



TERMS AND CONDITIONS
Effective as at 26 October 2021

1. General

- 1.1 All Goods or Services are purchased by Hungry Jack's subject to these Terms.
- 1.2 These Terms together with the relevant Purchase Order embody the sole terms and conditions between Hungry Jack's and the Supplier and supersedes all other conditions, representations and agreements between the parties (whether oral or in writing and whether made prior to the date of any Contract), unless expressly amended in writing by Hungry Jack's, or a separate agreement in writing has been specifically signed by the parties. In the event of any inconsistency arising between these Terms and the relevant Purchase Order, these Terms shall prevail to the extent of such inconsistency.
- 1.3 These Terms shall without further notice apply to all future transactions between the parties in relation to the supply of Goods or Services.
- 1.4 Hungry Jack's may vary these Terms from time to time with notice by publishing such variations online on the Hungry Jack's website, together with the date on which the new terms and conditions become effective. It is the Supplier's obligation to ask Hungry Jack's to provide a copy of the most up to date terms and conditions of purchase at the time the Supplier accepts a Purchase Order. By placing a Purchase Order after the date upon which the new terms and conditions of purchase become effective, the Supplier accepts and is bound by the changed terms and conditions. If the Supplier does not accept the changes to the new terms and conditions, it may notify Hungry Jack's to request amendments. No variation or abrogation of these Terms is valid or binding on a party unless made in writing and signed by both parties.
- 1.5 If the Supplier is a small business (as defined under the Australian Consumer Law or other relevant legislation), the Supplier is hereby given the express opportunity to negotiate these Terms. Without limiting any remedies available under the Act, if the Purchaser believes a term contained in these Terms is "unfair" as defined under the Australian Consumer Law, any dispute will be addressed at first instance via the process set out in clause 12.

2. Supply of Goods or Services

- 2.1 The Purchase Order will be deemed to be accepted on the earlier of:
- (a) the Supplier issuing written acceptance of the Purchase Order within 5 Business Days of receipt; or
 - (b) any act by the Supplier consistent with fulfilling the Purchase Order,
- at which point and on which date the Contract shall come into existence, and the Supplier must supply the Goods or Services to Hungry Jack's in accordance with the Purchase Order and these Terms.
- 2.2 On the acceptance or deemed acceptance of each Purchase Order by the Supplier, a separate contract of purchase (**Contract**) will arise. Any Contract will comprise the accepted Purchase Order and these Terms.

3. Price and Payment and GST

- 3.1 Hungry Jack's agrees to pay an undisputed amount of the Price for the Goods or Services within 30 days from the last day of the month the invoice was received unless other terms of payment have been agreed, and after receipt of a valid tax invoice that complies with clause 3.2 from the Supplier.

- 3.2 The invoice must be in a form acceptable to Hungry Jack's. The invoice must specify the Purchase Order number to which the invoice relates.
- 3.3 The Supplier must email all:
- (a) invoices to: invoices@hungryjacks.com.au
 - (b) statements to: Accounts.Payable@hungryjacks.com.au
 - (c) queries to: Accounts.Payable@hungryjacks.com.au.
- 3.4 The Price includes all packaging, transport, customs duty (and any other duties, taxes or levies), insurance, loading, unloading and storage costs, up to the point of Delivery.
- 3.5 Unless expressly stated otherwise, the Price and all amounts referred to in a Contract including amounts used to determine a payment are exclusive of GST (GST Exclusive Consideration). To the extent that GST is payable in respect of a supply made by the Supplier under or in connection with a Contract, the GST Exclusive Consideration to be provided for that supply is increased by an amount equal to the GST payable by the Supplier and Hungry Jack's must pay that additional amount to the Supplier at the same time and in the same manner as the GST Exclusive Consideration subject to Hungry Jack's having first received a valid tax invoice.
- 3.6 Each party agrees to do all things that may be necessary to enable or assist the other party to claim any input tax credit, adjustment or refund in relation to GST paid or payable in respect of any supply made under or in connection with a Contract.
- 3.7 If a payment to a party under a Contract is a payment by way of reimbursement or indemnity and is calculated by reference to the GST inclusive amount of a loss, cost or expense incurred by that party, then the payment is to be reduced by the amount of any input tax credit to which that party is entitled in respect of that loss, cost or expense before any adjustment is made for GST.
- 3.8 Hungry Jack's may withhold payment of the Price under a Contract which do not comply with Supplier's obligations and warranties under clause, and may set-off any amounts owed by Hungry Jack's to the Supplier under a Contract.
- 3.9 The Price and any other payments by Hungry Jack's to the Supplier under a Contract are to be made in Australian currency and will be made by direct deposit into an Australian bank account notified by the Supplier in writing at least 7 Business Days prior to the due date of payment.

4. Risk and title in Goods

- 4.1 Risk in the Goods passes to Hungry Jack's upon Delivery of the Goods. Title in the Goods passes to Hungry Jack's upon Delivery or upon payment by Hungry Jack's for the Goods, whichever occurs first.
- 4.2 The Supplier must fully insure the Goods against loss, destruction and damage until such time as risk passes to Hungry Jack's.

5. Conditions as to quality of Goods or Services and Supplier's warranties

- 5.1 The Supplier warrants that the Goods or Services:
- (a) comply with all Specifications;
 - (b) correspond with any description or sample the Supplier has previously provided to Hungry Jack's;
 - (c) are fit for the purpose which the Supplier has been notified Hungry Jack's intends to use them or for which they are commonly used;
 - (d) are not defective and are of acceptable quality;
 - (e) do not infringe any right of any third party (including, without limitation, any intellectual property right), or applicable law, statute, regulation, code or rule;
 - (f) comply with all relevant legislation;

- (g) where the Goods are intended for human consumption (or are an ingredient to be used in the manufacture of goods intended for human consumption):
 - (i) are fit for human consumption;
 - (ii) comply in all respects with all relevant provisions of all applicable food, health, trade practices, weights and measures and other legislation in Australia;
 - (iii) are not adulterated or contaminated in any way; and
 - (iv) the Goods do not comprise and are not derived from any genetically modified organisms or products, except to the extent agreed by Hungry Jack's.

5.2 Without limiting clause 5.1 above, the Supplier warrants that the Services will:

- (a) be performed by appropriately qualified, skilled and trained personnel;
- (b) be performed with due care and skill in a good and workmanlike manner; and
- (c) comply with all directives and orders given by Hungry Jack's representatives or procedures communicated by Hungry Jack's to the Supplier.

5.3 If Goods or Services (as applicable) do not comply with any of the warranties set out in clause 5, without prejudice to any other right or remedy which Hungry Jack's may have, upon the Supplier receiving written notice from Hungry Jack's that any Goods or Services do not comply with the Supplier's warranties, the Supplier must at its cost and at Hungry Jack's option:

- (a) remove, or collect any such defective Goods or Services from Hungry Jack's premises, or make alternative transport arrangements for such defective Goods or Services to be returned to Supplier, repair or replace the defective Goods or Services, and deliver the repaired or replacement Goods or Services to Hungry Jack's within 10 Business Days of the Supplier being notified of the defect (if the Goods or Services cannot be repaired or replaced so that it can comply with these Terms, the Supplier must refund to Hungry Jack's all money paid in respect of the non-conforming Goods or Services); or
- (b) pay or reimburse to Hungry Jack's any and all costs and expenses required for, or incurred by or on behalf of, Hungry Jack's to repair or replace all or part of any such defective Goods or Services,

provided that the Supplier will not be liable for a defective Good to the extent the defect arose as a direct result of the improper use or handling of the Good by Hungry Jack's.

6. Intellectual property

- 6.1 Nothing in these Terms affects ownership of any Intellectual Property Rights of the parties existing as at the date of a Contract or subsequently arising in relation to the Goods or Services other than as specified in clauses 6.3 and 6.4.
- 6.2 The supply or use of the Goods or Services will not infringe, directly or indirectly the Intellectual Property Rights of any other person.
- 6.3 If any of the Goods or Services have been specifically designed for or requested by Hungry Jack's ("**Custom Works**") all intellectual property in, and relating to, the Custom Works will be Hungry Jack's property.
- 6.4 All intellectual property created by or on behalf of the Supplier in the course of providing the Services to Hungry Jack's ("**Contract Intellectual Property**") will be Hungry Jack's property.
- 6.5 The Supplier must at its own cost to do all things necessary to give effect to clauses 6.3 and 6.4, including signing documents and procuring third party licences and consents necessary to assign all right to the Intellectual Property Rights under clauses 6.3 and 6.4 to Hungry Jack's and reserve all Hungry Jack's Intellectual Property Rights in any agreement which the Supplier enters into with any third party in relation to any Custom Works and/or Contract Intellectual Property.

7. Anti-slavery and human trafficking Laws

- 7.1 The Supplier must, and must ensure that each member of its Personnel, comply with all applicable anti-slavery and human trafficking Laws in force from time to time including the Modern Slavery.
- 7.2 The Supplier represents and warrants that as at the date of a Contract:
- (a) it has investigated its labour practices, to satisfy itself that there is no modern slavery or human trafficking used anywhere in its business or supply chain;
 - (b) none of its Personnel:
 - (i) has been convicted of any offence involving slavery and human trafficking; or
 - (ii) as been or is the subject of any formal complaint, investigating inquiry or enforcement proceedings by any person or regulatory body in connection with slavery and human trafficking.
- 7.3 The Supplier must promptly give to Hungry Jack's all information relating to the due diligence procedures described in clause 7.2(b) and any other information requested by Hungry Jack's (acting reasonably) for the purposes of complying with any anti-slavery and human trafficking laws, or any directions from an authority, as and when required by Hungry Jack's (acting reasonably).
- 7.4 The Supplier must, and must ensure that each member of its respective supply chains implement procedures to identify and eliminate slavery and human trafficking relating to its supply chain.
- 7.5 In the event that Hungry Jack's believes in good faith, that Supplier has breached this clause 7, Hungry Jack's shall have the right to terminate any Contract.

8. Insurance

- 8.1 The Supplier must obtain public liability insurance for not less than \$20 million per occurrence, product liability insurance of not less than \$20 million per occurrence;
- 8.2 The Supplier must obtain workers compensation insurance in respect of its employees to cover the maximum liability which may be imposed by law in each jurisdiction in which the Services are to be provided
- 8.3 If advice and/or design Services are being provided, the Supplier must obtain professional indemnity insurance of not less than \$10 million in respect of any one claim.
- 8.4 The Supplier must provide to Hungry Jack's a certificate of currency of such insurances, within 5 Business Days of Hungry Jack's request

9. Indemnity

- 9.1 The Supplier releases and indemnifies Hungry Jack's, its related bodies corporate, and their respective officers, employees, consultants and agents from and against all actions, claims, proceedings and demands (including those brought by third parties) which may be brought against it or them, whether on their own or jointly with the Supplier, and whether at common law, in equity, pursuant to statute or otherwise, in respect of any loss, death, injury, illness or damage (whether personal or property, and whether direct or consequential, including consequential financial loss) arising out of:
- (a) a breach of the Supplier's warranties or obligations contained in these Terms or any Contract; or
 - (b) any negligent or wrongful act or omission by or on behalf of the Supplier, and from and against all damages, reasonable costs and expenses incurred in satisfying, defending or settling any such claim, proceeding or demand.

10. Compliance with laws

The Supplier must comply with:

- (a) All applicable laws, regulations, industry standards and codes of conduct in Australia and any other relevant jurisdiction including but not limited to occupational health and safety, and environment laws, and the *Privacy Act 1988* (Cth) as amended from time to time; and
- (b) All applicable laws, regulations, industry standards and codes of conduct in Australia any other relevant jurisdiction relating to the nature, method of manufacture, acquisition, testing, packaging, labelling, release for supply and delivery of the Goods or Services, including the [Hungry Jack's Supplier Code of Business Ethics and Conduct](http://www.hungryjacks.com.au) available at www.hungryjacks.com.au.

11. Termination

11.1 Each party may terminate a Contract immediately if the other party:

- (a) commits a breach of any material term of a Contract or these Terms and such breach:
 - (i) is not capable of remedy; or
 - (ii) is capable of remedy but the other party fails to remedy that breach within 14 days from the date of receiving notice in writing of any such breach; or
- (b) becomes Insolvent.

11.2 Upon termination or expiry of a Contract for any reason, the Supplier must fulfil any outstanding Purchase Orders under that Contract existing at the date of termination or expiry unless Hungry Jack's cancels such Purchase Order in writing prior to delivery of the relevant Goods or Services.

11.3 Clauses 5, 8, 9, 11.2, 12 and 13.8 survive the termination or expiry of a Contract for any reason.

12. Dispute Resolution

12.1 If a dispute arises out of or related to these Terms or any Contract, no party may commence court or arbitration proceedings (other than proceedings for urgent interlocutory relief) unless it has complied with this clause 12.

12.2 A party claiming a dispute has arisen out of or related to these Terms or any Contract must give written notice to the other party specifying the nature of the dispute. On receipt of that notice by the other party the parties' representatives must endeavour in good faith to resolve the dispute expeditiously and in any event within 10 Business Days, failing which either party may bring such proceedings as it sees fit.

12.3 The parties must continue to perform their obligations under these Terms or any Contract notwithstanding the existence of any dispute.

13. Miscellaneous

13.1 Any notice given by a party in connection with these Terms or any Contract shall be in writing and will be deemed to have been given when delivered, or sent by post, or email to the party to whom such notice is intended to be given at the postal address or email address of that party provided in this agreement or as otherwise notified in writing to the other party. A notice is deemed to be given and received:

- (a) if hand delivered, on delivery;
- (b) if sent by prepaid post, 3 Business Days after the date of posting, or 6 Business Days if sent to or from another country; or
- (c) if sent by email when the sender's email system generates a message confirming successful transmission of the message.

- 13.2 Neither party may assign or transfer or purport to assign or transfer any of its rights or obligations under or in connection with the Contract to any other person or corporation whatsoever without written consent of the other party.
- 13.3 The Supplier must not subcontract any part of its obligations under a Contract without the written consent of Hungry Jack's.
- 13.4 All Contracts made between the parties shall be governed by and construed in accordance with the laws of New South Wales. The Purchaser agrees to submit to the non-exclusive jurisdiction of the New South Wales Courts and courts of appeal therefrom for all purposes of or in connection with such Contracts.
- 13.5 Any failure by Hungry Jack's to insist upon strict performance by the Supplier of any provision in these Terms or any Contract will not be taken to be a waiver of any existing or future rights of Hungry Jack's in relation to the provision.
- 13.6 These Terms (together with the Contracts) contain the entire agreement of the parties with respect to their subject matter and may only be amended in writing.
- 13.7 Neither these Terms nor any Contract create a relationship of agency, partnership, joint venture or employment between the parties. Neither party has any authority to act for or incur any liability or obligation on behalf of the other party in any manner.
- 13.8 The Supplier must not make press or other announcements or releases relating to these Terms or any Contract or the matters referred to therein without Hungry Jack's prior written approval.
- 13.9 Each party must act towards the other party with good faith.
- 13.10 Upon request by Hungry Jack's, the Supplier agrees to provide Hungry Jack's with sufficient information regarding any hazards inherent to its Goods and harm minimisation procedures in the event of such hazards occurring.

14. Definitions

Business Day means any day except Saturday or Sunday or a day that is a public or bank holiday in New South Wales.

Consideration, GST, Input tax credit, Supply, Tax Invoice, and Taxable Supply have the meanings given to those expressions in the *A New Tax System (Goods or Services Tax) Act 1999* (Cth) as amended from time to time.

Contract means a contract of purchase as referred to in clause 2.3.

Delivery occurs when Hungry Jack's signs the Supplier's delivery receipt.

Goods or Services means the goods or services specified in the Purchase Order to be supplied by the Supplier to Hungry Jack's (also referred to separately as 'Goods' or 'Services').

Hungry Jack's means Hungry Jack's Australia Pty Limited (ABN 83 065 643 343) or Hungry Jack's Pty Limited (ABN 25 008 747 073), as specified in the Purchase Order.

Insolvent means circumstances in which a party is unable to pay its debts as they fall due or otherwise takes any corporate action or any steps are taken or legal proceedings are started for: (a) its winding-up, dissolution, liquidation, or re-organisation, other than to reconstruct or amalgamate while solvent on terms approved by the other party; (b) the appointment of a controller, receiver, administrator, official manager, trustee or similar officer of it or of any of its revenues and assets; or (c) seeking protection or being granted protection from its creditors, under any applicable legislation.

Intellectual Property Rights means all statutory and other related rights in respect of copyright rights anywhere in the world, registered or unregistered, including the following rights:

- (a) patents, copyright (including software), rights in circuit layouts, registered designs, trademarks, know-how, inventions and the right to have confidential information kept confidential; and
- (b) any application or right to apply for registration of any of the rights referred to in paragraph (a) above

Modern Slavery has the meaning given to that term in the *Modern Slavery Act 2018* (NSW) and the *Modern Slavery Act 2018* (Cth) and includes slavery, servitude, forced labour, human trafficking, debt bondage, organ trafficking, forced marriage and the exploitation of children.

Personnel means:

- (a) the officers, employees, contractors (including subcontractors) and agents of that person or any of its related entities; and
- (b) the officers, employees, contractors (including subcontractors) and agents of the contractors of that person or any of its related entities or any other person that forms part of that persons' supply chain.

Price means the price specified in the Purchase Order.

Purchase Order means a purchase order provided by Hungry Jack's to the Supplier, from time to time, which includes and is governed by these Terms.

Related Body Corporate has the meaning given in the *Corporations Act 2001* (Cth).

Specifications means all specifications provided by Hungry Jack's to the Supplier in relation to the Goods or Services including those provided prior to the date of the Purchase Order.

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

Terms means these terms and conditions.

Interpretation

In these Terms and in any Contract to which these Terms apply, unless inconsistent with the context:

- (a) Words importing the singular number shall be deemed to include the plural and vice versa.
- (b) Words importing the male gender shall be deemed to include the female and neuter gender and vice versa.
- (c) A reference to writing or written includes fax and email.
- (d) A reference to a party includes its personal representatives, successors and permitted assigns.
- (e) Any words following the terms including, include, or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- (f) A provision of these Terms or any Contract may not be construed adversely to a party solely on the ground that the party was responsible for the preparation of these Terms or any Contract or the preparation or proposal of that provision.
- (g) A reference to '\$', 'A\$', 'AUD', 'dollars' or 'Dollars' is a reference to Australian dollars.
- (h) The headings in these Terms are provided for convenience only and do not affect the interpretation thereof.