

Farmer Jones Wholesale Limited T/A Smith's Meat Company – Terms & Conditions of Trade

1.	Definitions	8.3	If the Client requests Farmer Jones to leave Goods outside Farmer Jones'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.	16.	Consumer Guarantees Act 1993
1.1	"Farmer Jones" means Farmer Jones Wholesale Limited T/A Farmer Jones, its successors and assigns or any person acting on behalf of and with the authority of Farmer Jones Wholesale Limited T/A Farmer Jones.			16.1	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 Farmer Jones to the Client.
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.	9.	Title	17.	Intellectual Property
1.3	"Goods" means all Goods or Services supplied by Farmer Jones 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).	9.1	Farmer Jones and the Client agree that ownership of the Goods shall not pass until:	17.1	Where Farmer Jones has designed, drawn or developed Goods for the Client, then the copyright in any designs and drawings and documents shall remain the property of Farmer Jones. Under no circumstances may such designs, drawings and documents be used without the express written approval of Farmer Jones.
1.4	"Price" means the Price payable (plus any Goods and Services Tax (GST) where applicable) for the Goods as agreed between Farmer Jones and the Client in accordance with clause 5 below.	9.2	(a) the Client has paid Farmer Jones all amounts owing to Farmer Jones; and	17.2	The Client warrants that all designs, specifications or instructions given to Farmer Jones will not cause Farmer Jones to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify Farmer Jones against any action taken by a third party against Farmer Jones in respect of any such infringement.
2.	Acceptance	9.3	(b) the Client has met all of its other obligations to Farmer Jones.	17.3	The Client agrees that Farmer Jones may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which Farmer Jones has created for the Client.
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 (including but not limited to, by business fax, email or telephone) for or accepts delivery of the Goods.		Receipt by Farmer Jones 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.	18.	Default and Consequences of Default
2.2	These terms and conditions may only be amended with the consent of both parties in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and Farmer Jones.		It is further agreed that until ownership of the Goods passes to the Client in accordance with clause 9.1:	18.1	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 Farmer Jones's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
2.3	The Client acknowledges that the supply of Goods on credit shall not take effect until the Client has completed a credit application with Farmer Jones and it has been approved with a credit limit established for the account.		(a) the Client is only a bailee of the Goods and must return the Goods to Farmer Jones on request.	18.2	If the Client owes Farmer Jones any money the Client shall indemnify Farmer Jones from and against all costs and disbursements incurred by Farmer Jones in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Farmer Jones's collection agency costs, and bank dishonour fees).
2.4	In the event that the supply of Goods request exceeds the Client's credit limit and/or the account exceeds the payment terms, Farmer Jones reserves the right to refuse delivery.		(b) the Client holds the benefit of the Client's insurance of the Goods on trust for Farmer Jones and must pay to Farmer Jones the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.	18.3	Further to any other rights or remedies Farmer Jones may have under this contract, if a Client has made payment to Farmer Jones, 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 Farmer Jones under this clause 18 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this agreement.
2.5	The Client acknowledges and accepts that the supply of Goods for accepted orders may be subject to availability and if, for any reason, Goods are not or cease to be available, Farmer Jones reserves the right to vary the Price with alternative Goods as per clause 5.2, subject to prior confirmation and agreement of both parties.		(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 Farmer Jones and must pay or deliver the proceeds to Farmer Jones on demand.	18.4	In the event that the Client's payment terms are seven (7) days (as per clause 5.4(d) and the account remains unpaid after fourteen (14) days, then an amount of ten percent (10%) of the amount overdue (up to a maximum of \$200) shall be levied for administration fees which sum shall become immediately due and payable.
2.6	The Client accepts and acknowledges that the Goods are not processed as being HALAL or KOSHER certified, unless specifically stated in writing by Farmer Jones, the Client agrees not to display and/or resell any purchased Goods as being so defined.		(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 Farmer Jones and must sell, dispose of or return the resulting product to Farmer Jones as it so directs.	18.5	Without prejudice to Farmer Jones's other remedies at law Farmer Jones shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to Farmer Jones shall, whether or not due for payment, become immediately payable if:
3.	Electronic Transactions Act 2002		(e) the Client irrevocably authorises Farmer Jones to enter any premises where Farmer Jones believes the Goods are kept and recover possession of the Goods.	(a)	any money payable to Farmer Jones becomes overdue, or in Farmer Jones's opinion the Client will be unable to make a payment when it falls due;
3.1	Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 22 of the Electronic Transactions Act 2002 or any other applicable provisions of that Act or any Regulations referred to in that Act.	10.	Personal Property Securities Act 1999 ("PPSA")	(b)	the Client has exceeded any applicable credit limit provided by Farmer Jones;
4.	Change in Control	10.1	Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that:	(c)	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
4.1	The Client shall give Farmer Jones 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 Farmer Jones as a result of the Client's failure to comply with this clause.		(a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and	(d)	a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.
5.	Price and Payment	10.2	The Client undertakes to:	19.	Cancellation
5.1	At Farmer Jones's sole discretion, the Price shall be either:		(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 Farmer Jones may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;	19.1	Without prejudice to any other remedies Farmer Jones may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions Farmer Jones may suspend or terminate the supply of Goods to the Client. Farmer Jones will not be liable to the Client for any loss or damage the Client suffers because Farmer Jones has exercised its rights under this clause.
5.2	Farmer Jones reserves the right to change the Price:		(b) indemnify, and upon demand reimburse, Farmer Jones 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;	19.2	Farmer Jones 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 Farmer Jones shall repay to the Client any money paid by the Client for the Goods. Farmer Jones shall not be liable for any loss or damage whatsoever arising from such cancellation.
	(a) if a variation to the Goods which are to be supplied is requested; or	10.3	(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 Farmer Jones; and	19.3	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 Farmer Jones as a direct result of the cancellation (including, but not limited to, any loss of profits).
	(b) if during the course of the Services, the Goods are not or cease to be available, Farmer Jones reserves the right to change the Price with alternate Goods, subject to prior confirmation and agreement of both parties.	10.4	(d) immediately advise Farmer Jones 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.	19.4	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.
5.3	At Farmer Jones's sole discretion, a non-refundable deposit may be required.	10.5	Farmer Jones and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.		
5.4	Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by Farmer Jones, which may be:	10.6	The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.		
	(a) on delivery of the Goods;		Unless otherwise agreed to in writing by Farmer Jones, the Client waives its right to receive a verification statement or accreditation with section 148 of the PPSA.		
	(b) for certain approved Clients, 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;		The Client shall unconditionally ratify any actions taken by Farmer Jones under clauses 10.1 to 10.5.		
	(c) the date specified on any invoice or other form as being the date for payment; or				
	(d) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by Farmer Jones.				
5.5	Payment may be made by cash, cheque, electronic/on-line banking, credit card (a surcharge per transaction may apply), or by any other method as agreed to between the Client and Farmer Jones.	11.	Security and Charge		
5.6	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 Farmer Jones nor to withhold payment of any invoice because part of that invoice is in dispute.	11.1	In consideration of Farmer Jones 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).	20.	Privacy Act 1993
5.7	Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to Farmer Jones an amount equal to any GST Farmer Jones must pay for any supply by Farmer Jones 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.	11.2	The Client indemnifies Farmer Jones from and against all Farmer Jones's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Farmer Jones's rights under this clause.	20.1	The Client authorises Farmer Jones or Farmer Jones's agent to:
6.	Delivery of Goods	11.3	The Client irrevocably appoints Farmer Jones and each director of Farmer Jones 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.	(i)	access, collect, retain and use any information about the Client;
6.1	Delivery ("Delivery") of the Goods is taken to occur at the time that:			(ii)	(including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Client's creditworthiness; or
	(a) the Client or the Client's nominated carrier takes possession of the Goods at Farmer Jones's address; or	12.	Client's Disclaimer	(i)	for the purpose of marketing products and services to the Client.
	(b) Farmer Jones (or Farmer Jones's nominated carrier) delivers the Goods to the Client's nominated address even if the Client is not present at the address.	12.1	The Client hereby disclaims any right to rescind, or cancel any contract with Farmer Jones or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Client by Farmer Jones and the Client acknowledges that the Goods are bought relying solely upon the Client's skill and judgment.	(b)	disclose information about the Client, whether collected by Farmer Jones from the Client directly or obtained by Farmer Jones 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.
6.2	At Farmer Jones's discretion, the cost of delivery is either included in the Price or is in addition to the Price.			20.2	Where the Client is an individual the authorities under clause 20.1 are authorities or consents for the purposes of the Privacy Act 1993.
6.3	Farmer Jones 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.	13.	Defects and Returns	20.3	The Client shall have the right to request Farmer Jones for a copy of the information about the Client retained by Farmer Jones and the right to request Farmer Jones to correct any incorrect information about the Client held by Farmer Jones.
6.4	Any time specified by Farmer Jones for delivery of the Goods is an estimate only. The Client must take delivery by receipt or collection of the Goods whenever they are tendered for delivery. Farmer Jones will not be liable for any loss or damage incurred by the Client as a result of delivery being late. In the event that the Client is unable to take delivery of the Goods as arranged then Farmer Jones shall be entitled to charge a reasonable fee for redelivery and/or storage.	13.1	The Client shall inspect the Goods on delivery and shall within twenty-four (24) hours of delivery (time being of the essence) notify Farmer Jones of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford Farmer Jones 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 Farmer Jones has agreed in writing that the Client is entitled to reject, Farmer Jones's liability is limited to either (at Farmer Jones's discretion) replacing the Goods or repairing the Goods.	21.	Service of Notices
7.	On-Line Ordering	13.2	For defective Goods, which Farmer Jones has agreed in writing that the Client is entitled to reject, Farmer Jones's liability is limited to either (at Farmer Jones's discretion) replacing the Goods provided that:	21.1	Any written notice given under this contract shall be deemed to have been given and received:
7.1	The Client acknowledges and agrees that:		(a) the Client has complied with the provisions of clause 13.1	(a)	by handing the notice to the other party, in person;
	(a) Farmer Jones does not guarantee the website's performance;		(b) Farmer Jones will not be liable for Goods which have not been stored or used in a proper manner (temperature controlled refrigeration unit in keeping with best practice food handling guidelines);	(b)	by leaving it at the address of the other party as stated in this contract;
	(b) display on the website does not guarantee the availability of any particular Goods; therefore, all orders placed through the website shall be subject to confirmation of acceptance by Farmer Jones		(c) the Goods are returned in the condition in which they were delivered;	(c)	by sending it by registered post to the address of the other party as stated in this contract;
	(c) on-line ordering may be unavailable from time to time for regularly scheduled maintenance and/or upgrades;		(d) the Goods have not been thawed out or partially used.	(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;
	(d) there are inherent hazards in electronic distribution, and as such Farmer Jones cannot warrant against delays or errors in transmitting data between the Client and Farmer Jones including orders, and you agree that to the maximum extent permitted by law, Farmer Jones will not be liable for any losses which the Client suffers as a result of on-line ordering not being available or for delays or errors in transmitting orders;	13.3	Farmer Jones will not accept the return of Goods for credit.	(e)	if sent by email to the other party's last known email address.
	(e) when making a transaction through the website, the Client's information will pass through a secure server using SSL (secure sockets layer) encryption technology. The encryption process ensures that the Client's information cannot be read by or altered by outside influences;	13.4	Subject to clause 13.1, non-stocklist items or Goods made to the Client's specifications are not acceptable for credit or return.	21.2	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.
	(f) if the Client is not the cardholder for any credit card being used to pay for the Goods, Farmer Jones shall be entitled to reasonably assume that the Client has received permission from the cardholder for use of the credit card for the transaction.	14.	Compliance Laws	22.	General
7.2	Farmer Jones reserves the right to terminate the Client's order if it learns that you have provided false or misleading information, interfered with other users or the administration of Farmer Jones's business, or violated these terms and conditions.	14.1	Farmer Jones warrants that Products manufactured on its registered premises, and supplied to all Clients, shall meet all safety regulations and standards as defined by the Hazard Analysis and Critical Control Points (HACCP), Food Safety Programme, and is eminently suitable for public consumption and thereby compliant with the Australia New Zealand Food Standards Code.	22.1	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.
7.3	Furthermore, the Client accepts that placement of orders (via the online service,) in excess of 20kg may be subject to additional delivery cost, such costs will be charged in accordance with clause 5.2, unless otherwise agreed.	14.2	Any alleged claims of contamination, accidental inclusion of food borne illnesses must be reported to Farmer Jones management in writing as soon as reasonable practicable. Farmer Jones reserves the right to inspect any items attributed to the claim and have the items tested by an independent laboratory before any public claims, statements or dissemination of information in any format including social media, and the opportunity	22.2	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 Tauranga Courts of New Zealand.
8.	Risk			22.3	Farmer Jones 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 Farmer Jones of these terms and conditions (alternatively Farmer Jones's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
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.	15.	Dispute Resolution	22.4	Neither party to this contract may assign this contract, any payment or any other right, benefit or interest under this contract without the written consent of the other party (which shall not be unreasonably withheld). Farmer Jones 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 Farmer Jones's sub-contractors without the authority of Farmer Jones.
8.2	If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, Farmer Jones is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Farmer Jones is sufficient evidence of Farmer Jones's rights to receive the insurance proceeds without the need for any person dealing with Farmer Jones to make further enquiries.	15.1	Farmer Jones and the Client will negotiate in good faith and use their reasonable efforts to settle any dispute that may arise out of, or relate to, this agreement, or any breach thereof. If any such dispute cannot be settled amicably through ordinary negotiations, the dispute shall be referred to the representatives nominated by each party who will meet in good faith in order to attempt to resolve the dispute. Nothing shall restrict either party's freedom to commence legal proceedings to preserve any legal right or remedy or protect and proprietary or trade secret right.	22.5	The Client agrees that Farmer Jones may amend these terms and conditions by notifying 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 Farmer Jones to provide Goods to the Client.
		15.2	Furthermore, Farmer Jones and the Client agree to keep confidential any information in relation to the other party which is not in the public domain (including, but not limited to, trade secrets, processes, formulae, accounts, marketing, designs, databases and all other information held in any form).	22.6	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.
				22.7	Both parties warrant that they have the power to enter into this agreement and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this agreement creates binding and valid legal obligations on them.