

Kaan's Group General Terms and Conditions of Trade

1. **GENERAL**
- 1.1 "Kaan's Group" means Kaan's Catering Supplies Limited and its related companies as defined in the Companies Act 1993 and their directors, officers, employees and agents. "Kaan's" means the Kaan's Group company with which the Client has or seeks to have a trading relationship, its successors and assigns or any person acting on its behalf or with its authority.
- 1.2 "Client" means the person, company or entity (and if more than one, each of them jointly and severally) described as such on the invoices, application for credit, quotation, work authorisation, Online Ordering registration, Order or any other forms to which the Terms of Trade apply, plus its successors and assigns and includes any person using the Client's Login.
- 1.3 "Goods" means Goods supplied by Kaan's to the Client (and where the context so permits shall include any supply of services) and are as described on the invoices, quotation, work authorisation, Order or any other forms as provided by Kaan's to the Client.
- 1.4 "Contract" means any contract between the Client and Kaan's incorporating the Terms of Trade (without limitation, any application for credit provided by the Client to Kaan's, quotations or work authorisations).
- 1.5 "Kaan's Online Ordering" means the internet site by which Kaan's offers Goods for sale online.
- 1.6 "Login" means a Client's email address and password used to access Kaan's Online Ordering under that Client's registration.
- 1.7 "Order" means any order or request by the Client for the supply of Goods made by any medium, including Kaan's Online Ordering.
- 1.8 "Price" shall mean the cost of the Goods as agreed between Kaan's and the Client subject to clause 2 of this agreement.
- 1.9 "Terms of Trade" means the terms set out in this document and on www.kaans.co.nz which Kaan's may amend from time to time on www.kaans.co.nz or otherwise by notice to the Client. If there is any conflict between the terms in this document and on www.kaans.co.nz, the latter shall prevail.
- 1.10 Clause headings are for reference purposes only and do not form part of the Terms of Trade. References to any statute, regulation or rules includes any amendment to them and any substitute of them.
- 1.11 The Client agrees that the Terms of Trade shall apply to all supplies of Goods (including, without limitation, the present supply of Goods and all future supplies of Goods) by Kaan's to the Client to the exclusion of any other terms and conditions, including without limitation, any terms and conditions in the Client's documents which purport to provide that the Client's own terms shall prevail.
- 1.12 Kaan's is under no obligation to accept all or any of the Client's orders.
- 1.13 Kaan's reserves the right to:
 - (a) supply Goods under a Contract in full or only in part; and/or
 - (b) withdraw credit at any time at Kaan's sole and absolute discretion and demand immediate payment of any account.
- 1.14 Goods are offered for sale in New Zealand for delivery solely in New Zealand under New Zealand law.
2. **ORDERING AND PAYMENT**
- 2.1 By placing an Order, including by use of Kaan's Online Ordering, the Client represents that the Client has read, understood and accepted these Terms of Trade and agrees to be bound by them. Any Order placed constitutes a legal offer to purchase that is capable of being accepted by Kaan's regardless of whether or not the Client receives a confirmation of Order.
- 2.2 The Client is liable for every Order made on its behalf, whether using its Login or otherwise.
- 2.3 Online Orders may be submitted at any time but will be deemed not received until Kaan's is next open for business. Business hours may vary with public holidays and other special circumstances.
- 2.4 The Client is responsible for keeping its Login details secure and confidential at all times. Kaan's will use reasonable endeavours to ensure that information about Goods provided on Kaan's Online Ordering or otherwise is up to date and free from error but shall not be responsible for the accuracy or completeness of information provided by suppliers. Information about allergens is provided by suppliers and is a guideline only. The Client is responsible for checking Goods labels for detailed information.
- 2.6 Goods offered for Ordering are subject to availability while stocks last. Kaan's may change information about Goods at any time, without notice. If Kaan's cannot supply the Goods ordered by a Client, Kaan's may either substitute similar Goods at its discretion or decline to fill the Order. If Kaan's supplies substitute Goods, any resulting price adjustment will be made to the total Price for all Goods included in the accepted Order, on the invoice for the Goods that are in fact supplied.
- 2.7 Orders are accepted when the Goods are dispatched for delivery.
- 2.8 Prices for Goods are the Prices displayed at the time the Order is submitted except:
 - (a) in the case of manifest error; or
 - (b) any other error Kaan's notifies to the Client at any time; or
 - (c) Goods that need to be weighed (e.g. fruit, vegetables, meat, cheese), for which the invoiced Price will be the actual weight of the Goods supplied at the applicable Price per unit of weight.
- 2.9 The Client may download or print information on Kaan's Online Ordering for its purchase records or personal use. Otherwise, no information on Kaan's Online Ordering may be copied, altered, transmitted or redistributed without Kaan's prior written consent
- 2.10 At Kaan's sole discretion the Price shall be either:
 - (a) as stated on Kaan's invoice for the Goods supplied; or
 - (b) Kaan's current price at the date of delivery of the Goods.
- 2.12 All Offer Prices are stated **exclusive of GST**, unless expressly stated otherwise. GST on the total Price for all goods on an accepted Order will be added on the invoice.
- 2.13 Time for payment for the Goods is of the essence and shall be paid at Kaan's sole election:
 - (a) no later than the 7th working day following the date of the invoice; or
 - (b) prior to dispatch of the Goods; or
 - (c) by monthly account by prior arrangement; or
 - (d) as otherwise agreed by Kaan's ("the Due Date").
- 2.14 Kaan's may apportion payments received from the Client to any account of the Client that has moneys outstanding (in Kaan's sole and absolute discretion). Kaan's shall not be responsible for any delay in a credit of the Client being processed or liable for any loss resulting from such a delay. Credits may take up to 7 days to process.
- 2.15 The Client must pay the Price for the Goods together with any administration fees, **delivery charges** commission and associated charges (if any), interest and any other monies due under the Terms of Trade, plus GST as applicable, without set-off, deduction or counterclaim. All payments must be in cash or cleared funds.
- 2.16 Kaan's may, at Kaan's sole discretion and without notice, charge any monies due under the Terms of Trade to a debit card, credit card or a third party account (such as a wholesaler's account) provided to Kaan's by the Client for that purpose. If payment is made by such means, an administration fee shall be added to the cost payable by the Client.
- 2.17 If any part of an invoice is disputed, the Client must pay the full amount invoiced, including the disputed amount(s), then seek a refund of the amount in dispute.
3. **DELIVERY**
- 3.1 At Kaan's sole discretion delivery of the Goods shall take place when:
 - (a) the Client takes possession of the Goods at Kaan's address; or
 - (b) the Client takes possession of the Goods at the Client's delivery address (if that the Goods are delivered by Kaan's or Kaan's nominated carrier).
- 3.2 Risk of damage to, or loss or deterioration of any Goods shall pass to the Client on delivery.
- 3.3 The Client shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. If the Client is unable to take delivery of the Goods as arranged then Kaan's shall be entitled to charge a reasonable fee for redelivery.
- 3.4 Delivery of the Goods to a third party nominated by the Client is deemed to be delivery to the Client for the purposes of this agreement.
- 3.5 The Client shall take delivery of the Goods tendered notwithstanding that the quantity so delivered shall be either greater or lesser than the quantity purchased provided that:
 - (a) such discrepancy in quantity shall not exceed five percent (5%); and
- (b) the Price shall be adjusted pro rata to the discrepancy.
- 3.6 Where Prices in Kaan's price list include delivery this shall mean delivery to a destination within the boundaries nominated by Kaan's.
- 3.7 Kaan's will not be liable for any loss, including consequential loss and loss of profits, arising from any delay in Kaan's performance of the Contract, shortfall in delivered quantity of Goods, failure to deliver Goods by a specified date or the early termination of any Order.
- 3.8 Due to the nature of fresh and/or frozen Goods, Kaan's does not guarantee the supply of any specific type of Goods at any particular time.
4. **OWNERSHIP**
- 4.1 Notwithstanding risk in the Goods passing in accordance with clause 3.2, title in the Goods shall not pass to the Client until Kaan's has received in full (in cash or cleared funds) all sums due to Kaan's in respect of:
 - (a) the Goods; and
 - (b) all other sums which are or which become due to Kaan's from the Client on any account.
- 4.2 Receipt by Kaan's 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 and until then Kaan's ownership or rights in respect of the Goods shall continue.
- 4.3 Until such time as ownership in the Goods passes to the Client:
 - (a) the Client must hold the Goods supplied as bailee for Kaan's and Kaan's reserves the right to repossess the same or any part thereof at any time before title passes. The Client hereby irrevocably grants Kaan's the right to enter the Client's or the delivery premises for this purpose.
 - (b) the Client may sell the Goods supplied in the ordinary course of the Client's business as agent for Kaan's and must account to Kaan's for any sale proceeds, and hold the proceeds in trust for Kaan's until the Client does so.
- 4.4 While Kaan's retains ownership of Goods in the Client's possession or under the Client's control, the Client must at all times:
 - (a) properly and secure the Goods, and insure the Goods for the full purchase price (and hold any proceeds of the insurance on trust for Kaan's) until the Goods are sold pursuant to clause 4.3 above;
 - (b) ensure that the Goods supplied by Kaan's while in the Client's possession can be readily identified and distinguished; and
 - (c) ensure that all proceeds in whatever form that the Client receives from the sale of any of the Goods are readily identifiable and traceable.
- 4.5 Kaan's retains copyright in the display of, and all other intellectual property rights in, Kaan's Online Ordering. No licence of any kind is granted to the Client in respect of anything in which Kaan's has intellectual property rights.
5. **DEFECTS**
- 5.1 The Client shall inspect the Goods on delivery and shall within twenty-four (24) hours of delivery notify Kaan's of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote and supply the date and number of any invoice relating to the Goods. The Client shall afford Kaan's 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.
- 5.2 For defective Goods, which Kaan's has agreed in writing that the Client is entitled to reject, Kaan's liability is limited to replacing the Goods provided that:
 - (a) the Client has complied with the provisions of clause 5.1; and
 - (b) the Goods have been stored appropriately and/or used for their intended purpose; and
 - (c) the Goods are returned in the condition in which they were delivered; and
 - (d) the Goods have not been thawed out or partially used.
- 5.3 Due to the perishable nature of the Goods, Kaan's will not accept the return of Goods other than in accordance with clause 5.2.
- 5.4 The failure of Kaan's to deliver shall not entitle either party to treat this contract as repudiated.
- 5.5 Kaan's shall not be liable for any loss or damage whatsoever due to failure by Kaan's to deliver the Goods (or any of them) promptly or at all, where due to circumstances beyond their control.
6. **WARRANTY**
- 6.1 Kaan's warrants that Goods supplied to the Client shall meet all safety regulations and standards as defined by the Food Act 1981, and are eminently suitable for public consumption.
- 6.2 All other guarantees, warranties and representations in relation to the Goods or their supply (including those contained in the Sale of Goods Act 1908) are excluded except to the extent that Kaan's cannot lawfully exclude them.
- 6.3 The Client warrants that the Goods are not purchased for use primarily for personal, domestic or household purposes.
7. **SECURITY**
- 7.1 Capitalised terms in this clause 7 shall, as applicable, have the meaning given in the Personal Property Securities Act 1999 ("PPSA") and section references refer to sections of the PPSA.
- 7.2 The Client grants a Security Interest to Kaan's in the Goods and all proceeds of the Goods and acknowledges that this agreement creates a Purchase Money Security Interest in the Goods and the proceeds of the Goods. The Client will, if Kaan's requests, sign any documents, provide all necessary information and do anything else required by Kaan's to ensure the Purchase Money Security Interest is a Perfected Security Interest.
- 7.3 In addition to the Security Interest granted under clause 7.2 the Client also grants a Security Interest in all of the Client's Present and After Acquired Property as security for all moneys now and in the future owing by the Client to Kaan's under the Terms of Trade.
- 7.4 The client's credit account may go in and out of credit over time, The Client acknowledges and agrees that the security interest granted to Kaan's shall not terminate upon the client's credit account balance returning to zero. Any subsequent credit granted to the client after the account has returned to zero shall be covered by the original security interest and shall retain the original priority.
- 7.5 Kaan's may register the above Security Interests at any time on the Personal Property Securities Register ("PPSR")
- 7.6 The Client waives any right to receive from Kaan's a copy of any Financing Statement, Financing Change Statement or Verification Statement arising in connection with any registration made on the PPSR by Kaan's in connection with any Security Interest created by the Terms of Trade.
- 7.7 On the enforcement of any Security Interest created by the Terms of Trade to which the PPSA applies, Sections 114 (1) (a), 133 and 134 of the PPSA shall not apply. The Client waives any right the Client may have under sections 116, 120(2), 121, 125, 126, 127, 129 and 131 of the PPSA on enforcement of any such Security Interest.
- 7.8 Where the Client is the owner of any land or realty the Client agrees to mortgage all of its joint and/or several interest in the said land or realty to secure all amounts and other monetary obligations payable under the Terms of Trade. The Client acknowledges and agrees that Kaan's (or Kaan's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met.
- 7.9 The Client undertakes to give Kaan's at least fourteen (14) days' notice of any change in the Client's name, address, electronic contact details and/or any other change in the Client's details.
- 7.10 Should Kaan's elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Client shall indemnify Kaan's from and against all costs and disbursements incurred including any administrative or legal costs (on a solicitor / client basis) incurred in registering, maintaining, changing, discharging or enforcing any security interest.
- 7.11 The Client agrees to irrevocably nominate constitute and appoint Kaan's or Kaan's nominee as the Client's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 7.

8. **PAYMENT DEFAULT**
- 8.1 Notwithstanding any other provision herein if the Client fails to make any payment on the Due Date then (without prejudice to any of Kaan's other rights and remedies) Kaan's may:
- (a) make immediate formal demand for all monies due and payable to Kaan's on any account whatsoever which monies shall then immediately fall due and become payable;
 - (b) charge the Client administration fees and interest at the rate of half a per cent (1/2%) per week which shall accrue on a daily basis on the total amount outstanding (including any costs of enforcement) from the Due Date to the date of payment in full and such interest shall be compounded weekly on the Monday of each week commencing the Monday following the Due Date on which the default was made;
 - (c) pass on to Kaan's appointed agent for the purposes of debt recovery any information Kaan's may hold regarding the Client or the Client's dealings with Kaan's;
 - (d) exercise any and all remedies afforded to a secured party by Part 9 of the Personal Property Securities Act 1999 and enter any building or premises owned, occupied or used by the Client, to search for or re-take possession of the Goods and use or dispose of them for Kaan's own benefit at Kaan's sole and absolute discretion.
9. **CONSUMER GUARANTEES ACT 1993**
- 9.1 When the Client purchases Goods for business purposes, the guarantees in the Consumer Guarantees Act 1993 are excluded.
10. **LIMITATION OF LIABILITY**
- 10.1 Kaan's shall be under no liability whatever to the Client for any indirect or consequential loss and/or expense (including loss of profit or goodwill) suffered by the Client or any third party arising out of a breach by Kaan's of the Terms of Trade.
- 10.2 In the event of any breach of this agreement by Kaan's the remedies of the Client shall be limited to damages, and Kaan's liability (if any) whether in contract, tort or otherwise in respect of any defect in the Goods, or for any breach of the Terms of Trade, or of any duty owed to the Client in connection with them shall be limited to the amount of the Price.
- 10.3 Kaan's shall be excused from performance of any obligation under any Contract if it is unable to perform the obligation because of an event beyond its reasonable control including (without limitation) unavailability of Goods, law changes or other government acts, natural disasters, strikes or other shortages of labour, utility failures and transport delays.
11. **PRIVACY**
- 11.1 The Client authorises Kaan's to collect, retain and use personal information about the Client from any person for the purpose of:
- (a) assessing the Client's creditworthiness and/or verifying the identity of the Client or any guarantor, director, partner or other signatory;
 - (b) disclosing information about the Client:
 - (i) to any person who guarantees or who provides insurance or who provides any other credit support in relation to the Client's obligations to Kaan's;
 - (ii) to such persons as may be necessary or desirable to enable Kaan's to exercise any power, enforcement or attempted enforcement of Kaan's rights, remedies and powers under the Terms of Trade;
 - (c) marketing goods and services; and
 - (d) transferring such information to any nominee or assignee of Kaan's.
- 11.2 The Client may access and update certain personal information held by Kaan's in the "My Account" area of Kaan's Online Ordering.
- 11.3 Personal information entered using the Client's Login will be encrypted before transmission over the internet and stored on a secure server. Kaan's will use reasonable endeavours to prevent unauthorised access to Kaan's Online Ordering but no member of Kaan's Group shall be liable for any loss resulting from unauthorised access to Kaan's Online Ordering except where a member of Kaan's Group has acted maliciously or fraudulently.
- 11.5 Kaan's Online Order may use 'cookies' which are elements of data the web site can send to your browser which may then be stored on your system. To use Kaan's Online Ordering, you do not necessarily need to enable your browser to accept cookies. Some information or services may not be available if you disable cookies.
- 11.6 Kaan's uses Google Analytics to collect information on use of Kaan's Online Ordering. The information is anonymised and aggregated and is used to improve our web site and services to Clients.
12. **NOTICES**
- 12.1 All notices shall be in writing and, unless otherwise required by law, shall be deemed to have been served if delivered in person or posted, or sent by any electronic method (including text message, email and other electronic messaging platforms) to the contact details provided by the Client to Kaan's for the purposes of receiving notices. It is the Client's responsibility to advise Kaan's of any changes to such details.
13. **ENFORCEMENT**
- 13.1 The Client will pay Kaan's on demand all costs (including debt collection costs and legal costs on a solicitor/client basis) incurred by Kaan's in connection with the enforcement or attempted enforcement of Kaan's rights, remedies and powers under the Terms of Trade.
14. **WAIVER**
- 14.1 If Kaan's delays or does not exercise any of Kaan's rights or remedies under the Terms of Trade or otherwise at law, that will not be a waiver of the right or remedy.
- 14.2 Any waiver or consent Kaan's provides must be in writing and signed by a director, attorney or authorised senior executive of Kaan's and will be effective only in the specific instance and for the specific purpose for which it is given.
15. **SEVERABILITY**
- 15.1 If part of the Terms of Trade is deemed to be invalid, illegal or unenforceable, the remaining provisions will remain in full force and effect.
16. **CANCELLATION**
- 16.1 Kaan's reserves the right to cancel any Contract with the Client, without prejudice to any rights which may have accrued up to the date of cancellation, if:
- (a) the Client being a body corporate goes into liquidation, receivership or voluntary administration; or
 - (b) being a person becomes bankrupt; and/or
 - (c) the Client breaches any term of the Terms of Trade or is in default of any Contract and fails to remedy the breach or default within 7 days of receiving notice from Kaan's of the breach or default.
- 16.2 If the Client cancels delivery of Goods the Client shall be liable for any loss incurred by Kaan's (including, but not limited to, any loss of profits) up to the time of cancellation.
- 16.3 Cancellation of orders for Goods made or prepared to the Client's specifications will definitely not be accepted, once production has commenced.