

Terms of Trade

Lux Catering 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 *Alyx Fausett & Lisa Viel*. *Lux Catering 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 *Lux Catering* 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 *Lux Catering* 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.

Lux Catering 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 *Lux Catering* with its prior written consent and within 48 hours after delivery.

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

Goods not returned in accordance with the above may be rejected by *Lux Catering*.

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 *Lux Catering* 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 *Lux Catering*. If you claim that some services have not been supplied or rendered, you must notify *Lux Catering* 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 *Lux Catering* passes to the customer only when the customer has made payment in full for all goods provided by *Lux Catering* and of all other sums due to *Lux Catering* by the customer on any account whatsoever. Until all sums due to *Lux Catering* by the customer have been paid in full, *Lux Catering* has a security interest in all goods.

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

(c) Give *Lux Catering* 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 *Lux Catering* 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 *Lux Catering* will apply only to the extent that they are mandatory.

(iii) Where *Lux Catering* 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 *Lux Catering* power of attorney to sign all documents giving *Lux Catering* 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 *Lux Catering* 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 *Lux Catering* as security for the full satisfaction by the customer of the full amount owing between *Lux Catering* and the customer.

The customer gives irrevocable authority to *Lux Catering* 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 *Lux Catering* 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. *Lux Catering* 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. *Lux Catering* 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 *Lux Catering* 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 *Lux Catering*

Any notice required to be served by either party shall be 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 *Lux Catering* and communicate all details of such dissatisfaction. Unless the above procedure is followed *Lux Catering* 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 *Lux Catering* 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.

Lux Catering will set a credit limit and reserves the right to alter the credit limit from time to time.

10. Consumer Guarantees Act

Where *Lux Catering* 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 *Lux Catering* 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 *Lux Catering* 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 *Lux Catering* of any dispute, defect or damage within five days of receipt of the invoice, the customer shall be deemed to have 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 where 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 *Lux Catering* 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

Lux Catering 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

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

15. Review of Terms

Lux Catering 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 *Lux Catering* notified the customer of such change.

16. Intellectual Property

The customer acknowledges that *Lux Catering* 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 *Lux Catering* supplies to the customer or developed or contributed to by *Lux Catering* in relation to any information, fault, repair or documentation that is supplied to the customer or as a result of *Lux Catering* 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 *Lux Catering* except as authorised by *Lux Catering*

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 *Lux Catering* premises or vehicles.

18. Damage & Loss of Lux Catering 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 *Lux Catering* 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 *Lux Catering* and ourselves as the customer.