



# HUM HONEY®

Sunshine Coast



## Hum Honey Standard Terms & Conditions

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### 1. Definitions

**ACL** means the *Competition and Consumer Act 2010* (Cth) and any regulations forming part of or passed under it (collectively "ACL").

**Agreement** means these Terms and Conditions and any quote provided by the Supplier, along with each Purchase Order delivered by the Purchaser to the Supplier for the supply of Goods.

**Goods** means the honey or honey related products supplied or to be supplied by the Supplier to the Purchaser in accordance with a Purchase Order.

**PPSA** means the *Personal Property Securities Act 2009* (Cth) and any regulations forming part of or passed under it.

**Purchaser** means the buyer of Goods named in the Purchase Order and includes the executors, administrators, successors and permitted assignees of that person or company.

**Purchase Order** means the order or request made by the Purchaser for the supply by the Supplier of Goods and includes an invoice, proposal or quote provided by the Supplier. For the avoidance of doubt the payment by the Purchaser of an invoice of the Supplier will constitute a Purchase Order.

**Supplier** means Tony Sams t/as Hum Honey ABN 92 066 801 354.

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### 2. Interpretation

The Supplier's invoice, these Terms and Conditions and any Purchase Order will be read and interpreted as a single agreement, but if there is any conflict or inconsistency between them they will be interpreted and applied in the following order:

- (a) any special conditions contained in the Supplier's invoice;
  - (b) these Terms and Conditions; and
  - (c) the Purchase Order.
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### 3. Formation of contract

- (a) The delivery by the Purchaser of a Purchase Order, either verbally or in writing, or payment of the Supplier's invoice by the Purchaser, after these terms have been provided constitutes acceptance of these Terms and Conditions and the terms of this Agreement.
  - (b) These Terms and Conditions are subject to change at any time by the Supplier. The Purchaser is deemed to have accepted any changes to these Terms and Conditions upon the Purchaser delivering a Purchase Order to the Supplier, after the date on which the Supplier notifies the Purchaser of those changes, or otherwise communicating acceptance of the amended Terms and Conditions to the Supplier.
  - (c) Quotations made by the Supplier will not be construed as an offer or obligation to supply in accordance with the quotation.
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### 4. Payment terms

- (a) All prices are subject to reasonable change upon the Supplier providing notice to the Purchaser. If the Purchaser does not accept the reasonable change to price the Purchaser must advise the Supplier that it does not wish to be provided or supplied with the Goods.
- (b) Purchase Orders are accepted by the Supplier on the condition that they may be invoiced to the Purchaser at the applicable price as at the date of dispatch where a notice under paragraph 4(a) has been provided.



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- (c) The Purchaser must pay the total cost of the Goods supplied in accordance with the Purchase Order unless otherwise agreed to with the Supplier in writing.
- (d) All payments required to be made by the Purchaser under this Agreement will be made in cleared funds in accordance with the Supplier's invoice free of any set-off or counterclaim and without deduction or withholding.
- (e) The Supplier may, at any time and without notice, set off and deduct from any amounts which may be payable to the Purchaser for any reason, any amount payable by the Purchaser to the Supplier under this Agreement.
- (f) If the Purchaser fails to make a payment when due the Purchaser will pay to the Supplier in addition to the amounts due, interest on all outstanding amounts calculated at the rate quoted by the Supplier's bank for overdrafts in the amount of the outstanding balance of the Purchaser's account plus 2%. Interest will be calculated from the date when the Supplier's invoice becomes due and payable up until payment by the Purchaser of all amounts (including interest) is received by the Supplier in clear funds.
- (g) If any amount due to the Supplier is disputed under these Terms and Conditions by the Purchaser, the Purchaser must pay immediately to the Supplier any amount of the purchase price that is not in dispute.

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## 5. Deposit

- (a) The Supplier may require the Purchaser to pay a non-refundable deposit prior to fulfilling any Purchase Order and making delivery of the Goods.
- (b) No deposit made by the Purchaser to the Supplier will result in any ownership rights, whether legal or equitable, vesting in the Purchaser with regard to the Goods until such time as the Goods have been paid for in full.

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## 6. Assignment

- (a) The Purchaser's obligations under this Agreement cannot be transferred or assigned and any attempt to do so will be void.
- (b) The Supplier may assign, transfer, novate or otherwise deal with its rights and obligations pursuant to this Agreement in any way, without notice to the Purchaser, and the Purchaser hereby consents to any such assignment, transfer, novation or dealing.

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## 7. Risk

Risk in any Goods to be supplied to the Purchaser passes to the Purchaser immediately upon delivery to the delivery address advised by the Purchaser whether or not the Purchaser collects the Goods or refuses delivery.

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## 8. Retention of title

- (a) Legal and equitable title and property in the Goods is vested in the Supplier until full payment, in cleared funds, is made to and received by the Supplier for all amounts owing by the Purchaser, inclusive of the purchase price for the Goods and all other money owing to the Supplier for other goods or on any other account. Title will not pass to the Purchaser nor to any person to whom any Goods are purported to be sold by the Purchaser until full payment has been received by the Supplier in accordance with paragraph 8(c).
- (b) The Purchaser may, on its own account as principal, sell the original Goods supplied in the ordinary course of its business subject always to the title of the Supplier in respect of the Goods under clause 8(a).
- (c) Until payment in full has been made and is received in cleared funds by the Supplier, the Purchaser will:
  - (i) hold the Goods as agent of the Supplier; and
  - (ii) store the Goods separately so that they can be identified as the property of the Supplier, and must not mix the Goods with other goods.



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- (d) The Supplier may, with or without prior notice to the Purchaser, enter upon any premises at which the Goods or any part of them are stored, or at which the Supplier reasonably believes they are stored, to inspect the Goods and to take possession of the Goods, whether the Goods may be in the Purchaser's possession, custody or control. The Purchaser agrees to provide the Supplier with access to any such premises for that purpose. The Supplier may direct the Purchaser to deliver the Goods to the Supplier and the Purchaser must comply with that direction. The Purchaser waives the right to receive any statutory notice or any notice under the PPSA.
- (e) The Purchaser must pay the Supplier's costs and expenses in exercising any of its rights under this Clause 8 and indemnifies the Supplier against any claim, action or damages arising directly or indirectly out of the exercise by the Supplier of any power or right under this Clause 8. Where the Supplier exercises any power to enter premises, that entry will not give rise to any action of trespass or similar action on the part of the Purchaser against the Supplier, its employees, servants or agents.
- (f) The Supplier may sell or otherwise deal with any Goods repossessed by the Supplier.

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## 9. Personal Property Securities Act

- (a) The parties agree that terms used in this clause 9 have the same meaning and are subject to the provisions of the PPSA.
- (b) The Purchaser acknowledges and agrees that:
  - (i) the purchase price for Goods is the total invoiced cost evidenced by the invoice which relates to those Goods inclusive of all parts or components of that total but without prejudice to the Supplier's right to amend the invoice in the case of error; and
  - (ii) Clause 8 constitutes a security agreement for the purposes of the PPSA and creates a security interest in favour of the Supplier in all Goods supplied previously (if any) and all Goods that will be supplied in the future by the Supplier to the Purchaser to secure payment.
- (c) It is the intention of the Supplier and the Purchaser that the Supplier's security interest is a purchase money security interest as defined in the PPSA.
- (d) The Purchaser grants to the Supplier a security interest in all the Purchaser's present and after-acquired property.
- (e) The Purchaser agrees that the Supplier may attend to registration of its security interest on the Personal Property Securities Register ("PPSR") without notice to the Purchaser.
- (f) The Purchaser undertakes to:
  - (i) promptly sign any further documents and provide any further information which the Supplier may reasonably require to:
    - (A) register a financing statement or financing change statement in relation to a security interest on the PPSR;
    - (B) register any other document required to be registered pursuant to the PPSA;
    - (C) correct a defect in a statement or document referred to in clauses 9(f)(i)(A) & 9(f)(i)(B);
  - (ii) pay the Supplier for all expenses incurred in registering a financing statement or financing change statement on the PPSR or releasing any Goods charged pursuant to the PPSA;
  - (iii) 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 prior written consent of the Supplier;



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- (iv) give the Supplier not less than 14 days written notice of any proposed changes in the Purchaser's details, including but not limited to changes in name, address, facsimile number, email address, trading name or business practices;
  - (v) pay the Supplier for any costs incurred by the Supplier, including legal fees and disbursements on a solicitor-client basis, in obtaining an order pursuant to s182 of the PPSA and/or enforcing or attempting to enforce any security interest created in favour of the Supplier under this Agreement or otherwise.
- (g) The Purchaser and the Supplier agree that sections 96, 115 and 125 of the PPSA do not apply to the security interest created by this Agreement.
- (h) Pursuant to section 144, the Purchaser waives its rights to receive notices under sections 95, 118, 121, 130, 132 and 135 of the PPSA.
- (i) The Purchaser waives its rights as a grantor and/or debtor under sections 142 and 143 of the PPSA.
- (j) The Purchaser waives its rights to receive a verification statement in accordance with section 157 of the PPSA, unless otherwise agreed to in writing by the Supplier.
- (k) Any payments by the Purchaser under this Agreement will be applied in the order specified in section 14(6)(c) of the PPSA regardless of any direction or request by the Purchaser, any agreement between the parties (express or implied) or the application of any such payment by the Supplier. The Supplier does not waive any rights under this clause by applying any payment in a different order.

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## 10. Product Delivery Restrictions

- (a) Due to quarantine restrictions the Supplier may be unable to effect delivery of the Goods in certain jurisdictions. For example, quarantine and customers regulations prevent (in most circumstances) the importation of honey and honey related products into Western Australia.
- (b) The Purchaser acknowledges that the Supplier will be under no obligation or responsibility to fulfil a Purchase Order where delivery of the Goods would result in the Supplier breaching any relevant law or regulation, or where a law or regulation results in it being inviable for the Supplier to fulfil the Purchase Order.

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## 11. Delivery

- (a) Delivery of any Goods ordered will be effected by the Supplier at the delivery address specified by the Purchaser.
- (b) Delivery charges will be calculated and charged at the reasonable discretion of the Supplier and will be notified to the Purchaser.
- (c) Any time or date stated as the estimated time of delivery of the Goods by the Supplier is a bona fide estimate only and the Supplier will not be responsible in any way for any damage or consequential loss suffered by the Purchaser as a consequence of late or non-delivery.

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## 12. Alterations

Any alteration to an order may result in additional charges which will be calculated at the reasonable discretion of the Supplier based on the loss the Supplier has suffered.

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## 13. Cancellation of orders

The Purchaser cannot cancel any order if production of the relevant Goods has commenced or Goods have been dispatched by the Supplier.



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## 14. Limitation of liability

- (a) Unless otherwise required by law, the liability of the Supplier for any breach of this Agreement or any related order or contract and in tort (including negligence) is limited at the Supplier's option to:
  - (i) the replacement of Goods supplied;
  - (ii) the cost of replacing the Goods supplied; or
  - (iii) the amount paid by the Purchaser to the Supplier pursuant to the Agreement.
- (b) Any claim for short or wrongful delivery pursuant to a Purchase Order must be notified to the Supplier within 14 days after the date of delivery.
- (c) To the maximum extent permitted by law, the Supplier will not be liable for any loss of profit, loss of goodwill, loss of opportunity or any special, punitive, indirect or consequential loss or damage incurred by the Purchaser or any other person whether directly or indirectly related to this Agreement.
- (d) The Supplier is not liable for any loss or damage caused to the Purchaser by reason of any delay, lack of supply, industrial action, fire, riot, war, embargo, civil commotion, act of God or any other event which is beyond the Supplier's control.

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## 15. Australian Consumer Law

Regardless of any provision in this Agreement (in particular clauses 8, 10, 11, 14 and 23), where the Australian Consumer Law as contained in the ACL applies to Goods supplied under this Agreement or to the Purchaser:

- (a) all non-excludable warranties and guarantees implied by statute or other law apply to the Goods supplied under this Agreement and, to the extent that any provision in this Agreement conflicts with any such warranty or guarantee or the ACL, the provisions of the ACL apply to the exclusion of that provision; and
- (b) all Goods come with guarantees that cannot be excluded under the ACL and the Purchaser is entitled to a replacement or refund if the Goods fail to be of acceptable quality.

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## 16. Indemnity

- (a) The Purchaser will indemnify the Supplier and keep the Supplier indemnified against any claim, loss, damage, liability, cost or expense that may be incurred by the Supplier arising from or in connection with any breach or default by the Purchaser of this Agreement, any related Purchase Order or contract or the ACL.
- (b) The Purchaser acknowledges that the Supplier takes no responsibility for any local permissions or approvals that may be required for the delivery of the Goods. The Purchaser indemnifies the Supplier and will keep the Supplier indemnified against any claim, loss, damage, liability, cost or expense that may be incurred or suffered by the Supplier as a result of a breach or infringement of any local permission or approval required for the delivery of the Goods.

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## 17. Insolvency

If the Purchaser becomes insolvent, the Purchaser remains liable under this Agreement for payment of all amounts becoming payable under it. The Purchaser remains liable under this Agreement even if the Supplier receives a dividend or payment as a result of the insolvency of the Purchaser.

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## 18. Waiver

No waiver of or departure by the Supplier from a provision of this Agreement, will be effective unless it is in writing, signed by the Supplier.



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## 19. Costs

The Purchaser must pay:

- (a) any legal costs (on a solicitor/client indemnity basis) stamp duty, and other expenses payable in relation to this Agreement or any credit application, guarantee or other security documents;
- (b) all costs incurred by the Supplier relating to any default by the Purchaser; and
- (c) the Supplier's costs and disbursements incurred in pursuing any recovery action, or any other claim or remedy, against the Purchaser, including debt recovery fees paid to a collection agent or otherwise and legal costs on an indemnity basis and whether or not the recovery action, claim or remedy is successful.

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## 20. Taxes & Duties

- (a) Where prices are expressed to be exclusive of sales tax, GST or other Government imposts, the Purchaser must pay all sales tax, GST or other Government, imposts fees and charges which become payable on the supply to the Purchaser in addition to the price provided by the Supplier.
- (b) If as a result of:
  - (i) any legislation becoming applicable to the subject matter of this Agreement or any supply under it; or
  - (ii) any changes in legislation or its interpretation,the cost to the Supplier of performing its obligations or making any supply to the Purchaser increases (whether by way of any tax, duty, excise or levy or otherwise), the Purchaser must pay the Supplier such additional amounts on demand.

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## 21. Severance

This Agreement will, to the extent possible, be interpreted and construed so as not to be invalid, illegal or unenforceable in any respect. If a provision, on its true interpretation or construction is held to be illegal, invalid or unenforceable:

- (a) that provision will be read down to the extent that it may be necessary to ensure that it is not illegal, invalid or unenforceable and as may be reasonable in the circumstances to give it a valid operation unless this would materially change the intended effect of this Agreement; or
- (b) if the provision or part of it cannot effectively be read down, that provision or part will be deemed to be void and severable and the remaining provisions of this Agreement will not in any way be affected or impaired and will continue regardless of that illegality, invalidity or unenforceability.

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## 22. Jurisdiction

- (a) The Purchaser acknowledges and agrees that this Agreement will be governed by the laws of Queensland, and each party submits to the non-exclusive jurisdiction of the Courts of Queensland.
- (b) The Purchaser submits and consents to the jurisdiction of Queensland in respect of any proceeding relating to this Agreement or to the supply of goods to the Purchaser.

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## 23. Entire agreement

This Agreement contains the entire agreement between the parties and any previous understanding, agreement, representation or warranty is replaced by this Agreement and has no further effect. Any right that a party may have under this Agreement is in addition to, and does not replace or limit, any other right that the party may have.



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