

1. Definitions

- 1.1 "Summertime" means Summertime Chicken Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Summertime Chicken Pty Ltd.
- 1.2 "Customer" means the person/s buying the Goods as specified in any invoice, document or order, and if there is more than one Customer is a reference to each Customer jointly and severally.
- 1.3 "Goods" means all Goods or Services supplied by Summertime to the Customer at the Customer'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 Summertime and the Customer in accordance with clause 6 below.

2. Acceptance

- 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for Goods, or accepts Delivery.
- 2.2 These terms and conditions may only be amended with Summertime's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and Summertime.

3. Orders

- 3.1 Summertime reserves the right to accept in whole or part any order or to decline any order. Any order or part order not accepted is deemed to be cancelled.
- 3.2 The Customer acknowledges and accepts that the supply of Goods for accepted orders may be subject to availability and if, for any reason, Goods are not or cease to be available, Summertime reserves the right to vary the Price with alternative Goods as per clause 6.2.
- 3.3 Notwithstanding clause 3.3 Summertime also reserves the right at their discretion to introduce additional new Goods as part of the Goods to be supplied.

4. Change in Control

- 4.1 The Customer shall give Summertime not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address, contact phone or fax number/s, or business practice). The Customer shall be liable for any loss incurred by Summertime as a result of the Customer's failure to comply with this clause.

5. Compliance Laws

- 5.1 Summertime warrants that Goods manufactured on its registered premises, and supplied to the Customer, 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.

6. Price and Payment

- 6.1 At Summertime's sole discretion the Price shall be either:
- (a) as indicated on any invoice provided by Summertime to the Customer; or
 - (b) the Price as at the date of Delivery according to Summertime's current pricelist, which is subject to change; or
 - (c) Summertime's quoted price (subject to clause 6.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days. The Customer acknowledges that Summertime reserves the right to vary or amend any quoted Price in relation to future/subsequent orders.
- 6.2 Summertime reserves the right to change the Price if a variation to Summertime's quotation is requested.
- 6.3 At Summertime's sole discretion, a non-refundable deposit may be required.
- 6.4 Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by Summertime, as per approved account terms.
- 6.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (plus a surcharge of up to five percent (5%) of the Price), or by any other method as agreed to between the Customer and Summertime.
- 6.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to Summertime an amount equal to any GST Summertime must pay for any supply by Summertime under this or any other agreement for the sale of the Goods. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition the Customer 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.
- 6.7 Summertime in its discretion may grant or withdrawal credit approval to the Customer from time to time.

7. Delivery

- 7.1 Delivery of the Goods ("Delivery") is taken to occur at the time that:
- (a) the Customer or the Customer's nominated carrier takes possession of the Goods at Summertime's address; or
 - (b) Summertime (or Summertime's nominated carrier) delivers the Goods to the Customer's nominated address, even if the Customer is not present at the address.
- 7.2 At Summertime's sole discretion the cost of Delivery is either included in, or in addition to, the Price.
- 7.3 The Customer must take Delivery by receipt or collection of the Goods whenever they are tendered for Delivery. In the event that the Customer is unable to take Delivery as arranged then Summertime shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 7.4 Summertime 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.
- 7.5 Any time or date given by Summertime to the Customer is an estimate only. The Customer must still accept Delivery even if late and Summertime will not be liable for any loss or damage incurred by the Customer as a result of the Delivery being late.

8. Risk

- 8.1 Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.
- 8.2 If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to the Customer, Summertime is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Summertime is sufficient evidence of Summertime's rights to receive the insurance proceeds without the need for any person dealing with Summertime to make further enquiries.
- 8.3 If the Customer requests Summertime to leave Goods outside Summertime's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Customer's sole risk.

9. Title

- 9.1 Summertime and the Customer agree that ownership of the Goods shall not pass until:
- (a) the Customer has paid Summertime all amounts owing to Summertime; and
 - (b) the Customer has met all of its other obligations to Summertime.
- 9.2 Receipt by Summertime 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.
- 9.3 It is further agreed that, until ownership of the Goods passes to the Customer in accordance with clause 9.1:
- (a) the Customer is only a bailee of the Goods and must return the Goods to Summertime on request.
 - (b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for Summertime and must pay to Summertime the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
 - (c) the Customer 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 Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for Summertime and must pay or deliver the proceeds to Summertime on demand.
 - (d) the Customer should not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of Summertime and must sell, dispose of or return the resulting product to Summertime as it so directs.
 - (e) the Customer irrevocably authorises Summertime to enter any premises where Summertime believes the Goods are kept and recover possession of the Goods.
 - (f) Summertime may recover possession of any Goods in transit whether or not Delivery has occurred.
 - (g) the Customer 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 Summertime.
 - (h) Summertime may commence proceedings to recover the Price notwithstanding that ownership of the Goods has not passed to the Customer.
- 9.4 The Customer acknowledges and agrees that plastic tubs or containers in which the Goods have been shipped remain the property of Summertime and are returnable thereto. If they are not returned by the Customer to Summertime then Summertime may invoice the Customer accordingly and payment becomes due according to account terms provided.

10. Personal Property Securities Act 2009 ("PPSA")

- 10.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 10.2 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods that have previously been supplied and that will be supplied in the future by Summertime to the Customer.
- 10.3 The Customer undertakes to:
- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Summertime may reasonably require to:
 - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - (ii) register any other document required to be registered by the PPSA; or
 - (iii) correct a defect in a statement referred to in clause 10.3(a)(i) or 10.3(a)(ii);
 - (b) indemnify, and upon demand reimburse, Summertime for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of Summertime;
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of Summertime;
 - (e) immediately advise Summertime 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.
- 10.4 Summertime and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 10.5 The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 10.6 The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 10.7 Unless otherwise agreed to in writing by Summertime, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 10.8 The Customer must unconditionally ratify any actions taken by Summertime under clauses 10.3 to 10.5.
- 10.9 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

11. Security and Charge

- 11.1 In consideration of Summertime agreeing to supply the Goods, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 11.2 The Customer indemnifies Summertime from and against all Summertime's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Summertime's rights under this clause.
- 11.3 The Customer irrevocably appoints Summertime and each director of Summertime as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 11 including, but not limited to, signing any document on the Customer's behalf.

12. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)

- 12.1 The Customer must inspect the Goods on Delivery and must within twelve (12) hours of such time notify Summertime in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Customer must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Customer must allow Summertime to inspect the Goods.

- 12.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (**Non-Excluded Guarantees**).
- 12.3 Summertime acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 12.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, Summertime makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. Summertime's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 12.5 If the Customer is a consumer within the meaning of the CCA, Summertime's liability is limited to the extent permitted by section 64A of Schedule 2.
- 12.6 If Summertime is required to replace the Goods under this clause or the CCA, but is unable to do so, Summertime may refund any money the Customer has paid for the Goods.
- 12.7 Subject to this clause 12, returns will only be accepted provided that:
- (a) the Customer has complied with the provisions of clause 12.1; and
 - (b) Summertime has agreed that the Goods are defective; and
 - (c) the Goods are returned within a reasonable time at the Customer's cost (if that cost is not significant); and
 - (d) the Goods are returned in as close a condition to that in which they were delivered as is possible.
- 12.8 Notwithstanding clauses 12.1 to 12.7 but subject to the CCA, Summertime shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- (a) the Customer failing to properly maintain or store the Goods (Goods must be refrigerated at the recommended temperature of between 0-4 degrees);
 - (b) the Customer using the Goods for any purpose other than that for which they were designed;
 - (c) the Customer continuing the use of the Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - (d) the Customer failing to follow any instructions or guidelines provided by Summertime;
- 12.9 Summertime will not accept the return of, or allow any credit for, Goods that have passed their use by date.
- 12.10 Notwithstanding anything contained in this clause if Summertime is required by a law to accept a return then Summertime will only accept a return on the conditions imposed by that law.
- 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 fifteen percent (15%) per annum (and at Summertime's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 13.2 If the Customer owes Summertime any money the Customer shall indemnify Summertime from and against all costs and disbursements incurred by Summertime in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Summertime's contract default fee, and bank dishonour fees).
- 13.3 Without prejudice to any other remedies Summertime may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions Summertime may suspend or terminate the supply of Goods to the Customer. Summertime will not be liable to the Customer for any loss or damage the Customer suffers because Summertime has exercised its rights under this clause.
- 13.4 Without prejudice to Summertime's other remedies at law Summertime shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to Summertime shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to Summertime becomes overdue, or in Summertime's opinion the Customer will be unable to make a payment when it falls due;
 - (b) 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
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.
- 14. Cancellation**
- 14.1 Summertime may cancel any contract to which these terms and conditions apply or cancel Delivery at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice Summertime shall repay to the Customer any money paid by the Customer for the Goods. Summertime shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 14.2 In the event that the Customer cancels Delivery the Customer shall be liable for any and all loss incurred (whether direct or indirect) by Summertime 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 Customer'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 1988**
- 15.1 The Customer agrees for Summertime to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Customer in relation to credit provided by Summertime.
- 15.2 The Customer agrees that Summertime may exchange information about the Customer with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Customer; and/or
 - (b) to notify other credit providers of a default by the Customer; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Customer including the Customer's repayment history in the preceding two years.
- 15.3 The Customer consents to Summertime being given a consumer credit report to collect overdue payment on commercial credit.
- 15.4 The Customer agrees that personal credit information provided may be used and retained by Summertime for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Goods; and/or
 - (b) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Goods; and/or
 - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or

- (d) enabling the collection of amounts outstanding in relation to the Goods.
- 15.5 Summertime may give information about the Customer to a CRB for the following purposes:
- (a) to obtain a consumer credit report;
 - (b) allow the CRB to create or maintain a credit information file about the Customer including credit history.
- 15.6 The information given to the CRB may include:
- (a) personal information as outlined in 15.1 above;
 - (b) name of the credit provider and that Summertime is a current credit provider to the Customer;
 - (c) whether the credit provider is a licensee;
 - (d) type of consumer credit;
 - (e) details concerning the Customer's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
 - (f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Customer no longer has any overdue accounts and Summertime has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
 - (g) information that, in the opinion of Summertime, the Customer has committed a serious credit infringement;
 - (h) advice that the amount of the Customer's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 15.7 The Customer shall have the right to request (by e-mail) from Summertime:
- (a) a copy of the information about the Customer retained by Summertime and the right to request that Summertime correct any incorrect information; and
 - (b) that Summertime does not disclose any personal information about the Customer for the purpose of direct marketing.
- 15.8 Summertime will destroy personal information upon the Customer's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this agreement or is required to be maintained and/or stored in accordance with the law.
- 15.9 The Customer can make a privacy complaint by contacting Summertime via e-mail. Summertime will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Information Commissioner at www.oaic.gov.au.
- 16. General**
- 16.1 The failure by Summertime to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Summertime'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.
- 16.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales, the state in which Summertime has its principal place of business, and are subject to the jurisdiction of the Hornsby Local Court in that state.
- 16.3 Subject to clause 12, Summertime shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by Summertime of these terms and conditions (alternatively Summertime's liability shall be limited to damages which under no circumstances shall exceed the Price).
- 16.4 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by Summertime nor to withhold payment of any invoice because part of that invoice is in dispute.
- 16.5 Summertime may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
- 16.6 The Customer agrees that Summertime may amend these terms and conditions at any time. If Summertime makes a change to these terms and conditions, then that change will take effect from the date on which Summertime notifies the Customer of such change. The Customer will be taken to have accepted such changes if the Customer makes a further request for Summertime to provide Goods to the Customer.
- 16.7 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.
- 16.8 Summertime and the Customer agree to keep confidential any information in relation to the other party which is not in the public domain (including, but not limited to, trade secrets, processes, formulae, recipes, accounts, marketing, designs, and all other information held in any form).
- 16.9 The Customer 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.