

G&S FOODS LIMITED: CUSTOMER APPLICATION FORM

THE Customer:

Full legal name: (referred to in this form as "you" or "the Customer")

Entity Type (tick one): Limited Liability Company Partnership Individual

Other (describe)

Postal Address:

Email: Telephone: Fax:

Contact Person:

DECLARATION AND AGREEMENT:

In consideration of G&S Foods Limited (referred to in this form as "G&S", "us" or "we") agreeing to provide Goods and/or Services to you, at your request, I, the Customer or for and on behalf of the Customer:

1. Agree to the attached Terms of Trade; and
2. Declare that the information supplied in this form is correct.

Full Name: Signed:

Designation: Date:

GUARANTEE:

In consideration of G&S Foods Limited agreeing to supply Goods and/or Services to the Customer at my/our request:

1. I/We unconditionally guarantee to G&S Foods Limited the due and punctual payment by the Customer of all moneys payable in accordance with the Terms of Trade set out on the reverse side of this form as and when the same become due and payable by the Customer.
2. I/We agree to be deemed as principal debtor for all accounts held by the Customer with G&S Foods Limited
3. I/We agree that this guarantee shall be a continuing guarantee and shall not be discharged by any settlement or payment of account and that this guarantee is both joint and several.
4. I/We agree that our liability under this guarantee shall not be discharged, abrogated, prejudiced or affected by:
 - a. the granting of time, credit or the indulgence or other concession to the Customer;
 - b. any alteration, modification, variation or addition to any agreement in respect of the supply of goods and services; or
 - c. any other act, omission or event which but for this provision might operate to discharge, impair or otherwise affect, my/our obligations under this guarantee or any powers or remedies conferred upon G&S Foods Limited by this guarantee or by law.
5. I/We confirm that I/we have been advised by G&S Foods Limited that I/we should seek legal advice before signing this guarantee.

Name: Signed: Designation:

Witness Name: **Witness Signed:** **Date:**

Name: Signed: Designation:

Witness Name: **Witness Signed:** **Date:**

TERMS OF TRADE

By agreeing to acquire any goods and/or services from us you agree to these Terms to the exclusion of your terms (if any).

1. DELIVERY

- 1.1 Unless we agree otherwise in writing:
 - (a) any goods which you acquire from us from time to time ("Goods") must be collected from our premises by you at your cost (at which point "delivery" will be deemed to have occurred); and
 - (b) if we agree to arrange delivery of Goods it will be at your cost and "delivery" will be deemed to have occurred at the point in time at which the Goods leave our premises.
- 1.2 We may charge you storage and transportation expenses if you fail or refuse to take or accept delivery or indicate to us that you will fail to do so.
- 1.3 We reserve the right to deliver Goods by instalments.
- 1.4 If we have given you a time for delivery of any Goods (or any part of them), such time is approximate only and is not deemed to be of the essence.

2. TITLE AND RISK

- 2.1 We shall retain title to Goods we supply until they have been paid for in full and you have performed all your other obligations under these Terms.
- 2.2 Risk in all Goods passes to you when delivery of the Goods is completed in accordance with clause 1.1. We will not accept any responsibility for damage or deterioration to Goods which occurs following delivery. You must insure Goods for their full price, and must not sell, dispose or part with possession of them or do anything else inconsistent with our ownership of the Goods, from Delivery until title in them passes to you.

3. PERFORMANCE OF SERVICES

- 3.1 We will:
 - (a) perform all services which we agree to provide to you ("Services") with reasonable skill, care and diligence in a professional manner;
 - (b) endeavour to ensure that the Services are performed in accordance with any time frames agreed in writing with you; and
 - (c) liaise with you during the course of performing the Services in accordance with your reasonable requirements.
- 3.2 You must give reasonable assistance to enable us to perform the Services by:
 - (a) giving clear instructions;
 - (b) promptly providing any information or content required from you for us to complete the Services; and
 - (c) ensuring that the Services and products derived from the Services are fit for the purpose you intend to use them for and meet any appropriate statutory, regulatory, governmental and industry and environmental controls, standards or practices.

4. FEES

- 4.1 All fee prices are plus GST and other taxes and duties, which shall be paid by you and are in New Zealand dollars.
- 4.2 Our prices are subject to change without notice.
- 4.3 Unless we agree otherwise in writing and or a credit application is processed:
 - (a) domestic (NZ based) customers must pay 100% of our fee prior to taking delivery of the Goods / provision of the Services
 - (b) international customers must pay 50% of our fee up front and the remaining 50% of the fee prior to taking delivery of the Goods / provision of the Services.
- 4.4 If we provide a quotation to you, it is based on information available to us at that time and we may charge you more than the amount quoted if our costs (eg the cost of labour, materials, transport, tax, exchange rates or other costs) or the specifications change.
- 4.5 All payments shall be made without set-off or deduction. Receipt of a cheque, bill of exchange, or other negotiable instrument will not constitute payment and you remain liable for payment until payment is received by us.

5. DEFAULT

- 5.1 You will be in Default if:
 - (a) you fail to pay an amount due under these Terms by the due date for payment; or
 - (b) you commit a breach of any of your other obligations under these Terms or the terms of any other contract you have

- entered into, or enter into in the future, with us or one of our related entities; or
 - (c) you become insolvent, are wound up, have a receiver appointed, enter into any composition or arrangement with your creditors, do any act which would render you liable to be placed in liquidation or have a receiver appointed over your property, commit an act of bankruptcy, cease to be of full legal capacity, or die;
 - (d) Goods that we have retained title to are at risk; or
 - (e) an event or a series of events (whether related or not) occurs which, in our opinion, may cause a material adverse change in your ability to meet your obligations to us.
- 5.2 If you are in Default then we may, at our option, do any one or more of the following:
 - (a) charge you default interest at 14% per annum on any late payments calculated on a daily basis from the due date until the date payment is received;
 - (b) require you to remedy the default in the manner and within the period that we tell you;
 - (c) require you to pay to us all amounts you owe us immediately;
 - (d) suspend or terminate your account with us;
 - (e) enforce any security interests created by these Terms;
 - (f) cease to provide Services to you;
 - (g) exercise any rights that we have under these Terms or that are available to us at law.
 - 5.3 We may suspend or terminate your account with us at any time in our sole discretion. If your account is terminated, you must immediately pay us any amount you owe us. Termination will not affect any of our rights that have arisen before termination.

6. PERSONAL PROPERTY SECURITIES ACT 1999 ("PPSA")

- 6.1 Clause 2.1 creates a security interest in Goods we supply to you.
- 6.2 You shall not grant any other security interest or any lien over Goods that we have a security interest in.
- 6.3 At our request you shall promptly sign any documents and do anything else required by us to ensure our security interest constitutes a first ranking perfected security interest in the Goods.
- 6.4 We may at any time enter your premises and properties to uplift Goods that we have a security interest in.
- 6.5 If Goods that we have a security interest in are processed, included or dealt with in any way causing them to become accessions, processed or commingled Goods, our security interest will continue in the whole in which they are included. You shall not grant any other security interest or any lien in either the Goods or in the whole.
- 6.6 You waive any rights you may have under sections 114(1)(a), 116, 120(2), 121, 125, 129, 131, and 133 of the PPSA.
- 6.7 You waive your right to receive a copy of any verification statement (as that term is defined in the PPSA).
- 6.8 You shall give us prior written notice of any proposed change of your name or address.

7. LIMITATION OF LIABILITY

- 7.1 To the maximum extent permissible, we expressly exclude all implied warranties, representations, conditions and obligations.
- 7.2 Where you acquire goods and/or services from us for the purposes of a business:
 - (a) the parties acknowledge and agree that:
 - (i) you are acquiring the goods and/or services covered by these Terms for the purposes of a business in terms of sections 2 and 43(2) of the Consumer Guarantees Act 1993;
 - (ii) the goods and/or services are both supplied and acquired in trade for the purposes of the Fair Trading Act 1986 and the parties agree to contract out of sections 9 (Misleading and deceptive conduct generally), 12A (Unsubstantiated representations), and 13 (False or misleading representations); and
 - (b) you agree that all warranties, conditions, and other terms implied by the Consumer Guarantees Act 1993 or sections 9, 12A, and 13 of the Fair Trading Act 1986 are excluded from these Terms to the fullest extent permitted by law and the parties further acknowledge and agree that it is fair and reasonable that the parties are bound by this clause.
- 7.3 Our liability to you whether in contract, or tort (including in negligence), or otherwise shall be limited to (at our election):

- (a) repairing, replacing or refunding the purchase price of the Goods in question.
 - (b) re-performing the Services in question or refunding the purchase price of the Services in question.
- 7.4 You agree that we shall not be liable to you for any indirect, consequential or special losses or damages (whether in contract, tort or otherwise).

8. **PRIVACY OF INFORMATION**

8.1 You authorise us:

- (a) to collect, retain and use information about you from any person for the purpose of assessing your creditworthiness;
- (b) to disclose information about you:
 - (i) to any person who guarantees, or who provides insurance, or who provides any other credit support, in relation to your obligations to us;
 - (ii) to such persons as may be necessary or desirable to enable us to exercise any power or enforce or attempt to enforce any of our rights, remedies and powers under these Terms.

9. **VARIATION**

- 9.1 We shall be entitled at any time by notice in writing to you to vary any provision of these Terms of Trade and you shall be bound by such variation.

10. **CONFIDENTIALITY**

- 10.1 You shall at all times treat as confidential all non-public information and material received from us and shall not publish, release, or disclose the same without our prior written consent. For clarity, confidential information includes any prices.

11. **COSTS**

- 11.1 You must pay our costs (including legal costs, as between solicitor and client) of and incidental to the enforcement or attempted enforcement of our rights, remedies and powers under these Terms.

12. **TERMINATION**

- 12.1 Either party may terminate these Terms of Trade by giving one month's written notice to the other party.

13. **JURISDICTION**

- 13.1 These Terms are governed by the laws of New Zealand. Subject to clause 14, you may take legal action against us only in a New Zealand Court however we are entitled to commence any action arising out of or in respect of these Terms in any other Court.

14. **DISPUTES**

- 14.1 Any claim or dispute arising under these Terms shall be determined by arbitration under the Arbitration Act 1996 if the parties are unable to resolve such dispute themselves within one (1) month of the dispute arising. However, nothing in this clause prevents either party from taking immediate steps to seek any equitable relief before the New Zealand Courts.

15. **FORCE MAJEURE**

- 15.1 We shall not be liable for delay or failure to perform our obligations under these Terms if the cause of delay or failure is beyond our reasonable control.

16. **SURVIVAL**

- 16.1 The provisions of this clause 16 and clauses 1.1, 5, 7, 7.1, 8, 10, 11, 13, 14, 17, and **Error! Reference source not found.** of these Terms and any other provision which by its nature is intended to survive the termination or expiration of these Terms will survive the termination or expiration of these Terms or Delivery of the Goods and/or provision of the Services.

17. **GENERAL**

- 17.1 These Terms replace any earlier representations, warranties, understandings and agreements (whether oral or written), and constitute the entire agreement between us and you relating to their subject matter.
- 17.2 You shall not transfer or assign your rights, powers or obligations under these Terms without our prior written consent.
- 17.3 No failure or delay by us in insisting upon the strict performance of these Terms or exercising any right under these Terms will operate as a waiver of those matters.
- 17.4 We may change these Terms at any time. Any change applies from when we notify you of that change.