

SAWGRASS PTY LTD ACN 118 513 429 T/AS VELLUTI'S – THE FRUIT AND VEG COMPANY
TERMS AND CONDITIONS OF TRADE

1. Definitions

- 1.1 'Velluti's' means Sawgrass Pty Ltd ACN 118 513 429 t/as Velluti's – The Fruit & Veg Company, its successors and assigns or any person acting on behalf of and with the authority of Sawgrass Pty Ltd t/as Velluti's – The Fruit & Veg Company.
- 1.2 'Client' means the person/s buying the Goods as specified in any invoice, document or order, and if there is more than one Client, is a reference to each Client jointly and severally.
- 1.3 'Goods' means all Goods or Services supplied by Velluti's to the Client at the Client's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.4 'Price' means the price payable for the Goods as agreed between Velluti's and the Client.
- 1.5 'Terms and Conditions' means these Terms and Conditions of Trade and Velluti's Services Agreement.

2. Acceptance

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by the Terms and Conditions, if the Client places an order for or accepts delivery of the Goods.
- 2.2 The terms and conditions may only be amended with Velluti's written consent and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and Velluti's.

3. Payment

- 3.1 Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by Velluti's, which may be:
- (a) the date specified on any invoice or other form as being the date for payment; or
- (b) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by Velluti's.
- 3.2 Unless otherwise stated, the Price does not include GST. In addition to the Price, the Client must pay to Velluti's an amount equal to any GST Velluti's must pay for any supply by Velluti's under this or any other agreement for the sale of the Goods. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

4. Delivery of Goods

- 4.1 Delivery of the Goods ('Delivery') is taken to occur at the time that:
- (a) the Client or the Client's nominated carrier takes possession of the Goods at Velluti's address; or
- (b) Velluti's (or Velluti's nominated carrier) delivers the Goods to the Client's nominated address.
- 4.2 At Velluti's sole discretion, the cost of Delivery is either included in the Price or is in addition to the Price.
- 4.3 In the event that the Client is unable to take Delivery as arranged, Velluti's shall be entitled to charge a reasonable fee for redelivery and/or storage.

5. Risk

- 5.1 Risk of damage to or loss of the Goods passes to the Client on Delivery.
- 5.2 If the Client requests Velluti's to deliver the Goods to an unattended location then such Goods shall be left at the Client's sole risk.

6. Personal Property Securities Act 2009 ('PPSA')

- 6.1 In this clause financing statement, financing change statement, security agreement and security interest has the meaning given to it by the PPSA.
- 6.2 Upon assenting to these terms and conditions in writing or by conduct, the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods that have previously been supplied and that will be supplied in the future by Velluti's to the Client.

6.3 The Client undertakes to:

- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up to date in all respects) which Velluti's may reasonably require to:
- (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register ('PPSR');
- (ii) register any other document required to be registered by the PPSA; or
- (iii) correct a defect in a statement referred to in clause 6.3(a)(i) or 6.3(a)(ii);
- (b) indemnify, and upon demand reimburse, Velluti's for all expenses incurred in registering a financing statement or financing change statement on the PPSR or releasing any Goods charged thereby;
- (c) not register a financing change statement in respect of a security interest without the prior written consent of Velluti's;
- (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of Velluti's;
- (e) immediately advise Velluti's of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.

6.4 Velluti's and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.

6.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.

6.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.

6.7 Unless otherwise agreed to in writing by Velluti's, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.

6.8 The Client must unconditionally ratify any actions taken by Velluti's under clauses 6.3 to 6.5.

6.9 Subject to any express provisions to the contrary, nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

7. Security and Charge

7.1 In consideration of Velluti's agreeing to supply the Goods, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).

7.2 The Client indemnifies Velluti's from and against all of Velluti's costs and disbursements including legal costs on a solicitor/client basis incurred in exercising Velluti's rights under this clause.

8. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)

8.1 The Client must inspect the Goods on Delivery and must, by 5 pm on the day of Delivery, notify Velluti's by telephone, email or facsimile of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote.

8.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory implied guarantees under the CCA) may be implied into these terms and conditions ('Non-Excluded Guarantees').

8.3 Velluti's acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.

8.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, Velluti's makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. Velluti's liability in respect of these warranties is limited to the fullest extent permitted by law.

8.5 If the Client is a consumer within the meaning of the CCA, Velluti's liability is limited to the extent permitted by section 64A of Schedule 2 of the CCA.

- 8.6 If Velluti's is required to replace the Goods under this clause or the CCA, but is unable to do so, Velluti's may refund any money the Client has paid for the Goods.
- 8.7 If the Client is not a consumer within the meaning of the CCA, Velluti's liability for any defect or damage in the Goods is:
- (a) limited to the value of any express warranty provided to the Client by Velluti's at Velluti's sole discretion;
 - (b) otherwise negated absolutely.
- 8.8 Subject to this clause 8, returns will only be accepted provided that:
- (a) the Client has complied with the provisions of clause 8.1; and
 - (b) Velluti's has agreed that the Goods are defective; and
 - (c) the Goods are returned within a reasonable time at the Client's cost (if that cost is not significant); and
 - (d) the Goods are returned in as close a condition to that in which they were delivered as is possible.
- 8.9 Notwithstanding clauses 8.1 to 8.8 but subject to the CCA, Velluti's shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- (a) the Client failing to properly store any Goods;
 - (b) any accident or act of God.
- 8.10 Notwithstanding anything contained in this clause, if Velluti's is required by a law to accept a return then Velluti's will only accept a return on the conditions imposed by that law.

9. Default and Consequences of Default

- 9.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at Velluti's sole discretion such interest shall compound monthly at such a rate) after, as well as before any judgment.
- 9.2 If the Client owes Velluti's any money the Client shall indemnify Velluti's from and against all costs and disbursements incurred by Velluti's in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor/client basis, Velluti's contract default fees, and bank dishonour fees).
- 9.3 Without prejudice to any other remedies Velluti's may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions, Velluti's may suspend or terminate the supply of Goods to the Client. Velluti's will not be liable to the Client for any loss or damage the Client suffers because Velluti's has exercised its rights under this clause.
- 9.4 Without prejudice to Velluti's other remedies at law, Velluti's shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to Velluti's shall, whether or not due for payment, become immediately payable if any money payable to Velluti's becomes overdue, or in Velluti's opinion the Client will be unable to make a payment when it falls due.

10. Cancellation

- 10.1 Velluti's may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Client. On giving such notice, Velluti's shall repay to the Client any money paid by the Client for the Goods. Velluti's shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 10.2 In the event that the Client cancels delivery of Goods, the Client shall be liable for any and all loss incurred (whether direct or indirect) by Velluti's as a direct result of the cancellation (including, but not limited to, any loss of profits).

11. Privacy Act 1988

- 11.1 The Client agrees for Velluti's to obtain from a credit reporting agency a credit report containing personal credit information about the Client in relation to credit provided by Velluti's.
- 11.2 The Client agrees that Velluti's may exchange information about the Client with those credit providers either named as trade referees by the Client or named in a consumer credit report issued by a credit reporting agency for the following purposes:
- (a) to assess an application by the Client; and/or
 - (b) to notify other credit providers of a default by the Client; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Client.

The Client understands that the information exchanged can include anything about the Client's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.

- 11.3 The Client consents to Velluti's being given a consumer credit report to collect overdue payment on commercial credit (Privacy Act 1988 section 18K(1)(h)).
- 11.4 The Client agrees that personal credit information provided may be used and retained by Velluti's for the following purposes (and for other purposes as shall be agreed between the Client and Velluti's or required by law from time to time):
- (a) the provision of Goods; and/or
 - (b) the marketing of Goods by Velluti's, its agents or distributors; and/or
 - (c) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Goods; and/or
 - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
 - (e) enabling the daily operation of the Client's account and/or the collection of amounts outstanding in the Client's account in relation to the Goods.
- 11.5 Velluti's may give information about the Client to a reporting agency for the following purposes:
- (a) to obtain a consumer credit report about the Client;
 - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Client.
- 11.6 The information given to the credit reporting agency may include:
- (a) personal particulars (such as the Client's name, sex, address, previous addresses, date of birth and driver's licence number);
 - (b) details concerning the Client's application for credit or commercial credit and the amount requested;
 - (c) advice that Velluti's is a current credit provider to the Client;
 - (d) advice of any overdue accounts and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;
 - (e) that the Client's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default which has been listed;
 - (f) information that, in the opinion of Velluti's, the Client has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Client's credit obligations);
 - (g) advice that cheques drawn by the Client for one hundred dollars (\$100) or more have been dishonoured more than once;
 - (h) that credit provided to the Client by Velluti's has been paid or otherwise discharged.

12. General

- 12.1 The failure by Velluti's to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Velluti's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable, the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 12.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales.
- 12.3 The Client shall not be entitled to set off against or deduct from the Price, any sums owed or claimed to be owed to the Client by Velluti's or withhold payment of any invoice because part of that invoice is in dispute.
- 12.4 Velluti's may licence or sub-contract all or any part of its rights and obligations without the Client's consent.
- 12.5 The Client agrees that Velluti's may amend these terms and conditions at any time. If Velluti's makes a change to these terms and conditions, then that change will take effect from the date on which Velluti's notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for Velluti's to provide Goods to the Client.
- 12.6 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 12.7 The Client warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.