

Macaw Fruits – Standard Terms

These Standard Terms apply to the supply of any Products by (or on behalf of) Macaw Fruits from time to time. It is agreed:

1. Interpretation

1.1 Definitions

Unless the context otherwise requires, in these Standard Terms and any other document forming part of the Agreement the following terms are defined:

- (a) **Account Application** means any account application, new customer information, credit application or similar form completed by the Customer (including via Macaw Fruits's Website) that relates to the supply of Products by Macaw Fruits, including any associated guarantee given in favour of Macaw Fruits;
- (b) **Additional Charge** means any fees or charges for additional goods provided or additional services provided or performed (or arranged) by Macaw Fruits at the Customer's request or reasonably required as a result of the Customer's conduct;
- (c) **Agreement** means the agreement between Macaw Fruits and the Customer comprising these Standard Terms and any Account Application accepted by Macaw Fruits;
- (d) **Customer** means the relevant person that orders or purchases Products from Macaw Fruits from time to time, including any persons named as the customer, buyer, applicant or consignee in the relevant Account Application or Order, any Distributor and where the context permits the officers, employees and agents of the foregoing;
- (e) **Distributor** means the relevant Customer that orders or purchases Products from Macaw Fruits for the purposes of resale to third parties from time to time;
- (f) **Distributor T&Cs** means Macaw Fruits's terms and conditions applicable to Distributors in effect and as amended from time to time, including any provisions in these Standard Terms that apply to Distributors;
- (g) **International Customer** means a Customer (whether or not a Distributor) where the supply or delivery of the Products is to occur outside Australia, including where the Products are handed over to any agent or carrier within Australia for eventual delivery outside Australia;
- (h) **Macaw Fruits** means Kings Acai Pty Ltd ABN 32 655 093 922, trading as Macaw Fruits and, where the context permits includes references to its related bodies corporate and their respective officers, employees, contractors and agents;
- (i) **Order** means an order for Products placed by the Customer or its agent from time to time (including via the Website), and where an order is subsequently amended refers to the final amended Order that is accepted or notified by Macaw Fruits as permitted by these Standard Terms;
- (j) **Products** means any goods (as well as any ancillary or related services) supplied or procured by Macaw Fruits for the Customer from time to time, and when the term is used in the context of a particular Order means the Products the subject of that Order;
- (k) **Standard Terms** means these standard terms and conditions in effect and as amended from time to time;
- (l) **Supply Terms** the relevant Incoterm 2020 applicable to the relevant Order, as stated in the accepted Order as varied pursuant to this Agreement; and
- (m) **Website** means the websites owned or operated by Macaw Fruits, including kingsacai.com/.

1.2 When Customer bound

These Standard Terms apply to all transactions between the Customer and Macaw Fruits relating to the provision of Products (including all quotations, contracts and variations) and the Customer will be bound by these Standard Terms from the time it first signs a document forming part of this Agreement, creates an account via Macaw Fruits's Website or from when it first places an Order (whichever is the earlier).

2. Orders

2.1 Submitting Orders

- (a) Every Order by the Customer for the supply of Products must be submitted in writing in the manner required by Macaw Fruits from time to time and include such information as Macaw Fruits may require, including details of the relevant Products to be ordered (and any applicable product codes) and the Customer's requested Supply Terms and collection/delivery date.
- (b) The Order may be in the form of a pro forma invoice issued by Macaw Fruits that is accepted by the Customer and Macaw Fruits. To confirm any Order, Distributors are required to submit a valid purchase order, and International Customers must sign a pro forma invoice or submit a valid purchase order. However, Macaw Fruits may accept Orders placed by email, phone, submission through Macaw Fruits's online portal or any other means (in Macaw Fruits's discretion).
- (c) Following receipt of an Order, Macaw Fruits may notify the Customer of any required changes to be made to, or additional matters to be included in, the Order (including the prices or any changes to the prices for

the Products the subject of the order) and any Additional Charges relevant to the Order. If this occurs, the Customer must promptly confirm in writing that it accepts or rejects the variations proposed by Macaw Fruits, prior to Macaw Fruits being obliged to accept or fulfil the Order.

2.2 Acceptance of Orders

- (a) Macaw Fruits may, in its discretion, accept or reject any Order in whole or in part, for reasons including but not limited to where the Products are unavailable, any credit terms requested by the Customer have not been agreed or where payment has not been made in full for any previous Products supplied to the Customer or any of its related entities. Any costs incurred by Macaw Fruits in reliance on incorrect or inadequate information provided by the Customer in an Order may result in the imposition of an Additional Charge.
- (b) An Order will only be accepted by Macaw Fruits once Macaw Fruits notifies the Customer in writing that the Order has been accepted, at which point a contract is formed for the supply of the relevant Products. Any automatic electronic notification that an Order has been accepted via any Website or email address made available by Macaw Fruits for submitting orders will not be treated as acceptance of an Order.
- (c) Once Macaw Fruits accepts an Order, then it may advise the Customer of the proposed date that the Products will be ready for collection (or delivery, if agreed by Macaw Fruits) and next steps required to progress the Order (for example, payment). To the extent the law permits, any indication in any Order or communication from Macaw Fruits of the time frame for the provision of the Products is an estimate only and is not a fixed time frame. Macaw Fruits will use reasonable endeavours to fulfil the Order in any estimated timeframe but will not be liable to the Customer for any Liability suffered if the time frame is not met.

2.3 Cancellation and variation of Orders

- (a) An Order cannot be cancelled or varied without Macaw Fruits's written consent. Where an Order is cancelled by the Customer, the Customer indemnifies Macaw Fruits against all Liabilities reasonably incurred by Macaw Fruits as a result of the cancellation, including any loss of profit from other orders foregone as a result of the scheduling of the Order which is subsequently cancelled.
- (b) If the Customer wishes to vary an Order after it has been accepted by Macaw Fruits, Macaw Fruits reserves its right to further amend the Order or its quoted prices, including by adding Additional Charges in respect of any extra costs incurred in connection with the variation. Macaw Fruits may accept or reject any variation in its discretion.

3. Pricing, invoicing and payment

3.1 Price for Products

- (a) The price payable for the Products the subject of an Order will be the price advised to the Customer by Macaw Fruits prior to acceptance of the Order (which may be subject to variations or changes to reflect Macaw Fruits's then current prices at the time of delivery or collection where the Order is for the supply of Products at a later date), and if no such price is advised then Macaw Fruits will charge its then current prices at the time of acceptance of the Order. Any indication of prices on Macaw Fruits's Website or in any other material is not binding on Macaw Fruits and does not include any Additional Charges.
- (b) Unless otherwise specified in an accepted Order and the Supply Terms, the prices and charges referred to in the Order or notification from Macaw Fruits:
 - (i) are quoted on an 'Ex Works' basis as defined in Incoterms 2020 (which for the avoidance of doubt excludes freight, transport, handling, insurance or other third party costs), with the Customer to collect and load the Products at its cost from Macaw Fruits's nominated premises at the place of manufacture of the Products in Brazil (or, at Macaw Acai's election, its premises in Melbourne, Victoria Australia); and
 - (ii) do not include GST (including any other indirect transaction, consumption, value added, sales or similar taxes), taxes, duties (including any import/export duties), excise fees or Additional Charges or other sums required to be paid to Macaw Fruits or any third party in accordance with this Agreement, which the Customer must pay in addition to the agreed prices for the Products at the time of payment of the Products (or otherwise on demand).

3.2 Additional Charges

- (a) Where these Standard Terms entitle Macaw Fruits to impose any Additional Charges, the amount of the Additional Charge will be calculated as follows:
 - (i) where the sum of the Additional Charge is included in an accepted Order or invoice (including a pro forma invoice) that is not later varied in accordance with these Standard Terms, the sum specified in the Order or invoice (as the case may be);

- (ii) in all other cases, the sum reasonably determined by Macaw Fruits that represents its full costs and expenses incurred in connection with the matter giving rise to the Additional Charge, plus a mark-up of 20%.
- (b) Macaw Fruits may also impose Additional Charges as a result of any packaging, freight, transport, handling or insurance charges not specifically included in the accepted Order and the applicable Supply Terms, as well as any additional work or services requested by the Customer.

3.3 Invoicing

Unless this Agreement provides otherwise in respect of a particular Order, Macaw Fruits may issue an invoice (including a pro forma invoice) to the Customer at any time, including at the time of acceptance of the Order, during the manufacture of the Products or after the Products have been supplied. The amount payable by the Customer will be the amount set out in the invoice, consisting of the price for the Products and any Additional Charges. This paragraph does not release the Customer from any other obligations to pay as provided for in the Agreement and Macaw Fruits is under no obligation to commence manufacturing or continuing manufacturing or supplying any Products when any invoice has not been paid when due.

3.4 Payment terms

- (a) Unless Macaw Fruits has agreed to offer the Customer credit terms in respect of the relevant Order, the Customer must pay any invoice issued by Macaw Fruits immediately upon receipt and in any event prior to Macaw Fruits producing the Products (including for International Customers) or making them available for collection or dispatch.
- (b) All monies are payable to Macaw Fruits in Australian dollars (AUD) (unless the accepted Order states that the monies are payable in another currency, in which case payment must be made in that currency) at Macaw Fruits's registered office in Melbourne in the manner Macaw Fruits reasonably requires from time to time. Macaw Fruits may apply any payment received from the Customer to any amount owing or payable by the Customer to Macaw Fruits from time to time on any account whatsoever.
- (c) The Customer is to pay Macaw Fruits on demand interest at the rate of 10% per annum on all overdue amounts owed by the Customer to Macaw Fruits, calculated on daily balances and compounding monthly until paid. The Customer must also pay all costs and expenses incurred by Macaw Fruits associated with collecting any overdue amounts or enforcing Macaw Fruits's rights.

3.5 Credit terms

- (a) Macaw Fruits may agree to provide the Customer with credit terms in respect of any particular Order or an ongoing basis until revoked, on such conditions imposed by Macaw Fruits from time to time (which will include the requirement for the Customer to pass credit checks and be accepted by Macaw Fruits's relevant insurers).
- (b) Any credit terms offered by Macaw Fruits may be revoked or changed by notice to the Customer at any time in Macaw Fruits's discretion (including where any payment is overdue) and any Orders accepted by Macaw Fruits after providing such notice will have to be paid for in full prior manufacture, collection or dispatch of the Products.

4. Terms of supply of Products

4.1 Collection/delivery

- (a) The parties' rights and obligations with respect to the terms of supply of the Products shall be governed by the Supply Terms, save that this Agreement will prevail to the extent it is inconsistent with the Supply Terms.
- (b) Unless the Supply Terms and the Order provide for Macaw Fruits to deliver the Products to the Customer, the Customer will arrange for collection of the Products from Macaw Fruits's nominated address during normal business hours on the date notified by Macaw Fruits that the Products are ready for collection.
- (c) If the Supply Terms and Order provide for the Products to be delivered to the Customer or to a particular location (**Delivery Point**), then unless the Supply Terms and the Order expressly provide otherwise:
 - (i) the Customer must insure the Products while in transit as per Macaw Fruits's requirements and arrange for all approvals or clearances required as well as the unloading of any Products at the delivery location or vessel at the time the Products are delivered (at the Customer's cost);
 - (ii) the prices in the Order do not include Macaw Fruits's costs in connection with delivery, insurance, clearances, security-related costs or other approvals, which the Customer must pay to Macaw Fruits as an Additional Charge;
 - (iii) where a point/port of delivery or destination in the Order:
 - (A) is a port without specifying the location within the port, then the point/port of delivery or destination (as the case may be) will be on board the vessel at the relevant port; and

(B) is not specified, then the port of delivery will be, at Macaw Fruits's election, the Port of Melbourne or the relevant port of delivery in Brazil nominated by Macaw Fruits,

unless Macaw Fruits notifies the Customer otherwise in writing; and

- (iv) to the extent the law permits and unless the Supply Terms provide otherwise, Macaw Fruits will not be liable for any damage to the Products in transit where the Customer has engaged a third party to arrange delivery of the Products or where the Customer is required to insure the Products in transit.
- (d) If the Customer does not collect the Products from the nominated collection location within 14 days of the collection date notified to the Customer, or does not arrange for collection at another Delivery Point when the Products arrive, then Macaw Fruits may store the Products and charge the Customer storage costs and expenses as Additional Charges. If the Products are not collected within 30 days of the collection date notified to the Customer, then Macaw Fruits may dispose of the Products and recover from the Customer any Liability suffered by Macaw Fruits.

4.2 Inspection and acceptance of Products

- (a) The Customer will inspect the Products for any defects, faults or other non-compliance with this Agreement and will notify Macaw Fruits of any such defects, faults or non-compliance (via email with images where practical) to Macaw Fruits's nominated email addresses:
 - (i) by 5.00pm on the business day following delivery or collection where the Products are delivered or collected within Australia; or
 - (ii) within 14 days of delivery to the Customer, its carrier or agent, where the Products are shipped outside Australia to an International Customer.

Any defects, faults or other non-compliance with this Agreement visible on receipt must also be noted on consignment at time of delivery or collection.

- (b) To the extent the law allows, if the Customer fails to notify Macaw Fruits in writing of such defaults, faults or non-compliance within 5 Business Days from the relevant date in paragraph (a) above, then the Customer is deemed to have accepted the Products and that the Products are fully compliant with this Agreement. Nothing in this clause affects the Customer's rights for any alleged failure of a guarantee under the Australian Consumer Law.
- (c) Macaw Fruits will use its best endeavours to respond to any reports in relation to defects, faults or non-compliance and notify the Customer if anything further is required from the Customer, and what arrangements will be put in place for the replacement of any Products that are found to be defective (which will be agreed by the parties in writing).

4.3 Risk and title

- (a) The risk in any Products passes to the Customer at the time provided for in the Supply Terms (if any), otherwise risk passes on the earlier of the time immediately prior to loading the Products for collection by the Customer (or its agent) or dispatch to the Customer.
- (b) Property and title in Products does not pass to the Customer until all money owing to Macaw Fruits on any account is paid in full. If the Customer fails to pay to Macaw Fruits any monies due then Macaw Fruits and its employees and agents have the right and irrevocable licence to, at any time and without notice, enter the Customer's premises (or any other location) and repossess the Products or any part of them. Pending payment in full, the Customer must ensure that the Products are fully insured and that if the Products are damaged or destroyed then the proceeds of any insurance policy are paid directly to Macaw Fruits.
- (c) To the extent the law permits, the Customer waives any rights it has under the *Personal Property Securities Act 2009* (Cth) and any related legislation (**PPSA**) (including any rights to receive notices, statements or documents from Macaw Fruits), Macaw Fruits need not comply with any provisions of the PPSA (but Macaw Fruits may rely on all rights and remedies under the PPSA) and Macaw Fruits will separately have all the enforcement rights and remedies in the PPSA as if they were stated in these Standard Terms (but without any corresponding obligations).

5. Distributor T&Cs & International Customers

5.1 Distributor T&Cs & International Customers

This clause 5 contains 'Distributor T&Cs' that will apply in respect of any dealings between Macaw Fruits and a Distributor, in addition to any other provisions of this Agreement that apply to the Distributor as a 'Customer'. Further, this clause 5 contains some provisions that apply to International Customers (whether or not they are a 'Distributor').

5.2 Minimum Order Quantities

- (a) Unless Macaw Fruits otherwise agrees in writing in respect of a particular Order, any Order placed by an International Customer must be for a minimum of 2 pallets or a full container, unless otherwise advised by Macaw Fruits in writing at or around the time the Order is accepted by Macaw Fruits.
- (b) The Supply Terms in respect of an Order will be confirmed by Macaw Fruits at the time of acceptance of the Order and orders below any minimum quantity quoted by Macaw Fruits will incur freight charges as an Additional Charge.

5.3 Product storage and related obligations

The Distributor will at all times:

- (a) store and transport the Products in facilities and environmental conditions appropriate for the Products (including in such manner so as to minimise opportunities for food contamination) and which meet any requirements specified on the Products labelling or otherwise reasonably directed by Macaw Fruits;
- (b) comply with all appropriate food handling controls related to the receipt, storage, display, packaging, transportation, disposal and recall of food products so far as those controls are relevant to the Products;
- (c) maintain in a business-like manner the premises and the facilities from which it conducts its business to enable it to discharge its responsibilities under this Agreement and the safe storage and distribution of Products;
- (d) ensure that it takes out and maintains adequate and reasonable insurance in relation to its business and operations, including public and products liability insurance;
- (e) have a nominated food safety supervisor for any premises, facilities or other locations in which the Distributor stores the Products or distributes them from, and use its best endeavours to ensure that the nominated food safety supervisor has the experience and training reasonably expected of a person in that role; and
- (f) have (and ensure its staff comply with) a suitable pest management plan and related documentation (such as a pest sighting register) and have a pest inspection of the premises and the facilities which the Distributor stores the Products performed by an appropriately qualified and licensed technician at least annually, or at such shorter durations as necessary;
- (g) install and maintain adequate monitoring and security controls on any premises, facilities or other locations in which the Distributor stores the Products; and
- (h) provide Macaw Fruits with any reasonable evidence requested by Macaw Fruits in connection with the above matters.

5.4 Dealings with Macaw Fruits and customers

The Distributor will at all times:

- (a) act as the distributor of Macaw Fruits dutifully and in good faith, deal honourably and fairly with existing and prospective customers of the Distributor concerning the Products and not do anything in the manner of promoting or supplying the Products which may adversely affect the goodwill, reputation or Intellectual Property Rights of Macaw Fruits or its related bodies corporate;
- (b) offer for sale and sell the Products in the same condition they received them, not make any representation or give any warranty for the Products other than those contained in this Agreement at the time of the offering for sale or the sale and ensure that any advertising of the Products that is not provided by Macaw Fruits is approved by Macaw Fruits;
- (c) follow up any lead provided to the Distributor by Macaw Fruits promptly after receiving such a lead, and continue to follow up such a lead weekly thereafter until the Distributor is reasonably convinced that no sales will result, in which event the Distributor will refer the lead back to Macaw Fruits;
- (d) not seek to circumvent any supply arrangements between Macaw Fruits and its manufacturers or suppliers, and not seek to order any products directly from such manufacturers or suppliers with Macaw Fruits's consent (which will not be unreasonably withheld); and
- (e) communicate promptly to Macaw Fruits any complaints made to the Distributor concerning the Products and any enquiries or orders for the Products received by the Distributor where the Distributor does not intend to supply the Products to that potential customer.

5.5 Staffing and personnel

The Distributor must employ sufficient and appropriate personnel for the purpose of selling and distributing the Products and comply with any reasonable directives or instructions given by Macaw Fruits for any promotional activities concerning the nature, type, quality, characteristics, fitness for purpose, suitability, use and description of the Products.

5.6 Traceability

The Distributor must establish and maintain procedures to provide traceability of Products sold to its customers, end users or other third parties and the Distributor must retain those records for at least 7 years. The Distributor must provide Macaw Fruits a copy of such records on Macaw Fruits's reasonable request and fully cooperate and assist Macaw Fruits in connection with any product recalls, food safety matters or other regulatory issues (whether before or after termination of this Agreement). Upon termination of this Agreement, the Distributor must promptly deliver to Macaw Fruits all records, files, data and other information required to be maintained under this clause 5 to enable Macaw Fruits to implement recalls of any Products.

5.7 Product samples

The Distributor may request that Macaw Fruits provide samples of the Products. However, Macaw Fruits has the discretion to provide samples of Products.

6. General obligations

6.1 Warranties by Customer

To the extent permitted by law, the Customer warrants, acknowledges and agrees at all times that:

- (a) any person submitting an Order is properly authorised by the Customer, and the person submitting any Order or signing any constituent part of this Agreement separately warrants that he/she is duly authorised to bind the Customer;
- (b) the particulars in the Order and all other information provided to Macaw Fruits in connection with this Agreement are true, correct and not misleading in any respect (including by way of omission) and any specific dietary or other requirements for the Products have been notified to Macaw Fruits at the time of placing the Order;
- (c) if the Customer is a 'Distributor' for the purposes of this Agreement, it is purchasing the Products solely for business purposes and not for personal, domestic or household use;
- (d) if Macaw Fruits has arranged for insurance to cover the Products in transit, Macaw Fruits has provided no representations, warranties or advice that the insurance is appropriate or suitable for the Customer's purposes, any insurance will be on Macaw Fruits's standard policies in place from time to time (and subject to all limitations and exclusions contained therein with the insured value equalling the price charged to the Customer for the Products), and the Customer releases Macaw Fruits from any Liability that may be suffered by the Customer in connection with such insurance;
- (e) it has (and ensured its officers, employees and agents have) read, understood and agreed to any policies (including any privacy policy), codes of conduct or terms of use published on Macaw Fruits's Websites from time to time (**Macaw Fruits Policies**), and all required consents, waivers or agreements are in place to ensure continued compliance with the foregoing;
- (f) despite the Macaw Fruits Policies not forming part of this Agreement (or granting the Customer any rights against Macaw Fruits), where the Macaw Fruits Policies grant Macaw Fruits rights (including in respect of pricing errors on the Website or in respect of the handling of personal information), those rights are enforceable by Macaw Fruits despite not forming part of the Agreement;
- (g) the Customer has the power to enter into this Agreement, the power has been exercised properly and Macaw Fruits's supply of the Products will not infringe any third party rights or restrictions imposed on the Customer (including in respect of any trade marks or other material to be affixed to the Products at the Customer's request); and
- (h) if the Customer is the trustee of any trust, this Agreement is binding on the Customer in its personal capacity and in its capacity as trustee of any trust, the Customer is validly appointed as the sole trustee and will not allow any new trustee to be appointed and the Customer has the right to be fully indemnified out of the trust assets and from the beneficiaries for all liabilities in connection with this Agreement.

6.2 Implied terms

- (a) Subject to paragraph (b) below, any condition or warranty which would otherwise be implied in this Agreement which is capable of being excluded is hereby excluded, and all information, specifications and samples provided by Macaw Fruits in relation to the Products are approximations only and, subject to any guarantees under the Australian Consumer Law, small deviations or slight variations from them which do not substantially affect the Customer's use of the will not entitle the Customer to reject the Products upon delivery, or to make any claim in respect of them.
- (b) The Australian Consumer Law may give to the Customer certain guarantees. Where liability for breach of any such guarantee can be limited, Macaw Fruits's liability (if any) arising from any breach of those guarantees is limited with respect to the supply of goods, to the replacement or repair of the goods or the costs of resupply or replacement of the goods or with respect to services to the supply of services again or cost of re-supplying the services again.

6.3 Allocation of risk

- (a) To the extent the law permits, the Customer indemnifies and must keep indemnified Macaw Fruits (including its related bodies corporate and their respective officers, employees, contractors and agents) against any and all Liabilities incurred, suffered or otherwise arising in connection with any breach by the Customer of its covenants in favour of Macaw Fruits in connection with this Agreement or any negligence on the part of the Customer, its staff or agents.
- (b) To the extent the law permits, Macaw Fruits is not liable for any direct, indirect, punitive, incidental, special, consequential losses or damages (including damages for loss of use, data or profits) arising out of or in any way connected with the provision of or failure to provide Products or any technology systems through which Macaw Fruits communicates with the Customer, whether based on terms of trade, negligence, strict liability or otherwise, even if Macaw Fruits has been advised of the possibility of such losses or damages.

6.4 Intellectual Property Rights

- (a) In this Agreement, '**Intellectual Property Rights**' includes any and all industrial and intellectual property rights now in existence or coming into existence anywhere in the world (whether registered or capable of registration or not and whether protected by statute or common law or not), including copyright, trade marks, patents and designs and any rights to apply for registration of or protection of the foregoing.
- (b) The Customer warrants that it owns (or has a licence to) all Intellectual Property Rights or other materials supplied or provided to Macaw Fruits in connection with any Order for Products and authorises Macaw Fruits to reproduce or use same for the purposes of the Order and this Agreement. Further, the Customer indemnifies and agrees to keep indemnified Macaw Fruits against all Liabilities incurred by, or asserted against, Macaw Fruits in relation to any breach of any Intellectual Property Rights in relation to any material supplied by the Customer.
- (c) All Intellectual Property Rights in the Products (including any quality standards, specifications, plans, designs, data, ideas, know-how, inventions, recipes or other items), technology or process relating to the Products and any other works created by Macaw Fruits (or arise in connection with this Agreement or any dealing with the Customer) vest in and remain the property of Macaw Fruits, and the Customer obtains no rights in them. The Customer must (at its cost) do any and all things (including obtaining any third party consents or waivers) requested by Macaw Fruits from time to time to ensure that title such Intellectual Property Rights are vested in Macaw Fruits and registered (where possible) free of any third party interest or claim.
- (d) The Customer must not (and must ensure its customers do not) disclose, misuse or in any way prejudice Macaw Fruits's Intellectual Property Rights or confidential information (including by seeking to reverse engineer or otherwise determine any recipes for Products), except to the extent expressly permitted by Macaw Fruits in writing from time to time. The Customer must immediately return any and all documents or other materials containing Macaw Fruits's Intellectual Property Rights or confidential information.
- (e) The Customer acknowledges and agrees that any use by the Customer of Macaw Fruits's Intellectual Property Rights (whether before or after this Agreement), in the nature of trading names, corporate names, domain names, business names, logos, marks or words comprising any (or any part) of Intellectual Property Rights of Macaw Fruits (or its related bodies corporate) is subject to a licence granted from Macaw Fruits on terms set out in this Agreement and which is terminable at any time upon notice from Macaw Fruits. The Customer agrees:
 - (i) to use (and apply to the Products) the relevant Intellectual Property Rights only under the conditions which are set down by Macaw Fruits or by any third party owner of the Intellectual Property Rights from time to time;
 - (ii) that it will never make nor have any claim to the Intellectual Property Rights of Macaw Fruits, and will do all things requested by Macaw Fruits in connection with any Intellectual Property Rights of Macaw Fruits (or its related bodies corporate) from time to time (including ceasing use of same upon termination of this Agreement or earlier on request).

7. Termination

7.1 Termination for breach

A party (**Innocent Party**) may terminate this Agreement by notice in writing to the other party (**Defaulting Party**) if:

- (a) the Defaulting Party breaches any provision of this Agreement, and the breach is incapable of remedy or is not remedied to the reasonable satisfaction of the Innocent Party within 14 days of the Innocent Party providing written notice of the breach; or
- (b) the Defaulting Party is insolvent or presumed to be insolvent, commits an act of bankruptcy or is declared bankrupt (as those terms as defined in the *Bankruptcy Act 1966* (Cth), has any creditors, debtors or similar petition relating to insolvency presented against it, the Customer is subject to any form of insolvency

proceedings, external administration or similar court or voluntary process (including any liquidation, administration, deed or scheme of company arrangement).

7.2 Termination for convenience

Either party terminate this Agreement by giving not less than 3 months' written notice to the other party (or such other period agreed by the parties in writing). The parties will remain obliged to comply with their respective obligations in connection with any Orders accepted prior to termination under this clause 7.2.

7.3 Consequences of termination

- (a) The termination of this Agreement is without prejudice to any rights that Macaw Fruits may have at law or statute (which are hereby expressly preserved) and upon termination all monies owing to Macaw Fruits (whether due for payment or not) will become immediately due for payment.
- (b) Any obligations of the Customer, or rights of Macaw Fruits, under or in connection with this Agreement that expressly or impliedly survive the termination of this Agreement (or are capable of surviving) will continue in full force and effect, including any provisions in respect of Macaw Fruits's Intellectual Property Rights.
- (c) In respect of any Distributor, if this Agreement is terminated then the Distributor must promptly:
 - (i) remove from its property and immediately discontinue all use (whether directly or indirectly) of any trade marks, business names, trading names, markings and the like owned or licensed by Macaw Fruits; and
 - (ii) deliver to Macaw Fruits all records, files, data and other information relating to the sale, distribution, marketing or promotion of the Products, including all Product and customer information required to be maintained pursuant to clause 5.6 to enable Macaw Fruits to implement Product recalls.

8. Privacy Policy

8.1 Notice

Macaw Fruits is committed to providing quality services to you and this policy outlines our ongoing obligations to you in respect of how we manage your Personal Information. We have adopted the Australian Privacy Principles (APPs) contained in the Privacy Act 1988 (Cth) (the Privacy Act). The APPs govern the way in which we collect, use, disclose, store, secure and dispose of your Personal Information. A copy of the Australian Privacy Principles may be obtained from the website of The Office of the Australian Information Commissioner at <https://www.oaic.gov.au/>.

8.2 Personal Information

Personal Information is information or an opinion that identifies an individual. Examples of Personal Information we collect includes names, business names, addresses, email addresses, and phone numbers. This Personal Information is obtained in many ways including correspondence, by telephone, by email, via our website (kingsacai.com / macawfruits.com), from public directory sources, and directly from third-party digital advertising platforms (such as Meta and LinkedIn lead generation forms). We don't guarantee website links or the policies of authorised third parties.

We collect your Personal Information for the primary purpose of providing our products and wholesale services to you, providing information to our clients, and marketing. We may also use your Personal Information for secondary purposes closely related to the primary purpose, in circumstances where you would reasonably expect such use or disclosure. You may unsubscribe from our mailing/marketing lists at any time by utilising the unsubscribe links provided in our emails or by contacting us in writing. When we collect Personal Information we will, where appropriate and where possible, explain to you why we are collecting the information and how we plan to use it.

8.3 Digital Advertising, Cookies and Analytics (Paid Ads Compliance)

To assist with our digital marketing campaigns and improve your online experience, our digital platforms utilise modern tracking technologies:

- a) Cookies: We use cookies and similar pixel technologies to enhance website functionality, remember your preferences, and analyse our web traffic. You can choose to accept or decline cookies through your browser settings.
- b) Third-Party Advertising Tools (Meta Pixel & LinkedIn Insight Tag): We use conversion tracking pixels from platforms like Meta (Facebook & Instagram) and LinkedIn. These tools allow us to measure the effectiveness of our paid advertisements, understand user behaviour on our website, and serve targeted, relevant advertisements to you based on your past interactions with our brand.
- c) Lead Generation Forms: When you submit your contact information via an Instant Lead Form on Meta or LinkedIn to request a product brochure or free sample pack, that information is collected securely via those respective platforms and integrated directly into our customer database for processing and follow-up.
- d) Data Privacy: Third-party platforms securely hash your data, and we do not sell or share this digital tracking data with unauthorised third parties. Personal Information is information or an opinion that identifies an individual.

8.4 Sensitive Information

Sensitive information is defined in the Privacy Act to include information or opinion about such things as an individual's racial or ethnic origin, political opinions, membership of a political association, religious or philosophical beliefs, membership of a trade union or other professional body, criminal record or health information.

Sensitive information will be used by us only:

- a) For the primary purpose for which it was obtained
- b) For a secondary purpose that is directly related to the primary purpose
- c) With your consent; or where required or authorised by law.

8.5 Third Parties

Where reasonable and practicable to do so, we will collect your Personal Information only from you. However, in some circumstances we may be provided with information by third parties. In such a case we will take reasonable steps to ensure that you are made aware of the information provided to us by the third party.

8.6 Disclosure of Personal Information

Your Personal Information may be disclosed in a number of circumstances including the following:

- a) Third parties where you consent to the use or disclosure; and
- b) Where required or authorised by law.

8.7 Security of Personal Information

Your Personal Information is stored in a manner that reasonably protects it from misuse and loss and from unauthorised access, modification or disclosure.

When your Personal Information is no longer needed for the purpose for which it was obtained, we will take reasonable steps to destroy or permanently de-identify your Personal Information. However, most of the Personal Information is or will be stored in client files which will be kept by us for a minimum of 7 years.

8.8 Access to your Personal Information

You may access the Personal Information we hold about you and to update and/or correct it, subject to certain exceptions. If you wish to access your Personal Information, please contact us in writing. Macaw Fruits will not charge any direct fee for your access request, but may charge an administrative fee for providing a copy of your Personal Information. In order to protect your Personal Information we may require identification from you before releasing the requested information.

8.9 Maintaining the Quality of your Personal Information

It is important to us that your Personal Information is up to date. We will take reasonable steps to make sure that your Personal Information is accurate, complete and up-to-date. If you find that the information we have is not up to date or is inaccurate, please advise us as soon as practicable so we can update our records and ensure we can continue to provide quality services to you

8.10 Policy Updates

This Policy may change from time to time and the latest version will always be available on our website.

8.11 Privacy Policy Enquires

If you have any queries about our Privacy Policy please contact us at:

Macaw Fruits (Trading name of Kings Acai Pty Ltd) Melbourne – Australia

info@kingsacai.com.au

(+61) 491 737 221

9. General Provisions

9.1 Notice

Any notice, demand or other communication relating to this Agreement must be in writing and may be given by being personally served on a party, being left at the party's last known address, being sent to a party's last known address by pre-paid ordinary mail, express mail, or registered mail (in which case it will be deemed to be served in two Business Days after posting) or being sent by email to the party's last known email address in which case it will be deemed to be served on the same day if sent before 4:00pm in the place of receipt.

9.2 Further acts

The Customer must, upon request from Macaw Fruits, promptly do any further act and execute and deliver any further documents and information which Macaw Fruits may reasonably request to facilitate the completion of the Agreement, to verify that the Customer is complying with its obligations in connection with this Agreement and in order to give effect to Macaw Fruits's rights (and the Customer's obligations) in connection with this Agreement and any Products.

9.3 Nature of relationship

Nothing in this Agreement establishes or creates a principal and agent relationship or a partnership or joint venture or franchise between the parties. The Customer (including any Distributor) must not describe themselves in any way as agents of Macaw Fruits.

9.4 Variation and waiver

Any variation of or to this Agreement will not have any effect whatsoever unless such variation is reduced to writing and signed by Macaw Fruits. Further, any failure of Macaw Fruits to exercise any or all of its rights or powers under this Agreement at any time and for any period of time shall not constitute a waiver of any of Macaw Fruits's rights or powers arising pursuant to this Agreement.

9.5 Updates to these Standard Terms

To the extent the law permits, Macaw Fruits may amend these Standard Terms by publishing the amendments on its Website or by written notice to the Customer (including by providing notification on invoices issued to the Customer) and the amended terms will apply to any Orders placed for Products after such notice.

9.6 **Force majeure**

If the performance of this Agreement or any obligation under it (except for any obligation to pay) is prevented, restricted, interfered with or materially prejudiced by reason of circumstances beyond the reasonable control of the party obliged to perform it (including any Act of God, act of any governmental or competent authority, the imposition of any new taxes, excise fees, tariffs or other mandatory charges or an increase in same, default of any suppliers under any contract to which Macaw Fruits is a party or seizure or stoppage of Products in transit), the party so affected (upon giving prompt notice to the other party) shall be excused from performance to the extent of the prevention, restriction or interference, but the party so affected shall use its best endeavours to avoid or remove the causes of non-performance and shall continue performance under this Agreement with the utmost despatch whenever such causes are removed or diminished. If such causes are not reasonably able to be overcome, then the parties will negotiate in good faith alternative arrangements for the performance of this Agreement.

9.7 **Entire agreement**

To the extent the law permits, this Agreement represents all the terms and conditions between the parties, and the Customer acknowledges that it has not entered into this Agreement in reliance on, or as a result of, any promise, representation, statement, conduct or inducement of any kind relating to any matter in connection with this Agreement from Macaw Fruits or its agents. The parties agree that the United Nations Convention on Contracts for the International Sale of Products does not apply to this Agreement or the supply of any Products.

9.8 **Counterparts**

Any documents forming part of this Agreement may be executed and exchanged in any number of counterparts, all of which taken together constitute one and the same document.

9.9 **Severance**

If any provision of this Agreement in favour of Macaw Fruits exceeds what is permitted by law (**Void Term**), then the following provisions will apply:

- (a) the Void Term shall be read down to the extent required to ensure it is enforceable;
- (b) if the Void Term imposes liability on the Customer, then the Customer shall only be liable to the extent that the Customer caused or contributed to the liability;
- (c) if the Void Term releases Macaw Fruits from any legal obligation, Macaw Fruits will still be liable to perform that obligation to the extent Macaw Fruits either caused or contributed to the event giving rise to the obligation or breached this Agreement or terms implied by law that cannot legally be excluded,

and if the foregoing does not cure the invalidity or unenforceability (or the provision is void or unenforceable for any other reason), this Agreement does not include the provision and the remainder of this Agreement continues in full force.

9.10 **Governing law**

This Agreement is governed by the laws of the Victoria, Australia. Each party irrevocably submits to the non-exclusive jurisdiction of the courts of the Victoria, Australia.

9.11 **Multiple parties**

- (a) If the Customer consists of more than one person, or a term is used in this document to refer to more than one person comprising the Customer, each obligation is imposed on each person jointly and severally and each right is granted on each person severally.
- (b) Despite the definition of 'Macaw Fruits' in clause 1.1 referring to Macaw Fruits's related bodies corporate, only the entity that is supplying the relevant Products to the Customer will be bound to fulfil the relevant Order. However, each entity that comprises 'Macaw Fruits' is entitled to rely on the Customer's covenants and obligations in connection with this Agreement and enforce same directly against the Customer, and the Customer will be deemed to have received notice of acceptance of such covenants and obligations when the first Order is accepted.

9.12 **Interpretation**

In these Standard Terms:

- (a) headings are for convenience only and do not affect interpretation of this Agreement;
- (b) the provisions of this Agreement must not be construed to the disadvantage of a party merely because that party or its advisers were responsible for proposing or preparing the Agreement;
- (c) a reference to a 'Liability' includes any cost, loss, liability, charge (government or otherwise), tax, duty, penalty, fine, expense (including solicitors' fees on a full indemnity basis), demand, proceeding, suit, action or cause of action, whether arising in contract, tort (including negligence), under statute or otherwise, of whatever nature, known or unknown, liquidated or unliquidated, actual or contingent;

- (d) Business Day means a day that is not a Saturday, Sunday, public holiday or bank holiday in Melbourne, Victoria;
- (e) the words 'includes', 'including', 'such as' or 'for example' (or similar phrases) do not limit what else might be included,

and unless the context otherwise requires:

- (f) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- (g) a reference to a party includes that party's executors, administrators, successors, permitted assigns and, in the case of a trustee, includes any substituted or additional trustee;
- (h) singular includes the plural and vice versa and a reference to person includes a corporation, trust, partnership, unincorporated body, government agency, or other entity whether or not it comprises a separate legal entity;
- (i) a reference to legislation or to a provision of legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
- (j) a reference to any document includes any agreement or other legally enforceable arrangement created by it (whether an agreement, deed or otherwise) and includes any variation, replacement or novation of it from time to time.