

## Frosty Boy – Standard Terms

These Standard Terms apply to the supply of any Products by (or on behalf of) Frosty Boy from time to time. It is agreed:

### 1. Interpretation

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#### 1.1 Definitions

Unless the context otherwise requires, in these Standard Terms and any other document forming part of the Agreement the following terms are defined:

- (a) **Account Application** means any account application, new customer information, credit application or similar form completed by the Customer (including via Frosty Boy's Website) that relates to the supply of Products by Frosty Boy, including any associated guarantee given in favour of Frosty Boy;
- (b) **Additional Charge** means any fees or charges for additional goods provided or additional services provided or performed (or arranged) by Frosty Boy at the Customer's request or reasonably required as a result of the Customer's conduct;
- (c) **Agreement** means the agreement between Frosty Boy and the Customer comprising these Standard Terms and any Account Application accepted by Frosty Boy;
- (d) **Customer** means the relevant person that orders or purchases Products from Frosty Boy from time to time, including any persons named as the customer, buyer, applicant or consignee in the relevant Account Application or Order, any Distributor and where the context permits the officers, employees and agents of the foregoing;
- (e) **Distributor** means the relevant Customer that orders or purchases Products from Frosty Boy for the purposes of resale to third parties from time to time;
- (f) **Distributor T&Cs** means Frosty Boy's terms and conditions applicable to Distributors in effect and as amended from time to time, including any provisions in these Standard Terms that apply to Distributors;
- (g) **International Customer** means a Customer (whether or not a Distributor) where the supply or delivery of the Products is to occur outside Australia, including where the Products are handed over to any agent or carrier within Australia for eventual delivery outside Australia;
- (h) **Frosty Boy** means Frosty Boy Australia Pty Ltd ABN 61 614 143 654 and, where the context permits includes references to its related bodies corporate and their respective officers, employees, contractors and agents;
- (i) **Order** means an order for Products placed by the Customer or its agent from time to time (including via the Website), and where an order is subsequently amended refers to the final amended Order that is accepted or notified by Frosty Boy as permitted by these Standard Terms;
- (j) **Products** means any goods (as well as any ancillary or related services) supplied or procured by Frosty Boy for the Customer from time to time, and when the term is used in the context of a particular Order means the Products the subject of that Order;
- (k) **Standard Terms** means these standard terms and conditions in effect and as amended from time to time;
- (l) **Supply Terms** the relevant Incoterm 2020 applicable to the relevant Order, as stated in the accepted Order as varied pursuant to this Agreement; and
- (m) **Website** means the websites owned or operated by Frosty Boy, including fbgdirect.com, frostyboy.com, frostyboyglobal.com, wellboost.com and artofblend.com.

#### 1.2 When Customer bound

These Standard Terms apply to all transactions between the Customer and Frosty Boy relating to the provision of Products (including all quotations, contracts and variations) and the Customer will be bound by these Standard Terms from the time it first signs a document forming part of this Agreement, creates an account via Frosty Boy's Website or from when it first places an Order (whichever is the earlier).

### 2. Orders

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#### 2.1 Submitting Orders

- (a) Every Order by the Customer for the supply of Products must be submitted in writing in the manner required by Frosty Boy from time to time and include such information as Frosty Boy may require, including details of the relevant Products to be ordered (and any applicable product codes) and the Customer's requested Supply Terms and collection/delivery date.
- (b) The Order may be in the form of a pro forma invoice issued by Frosty Boy that is accepted by the Customer and Frosty Boy. To confirm any Order, Distributors are required to submit a valid purchase order, and International Customers must sign a pro forma invoice or submit a valid purchase order. However, Frosty Boy may accept Orders placed by email, phone, submission through Frosty Boy's online portal or any other means (in Frosty Boy's discretion).
- (c) Following receipt of an Order, Frosty Boy may notify the Customer of any required changes to be made to, or additional matters to be included in, the Order (including the prices or any changes to the prices for the Products the subject of the order) and any Additional Charges relevant to the Order. If this occurs, the Customer must

promptly confirm in writing that it accepts or rejects the variations proposed by Frosty Boy, prior to Frosty Boy being obliged to accept or fulfil the Order.

## 2.2 Acceptance of Orders

- (a) Frosty Boy may, in its discretion, accept or reject any Order in whole or in part, for reasons including but not limited to where the Products are unavailable, any credit terms requested by the Customer have not been agreed or where payment has not been made in full for any previous Products supplied to the Customer or any of its related entities. Any costs incurred by Frosty Boy in reliance on incorrect or inadequate information provided by the Customer in an Order may result in the imposition of an Additional Charge.
- (b) An Order will only be accepted by Frosty Boy once Frosty Boy notifies the Customer in writing that the Order has been accepted, at which point a contract is formed for the supply of the relevant Products. Any automatic electronic notification that an Order has been accepted via any Website or email address made available by Frosty Boy for submitting orders will not be treated as acceptance of an Order.
- (c) Once Frosty Boy accepts an Order, then it may advise the Customer of the proposed date that the Products will be ready for collection (or delivery, if agreed by Frosty Boy) and next steps required to progress the Order (for example, payment). To the extent the law permits, any indication in any Order or communication from Frosty Boy of the time frame for the provision of the Products is an estimate only and is not a fixed time frame. Frosty Boy will use reasonable endeavours to fulfil the Order in any estimated timeframe but will not be liable to the Customer for any Liability suffered if the time frame is not met.

## 2.3 Cancellation and variation of Orders

- (a) An Order cannot be cancelled or varied without Frosty Boy's written consent. Where an Order is cancelled by the Customer, the Customer indemnifies Frosty Boy against all Liabilities reasonably incurred by Frosty Boy as a result of the cancellation, including any loss of profit from other orders foregone as a result of the scheduling of the Order which is subsequently cancelled.
- (b) If the Customer wishes to vary an Order after it has been accepted by Frosty Boy, Frosty Boy reserves its right to further amend the Order or its quoted prices, including by adding Additional Charges in respect of any extra costs incurred in connection with the variation. Frosty Boy may accept or reject any variation in its discretion.

## 3. Pricing, invoicing and payment

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### 3.1 Price for Products

- (a) The price payable for the Products the subject of an Order will be the price advised to the Customer by Frosty Boy prior to acceptance of the Order (which may be subject to variations or changes to reflect Frosty Boy's then current prices at the time of delivery or collection where the Order is for the supply of Products at a later date), and if no such price is advised then Frosty Boy will charge its then current prices at the time of acceptance of the Order. Any indication of prices on Frosty Boy's Website or in any other material is not binding on Frosty Boy and does not include any Additional Charges.
- (b) Unless otherwise specified in an accepted Order and the Supply Terms, the prices and charges referred to in the Order or notification from Frosty Boy:
  - (i) are quoted on an 'Ex Works' basis as defined in Incoterms 2020 (which for the avoidance of doubt excludes freight, transport, handling, insurance or other third party costs), with the Customer to collect and load the Products at its cost at Frosty Boy's premises at 1 Dixon St, Yatala Qld 4207; and
  - (ii) do not include GST (including any other indirect transaction, consumption, value added, sales or similar taxes), taxes, duties (including any import/export duties), excise fees or Additional Charges or other sums required to be paid to Frosty Boy or any third party in accordance with this Agreement, which the Customer must pay in addition to the agreed prices for the Products at the time of payment of the Products (or otherwise on demand).

### 3.2 Additional Charges

- (a) Where these Standard Terms entitle Frosty Boy to impose any Additional Charges, the amount of the Additional Charge will be calculated as follows:
  - (i) where the sum of the Additional Charge is included in an accepted Order or invoice (including a pro forma invoice) that is not later varied in accordance with these Standard Terms, the sum specified in the Order or invoice (as the case may be);
  - (ii) in all other cases, the sum reasonably determined by Frosty Boy that represents its full costs and expenses incurred in connection with the matter giving rise to the Additional Charge.
- (b) Frosty Boy may also impose Additional Charges as a result of any packaging, freight, transport, handling or insurance charges not specifically included in the accepted Order and the applicable Supply Terms, as well as any additional work or services requested by the Customer.

### 3.3 Invoicing

Unless this Agreement provides otherwise in respect of a particular Order, Frosty Boy may issue an invoice (including a pro forma invoice) to the Customer at any time, including at the time of acceptance of the Order, during the manufacture of the Products or after the Products have been supplied. The amount payable by the Customer will be the amount set out in the invoice, consisting of the price for the Products and any Additional Charges. This paragraph does not release the Customer from any other obligations to pay as provided for in the Agreement and Frosty Boy is under no obligation to commence manufacturing or continuing manufacturing or supplying any Products when any invoice has not been paid when due.

### 3.4 Payment terms

- (a) Unless Frosty Boy has agreed to offer the Customer credit terms in respect of the relevant Order, the Customer must pay any invoice issued by Frosty Boy immediately upon receipt and in any event prior to Frosty Boy producing the Products (including for International Customers) or making them available for collection or dispatch.
- (b) All monies are payable to Frosty Boy in Australian dollars (AUD) (unless the accepted Order states that the monies are payable in another currency, in which case payment must be made in that currency) at 1 Dixon St, Yatala QLD 4207 in the manner Frosty Boy reasonably requires from time to time. Frosty Boy may apply any payment received from the Customer to any amount owing or payable by the Customer to Frosty Boy from time to time on any account whatsoever.
- (c) The Customer is to pay Frosty Boy on demand interest at the rate of 10% per annum on all overdue amounts owed by the Customer to Frosty Boy, calculated on daily balances and compounding monthly until paid. The Customer must also pay all costs and expenses incurred by Frosty Boy associated with collecting any overdue amounts or enforcing Frosty Boy's rights.

### 3.5 Credit terms

- (a) Frosty Boy may agree to provide the Customer with credit terms in respect of any particular Order or an ongoing basis until revoked, on such conditions imposed by Frosty Boy from time to time (which will include the requirement for the Customer to pass credit checks and be accepted by Frosty Boy's relevant insurers).
- (b) Any credit terms offered by Frosty Boy may be revoked or changed by notice to the Customer at any time in Frosty Boy's discretion (including where any payment is overdue) and any Orders accepted by Frosty Boy after providing such notice will have to be paid for in full prior manufacture, collection or dispatch of the Products.

## 4. Terms of supply of Products

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### 4.1 Collection/delivery

- (a) The parties' rights and obligations with respect to the terms of supply of the Products shall be governed by the Supply Terms, save that this Agreement will prevail to the extent it is inconsistent with the Supply Terms.
- (b) Unless the Supply Terms and the Order provide for Frosty Boy to deliver the Products to the Customer, the Customer will arrange for collection of the Products from Frosty Boy's nominated address during normal business hours on the date notified by Frosty Boy that the Products are ready for collection.
- (c) If the Supply Terms and Order provide for the Products to be delivered to the Customer or to a particular location (**Delivery Point**), then unless the Supply Terms and the Order expressly provide otherwise:
  - (i) the Customer must insure the Products while in transit as per Frosty Boy's requirements and arrange for all approvals or clearances required as well as the unloading of any Products at the delivery location or vessel at the time the Products are delivered (at the Customer's cost);
  - (ii) the prices in the Order do not include Frosty Boy's costs in connection with delivery, insurance, clearances, security-related costs or other approvals, which the Customer must pay to Frosty Boy as an Additional Charge;
  - (iii) where a point/port of delivery or destination in the Order:
    - (A) is a port without specifying the location within the port, then the point/port of delivery or destination (as the case may be) will be on board the vessel at the relevant port; and
    - (B) is not specified, then the Brisbane port will be the port of delivery, unless Frosty Boy notifies the Customer otherwise in writing; and
  - (iv) to the extent the law permits and unless the Supply Terms provide otherwise, Frosty Boy will not be liable for any damage to the Products in transit where the Customer has engaged a third party to arrange delivery of the Products or where the Customer is required to insure the Products in transit.
- (d) If the Customer does not collect the Products from Frosty Boy's premises within 14 days of the collection date notified to the Customer, or does not arrange for collection at another Delivery Point when the Products arrive, then Frosty Boy may store the Products and charge the Customer storage costs and expenses as Additional

Charges. If the Products are not collected within 30 days of the collection date notified to the Customer, then Frosty Boy may dispose of the Products and recover from the Customer any Liability suffered by Frosty Boy.

#### 4.2 Inspection and acceptance of Products

- (a) The Customer will inspect the Products for any defects, faults or other non-compliance with this Agreement and will notify Frosty Boy of any such defects, faults or non-compliance (via email with images where practical to [quality@frostyboy.com](mailto:quality@frostyboy.com) and to [Intl.Logistics@frostyboy.com](mailto:Intl.Logistics@frostyboy.com) for International Customers or [orders@frostyboy.com](mailto:orders@frostyboy.com) for all other Customers):
- (i) by 5.00pm on the business day following delivery or collection where the Products are delivered or collected within Australia; or
  - (ii) within 14 days of delivery to the Customer, its carrier or agent, where the Products are shipped outside Australia to an International Customer.

Any defects, faults or other non-compliance with this Agreement visible on receipt must also be noted on consignment at time of delivery or collection.

- (b) To the extent the law allows, if the Customer fails to notify Frosty Boy in writing of such defaults, faults or non-compliance within 5 Business Days from the relevant date in paragraph (a) above, then the Customer is deemed to have accepted the Products and that the Products are fully compliant with this Agreement. Nothing in this clause affects the Customer's rights for any alleged failure of a guarantee under the Australian Consumer Law.
- (c) Frosty Boy will use its best endeavours to respond to any reports in relation to defects, faults or non-compliance and notify the Customer if anything further is required from the Customer, and what arrangements will be put in place for the replacement of any Products that are found to be defective (which will be agreed by the parties in writing).

#### 4.3 Risk and title

- (a) The risk in any Products passes to the Customer at the time provided for in the Supply Terms (if any), otherwise risk passes on the earlier of the time immediately prior to loading the Products for collection by the Customer (or its agent) or dispatch to the Customer.
- (b) Property and title in Products does not pass to the Customer until all money owing to Frosty Boy on any account is paid in full. If the Customer fails to pay to Frosty Boy any monies due then Frosty Boy and its employees and agents have the right and irrevocable licence to, at any time and without notice, enter the Customer's premises (or any other location) and repossess the Products or any part of them. Pending payment in full, the Customer must ensure that the Products are fully insured and that if the Products are damaged or destroyed then the proceeds of any insurance policy are paid directly to Frosty Boy.
- (c) To the extent the law permits, the Customer waives any rights it has under the *Personal Property Securities Act 2009* (Cth) and any related legislation (**PPSA**) (including any rights to receive notices, statements or documents from Frosty Boy), Frosty Boy need not comply with any provisions of the PPSA (but Frosty Boy may rely on all rights and remedies under the PPSA) and Frosty Boy will separately have all the enforcement rights and remedies in the PPSA as if they were stated in these Standard Terms (but without any corresponding obligations).

### 5. Distributor T&Cs & International Customers

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#### 5.1 Distributor T&Cs & International Customers

This clause 5 contains 'Distributor T&Cs' that will apply in respect of any dealings between Frosty Boy and a Distributor, in addition to any other provisions of this Agreement that apply to the Distributor as a 'Customer'. Further, this clause 5 contains some provisions that apply to International Customers (whether or not they are a 'Distributor').

#### 5.2 Minimum Order Quantities

Unless Frosty Boy otherwise agrees in writing in respect of a particular Order, any Order placed:

- (a) by the Distributor for shipment or delivery within Australia must be for a minimum of 80 carton mixed pallet in order for the Distributor to be entitled to wholesale pricing and CPT (Carriage Paid To) Supply Terms, with the named place of destination being the location specified in the accepted Order; and
- (b) by an International Customer must be for a minimum of 2 pallets or a full container, unless otherwise advised by Frosty Boy in writing at or around the time the Order is accepted by Frosty Boy.

The Supply Terms in respect of an Order will be confirmed by Frosty Boy at the time of acceptance of the Order and orders below that minimum quantity will incur freight charges as an Additional Charge.

#### 5.3 Placing Orders

All Orders for Products for domestic supply must be submitted to [orders@frostyboy.com](mailto:orders@frostyboy.com) by no later than 1.00pm on a Business Day for next Business Day dispatch. International Customers must submit Orders via email to [Intl.Logistics@frostyboy.com](mailto:Intl.Logistics@frostyboy.com) or such other email address nominated by Frosty Boy from time to time. Unless otherwise notified by Frosty Boy, Frosty Boy will use best endeavours to ensure that any Order for delivery or collection

within Australia that is submitted and accepted within the relevant cut off time will be dispatched on the next Business Day.

#### 5.4 Product storage and related obligations

The Distributor will at all times:

- (a) store and transport the Products in facilities and environmental conditions appropriate for the Products (including in such manner so as to minimise opportunities for food contamination) and which meet any requirements specified on the Products labelling or otherwise reasonably directed by Frosty Boy;
- (b) comply with all appropriate food handling controls related to the receipt, storage, display, packaging, transportation, disposal and recall of food products so far as those controls are relevant to the Products;
- (c) maintain in a business-like manner the premises and the facilities from which it conducts its business to enable it to discharge its responsibilities under this Agreement and the safe storage and distribution of Products;
- (d) ensure that it takes out and maintains adequate and reasonable insurance in relation to its business and operations, including public and products liability insurance;
- (e) have a nominated food safety supervisor for any premises, facilities or other locations in which the Distributor stores the Products or distributes them from, and use its best endeavours to ensure that the nominated food safety supervisor has the experience and training reasonably expected of a person in that role; and
- (f) have (and ensure its staff comply with) a suitable pest management plan and related documentation (such as a pest sighting register) and have a pest inspection of the premises and the facilities which the Distributor stores the Products performed by an appropriately qualified and licensed technician at least annually, or at such shorter durations as necessary;
- (g) install and maintain adequate monitoring and security controls on any premises, facilities or other locations in which the Distributor stores the Products; and
- (h) provide Frosty Boy with any reasonable evidence requested by Frosty Boy in connection with the above matters.

#### 5.5 Dealings with Frosty Boy and customers

The Distributor will at all times:

- (a) act as the distributor of Frosty Boy dutifully and in good faith, deal honourably and fairly with existing and prospective customers of the Distributor concerning the Products and not do anything in the manner of promoting or supplying the Products which may adversely affect the goodwill, reputation or Intellectual Property Rights of Frosty Boy or its related bodies corporate;
- (b) offer for sale and sell the Products in the same condition they received them, not make any representation or give any warranty for the Products other than those contained in this Agreement at the time of the offering for sale or the sale and ensure that any advertising of the Products that is not provided by Frosty Boy is approved by Frosty Boy;
- (c) follow up any lead provided to the Distributor by Frosty Boy promptly after receiving such a lead, and continue to follow up such a lead weekly thereafter until the Distributor is reasonably convinced that no sales will result, in which event the Distributor will refer the lead back to Frosty Boy; and
- (d) communicate promptly to Frosty Boy any complaints made to the Distributor concerning the Products and any enquiries or orders for the Products received by the Distributor where the Distributor does not intend to supply the Products to that potential customer.

#### 5.6 Staffing and personnel

The Distributor must employ sufficient and appropriate personnel for the purpose of selling and distributing the Products and comply with any reasonable directives or instructions given by Frosty Boy for any promotional activities concerning the nature, type, quality, characteristics, fitness for purpose, suitability, use and description of the Products.

#### 5.7 Traceability

The Distributor must establish and maintain procedures to provide traceability of Products sold to its customers, end users or other third parties and the Distributor must retain those records for at least 7 years. The Distributor must provide Frosty Boy a copy of such records on Frosty Boy's reasonable request and fully cooperate and assist Frosty Boy in connection with any product recalls, food safety matters or other regulatory issues (whether before or after termination of this Agreement). Upon termination of this Agreement, the Distributor must promptly deliver to Frosty Boy all records, files, data and other information required to be maintained under this clause 5 to enable Frosty Boy to implement recalls of any Products.

#### 5.8 Product samples

The Distributor may request that Frosty Boy provide samples of the Products. However, Frosty Boy has the discretion to provide samples of Products.

## 6. General obligations

### 6.1 Warranties by Customer

To the extent permitted by law, the Customer warrants, acknowledges and agrees at all times that:

- (a) any person submitting an Order is properly authorised by the Customer, and the person submitting any Order or signing any constituent part of this Agreement separately warrants that he/she is duly authorised to bind the Customer;
- (b) the particulars in the Order and all other information provided to Frosty Boy in connection with this Agreement are true, correct and not misleading in any respect (including by way of omission) and any specific dietary or other requirements for the Products have been notified to Frosty Boy at the time of placing the Order;
- (c) if the Customer is a 'Distributor' for the purposes of this Agreement it is purchasing the Products solely for business purposes and not for personal, domestic or household use;
- (d) if Frosty Boy has arranged for insurance to cover the Products in transit, Frosty Boy has provided no representations, warranties or advice that the insurance is appropriate or suitable for the Customer's purposes, any insurance will be on Frosty Boy's standard policies in place from time to time (and subject to all limitations and exclusions contained therein with the insured value equalling the price charged to the Customer for the Products), and the Customer releases Frosty Boy from any Liability that may be suffered by the Customer in connection with such insurance;
- (e) it has (and ensured its officers, employees and agents have) read, understood and agreed to any policies (including any privacy policy), codes of conduct or terms of use published on Frosty Boy's Websites from time to time (**Frosty Boy Policies**), and all required consents, waivers or agreements are in place to ensure continued compliance with the foregoing;
- (f) despite the Frosty Boy Policies not forming part of this Agreement (or granting the Customer any rights against Frosty Boy), where the Frosty Boy Policies grant Frosty Boy rights (including in respect of pricing errors on the Website or in respect of the handling of personal information), those rights are enforceable by Frosty Boy despite not forming part of the Agreement;
- (g) the Customer has the power to enter into this Agreement, the power has been exercised properly and Frosty Boy's supply of the Products will not infringe any third party rights or restrictions imposed on the Customer (including in respect of any trade marks or other material to be affixed to the Products at the Customer's request); and
- (h) if the Customer is the trustee of any trust, this Agreement is binding on the Customer in its personal capacity and in its capacity as trustee of any trust, the Customer is validly appointed as the sole trustee and will not allow any new trustee to be appointed and the Customer has the right to be fully indemnified out of the trust assets and from the beneficiaries for all liabilities in connection with this Agreement.

### 6.2 Implied terms

- (a) Subject to paragraph (b) below, any condition or warranty which would otherwise be implied in this Agreement which is capable of being excluded is hereby excluded, and all information, specifications and samples provided by Frosty Boy in relation to the Products are approximations only and, subject to any guarantees under the Australian Consumer Law, small deviations or slight variations from them which do not substantially affect the Customer's use of the will not entitle the Customer to reject the Products upon delivery, or to make any claim in respect of them.
- (b) The Australian Consumer Law may give to the Customer certain guarantees. Where liability for breach of any such guarantee can be limited, Frosty Boy's liability (if any) arising from any breach of those guarantees is limited with respect to the supply of goods, to the replacement or repair of the goods or the costs of resupply or replacement of the goods or with respect to services to the supply of services again or cost of re-supplying the services again.

### 6.3 Allocation of risk

- (a) To the extent the law permits, the Customer indemnifies and must keep indemnified Frosty Boy (including its related bodies corporate and their respective officers, employees, contractors and agents) against any and all Liabilities incurred, suffered or otherwise arising in connection with any breach by the Customer of its covenants in favour of Frosty Boy in connection with this Agreement or any negligence on the part of the Customer, its staff or agents.
- (b) To the extent the law permits, Frosty Boy is not liable for any direct, indirect, punitive, incidental, special, consequential losses or damages (including damages for loss of use, data or profits) arising out of or in any way connected with the provision of or failure to provide Products or any technology systems through which Frosty Boy communicates with the Customer, whether based on terms of trade, negligence, strict liability or otherwise, even if Frosty Boy has been advised of the possibility of such losses or damages.

## 6.4 Intellectual Property Rights

- (a) In this Agreement, '**Intellectual Property Rights**' includes any and all industrial and intellectual property rights now in existence or coming into existence anywhere in the world (whether registered or capable of registration or not and whether protected by statute or common law or not), including copyright, trade marks, patents and designs and any rights to apply for registration of or protection of the foregoing.
- (b) The Customer warrants that it owns (or has a licence to) all Intellectual Property Rights or other materials supplied or provided to Frosty Boy in connection with any Order for Products and authorises Frosty Boy to reproduce or use same for the purposes of the Order and this Agreement. Further, the Customer indemnifies and agrees to keep indemnified Frosty Boy against all Liabilities incurred by, or asserted against, Frosty Boy in relation to any breach of any Intellectual Property Rights in relation to any material supplied by the Customer.
- (c) All Intellectual Property Rights in the Products (including any quality standards, specifications, plans, designs, data, ideas, know-how, inventions, recipes or other items), technology or process relating to the Products and any other works created by Frosty Boy (or arise in connection with this Agreement or any dealing with the Customer) vest in and remain the property of Frosty Boy, and the Customer obtains no rights in them. The Customer must (at its cost) do any and all things (including obtaining any third party consents or waivers) requested by Frosty Boy from time to time to ensure that title such Intellectual Property Rights are vested in Frosty Boy and registered (where possible) free of any third party interest or claim.
- (d) The Customer must not (and must ensure its customers do not) disclose, misuse or in any way prejudice Frosty Boy's Intellectual Property Rights or confidential information (including by seeking to reverse engineer or otherwise determine any recipes for Products), except to the extent expressly permitted by Frosty Boy in writing from time to time. The Customer must immediately return any and all documents or other materials containing Frosty Boy's Intellectual Property Rights or confidential information.
- (e) The Customer acknowledges and agrees that any use by the Customer of Frosty Boy's Intellectual Property Rights (whether before or after this Agreement), in the nature of trading names, corporate names, domain names, business names, logos, marks or words comprising any (or any part) of Intellectual Property Rights of Frosty Boy (or its related bodies corporate) is subject to a licence granted from Frosty Boy on terms set out in this Agreement and which is terminable at any time upon notice from Frosty Boy. The Customer agrees:
  - (i) to use (and apply to the Products) the relevant Intellectual Property Rights only under the conditions which are set down by Frosty Boy or by any third party owner of the Intellectual Property Rights from time to time;
  - (ii) that it will never make nor have any claim to the Intellectual Property Rights of Frosty Boy, and will do all things requested by Frosty Boy in connection with any Intellectual Property Rights of Frosty Boy (or its related bodies corporate) from time to time (including ceasing use of same upon termination of this Agreement or earlier on request).

## 7. Termination

### 7.1 Termination for breach

A party (**Innocent Party**) may terminate this Agreement by notice in writing to the other party (**Defaulting Party**) if:

- (a) the Defaulting Party breaches any provision of this Agreement, and the breach is incapable of remedy or is not remedied to the reasonable satisfaction of the Innocent Party within 14 days of the Innocent Party providing written notice of the breach; or
- (b) the Defaulting Party is insolvent or presumed to be insolvent, commits an act of bankruptcy or is declared bankrupt (as those terms as defined in the *Bankruptcy Act 1966* (Cth), has any creditors, debtors or similar petition relating to insolvency presented against it, the Customer is subject to any form of insolvency proceedings, external administration or similar court or voluntary process (including any liquidation, administration, deed or scheme of company arrangement).

### 7.2 Termination for convenience

Either party terminate this Agreement by giving not less than 3 months' written notice to the other party (or such other period agreed by the parties in writing). The parties will remain obliged to comply with their respective obligations in connection with any Orders accepted prior to termination under this clause 7.2.

### 7.3 Consequences of termination

- (a) The termination of this Agreement is without prejudice to any rights that Frosty Boy may have at law or statute (which are hereby expressly preserved) and upon termination all monies owing to Frosty Boy (whether due for payment or not) will become immediately due for payment.
- (b) Any obligations of the Customer, or rights of Frosty Boy, under or in connection with this Agreement that expressly or impliedly survive the termination of this Agreement (or are capable of surviving) will continue in full force and effect, including any provisions in respect of Frosty Boy's Intellectual Property Rights.
- (c) In respect of any Distributor, if this Agreement is terminated then the Distributor must promptly:

- (i) remove from its property and immediately discontinue all use (whether directly or indirectly) of any trade marks, business names, trading names, markings and the like owned or licensed by Frosty Boy; and
- (ii) deliver to Frosty Boy all records, files, data and other information relating to the sale, distribution, marketing or promotion of the Products, including all Product and customer information required to be maintained pursuant to clause 5.7 to enable Frosty Boy to implement Product recalls.

## **8. General Provisions**

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### **8.1 Notice**

Any notice, demand or other communication relating to this Agreement must be in writing and may be given by being personally served on a party, being left at the party's last known address, being sent to a party's last known address by pre-paid ordinary mail, express mail, or registered mail (in which case it will be deemed to be served in two Business Days after posting) or being sent by email to the party's last known email address in which case it will be deemed to be served on the same day if sent before 4:00pm in the place of receipt.

### **8.2 Further acts**

The Customer must, upon request from Frosty Boy, promptly do any further act and execute and deliver any further documents and information which Frosty Boy may reasonably request to facilitate the completion of the Agreement, to verify that the Customer is complying with its obligations in connection with this Agreement and in order to give effect to Frosty Boy's rights (and the Customer's obligations) in connection with this Agreement and any Products.

### **8.3 Nature of relationship**

Nothing in this Agreement establishes or creates a principal and agent relationship or a partnership or joint venture or franchise between the parties. The Customer (including any Distributor) must not describe themselves in any way as agents of Frosty Boy.

### **8.4 Variation and waiver**

Any variation of or to this Agreement will not have any effect whatsoever unless such variation is reduced to writing and signed by Frosty Boy. Further, any failure of Frosty Boy to exercise any or all of its rights or powers under this Agreement at any time and for any period of time shall not constitute a waiver of any of Frosty Boy's rights or powers arising pursuant to this Agreement.

### **8.5 Updates to these Standard Terms**

To the extent the law permits, Frosty Boy may amend these Standard Terms by publishing the amendments on its Website or by written notice to the Customer (including by providing notification on invoices issued to the Customer) and the amended terms will apply to any Orders placed for Products after such notice.

### **8.6 Force majeure**

If the performance of this Agreement or any obligation under it (except for any obligation to pay) is prevented, restricted, interfered with or materially prejudiced by reason of circumstances beyond the reasonable control of the party obliged to perform it (including any Act of God, act of any governmental or competent authority, the imposition of any new taxes, excise fees, tariffs or other mandatory charges or an increase in same, default of any suppliers under any contract to which Frosty Boy is a party or seizure or stoppage of Products in transit), the party so affected (upon giving prompt notice to the other party) shall be excused from performance to the extent of the prevention, restriction or interference, but the party so affected shall use its best endeavours to avoid or remove the causes of non-performance and shall continue performance under this Agreement with the utmost despatch whenever such causes are removed or diminished. If such causes are not reasonably able to be overcome, then the parties will negotiate in good faith alternative arrangements for the performance of this Agreement.

### **8.7 Entire agreement**

To the extent the law permits, this Agreement represents all the terms and conditions between the parties, and the Customer acknowledges that it has not entered into this Agreement in reliance on, or as a result of, any promise, representation, statement, conduct or inducement of any kind relating to any matter in connection this Agreement from Frosty Boy or its agents. The parties agree that the United Nations Convention on Contracts for the International Sale of Products does not apply to this Agreement or the supply of any Products.

### **8.8 Counterparts**

Any documents forming part of this Agreement may be executed and exchanged in any number of counterparts, all of which taken together constitute one and the same document.

### **8.9 Severance**

If any provision of this Agreement in favour of Frosty Boy exceeds what is permitted by law (**Void Term**), then the following provisions will apply:

- (a) the Void Term shall be read down to the extent required to ensure it is enforceable;



- (b) if the Void Term imposes liability on the Customer, then the Customer shall only be liable to the extent that the Customer caused or contributed to the liability;
- (c) if the Void Term releases Frosty Boy from any legal obligation, Frosty Boy will still be liable to perform that obligation to the extent Frosty Boy either caused or contributed to the event giving rise to the obligation or breached this Agreement or terms implied by law that cannot legally be excluded,

and if the foregoing does not cure the invalidity or unenforceability (or the provision is void or unenforceable for any other reason), this Agreement does not include the provision and the remainder of this Agreement continues in full force.

#### 8.10 Governing law

This Agreement is governed by the laws of the Queensland, Australia. Each party irrevocably submits to the non-exclusive jurisdiction of the courts of the Queensland, Australia.

#### 8.11 Multiple parties

- (a) If the Customer consists of more than one person, or a term is used in this document to refer to more than one person comprising the Customer, each obligation is imposed on each person jointly and severally and each right is granted on each person severally.
- (b) Despite the definition of 'Frosty Boy' in clause 1.1 referring to Frosty Boy's related bodies corporate, only the entity that is supplying the relevant Products to the Customer will be bound to fulfil the relevant Order. However, each entity that comprises 'Frosty Boy' is entitled to rely on the Customer's covenants and obligations in connection with this Agreement and enforce same directly against the Customer, and the Customer will be deemed to have received notice of acceptance of such covenants and obligations when the first Order is accepted.

#### 8.12 Interpretation

In these Standard Terms:

- (a) headings are for convenience only and do not affect interpretation of this Agreement;
- (b) the provisions of this Agreement must not be construed to the disadvantage of a party merely because that party or its advisers were responsible for proposing or preparing the Agreement;
- (c) a reference to a 'Liability' includes any cost, loss, liability, charge (government or otherwise), tax, duty, penalty, fine, expense (including solicitors' fees on a full indemnity basis), demand, proceeding, suit, action or cause of action, whether arising in contract, tort (including negligence), under statute or otherwise, of whatever nature, known or unknown, liquidated or unliquidated, actual or contingent;
- (d) Business Day means a day that is not a Saturday, Sunday, public holiday or bank holiday in Brisbane, Queensland;
- (e) the words 'includes', 'including', 'such as' or 'for example' (or similar phrases) do not limit what else might be included,

and unless the context otherwise requires:

- (f) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- (g) a reference to a party includes that party's executors, administrators, successors, permitted assigns and, in the case of a trustee, includes any substituted or additional trustee;
- (h) singular includes the plural and vice versa and a reference to person includes a corporation, trust, partnership, unincorporated body, government agency, or other entity whether or not it comprises a separate legal entity;
- (i) a reference to legislation or to a provision of legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
- (j) a reference to any document includes any agreement or other legally enforceable arrangement created by it (whether an agreement, deed or otherwise) and includes any variation, replacement or novation of it from time to time.