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STANDARD TERMS & CONDITIONS OF TRADE  
PASTILLA NASH PTY LIMITED ACN 003 768 787

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In this document:

Terms means the terms and conditions contained in this document, as amended by us and published on our website [www.pastillanash.com](http://www.pastillanash.com) from time to time.

We, us or our means Pastilla Nash Pty Limited ACN 003 768 787

Quote means any quote we issue from time to time.

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1. Quotes

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We may from time to time issue Quotes for the supply of goods. All Quotes issued by us to you are subject to these Terms.

Unless otherwise stated, any Quote will remain open for acceptance for the time stated on the Quote and where no time is stated, for 60 days, unless withdrawn by us earlier.

A Quote may be accepted by signing and returning the Quote. If you accept a Quote, you are also accepting all of these Terms without amendment.

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2. Acceptance

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We reserve the right to refuse any purchase order placed by acceptance of a Quote within 7 days of receipt of the acceptance.

We may in our absolute discretion refuse or accept a purchase order from you in respect of the supply of goods.

If you are an individual, by signing the acceptance of a Quote, you warrant that you are authorised to accept these Terms on behalf of the relevant entity. If you sign as a director or trustee of a customer then in addition to that entity you agree to be personally liable to guarantee performance of this Agreement by the contracting entity.

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3. Your obligations

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You must ensure that all information provided to us is true, accurate and not misleading.

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4. Shortage

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Details of any goods as recorded by us upon dispatch will be conclusive evidence of the quantity received by you on delivery unless you provide conclusive evidence proving the contrary within 7 days of delivery.

You waive any claims in respect of any shortages for any goods delivered not in accordance with the Terms unless a written notice giving details of any claimed short delivery is provided to us within 7 days of delivery.

If you fail to give that notice, then to the extent permitted by law, the goods must be treated as having been accepted by you

and you must pay for the goods in accordance with the provisions of these Terms.

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5. Delivery

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(a) Place of delivery

Unless otherwise stated in writing delivery is at our place of business and the cost of transportation of the goods must be paid by you.

Delivery is completed at our place of business, when the goods have been loaded on the means of transport provided by you or provided by us if agreed.

(b) Time for delivery and delay

Any dates specified by us for delivery of the goods are estimates only and we are not liable for any delay in delivery. If no dates are so specified, delivery will be within a reasonable time. We may deliver the goods in batches or in instalments.

(c) Storage

If you fail to take delivery of any of goods or to provide any instructions to enable the goods to be delivered, without prejudice to any other rights, we may store (at your risk and expense) or arrange for the storage of the goods pending payment by you.

(d) Licences, authorisations, clearances and other formalities

Unless otherwise stated in the Quote, where applicable, you must obtain, at your own risk and expense, any export and import licence or other official authorisation and carry out all customs formalities necessary for the export and import of the goods and for their transport through any country (including payment of all duties, taxes and other charges payable upon export and import).

(e) Contracts of carriage and insurance

We have no obligation to you to make a contract of carriage. However, if requested by you we may contract for carriage on usual terms at your risk and expense. We may decline to make the contract of carriage and, if we do, shall promptly notify you.

We have no obligation to you to make a contract of insurance. However, we must provide you, at your request, risk and expense (if any), with information that you need for obtaining insurance.

You must contract at your own expense for the carriage of the goods from the place of delivery, except when we agree to contract for the carriage of the goods as provided above.

Where we agree to make a contract of carriage to an address notified by you, you must pay and indemnify us for all costs

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of transportation of the goods to your specified address (and if no address is specified then your nearest place of business), except that the costs must be paid by you to us prior to transportation.

(f) Notices

You must notify us of:

- (i) the name of the carrier or another person nominated within sufficient time as to enable us to deliver the goods in accordance with these Terms;
- (ii) where necessary, the selected time within the period agreed for delivery when the carrier or person nominated will take the goods; and
- (iii) the mode of transport to be used by the person nominated.

We must provide you, at our expense, with the usual proof that the goods have been delivered in accordance with this clause 5 and you must accept the proof of delivery. We must provide assistance to you, at your request, risk and expense, in obtaining a transport document.

(g) Inspection of goods

You must pay the costs of any mandatory pre-shipment inspection, except when such inspection is mandated by the authorities of the country of export.

(h) Packaging

We must, at our own expense, package and mark the goods in a manner appropriate for their transport, unless you notify us of specific packaging requirements before the contract of sale is concluded.

(i) Assistance with information and related costs

We must, where applicable, in a timely manner, provide to or render assistance in obtaining for you, at your request, risk and expense, any documents and information, including security-related information, that you need for the import of the goods and/or for their transport to the final destination. You agree to reimburse us for all costs and charges (if any) incurred by us in providing or rendering assistance in obtaining documents and information.

Where applicable, you must in a timely manner, provide to or render assistance in obtaining for us, at your request, risk and expense, any documents and information, including security-related information, that we need for the transport and export of the goods and for their transport through any country.

6. Goods and Services Tax

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Unless otherwise stated, all amounts and prices provided in a Quote or otherwise are exclusive of GST. Where the service

provided is subject to GST, it will be added and charged to you.

7. Price increases

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Amounts and prices stated on any Quote are those at the date of the Quote and may not be varied other than by agreement in writing between the parties.

If you require any changes to the Quote which affect the cost or rates for insurance, freight, cartage or shipping expenses, duties, exchange rates, sorting and stacking costs, costs of materials or any other amounts used to calculate the price or amounts stated on the Quote, or if those inputs increase in cost before acceptance or during the currency of our contract, any increase in those amounts are for your account and will increase the price accordingly.

8. Accounts and interest

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Unless otherwise stated in a Quote, all accounts must be paid by you on the placement of an order. Time is of the essence in respect of your obligations to make payment for goods sold by us to you.

If our accounts are not paid in full by their due date, we may charge you interest on the unpaid amount at the rate of 15% per annum.

9. Outstanding accounts

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If any account remains outstanding for a period of 45 days or more, without limitation to any other rights and remedies we may have, you hereby charge in our favour any real or personal property in which you have an interest with payment of any outstanding account and you irrevocably authorise us to lodge caveats to notify and protect that charge in relation to any real property in which you have an interest at your cost.

If an account remains outstanding for more than 60 days, you authorise us to provide your particulars and the particulars of the unpaid debt to any credit reporting agency to have the default in payment listed.

All costs and disbursements incurred by us in recovering payment of any overdue account or in enforcing our rights under these Terms including, without limitation, legal costs on a solicitor and client basis are payable by you.

We may retain any documents or goods held on your behalf pending payment of any outstanding account.

10. Retention of title

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In this clause 10 **PPSA** means *Personal Property Securities Act 2009* (Cth).

A term that is used in *italics* in this clause 10 has the same meaning as in the PPSA.

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Property in the goods supplied by us to you does not pass to you until the money owing for those goods, and any other money owing by you to us, has been paid.

Until the goods have been paid for in full, you must not:

- (i) either sell the goods or use the goods in a manufacturing process, other than in the ordinary course of its business, in which case you grant to us a *security interest* in either every payment to you for the goods or the portion of every payment for the manufactured product that relates to the goods (both as *proceeds* of the goods and as original *collateral*); and
- (ii) sell, assign, charge or otherwise encumber or grant any interest over any debts and other obligations which any third party may owe to you as a result of the use, manufacture or resale of the goods.

You irrevocably authorise us at any time, to enter any premises where the goods are stored to enable us to inspect the goods and, if you have breached these Terms, to reclaim possession of the goods. You indemnify us against any liability to any person in connection with the entry or reclamation of the goods.

#### 11. PPSA Registration

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The Purchaser acknowledges and agrees that:

- (i) clause 10 creates a *security interest* in all present and after acquired goods and any *proceeds* as security for your obligations to us;
- (ii) we are a *secured party* in relation to the goods and any *proceeds* of the goods, and is entitled to register its interest on the *register* as a *security interest* and if applicable, a *purchase money security interest*;
- (iii) we may, by notice to you, require you to take all steps requested by us to ensure our *security interest* in the goods and the *proceeds* is enforceable, and to perfect, or better secure our position and you must comply with that notice; and
- (iv) we are not obliged to give any notice, document or information under the PPSA, unless the provision of the notice, document or information is required by the PPSA and cannot be excluded.

The parties may not disclose any information of a kind referred to in section 275(1) of the PPSA that is not in the public domain.

You are responsible for all costs incurred by us in registering our interest under the PPSA and all costs of enforcement.

If we, pursuant to PPSA take all or any of the goods in satisfaction of your obligations to us you agree that you will

remain liable to us for the difference between the market value of the goods at the time they are first able to be sold by us free from all rights and interests of you and other persons and the amount of your obligation for which you are in default.

You will immediately notify us of any change in your name, address, contact or personal details to enable us to register a financing change statement if required. In the absence of such notification, the address we hold in our records is deemed to be your relevant address.

You will not agree, encourage or allow any other person to register a financing statement without the express written consent of us and shall notify us as soon as you are aware of any other person taking steps to register an interest in the goods.

#### 12. Returns

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We are not under any obligation to accept the return of any goods or to provide refunds however, we may do so only on terms satisfactory to us.

#### 13. Termination

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To the extent permitted by law, we may terminate any order at any time without cause and in our absolute discretion.

You may only terminate any order with our consent and on terms which indemnify us from all costs and expenses incurred with third parties after the date of the accepted Quote in respect of the order sought to be cancelled and pay such amounts within 14 days of the cancellation.

Subject to these Terms, on termination, that part of the price paid (if paid in advance) will be refunded to you within 14 days of the cancellation of the relevant order, less the costs and expenses incurred with third parties after the date of the accepted Quote associated with that order.

#### 14. Release and indemnity

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You hereby release and indemnify us and agree to forever keep us indemnified from any and all cost, damage, liability, expense or loss, including indirect, consequential and special losses, that we may incur in relation to you or any third party, where the cost, damage, liability, expense or loss is caused by or contributed to by the goods.

#### 15. Risk and insurance

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Goods supplied by us to you are at your risk immediately on delivery at our place of business. You must insure the goods at your cost from delivery of the goods until they are paid for in full against the value of the accepted Quote and must note our interest on the policy and produce a certificate to this effect to us on request.

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16. Warranties

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We do not provide any warranties in relation to any goods.

Any warranty or condition which would otherwise be implied in any agreement between us or in these Terms (including, but not limited to, merchantability, suitability or fitness for purpose, quality, design, assembly, installation, operation or otherwise) is expressly denied and is excluded to the maximum extent permitted by law.

17. Contractual limitation of liability

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To the extent permitted by law, and notwithstanding Clause 14 entitled "Release and Indemnity", our liability to you in respect of any cost, damage, liability, expense or loss (including those caused or contributed to by our negligence or breach of any Term) is limited to, at our absolute discretion:

- (i) replacement of the goods or the supply of equivalent goods;
- (ii) refund of the purchase price to the extent payment has been received from you; or
- (iii) payment of the cost of replacing or acquiring equivalent goods.

18. Intellectual property

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All rights we may hold in any intellectual property associated with goods sold or delivered under these Terms remains our property, whether under licence from another or otherwise.

19. Force majeure

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Force majeure event means any event outside the reasonable control of a party, including (without limitation) an act of God, any industrial disturbance and any act of war or terrorism. We are not liable for any delay or failure to perform an obligation under these Terms caused by a force majeure event. If a force majeure event occurs, the performance of the obligations under this agreement are suspended for the period of delay caused by the force majeure event. Any party may terminate this agreement by giving the other 14 days notice if it determines that it is not able to deliver the goods within a reasonable time due to a force majeure event.

20. General

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(a) Information

To the maximum extent permissible by law you waive all rights under the Privacy Act 1988 and consent to the collection, storage and provision of information by us to third parties. Such information may be used in respect to our attendances relating to the goods we provide to you and for our own statistical or marketing purposes, among other uses.

Further, you expressly consent to us using any personal information or any other information we hold on you for the purposes of investigating your creditworthiness including but not limited to conducting a credit check on you.

(b) Notices

All notices required or permitted to be given under these Terms must be in writing and given by personal service, pre-paid postage, facsimile transmission or e-mail transmission at the addresses of the parties as stated in the Quote or as notified in writing from time to time.

(c) No waiver

A waiver by us of any matter does not prejudice our rights in respect of any subsequent or other matter. Any non-exercise or partial exercise of, or any delay in exercising any right or remedy does not constitute a waiver of that right or remedy.

These Terms may only be amended in writing signed by each of us.

(d) Entire agreement

These Terms and any matters set out in a Quote supersede all previous agreements between us and embody the entire agreement in relation to any accepted Quote or any other arrangement between us.

Any previous correspondence, negotiations or representations between us do not bind either us or you and neither we nor you can rely on them.

(e) Delegation

We may delegate or sub-contract the performance of any obligation in our absolute discretion.

(f) No assignment

You may not assign the benefits or obligations under any agreement with us to any entity without our consent, which may be withheld in our absolute discretion.

(g) Severance

If a provision of these Terms would be illegal, void, unenforceable or contravene any law, then it is severed without affecting the enforceability of the other provisions of these Terms.

(h) Disputes

If a dispute arises out of or relates to these Terms, a party must not commence any court or arbitration proceedings relating to the dispute unless it has complied with the following paragraphs:

- (i) the party claiming that a dispute has arisen must give written notice to the other party specifying the nature of the dispute;
- (ii) on receipt of that notice by that other party, the parties must endeavour in good faith to resolve the dispute using informal dispute resolution techniques; and
- (iii) if the parties are not able to resolve the dispute within 10 days of receipt of the notice (or such further period as the parties agree in writing) the parties must mediate the dispute in accordance with the Mediation Rules of the Law Society of New South Wales and the President of the Law Society of New South Wales or the President's nominee will select the mediator and determine the mediator's remuneration.

Nothing in these Terms will prejudice the right of a party to seek urgent injunctive or declaratory relief in respect of a dispute or any matter arising under these Terms or in connection with it.

- (i) Governing law and jurisdiction

These Terms and the transactions contemplated by them are governed by the law of New South Wales, Australia.

We each irrevocably submit to the jurisdiction of the courts of New South Wales, Australia and all courts called to hear appeals from the courts of New South Wales in respect of the Terms or its subject matter.