

## CONDITIONS OF SALE

### Entire Agreement

- 1) Any Goods supplied by Barker's to you shall be subject to these Conditions and the relevant Barker's Product Specification (if applicable), unless Barker's agrees otherwise in writing. Where there is a conflict between these Conditions and the relevant Barker's Product Specification (if applicable), then the relevant Barker's Product Specification will prevail.
- 2) These Conditions together with your Application for a Credit Account (if applicable) and the Barker's Product Specification (if applicable) constitute the entire contract between Barker's and you as buyer. Barker's will not be bound by any terms in your correspondence or order documents unless Barker's specifically accepts them in writing. If you accept Goods from Barker's, that action by you will be deemed to be acceptance of these Conditions, despite anything that may be stated to the contrary in your enquiries or order form.

### Price

- 3) The price for Goods will be as set out in Barker's Price List applying at the time of order, unless Barker's have quoted otherwise to you in writing.
- 4) Barker's may withdraw its Price List by notice to you, and may withdraw a quotation before it is accepted, and in any event, a Barker's quotation will lapse, without notice 30 days after it is given. Barker's may accept or decline an order for Goods in its sole discretion.
- 5) Unless otherwise agreed in writing, all prices are exclusive of Goods and Services Tax, but inclusive of any other government taxes, duties or imposts payable in respect of the Goods. Goods and Services Tax will be charged at the rate applying at the time of delivery.

### Risk and Delivery

- 6) Delivery of the Goods will take place when you or your agent receive the Goods at your premises or the stipulated place of delivery, or your carrier receives them, whichever event occurs first. When you ask Barker's to deliver Goods directly to another person, that person takes possession of the Goods for you as your agent.
- 7) Barker's may deliver the Goods by instalments and each instalment is deemed to be a separate contract under the same terms as the primary contract. Failure to deliver any one or more instalment does not entitle you to cancel or repudiate the primary contract.
- 8) Despite clause 6 above, risk in the goods passes upon delivery to you in accordance with clause 6 above. You are responsible for insurance for the Goods from that time.
- 9) Any delivery date indicated will be approximate only and will not constitute the essence of the contract. Barker's will not be liable to you for any failure to deliver on a specified date or within a specified period, however that failure was caused.
- 10) Without limiting the previous provisions, all claims for credits due, or errors or deficiencies in delivery must be made in writing within 2 days of delivery of the Goods.

### Payment

- 11) Unless Barker's have agreed in writing to extend credit to you, you must pay for Goods in full before dispatch. If Barker's have agreed in writing to extend credit to you, payment for Goods supplied on credit account is strictly 20<sup>th</sup> of the month following date of invoice in full, without deduction or set off, unless special terms have been agreed in writing. Your payment is made only when funds have fully cleared through the bank system into Barker's bank account.
- 12) If full payment for the Goods is not made by the due date, then without prejudice to any other rights or remedies available to Barker's:
  - a) Barker's may cancel or suspend the delivery of further Goods;
  - b) Barker's reserves the right to charge interest on any overdue amount at 4% per annum above the current overdraft rate charged by Barker's bankers (as varied from time to time) and calculated on a daily basis from the due date until payment is received in full by Barker's, including after any court judgment or order;
  - c) You will pay all costs incurred by Barker's for recovery of any overdue amount, including legal costs as between solicitor and client and disbursements and Barker's (or its agent's) costs of collection; and

- d) Any discount offered to you will be deemed to be withdrawn, and you will be liable for the full invoice price.
- 13) Barker's may accept and apply payments from you in respect of any indebtedness, and will not be bound by any conditions or qualifications attaching to payments.
- 14) Where Barker's has agreed to extend credit to you, Barker's may, from time to time at its discretion, vary your credit limit with Barker's. If a purchase of Goods would exceed your current credit limit, Barker's may require payment in cash of the excess before delivery of them.
- 15) Despite clause 11 above, or any agreement to the contrary, all payments shall become immediately due and payable if Barker's reasonably believe that the information which you have given Barker's in your Application for a Credit Account is not correct or no longer correct, or if you default under any agreement with Barker's, become insolvent or commit any act of bankruptcy, a receiver, liquidator or statutory manager is appointed over any of your assets or undertaking or you make or attempt to make an arrangement or composition with your creditors.

#### **Reservation of Title**

- 16) Ownership in the Goods shall not pass to you on delivery, but will remain with Barker's until payment in full is made to Barker's in cash or cleared funds, of all monies owing by you to Barker's.
- 17) Until all such monies have been paid:
  - a) Barker's remains the legal and beneficial owner of the Goods and you will hold them as bailee for Barker's;
  - b) You will keep the Goods protected and insured and properly stored and in such a manner that they can be readily identified as the property of Barker's;
  - c) If the Goods are mixed with, incorporated or processed by you into any other property, ownership of the combined property will pass to Barker's;
  - d) If the Goods are sold to you as inventory for resale, you may resell the Goods, including if the Goods are mixed with, incorporated or processed by you into any other property, in the normal course of your business at full market value, provided that: (i) the resale shall be as principal in relation to your sub-buyer, but, as between you and Barker's, you will sell as Barker's fiduciary agent and bailee; and (ii) you will receive and hold the proceeds of sale in trust for Barker's, and immediately account to Barker's for any overdue amount or otherwise pay the proceeds into a separate bank account without mixing them with other monies;
  - e) All sums received from any insurance claim made in respect of loss of or damage to the Goods shall be treated as if they were proceeds of sale and held by you on the same terms as those set out above at clause 17(d), and you will also hold on trust for Barker's and, if required by Barker's, forthwith assign to Barker's the benefit of any insurance claim made in respect of the Goods; and
  - f) Barker's may, at any time, require you to deliver the Goods (which have not been resold) to Barker's, and if you fail to do so forthwith, you irrevocably consent to Barker's, its employees and authorised agents, entering into or onto any premises where Barker's reasonably believe that Goods supplied to you are stored and taking possession of such Goods, and you agree to indemnify Barker's on demand, against any liability incurred by Barker's in exercise of this right.

#### **Personal Property Securities Act 1999**

- 18) You acknowledge and agree that, by accepting these Conditions, you grant to Barker's a security interest over the Goods and their proceeds (by virtue of the retention of title under clause 16 above), and irrevocably authorise Barker's to perfect its security interest under clause 16 above pursuant to the PPSA.
- 19) You undertake to:
  - a) Do all acts and supply to Barker's on request with all information it requires to enable perfection of that security interest including to enable Barker's to register a financing statement or financing change statement on the Personal Property Securities Register; and
  - b) Advise Barker's immediately in writing of any proposed change in your name or other details on the Personal Property Securities Register.
- 20) You waive your right to receive a verification statement in respect of any financing statement or financing change statement relating to the security interest and waive your rights and, with Barker's agreement, contract out of your rights under sections 116, 120(2), 121, 125, 126, 127, 129 and 131 of the PPSA, and agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these Conditions and, with Barker's agreement, contract out of such sections.
- 21) Unless the context otherwise requires, the terms and expressions used in clauses 18, 19 and 20 above have the meanings given to them in, or by virtue of, the PPSA.

### Returns and Cancellation

- 22) In the event any circumstances arise such that Barker's recall any of the Goods supplied to you, you agree to immediately return to Barker's all Goods subject to the recall, at Barker's cost. You must immediately advise Barker's of any circumstances which may lead to Barker's undertaking a recall of any Goods and give full details of those circumstances. Barker's warrants that it will replace, or at its option refund, Goods recalled by Barker's.
- 23) Subject to clause 22 above and clauses 28 and 32 below, Goods may not be returned to Barker's for credit.
- 24) You may not cancel an order for Goods, wholly or partly, without Barker's written consent. As a condition of Barker's giving consent, it may require reimbursement of any costs (including materials, ingredients, handling fees and labour) incurred by Barker's in connection with the order up to the date of Barker's consent.
- 25) In addition to Barker's other rights pursuant to these Conditions, Barker's may cancel or suspend an order for Goods, wholly or partly and without liability to you, in any circumstances set out in clause 15 above or if fulfilling the order becomes impractical or uneconomic due to any cause beyond Barker's control.

### Liability/Suitability of Goods

- 26) Barker's warrants that the Goods supplied conform with the relevant Barker's Product Specification (if applicable) including any specific variation agreed.
- 27) Any advice, information or recommendation provided by Barker's in relation to the Goods is given in good faith but without any liability or responsibility on the part of Barker's.
- 28) Barker's warrants that it will replace, or at its option refund, Goods supplied to you which are accepted to be defective, damaged or in breach of Barker's warranty at clause 26 above free of charge, provided that you notify Barker's in writing of the nature of the defect, damage or breach of Barker's warranty in sufficient detail for the Goods and the defect, damage or breach to be identified before the "*best before*" date or expiry of the shelf life in respect of the relevant Goods, and, if requested by Barker's, you return the Goods to Barker's (at Barker's cost).
- 29) The "*best before*" date is stated on the label attached to the packaging of the Goods or the shelf life is recorded in the relevant Barker's Product Specification (if applicable). You must ensure that the Goods are used or sold by you before the "*best before*" date or expiry of the shelf life.
- 30) Barker's will not be liable for any wilful damage, negligence, unsuitable or abnormal storage conditions, failure to follow Barker's instructions, misuse, fair wear and tear, or for any defect arising from a specification supplied by you.
- 31) If you are a consumer under the CGA but are acquiring or holding yourself out as acquiring the Goods for business purposes, then the CGA will not apply. If you are acquiring the Goods for the purposes of resupplying them in trade, then you will:
  - a) Include in your conditions of sale (and if your customers acquire the Goods for the purposes of resale, their conditions of sale and the conditions of sale of each other person in your distribution chain must include) a clause to the effect that the CGA will not apply where a customer acquires or holds itself out as acquiring the Goods for a business purpose;
  - b) Notify your customers of the effect of subclause (a) above; and
  - c) Indemnify Barker's against all losses, cost, damages or liabilities which Barker's may incur or be liable to pay arising out of your failure to take the action required under subclauses (a) and (b) above.
- 32) Subject to clause 31 above nothing in these Conditions will affect any right you have as a consumer under the Consumer Guarantees Act 1993.
- 33) Subject to clause 32 above and to the fullest extent permitted by law:
  - a) Barker's liability under these Conditions is in substitution for, and to the exclusion of, all other warranties, descriptions, representations, conditions or obligations whether imposed or implied by law, statute or otherwise; and
  - b) Barker's total liability under these Conditions will be the lesser of the cost of complying with its obligations in clauses 22 and 28 above, or the actual loss or damage suffered by you, provided you notify Barker's in writing of the nature of the loss in sufficient detail within 15 days after delivery of the Goods in relation to which the loss occurred, and, if requested by Barker's, you return the relevant Goods to Barker's (at Barker's cost). Barker's will not be liable for any loss of profits or indirect, special or consequential loss or damage of any kind.

### **Jurisdiction**

- 34) These Conditions will be interpreted in accordance with the laws of New Zealand, and the New Zealand Courts will have non-exclusive jurisdiction of all matters between Barker's and you.

### **Privacy Act**

- 35) You hereby authorise:
- Barker's to use any personal information that you give Barker's for credit (including investigating your trading history and trade practices), administration, service, and marketing purposes. If you do not give this information Barker's may not be able to provide Goods to you; and
  - Any person or company to give Barker's such information as it may require in response to its credit and other enquiries.
- 36) You understand that Barker's may use a credit reporting agency to credit check you. In such case:
- The agency will give Barker's information about you for that purpose;
  - Barker's will give your personal information to the agency, and the agency will hold the information on its systems and use it to provide their credit reporting service;
  - When other customers use the service, the agency may give the information to those customers; and
  - If you default in your payment obligations to Barker's, information about the default may be given to the agency, and the agency may give the information to other customers.
- 37) You acknowledge that any personal information provided by you to Barker's is subject to Barker's Privacy Policy from time to time. Barker's Privacy Policy is on Barker's website [www.barkersprofessional.nz](http://www.barkersprofessional.nz). You may also request a copy of Barker's Privacy Policy by calling Barkers on 0800 BARKERS (0800 227537) or emailing Barker's at [fruit@barkers.co.nz](mailto:fruit@barkers.co.nz). You understand you have a right of access to, and may request correction of, your personal information in the manner specified in Barker's Privacy Policy from time to time.
- 38) For the purposes of clauses 35, 36 and 37 above "you" and "your" includes any guarantor of the Customer's obligations to Barker's.

### **Intellectual Property**

- 39) Neither Barker's nor its suppliers transfer to you any right, title or interest in any Confidential Information, copyright, trade marks, patents or other intellectual property rights in or relating to the Goods.
- 40) You warrant that any designs or specifications which you provide to Barker's will not infringe any intellectual property rights of any third party, and you agree to indemnify Barker's, on demand, against any liability Barker's may suffer as a result of Barker's use of those designs and specifications.

### **Confidential Information**

- 41) You must not disclose any Confidential Information unless it is required to be disclosed by law, and must not use any Confidential Information except as necessary for the purposes of these Conditions. You must promptly return all Confidential Information to Barker's or destroy it if Barker's asks you to do so.

### **Amendments**

- 42) Barker's may amend these Conditions from time to time on Barker's website [www.barkersprofessional.nz](http://www.barkersprofessional.nz) or by notice to you in writing. For the avoidance of doubt, Barker's uploading amended Conditions on its website is deemed to be an amendment of these Conditions.

### **Waiver**

- 43) No delay or failure by Barker's to exercise its rights under these Conditions operates as a waiver of those rights. A partial exercise of those rights does not prevent their further exercise in the future.

### **Severability**

- 44) If a court decides that part of these Conditions is unenforceable, the part concerned shall be deleted from the rest of these Conditions, which will then continue in force.

### **Contracts (Privity) Act 1982**

- 45) For the purposes of the Contracts (Privity) Act 1982 the benefit of the provisions of these Conditions is conferred on Barker's Related Companies and the directors, shareholders, employees, contractors and agents of Barker's and its Related Companies.

### **Defined Terms and Interpretation**

- 46) In these Conditions, the following words have the following special meanings:

"**Barker's**" means Barker Fruit Processors Limited;

"**Barker's Product Specification**" means the agreed product specifications in respect of the Goods;

"**CGA**" means the Consumer Guarantees Act 1993;

"**Conditions**" means these Conditions of Sale (as amended from time to time);

"**Confidential Information**" means any specifications provided by Barker's, any trade secrets, know-how, recipes, processes, technical, scientific, commercial, financial, product, market or pricing or other information of or about Barker's or the Goods that may reasonably be regarded as confidential or commercially sensitive to which you gain access, but excluding information which has become public knowledge (other than by reason of breach of these Conditions or any laws);

"**Goods**" means (i) all food products, including but not limited to all fillings and toppings, fruit mince, fruit preparations, pulps, purees, smoothie bases, syrups, jams, compotes, curds, marmalades, jellies, chutneys and pickles, spreads, custards, icings, sauces, condiments, gift baskets and boxes and other goods supplied by Barker's to you at any time, and includes any goods described by item or kind on any relevant Barker's Product Specification (if applicable), order form, packing slip or invoice, on the basis that each such order form, packing slip or invoice shall be deemed to be incorporated in and form part of these Conditions; and (ii), except where the context requires, all services supplied by Barker's to you at any time, whether in conjunction with the supply of goods or otherwise;

"**PPSA**" means the Personal Property Securities Act 1999;

"**Related Companies**" has the meaning given to it at section 2(3) of the Companies Act 1993); and

"**You**" means the Customer named in the attached Application for a Credit Account, the Barker's Product Specification (if applicable), or invoice, or if not so named, means the purchaser of the Goods.

- 47) For Convenience, these Conditions have been grouped under different headings, but the headings do not affect the meaning of these Conditions.
- 48) In these Conditions references to any law include any changes to that law which are in force from time to time.

Company	Partnership, Sole Trader, Other
<b>SIGNED by the Customer's authorised signatory:</b>	<b>SIGNED by the Customer:</b>
<b>Print Name</b> _____	<b>Print Name</b> _____
<b>Date signed agreement:</b> _____	<b>Date signed agreement:</b> _____

## PRIVACY POLICY

We have put in place the following policy to protect your personal information. By using our website and/or providing information to us, you consent to the policy.

### **What personal information do we collect?**

You may give us information about yourself, such as your name, address, email address and telephone numbers, when, for example, you become a customer, request our e-newsletter, request a catalogue or make a purchase from us. If you do not give this information, we may not be able to provide goods or services to you.

When you visit our website we may collect more information, such as the address of your Internet service provider, the name of the web page directing you, and your clicks and activity on our site.

### **How do we use the personal information?**

We may use the information to process your transactions, to administer your account, to conduct credit and other checks, for our own internal purposes (such as risk management, staff training and billing), to help us to develop our website to be more available and user friendly to our customers, and for any other use which you may authorise.

In addition, we may use the information to promote and market our products and services, or the products and services of others. However, we will not do this by email or text (except as part of an email which facilitates, completes or confirms a transaction with you) unless we have your express or deemed consent to do so. These emails and texts will always include an "unsubscribe" facility. Further, if you do not wish to receive them, you can update your records on our website, call us on 0800 BARKERS (0800 227537) or email us at [fruit@barkers.co.nz](mailto:fruit@barkers.co.nz).

### **Will we disclose the information to others?**

We do not sell, trade or rent your personal information to others.

However, we do use other companies and individuals to perform services on our behalf, such as delivering packages, sending mail and emails and processing payments. They will have access to your personal information needed to perform these services, but we will not authorise them to use your information for other purposes.

In addition, we may provide statistics about our customers, sales, traffic patterns and related site functions to reputable third parties.

### **Cookies**

Our website uses a technology called cookies. A cookie is a small element of data that our website may send to your computer. Any such cookie is typically stored on your computer's hard drive and permits our website to recognise you when you return. Our use of cookies helps us to provide you with a better experience during your use of our website by allowing us to understand what areas of the site are of interest to you. You may configure your web browser to not accept cookies, although you may experience a loss of functionality as a result.

### **Security**

We take security seriously, and have taken steps to ensure your personal information is secure. We use secure servers, and industry standard data encryption whenever we are receiving or transferring your information online. However, we accept no responsibility for any loss, misuse, unauthorised access or disclosure, alteration or destruction of personal information which you submit to us.

### **What about links to other websites?**

Our website may contain links to other sites that are not under our control. These websites have their own privacy policies, and we encourage you to review them. We have no responsibility for linked websites, and provide them solely for your information and convenience.

**Updating your personal information**

You may obtain confirmation from us as to whether or not we hold personal information about you. You may also request a copy of the information and/or request that corrections or changes are made to it. You can make changes to your personal information on our website, by calling us on 0800 BARKERS (0800 227537) or email us at [fruit@barkers.co.nz](mailto:fruit@barkers.co.nz).

**Policy changes**

We may change this policy from time to time and will notify you by posting an updated version on our website.

**Feedback**

We welcome your questions and comments about privacy at Barker's. Please call us on 0800 BARKERS (0800 227537) or email us at [fruit@barkers.co.nz](mailto:fruit@barkers.co.nz).

**INVOICES & STATEMENTS**

Dear Customer

Our preference is to send your invoices and statements by email.

Please complete this form and return it along with your Application for a Credit Account so we can record your details. If you have any queries, please contact our Customer Services Department.

**COMPANY NAME** .....

Please tick your preferred method of receiving Statements:

Contact Name: .....

Email Address: .....

Post .....

Please tick your preferred method of receiving Invoices:

Contact Name: .....

Email Address: .....

Post .....

**PAYMENTS**

Payments can be made by direct credit to:

**New Zealand Customers**

HSBC New Zealand, Auckland

Account Number: 30-2907-0065709-061

Account Name: Barker Fruit Processors Ltd

Yours faithfully

**Barker's Customer Services Team**

**Barker Fruit Processors Limited**

P O Box 100, Geraldine 7956, South Canterbury, New Zealand. Tel: +64 3 693 8969 Fax: +64 3 693 8610

[www.barkersprofessional.nz](http://www.barkersprofessional.nz) Email: [fruit@barkers.co.nz](mailto:fruit@barkers.co.nz)