**Terms of Trade**

**The Food Agency Ltd Trading As Corporate Bunny Diners**

**1. Payments**

All payments shall be made within 7 days from the day following the issue of the invoice unless otherwise arranged in advance and confirmed in writing by *Andrew Murphy & Lisa Viel*

*The Food Agency Ltd T/A Corporate Bunny Diners* reserves the right to withdraw or refuse credit facilities or to require payment of a deposit before delivery.

Interest shall be paid at 15% per month calculated on a monthly basis on all outstanding amounts from the date on which the payment was due until actual date of payment.

Any expenses, disbursements and costs (including solicitors fees or debt collection agency fees) incurred by *The Food Agency* in the event of customer default are payable by you the customer.

Payment by bill of exchange or cheque shall not be deemed payment until the bill of exchange or cheque has been paid by the customer's banker and credited to *The Food Agency* bank account.

Credit card payments will incur a credit card surcharge applicable to the credit card type.

**2. Freight**

All product prices exclude freight charges unless otherwise specified and advised in writing to the customer.

*The Food Agency* reserves the right to levy a freight surcharge where urgent delivery is requested by the customer.

Under the Carriage of Goods Act all claims for loss of or damage to goods must be made on the carrier within 48 hours from the date of invoice.

**3. Goods for Return**

Goods shall only be returned to *The Food Agency* with its prior written consent and within 48 hours after delivery.

Should *The Food Agency* discover that there is not a material defect in the goods; *The Food Agency* may charge the customer a handling fee.

Goods not returned in accordance with the above may be rejected by *The Food Agency.*

All costs for the return or delivery of the goods shall be payable by the customer.

**4. Services**

"Services" shall include all labour, parts, expenses and sub- contractors' services supplied by *The Food Agency* to you.

All invoices rendered shall include services provided.

**5. Supply and Delivery**

All services supplied shall be deemed to have been supplied when notified by *The Food Agency*. If you claim that some services have not been supplied or rendered, you must notify *The Food Agency* within 48 hours of notification of supply.

Any claim by you must be made in writing.

**6. Title and Security (Personal Property Security Act 1999)**

Title in any goods supplied by *The Food Agency* passes to the customer only when the customer has made payment in full for all goods provided by *The Food Agency* and of all other sums due to *The Food Agency* by the customer on any account whatsoever. Until all sums due to *The Food Agency* by the customer have been paid in full, *The Food Agency* has a security interest in all goods.

The customer grants to *The Food Agency* a personal property security in the goods (by virtue of the Retention of Title clause in these terms) and all goods previously supplied by *The Food Agency* to the customer (if any) and all after acquired goods supplied by *The Food Agency* to the customer.

The customer agrees to:-

(a) Sign any further document and provide any further information which the customer warrants to be complete, accurate and up-to-date in all respects, which *The Food Agency* may reasonably

require to register a financing statement or financing change statement on the personal property securities register.

(b) Not register a financing change statement or a change demand without the prior written consent of *The Food Agency.*

(c) Give *The Food Agency* no less than 14 days written notice of any change of the customer's name or other change in the customer's details (including but not limited to changes in address, facsimile number, trading name or business practice).

(d) Indemnify *The Food Agency* for any costs incurred by it in relation to the above.

(e) Waive any rights to receive a copy of the verification statement under the Personal Property Securities Act and agrees to the extent permitted by law that under this contract:-

(i) The customer will have no rights under (or by reference to) Section 114(1) or 133 of the Personal Property Securities Act.

(ii) The provisions of Part 9 of the Personal Property Securities Act which after the benefit of the customer or place obligations on *The Food Agency* will apply only to the extent that they are mandatory.

(iii) Where *The Food Agency* has rights under this contract additional to those in Part 9 of the Personal Property Securities Act, those rights will continue to apply.

In the event the customer refuses to comply with its obligations under the above clause, then by signing this document the customer grants to *The Food Agency* power of attorney to sign all documents giving *The Food Agency* a personal property security in the goods.

If the goods are attached, fixed or incorporated into any property of the customer, by way of any manufacturing or assembling process by the customer or any third party, title in the goods shall remain with *The Food Agency* until the customer has made payment for all goods and where those goods are mixed with other property so as to be part of or a constituent of any new products, title to these new products shall be deemed to be assigned to *The Food Agency* as security for the full satisfaction by the customer of the full amount owing between *The Food Agency* and the customer.

The customer gives irrevocable authority to *The Food Agency* to enter any premises occupied by the customer or on which products are situated at any reasonable time after default by the customer or before default if *The Food Agency* believes a default is likely and to remove and repossess any goods and any other property to which goods are attached or in which goods are incorporated. *The Food Agency* shall not be liable for any costs, damages, expenses or losses incurred by the customer or third party as a result of this action, nor liable in contract or in tort or in otherwise in any way whatsoever unless by statute such liability cannot be excluded. *The Food Agency* may either resell any repossessed goods and credit the customer's account with the net proceeds of sale (after deduction of all repossession, storage, selling and other costs) or may retain any repossessed goods and credit the customer's account with the invoice value less such sum as *The Food Agency* reasonably determines on account of wear and tear, depreciation, obsolescence, loss or profit and costs.

**7. General**

These terms of trade shall apply to all services supplied to the customer.

If any provisions of these terms are unenforceable, that term will be deemed modified to the extent necessary to make it enforceable or if modification is impractical, the provision will be deemed deleted but without affecting the remainder of these terms.

These terms may only be varied by the written agreement of *The Food Agency*

Any notice required to be served by either party shall deemed to have been properly served if left at or posted in a pre-paid letter addressed to the other party at the place of business or residence of such party and any service by post shall be deemed to have been effected when the letter containing such notice would have been delivered in the ordinary course of post.

These terms shall be governed by and construed in accordance with the laws of New Zealand.

**8. Returns, Claims, Refunds**

The customer shall immediately upon receipt of goods supplied fully inspect such goods and satisfy itself that the goods are correct. If the customer is unsatisfied, the customer must immediately contact *The Food Agency* and communicate all details of such dissatisfaction. Unless the above procedure is followed *The Food Agency* is entitled to assume that the goods supplied are correct and no returns claims for refunds will be permitted or made.

**9.Customer Information**

In accordance with the Privacy Act 1993 the customer authorises *The Food Agency* to obtain such information as it may require in response to their enquiries from any source in order to determine the customer's credit worthiness and to be used as a guide concerning credit limits.

*The Food Agency* will set a credit limit and reserves the right to alter the credit limit from time to time.

**10. Consumer Guarantees Act**

Where *The Food Agency* supplies the goods to the customer for the customer's use in a business for the purpose of the business, the customer agrees that the Consumer Guarantees Act does not apply. Where *The Food Agency* supplies the product to a customer as a "consumer" as defined in the Consumer Guarantees Act for a non- business purpose, the Consumer Guarantees Act will apply and prevail over any contrary provision in these terms and conditions.

**11. Disputes Accounts**

The customer must notify *The Food Agency* in writing within five days of receipt of any disputed invoice. The notification must quote the relevant invoice number and must include all the necessary details of the reason the invoice is being disputed. Should the customer fail to notify *The Food Agency* of any dispute, defect or damage within five days of receipt of the invoice, the customer shall be deemed to accepted the invoice and shall pay that invoice according to the terms and conditions contained in this document.

**12.Confidential Information**

Each party agrees to always keep the other party's confidential material confidential and not to use the confidential material for any purpose other than for the purpose for which it was supplied or copy or reproduce any of the confidential material in any way except whether disclosure is necessary to enable goods or services to be used under lease or where the party that owns the confidential material has consented to disclosure.

On request each party will ensure that any confidential material (including any copies) that it possesses or controls and that belongs to the other party is returned to that other party.

Confidential material means:-

(a) All information and other material relating to *The Food Agency* business, employees, goods or services which we make available or have previously made available to you; or

(b) Any report or material which we produce as a direct or indirect result of any work that we carry out for you and anything that you derive from this information and material but excluding everything which is generally available to the public or you or a third party have independently developed or acquired this confidential material.

**13. Resolving Disputes**

*The Food Agency* and the customer will use all reasonable endeavours to resolve any dispute between them. If they cannot resolve their dispute between them, they will:-

(a) Refer the dispute to mediation which will be conducted in accordance with the LEADR New Zealand Standard Mediation Agreement; and

(b) If mediation is unsuccessful, the matter of dispute shall be referred to a single arbitrator in accordance with the provisions contained in the Arbitration Act 1996 and any amendments.

Nothing in this clause will preclude either party from taking immediate steps to seek urgent equitable relief before an appropriate Court.

**14. Assignment**

*The Food Agency* is entitled at any time to assign to any other person all or any part of the debt owing by the customer to *The Food Agency*.

**15.Review of Terms**

*The Food Agency* reserves the right to review any of these terms at any time. Any change will take effect on the next transaction following the date on which *The Food Agency* notified the customer of such change.

**16. Intellectual Property**

The customer acknowledges that *The Food Agency* is the sole owner of all intellectual property (including business know how, ideas, methodologies, routines, systems and processes relating to or arising, directly or indirectly, out of the goods and services that *The Food Agency* supplies to the customer or developed or contributed to by *The Food Agency* in relation to any information, fault, repair or documentation that is supplied to the customer or as a result of *The Food Agency* performing services or any other work for the customer.

The customer agrees not to use any trademarks or other intellectual property rights which are legally *The Food Agency* except as authorised by *The Food Agency*

**17. Hired Equipment**

All damage, loss or breakage of equipment and packaging (including boxes and crates) is to be paid for by the customer at replacement cost. It is the customer's responsibility to guard against equipment loss and damage until returned or collected. Hire equipment is not insured whilst outside of *The Food Agency* premises or vehicles.

**18. Damage & Loss of The Food Agency Kitchen Equipment**

All damage, loss or breakage of equipment (including plates and crockery) is to be paid for by the customer at replacement cost. It is the customer's responsibility to guard against equipment loss and damage until returned or collected. Equipment is not insured whilst outside of *The Food Agency* premises or vehicles.

**19. Acknowledgement and Declaration**

I/We agree to this declaration as the customer:-

(a) Accepting and agreeing to abide by the terms of trade specified above; and

(b) Giving the necessary approvals, consents, authorisations under the Privacy Act 1993; and

(c) Acknowledging that a copy of the terms of trade has been received, read and understood.

(d) Agreeing that these terms of trade will apply to all contracts between *The Food Agency* and ourselves as the customer.