

## TRADING TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS AND SERVICES

Mossgiel Holdings Pty Ltd (ACN 114 612 805) T/A Fleurieu Smallgoods, Fleurieu Foods & Fleurieu Quiches (ABN 87 140 541 771).

**PARTIES:** The Supplier: Mossgiel Holdings Pty Ltd, A.C.N 114 612 805  
The Customer: \_\_\_\_\_  
Delivery Address: \_\_\_\_\_

### DEFINITIONS

1. The Supplier is Mossgiel Holdings Pty Ltd (ACN 114 612 805), trading as (1) FLEURIEU SMALLGOODS, (2) FLEURIEU FOODS, and (3) FLEURIEU QUICHES (ABN 87 140 541 771). The Customer is the party or any person acting on behalf of and with the authority of the Customer that the Order is provided for.
2. The Guarantor is the person(s), or entity, who agrees to be liable for the debts of the Customer.
3. The Order shall be defined as any request for the provision of Goods and/or Services by the Customer with the Supplier which has been accepted by the Supplier.
4. The Goods are the fresh and/or frozen food and/or products provided by the Supplier.
5. The Services are all the delivery and/or supply of Goods by the Supplier.
6. The Premises is the delivery address where the Goods and/or Services are supplied or delivered to by the Supplier.
7. The Price is the amount invoiced for Goods supplied or Services provided.
8. Indirect, Special or Consequential loss or damage includes i) any loss of income profit or business; ii) any loss of good will or reputation; iii) any loss of value of intellectual property.
9. Invoices include invoices for Goods supplied or for Services provide, or both.

### GENERAL

10. These Terms and Conditions together with the Supplier's written or verbal quotation and the Supplier's Credit Application Form form this Agreement.
11. Any Order requested by the Customer is deemed to be an Order incorporating these Terms and Conditions and may not be varied unless expressly agreed to by the Supplier in writing. In the event that an inconsistency exists and/or arises between these terms and the Order it is acknowledged between the parties that these Terms and Conditions will prevail.
12. No subsequent correspondence or document or discussion shall modify or otherwise vary these Terms and Conditions unless such variation is in writing and signed by the Supplier.
13. The Terms and Conditions are binding on the Customer, his heirs, assignees, executors, trustees and where applicable, any liquidator, receiver or administrator.
14. In these Terms and Conditions, the singular shall include the plural, the masculine shall include feminine and neuter and words importing persons shall apply to corporations.
15. Where more than one Customer completes this Agreement each shall be liable jointly and severally.
16. 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 and the offending provision shall be deemed as severed from these Terms and Conditions.
17. The Supplier may license or sub-contract all or any part of its rights and obligations without the Customer's consent but the Supplier acknowledges that it remains at all times liable to the Customer.
18. 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.
19. The Customer acknowledges that the Supplier may detail these Terms and Conditions on its website. In this event, the Terms and Conditions on the Supplier's website shall apply to any future dealings as between the parties and the Customer is deemed to have notice of any such Terms and Conditions and/or amendments.
20. These Terms and Conditions must be read in conjunction with the Supplier's Credit Application Form.

### PLACEMENT OF ORDERS

21. Orders placed by the Customer with the Supplier will be considered valid when placing the Order by telephone, email, fax, sms, or in person.
22. Any written and/or verbal Quotation given by the Supplier shall expire thirty (30) days after the date of the written quotation. Quotations may also be provided to the Customer by verbal communication over the telephone.
23. All prices are based on taxes and statutory charges current at the time of the Quotation. Should these vary during the period from the date of the Quotation to the date of the invoice, the difference will become the responsibility of the Customer and the Customer will be invoiced for the extra charge by the Supplier.

### PRICE

24. At the Supplier's sole discretion the Price shall be either:
  - 24.1. As detailed on invoices provided by the Supplier to the Customer in respect of Goods and/or Services supplied; or
  - 24.2. The Supplier's quoted Price as for the Order (subject to clause 25).
25. The Supplier reserves the right to change the Price in the event of a variation to the Supplier's Order, and notice will be provided in writing by the Supplier within a reasonable time.

### SUPPLY AND DELIVERY OF GOODS & SERVICES

26. The Supplier reserves their right to:
  - 26.1. Decline requests for any Goods requested by the Customer
  - 26.2. Cancel or postpone the delivery of Goods at their discretion.
27. Delivery of the Goods shall be deemed to be complete when the Goods are collected by the Customer or are delivered to the Customer, the Premises or to the carrier as nominated by the Supplier and/or Customer.
28. If the Customer fails to make all arrangements necessary to take delivery of the Goods the Customer shall, at the discretion of the Supplier, be liable for a \$33.00 Non Delivery Fee and the Supplier shall be entitled, also at its discretion, to charge a reasonable fee for redelivery and storage.

Supplier Initials \_\_\_\_\_ Customer Initials \_\_\_\_\_

29. Unless specified by the Supplier to the contrary in the Order, the Supplier does not warrant that it will be capable of providing the Goods at specific times requested by the Customer during the term of this Agreement.
30. Subject to otherwise complying with its obligations under this Agreement, the Supplier shall exercise its independent discretion as to its most appropriate and effective manner of providing the Goods and of satisfying the Customer's expectations of those Goods.
31. In the discharge of its duties, the Supplier shall comply with all reasonable directions of the Customer as to the nature and scope of the Goods to be provided.
32. Nothing in the above clause shall effect the Supplier's right to exercise its own judgment and to utilise its skills as it considers most appropriate in order to achieve compliance with the said resolutions, regulations and directions or otherwise with its obligations under this Agreement.
33. The Supplier may agree to provide, on request from the Customer, additional Goods not included or specifically excluded in the Quotation/Order. In this event, the Supplier shall be entitled to make an additional charge. Additional Goods includes, but is not limited to, alterations, amendments, and any additional visits by the Supplier after provision of the Goods at the request of the Customer.

#### **PAYMENT AND CREDIT POLICY**

34. Any reference to Customer shall include all Customers, unless it refers to a specific group of Customers.
35. For credit purposes, the two main groups of Customers are Non-Account Customers and Account Customers.
36. **Non-Account Customers**
  - 36.1. The Customer must make full payment to the Supplier upon provision of the goods and/or service.
37. **Account Customers**
  - 37.1. Seven (7) day account customers must make full payment to the Supplier within seven (7) days from the date of issue of invoice(s) for the Goods.
  - 37.2. Fourteen (14) day account customers must make full payment to the Supplier within fourteen (14) days from the date of issue of invoice(s) for the Goods.

#### **Credit**

38. Credit will only be granted at the sole discretion of the Supplier and upon submission of a completed Credit Application Form.
39. Any credit granted may be revised by the Supplier at any time and at its discretion.
40. The Supplier reserves the right to withdraw any credit facility upon any breach by the Customer of these Terms of Conditions or upon the Customer ceasing to trade and/or being subject to any legal proceedings and/or the Customer committing an act of insolvency.
41. The Customer agrees that upon such withdrawal, any and all monies owing on the account shall become immediately due and payable.

#### **GOODS AND SERVICES TAX**

42. GST refers to Goods and Services tax under the *Goods and Services Act 1999* ("*GST Act*") and terms used herein have the meanings contained within the *GST Act*.
43. It is agreed between the Customer and the Supplier that the consideration for the Supplier expressed in this Agreement is exclusive of the Supplier's liability of GST.
  - 43.1. On sale:
    - 43.1.1. The Customer will pay to the Supplier, in addition to the total purchase Price, the amount payable by the Supplier of GST on the taxable supply made by the Supplier under this Agreement;
    - 43.1.2. The Supplier shall deliver to the Customer a Tax Invoice for the supply in a form which complies with the *GST Act* and Regulations.

#### **DISHONOUR OF CHEQUE**

44. If any cheque issued by the Customer or by any third party in payment of the Price is dishonoured:
  - 44.1. The Supplier may refuse to supply any further Goods until satisfactory payment is received in full, including bank fees and charges;
  - 44.2. The Supplier is entitled to treat the dishonour of the Customer's cheque as a repudiation of this Agreement and to elect between terminating this Agreement or affirming this Agreement, and in each case claiming and recovering compensation for loss or damage suffered from the Customer.
  - 44.3. The Customer may be liable for a dishonoured cheque fee of **\$40.00**.

#### **DEFAULT**

45. Invoices issued by the Supplier shall be due and payable upon provision of the Goods and/or Services for Non Account Customer and/or within seven (7) days from the date of issue of the invoices ("Default Date"). Without prejudice to any other rights of the Supplier, the Customer may be charged account keeping fees of **\$25.00** monthly on any payment in arrears.
46. If the Supplier does not receive the Outstanding Balance for the Price on or before the Default Date, the Supplier may, without prejudice to any other remedy it may have, forward the Customer's outstanding account to a debt collection agency for further action. The Customer acknowledges and agrees that:
  - 46.1. After the Default Date, the Outstanding Balance shall include, but not limited to, all applicable fees and charges under this Agreement;
  - 46.2. The Supplier may, in its discretion, calculate interest at the rate of fifteen percentum (**15%**) per annum for all monies due by the Customer to the Supplier.
  - 46.3. In the event of the Customer being in default of the obligation to pay and the overdue account is then referred to a debt collection agency and/or law firm for collection, the commission payable where the collection agency charges commission on a contingency basis shall be calculated as if the agency has achieved one hundred percent recovery and shall be added to the debt and the legal costs, whether incurred directly or by the agency shall be calculated on the indemnity basis and added to and form part of the debt and the total shall be treated as a liquidated sum.

#### **RISK AND LIABILITY**

47. The Customer will ensure when placing Orders that there is sufficient information to enable the Supplier to execute the Order.
48. The Supplier takes no responsibility if the specifications are wrong or inaccurate and the Customer will be liable in that event for the expenses incurred by the Supplier for any work required to rectify the Order.
49. The Customer is responsible for ensuring that the Supplier is made aware of any special requirements pertaining to the Order and the Supplier relies upon the integrity of the information supplied to it.
50. The Supplier takes no responsibility and will not be liable for any damages or costs resulting in the Goods being faulty as a consequence of insufficient information provided by the Customer.
51. The Supplier takes no responsibility for representations made in relation to the Goods or any delay in the delivery of the Goods made by a third party or third party manufacturer.
52. The Customer acknowledges that the Supplier shall not be liable for and the Customer releases the Supplier from:
  - 52.1. Any claims in respect of faulty or defective design of any Goods supplied.

Supplier Initials \_\_\_\_\_ Customer Initials \_\_\_\_\_

- 52.2. Physical or financial injury, loss or damage or for consequential loss or damage of any kind arising out of supply, layout, assembly, installation or operation of the Goods.
53. Except as provided in these conditions all express and implied warranties, guarantees and conditions under statute or general law as to merchantable quality, description, quality, suitability or fitness of the Goods for any purpose or as to design, assembly, installation, materials or workmanship or otherwise are expressly excluded.
54. The Supplier does not represent that it will provide and/or deliver any Goods unless it is included in the Quote.
55. The Customer accepts risk in relation to the Goods when the Goods pass to his care and/or control.

## **CLAIMS**

56. If the Customer does not advise the Supplier of any fault, damage or defect in Goods or failure to comply with the description and quality ordered made pursuant to these conditions within **two (2) business days** of the Goods being delivered to the Customer:
- 56.1. The Customer is deemed to have accepted the Goods and Services and is deemed to agree that the Goods and Services are not faulty, damaged or defective and comply with terms of contract made pursuant to these Terms and Conditions;
- 56.2. The Customer releases and discharges the Supplier from and against any claims, actions, loss or liability relating to any fault, damage or defect in Goods or any failure of the Goods to comply with the terms of contract made pursuant to these Terms and Conditions;
- 56.3. All Goods where a claim is made are to be returned to the Supplier or are to be left in the state and conditions in which they were delivered until such time as the Supplier or its authorised agent has inspected the Goods. Such inspection is to be carried out within a reasonable time after notification. If the Goods are not so left in the state and condition in which they were delivered, the Customer shall be deemed to have accepted the Goods and shall pay the purchase price.

## **WARRANTY**

### **Warranty for Services**

57. The Supplier warrants that if any defect in any Goods and/or Service provided by the Supplier becomes apparent and is reported to the Supplier within **two (2) business days** of the provision of the Goods and/or Services (time being of the essence) then the Supplier will (at the Supplier's sole discretion) remedy the defective Goods and/or Service.
58. If any Goods and/or Services provided by the Supplier are repaired, altered or overhauled by the Customer or caused to be repaired, altered or overhauled by the Customer without the Supplier's consent, the warranty shall cease and the Supplier shall thereafter in no circumstances be liable under the terms of the warranty.
59. In respect of all claims the Supplier shall not be liable to compensate the Customer for any delay in replacing the defective Goods or remedying the defective Services or in properly assessing the Customer's claim. The Supplier will use its best endeavors to assist the Customer with its claim.
60. Where the Customer has complied with the conditions of warranty for defective Services, the Supplier's liability is limited to rectifying and/or remedying the defective Services.

### **Warranty for Goods**

61. The warranty for Goods supplied shall be the current warranty provided by the manufacturer of the Goods. The Supplier shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods. The Supplier will use its best endeavours to assist the Customer with any claim with respect of the Goods.
62. The Customer continues to be responsible for all amounts owing to the Supplier in the event that any Goods are supplied on the basis that a manufacturer's warranty is in place and it subsequently becomes known to the parties that the warranty is void or inapplicable.
63. Warranty for Goods shall only cover the cost of Goods. The Customer acknowledges that additional costs incurred, such as labour and/or freight, must be borne by the Customer.

## **RETENTION OF TITLE**

64. While the risk in Goods shall pass on delivery and/or supply (including all risks associated with unloading), legal and equitable title in the Goods shall remain with the Supplier until full payment of all Goods supplied by the Supplier to the Customer is made. Pending such payment the Customer:
- 64.1. Shall hold the Goods as Bailee for the Supplier and shall return the Goods to the Supplier if so requested.
- 64.2. Agrees to hold the Goods at the Customer's own risk and is liable to compensate the Supplier for all loss or damage sustained to the Goods whilst they are in the Customer's possession.
65. The Supplier is authorised to enter the Premises or the premises where the Customer stores the Goods without liability for trespass or any resulting damage in retaking possession of the Goods until the accounts owed to the Supplier by the Customer are fully paid.
66. The Customer acknowledges that the Supplier may produce this clause to register its legal and equitable interest of the Goods as a secured party in accordance with the provisions of the *Personal Property Securities Act 2009*.

## **TERMINATION AND CANCELLATION**

### **Cancellation by Supplier**

67. The Supplier may cancel any Order to which these Terms and Conditions apply or cancel delivery of Goods at any time before the Goods are delivered provided by giving written notice to the Customer. On giving such notice the Supplier shall repay to the Customer any sums paid in respect of the Price. The Supplier shall not be liable for any loss or damage or consequential loss or damage whatever arising from such cancellation.
68. 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 Customer which remains unfulfilled and all amounts owing to the Supplier shall, whether or not due for payment, become immediately payable in the event that:
- 68.1. Any money payable to the Supplier becomes overdue; or
- 68.2. The Customer 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
- 68.3. A receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

### **Cancellation by Customer**

69. Any Order cannot be cancelled by the Customer unless expressly agreed to by the Supplier in writing.
70. In the event that the Customer cancels delivery of Goods the Customer shall be liable for any loss incurred by the Supplier (including, but not limited to, any loss of profits) up to the time of cancellation.

Supplier Initials \_\_\_\_\_ Customer Initials \_\_\_\_\_

71. If the Customer places an Order with the Supplier and the Supplier places an Order with a third party Supplier to meet the Customer's request, the Customer shall be liable for the Price of the Goods ordered if the Customer cancels the Order and the Goods have already been dispatched.

**Limitation of damage**

72. The Customer acknowledges that in the event of any breach of this Agreement/Order by the Supplier resulting in indirect, special or consequential loss, the remedies of the Customer shall be limited to damages which under no circumstances shall exceed the Price.

**SET-OFF**

73. The Customer shall have no right of set-off in any suit, claim or proceeding brought by the Supplier against the Customer for default in payment.  
74. The Customer acknowledges that the Supplier can produce this clause in bar of any proceeding for set-off.

**INSURANCE**

75. The Supplier is not liable to provide any insurance cover in relation to the provision of the Goods and Services. The Customer is responsible to effect whatever insurance cover he requires at his own expense.

**ACCESS**

76. The Customer shall, where relevant, ensure the Supplier has full and safe access to the Premises and any necessary essential services, resources, equipment, materials and information.  
77. The Customer will be charged an additional fee if the Supplier's work is interfered with or no proper or safe access is provided to the Supplier.  
78. The Supplier will not be held responsible for any delay due to inclement weather, failure of the Customer to provide required Items or changes requested to be made by the Customer and/or in any circumstances beyond the Supplier's reasonable control.

**AGREED USE**

79. The Customer acknowledges that the Customer may forfeit any rights if any, he may have against the Supplier if:  
79.1. The Goods are applied for any other use to which the Goods are not intended for and/or not in accordance with any applicable manual;  
79.2. Any alteration to the Goods is carried out other than in accordance with intended alterations and/or the Goods are not repaired by an authorised repairer.  
80. The Customer further acknowledges sole responsibility for any damage or injury to property or person caused by using the Goods in any way and shall indemnify in full the Supplier, its servants and/or agents in relation to all such claims.  
81. The Customer acknowledges that he has have not relied on any representation or warranty from the Supplier with respect to the merchantable quality, description, quality, suitability or fitness for use of the Goods.

**JURISDICTION**

82. This Agreement is deemed to be made in the State of South Australia and all disputes hereunder shall be determined by the appropriate courts of South Australia.

**PRIVACY ACT 1988**

83. The Customer and/or the Guarantor/s agrees;  
83.1. For the Supplier to obtain from a credit reporting agency a credit report containing personal credit information about the Customer and Guarantor/s in relation to credit provided by the Supplier.  
83.2. That the Supplier may exchange information about the Customer and the Guarantor/s with those credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting agency.  
84. The Customer consent to the Supplier being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) *Privacy Act 1988*).

**ENTIRE AGREEMENT**

85. These Terms and Conditions as defined in Clause 3.1 constitute the whole Agreement made between the Customer and the Supplier.  
86. This Agreement can only be amended in writing signed by each of the parties.  
87. All prior discussions and negotiations are merged within this document and the Supplier expressly waives all prior representations made by him or on his behalf that are in conflict with any clauses in this document in any way.  
88. Nothing in these Terms and Conditions is intended to have the effect of contravening any applicable provisions of the *Competition and Consumer Act 2010* or the *Fair Trading Acts* in each of the States and Territories of Australia.

I/We understand and agree to be bound by the Terms and Conditions set out herein.

CUSTOMER NAME: ..... POSITION HELD:.....

SIGNATURE: X ..... DATE: ...../...../.....

SUPPLIER NAME: ..... POSITION HELD:.....

SIGNATURE: X ..... DATE: ...../...../.....