO's security interest continues in any goods into which the products are incorporated, and in any proceeds arising from the sale of the products.
- 6 **DEFAULT BY YOU**
- 6.1 Where you are in default under these terms, ANZCO may:
- (a) suspend or terminate any credit facility made available to you (at which time all amounts owed by you to ANZCO become immediately due and payable);
  - (b) suspend or terminate any agreements or arrangements to supply products to you, including diverting any products already despatched; and/or recover from you:
  - (i) all costs incurred by ANZCO arising from such default and exercising our rights (including legal costs and disbursements on a solicitor-client basis and enforcement

- (ii) action including but not limited to proceedings taken by ANZCO); and all ANZCO's losses or damage arising from your default and exercising our rights, including packaging, storage and demurrage costs, loss of profits and any reduction in value of the products.

6.2 ANZCO and its agents and contractors may enter any premises in which products are situated at any time after a default by you occurs (or before any such event if ANZCO believes its occurrence is likely) to remove and repossess any products and any other property in which products are incorporated. To the extent permitted by law, ANZCO will not be liable for, and you indemnify ANZCO against, any damage or loss you or any third party incurs as a result of ANZCO's actions under this clause.

6.3 Under these terms, a *default* by you occurs if:

- (a) you breach these terms or any other agreement with ANZCO;
- (b) you become bankrupt or insolvent (in that in ANZCO's opinion you are not able to pay your debts as they fall due, or you are placed into liquidation, statutory management, receivership, voluntary administration or are dissolved, or you enter into any arrangement for the benefit of your creditors); or
- (c) ANZCO becomes aware of any information that ANZCO considers might affect your creditworthiness or ability to comply with these terms or any other agreements with ANZCO.

## 7 PRODUCTS

7.1 You must comply with all reasonable and lawful directions notified by ANZCO to you in respect of the products (including in relation to the transport, storage, handling and use of products).

7.2 You must immediately give written notice to ANZCO of any adverse reaction caused or alleged to be caused by any products supplied by ANZCO to you.

## 8 WARRANTIES AND LIABILITY

8.1 Except for any written warranties given by ANZCO to you, all warranties and representations (including those expressed or implied by law) in respect of products supplied to you are excluded to the extent permitted by law.

8.2 ANZCO and you agree that where the sale and purchase of products under these terms are for the purposes of trade, having regard to all relevant circumstances of these transactions, it is fair and reasonable that (i) the Consumer Guarantees Act 1993 and (ii) sections 9, 12A, 13 and 14(1) of the Fair Trading Act 1986 do not apply to these transactions to the extent permitted by law.

8.3 Notwithstanding any other provision of these terms, ANZCO's maximum liability to you (in the event such liability exists) in respect of any breach of these terms or for defective products supplied is limited at ANZCO's option to replacing the products or refunding the price for the products paid by you, and will not in any event exceed the amounts paid by you to ANZCO for the relevant products (whether in contract, tort including negligence or otherwise). Where ANZCO elects to replace any products it will use reasonable endeavours to do so as soon as practicable but will not be liable for any delay in such replacement.

8.4 Notwithstanding any other provision of these terms, ANZCO will not be liable, whether in contract, tort including negligence or otherwise:

- (a) where any products are not transported, stored,

handled or used in accordance with any directions given by ANZCO to you;

for any special, indirect, incidental or consequential loss, damage or injury of any kind, or for any loss of profit or revenue, to the extent permitted by law; or

- (b) for any demurrage and/or detention charges imposed by a shipping carrier. If ANZCO incurs any demurrage and/or detention charges from a shipping carrier in respect of products ordered by you, you will promptly reimburse ANZCO for such charges, except to the extent ANZCO caused such charges to be imposed.

## 9 MISCELLANEOUS

9.1 **Information/privacy:** You authorise ANZCO to collect and hold information about you from any source ANZCO considers appropriate for determining creditworthiness, debt collection purposes or for any other purpose related to these terms. You further authorise ANZCO to disclose information held by ANZCO for the purposes set out above to any other person. You have a right of access to, and may request correction of, personal information held by ANZCO about you.

9.2 **Force majeure:** ANZCO will not be liable, and you will not be entitled to cancel any order, for any delay or failure by ANZCO to perform its obligations under these terms caused directly or indirectly by any event or circumstance beyond ANZCO's reasonable control (including without limitation fire, accident, earthquake, flood, drought, crime, war, blockade, civil commotion, epidemic, pandemic, strike, lockout or labour dispute, shortage of fuel, power or raw material, inability to procure stock or transport, or acts or omissions by governmental or regulatory authorities).

9.3 **Entire agreement:** These terms, together with ANZCO's order confirmation and invoice, is the entire agreement between you and ANZCO for the supply of products, and replaces any earlier correspondence, discussions and agreements on the supply of the products (either oral or written) and any documents provided by you.

9.4 **Convention:** The United Nations Convention on Contracts for the International Sale of Goods (the Vienna Convention) does not apply to the sale and purchase of the products.

9.5 **Waiver:** Any waiver of these terms will not be effective except to the extent agreed in writing.

9.6 **Terms:** ANZCO may vary these terms from time to time. Any varied terms will be posted on ANZCO's website at [www.anzcofoods.com](http://www.anzcofoods.com), and will apply to the provision of all products you order after the date on which the varied terms take effect.

9.7 **Benefit:** These terms do not confer any benefit on, and are not enforceable by, any person other than ANZCO and you. You may not assign or subcontract all or any of your rights or obligations under this agreement without ANZCO's prior written consent. These terms will be binding on your successors and permitted assigns.

9.8 **Severability:** If any provision in these terms is held by any court or administrative body of competent jurisdiction to be illegal, void or unenforceable, that provision will be amended to the extent necessary to make it legal, valid and enforceable without altering its meaning or intent. If that is not possible, that provision will be severed from these terms and the enforceability of the remaining provisions will not be affected.

9.9 **Governing law:** These terms will be governed by the laws of New Zealand, and you and ANZCO agree to submit to the non-exclusive jurisdiction of the Courts of New Zealand.