

## Terms and Conditions of Sale

### 1. DEFINITIONS AND INTERPRETATION

#### 1.1 In this agreement, the following terms have the following meanings.

**Commissioning Date** means the date that the Solution is fully installed, commissioned, tested and operational.

**Equipment** means the Equipment (machinery or parts) described in the Quotation and/or Order Acknowledgment.

**Order Acknowledgment** means the document provided by Flavourtech to the Purchaser confirming:

- (a) receipt of the purchase order from the Purchaser;
- (b) the Price payable for the Solution and Services, and receipt of the applicable deposit; and
- (c) the Specifications for the Solution and Services.

**Order Variation Document** means a document that specifies any changes to the Specifications after Flavourtech has issued the Order Acknowledgment to the Purchaser.

**Performance Criteria** means the guaranteed levels of performance of the Solution, as may be specified in the Quotation and/or Order Acknowledgment.

**Price** means the price of the Solution and Services that is to be paid to Flavourtech by the Purchaser as specified in the Quotation and confirmed in the Order Acknowledgment.

**Quotation** means the document provided by Flavourtech to the Purchaser pursuant to clause 2.2 for the purposes of enabling the Purchaser to decide whether to place a purchase order with Flavourtech to acquire the Solution and Services.

**Services** means the technical services described in the Quotation, the Order Acknowledgment and any Order Variation Document.

**Site** means the physical location where the Solution will be installed and the Services will take place.

**Solution** means the technology solution designed for the Purchaser and comprised of the Equipment, as described in the Quotation, the Order Acknowledgment and any Order Variation Document.

**Specifications** has the meaning given to that term in clause 3.1.

**Warranty Period** means, in respect of the Solution, the period of twelve (12) months following installation of the Solution to Purchaser (or such longer period as may be required by consumer law in the country where the Site is located).

#### 1.2 In this agreement:

- (a) the meaning of any general language is not restricted by any accompanying example, and the words 'includes', 'including', 'such as' or 'for example' (or similar phrases) do not limit what else might be included;
- (b) this agreement is not to be interpreted against the interests of a party merely because that party proposed this agreement or some provision in it or because that party relies on a provision of this agreement to protect itself;
- (c) a reference to 'month' means calendar month;
- (d) a reference to a document or agreement (including a reference to this agreement) is to that document or agreement as amended, novated, supplemented, varied or replaced; and
- (e) a reference to a party is a reference to Flavourtech or the Purchaser, and a reference to the parties is a reference to both Flavourtech and the Purchaser.

### 2. FORMATION OF CONTRACT

**2.1** The Purchaser may, from time to time, place a request to acquire a Solution and Services from Flavourtech.

**2.2** Following the Purchaser's request, Flavourtech may issue a Quotation specifying:

- (a) the Solution;
- (b) the Services;

(c) the Price payable for the Solution and Services; and

(d) any additional terms applicable to the supply and purchase of the Solution and Services.

**2.3** No contract shall be entered into between Flavourtech and the Purchaser until:

- (a) the Purchaser issues a purchase order to Flavourtech offering to acquire the Solution and Services on the basis of the Quotation; and
- (b) Flavourtech issues an Order Acknowledgment to the Purchaser confirming acceptance of the Purchaser's purchase order on the basis of the Quotation and the Order Acknowledgment.

**2.4** The Purchaser acknowledges that Flavourtech is not obliged to accept any request or purchase order that it receives from the Purchaser, and that the Purchaser's purchase order is only accepted when Flavourtech responds by way of an Order Acknowledgment.

**2.5** Unless otherwise specified, the Quotation will remain valid for a period of thirty (30) days from the date of the Quotation and will thereafter expire if:

- (a) the Purchaser does not issue a purchase order in accordance with clause 2.3; or
- (b) the Quotation is not extended by Flavourtech in writing.

**2.6** The terms and conditions of this agreement, together with the Quotation and the Order Acknowledgment, form the contract between the Purchaser and Flavourtech. Any terms and conditions contained in the purchase order or any ordering document issued by the Purchaser to Flavourtech is, unless otherwise agreed in writing by Flavourtech, of no force and effect.

**2.7** In the case of any discrepancy or inconsistency between the terms and conditions of:

- (a) the Order Acknowledgment;
- (b) the Quotation; and
- (c) this agreement,

the terms and conditions of the document listed higher in the list will prevail to the extent of that discrepancy or inconsistency.

### 3. SPECIFICATIONS

**3.1** Following the Purchaser issuing a purchase order in accordance with clause 2.3, the parties will work together in good faith to agree the technical specifications in relation to the Solution and Services, which may include (among other things) details of the Equipment to be supplied as part of the Solution, design drawings and Purchaser dependencies and requirements (**Specifications**).

**3.2** The Specifications will be documented as part of the Order Acknowledgment.

### 4. CHANGES

**4.1** After the Order Acknowledgment has been issued by Flavourtech to the Purchaser, any variation to the Quotation, Order Acknowledgment or the Specifications that is agreed between the parties will be documented by Flavourtech and included as part of an Order Variation Document.

**4.2** The Purchaser must review and sign the Order Variation Document following its receipt, at which point the Order Variation Document will form part of this agreement.

**4.3** The Purchaser acknowledges that Flavourtech is not obliged to commence manufacture of the Solution, or performance of the Services, until the Order Acknowledgment has been issued by Flavourtech to the Purchaser and any Order Variation Document has been signed by the Purchaser in accordance with clause 4.2.

- 4.4** In the case of any discrepancy or inconsistency between the terms and conditions of:
- an Order Variation Document; and
  - this agreement, the Quotation and the Order Acknowledgment, the terms and conditions of the Order Variation Document prevail to the extent of that discrepancy or inconsistency.
- 5. FLAVOURTECH'S RESPONSIBILITIES**
- 5.1** Subject to payment of the Price by the Purchaser to Flavourtech, Flavourtech will supply the Solution and the Services to the Purchaser.
- 5.2** Flavourtech will comply with its obligations as specified in the Quotation, the Order Acknowledgment, any Order Variation Document and this agreement in a timely and professional manner.
- 6. PURCHASER'S RESPONSIBILITIES**
- 6.1** The Purchaser must obtain all necessary licences, permits, consents, authorisations, approvals and assurances for the delivery, installation, testing, commissioning, use and operation of the Solution and the provision of the Services.
- 6.2** The Purchaser must comply with its obligations as specified in the Quotation, the Order Acknowledgment, any Order Variation Document and this agreement in a timely and professional manner.
- 7. PRICE**
- 7.1** The Price does not include GST or any other taxes, duties, government charges or fees of a similar nature unless otherwise stated in the Quotation.
- 7.2** The Purchaser must promptly, at Flavourtech's option, either reimburse Flavourtech or make funds available to pay for any GST or any other taxes, duties, government charges or fees of a similar nature (including fines, penalties and interest) imposed or levied in Australia or overseas in connection with the performance of this agreement, including in respect of the sale, delivery installation, commissioning, operation and use of the Solution and the provision of the Services.
- 8. TITLE AND RISK OF LOSS OR DAMAGE**
- 8.1** Subject to clause 8.6, notwithstanding delivery of the Solution (or any part of it), title to the Solution remains with Flavourtech until the Price, and all other monies owed to Flavourtech by the Purchaser in connection with this agreement, has been paid in full to Flavourtech.
- 8.2** The risk of loss or damage in the Solution passes to the Purchaser at the delivery point specified in the Quotation, Order Acknowledgment and/or any Order Variation Document. The Purchaser is responsible for the care, safeguarding and insurance of the Solution from this point on.
- 8.3** Subject to clause 8.6, the Purchaser acknowledges that it is in possession of the Solution solely as bailee for Flavourtech until payment in full of the Price. For as long as any part of the Price remains unpaid, the Purchaser agrees that:
- it will store the Solution separately from other goods of the Purchaser, so that the Solution is not mixed with those other goods and in such a way that the Solution is recognisable as the property of Flavourtech;
  - Flavourtech will have the right of access to Purchaser's premises at any time during normal business hours for the purpose of removing the Solution and holding and selling it in order to recover payment of monies due from the Purchaser; and
  - Flavourtech has a purchase money security interest in the Solution until such time that the Price has been paid. This agreement may also create a security interest in the Solution that is not a purchase money security interest.
- 8.4** The Purchaser must not resell, lease or otherwise dispose of the Solution (or any part of it) without the prior consent in writing of Flavourtech for so long as the Price remains unpaid. Where Flavourtech gives its consent, the Purchaser may only sell, lease or dispose of the Solution (or part) as agents and bailees for Flavourtech and the entire proceeds from any sale must be held in trust for Flavourtech.
- 8.5** While the Solution remains the property of Flavourtech, the Purchaser must not grant or allow another person to hold a higher ranking security interest in the Solution (or any part of it), the proceeds of the Solution (or any part of it) or any goods to which the Solution (or any part of it) is installed or affixed. It is a condition of this agreement that the Purchaser complies with this clause 8.5.
- 8.6** The following clause 8.7 applies where the Solution (or any part of it) is delivered to a Site in Australia.
- 8.7** Capitalised terms in this clause 8.7 have the same meaning as given to them in the *Personal Property Securities Act 2009* (Cth) (**PPSA**).
- Flavourtech and the Purchaser acknowledge that title to the solution supplied by Flavourtech to the Purchaser does not pass to the Purchaser until receipt by Flavourtech of payment of the Price and this document constitutes a Security Agreement and gives rise to a Purchase Money Security Interest (**PMSI**) in favour of Flavourtech over the Solution.
  - The Solution falls within the PPSA classification of "Other Goods" acquired by the Purchaser pursuant to this agreement.
  - Flavourtech and the Purchaser acknowledge that Flavourtech, as Security Party, is entitled to register its interest in the Solution under this agreement on the PPSA Register as Collateral.
  - To the extent permissible at law, the Purchaser:
    - waives its right to receive notification of or a copy of any Verification Statement confirming registration of a Financing Statement or a Financing Change Statement relating to a Security Interest granted by the Purchaser, as Grantor, to Flavourtech;
    - agrees to indemnify Flavourtech on demand for all costs and expenses, including legal costs and expenses on a solicitor/client basis, associated with the:
      - registration or amendment or discharge of any Financing Statement registered by or on behalf of Flavourtech; and
      - enforcement or attempted enforcement of any Security Interest granted to Flavourtech by the Purchaser;
    - agrees that nothing in sections 130 to 143 of the PPSA will apply to this agreement or the Security under this agreement;
    - agrees to waive its right to any of the following under the PPSA:
      - receive notice of removal of an Accession under section 95;
      - receive notice of an intention to seize Collateral under section 123;
      - object to the purchase of the Collateral by the Security Party under section 129;
      - receive notice of disposal of Collateral under section 130;
      - receive a Statement of Account if there is no disposal under section 130(4);
      - receive a Statement of Account under section 132(3)(d) following a disposal showing the amounts paid to other Security Parties and whether Security Interests held by other Secured Parties have been discharged;
      - receive notice of retention of Collateral under section 135;
      - redeem the Collateral under section 142; and
      - reinstate the Security Agreement under section 143.
- 9. PAYMENT TERMS**
- 9.1** The Purchaser must pay Flavourtech the Price in the currency and on the terms set forth in the Quotation, Order Acknowledgment and/or any Order Variation Document. If there are no payment terms in the Quotation, Order Acknowledgment and/or the Order Variation Document, the Purchaser must pay Flavourtech the Price in Australian currency within fifteen (15) days from the date of invoice.
- 9.2** Transfer of funds must be made in accordance with a mutually agreed upon procedure. If no procedure is agreed upon, the Purchaser must transfer funds by telegraphic transfer as directed by Flavourtech free and clear of any encumbrances, levies, bank charges or fees of any nature whatsoever.
- 9.3** In the event the Purchaser does not strictly comply with the terms of payment set out in the Quotation, Order Acknowledgment, any Order Variation Document or this agreement, Flavourtech may, in addition to any other remedies available to Flavourtech, suspend all performance of its obligations under this agreement until such time as the Purchaser has so complied.
- 9.4** Interest will be charged on overdue amounts, calculated at a daily rate which is 2% in excess of the published Australia and New Zealand Banking Group Limited variable interest rate for personal loans (or, if lower, the maximum rate permitted by applicable law).

**9.5** The Purchaser must not set off against any amount owing by the Purchaser any amounts owing or claimed to be owing by Flavourtech to the Purchaser.

## **10. DELIVERY**

- 10.1** Flavourtech will, at its own cost, pack the Equipment in a manner suitable to protect the Equipment during transit. Each package or non-crated item will be appropriately marked and labelled.
- 10.2** Unless otherwise specified, the time for delivery of the Solution will start to run once:
- (a) the Order Acknowledgment has been issued by Flavourtech to the Purchaser in accordance with clause 2.3;
  - (b) any Order Variation Document has been signed by the Purchaser in accordance with clause 4.2; and
  - (c) Flavourtech is in receipt of:
    - (i) any instalments of the Price then due and payable by the Purchaser to Flavourtech in accordance with the Quotation, Order Acknowledgment and/or any Order Variation Document; and
    - (ii) any applicable security for the remaining part of the Price.
- 10.3** Flavourtech's ability to deliver the Solution in a timely manner is expressly contingent on the timely performance by the Purchaser of all of the Purchaser's dependencies, requirements and obligations set out in the Quotation, Order Acknowledgment, any Order Variation Document and this agreement. If the Purchaser fails to perform in timely manner, and Flavourtech is unable therefore to deliver the Equipment in a timely manner, Flavourtech will have no liability to the Purchaser for any delays incurred.
- 10.4** Times or dates of delivery indicated to the Purchaser are estimates only unless expressly guaranteed by Flavourtech in the Quotation, Order Acknowledgment or Order Variation Document. Every reasonable effort will be made to deliver the Solution on time, however, failure to do so will not confer a right of cancellation or refusal of delivery on the Purchaser or render Flavourtech liable for any damages (whether direct or indirect) sustained by the Purchaser as a result of the delay.
- 10.5** If Flavourtech is unable to supply the Solution in accordance with any agreed time schedule through the fault of the Purchaser or the Purchaser's agents or subcontractors, the Purchaser must continue to pay Flavourtech in accordance with its obligations under clause 9.
- 10.6** If the Purchaser is unable or unwilling to accept physical delivery of the Solution at the time it is ready for delivery, Flavourtech may, at the request of the Purchaser, arrange for the storage of the Solution at the risk and cost of the Purchaser, including all transportation, warehousing and other consequential costs. The Purchaser must pay such costs to Flavourtech upon request.

## **11. WARRANTIES**

- 11.1** Flavourtech warrants to the Purchaser that the Solution is as specified in the Quotation, Order Acknowledgment and/or and Order Variation Document. Flavourtech further warrants that the Solution will be free from defects in design, material and workmanship during the Warranty Period.
- 11.2** Flavourtech will, at its option, repair, replace or refund that part of the Price attributable to any part of the Solution found to be defective during the Warranty Period. To the fullest extent permitted by law, this is Purchaser's sole and exclusive remedy for the Solution (or any part) which does not meet the warranty referred to in clause 11.1. The Purchaser must notify Flavourtech in writing of the claimed defect promptly after becoming aware of it and, in any event, no later than the end of the Warranty Period.
- 11.3** Flavourtech will have no responsibility for damage caused to the Solution (or any part of it) by:
- (a) ordinary wear and tear; or
  - (b) unintended use, misuse, abuse, or improper storage, installation, maintenance, operation or repairs by the Purchaser or by any person not under Flavourtech's supervision.
- 11.4** Flavourtech will bear all transportation costs and risks associated with the:
- (a) return to Flavourtech of defective items of the Solution for repair or replacement within the Warranty Period; and
  - (b) delivery to the Purchaser of any items of the Solution which are repaired or replaced by Flavourtech.
- 11.5** Any defective items of the Solution which are replaced by Flavourtech will become Flavourtech's property.

## **12. INSPECTION**

- 12.1** The Purchaser is entitled to inspect the Solution at reasonable times before shipment. The Purchaser must notify Flavourtech of the specific items of the Solution that the Purchaser wishes to inspect within thirty (30) days of issuing its purchase order in accordance with 2.3(a). The Purchaser must give Flavourtech at least fifteen (15) days' notice of its desire to inspect such items, and the Purchaser must confirm the inspection date at least seventy-two (72) hours before the date of inspection.
- 12.2** The Purchaser bears all costs and expenses of such inspection, except for those expenses connected with Flavourtech's personnel and with normal factory tests.
- 12.3** Unless otherwise specifically agreed, the Purchaser must promptly unpack and inspect the Solution upon its arrival at the Site. Flavourtech may be present at such inspection, at Flavourtech's option. The Purchaser must notify Flavourtech within fifteen (15) days after the Solution's arrival at the Site of any missing, damaged or defective items. Failure to notify Flavourtech within this time period will, where permitted by law, invalidate any claim by the Purchaser under the warranty in clause 11.1 of any defect of or damage to the Solution which would be apparent upon a reasonable inspection of the Solution. The Purchaser's notification of missing, damaged or defective items does not constitute conclusive evidence of the Solution's condition at the time of delivery.
- 12.4** The Solution or items of Equipment cannot be returned to Flavourtech without its consent (not to be unreasonably withheld). The Solution or items of Equipment which are approved by Flavourtech for return must be despatched within fifteen (15) days from the time of consent.

## **13. INSURANCE**

- 13.1** Until the Purchaser has paid the Price in full, the Purchaser must insure the Solution for which it has assumed risk pursuant to clause 8.2 against loss, damage or destruction by theft, fire or other event which a solution of its type would normally be insured for the full replacement value of the Solution.
- 13.2** Upon request of Flavourtech, the Purchaser must name Flavourtech as an additional insured (co-insured) and/or demonstrate to Flavourtech's satisfaction evidence of such required insurance.
- 13.3** All insurance proceeds must be first used to pay Flavourtech any outstanding portion of the Price of any part of the Solution lost, damaged or destroyed. Any excess proceeds belong to the Purchaser. The Purchaser hereby waives subrogation against Flavourtech.

## **14. COMMISSIONING**

- 14.1** If Flavourtech expressly agrees to install, commission, start up, test or maintain the Solution, the Purchaser will have the Site clear and available and will, if required, provide water, steam, electricity, gas, fuel and other services essential to the installation, commissioning and continued functioning of the Solution prior to the arrival at the Site of Flavourtech's employees or contractors.
- 14.2** Flavourtech may, at its option, elect to install, commission, start up, test or maintain (as applicable) the Solution remotely (that is, without physically attending the Site) in circumstances where Flavourtech, acting reasonably, considers that it is appropriate (including in the case of a force majeure event under clause 16).
- 14.3** Unless otherwise expressly specified in the Quotation or the Order Acknowledgment, Flavourtech has no obligation to install, commission, start up, test (other than as provided in clause 17) or maintain the Solution or otherwise provide the Services.

## **15. LIMITATION OF LIABILITY**

- 15.1** Subject to clauses 15.2, 15.3 and 15.4, any liability of Flavourtech for any loss or damage however caused (including by the negligence of Flavourtech), suffered by the Purchaser in connection with this agreement is limited to to fifty (50) percent of the Price paid by the Purchaser to Flavourtech.
- 15.2** Subject to clauses 15.3 and 15.4, Flavourtech is not liable for any special, consequential or incidental damages, or for any loss of bargain, loss of revenue, loss of profits, loss of actual or anticipated savings, loss of opportunities (including opportunities to enter into arrangements with third parties), loss of reputation or loss or damage in connection with claims against the Purchaser by third parties however caused (including by the negligence of Flavourtech), suffered or incurred by the Purchaser in connection with this agreement

**15.3** This agreement does not exclude, restrict or modify the application of any provision of any Commonwealth, State or Territorial law which by law cannot be excluded, restricted or modified.

**15.4** If the *Competition and Consumer Act 2010* (Cth) or any other legislation provides that there is a guarantee in relation to any good or service supplied by Flavourtech in connection with this agreement and Flavourtech's liability for failing to comply with that guarantee cannot be excluded but may be limited, then clauses 15.1 and 15.2 do not apply to that liability and instead the Flavourtech's liability for such failure is limited to (at Flavourtech's election), in the case of a supply of goods, Flavourtech replacing the goods or supplying equivalent goods or repairing the goods, or in the case of a supply of services, Flavourtech supplying the services again or paying the cost of having the services supplied again.

**15.5** Except for the express limited warranties contained in clause 11.1 above and the guarantees referred to in clause 15.4, Flavourtech makes, and the Purchaser, receives no warranties or conditions on the Solution, express, implied, statutory, or in any other communication with the Purchaser, and Flavourtech specifically disclaims any implied warranty or condition of merchantability or fitness for a particular purpose.

## **16. FORCE MAJEURE**

**16.1** If performance of a party's obligations to the other party are delayed, impeded or prevented, wholly or partially, by circumstances beyond its control, whether foreseen or unforeseen, then the performance of the obligations of such party, in so far as it is affected by such cause, will be excused during the continuance of such circumstances.

**16.2** In order to claim relief and be excused from performance of its obligations, reasonable notice must be given to the other party. Notwithstanding any claim for relief invoked under this clause 16, the Purchaser must pay Flavourtech for the Solution manufactured or delivered up to the date of notice.

**16.3** A party claiming relief by reason of such circumstances must take reasonable steps to mitigate the effects of any delay or failure to perform by that party. Promptly after the cessation of the circumstances, the party claiming relief will notify the other party in writing.

**16.4** Any letter of credit or other terminable security for payment of the Price must be extended for a period equivalent to any delay in Flavourtech's performance.

**16.5** If such circumstances continue for more than six (6) months, either party may immediately terminate this agreement upon written notice to the other party or negotiate a mutually acceptable time extension to allow the order to be delivered.

## **17. PERFORMANCE CRITERIA**

**17.1** Unless otherwise specified in the Quotation, Order Acknowledgment and/or Order Variation Document, the fulfilment of any Performance Criteria will be proven by operation of the Solution by the Purchaser for a period of fifteen (15) days from the Commissioning Date. The fulfilment is expressly contingent on the following conditions:

- (a) correct installation of the Solution;
- (b) correct quantity and quality of raw materials, utilities and consumables; and
- (c) compatibility and correct installation of Equipment not supplied by Flavourtech,

in each case, to the satisfaction of Flavourtech.

**17.2** If the Purchaser is unable to comply with the above specified conditions, Flavourtech will not be obliged to begin or continue with any tests until such conditions have been met.

**17.3** The test procedure will be as agreed between Flavourtech and the Purchaser but, failing such agreement, as Flavourtech deems reasonably appropriate.

**17.4** If the Solution fails to meet the Performance Criteria, Flavourtech will, at its own cost, make any alterations and adjustments to the Solution as Flavourtech deems appropriate. Flavourtech may then repeat the tests.

**17.5** If after making adjustments and alterations, Flavourtech is unable to meet the Performance Criteria, the Purchaser's remedy is to accept the Solution at an adjusted price. The price adjustment will be based on the ratio between the actual level of performance and the guaranteed level. The maximum price adjustment will be fifty (50) percent, in accordance with the limitation of liability in clause 15.1 above.

**17.6** Clause 17.5 sets out the Purchaser's sole and exclusive remedy for failure by Flavourtech to meet the Performance Criteria.

## **18. TERMINATION**

**18.1** A party may terminate this agreement immediately on written notice to the other party if:

- (a) the other party commits a material breach of any of the terms of this agreement, the Quotation, Order Acknowledgment and/or any Order Variation Document, and fails to provide a solution to rectify the breach within thirty (30) days of the receipt by the other party of a notice from the first party requesting such rectification;
- (b) the other party, being an individual, commits any act of bankruptcy or, being a corporation, passes a resolution for winding up or liquidation (except for the purpose of a solvent reconstruction or amalgamation);
- (c) a receiver is appointed in respect of any property or assets of the other party;
- (d) the other party enters into any scheme of arrangement for the benefit of its creditors or if any petition is presented for its involuntary dissolution;
- (e) any step is taken to appoint a receiver, manager, a liquidator, an administrator, or other like person of or to the whole or any part of the other party's assets or business; or
- (f) the other party ceases to be able to pay its debts as they become due or to carry on its business.

**18.2** Flavourtech may terminate this agreement immediately on written notice to Purchaser in the event of any of the following circumstances if the Purchaser:

- (a) fails to take delivery of the Solution for a period of thirty (30) days after notice has been given by Flavourtech that the Solution is ready for delivery;
- (b) fails to pay any part of the Price when due, and fails to rectify the non-payment within fifteen (15) days of the receipt by it of a notice from Flavourtech requesting such rectification; or
- (c) seeks to cancel all or any part of this agreement, the Quotation, the Order Acknowledgment or any Order Variation Document.

**18.3** If this agreement is terminated, the Purchaser indemnifies Flavourtech against all losses, damages and expenses incurred by Flavourtech as a result of such termination, which includes the value of any Solution supplied, and any work and labour performed, up to the date of termination and not previously paid for, together with the value of all work in progress in the course of manufacture of the Solution and all legal costs and disbursements calculated on a solicitor/client basis and related to recovering these amounts. The Purchaser must pay all such losses, damages and expenses within fifteen (15) days from the date of receipt of Flavourtech's notice specifying such losses, damages and expenses. If the Purchaser fails to pay when required, such losses, damages and expenses will be recoverable by Flavourtech as liquidated and ascertained damages and will bear interest from the due date at the rate specified in clause 9.4.

**18.4** Any prepayments which may have been made to Flavourtech in respect of this agreement, and which have not already been otherwise allocated or appropriated, may be applied toward satisfaction of all and any monies due to Flavourtech pursuant to clause 18.3 and any excess payment will be refunded by Flavourtech to the Purchaser.

## **19. DISPUTES**

**19.1** Any dispute or difference (**Dispute**) arising hereunder must be resolved in accordance with this clause 19.

**19.2** As soon as practicable after a Dispute arises, the party alleging the Dispute must serve on the other party a notice of the Dispute (**Dispute Notice**), which must set out:

- (a) the nature of the Dispute; and
- (b) the relief claimed or action required to be taken by the other party, which would resolve the Dispute, and;
- (c) within fifteen (15) days after the other party receives the Dispute Notice, representatives of both parties will meet to attempt to resolve the Dispute in good faith; and
- (d) if the Dispute cannot be resolved in accordance with clause 19.2(c) within thirty (30) days after receipt of the Dispute Notice, the Dispute will be submitted for arbitration in the jurisdiction of the party that is the recipient of the Dispute Notice, to which jurisdiction the parties hereby irrevocably submit, unless an alternative jurisdiction for Disputes is specified in the Quotation or Order Acknowledgment.

- 19.3** Any arbitration in Australia will be conducted by the Australian Disputes Centre in Sydney, Australia in accordance with and subject to the Australian Dispute Centre's rules and guidelines.
- 19.4** An award made in accordance with the arbitration process in clause 19.2(d) is final and may be entered in any court of competent jurisdiction.
- 19.5** Nothing in this agreement prevents Flavourtech from applying to a court of competent jurisdiction:
- (a) for injunctive or other urgent interlocutory relief; or
  - (b) in relation to a Dispute regarding the ownership or possession of the Solution, moneys due by the Purchaser to Flavourtech, Flavourtech's right to protect or enforce any Intellectual Property Rights (as that term is defined in clause 22) or confidential information, or as part of any proceedings commenced by a third party.

## **20. REPRESENTATIONS**

- 20.1** Unless otherwise provided by any relevant statute, any advice, recommendation, information, assistance or service provided by Flavourtech in relation to the Solution is given in good faith, but without any liability or responsibility on the part of Flavourtech. The Purchaser acknowledges that it has not relied upon or been induced by any representations of Flavourtech not expressly set out in this agreement, the Quotation, the Order Acknowledgment or any Order Variation Document.
- 20.2** Any representation, information or other data found in any advertisement, catalogue, brochure, circular document or other thing of Flavourtech are approximate only, and deviations from there do not invalidate any contract or form the basis of any claim against Flavourtech unless specifically included in any Performance Criteria. All drawings and technical data forming part of the Specifications will be in conformity with Flavourtech's standard drafting procedures and the English language will be used. The Purchaser must not make any changes in any drawings of Flavourtech without Flavourtech's prior written consent. If the Purchaser changes any drawings without Flavourtech's consent, Flavourtech may, at its sole discretion, invalidate any warranty given in respect thereof.

## **21. CONFIDENTIAL INFORMATION**

- 21.1** In this clause 21, **Confidential Information** means all information (regardless of its form or the medium on which it is stored) of a confidential, sensitive, non-public or proprietary nature which relates to the business or affairs of a party or any customer or partner of a party, disclosed or to be disclosed or made available by a party, including, without limitation:
- (a) the terms of the Quotation, Order Acknowledgment, any Order Variation Document and this agreement;
  - (b) know-how, trade secrets, concepts, business methods, technical and operational information;
  - (c) developments relating to existing and future products, customer details or any third-party agreements or arrangements;
  - (d) information obtained by way of observation during a visit to the other party's premises; and
  - (e) any trial data, or financial or market information, but does not include:
  - (f) information which is or becomes generally available in the public domain (other than through any breach of confidence);
  - (g) information rightfully received by the other party from a third person who is under no obligation of confidentiality in relation to the information and who has not obtained that information either directly or indirectly as a result of a breach of any duty of confidence owed to the first party; or
  - (h) information which has been independently developed or obtained by the other party.
- 21.2** Each party must keep the Confidential Information secure, in strict confidence and not disclose or reproduce the Confidential Information, except to the extent required by:
- (a) a law or court order;
  - (b) the rules of a stock exchange to which it is subject; or
  - (c) its own officers, agents, professional advisors, employees, contractors or a related body corporate under section 9 *Corporations Act 2001* (Cth) or any officers of that related body corporate, in order to exercise rights or perform obligations under this agreement.

- 21.3** Each party acknowledges and agrees that:
- (a) the other party may suffer loss if there is a breach or threatened breach of this clause 21, and damages would be an insufficient remedy; and
  - (b) in addition to any other available remedy, the other party is entitled to specific performance and injunctive relief, to prevent a breach of, and to compel performance of, this clause 21.

## **22. INTELLECTUAL PROPERTY RIGHTS**

- 22.1** In this agreement, **Intellectual Property Rights** means all industrial and intellectual property rights, both in Australia and throughout the world, and includes any copyright, moral right patent, registered or unregistered trade mark, registered or unregistered design, registered or unregistered plant breeder's right, trade secret, know how, right in relation to semiconductors and circuit layouts, trade or business or company name, indication or source or appellation of origin or other proprietary right, or right of registration of such rights.
- 22.2** Except as expressly provided in this agreement, the Purchaser acknowledges and agrees that nothing in this agreement grants Purchaser any Intellectual Property Rights in the Solution or in any other Intellectual Property Rights of Flavourtech.

## **23. SOFTWARE**

If software is included in the Solution, Flavourtech grants to the Purchaser a non-exclusive, royalty-free license only for use of the software provided with the Solution. Under this licence, the Purchaser may: (i) use the software only in machine readable object code and only in connection with the Solution; (ii) copy the software in machine readable object code for backup purposes in support of the use of the Solution; and (iii) create one additional copy of the software for archival purposes only. This licence may not be assigned, sub-licensed or otherwise transferred without the prior written consent of Flavourtech. The Purchaser acknowledges that the software provided comprises a valuable trade secret and/or copyright property of Flavourtech and covenants that it will take all reasonable precautions against unauthorised access to or disclosure of the software.

## **24. MISCELLANEOUS**

- 24.1** The Purchaser must not assign any benefit or obligation under this agreement without the prior consent of Flavourtech. The Purchaser acknowledges that any assignment made in violation of this clause will be void.
- 24.2** The action, or failure to act, by Flavourtech or the Purchaser to enforce any one or all of the rights granted to either party does not act as a waiver of that right nor serve as an acceptance of a breach of any of the provisions of this agreement.
- 24.3** Flavourtech may substitute any item of the Equipment for another item of equal or better performance provided that the Purchaser is not responsible for any additional price for the substituted item, unless otherwise agreed between the parties.
- 24.4** No change or alteration of any term of this agreement, the Quotation, Order Acknowledgment, any Order Variation Document or any other document of Flavourtech may be made unless it is in writing and signed by or on behalf of Flavourtech.
- 24.5** Nothing in this agreement gives rise to an exclusive arrangement as between the parties.

## **25. GOVERNING LAW**

This agreement, and any other documents comprising the agreement between Flavourtech and the Purchaser, are governed and construed in accordance with the laws of the State of New South Wales, Commonwealth of Australia.