

The Kitchenary Purchase Order Trading Terms



THE KITCHENARY

PURCHASE ORDER - TRADING TERMS:

- 1. Supplies** - The Supplier must provide the Goods and/or Services to The Kitchenary in accordance with this Purchase Order and all Relevant Laws. The Supplier must provide the Goods and/or Services to the nominated sites within the timeframe set out on the front of this Purchase Order.
- 2. Title and risk** - The Goods become the property of The Kitchenary, and the risk of loss or damage to the Goods passes to The Kitchenary, upon acceptance of the Goods. Acceptance of the Goods will occur after satisfactory installation and testing (for Goods that require installation and/or testing) with both parties acting reasonably, or upon delivery of the Goods to the nominated site (for Goods that do not require installation and/or testing).
- 3. Rejected Goods and/or Services** - If there is a Fault in the Goods and/or Services (or part thereof), then The Kitchenary may, irrespective of whether it has accepted and/or paid for the Goods and/or Services, reject the Goods and/or Services promptly following the identification of the Fault (and in any case no later than 6 months from delivery), by giving written notice to the Supplier ("**Rejection Notice**"). In addition to any other rights The Kitchenary has under the Relevant Law, if The Kitchenary gives the Supplier a Rejection Notice, then The Kitchenary may within 2 Business Days, elect for the Supplier to (at the Supplier's cost): (a) promptly collect, replace, repair, or to collect the Goods and refund all payments made by The Kitchenary for the rejected Goods; or (b) re-perform the rejected Services at no additional cost to The Kitchenary.
- 4. Subcontracting** - The Supplier must not subcontract or otherwise arrange for all or any part of its obligations under this Purchase Order to be performed by any other person without the prior written consent of The Kitchenary. Irrespective of the Supplier entering into the subcontract, the Supplier is not discharged from any obligation or liability that it has to The Kitchenary under or arising from this Purchase Order. The Supplier is responsible for all acts and omissions of its subcontractors as if they were those of the Supplier. The Supplier remains liable to The Kitchenary for the acts, omissions, defaults or negligence of any subcontractor as fully as if they were the acts, omissions, defaults or negligence of the Supplier.
- 5. Warranties** - The Supplier represents and warrants that it has full capacity, and all licences, approvals, permits and consents or qualifications required under all Relevant Laws to comply with this Purchase Order. In respect of Goods, the Supplier warrants that the Goods are of good quality, fit for purpose and free from defects and omissions in material, design or workmanship, have been manufactured from legally and sustainably harvested timber, and are unused and free from any charge, encumbrance or defect in title and comply with all Relevant Laws (including, but not limited to illegal logging prohibitions). In respect of Services, the Supplier warrants that it will perform the Services with due care, skill and workmanship and in accordance with industry best practice and in compliance with all Relevant Laws. The Supplier also warrants that the Goods and/or Services and their use will not infringe the Intellectual Property Rights of any third party or misuse any person's Confidential Information. Nothing in these terms and conditions limits or excludes any rights available to The Kitchenary under law or in equity, including rights and remedies available under consumer protection legislation, to the extent they apply.
- 6. The Kitchenary Policies** - The Supplier must ensure that it and all its Representatives comply with the Human Rights Policy and Responsible Sourcing Standards (being that of the Woolworths Group, see <https://partnerhub.TheWoolworthsgroup.com.au/s/article/Woolworths-Responsible-Sourcing-Program>) and Gifts and Entertainment Policy (being that of the Woolworths Group, see <https://partnerhub.woolworthsgroup.com.au/s/article/Gifts-and-Entertainment-Policy1>) (to the extent applicable to the Supplier, the Supply or the Supplier's dealings with The Kitchenary or its sites).
- 7. Work Health and Safety** - In respect of the provision of the Supplies, the Supplier must, and must ensure its Representatives, comply with all work health and safety legislation, codes of practice and standards applicable or relevant to the Supply. The Supplier must promptly notify The Kitchenary of any accident or incident, injury or illness, fatality, property or environmental damage (or any "near miss" which exposes any person to a risk of any of the foregoing) that occurs during the provision of the Supply or which may adversely affect the provision of the Supply. Within 5 Business Days of any such accident, incident, or other event or "near miss" referred to above, the Supplier must provide The Kitchenary with a report giving complete details of the event or "near miss", including results of investigations into its cause, and any recommendations or strategies for future prevention.
- 8. Confidential Information** - Each party acknowledges that the Confidential Information of the other party is valuable to the other party. Each party undertakes to use the Confidential Information of the other party only for the purposes of the Supply, and to keep the Confidential Information of the other party confidential, except when, and only to the extent that, any disclosure is required by law, or under the listing rules of the Australian stock exchange, or where the other party has agreed in writing to such disclosure.
- 9. The Kitchenary Data** - The parties must comply with the relevant privacy legislation that applies to the jurisdiction where the Goods and/or Services are provided or performed. The Supplier must not disclose The Kitchenary Data outside of Australia without The Kitchenary's prior written consent. Supplier agrees that The Kitchenary owns The Kitchenary Data and all Intellectual Property Rights in The Kitchenary Data.
- 10. The Kitchenary Intellectual Property** - All Intellectual Property Rights in any materials provided by The Kitchenary to the Supplier are either licensed to (on a non-transferable, royalty-free, non-exclusive basis for the duration of the Supply) or are the property of The Kitchenary, and this Purchase Order does not convey to the Supplier any right, title or interest in them. The Supplier's only right with respect to The Kitchenary's Intellectual Property, is the right to use the Intellectual Property to provide the Goods and/or Services in accordance with this Purchase Order. Upon the Supplier or its Representatives creating any material which either: (a) contains or was created using any The Kitchenary Intellectual Property; or (b) was created for and/or jointly with The Kitchenary, in connection with the Supply or this Purchase Order (together, "**Created Material**"), the Supplier assigns all of the Intellectual Property Rights in the Created Material to The Kitchenary.
- 11. Invoicing and Payment** - The Supplier must invoice The Kitchenary for Goods, upon delivery of the Goods and for Services, upon completion of the performance of the Services. The Kitchenary will pay each correctly rendered Tax Invoice within 30 days following the end of the month in which The Kitchenary receives that invoice or receives the correct good or service from the Supplier (whichever is the later), unless the Supplier has applied for and satisfied the eligibility requirements of The Kitchenary Group Small Supplier Policy (in which case The Kitchenary Group Small Supplier Policy will prevail), or is otherwise agreed in writing or is required by Relevant Law. The Kitchenary is not liable to the Supplier for any loss or damage resulting from The Kitchenary relying on the details the Supplier provided to The Kitchenary in connection with the Supply, including if such details are incorrect, incomplete or out of date, except where The Kitchenary caused or contributed to the loss or damage through its own unlawful or negligent act or omission. Either party may, acting reasonably, set off any amount(s) owing to that party from the other party from amounts payable by that party to the other party under this Purchase Order. Subject to **clause 12 (GST)**, the charges are fixed and no other amounts are payable by The Kitchenary to the Supplier under this Purchase Order.
- 12. GST** - Unless expressly stated otherwise, all amounts payable or other consideration provided in respect of supplies made in relation to the Purchase Order are exclusive of GST and to the extent GST is payable on a corresponding supply, such amounts shall be increased by the amount of GST payable on the supply. If the Supplier is required to pay any GST on any supply made by The Kitchenary to the Supplier, the Supplier must within 14 days after receiving a Tax Invoice, pay to The Kitchenary an amount equivalent to that GST. Despite **clause 11 (Invoicing and Payment)**, The Kitchenary may elect to issue RCTIs in respect of any supplies made by Supplier to The Kitchenary in which case: (a) Supplier accepts The Kitchenary's election and agrees that it will constitute a written agreement for The

Kitchenary to issue RCTIs in respect of the identified supplies; (b) the supplies being delivered under the Purchase Order are of the type for which a RCTI can be issued; (c) where The Kitchenary issues a RCTI, the Supplier shall not issue a Tax Invoice in respect of any of the supplies for which The Kitchenary has elected to issue a RCTI; and (d) each party acknowledges that it is registered for GST and that it will notify the other if it ceases to be registered for GST. Terms defined in the GST Act have the same meaning when used in this **clause 12 (GST)** (as the context requires).

13. Indemnity - Each party (**Indemnifying Party**) indemnifies the other party and its Representatives (each an **Indemnified Party**) against all losses, damages, liabilities, claims and expenses (including legal costs) incurred by an Indemnified Party, in respect of: (a) any death or injury to persons or any loss or damage to real or personal property of an Indemnified Party or a third party caused by any act or omission of an Indemnifying Party that arises in connection with the Supply or this Purchase Order; (b) any infringement of the Intellectual Property rights of an Indemnified Party or of any third party; and (c) any breach of **clause 8 (Confidential Information)** by an Indemnifying Party. The indemnity under this **clause 13 (Indemnity)** is reduced proportionately to the extent that an Indemnified Party's wrongful or negligent act or omission contributed to the loss or damage incurred by an Indemnified Party. To the maximum extent permitted under law, the parties agree that the operation of any proportionate liability legislation in the relevant jurisdiction is excluded.

14. Insurance policies - Prior to supplying the Goods and/or Services, the Supplier must maintain at its own cost, comprehensive insurance policies with a reputable and financially sound insurer in relation to any liability arising out of this Purchase Order (including where relevant, workers compensation, public and product liability of at least \$10,000,000 per claim (and in the aggregate for product liability insurance)) and upon request by The Kitchenary must provide to The Kitchenary proof that such insurances have been maintained. The Supplier must ensure that its subcontractors have similar insurance for the Supply under this Purchase Order (including, the amount of insurance, types of insurance and period of insurances).

15. Variation and Termination - The Kitchenary may vary or cancel this Purchase Order at any time before it has been accepted by the Supplier. The Kitchenary may terminate this Purchase Order immediately: (a) if the Supplier is insolvent (to the extent such right is not stayed by the operation of law); (b) if any of its representations or warranties were not, to the best of the Supplier's knowledge, accurate or true; or (c) if the Supplier commits a material breach of any term or condition under this Purchase Order: (i) which is not capable of remedy; or (ii) which is capable of remedy but is not remedied by the Supplier within 10 Business Days from receipt of a written notice from The Kitchenary requesting the Supplier to do so. The Supplier may terminate this Purchase Order upon 30 Business Days' notice to The Kitchenary if The Kitchenary commits a material breach of any term or condition under this Purchase Order: (i) which is not capable of remedy; or (ii) which is capable of remedy but is not remedied by The Kitchenary within 10 Business Days from receipt of a written notice from Supplier requesting The Kitchenary to do so. Upon termination for any reason, The Kitchenary must pay the Supplier for all Goods delivered and/or Services performed (as applicable) up to the termination date and in the event that the Supplier has incurred costs pre-approved by The Kitchenary in relation to the supply of the Goods prior to the termination date, then The Kitchenary may: (a) reimburse the Supplier for such costs that can be substantiated by documentary evidence available for inspection and review by The Kitchenary; and/or (b) procure all current, non-obsolete supplies and raw materials (as applicable) in relation to those costs to be delivered to The Kitchenary at the Supplier's cost.

16. Modern slavery, anti-bribery and corruption - In performing its obligations in connection with this Purchase Order, the Supplier will, and will ensure that each of its Representatives will: (a) comply with: (i) all Modern Slavery Requirements; and (ii) all Relevant Laws in relation to anti-bribery, anti-corruption, money laundering, fraud or similar activities; and (b) do all things required and necessary to mitigate or reduce modern slavery risks in its operations and supply chains and enable The Kitchenary to comply with Modern Slavery Requirements. The Supplier must immediately give written notice to The Kitchenary if it becomes aware of a suspected or actual breach by it or its Representatives under the requirements set out in this **clause 16 (Modern slavery, anti-bribery and corruption)**.

17. Notices - All notices and other communications in connection with this Purchase Order must be in writing, signed by the sender or its authorised representative and sent by post or email to the address set out on the front of this Purchase Order. A notice is taken to be received: (a) if sent by post within Australia, on the 6th Business Day after the date of posting (or on the 10th Business Day after the date of posting if sent to or from a place outside Australia); or (b) if sent by email: (i) when the sender receives an automated message confirming delivery; or (ii) 4 hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that delivery failed, whichever happens first.

18. Assignment - A party must not assign, transfer, novate, encumber or otherwise deal with all or part of its rights or obligations under this Purchase Order without the other party's prior written consent, which will not be unreasonably withheld (except that The Kitchenary may assign, transfer or novate its rights and obligations under this Purchase Order to a member of the Woolworths Group on notice to the Supplier without the Supplier's prior written consent).

19. Governing law - This Purchase Order is governed by the law in force in New South Wales, Australia. Each party submits to the non-exclusive jurisdiction of the courts of that place.

20. Survival - The following terms and conditions under this Purchase Order will survive termination or expiration: 2 (Title and risk) 4 (Subcontracting) 5 (Warranties) 8 (Confidential Information) 9 (The Kitchenary Data) 10 (The Kitchenary Intellectual Property) 11 (Invoicing and Payment) 12 (GST) 13 (Indemnity) 14 (Insurance Policies) 17 (Notices) 19 (Governing Law), 20 (Survival), 22 (Disputes) and 23 (Definitions).

21. No relationship - Nothing in this Purchase Order will be taken to constitute the Supplier as an employee, agent, partner or joint venturer of The Kitchenary nor is the Supplier authorised to incur any obligation on behalf of The Kitchenary.

22. Disputes - In the event a dispute arises in connection with this Purchase Order, the parties agree to notify the other party in writing and use reasonable endeavours to resolve the matter through discussions with the other party prior to commencing any court proceedings.

The following supplementary clauses also apply to the procurement of ingredients and/or materials for Goods sold by The Kitchenary:

23. Rejected Goods - The Kitchenary must inspect the Goods within the expected life of the Goods (as set out in the specifications) and no more than 6 months after delivery of the Goods, notify the Supplier if The Kitchenary identifies a Fault in the Supply (**Non-Compliant Supply**). The Kitchenary must notify the Supplier in writing, promptly, if The Kitchenary identifies a Non-Compliant Supply (failure to provide such notice in respect of a delivery will be deemed acceptance that the delivery is not a Non-Compliant Supply). If written notice is provided, the Supplier may review and investigate the alleged Non-Compliant Supply and where requested, The Kitchenary will provide all necessary assistance to allow the Supplier to do so. If the parties do not agree in relation to a material aspect of the Non-Compliant Supply, the parties will jointly appoint an independent expert to assess the Non-Compliant Supply with costs for the expert assessment to be paid by the unsuccessful party. Where the Non-Compliant Supply is not accepted by The Kitchenary or confirmed by the expert as being a Non-Compliant Supply, the Supplier will at The Kitchenary's election, rectify the Non-Compliant Supply, replace the rejected Goods, or refund all payments made for the rejected Goods.

24. Product safety - Upon request, the Supplier must provide The Kitchenary with independent test reports of all Goods that are subject to any standard, or which may be subject to a product ban, imposed under any Relevant Law. The Kitchenary may conduct audits

as reasonably required (which may include site visits or virtual site visits) and/or ask the Supplier to provide reasonable evidence of the compliance of relevant Goods with applicable standards or product bans under any Relevant Law at any time until two years after delivery of the Goods.

25. Product recalls

- a) **Obligation to Notify:** The Supplier must immediately notify The Kitchenary in writing if it becomes aware of any defects, safety issues, or non-compliance with any Relevant Laws relating to the Goods supplied under this Agreement that could reasonably necessitate a product recall and withdrawal.
- b) **Initiation of Recall and Withdrawal:** The Kitchenary has the sole discretion to initiate a product recall and withdrawal if it reasonably believes that the Goods supplied are defective, unsafe, or non-compliant with any Relevant Laws. The Supplier must cooperate fully with The Kitchenary in all matters relating to the recall and withdrawal.
- c) **Recall Procedures:** Upon initiation of a recall and withdrawal, the Supplier must:
 - i) Cease the supply of the affected Goods immediately.
 - ii) Assist The Kitchenary in developing and implementing a recall and withdrawal strategy, including but not limited to notifications, retrieval, and disposal of the recalled and withdrawn Goods.
 - iii) Provide all necessary documentation and information to The Kitchenary to facilitate the recall and withdrawal process.
- d) **Costs and Expenses:** The Supplier shall bear all reasonable costs and expenses associated with the recall and withdrawal, including but not limited to:
 - i) The cost of notifying customers and end-users.
 - ii) Retrieval and transportation costs for the recalled and withdrawn Goods.
 - iii) Costs associated with the disposal or destruction of the recalled and withdrawn Goods.
 - iv) Any other costs reasonably incurred by The Kitchenary in connection with the recall and withdrawal.
- e) **Replacement or Refund:** At The Kitchenary's option, the Supplier must either replace the recalled and withdrawn Goods with compliant Goods or refund The Kitchenary for the purchase price of the recalled and withdrawn Goods, including any associated taxes and fees.
- f) **Indemnification:** The Supplier agrees to indemnify The Kitchenary against all losses, damages, liabilities, claims and expenses (including legal costs) incurred by The Kitchenary and its Representatives in respect of the recall and withdrawal of the Goods. The indemnity under this clause (f) is reduced proportionately to the extent that The Kitchenary's wrongful or negligent act or omission contributed to the loss or damage incurred by The Kitchenary.
- g) **Reporting to Authorities:** If required by Relevant Law, the Supplier must report the recall and withdrawal to the relevant Government Agency and provide The Kitchenary with copies of any such reports.
- h) **Record Keeping:** The Supplier must maintain accurate records of the manufacture, distribution, and recall and withdrawal of the Goods for a period of no less than 7 years and provide copies of such records to The Kitchenary upon request.

26. Supplementary clauses prevail - To the extent that there is any inconsistency between these supplementary clauses and any other clause in these Purchase Order terms, the supplementary clauses prevail to the extent necessary to resolve the inconsistency.

27. Definitions -

Business Day means a day other than a Saturday, Sunday or public holiday in the location in which the Goods are delivered to or the Services are performed (as relevant).

Confidential Information means the Purchase Order and all data, information, text, drawings or other material disclosed (or exposed during the performance of the Supply) by the parties to the other in connection with this Purchase Order, which is not already in the public domain as at the date of this Purchase Order. For the avoidance of doubt, The Kitchenary Data is Confidential Information.

Created Material has the meaning given under **clause 10 (The Kitchenary Intellectual Property)**.

Fault means any defect, fault, impairment in or damage to the Goods and/or Services that results or may result in non compliance with the requirements of this Purchase Order or any Relevant Laws.

Goods means the goods (including packaging and labelling) set out on the front page of this Purchase Order (if any).

GST has the meaning it has in the GST Act.

GST Act means *A New Tax System (Goods and Services Tax) Act 1999*.

Intellectual Property Rights means all intellectual property rights including current and future registered and unregistered rights in respect of copyright, designs, circuit layouts, trademarks, trade secrets, know-how, confidential information, patents, invention and discoveries and all other intellectual property as defined in article 2 of the convention establishing the World Intellectual Property Organisation 1967.

Modern Slavery has the meaning given to it under the *Modern Slavery Act 2018* (Cth).

Modern Slavery Requirements means any Relevant Laws in relation to Modern Slavery and any Woolworths Group policy and standard in relation to responsible sourcing, provided that such requirements do not conflict with Relevant Laws in relation to Modern Slavery.

Non-Compliant Supply has the meaning given under **clause 23 (Rejected Goods)**.

Purchase Order means the purchase order form issued by The Kitchenary to the Supplier in respect of the Supply, which is governed by these terms and conditions and forms the contract between the parties.

RCTI means recipient created tax invoices as defined in *A New Tax System (Goods and Services Tax) Act 1999*.

Rejection Notice has the meaning given under **clause 3 (Rejected Goods and/or Services)**.

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

Relevant Law means any statute, ordinance, code or other law including regulations under them and any code of practice, membership rules or standards issued by relevant regulators or industry bodies, whether not having the force of law, applicable to this Purchase Order, the Confidential Information, the Intellectual Property Rights, the provision of the Goods and/or Services or any other obligations under this Purchase Order.

Representatives means an employee, agent, officer, director, auditor, advisor, partner, consultant, contractor or subcontractor of that party, but in the case of The Kitchenary does not include Supplier.

Separate Supply Agreement has the meaning given under the “Important Notice” section on the front page of this Purchase Order.

Services means the services set out on the front page of this Purchase Order and any ancillary services reasonably requested for the proper performance of the Services (if any).

Supplier means the party identified as the supplier on the front page of this Purchase Order. **Supply** means the supply of the Goods and/or Services.

Taxes means taxes, levies, imposts, charges and duties (including stamp and transaction duties) imposed by any authority together with any related interest, penalties, fines and expenses in connection with them except if imposed on, or calculated having regard to, the net income of The Kitchenary.

Tax Invoice has the meaning given to it in the GST Act.

The Kitchenary means The Kitchenary Pty Ltd ABN 82 619 485 353.

The Kitchenary Data means: (a) all data, information, text, drawings or other material which is accessed, collected, stored, processed, retrieved, used or generated by the Supplier in the course of performing this Purchase Order; and: (i) are supplied by The Kitchenary to the Supplier under or in connection with this Purchase Order; or (ii) relate to The Kitchenary’s operations, facilities, customers, personnel, assets, programs or the Services; and (b) any personal information (as defined under the relevant privacy legislation) the Supplier is provided with, collects or accesses in connection with this Purchase Order.

The Kitchenary Group Small Supplier Policy means the following policy <https://TheKitchenary.com.au/Small-Supplier-Policy> (as updated by The Kitchenary from time to time) for payments to be made to small suppliers in relation to correctly rendered invoices.

The Kitchenary Intellectual Property means all Intellectual Property Rights owned by The Kitchenary Group.

Woolworths Group means Woolworths Group Limited, its Related Bodies Corporate and its joint venture partners.