

## Terms of Trade

The terms of trade set out below govern all of the supplies of products and services from Food Source ("we", "us") to the customer ("you").

They will replace all earlier Food Source terms of trade and any conditions contained in any document used by you and purporting to have contractual effect. Your acceptance of any products from Food Source indicates your acceptance of these terms of trade.

### 1.0 General

1.1 In these conditions, Supplier means Food Source suppliers; products means goods or services of any kind which are supplied by Food Source to you. Any variations to these terms must be previously agreed to in writing.

### 2.0 Price and orders

2.1 Prices may be altered without notice.

2.2 Food Source reserves the right to refuse to accept any order or any part of an order, and to deliver goods by instalments, in which case each instalment will comprise a separate contract and shall be paid for as if it were a separate order.

### 3.0 Risk and delivery

3.1 You are responsible for insurance and risk in the products from the time they are received by a carrier for delivery to you or collected by you or your agent.

3.2 You agree to pay all delivery costs unless previously negotiated with us.

3.3 All claims for shortage or damage during delivery must be made to the carrier within 7 days of the date of delivery. Where goods appear to be damaged or missing you must contact the carrier and us immediately.

3.4 We will make every effort to ensure delivery of products, or performance of services, is on time, but will not be liable to you for any loss or damage arising in any way from any delay in delivery or performance. Delay in delivery or performance does not entitle you to cancel any order.

3.5 Where you ask us to deliver goods directly to another person, that person takes possession of the goods for you as your agent, but you are still directly responsible to us under these terms of trade.

### 4.0 Payment

4.1 Unless we have agreed to extend credit to you, you must pay in cash before supply.

4.2 Where we have agreed in writing to extend credit to you, you must pay in full within 7 days of supply, or (only if we have agreed in writing) by the 20th of the month following the dispatch of an invoice. Your payment is made only when funds have fully cleared through the banking system into our bank account.

4.3 We have sole discretion to determine the amount of credit we will extend to you at any time.

4.4 You agree to pay for the products in full without deduction or setoff and to pay goods and services tax and any other government duties, levies or taxes in respect of the products.

4.5 If payment is not made in full by the due date, we are entitled to charge you interest on the unpaid overdue balance at the rate of 10% per annum above the current overdraft rate charged by our bankers, compounding monthly on the unpaid balance owing on the first day of each month until payment in full is received by us, and we may charge you costs (including collection costs and legal costs on a solicitor-client basis) and suspend delivery of further products or performance of further services until the account is paid.

4.6 Notwithstanding clauses 4.2 and 4.3 above, all payments shall immediately become due to us if you refuse to accept delivery of any products, if we reasonably believe that the information which you have given us in your application for credit is incorrect or no longer correct and you have failed to give us correct information satisfactory to us within 5 days of our request, if you sell or otherwise dispose of any goods which have not been paid for without our consent, if you become insolvent, commit any act of bankruptcy, if a receiver, liquidator or statutory manager is appointed over any of your assets or undertaking, if you make or attempt to make an arrangement or composition with creditors, or if you fail to comply with any of the provisions of clause 6.

### 5.0 Property

5.1 Property and ownership in products will not pass to you but will remain with us until we receive payment in full of the purchase price of the products and all other amounts that you owe to us for any reason.

5.2 Until property passes to you, you shall hold any products in trust as fiduciary bailee for us and/or our Supplier, and store them in a manner to enable them to be identified and cross referenced to particular invoices.

5.3 Where Food Source reasonably believes you are or will be in breach of any part of clauses 4, 5 or 6 of these terms of trade, Food Source or its agent may without notice enter any premises under your control to remove any products which are the property of Food Source, using such force as is necessary, and without prejudice to any other of Food Source's rights. You indemnify Food Source against all costs and claims in respect of its exercise of rights under this clause 5.

#### **6.0 Security interests**

6.1 You agree that you will do all acts necessary and provide us on request all information we require to register a financing statement over the products or their proceeds, and that you will advise us immediately in writing of any changes to that information. You waive all rights to receive a copy of any verification statement of a financing statement.

6.2 You agree that you will supply us, within 2 business days of our written request, with copies of all security interests registered over your personal property, and you authorise us as your agent to request information from any secured party relating to any security interest which is held in any personal property which is or has been in your possession or control.

6.3 You agree that we may require you to pay all reasonable costs, including legal costs on a solicitor client basis, associated with the discharge or amendment of any financing statement registered by us, whether or not the change was initiated by you.

6.4 If we repossess goods under this agreement, we may retain those goods or dispose of them without notice or statement of account to you or any other person, and, after deducting reasonable costs of sale, we may credit any surplus by way of setoff against any sums owing to us. We will not be obliged to resupply any repossessed inventory.

6.5 You authorise us to search the Personal Property Securities Register at any time for any information about you or (if you are a company) your parent or associated companies.

#### **7.0 Returns**

7.1 You acknowledge and agree that returns shall only be accepted by us in accordance with our returns policy as notified to you from time to time, and that you may receive a credit for goods returned only if we have consented in writing.

#### **8.0 Warranties**

8.1 Goods are subject to the manufacturers' warranties only. We will pass on the benefit of those warranties to you, without being directly liable to you under any warranty.

8.2 Where goods are subject to a return to base warranty, you are responsible for returning them to us or the manufacturer (as provided by the warranty) and you may be responsible for additional costs including (but not limited to) freight.

8.3 Any warranty may be voided by damage to or misuse of the product, or problems caused by inadequate packaging or storage.

#### **9.0 Obligations to suppliers**

9.1 We may impose certain conditions on you from time to time where our suppliers require us to do so.

#### **10.0 Limitation of liability**

10.1 The provisions of the Consumer Guarantees Act shall not apply to any supply of products to you, and the conditions, warranties and guarantees set out in the Sale of Goods Act 1908 or implied by common law will not apply and are excluded from these terms of trade.

10.2 Food Source maximum liability to you shall be limited to the value of any faulty products or services supplied, and Food Source and its employees, contractors and agents, any manufacturers of the products or any of their materials or components, will not be liable to you for loss or damage of any kind however that loss or damage is caused or arises. This exclusion of liability includes, but is not limited to, costs (including costs of returning products to Food Source or to any manufacturer), consequential loss, loss of profits and damage caused by or arising from delays in manufacturing or delivery, unreasonable use, negligence (including a failure to do something which should have been done or to prevent something from happening), faulty specifications and design, and faulty materials, components, manufacture or compilation of the products.

10.3 We will not be liable to you for any losses caused by events beyond our reasonable control. We will not be required to settle a strike or lockout or other industrial disturbance against our wishes in order to benefit from this clause.

## **11.0 Your further obligations**

11.1 Where you purchase any products from us for resupply as, or incorporation into, goods or services ordinarily acquired for personal household or domestic use or consumption ("Consumer Products") you warrant that:

(a) If you supply the Consumer Products directly to an end user/consumer you will do so using terms and conditions of supply which exclude liability for any claims under the CGA; and

(b) If your customer acquires the Products for resupply, you will ensure that your customer and each person in the distribution chain will exclude liability in its contract for supply for any claims under the Consumer Guarantees Act, but in each case only where the end user/consumer acquires the Consumer Products for business purposes, and you agree to indemnify us and our Suppliers against any failure by you, your customers or any person in the distribution chain to properly contract out of liability to business end users/consumers under the CGA.

11.2 You indemnify us against all costs (including legal costs on a solicitor and own client basis) expenses, losses, damages or claims arising in any way as a result of your failure to comply with any part of these terms of trade.

## **12.0 Intellectual property and confidentiality**

12.1 All intellectual property shall remain the property of Food Source or any Supplier entitled to it, and neither Food Source nor its Suppliers transfer any right, title or interest in the intellectual property to you.

12.2 You must not use any trademarks which are the property of Food Source or its Suppliers, or any similar words or marks, or any combination of words which includes any of those trademarks or any similar words or marks, except to the extent authorised by Food Source in writing.

12.3 You agree to dispatch the products only under the trade marks under which they are supplied by Food Source, and under no circumstances shall you apply any of the trade marks to any product which is not a genuine branded product supplied to you by Food Source.

12.4 You must not cause or permit anything which may interfere with, damage or endanger the trademarks or other intellectual property rights of Food Source or its Suppliers, or assist or allow others to do so.

12.5 You must advise Food Source immediately when you become aware of any unauthorised use or attempted use by any person of the trademarks or other intellectual property rights of Food Source or its Suppliers.

12.6 You may not register a business name incorporating the words "Food Source".

12.7 If your account with Food Source is terminated, you must immediately discontinue use of any of the trademarks which are the property of Food Source in any sign, or advertising and thereafter you shall not use those trademarks directly or indirectly in connection with your business.

12.8 You agree to ensure that all Confidential Information given by Food Source to you is made available to your employees only on the basis that those employees at all times maintain strict confidentiality.

12.9 This clause 12 shall survive the termination of the agreement.

## **13.0 General**

13.1 Food Source reserves the right to change these terms of trade from time to time.

13.2 If Food Source fails to enforce any terms or to exercise its rights under these terms of trade at any time, Food Source has not waived those rights.

13.3 If any provision of these terms of trade is held to be invalid or unenforceable for any reason, the remaining provisions shall remain in full force and effect and the parties shall adjust their respective rights and obligations in accordance with the spirit and intent of the parties as shown by these terms of trade.

13.4 This agreement is governed by the laws of New Zealand and any dispute under it shall be subject to the exclusive jurisdiction of the Courts of New Zealand.