

## Terms & Conditions of Trade

- 1. Definitions**
  - 1.1 "Supplier" means Jayare Limited T/A Oxford Pies., its successors and assigns or any person acting on behalf of and with the authority of Jayare Limited T/A Oxford Pies.
  - 1.2 "Client" means the person's buying the Goods as specified in any invoice, document or order, and if there is more than one Client is a reference to each Client jointly and severally.
  - 1.3 "Goods" means all Goods or Services supplied by the Supplier to the Client at the Client's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
  - 1.4 "Price" means the Price payable for the Goods as agreed between the Supplier and the Client in accordance with clause 5 below.
- 2. Acceptance**
  - 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of the Goods.
  - 2.2 These terms and conditions may only be amended with the Supplier's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and the Supplier.
  - 2.3 Unless otherwise agreed to by both parties, the Client accepts and acknowledges that Goods supplied shall be within the specifications and formulae as quoted by the Supplier. Any such variations to the end product will at all times be at the Supplier's discretion.
- 3. Electronic Transactions Act 2002**
  - 3.1 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 22 of the Electronic Transactions Act 2002 or any other applicable provisions of that Act or any Regulations referred to in that Act.
- 4. Change in Control**
  - 4.1 The Client shall give the Supplier not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, or business practice). The Client shall be liable for any loss incurred by the Supplier as a result of the Client's failure to comply with this clause.
- 5. Price and Payment**
  - 5.1 At the Supplier's sole discretion the Price shall be either:
    - (a) as indicated on any invoice provided by the Supplier to the Client; or
    - (b) the Price as at the date of delivery of the Goods according to the Supplier's current price list; however, this price list is subject to change from time to time and all updated prices will be provided to the Client fourteen (14) days prior to implementing the new price list charges; or
    - (c) the Supplier's quoted price (subject to clause 5.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
  - 5.2 The Supplier reserves the right to change the Price if a variation to the Supplier's quotation is requested.
  - 5.3 At the Supplier's sole discretion a deposit may be required.
  - 5.4 Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by the Supplier, which may be:
    - (a) seven (7) days following the date of any invoice given to the Client by the Supplier;
    - (b) by way of instalments/progress payments in accordance with the Supplier's payment schedule;
    - (c) for certain approved Clients, due twenty (20) days following the end of the month in which a statement is posted to the Client's address or address for notices; or
    - (d) the date specified on any invoice or other form as being the date for payment.
  - 5.5 If any part of an invoice is in dispute then the Client shall notify the Supplier in writing within three (3) business days once in receipt of the invoice, then the Client may only withhold payment for that part of the invoice that is in dispute and shall pay the balance of the invoice when due.
  - 5.6 Payment may be made by cheque, direct debit, electronic/on-line banking, credit card (plus a surcharge of up to two and a half percent (2.5%) of the Price), or by any other method as agreed to between the Client and the Supplier.
  - 5.7 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to the Supplier an amount equal to any GST the Supplier must pay for any supply by the Supplier under this or any other agreement for the sale of the Goods. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.
- 6. Delivery of Goods**
  - 6.1 Delivery ("Delivery") of the Goods is taken to occur at the time that the Supplier (or the Supplier's nominated carrier) delivers the Goods to the Client's nominated address even if the Client is not present at the address.
  - 6.2 At the Supplier's sole discretion the cost of delivery is either included in the Price or is in addition to the Price.
  - 6.3 The Supplier may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
  - 6.4 Any time or date given by the Supplier to the Client is an estimate only. The Client must still accept delivery of the Goods even if late and the Supplier will not be liable for any loss or damage incurred by the Client as a result of the delivery being late.
- 7. Risk**
  - 7.1 Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery.
  - 7.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, the Supplier is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Supplier is sufficient evidence of the Supplier's rights to receive the insurance proceeds without the need for any person dealing with the Supplier to make further enquiries.
  - 7.3 If the Client requests the Supplier to leave Goods outside the Supplier's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Client's sole risk.
- 8. Title**
  - 8.1 The Supplier and the Client agree that ownership of the Goods shall not pass until:
    - (a) the Client has paid the Supplier all amounts owing to the Supplier; and
    - (b) the Client has met all of its other obligations to the Supplier.
  - 8.2 Receipt by the Supplier of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
  - 8.3 It is further agreed that:
    - (a) until ownership of the Goods passes to the Client in accordance with clause 8.1 that the Client is only a bailee of the Goods and must return the Goods to the Supplier on request.
    - (b) the Client holds the benefit of the Client's insurance of the Goods on trust for the Supplier and must pay to the Supplier the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
    - (c) the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for the Supplier and must pay or deliver the proceeds to the Supplier on demand.
    - (d) the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of the Supplier and must sell, dispose of or return the resulting product to the Supplier as it so directs.
    - (e) the Client irrevocably authorises the Supplier to enter any premises where the Supplier believes the Goods are kept and recover possession of the Goods.
    - (f) the Supplier may recover possession of any Goods in transit whether or not delivery has occurred.
    - (g) the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of the Supplier.
    - (h) the Supplier may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.
  - 9. Personal Property Securities Act 1999 ("PPSA")**
    - 9.1 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that:
      - (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
      - (b) a security interest is taken in all Goods and/or collateral (account) – being a monetary obligation of the Client to the Supplier for Services – that have previously been supplied and that will be supplied in the future by the Supplier to the Client.
    - 9.2 The Client undertakes to:
      - (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Supplier may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
      - (b) indemnify, and upon demand reimburse, the Supplier for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged thereby;
      - (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of the Supplier; and
      - (d) immediately advise the Supplier of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
    - 9.3 The Supplier and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
    - 9.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
    - 9.5 Unless otherwise agreed to in writing by the Supplier, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
    - 9.6 The Client shall unconditionally ratify any actions taken by the Supplier under clauses 9.1 to 9.5.
  - 10. Client's Disclaimer**
    - 10.1 The Client hereby disclaims any right to rescind, or cancel any contract with the Supplier or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Client by the Supplier and the Client acknowledges that the Goods are bought relying solely upon the Client's skill and judgment.
  - 11. Defects**
    - 11.1 The Client shall inspect the Goods on delivery and shall within:
      - (a) twenty-four (24) hours for fresh Goods; or
      - (b) forty-eight (48) hours for frozen Goods (time being of the essence) notify the Supplier of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford the Supplier an opportunity to inspect the Goods within a reasonable time following delivery if the Client believes the Goods are defective in any way. If the Client shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which the Supplier has agreed in writing that the Client is entitled to reject, the Supplier's liability is limited to either (at the Supplier's discretion) replacing the Goods or repairing the Goods.
    - 11.2 For defective Goods, which the Supplier has agreed in writing that the Client is entitled to reject, the Supplier's liability is limited to either (at the Supplier's discretion) replacing the Goods provided that:
      - (a) the Client has complied with the provisions of clause 11.1;
      - (b) the Supplier will not be liable for Goods which have not been stored or used in a proper manner;
      - (c) the Goods are returned in the condition in which they were delivered;
      - (d) the Goods have not been thawed out or partially used.
  - 12. Consumer Guarantees Act 1993**
    - 12.1 If the Client is acquiring Goods for the purposes of a trade or business, the Client acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Goods by the Supplier to the Client.
  - 13. Default and Consequences of Default**
    - 13.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at the Supplier's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
  - 13.2 If the Client owes the Supplier any money the Client shall indemnify the Supplier from and against all costs and disbursements incurred by the Supplier in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Supplier's collection agency costs, and bank disbursement fees).
  - 13.3 Further to any other rights or remedies the Supplier may have under this contract, if a Client has made payment to the Supplier by credit card, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Supplier under this clause 13 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this agreement.
  - 13.4 Without prejudice to any other remedies the Supplier may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions the Supplier may suspend or terminate the supply of Goods to the Client. The Supplier will not be liable to the Client for any loss or damage the Client suffers because the Supplier has exercised its rights under this clause.
  - 13.5 Without prejudice to the Supplier's other remedies at law the Supplier shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Supplier shall, whether or not due for payment, become immediately payable if:
    - (a) any money payable to the Supplier becomes overdue, or in the Supplier's opinion the Client will be unable to make a payment when it falls due;
    - (b) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
    - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.
  - 14. Cancellation**
    - 14.1 The Supplier may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Client. On giving such notice the Supplier shall repay to the Client any money paid by the Client for the Goods. The Supplier shall not be liable for any loss or damage whatsoever arising from such cancellation.
    - 14.2 In the event that the Client cancels delivery of Goods the Client shall be liable for any and all loss incurred (whether direct or indirect) by the Supplier as a direct result of the cancellation (including, but not limited to, any loss of profits).
    - 14.3 Cancellation of orders for Goods made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.
  - 15. Privacy Act 1993**
    - 15.1 The Client authorises the Supplier or the Supplier's agent to:
      - (a) access, collect, retain and use any information about the Client:
        - (i) (including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Client's creditworthiness; or
        - (ii) for the purpose of marketing products and services to the Client.
      - (b) disclose information about the Client, whether collected by the Supplier from the Client directly or obtained by the Supplier from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Client.
    - 15.2 Where the Client is an individual the authorities under clause 15.1 are authorities or consents for the purposes of the Privacy Act 1993.
    - 15.3 The Client shall have the right to request the Supplier for a copy of the information about the Client retained by the Supplier and the right to request the Supplier to correct any incorrect information about the Client held by the Supplier.
  - 16. Compliance Laws**
    - 16.1 The Supplier warrants that Goods manufactured on its registered premises, and supplied to all Clients, shall meet all safety regulations and standards as defined by the Hazard Analysis and Critical Control Points (HACCP), Food Safety Programme, and is eminently suitable for public consumption and thereby compliant with the Australia New Zealand Food Standards Code.
  - 17. General**
    - 17.1 The failure by the Supplier to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Supplier's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
    - 17.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the Hamilton Courts of New Zealand.
    - 17.3 The Supplier shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Supplier of these terms and conditions (alternatively the Supplier's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
    - 17.4 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by the Supplier nor to withhold payment of any invoice because part of that invoice is in dispute.
    - 17.5 The Client agrees that the Supplier may amend these terms and conditions at any time. If the Supplier makes a change to these terms and conditions, then that change will take effect from the date on which the Supplier notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for the Supplier to provide Goods to the Client.
    - 17.6 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
    - 17.7 The Client warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.