

**1. TERMS OF PAYMENT**

- 1.1 Payments shall be made by the due date specified in the Supplier's invoice. The Buyer shall not withhold payment nor make any deductions from the Contract Price. **Our payment terms are 20<sup>th</sup> of the following month unless otherwise stated on the Supplier's invoice.**
- 1.2 Any overdue accounts at 30 days or more will be placed on stop credit and no further goods will be supplied until the account is brought up to date.
- 1.3 If the Buyer defaults in the payment of any moneys payable to the Supplier under the Contract, interest at a rate equal to the 90 day bank bill rate on the date payment is due plus a penalty of 6% p.a. calculated on a daily basis shall be payable on such moneys outstanding under the Contract from the date payment is due until the date payment is received by the Supplier, but without prejudice to the Supplier's other rights or remedies in respect of such default.

**2. DELIVERY AND RISK**

Delivery shall be made at the place indicated in the Contract or, if no place is indicated, at the Supplier's premises.

**2.1 Damaged Items**

Any damage goods MUST follow the procedure below:

2.1.1 Damage MUST be noted on the consignment note at time of delivery.

2.1.2 Notification of the damaged MUST be received by Festive Foods NZ Limited within three (3) working days from date of receipt of goods.

**Failure to follow these steps may result in your claim being declined.**

**2.2 Cone Delivery**

In order to ensure your cones arrive in good condition; there is an eight cartons minimum for all deliveries via courier or freight provider (unless otherwise agreed). If you require less than eight cartons of cones we are happy to supply at your own risk and no claim for damage will be accepted.

**2.3 Freight Charges**

Freight charges apply to any orders that do not reach the minimum dollar value as set out below. All order above this threshold are freight free.

- Within Auckland under \$200.00 incurs a \$15.00 freight charge.
- Outside of Auckland under \$300.00 incurs a \$25.00 freight charge.

2.4 The Supplier may deliver the Goods by instalments and each instalment shall be deemed to be a separate contract under the same provisions as the main Contract. Failure to deliver or defective delivery by the Supplier of one or more instalments shall not entitle the Buyer to repudiate the main Contract.

2.5 Any delivery time shall be approximate only and shall not be deemed to be of the essence of the Contract.

2.6 Risk of any loss, damage or deterioration of or to the Goods passes to and shall be borne by the Buyer from the delivery date

**3. OWNERSHIP**

3.1 Ownership of the Goods remains with the Supplier until, and only passes to the Buyer when, either all moneys payable to the Supplier by the Buyer have been paid in full or when Goods are resold by the Buyer as provided by clause 3.2.

3.2 While ownership of the Goods remains with the Supplier, the Buyer may sell the Goods in the ordinary course of business. This authority may be revoked by written notice from the Supplier at any time if the Supplier considers the credit of the Buyer to be unsatisfactory or if the Buyer is in default in the performance of its obligations under the Contract or any other contract between the Supplier and the Buyer, and shall be deemed automatically revoked if the Buyer commits any Act of Default.

3.3 If the Buyer commits any Act of Default while ownership remains with the Supplier, the Buyer authorises the Supplier to enter the premises where the Goods are stored and remove them, and the Supplier may resell the Goods and apply the proceeds of sale in reduction of the Buyer's indebtedness to the Supplier.

3.4 If the Buyer resells the Goods before ownership has passed to the Buyer, the proceeds of such sale shall be held by the Buyer (in whatever form) on trust for the Supplier. The Supplier's interest as beneficiary under the trust shall be that portion of the proceeds which does not exceed the Buyer's total indebtedness to the Supplier. Any balance of proceeds shall be retained by the Buyer

**4. LIABILITY**

4.1 To the fullest extent permissible at law;

4.1.1 All representations, terms, warranties, guarantees, or conditions whether implied by statute, common law or custom of the trade or otherwise, including, but not limited to, implied warranties, guarantees or conditions of merchantability and/or fitness for a particular purpose are excluded.

4.1.2 The Supplier shall have no liability to the Buyer for anything, other than a breach by the Buyer of an express provision of these conditions of supply (including but not limited to negligence on the part of the Supplier or its employees or agents).

4.2 The Supplier shall not be liable for any loss of profits or any consequential, indirect or special loss, damage or injury of any kind whatsoever suffered by the Buyer arising directly or indirectly from any breach of any of the Supplier's obligations arising under or in connection with the Contract or from any cancellation of the Contract or from any negligence, misrepresentation or other act or omission on the part of the Supplier, its servants, agents or contractors nor shall the Supplier be liable for any loss, damage or injury caused to the Buyer's servants, agents, contractors, customers, visitors, tenants, trespassers or other persons whomsoever (whether similar to the foregoing or not) arising as aforesaid. The Buyer indemnifies the Supplier against any claim by any of the foregoing persons in respect of any loss, damage or injury arising as aforesaid.

4.3 Notwithstanding anything contained in this section 5 or elsewhere in the Contract, the liability of the Supplier in respect of all claims for loss, damage or injury arising from breach of any of the Supplier's obligations arising under or in connection with the Contract, from any

cancellation of the Contract or from any negligence, misrepresentation or other act or omission on the part of the Supplier, its servants, agents or contractors shall not in aggregate exceed the Contract Price.

## 5. DISPUTE RESOLUTION

In the event of a dispute between the parties in any way arising out of or in connection with the Contract, then the parties undertake in good faith to use all reasonable endeavours (including escalating the dispute to executive level) to settle the dispute before referring such dispute to conciliation, arbitration or commencing court proceedings.

## 6. DEFAULT AND INDEMNITY

If the Buyer defaults in the payment of any moneys payable to the Supplier or in the performance of its obligations under the Contract or any other contract between the Buyer and the Supplier or commits any Act of Default, or the Goods are "at risk" (as that term is defined in the PPSA), the Supplier may, without prejudice to any other right it has at law or in equity, suspend or terminate the Contract. Payment for the Goods delivered and/or Services performed up to the date of such suspension or termination and any other moneys payable hereunder shall immediately become due and payable. All costs and expenses of or incurred by the Supplier as a result of any such action together with transportation and storage charges shall be payable by the Buyer upon demand. Any suspension of the Contract by the Supplier shall not prevent it terminating the Contract during the period of suspension.

## 7. CONTRACT

The Contract forms the basis on which the Supplier supplies and sells the Goods and/or Services to the Buyer. Each such supply and sale shall be affected pursuant to the terms of these conditions of supply (unless in any specific case agreed otherwise in writing). Any invoice or other document evidencing or describing any Goods and/or Services is incorporated into and forms part of the Contract. These conditions of supply are paramount, and, to the extent that there is any conflict between any provision of them and any invoice or other document evidencing or describing any Goods and/or Services, these conditions of supply will prevail. Further, if there is any other document or arrangement which conflicts with the Contract, the Contract (including these conditions of supply) shall prevail.

## 8. CONSUMER GUARANTEES ACT 1993 AND FAIR TRADING ACT 1986

8.1 Nothing in these terms shall affect the rights of the Buyer under the Consumer Guarantees Act 1993 or the Fair Trading Act 1986.

8.2 The Buyer shall not, in relation to the supply of any Goods and/or Services by the Buyer to a third party, give or make any undertaking, assertion or representation in relation to the Goods and/or Services without the prior approval in writing of the Supplier, and the Buyer shall indemnify the Supplier against any liability or cost incurred by the Supplier as a result of any breach by the Buyer of this provision.

8.3 The Buyer shall, in relation to the supply of any Goods and/or Services by the Buyer to a third party, contract out of the provisions of the Consumer Guarantees Act 1993 to the extent that the Buyer is entitled to do so under that Act and shall indemnify the Supplier against any liability or cost incurred by the Supplier under the Consumer Guarantees Act 1993 as a result of any breach by the Buyer of this provision.

## 9. USE OF INFORMATION

The Buyer agrees that the Supplier may obtain information about the Buyer from the Buyer or any other person (including any credit or debt collection agencies) in the course of its business, and the Buyer consents to any person providing the Supplier with such information. The Buyer agrees that the Supplier may give any information it has about the Buyer relating to the Buyer's credit worthiness to any other person, including any credit or debt collection agency, for credit assessment and debt collection purposes.

## 10. GENERAL

10.1 Where the Goods are imported subject to the Buyer's import licence, the Buyer shall be responsible for the disposal of any Goods where entry into New Zealand is refused.

10.2 All the original rights, powers, exemptions and remedies of the Supplier shall remain in full force notwithstanding any neglect, forbearance or delay in their enforcement. The Supplier shall not be deemed to have waived any condition unless such waiver is in writing from the Supplier and any such waiver shall apply to and operate only in a particular transaction, dealing or matter.

10.3 The Buyer is not entitled to assign all or any of the Buyer's rights or obligations under the Contract without the prior written consent of the Supplier. Consent may be given by the Supplier at its sole discretion.

10.4 The Contract shall in all respects be deemed to be a contract made in New Zealand and the construction, validity and performance of the Contract shall be governed by New Zealand law.

10.5 In these conditions:

**"Act of Default"** means any act of bankruptcy, entering into any composition or arrangement with its creditors (in the case of a company), any act which would render it liable to be wound up, the passing of any resolution or commencement of any proceedings for its winding up or the appointment of a receiver over all or any of its assets.

**"Buyer"** means the party buying the Goods and/or Services from the Supplier.

**"Contract"** means these conditions of supply themselves together with any and every invoice or other document evidencing or describing, whether by item or kind or otherwise, any Goods and/or Services and any other written agreement or acknowledgement between the Supplier and Buyer relating to the sale and purchase of any Goods and/or Services.

**"Contract Date"** means:

- (a) where the Contract arises from an order placed by the Buyer, the date of acceptance of the order by the Supplier;
- (b) where the Contract arises from a quotation given by the Supplier, the date upon which written notification of acceptance of the quotation is received by the Supplier or, where no written notification of acceptance of the quotation is received by the Supplier, the date of such other form of acceptance as the Supplier in its discretion determines to treat as a valid acceptance.

**"Contract Price"** means the price of the Goods and/or Services as agreed between the Supplier and the Buyer, subject to any variation in accordance with these conditions of sale.

**"Goods"** means all chemicals and plastics raw materials, film, foil, plastics, food and refractory finished products, machinery and equipment for the production or delivery of any such items, and all other goods or other property which are supplied by the Supplier to the Buyer.

**"Services"** means all advice given in relation to the Goods, sourcing any Goods as agents for the Buyer, delivery, storage, installation, repair and maintenance of Goods and all other services which are supplied by the Supplier to the Buyer.

**"Supplier"** means Festive Foods NZ Limited.