

WHOLESALE AGREEMENT

These terms set out the agreement (this **Agreement**) under which you or the company which you represent (the **Customer, you**) will purchase products (**Products**) from us, OATS MY GOODNESS PTY. LTD. ABN 72 634 422 432 (**we, us, our**).

These Agreement applies when you sign-up for an account (**Account**) through our website accessible at www.oatsmygoodness.com.au and any other websites we operate with the same domain name and a different extension (**Website**). Through your Account, you may submit orders for purchase of Products (**Order**).

1 ACCOUNTS

- (a) This Agreement starts on registration of your Account, and continues indefinitely until terminated in accordance with clause 12 (**Term**).
- (b) As part of the Account registration process and your continued use of the Website, you will be required to provide details about your business, including a contact email address and phone number, secure password, billing, postal and physical addresses, bank account information, and other information as determined by us from time to time.
- (c) You warrant that any information you give to us in the course of completing the Account registration process will always be accurate, honest, correct and up-to-date.
- (d) Once you complete the Account registration process, we may, in our absolute discretion, choose to accept you as a registered user within the Website and provide you with an Account.
- (e) We may suspend or cancel your Account if you do not comply with these terms or any other reason on notice to you.
- (f) By signing up for an Account and/or placing an Order, you represent and warrant that:
 - (i) you are authorised to do so by the company which you represent (if applicable); and
 - (ii) you are authorised to use the debit or credit card you provide with your Account and/or Order.
- (g) At the time of creating an Account, you will receive a "Customer Registration Form" which forms part of this Agreement, that sets out:
 - (i) the available Products that you can Order;
 - (ii) the price payable by you for each Product;
 - (iii) the minimum dollar spend per Order (**Minimum Order**) to receive free delivery, and the delivery rate if the Order does not meet the Minimum Order;
 - (iv) the recommended retail price of each Product; and
 - (v) payment options.
- (h) We may provide you with recommended retail pricing, which is to be used as a guideline only. You are responsible for determining the price at which you sell the Products and are not bound to accept any recommendations.

2 ORDERS

- (a) During the Term, you may submit any number of Orders, each comprising a separate "Order", which is governed by this Agreement.
- (b) Submitting an Order constitutes your intention and offer to enter into this Agreement where we will provide you with the Products you have ordered in exchange for your payment of the total amount listed upon checkout.
- (c) An Order is not considered confirmed by us until we have approved your payment and you receive an email from us confirming that your Order is being processed. We have the right to reject an Order for any reason and refund any fees paid by you to us for that Order.

- (d) At the time of placing an Order, you will have the option to select if you will pay for the Order:
 - (i) at the time of placing the Order (**Upfront Payment**); or
 - (ii) pursuant to an invoice issued after the Order is placed, within 30 days of receipt of that invoice (**Post-Payment**).
- (e) On placing an Order, you acknowledge and agree that fees for the Order are due in full regardless of the retail success of the Products. Orders are not subject to any consignment arrangements unless agreed in writing between the parties prior to the Order being placed. This clause is subject to clause 7 and any rights you may have under the Australian Consumer Law contained in the *Competition and Consumer Act 2010* (Cth) (**ACL**).

3 PRODUCTS

- (a) Our “overnight oats” Products:
 - (i) will be delivered with at least 20 days shelf-life; and
 - (ii) must be stored at all times between 1-5 degrees.
- (b) We accept no responsibility for spoiling of Products that require refrigeration:
 - (i) being left out of fridges once delivered; or
 - (ii) not being stored at the correct temperature while in your possession.
- (c) Our “granola” Products will be delivered with at least 6 months shelf-life.
- (d) We will endeavour to ensure that the Products provided will be substantially the same as the Products described on the Customer Registration Form, or as otherwise agreed with you in writing prior to you placing your Order.
- (e) Until the price of your Products is paid in full, title in those Products is retained by us. Risk in the Products will pass to you on delivery in accordance with clause 5. Delivery must not be refused by you.

4 PAYMENT

- (a) All prices are:
 - (i) per unit (except where indicated);
 - (ii) in Australian Dollars; and
 - (iii) subject to change prior to you completing an Order, by written notice from us.
- (b) (**Payment obligations**) You must pay for your Order via Upfront Payment or Post-Payment as selected at the time of placing your Order. We reserve the right to remove your option to pay via Post-Payment at any time, including where you fail to make payment on time.
- (c) (**GST**) In relation to any GST payable for a taxable supply by us, you must pay the GST subject to us providing a tax invoice.
- (d) (**Card surcharges**) We reserve the right to charge credit card surcharges in the event that payments are made using a credit, debit or charge card (including Visa, MasterCard or American Express)
- (e) (**Online payment partner**) We may use third-party payment providers such as [insert e.g., Stripe] (**Payment Providers**) to collect payments for Products. The processing of payments by the Payment Provider will be, in addition to these terms, subject to the terms, conditions and privacy policies of the Payment Provider accessible [here] and, to the maximum extent permitted by law, we will not be liable for the security or performance of the Payment Provider. We reserve the right to correct, or to instruct our Payment Provider to correct, any errors or mistakes in collecting your payment.
- (f) (**Late Payment**) If you do not pay us the amounts due and payable under an invoice on or before its due date, without limiting our other rights under this Agreement, you must pay us interest at the rate of 10% per annum on each amount outstanding, from the due

date for payment to the date on which the payment is received by us. However, before applying this interest, we will provide you with a written notice giving an additional 7 days to complete the payment. If payment is still not received by the end of this 7-day grace period, interest will accrue from the expiration of that period until the date the full payment is received by us.

5 DELIVERY AND SHIPPING

- (a) **(Delivery Details)** We may charge you for delivery at any time (notwithstanding that we may not have previously done so). Where prices are stated as inclusive of delivery:
 - (i) delivery is to the delivery point specifically accepted by us; and
 - (ii) we will deliver the Products to you in accordance with the shipping information displayed on an Order.
- (b) **(Delivery Issues)** Third party courier terms apply to the delivery of the Products to you. Any problems with delivery should be directed to us to troubleshoot the issue. We will endeavour to assist you to ensure your delivery arrives. All delivery times provided to you are estimates only and are subject to postal delays and reasons beyond our control. We do not warrant or make any representation that your order will be delivered within the times indicated. We will not be liable for any loss or damage suffered as a result of or in connection with late deliveries.

6 CANCELLATION

- (a) We reserve the right to cancel your Order for any reason and we will notify you of this as soon as possible. Where payment has already been debited, the full amount will be credited back to your original method of payment.
- (b) You may cancel your Order up to the time that we confirm your Order in writing to you. Once we confirm your Order, your Order is binding and cannot be changed by you. However, our refunds process in clause 7 may apply.

7 RETURNS

- (a) We do not offer change of mind returns.
- (b) We will provide a full refund of the price paid for Products in an Order if we determine that:
 - (i) the Products you have ordered were not received by you solely due to failure by us;
 - (ii) the Products provided to you are not substantially the same as the Products you ordered; or
 - (iii) the Products are spoiled or otherwise unsuitable for retail sale, solely due to a failure by us (**Spoiled**), in accordance with clause 7(c), in which case we may provide store credit, a replacement or a full refund of the price paid for a Product.
- (c) The following process applies to any Products you believe to be Spoiled.
 - (i) If you believe your Products are Spoiled, please contact us using the details provided on our Website with a full description of the issue.
 - (ii) If we determine in our reasonable opinion that the Products are not Spoiled, or are Spoiled as a result of your failure to handle and store the Products in accordance with our instructions, we will refuse your request.
 - (iii) If we determine that the Products are Spoiled, we will issue you with a store credit, replacement or refund. All refunds will be credited back to your original method of payment unless you request otherwise and we approve this request.
 - (iv) If you fail to comply with the provisions of this clause in respect of Spoiled Products, we may, in our absolute discretion, issue only a partial refund or no refund in respect of the faulty Product.

- (v) Nothing in this clause is intended to limit or otherwise affect the operation of any of your rights which cannot be excluded under applicable law.

8 INTELLECTUAL PROPERTY

- (a) We retain all intellectual property rights in the design of the Products, including the labelling and packaging, or those rights are owned by a third party.
- (b) In this clause 8, “**intellectual property rights**” means all copyright, trade mark, design, patent, trade, business, company and domain names, confidential and other proprietary rights, and any other rights to registration of such rights whether created before or after the date of these terms both in Australia and throughout the world.

9 THIRD PARTY TERMS SUPPLIERS

- (a) If we need to acquire goods or services supplied by a third party, you may be subject to the terms and conditions of that third party (**Third Party Terms**).
- (b) Provided that we have notified you of such Third Party Terms and provided you with a copy of those terms (for example, a link on our Website), you agree to any Third Party Terms applicable to any goods or services supplied by a third party that we use to provide you with the Products or any services related to providing the Products and we will not be liable for any loss or damage suffered by you in connection with such Third Party Terms.

10 LIABILITY

- (a) (**warranties**) Under the ACL, you may be entitled to certain remedies (like a refund, replacement or repair) if there is failure with the goods or services provided. Nothing in these terms is intended to limit the operation of the ACL. Please note that to the maximum extent permitted by applicable law, all express or implied representations and warranties not expressly stated in this agreement are excluded.
- (b) (**liability**) To the maximum extent permitted by law and subject to clause 10(a), the total liability of each party in respect of loss or damage sustained by the other party in connection with these terms is limited to the total Fees paid by you to us under the most recent Order. Claims for loss of or damage to Products in transit must be made against the carrier.
- (c) (**consequential loss**) To the maximum extent permitted by law, neither party will be liable for any incidental, special or consequential loss or damages, or damages for loss of data, business or business opportunity, goodwill, anticipated savings, profits or revenue in connection with this agreement or any Products or services provided by us, except to the extent this liability cannot be excluded under the *Competition and Consumer Act 2010 (Cth)*.

11 NOTICES

- (a) Any notices required to be sent under this agreement must be sent via email using the party's email addresses set out in this agreement, and the email's subject heading must refer to the name and date of this agreement.
- (b) If no email address is stated in this agreement, the notice may be sent to the email address most commonly used by the parties to correspond in relation to this agreement at the time the notice is sent.
- (c) The notice will be considered to be delivered 24 hours after it was sent, unless the sender has reason to believe the email failed to send or was otherwise not delivered or received.

12 TERMINATION

- (a) Either party may terminate this agreement immediately by written notice to the other party.

- (b) The termination of this agreement will not prejudice any accrued rights or liabilities of either party, nor excuse either party from a breach of this agreement occurring prior to expiration or termination of this agreement.
- (c) Upon termination of this agreement:
 - (i) we will deliver to you any Products which were the subject of any outstanding Orders received by us from you prior to the date of termination of this Agreement; and
 - (ii) you will immediately pay us:
 - (A) for the Products referred to in clause 12(c)(i); and
 - (B) any other amounts still owing by you to us as at the date of termination of this agreement.
 - (iii) Both parties must return to the other party any documents that contain any confidential information of the other party.
- (d) Any clause that by its nature would reasonably be expected to be performed after the termination or expiry of this agreement will survive and be enforceable after such termination or expiry.

13 GENERAL

- (a) **(jurisdiction)** This agreement is governed by the law applying in Victoria, Australia. Each party irrevocably submits to the exclusive jurisdiction of the courts of Victoria, Australia and courts of appeal from them in respect of any proceedings arising out of or in connection with these terms. Each party irrevocably waives any objection to the venue of any legal process on the basis that the process has been brought in an inconvenient forum.
- (b) **(waiver)** No party to these terms may rely on the words or conduct of any other party as a waiver of any right unless the waiver is in writing and signed by the party granting the waiver.
- (c) **(severance)** Any term of these terms which is wholly or partially void or unenforceable is severed to the extent that it is void or unenforceable. The validity and enforceability of the remainder of these terms is not limited or otherwise affected.
- (d) **(joint and several liability)** An obligation or a liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally.
- (e) **(assignment)** A party cannot assign, novate or otherwise transfer any of its rights or obligations under these terms without the prior written consent of the other party.
- (f) **(costs)** Except as otherwise provided in these terms, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing these terms.
- (g) **(entire agreement)** This agreement embodies the entire agreement between the parties and supersedes any prior negotiation, conduct, arrangement, understanding or agreement, express or implied, in relation to the subject matter of these terms.