
Daily Fresh Food Service – Terms & Conditions of Trade

1. Definitions

- 1.1 “Daily Fresh” means Erinfen Pty Ltd T/A Daily Fresh Food Service, its successors and assigns or any person acting on behalf of and with the authority of Erinfen Pty Ltd T/A Daily Fresh Food Service.
- 1.2 “Client” means the person/s buying the Goods as specified in any invoice, document or order, and if there is more than one Client is a reference to each Client jointly and severally.
- 1.3 “Goods” means all Goods or Services supplied by Daily Fresh to the Client at the Client’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 Daily Fresh 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 the Goods.
- 2.2 These terms and conditions may only be amended with Daily Fresh’s consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and Daily Fresh.

3. Change in Control

- 3.1 The Client shall give Daily Fresh 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, or business practice). The Client shall be liable for any loss incurred by Daily Fresh as a result of the Client’s failure to comply with this clause.

4. Electronic Transactions Act 2000

- 4.1 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.

5. Online Ordering

- 5.1 The Client acknowledges and agrees that:
 - (a) Daily Fresh do not guarantee the websites performance or availability of any of its Goods; and
 - (b) on-line ordering may be unavailable from time to time for regularly scheduled maintenance and/or upgrades; and
 - (c) there are inherent hazards in electronic distribution and as such Daily Fresh cannot warrant against delays or errors in transmitting data between the customer and Daily Fresh including orders, and you agree that to the maximum extent permitted by law, Daily Fresh will not be liable for any losses which the Client suffers as a result of online-ordering not being available or for delays or errors in transmitting orders.
- 5.2 Daily Fresh reserve the right to terminate your order if it learns that you have provided false or misleading information, interfered with other users or the administration of Daily Fresh Food Service, or violated these terms and conditions.

6. Price and Payment

- 6.1 At Daily Fresh’s sole discretion the Price shall be either:
 - (a) as indicated on any invoice provided by Daily Fresh to the Client; or
 - (b) the Price as at the date of delivery of the Goods according to Daily Fresh’s current price list; or
 - (c) Daily Fresh’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.
- 6.2 Daily Fresh reserves the right to change the Price:
 - (a) if a variation to the Goods which are to be supplied is requested; or
 - (b) in the event of increases to Daily Fresh in the cost of labour or materials (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) which are beyond Daily Fresh’s control.
- 6.3 At Daily Fresh’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 Client on the date/s determined by Daily Fresh, which may be:
 - (a) on delivery of the Goods;
 - (b) before delivery of the Goods;
 - (c) by way of instalments/progress payments in accordance with Daily Fresh’s payment schedule;
 - (d) thirty (30) days following the end of the month in which a statement is posted to the Client’s address or address for notices;
 - (e) the date specified on any invoice or other form as being the date for payment; or
 - (f) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by Daily Fresh.
- 6.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (plus a surcharge of up to three and a half percent (3.5%) of the Price applicable to AMEX cards only), or by any other method as agreed to between the Client and Daily Fresh.

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6.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to Daily Fresh an amount equal to any GST Daily Fresh must pay for any supply by Daily Fresh 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.

7. Delivery of Goods

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

8. Risk

- 8.1 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.
- 8.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, Daily Fresh is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Daily Fresh is sufficient evidence of Daily Fresh’s rights to receive the insurance proceeds without the need for any person dealing with Daily Fresh to make further enquiries.
- 8.3 If the Client requests Daily Fresh to leave Goods outside Daily Fresh’s premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Client’s sole risk.

9. Title

- 9.1 Daily Fresh and the Client agree that ownership of the Goods shall not pass until:
- (a) the Client has paid Daily Fresh all amounts owing to Daily Fresh; and
 - (b) the Client has met all of its other obligations to Daily Fresh.
- 9.2 Receipt by Daily Fresh 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:
- (a) until ownership of the Goods passes to the Client in accordance with clause 9.1 that the Client is only a bailee of the Goods and must return the Goods to Daily Fresh on request.
 - (b) the Client holds the benefit of the Client’s insurance of the Goods on trust for Daily Fresh and must pay to Daily Fresh the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
 - (c) 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 Daily Fresh and must pay or deliver the proceeds to Daily Fresh on demand.
 - (d) 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 Daily Fresh and must sell, dispose of or return the resulting product to Daily Fresh as it so directs.
 - (e) the Client irrevocably authorises Daily Fresh to enter any premises where Daily Fresh believes the Goods are kept and recover possession of the Goods.
 - (f) Daily Fresh may recover possession of any Goods in transit whether or not delivery has occurred.
 - (g) 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 Daily Fresh.
 - (h) Daily Fresh may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

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 Client 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 Daily Fresh to the Client.
- 10.3 The Client 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 Daily Fresh may reasonably require to;

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- (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, Daily Fresh 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 Daily Fresh;
- (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 Daily Fresh;
- (e) immediately advise Daily Fresh 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 Daily Fresh and the Client 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 Client 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 Client 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 Daily Fresh, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 10.8 The Client must unconditionally ratify any actions taken by Daily Fresh 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 Daily Fresh agreeing to supply the Goods, 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).
- 11.2 The Client indemnifies Daily Fresh from and against all Daily Fresh's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Daily Fresh's rights under this clause.
- 11.3 The Client irrevocably appoints Daily Fresh and each director of Daily Fresh as the Client'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 Client's behalf.

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

- 12.1 The Client must inspect the Goods on delivery and must within twenty-four (24) hours being applicable to fresh foods, or within seven (7) days for dry foods, of delivery notify Daily Fresh in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow Daily Fresh 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 Daily Fresh 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, Daily Fresh makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. Daily Fresh's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 12.5 If the Client is a consumer within the meaning of the CCA, Daily Fresh's liability is limited to the extent permitted by section 64A of Schedule 2.
- 12.6 If Daily Fresh is required to replace the Goods under this clause or the CCA, but is unable to do so, Daily Fresh may refund any money the Client has paid for the Goods.
- 12.7 If the Client is not a consumer within the meaning of the CCA, Daily Fresh's liability for any defect or damage in the Goods is:
- (a) limited to the value of any express warranty or warranty card provided to the Client by Daily Fresh at Daily Fresh's sole discretion;
 - (b) limited to any warranty to which Daily Fresh is entitled, if Daily Fresh did not manufacture the Goods;
 - (c) otherwise negated absolutely.
- 12.8 Subject to this clause 12, returns will only be accepted provided that:
- (a) the Client has complied with the provisions of clause 12.1; and
 - (b) Daily Fresh has agreed that the Goods are defective; and
 - (c) the Goods are returned within a reasonable time at the Client'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.

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- 12.9 Notwithstanding clauses 12.1 to 12.8 but subject to the CCA, Daily Fresh 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 Client failing to properly maintain or store any Goods;
 - (b) the Client using the Goods for any purpose other than that for which they were designed;
 - (c) the Client continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - (d) the Client failing to follow any instructions or guidelines provided by Daily Fresh;
 - (e) fair wear and tear, any accident, or act of God.
- 12.10 Daily Fresh may in its absolute discretion accept non-defective Goods for return in which case Daily Fresh may require the Client to pay handling fees of up to ten percent (10%) of the value of the returned Goods plus any freight costs.
- 12.11 Notwithstanding anything contained in this clause if Daily Fresh is required by a law to accept a return then Daily Fresh 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 two and a half percent (2.5%) per calendar month (and at Daily Fresh's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 13.2 If the Client owes Daily Fresh any money the Client shall indemnify Daily Fresh from and against all costs and disbursements incurred by Daily Fresh in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Daily Fresh's contract default fees, and bank dishonour fees).
- 13.3 Without prejudice to any other remedies Daily Fresh may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions Daily Fresh may suspend or terminate the supply of Goods to the Client. Daily Fresh will not be liable to the Client for any loss or damage the Client suffers because Daily Fresh has exercised its rights under this clause.
- 13.4 Without prejudice to Daily Fresh's other remedies at law Daily Fresh shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to Daily Fresh shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to Daily Fresh becomes overdue, or in Daily Fresh's opinion the Client will be unable to make a payment when it falls due;
 - (b) the Client 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 Client or any asset of the Client.

14. Cancellation

- 14.1 Daily Fresh may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Client. On giving such notice Daily Fresh shall repay to the Client any money paid by the Client for the Goods. Daily Fresh shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 14.2 In the event that the Client cancels delivery of Goods the Client shall be liable for any and all loss incurred (whether direct or indirect) by Daily Fresh 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 Client'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 Client agrees for Daily Fresh to obtain from a credit reporting agency a credit report containing personal credit information about the Client in relation to credit provided by Daily Fresh.
- 15.2 The Client agrees that Daily Fresh may exchange information about the Client with those credit providers either named as trade referees by the Client or named in a consumer credit report issued by a credit reporting agency for the following purposes:
- (a) to assess an application by the Client; and/or
 - (b) to notify other credit providers of a default by the Client; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Client.
- The Client understands that the information exchanged can include anything about the Client's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.
- 15.3 The Client consents to Daily Fresh being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 15.4 The Client agrees that personal credit information provided may be used and retained by Daily Fresh for the following purposes (and for other purposes as shall be agreed between the Client and Daily Fresh or required by law from time to time):
- (a) the provision of Goods; and/or

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- (b) the marketing of Goods by Daily Fresh, its agents or distributors; and/or
 - (c) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Goods; and/or
 - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
 - (e) enabling the daily operation of Client's account and/or the collection of amounts outstanding in the Client's account in relation to the Goods.
- 15.5 Daily Fresh may give information about the Client to a credit reporting agency for the following purposes:
- (a) to obtain a consumer credit report about the Client;
 - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Client.
- 15.6 The information given to the credit reporting agency may include:
- (a) personal particulars (the Client's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number);
 - (b) details concerning the Client's application for credit or commercial credit and the amount requested;
 - (c) advice that Daily Fresh is a current credit provider to the Client;
 - (d) advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;
 - (e) that the Client's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;
 - (f) information that, in the opinion of Daily Fresh, the Client has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Client's credit obligations);
 - (g) advice that cheques drawn by the Client for one hundred dollars (\$100) or more, have been dishonoured more than once;
 - (h) that credit provided to the Client by Daily Fresh has been paid or otherwise discharged.
- 16. General**
- 16.1 The failure by Daily Fresh to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Daily Fresh'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 in which Daily Fresh has its principal place of business, and are subject to the jurisdiction of the Parramatta courts in New South Wales.
- 16.3 Subject to clause 12, Daily Fresh 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 Daily Fresh of these terms and conditions (alternatively Daily Fresh's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 16.4 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 Daily Fresh nor to withhold payment of any invoice because part of that invoice is in dispute.
- 16.5 Daily Fresh may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 16.6 The Client agrees that Daily Fresh may amend these terms and conditions at any time. If Daily Fresh makes a change to these terms and conditions, then that change will take effect from the date on which Daily Fresh notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for Daily Fresh to provide Goods to the Client.
- 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 The Client 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.