



SWISS DELI[®]
(Global Food Manufacturing Limited)

68 – 70 Greenmount Drive East Tamaki PO Box 51-520 Pakuranga
Phone (09) 274 4455 Facsimile (09) 274 1203 www.swissdeli.co.nz

Account Application – Payment Terms Seven (7) Days/COD

Legal Name _____

Trading Name _____

Postal Address _____

Delivery Address _____

Email Address _____ Fax Number _____

Phone Number _____ Mobile Number _____

Type of Business: Sole Trader Partnership Limited Company Other _____

Ownership, Directors, Partners

Name/Address _____

Name/Address _____

Name/Address _____

Credit References (Businesses that can tell us about your trading history)

1. _____ Phone Number _____

2. _____ Phone Number _____

3. _____ Phone Number _____

I/We have read and agree to be bound by the terms and conditions of trade as printed overleaf. I/We warrant to Swiss Delicatessen that the above information is to the best of my knowledge, information and belief true and correct and that I am duly authorised to enter into this application and future contracts on behalf of the customer.

Signed _____ Date _____

Full Name _____ Position _____

Swiss Deli® (Global Food Manufacturing Limited) - Terms and Conditions of Trade



1. DEFINITIONS

- 1.1 "Swiss Delicatessen" shall mean Global Food Manufacturing, trading as Swiss Deli, or any agents or employees thereof.
- 1.2 "Customer" shall mean the customer, any person acting on behalf of the customer, or any person purchasing goods from Swiss Delicatessen.
- 1.3 "Goods" shall mean all goods, chattels, or services, provided by Swiss Delicatessen to the customer, and shall include without limitation all food and accessories, labour and work, hire charges, insurance charges, or any fee or charge associated with the supply of goods by Swiss Delicatessen to the customer.
- 1.4 "Price" shall mean the cost of the goods as agreed between Swiss Delicatessen and the customer subject to clause 4 of this contract.

2. ACCEPTANCE

- 2.1 Any instructions received by Swiss Delicatessen from the customer for the supply of goods shall constitute acceptance of the terms and conditions contained herein.

3. COLLECTION AND USE OF INFORMATION

- 3.1 The customer authorises Swiss Delicatessen to collect, retain and use any information about the customer, or for the purpose of assessing the customer's credit worthiness, enforcing any rights under this contract, or marketing any goods and services provided by Swiss Delicatessen to any other party.
- 3.2 The customer authorises Swiss Delicatessen to disclose any information obtained to any person for the purposes set out in clause 3.1.
- 3.3 Where the customer is a natural person the authorities under clauses 3.1 and 3.2 are authorities or consents for the purposes of the Privacy Act 1993.

4. PRICE

- 4.1 Where no price is stated in writing or agreed to orally the goods shall be deemed to be sold at the current amount as such goods are sold by Swiss Delicatessen at the time of the contract.
- 4.2 The price may be increased by the amount of any reasonable increase in the cost of supply of the goods that is beyond the control of Swiss Delicatessen between the date of the contract and delivery of the goods.

5. PAYMENT

- 5.1 Unless prior arrangements for different terms of payment have been agreed upon between us and you payment for goods shall be made in full within seven (7) days of receipt of the goods ("the due date").
- 5.2 Interest may be charged on any amount owing after the due date at the rate of 2.5% per month or part month.
- 5.3 Any expenses, disbursements and legal costs incurred by Swiss Delicatessen in the enforcement of any rights contained in this contract shall be paid by the customer, including any reasonable solicitor's fees or debt collection agency fees.
- 5.4 Receipt of a cheque, bill of exchange, or other negotiable instrument shall not constitute payment until such negotiable instrument is paid in full.

6. QUOTATION

- 6.1 Where a quotation is given by Swiss Delicatessen for goods:
 - 6.1.1 The quotation shall be valid for seven days from the date of issue; and
 - 6.1.2 The quotation shall be exclusive of Goods and Services Tax unless specifically stated to the contrary.
- 6.2 Where goods are required in addition to the quotation the customer agrees to pay for the additional cost of such goods.

7. RISK

- 7.1 The goods remain at Swiss Delicatessen's risk until the delivery to the customer, but when title passes to the customer pursuant to clause 9.1 of this contract the goods are at the customer's risk whether delivery has been made or not.
- 7.2 Delivery of goods shall be deemed complete when Swiss Delicatessen gives possession of the goods for delivery to the customer, or possession of the goods is given to a common carrier, or other bailee for the purposes of transmission to the customer.
- 7.3 The time agreed for delivery shall not be an essential term of this contract unless the customer gives written notice to Swiss Delicatessen making time of the essence.
- 7.4 Where Swiss Delicatessen delivers goods to the customer by instalments and Swiss Delicatessen fails to deliver one or more instalments the customer shall not have the right to repudiate the contract but shall have the right to claim compensation as a severable breach.

8. AGENCY

- 8.1 The customer authorises Swiss Delicatessen to contract either as principal or agent for the provision of goods that are the matter of this contract.
- 8.2 Where Swiss Delicatessen enters into a contract of the type referred to in clause 8.1 it shall be read with and form part of this agreement and the customer agrees to pay any amounts due under that contract.

9. TITLE

- 9.1 If the goods are ascertained and in a deliverable state, title in the goods passes to the customer when the customer has made payment for all goods supplied by Swiss Delicatessen.
- 9.2 Where the customer has not paid for any goods in its possession property in such goods shall remain with Swiss Delicatessen and:
 - 9.2.1 The goods shall be held by the customer as bailee; and
- 9.3 The customer gives irrevocable authority to Swiss Delicatessen to enter any premises occupied by the customer, at any reasonable time, to remove any goods not paid for in full by the customer. Swiss Delicatessen shall not be liable for costs, damages or expenses or any other losses incurred by the customer or any third party as a result of this action, nor liable in contract or in tort or otherwise in any way whatsoever.

10. RETURN OF GOODS

- 10.1 No claim relating to delivery of goods shall be considered unless made within 48 hours of delivery.
- 10.2 The customer shall be deemed to have accepted the goods unless the customer notifies Swiss Delicatessen otherwise within 48 hours of delivery of the goods to the customer.
- 10.3 If the goods are not accepted according to clause 10.2 of this contract the customer shall pay for the delivery of the returned goods to Swiss Delicatessen whereby the customer shall be entitled to a credit for the purchase price of any such goods.

11. LIABILITY

- 11.1 Except as otherwise provided by statute Swiss Delicatessen shall not be liable for:
 - 11.1.1 Any loss or damage of any kind whatsoever whether suffered or incurred by the customer or another person whether such loss or damage arises directly or indirectly from goods or services or advice provided by Swiss Delicatessen to the customer and without limiting the generality of the foregoing of this clause Swiss Delicatessen shall not be liable for any consequential loss or damage of any kind including without limitation any financial loss; and
 - 11.1.2 Except as provided in this contract Swiss Delicatessen shall not be liable in contract, or in tort, or otherwise for any loss, damage, or injury beyond the value of the goods provided by Swiss Delicatessen to the customer; and
 - 11.1.3 The customer shall indemnify Swiss Delicatessen against all claims of any kind whatsoever however caused or arising and without limiting the generality of the foregoing of this clause whether caused or arising as a result of the negligence of Swiss Delicatessen or otherwise, brought by any person in connection with any matter, act, omission, or error by Swiss Delicatessen its agents or employees in connection with the goods.

12. CONSUMER GUARANTEES ACT

- 12.1 The guarantees contained in the Consumer Guarantees Act 1993 are excluded where the customer acquires goods or services from Swiss Delicatessen for the purposes of a business in terms of section 2 and 43 of that Act.

13. GENERAL LIEN

- 13.1 The customer agrees that Swiss Delicatessen may exercise a general lien against any goods or any property belonging to the customer that is in the possession of Swiss Delicatessen for all sums outstanding under this contract and any other contract to which the customer and company are parties.
- 13.2 If the lien is not satisfied within 7 days of the due date Swiss Delicatessen may having given notice of the lien at its option either:
 - 13.2.1 Remove such goods or property and store them in such a place and in such a manner as Swiss Delicatessen shall think fit and proper and at the risk and expense of the customer; or
 - 13.2.2 Sell such goods or property or part thereof upon such terms as it shall think fit and apply the proceeds in or towards discharge of the lien and costs of sale without being liable to any person for damage caused.

14. WARRANTY

- 14.1 No representation, condition, warranty or premise expressed or implied by law or otherwise applies to goods except where goods are supplied pursuant to the Consumer Guarantees Act 1993 or except where expressly provided to the customer at the time of sale HOWEVER no warranty shall exceed that given by the manufacturer.
- 15.2 Swiss Delicatessen does not provide any warranty that the goods are fit and suitable for the purpose for which they are required by the customer and shall not be liable if they are not.

15. CANCELLATION

- 15.1 Swiss Delicatessen shall, without any liability, and without any prejudice to any other right it has in law or equity, have the right by notice to suspend or cancel in whole or in part any contract for the supply of goods to the customer if the customer fails to pay any money owing after the due date or the customer commits an act of bankruptcy as defined in section 19 of the Insolvency Act 1967.
- 15.2 Any cancellation or suspension under clause 15.1 of this agreement shall not affect Swiss Delicatessen's claim for money due at the time of cancellation or suspension or for damages for any breach of any terms of this contract or the customer's obligations to Swiss Delicatessen under this contract.

16. MISCELLANEOUS

- 16.1 The customer shall not assign all or any of its rights or obligations under this contract without the written consent of Swiss Delicatessen.
- 16.2 Swiss Delicatessen shall not be liable for delay or failure to perform its obligations if the cause of the delay or failure is beyond its control.
- 16.3 Failure by Swiss Delicatessen to enforce any of the terms and conditions contained in this contract shall not be deemed to be a waiver of any of the rights or obligations Swiss Delicatessen has under this contract.
- 16.4 The law of New Zealand shall apply to this contract except to the extent expressly negated or varied by this contract.
- 16.5 Where the terms of this contract are at variance with the order or instruction from the customer, this contract shall prevail.
- 16.6 If any provision of this contract shall be invalid, void or illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.