

# **“YOUR CHILD COULD BE THE FACE OF KINDER CHOCOLATE” 2018 PROMOTION**

## **TERMS AND CONDITIONS**

1. Information on how to enter and the prize(s) form part of these Terms and Conditions. Participation in this promotion is deemed acceptance of these Terms and Conditions.
2. Entry is only open to Australian and New Zealand residents aged 18 years or over who (a) is the parent or guardian of a child aged between 3 years & 10 years as at the date of entry; and (b) is available to travel to Sydney, NSW for the purposes of a photo shoot if selected as a winner, during the period of August – October 2018 (with exact travel date to be determined by the Promoter). The child entered must also be an Australian or New Zealand resident.
3. Employees (and their immediate families) of the Promoter and agencies associated with this promotion are ineligible to enter. Immediate family means any of the following: spouse, ex-spouse, de-facto spouse, child or step-child (whether natural or by adoption), parent, step-parent, grandparent, step-grandparent, uncle, aunt, niece, nephew, brother, sister, step-brother, step-sister or 1<sup>st</sup> cousin.
4. Promotion commences at 12.00am AEST on 16/04/2018 and closes at 11:59pm AEST on 10/06/2018 (“the **Promotional Period**”). All times and dates throughout these Terms and Conditions will be AEST as and when applicable in NSW.

### **How to enter**

5. To be eligible to enter, individuals must Purchase a specially marked “Face of Kinder” Kinder Chocolate product (from any retailer that stocks specially marked Kinder Chocolate in Australia or New Zealand) during the Promotional Period (“**Qualifying Purchase**”).
6. Specially marked “Face of Kinder” Kinder Chocolate products include:
  - Kinder chocolate snack bar 21g
  - Kinder chocolate 4 treats 50g
  - Kinder chocolate 6 snack bars 126g
  - Kinder chocolate share bag 16 treats 200g
  - Kinder chocolate mini bag 108g

each a (“**Participating Product**”). Each Participating Product will contain a unique code (“**Unique Code**”).

7. To enter, individuals must then, during the Promotional Period, undertake the following steps:

*This document must be disclosed only to authorized individuals. Any reproduction and/or disclosure must be subject to Information Owner prior consent.*

- (a) visit the website [www.faceofkinder.com.au](http://www.faceofkinder.com.au) or [www.faceofkinder.co.nz](http://www.faceofkinder.co.nz) (“the Website”)
  - (b) input their Unique Code;
  - (c) when prompted, upload a photograph of their own child, which they have personally taken. The photograph must be a clear, colour photograph of the child showing head and shoulders. The photograph must not have been taken more than three (3) months before the date of entry. The child’s face must be fully visible. Whilst the child can be dressed in clothing that represents their dream, the child must be dressed in non-branded clothing (i.e. the clothing should exclude brands, including any cartoon or movie characters). When uploading a photograph, entrants will also be given the opportunity to edit their photograph using illustrations provided by the Promoter to also assist in representing their child’s dream. For clarity, the illustrations may vary throughout the Promotional Period. It is not mandatory to edit photographs. Illustrations will not be taken into consideration when determining the winners;
  - (d) input the requested details of the child that they wish to enter including their date of birth (i.e. the child that appears in the photograph) and provide an answer to the following question in 70 words or less: ‘Share Your Child’s Big Dream’?. For example a Big Dream could be the child wanting to be an astronaut or a dolphin trainer. Dreams that refer to branded content or third party IP such as wanting to be Batman or Mickey Mouse will be excluded;
  - (e) input the entrant’s details, including their full name, date of birth, a valid email address, mobile phone number and postcode;
  - (f) agree to the Privacy Statement and these Terms and Conditions; and then
  - (g) submit the fully completed online entry form.
8. The Promoter will confirm via email within two (2) NSW business days, from when the entry is finalised, whether an entry has (a) been accepted and posted on the Website for public voting; (b) if it has been flagged for review; or (c) if it has not been accepted. If the entry is not accepted the Promoter may, in its absolute discretion, permit the entrant to enter their child again. Entries will not be accepted if they are not in accordance with these Terms and Conditions, including but not limited to, if the Promoter reasonably believes the entrant has not complied with clause 9.
9. Entrants agree that they are fully responsible for any materials they submit via the promotion including but not limited to comments, recordings and images

*This document must be disclosed only to authorized individuals. Any reproduction and/or disclosure must be subject to Information Owner prior consent.*

("Content"). The Promoter shall not be liable in any way for such Content to the full extent permitted by law. The Promoter may remove or decline to publish any Content without notice for any reason whatsoever. Entrants warrant and agree that:

(a) they will not submit any Content that is unlawful or fraudulent, or that the Promoter may deem in breach of any intellectual property, privacy, publicity or other rights, defamatory, obscene, derogatory, pornographic, sexually inappropriate, violent, abusive, harassing, threatening, objectionable with respect to race, religion, origin or gender, not suitable for children aged under 15, or otherwise unsuitable for publication;

(b) their Content shall not contain viruses or cause injury or harm to any person or entity;

(c) they will obtain prior consent from any person or from the owner(s) of any property that appears in their Content;

(d) the Content is the original work of the entrant that does not infringe the rights of any third party;

(e) they consent to any use of the Content which may otherwise infringe the Content creator's moral rights pursuant to the *Copyright Act 1968* (Cth) and warrant that they have the full authority to grant these rights; and

(f) they will comply with all applicable laws and regulations, including without limitation, those governing copyright, content, defamation, privacy, publicity and the access or use of others' computer or communication systems.

Without limiting any other terms herein, the entrant agrees to indemnify the Promoter for any breach of the above terms.

10. As a condition of entering this promotion, each entrant agrees to assign all of their rights, title and interest (including copyright) in and to their entry (which shall include Content) to the Promoter, and to execute any documents to confirm such assignment. Entries will not be returned to any entrant.
11. The Promoter reserves the right, at any time, to verify the validity of entries and entrants (including an entrant's or their child's identity, age and place of residence) and reserves the right, in its sole discretion, to disqualify any individual who the Promoter has reason to believe has breached any of these Terms and Conditions, tampered with the entry process, or engaged in any unlawful or other improper misconduct calculated to jeopardise the fair and proper conduct of the promotion. Errors and omissions may be accepted at the Promoter's discretion. Failure by the Promoter to enforce any of its rights at any stage does not constitute a waiver of those rights. The Promoter's legal rights to recover damages or other compensation from such an offender are reserved.

*This document must be disclosed only to authorized individuals. Any reproduction and/or disclosure must be subject to Information Owner prior consent.*

12. Multiple entries permitted, subject to the following: (a) only one (1) entry is permitted per Participating Product purchased; (b) subject to 12(a) each entrant is only allowed to submit one (1) entry per child; (c) only one Unique Code per entry is permitted; (d) the same Unique Code cannot be used more than once; and (e) unrecognised codes will be deemed invalid

### **Voting**

13. The voting commences at 12:00am AEST on 17/04/2018 and closes at 11.59pm AEST on 17/06/2018 (“the Voting Period”).
14. Voting is open to Australian and New Zealand residents aged 18 years or over.
15. Employees (and their immediate families) of the Promoter and agencies associated with this promotion are ineligible to vote. Immediate family means any of the following: spouse, ex-spouse, de-facto spouse, child or step-child (whether natural or by adoption), parent, step-parent, grandparent, step-grandparent, uncle, aunt, niece, nephew, brother, sister, step-brother, step-sister or 1<sup>st</sup> cousin.
16. To vote, individual must, during the Voting Period, undertake the following steps:
  - (a) visit the Website and follow the prompts to vote;
  - (b) the voter must then register their requested details, including providing an email address;
  - (c) the individual must then submit their vote in accordance with the instructions provided.
17. The Promoter reserves the right, at any time: (a) to invalidate any votes which it reasonably suspects have been submitted using false, incorrect, fraudulent or misleading information, including but not limited to personal details and contact information and/or votes that have been submitted through the use of multiple identities, email addresses or accounts; and/or (b) to disqualify any entrant (or invalidate his/her entry) that the Promoter reasonably suspects has paid, bartered or offered payment or other consideration to another person in exchange for votes or has otherwise encouraged or procured any person to submit votes contrary to these Terms and Conditions.
18. Only one (1) vote is permitted per person per day. For clarity a person can submit multiple votes during the Promotional Period, however a person can only submit one (1) vote per child and only one (1) vote per day.

### **Judging**

19. Judging will involve a two (2) step process. There will be thirty (30) boys and thirty (30) girls selected from Australian residents based on the number of votes received. There will be twenty (20) boys and twenty (20) girls selected from New Zealand residents based on the number of votes received (“the Top 100”).

*This document must be disclosed only to authorized individuals. Any reproduction and/or disclosure must be subject to Information Owner prior consent.*

The Promoter will not release the number of votes received by each entry at any time. In the event of a tie between any entries with the same highest number of votes for a Top 100 position, the Promoter will judge each tied entry and determine which of the tied entries will be deemed one of the Top 100.

20. The Top 100 entries will then be judged by a panel of judges selected by the Promoter. Each of the Top 100 entries will be judged by the judging panel based on the criteria which child's Big Dream story is the most creative and unique. There will be two (2) boys and two (2) girls selected from Australia to win the prize and one (1) boy and one (1) girl selected from New Zealand to receive the prize. The judges may select additional reserve entries, which they determine to be the next best, and record them in order, in case of an invalid entry or ineligible entrant.
21. The winners will be notified by telephone and email. The Promoter may announce the results on the Website (or any other medium including but not limited to social media channels) shortly after the winners have been determined, in their absolute discretion. The parent or guardian of each winning child must confirm by email that they can attend the prize on the nominated dates (as indicated at the time of winner notification). It is also a condition of accepting the prize, that the parent or guardian of the child in question, sign a legal release, indemnity, and copyright assignment in a form determined by the Promoter and return it by the date and in the manner required as indicated at the time of winner notification. If the parent or guardian fails to provide confirmation (and or the required documents) in the required time then they will be deemed ineligible and the Promoter may select a reserve to take their place. If for any reason the child and/or parent/guardian does not attend the photo shoot at the time stipulated by the Promoter or the child does not want to appear on pack or any other media, then the child and parent/guardian will forfeit the chance to have the child appear on pack, and will not receive any other prize or cash in lieu of the prize.
22. This is a game of skill and chance plays no part in determining the winners.

### **Prizes**

23. Each prize is the chance for the child to participate in a photo shoot in order to appear on Kinder Chocolate packs together with their Big Dream story (or an edited version of the same as determined by the Promoter in its absolute discretion). The Promoter may also decide to obtain additional content (including photographs and/or video recordings) from selected winners for the purposes of promoting the Face of Kinder 2019 promotion, should the Promoter choose to conduct the promotion again in 2019.
24. The Promoter in its absolute discretion will determine:
  - (a) how the child and their story will appear on packs;
  - (b) the number and type of packs on which the child will appear; and

*This document must be disclosed only to authorized individuals. Any reproduction and/or disclosure must be subject to Information Owner prior consent.*

(c) how, where and when the packs will be distributed and sold in Australia and New Zealand.

25. In order to take up the prize the child and parent must be able to attend the nominated photo studio (for a photo and video shoot), as determined by the Promoter, in Sydney, NSW on the date (or dates) to be determined by the Promoter between the period of August to October 2018. The shoot will be for a period of between 1-3 days in total. The Promoter will provide 2 return economy airfares from (a) the winner's nearest Australian capital city to Sydney (in the case of Australian residents, if required); or (b) from Wellington or Christchurch or Auckland to Sydney (in the case of New Zealand residents, if required). Prize does not include any accommodation, unless otherwise specified by the Promoter. In exceptional circumstances, because of the location of individuals, the Promoter may, in its absolute discretion, provide up to three (3) night's accommodation. Any other ancillary costs associated with accepting the prize are not included. Prize must be taken on specified dates and is subject to booking. No other prize, other than what is listed above will be awarded to the winners and/or entrants.

### **General**

26. Incomplete, indecipherable, or illegible entries or votes will be deemed invalid.
27. During the entire duration of the photo shoot a nominated parent/guardian must accompany any child.
28. In the event of war, terrorism, state of emergency or disaster, the Promoter reserves the right to cancel, terminate, modify or suspend the promotion, or suspend or modify a prize.
29. If any prize (or part of any prize) is unavailable, the Promoter, in its discretion, reserves the right to substitute the prize (or that part of the prize) with a prize to the equal value and/or specification.
30. Prizes, or any unused portion of a prize, are not transferable or exchangeable and cannot be taken as cash, unless otherwise specified.
31. Entrants consent to the Promoter using their and child's name, likeness, image and/or voice in the event they are a winner (including photograph, film and/or recording of the same) in any media for an unlimited period without remuneration for the purpose of promoting this promotion (including any outcome), and promoting any products manufactured, distributed and/or supplied by the Promoter. Winners may be required to appear in person for media interviews and picture opportunities upon reasonable request by the Promoter.

*This document must be disclosed only to authorized individuals. Any reproduction and/or disclosure must be subject to Information Owner prior consent.*

32. If this promotion is interfered with in any way or is not capable of being conducted as reasonably anticipated due to any reason beyond the reasonable control of the Promoter, including but not limited to technical difficulties, unauthorised intervention or fraud, the Promoter reserves the right, in its sole discretion, to the fullest extent permitted by law (a) to disqualify any entrant; or (b) to modify, suspend, terminate or cancel the promotion, as appropriate.
33. Any cost associated with accessing the promotional website is the entrant's responsibility and is dependent on the Internet service provider used.
34. The use of any automated entry or voting software or any other mechanical or electronic means that allows an entrant to automatically enter or vote repeatedly is prohibited and will render all entries/votes submitted by that entrant invalid.
35. Nothing in these Terms and Conditions limits, excludes or modifies or purports to limit, exclude or modify the statutory consumer guarantees as provided under the Competition and Consumer Act, as well as any other implied warranties under the ASIC Act or similar consumer protection laws in the States and Territories of Australia or any statutory consumer guarantees as provided under consumer protection laws in New Zealand ("**Non-Excludable Guarantees**"). Except for any liability that cannot by law be excluded, including the Non-Excludable Guarantees, the Promoter (including its respective officers, employees and agents) excludes all liability (including negligence), for any personal injury; or any loss or damage (including loss of opportunity); whether direct, indirect, special or consequential, arising in any way out of the promotion.
36. Except for any liability that cannot by law be excluded, including the Non-Excludable Guarantees, the Promoter (including its respective officers, employees and agents) is not responsible for and excludes all liability (including negligence), for any personal injury; or any loss or damage (including loss of opportunity); whether direct, indirect, special or consequential, arising in any way out of: (a) any technical difficulties or equipment malfunction (whether or not under the Promoter's control); (b) any theft, unauthorised access or third party interference; (c) any entry or prize claim that is late, lost, altered, damaged or misdirected (whether or not after their receipt by the Promoter) due to any reason beyond the reasonable control of the Promoter; (d) any variation in prize value to that stated in these Terms and Conditions; (e) any tax liability incurred by a winner or entrant; or (f) the prize, including photo shoot.
37. The Promoter collects personal information in order to conduct the promotion and may, for this purpose, disclose such information to related bodies corporate, and third parties, including but not limited to agents, contractors, service providers, prize suppliers and if required, to Australian and New Zealand regulatory authorities. Entry and voting is conditional on providing this information. The Promoter may, for an indefinite period, unless otherwise advised, use the information for promotional, marketing, publicity, research and profiling purposes, including sending electronic messages or telephoning the

*This document must be disclosed only to authorized individuals. Any reproduction and/or disclosure must be subject to Information Owner prior consent.*

entrant or voter. Entrants or voters should direct any request to access, update or correct information to the Promoter at the address set out below and/or in accordance with the relevant Privacy Policy. A copy of the Promoter's Privacy Policy is available at: <http://www.kinder.com/en/au/legal-aspects>. The Privacy Policy also contains details of how Australian individuals can complain if they believe a breach of the Australian Privacy Principles or any other applicable law or code has occurred and how those complaints will be resolved. All entries and votes become the property of the Promoter. Unless otherwise indicated by the Promoter, the Promoter may disclose personal information of Australians to entities outside of Australia (for details, see the Promoter's Privacy Policy).

38. The laws of Australia apply to this promotion to the exclusion of any other law. Entrants submit to the exclusive jurisdiction of the courts of Australia.
39. The Promoter is Ferrero Australia Pty Ltd of Level 18, 168 Walker Street, North Sydney NSW 2060. ABN 29 001 249 261. Phone: Aus 1800 627 231, NZ 0800 441 512.

*This document must be disclosed only to authorized individuals. Any reproduction and/or disclosure must be subject to Information Owner prior consent.*