
NZ Food Trailers Limited – Terms & Conditions of Trade

1. Definitions

- 1.1 “Contract” means the terms and conditions contained herein, together with any Quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.2 “NZ Food Trailers” means NZ Food Trailers Limited, its successors and assigns or any person acting on behalf of and with the authority of NZ Food Trailers Limited.
- 1.3 “Client” means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting NZ Food Trailers to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
- (a) if there is more than one Client, is a reference to each Client jointly and severally; and
 - (b) if the Client is a partnership, it shall bind each partner jointly and severally; and
 - (c) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
 - (d) includes the Client’s executors, administrators, successors and permitted assigns.
- 1.4 “Services” means all Services (including consultation, manufacturing and/or installation services) or Goods supplied by NZ Food Trailers to the Client at the Client’s request from time to time (where the context so permits the terms ‘Services’ or ‘Goods’ shall be interchangeable for the other).
- 1.5 “Confidential Information” means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party’s intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, “**Personal Information**” such as: name, address, D.O.B, occupation, driver’s license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
- 1.6 “Cookies” means small files which are stored on a user’s computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website, and can be accessed either by the web server or the client’s computer. **If the Client does not wish to allow Cookies to operate in the background when ordering from the website, then the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to ordering Services via the website.**
- 1.7 “Price” means the Price payable (plus any Goods and Services Tax (“GST”) where applicable) for the Services as agreed between NZ Food Trailers and the Client in accordance with clause 6 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 any Services.
- 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.4 The Client acknowledges that the supply of Services on credit shall not take effect until the Client has completed a credit application with NZ Food Trailers and it has been approved with a credit limit established for the account.
- 2.5 In the event that the supply of Services request exceeds the Clients credit limit and/or the account exceeds the payment terms, NZ Food Trailers reserves the right to refuse delivery.
- 2.6 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 226 of the Contract and Commercial Law Act 2017 or any other applicable provisions of that Act or any Regulations referred to in that Act.

3. Finance

- 3.1 If this Contract is conditional upon the Client obtaining capital funding from a financial institution then they shall provide NZ Food Trailers with written confirmation of the loan approval within five (5) working days of the date of signing this Contract.
- 3.2 In the event any such loan application is declined then the Client shall have the right to withdraw from this Contract subject to the Client providing NZ Food Trailers with written evidence within five (5) working days of the date of signing this Contract that the loan was declined. Upon receipt of such evidence NZ Food Trailers shall refund the Client any deposit paid less any expenses incurred by NZ Food Trailers for any Services performed to date.
- 3.3 In the event that NZ Food Trailers is to organise such funding as stated in clause 3.1 then in accordance with the Credit Contracts and Consumer Finance Act 2003 a separate Contract independent of these terms and conditions must be completed where the purpose of the Contract is for the purchase of a trailer. 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.
- 3.4 Nothing in this Contract is intended to have the effect of contracting out of any provisions of the Credit Contracts and Consumer Finance Act 2003.

4. Errors and Omissions

- 4.1 The Client acknowledges and accepts that NZ Food Trailers shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
- (a) resulting from an inadvertent mistake made by NZ Food Trailers in the formation and/or administration of this Contract; and/or
 - (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by NZ Food Trailers in respect of the Services.
- 4.2 In the event such an error and/or omission occurs in accordance with clause 4.1, and is not attributable to the negligence and/or wilful misconduct of NZ Food Trailers; the Client shall not be entitled to treat this Contract as repudiated nor render it invalid.

5. Change in Control

- 5.1 The Client shall give NZ Food Trailers 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, change of trustees, or business practice). The Client shall be liable for any loss incurred by NZ Food Trailers as a result of the Client’s failure to comply with this clause.

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6. Authorised Representatives

- 6.1 Unless otherwise limited as per clause 6.2, the Client agrees that should the Client introduce any third party to NZ Food Trailers as the Client's duly authorised representative, that once introduced that person shall have the full authority of the Client to order any Services, and/or to request any variation thereto, on the Client's behalf (such authority to continue until all requested Services have been completed, or the Client otherwise notifies NZ Food Trailers in writing that said person is no longer the Client's duly authorised representative).
- 6.2 In the event that the Client's duly authorised representative, as per clause 6.1, is to have only limited authority to act on the Client's behalf then the Client must specifically and clearly advise NZ Food Trailers in writing of the parameters of the limited authority granted to their representative.
- 6.3 The Client specifically acknowledges and accepts that they will be solely liable to NZ Food Trailers for all additional costs incurred by NZ Food Trailers (including NZ Food Trailers profit margin) in providing any Services, or variation/s thereto, requested by the Client's duly authorised representative (subject always to the limitations imposed under clause 6.2 (if any)).

7. Price and Payment

- 7.1 At NZ Food Trailers sole discretion the Price shall be either:
- (a) as indicated on invoices provided by NZ Food Trailers to the Client in respect of Services performed or Goods supplied; or
 - (b) NZ Food Trailers quoted Price (subject to clause 7.2) which shall be binding upon NZ Food Trailers provided that the Client shall accept NZ Food Trailers quotation in writing within thirty (30) days.
- 7.2 NZ Food Trailers reserves the right to change the Price:
- (a) if a variation to the Goods which are to be supplied is requested; or
 - (b) if a variation to the Services originally scheduled (including any applicable plans or specifications) is requested; or
 - (c) where additional Services are required due to the discovery of hidden or unidentifiable difficulties which are only discovered on commencement of the Services or prerequisite work by a third party not being completed; or
 - (d) in the event of increases to NZ Food Trailers in the cost of labour or Goods (including but not limited to overseas transactions that may increase as a consequence of variations in foreign currency rates of exchange and/or international freight and insurance charges, or tolls and fines (unless due, to misconduct by NZ Food Trailers) where the Goods are required to be tested, which are beyond NZ Food Trailers control
- 7.3 Variations will be charged for on the basis of NZ Food Trailers quotation, and will be detailed in writing, and shown as variations on NZ Food Trailers invoice. The Client shall be required to respond to any variation submitted by NZ Food Trailers within ten (10) working days. Failure to do so will entitle NZ Food Trailers to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 7.4 At NZ Food Trailers sole discretion a deposit may be required.
- 7.5 Time for payment for the Services being of the essence, the Price will be payable by the Client on the date/s determined by NZ Food Trailers, which may be:
- (a) on completion of the Services; or
 - (b) by way of progress payments in accordance with NZ Food Trailers specified progress payment schedule. Subject to clause 13.1, legal ownership will be transferred to the Client upon full payment and any PPSR registration will be updated and removed at that time;
 - (c) for certain approved Client's, 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;
 - (d) the date specified on any invoice or other form as being the date for payment; or
 - (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by NZ Food Trailers.
- 7.6 Payment may be made by cheque or electronic/on-line banking, or by any other method as agreed to between the Client and NZ Food Trailers.
- 7.7 NZ Food Trailers may in its discretion allocate any payment received from the Client towards any invoice that NZ Food Trailers determines and may do so at the time of receipt or at any time afterwards. On any default by the Client NZ Food Trailers may re-allocate any payments previously received and allocated. In the absence of any payment allocation by NZ Food Trailers, payment will be deemed to be allocated in such manner as preserves the maximum value of NZ Food Trailers Purchase Money Security Interest (as defined in the PPSA) in the Goods.
- 7.8 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 NZ Food Trailers nor to withhold payment of any invoice because part of that invoice is in dispute.
- 7.9 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to NZ Food Trailers an amount equal to any GST NZ Food Trailers must pay for any supply by NZ Food Trailers 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.

8. Provision of the Services

- 8.1 Delivery ("Delivery") of the Goods is taken to occur at the time that NZ Food Trailers (or NZ Food Trailers nominated carrier) delivers the Goods to the Client's nominated address even if the Client is not present at the address.
- 8.2 Subject to clause 8.3 it is NZ Food Trailers responsibility to ensure that the Services start as soon as it is reasonably possible.
- 8.3 The Services commencement date will be put back and the completion date extended by whatever time is reasonable in the event that NZ Food Trailers claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond NZ Food Trailers control, including but not limited to any failure by the Client to make a selection.
- 8.4 At NZ Food Trailers sole discretion the cost of Delivery is in addition to the Price.
- 8.5 NZ Food Trailers may deliver the Services by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 8.6 Any time specified by NZ Food Trailers for delivery of the Services is an estimate only and NZ Food Trailers will not be liable for any loss or damage incurred by the Client as a result of delivery being late. However both parties agree that they shall make every endeavour to enable the Services to be supplied at the time and place as was arranged between both parties. In the event that NZ Food Trailers is unable to

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supply the Services as agreed solely due to any action or inaction of the Client, then NZ Food Trailers shall be entitled to charge a reasonable fee for re-supplying the Services at a later time and date, and/or for storage of the Goods.

9. Risk

- 9.1 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.
- 9.2 If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to the Client, NZ Food Trailers is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by NZ Food Trailers is sufficient evidence of NZ Food Trailers rights to receive the insurance proceeds without the need for any person dealing with NZ Food Trailers to make further enquiries.
- 9.3 If the Client requests NZ Food Trailers to leave Goods outside NZ Food Trailers premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Client's sole risk.

10. Client's Acknowledgments and Responsibilities

- 10.1 The Client acknowledges that:
- (a) Goods supplied may exhibit variations in shade, colour, texture, surface and finish. NZ Food Trailers will make every effort to match batches of product supplied in order to minimise such variations but shall not be liable in any way whatsoever where such variations occur;
 - (b) NZ Food Trailers is only responsible for parts that are replaced/supplied by NZ Food Trailers and does not at any stage accept any liability in respect of components supplied by any other third party that subsequently fail and are found to be the source of the failure, the Client agrees to indemnify NZ Food Trailers against any loss or damage to the Goods, or caused thereby, or any part thereof howsoever arising;
 - (c) even if ownership of the Goods has not passed to the Client, the Client is liable for all costs incurred with parking, toll charges or traffic infringement, impoundment, towage and storage, where the Client is in possession and use of the trailer.
- 10.2 Any advice, recommendation, information, assistance or service provided by NZ Food Trailers in relation to Goods provided is given in good faith, is based on NZ Food Trailers own knowledge and experience and shall be accepted without liability on the part of NZ Food Trailers and it shall be the responsibility of the Client to confirm the accuracy and reliability of the same in light of the use to which the Client makes or intends to make of the Goods.

11. Dimensions, Plans and Specifications

- 11.1 All customary industry tolerances shall apply to the dimensions and measurements of the Goods unless the Client and NZ Food Trailers agree otherwise in writing.
- 11.2 NZ Food Trailers shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Client.
- 11.3 Where the Client is to supply NZ Food Trailers with any design specifications (including, but not limited to CAD drawings) the Client shall be responsible for providing accurate data. NZ Food Trailers shall not be liable whatsoever for any errors in the Goods that are caused by incorrect or inaccurate data being supplied by the Client.
- 11.4 The Client acknowledges that:
- (a) all descriptive specifications, illustrations, drawings, data, dimensions, ratings and weights stated in NZ Food Trailers fact sheets, price lists or advertising material, are approximate only and are given by way of identification only. The Client shall not be entitled to rely on such information, and any use of such does not constitute a sale by description, and does not form part of the contract, unless expressly stated as such in writing by NZ Food Trailers;
 - (b) while NZ Food Trailers may have provided information or figures to the Client regarding the performance and/or sustainability of the Goods, the Client acknowledges that NZ Food Trailers has given these in good faith, and are estimates based on industry prescribed estimates.
- 11.5 The Client shall be responsible for ensuring that the Goods ordered are suitable for their intended use.

12. Compliance with Laws

- 12.1 Where NZ Food Trailers is to affect the full fitout on the Goods, only qualified and certified installers are used. Where NZ Food Trailers is to supply Goods only and the Client is to engage a third party to affect the fitout, NZ Food Trailers does not accept any liability for any defect or damage resulting from incorrect or faulty installation (including but not limited to, electrical services carried out by third party contractors engaged by the Client; any overloading of the trailer's electrical circuits, will not be considered a defect as per clause 16.3). It will be the Client responsibility to obtain all compliance certificates applicable to the fitout from the regulated governing bodies.
- 12.2 The Client and NZ Food Trailers shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services and any Worksafe guidelines and the Health and Safety at Work Act 2015 relating or any other relevant safety standards or legislation pertaining to the Services.
- 12.3 The Client shall obtain (at the expense of the Client) all compliance certificates that may be required for the Services, this will be in addition to the Price, unless otherwise stated.

13. Title

- 13.1 NZ Food Trailers and the Client agree that ownership of the Goods shall not pass until:
- (a) the Client has paid NZ Food Trailers all amounts owing to NZ Food Trailers; and
 - (b) the Client has met all of its other obligations to NZ Food Trailers (including but not limited to, where the Client is to pay for the Goods by instalment).
- 13.2 Receipt by NZ Food Trailers 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.
- 13.3 It is further agreed that:
- (a) until ownership of the Goods passes to the Client in accordance with clause 13.1 that the Client is only a bailee of the Goods and unless the Goods have become fixtures must return the Goods to NZ Food Trailers on request;
 - (b) the Client holds the benefit of the Client's insurance of the Goods on trust for NZ Food Trailers and must pay to NZ Food Trailers the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;

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- (c) the production of these terms and conditions by NZ Food Trailers shall be sufficient evidence of NZ Food Trailers rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with NZ Food Trailers to make further enquiries;
- (d) 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 NZ Food Trailers and must pay or deliver the proceeds to NZ Food Trailers on demand;
- (e) 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 NZ Food Trailers and must sell, dispose of or return the resulting product to NZ Food Trailers as it so directs;
- (f) unless the Goods have become fixtures the Client irrevocably authorises NZ Food Trailers to enter any premises where NZ Food Trailers believes the Goods are kept and recover possession of the Goods;
- (g) NZ Food Trailers may recover possession of any Goods in transit whether or not delivery has occurred;
- (h) 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 NZ Food Trailers;
- (i) NZ Food Trailers may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

14. Personal Property Securities Act 1999 (“PPSA”)

- 14.1 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 NZ Food Trailers for Services – that have previously been supplied and that will be supplied in the future by NZ Food Trailers to the Client.
- 14.2 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 NZ Food Trailers may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - (b) indemnify, and upon demand reimburse, NZ Food Trailers 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 NZ Food Trailers; and
 - (d) immediately advise NZ Food Trailers of any material change in its business practices of selling Goods which would result in a change in the nature of proceeds derived from such sales.
- 14.3 NZ Food Trailers and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 14.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129 and 131 of the PPSA.
- 14.5 Unless otherwise agreed to in writing by NZ Food Trailers, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 14.6 The Client shall unconditionally ratify any actions taken by NZ Food Trailers under clauses 14.1 to 14.5.
- 14.7 Subject to any express provisions to the contrary (including those contained in this clause 14), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

15. Security and Charge

- 15.1 In consideration of NZ Food Trailers agreeing to supply the Services, the Client 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 Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 15.2 The Client indemnifies NZ Food Trailers from and against all NZ Food Trailers costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising NZ Food Trailers rights under this clause.
- 15.3 The Client irrevocably appoints NZ Food Trailers and each director of NZ Food Trailers as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 15 including, but not limited to, signing any document on the Client's behalf.

16. Defective Goods/Services

- 16.1 The Client shall inspect the Goods immediately on delivery and shall within seven (7) days of delivery (time being of the essence) notify NZ Food Trailers of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford NZ Food Trailers 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 NZ Food Trailers has agreed in writing that the Client is entitled to reject, NZ Food Trailers liability is limited to either (at NZ Food Trailers discretion) replacing the Goods or repairing the Goods.
- 16.2 Goods will not be accepted for return other than in accordance with 16.1 above.
- 16.3 Notwithstanding clause 16.1 NZ Food Trailers shall accept no responsibility for services undertaken by any third party contractor employed by the Client that results in a defect such as, installation of appliances that may cause overloading of the trailer structure, plumbing and/or electrical system. If the Client believes that they have any claim in relation to services undertaken by that third party then said claim must be made against the third party contractor in the first instance.

17. Returns Policy

- 17.1 Returns will only be accepted provided that:
 - (a) the Client has complied with the provisions of clause 16.1; and
 - (b) NZ Food Trailers has agreed in writing to accept the return of the Goods; and
 - (c) the Goods are returned at the Client's cost within fourteen (14) days of the delivery date; and
 - (d) NZ Food Trailers will not be liable for Goods which have not been stored or used in a proper manner; and
 - (e) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.

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- 17.2 Non-stocklist items or Goods made to the Client's specifications are under no circumstances acceptable for credit or return.
- 17.3 Return of Goods due to change of mind will be covered by NZ Food Trailers seven (7) days right of return policy, subject to transport costs at NZ Food Trailers discretion. This returns policy only applies to purchases of Goods that are still in an as-new condition but must be notified to NZ Food Trailers within twenty-four (24) hours of the delivery of the Goods. Once NZ Food Trailers grants the return of Goods, a return approval reference will be issued to the Client for which the Goods must be returned and received by NZ Food Trailers within seven (7) days from the date of the return approval notice.

18. Warranties

- 18.1 Subject to the conditions of warranty set out in clause 18.2 NZ Food Trailers warrants that if any defect in any workmanship of NZ Food Trailers becomes apparent and is reported to NZ Food Trailers within twelve (12) months of the date of delivery (time being of the essence) then NZ Food Trailers will either (at NZ Food Trailers sole discretion) replace or remedy the workmanship.
- 18.2 The conditions applicable to the warranty given by clause 18.1 are:
- (a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
 - (i) failure on the part of the Client to properly maintain or suitably store the Goods; or
 - (ii) failure on the part of the Client to follow any instructions or guidelines provided by NZ Food Trailers, pertaining to routine maintenance and repair service; or
 - (iii) any use of any Goods otherwise than for any application specified on a quote or order form (including but not limited to, overloading); or
 - (iv) any installation of a product on chassis other than original factory installation;
 - (v) damage caused by loose nuts, bolts or screws including improperly torqued wheel lug nuts;
 - (vi) any Goods utilized as a rental combination with rental equipment;
 - (vii) the continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
 - (viii) fair wear and tear (including, light bulbs, paint, brakes, tyres, decking and the like or damage to paint resulting from deterioration due to exposure, misuse, chipping, scratching, or damage from road elements, such as, magnesium chloride (liquid salt), sand, improper wash solvents, and/or weather conditions), vandalism, accidents (including but not limited to, collision) or act of God;
 - (ix) transportation costs, if any, of transporting the Goods or any component to an approved repair facility, shall be borne by the Client.
 - (b) the warranty shall cease and NZ Food Trailers shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without NZ Food Trailers consent.
 - (c) in respect of all claims NZ Food Trailers shall not be liable to compensate the Client for any delay in either replacing or remedying the workmanship or in properly assessing the Client's claim.

19. Consumer Guarantees Act 1993

- 19.1 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 NZ Food Trailers to the Client.

20. Intellectual Property

- 20.1 Where NZ Food Trailers has designed, drawn, written plans or a schedule of Services, or created any products for the Client, then the copyright in all such designs, drawings, documents, plans, schedules and products shall remain vested in NZ Food Trailers, and shall only be used by the Client at NZ Food Trailers discretion. Under no circumstances may such designs, drawings and documents be used without the express written approval of NZ Food Trailers.
- 20.2 The Client warrants that all designs, specifications or instructions given to NZ Food Trailers will not cause NZ Food Trailers to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify NZ Food Trailers against any action taken by a third party against NZ Food Trailers in respect of any such infringement.
- 20.3 The Client agrees that NZ Food Trailers may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings, plans or products which NZ Food Trailers has created for the Client.

21. Default and Consequences of Default

- 21.1 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 NZ Food Trailers sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 21.2 If the Client owes NZ Food Trailers any money the Client shall indemnify NZ Food Trailers from and against all costs and disbursements incurred by NZ Food Trailers in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, NZ Food Trailers collection agency costs, and bank dishonour fees).
- 21.3 Further to any other rights or remedies NZ Food Trailers may have under this Contract, if a Client has made payment to NZ Food Trailers, 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 NZ Food Trailers under this clause 21, where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this Contract.
- 21.4 Without prejudice to NZ Food Trailers other remedies at law NZ Food Trailers shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to NZ Food Trailers shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to NZ Food Trailers becomes overdue, or in NZ Food Trailers opinion the Client will be unable to make a payment when it falls due;
 - (b) the Client has exceeded any applicable credit limit provided by NZ Food Trailers;
 - (c) the Client becomes insolvent or bankrupt, 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
 - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

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22. Cancellation

- 22.1 Without prejudice to any other rights or remedies NZ Food Trailers may have, if at any time the Client is in breach of any obligation (including those relating to payment and/or failure to remedy any breach in respect of this Contract within ten (10) working days of receipt by the Client of such notice/s) then NZ Food Trailers may suspend the Services immediately or commence proceedings to take back possession of the Goods. NZ Food Trailers will not be liable to the Client for any loss or damage the Client suffers because NZ Food Trailers has exercised its rights under this clause.
- 22.2 NZ Food Trailers may cancel any contract to which these terms and conditions apply or cancel delivery of Services at any time before the Services are commenced by giving written notice to the Client. On giving such notice NZ Food Trailers shall repay to the Client any sums paid in respect of the Price, less any amounts owing by the Client to NZ Food Trailers for Services already performed. NZ Food Trailers shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 22.3 In the event that the Client cancels the delivery of Services the Client shall be liable for any and all loss incurred (whether direct or indirect) by NZ Food Trailers as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 22.4 Cancellation of orders for products 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.

23. Privacy Policy

- 23.1 All emails, documents, images or other recorded information held or used by NZ Food Trailers is Personal Information as defined and referred to in clause 23.3 and therefore considered confidential. NZ Food Trailers acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1993 ("the Act") including Part II of the OECD Guidelines and as set out in Schedule 5A of the Act and any statutory requirements where relevant in a European Economic Area "EEA" then the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). NZ Food Trailers acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Clients Personal Information, held by NZ Food Trailers that may result in serious harm to the Client, NZ Food Trailers will notify the Client in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Client by written consent, unless subject to an operation of law.
- 23.2 Notwithstanding clause 23.1, privacy limitations will extend to NZ Food Trailers in respect of Cookies where transactions for purchases/orders transpire directly from NZ Food Trailers website. NZ Food Trailers agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client's:
- (a) IP address, browser, email client type and other similar details;
 - (b) tracking website usage and traffic; and
 - (c) reports are available to NZ Food Trailers when NZ Food Trailers sends an email to the Client, so NZ Food Trailers may collect and review that information ("collectively Personal Information")
- In order to enable / disable the collection of Personal Information by way of Cookies, the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable, provided on the website prior to proceeding with a purchase/order via NZ Food Trailers website.
- 23.3 The Client authorises NZ Food Trailers or NZ Food Trailers agent to:
- (a) access, collect, retain and use any information about the Client;
 - (i) (including, name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history or 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 NZ Food Trailers from the Client directly or obtained by NZ Food Trailers 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.
- 23.4 Where the Client is an individual the authorities under clause 23.3 are authorities or consents for the purposes of the Privacy Act 1993.
- 23.5 The Client shall have the right to request NZ Food Trailers for a copy of the Personal Information about the Client retained by NZ Food Trailers and the right to request NZ Food Trailers to correct any incorrect Personal Information about the Client held by NZ Food Trailers.

24. Service of Notices

- 24.1 Any written notice given under this Contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
 - (b) by leaving it at the address of the other party as stated in this Contract;
 - (c) by sending it by registered post to the address of the other party as stated in this Contract;
 - (d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;
 - (e) if sent by email to the other party's last known email address.
- 24.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

25. Trusts

- 25.1 If the Client at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not NZ Food Trailers may have notice of the Trust, the Client covenants with NZ Food Trailers as follows:
- (a) the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;
 - (b) the Client has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
 - (c) the Client will not without consent in writing of NZ Food Trailers (NZ Food Trailers will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:

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- (i) the removal, replacement or retirement of the Client as trustee of the Trust;
- (ii) any alteration to or variation of the terms of the Trust;
- (iii) any advancement or distribution of capital of the Trust; or
- (iv) any resettlement of the trust property.

26. General

- 26.1 Any dispute or difference arising as to the interpretation of these terms and conditions or as to any matter arising hereunder, shall be submitted to, and settled by, adjudication in accordance with the Arbitration Act 1996 or its replacement(s).
- 26.2 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party'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.
- 26.3 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 courts of Tauranga.
- 26.4 NZ Food Trailers 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 NZ Food Trailers of these terms and conditions (alternatively NZ Food Trailers liability shall be limited to damages which under no circumstances shall exceed the Price of the Services).
- 26.5 NZ Food Trailers may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent.
- 26.6 The Client cannot licence or assign without the written approval of NZ Food Trailers.
- 26.7 NZ Food Trailers may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of NZ Food Trailers sub-contractors without the authority of NZ Food Trailers.
- 26.8 The Client agrees that NZ Food Trailers may amend their general terms and conditions for subsequent future contracts with the Client by disclosing such to the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for NZ Food Trailers to provide Services to the Client.
- 26.9 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.
- 26.10 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.