



Terms & Conditions of Trade (Page 1 of 2)

1. Definitions

- 1.1 "Seller" means Spitroast.com 2012 Ltd T/A Spitroast.com, its successors and assigns or any person acting on behalf of and with the authority of Spitroast.com 2012 Ltd T/A Spitroast.com.
- 1.2 "Customer" means the person/s buying the Goods (and/or hiring Equipment) as specified in any invoice, document or order, and if there is more than one Customer is a reference to each Customer jointly and severally.
- 1.3 "Goods" means all Goods or Services supplied by the Seller to the Customer at the Customer's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.4 "Equipment" means all Equipment including any accessories supplied on hire by the Seller to the Customer (and where the context so permits shall include any supply of Services). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation form provided by the Seller to the Customer.
- 1.5 "Price" means the Price payable for the Goods/Equipment or hire as agreed between the Seller and the Customer in accordance with clause 5 below.

2. Acceptance

- 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of the Goods/Equipment.
- 2.2 These terms and conditions may only be amended with the Seller's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and the Seller.
- 2.3 The Customer accepts and acknowledges that in the event of extreme weather conditions forcing postponement or cancellation of any event held outside the Customer shall be liable for up to fifty percent (50%) of the total cost of the event to cover associated food and staff costs that cannot be recovered.
- 2.4 The Customer accepts and acknowledges that if on the day of the event service is delayed through no fault of the Seller, an additional charge may be payable (at the Seller's sole discretion), at a rate of twenty-five (\$25) dollars per staff member on site, per hour, or part thereof for the extra time required on site. The Customer further agrees in the event of delay occurring the Seller will under no circumstances be held liable for overcooked or spoiled food.

3. Change in Control

- 3.1 The Customer shall give the Seller not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including, but not limited to, changes in the Customer's name, address, contact phone or fax number/s, or business practice). The Customer shall be liable for any loss incurred by the Seller as a result of the Customer's failure to comply with this clause.
4. Event Numbers
- 4.1 Confirmed numbers of attending guests, inclusive of children, are required five (5) days prior to the event.
- 4.2 Any reduction in the number of guests attending notified within five (5) days prior to the event will still be charged at the agreed rate per person.
- 4.3 Extra guests can be included as long as notification is given within forty-eight (48) hours prior to the event. Extra guests will be charged at the agreed rate per person.
- 4.4 The Customer accepts and acknowledges that all menu selections must be finalised five (5) days prior to the event.

5. Price and Payment

- 5.1 At the Seller's sole discretion the Price shall be either: (a) as indicated on any invoice provided by the Seller to the Customer; or (b) the Seller's quoted price (subject to clause 5.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 5.2 The Seller reserves the right to change the Price if a variation to the Seller's quotation is requested. Any variation from the plan of scheduled Services or specifications of the Goods (including, but not limited to, any variation as a result of increases to the Seller in the cost of taxes, levies, materials and labour, or where additional Services are required due to the discovery of hidden or unidentifiable difficulties including, but not limited to, limitations to accessing the site, poor weather conditions or prerequisite work by any third party not being completed etc which are only discovered on commencement of the Services) will be charged for on the basis of the Seller's quotation and will be shown as variations on the invoice.
- 5.3 At the Seller's sole discretion a deposit may be required. The deposit amount will range between a minimum of three hundred (\$300) dollars to a maximum of thirty per cent (30%) of the total Price of the quote or invoice. Once the Seller receives the Customer's completed Booking Confirmation form an account will be sent to the Customer for the deposit which will be payable within five (5) days of receiving the account to confirm the booking.
- 5.4 Time for payment for the Goods/Equipment being of the essence, the Price will be payable by the Customer on the date/s determined by the Seller, which may be: (a) before delivery of the Goods/Equipment (i.e. date of the function); (b) the date specified on any invoice or other form as being the date for payment; or (c) failing any notice to the contrary, the date which is three (3) days following the date of any invoice given to the Customer by the Seller.
- 5.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, Visa or MasterCard (credit cards will incur a surcharge of three per cent (3%) of the Price), or by any other method as agreed to between the Customer and the Seller.
- 5.6 Unless otherwise stated the Price includes GST.

6. Delivery of Goods/Equipment

- 6.1 Delivery ("Delivery") of the Goods/Equipment is taken to occur at the time that: (a) the Customer or the Customer's nominated carrier takes possession of the Goods/ Equipment at the Seller's address; or (b) the Seller (or the Seller's nominated carrier) delivers the Goods/Equipment to the Customer's nominated address even if the Customer is not present at the address.
- 6.2 At the Seller's sole discretion travel fees apply to events being held more than 20 kilometres outside of the Seller's commercial base.
- 6.3 Any time or date given by the Seller to the Customer is an estimate only. The Customer must still accept delivery of the Goods/Equipment even if late and the Seller will not be liable for any loss or damage incurred by the Customer as a result of the delivery being late.

7. Risk

- 7.1 Any advice, recommendation, information, assistance or service provided by the Seller in relation to Goods or Services supplied is given in good faith and based on the Seller's own knowledge and experience and shall be accepted without liability on the part of the Seller and it shall be the responsibility of the Customer to confirm the accuracy and reliability of the same in light of the use to which the Customer makes or intends to make of the Goods or Services.
8. Accuracy of Customer's Plans and Measurements
- 8.1 The Seller shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Customer. The Customer acknowledges and agrees that in the event that any of this information provided by the Customer is inaccurate, the Seller accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.
- 8.2 In the event the Customer gives information relating to measurements and quantities of the Goods required to complete the Services, it is the Customer's responsibility to verify the accuracy of the measurements and quantities, before the Customer or Seller places an order based on these measurements and quantities. The Seller accepts no responsibility for any loss, damages, or costs however resulting from the Customer's failure to comply with this clause.

9. Access

- 9.1 The Customer shall ensure that the Seller has clear and free access to the event site at all times to enable them to undertake the Services. The Seller shall not be liable for any loss or damage to the event site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of the Seller.

10. Title To Goods

- 10.1 The Seller and the Customer agree that ownership of the Goods shall not pass until: (a) the Customer has paid the Seller all amounts owing to the Seller; and (b) the Customer has met all of its other obligations to the Seller.
- 10.2 Receipt by the Seller 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.

11. Personal Property Securities Act 1999 ("PPSA")

- 11.1 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that: (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and (b) a security interest is taken in all Goods/Equipment previously supplied by the Seller to the Customer (if any) and all Goods/Equipment that will be supplied in the future by the Seller to the Customer.
- 11.2 The Customer undertakes to: (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 the Seller may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register; (b) indemnify and, upon demand, reimburse the Seller for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register, or releasing any Goods/Equipment charged thereby; (c) not register a financing change statement or a change demand without the prior written consent of the Seller; and (d) immediately advise the Seller of any material change in its business practices of selling Goods which would result in a change in the nature of proceeds derived from such sales.
- 11.3 The Seller and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 11.4 The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 11.5 Unless otherwise agreed to in writing by the Seller, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 11.6 The Customer shall unconditionally ratify any actions taken by the Seller under clauses 11.1 to 11.5.

12. Security and Charge

- 12.1 In consideration of the Seller agreeing to supply the Goods/Equipment, the Customer 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 Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 12.2 The Customer indemnifies the Seller from and against all the Seller's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Seller's rights under this clause.
- 12.3 The Customer irrevocably appoints the Seller and each director of the Seller as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 12 including, but not limited to, signing any document on the Customer's behalf.

13. Customer's Disclaimer

- 13.1 The Customer hereby disclaims any right to rescind or cancel any contract with the Seller, or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Customer by the Seller. The Customer acknowledges that the Goods are bought relying solely upon the Customer's skill and judgment.

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14. Defects

- 14.1 The Customer shall inspect the Goods/Equipment on delivery and shall within three (3) days of delivery (time being of the essence) notify the Seller of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford the Seller an opportunity to inspect the Goods/Equipment within a reasonable time following delivery if the Customer believes the Goods are defective in any way. If the Customer fails to comply with these provisions the Goods/Equipment shall be presumed to be free from any defect or damage. For defective Goods/Equipment, which the Seller has agreed in writing that the Customer is entitled to reject, the Seller's liability is limited to either (at the Seller's discretion) replacing the Goods/Equipment or repairing the Goods/Equipment.

15. Warranty

- 15.1 To the extent permitted by statute, no warranty is given by the Seller as to the quality or suitability of the Goods for any purpose and any implied warranty is expressly excluded. The Seller shall not be responsible for any loss or damage to the Goods or caused by the Goods, or any part thereof, however arising.

16. Consumer Guarantees Act 1993

- 16.1 If the Customer is acquiring Goods for the purposes of a trade or business, the Customer acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Goods by the Seller to the Customer.

17. Intellectual Property

- 17.1 Where the Seller has designed, drawn or developed Goods/Equipment for the Customer, then the copyright in any designs and drawings and documents shall remain the property of the Seller.
- 17.2 The Customer warrants that all designs, specifications or instructions given to the Seller will not cause the Seller to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify the Seller against any action taken by a third party against the Seller in respect of any such infringement.

18. Default and Consequences of Default

- 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 the Seller's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 18.2 If the Customer owes the Seller any money the Customer shall indemnify the Seller from and against all costs and disbursements incurred by the Seller in recovering the debt (including, but not limited to, internal administration fees, legal costs on a solicitor and own client basis, the Seller's collection agency costs, and bank dishonour fees).
- 18.3 Without prejudice to any other remedies the Seller may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions the Seller may suspend or terminate the supply of Goods/Equipment to the Customer. The Seller will not be liable to the Customer for any loss or damage the Customer suffers because the Seller has exercised its rights under this clause.
- 18.4 Without prejudice to the Seller's other remedies at law the Seller shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to the Seller shall, whether or not due for payment, become immediately payable if:
- any money payable to the Seller becomes overdue, or in the Seller's opinion the Customer will be unable to make a payment when it falls due;
 - the Customer 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
 - a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

19. Dispute Resolution

- 19.1 If a dispute arises between the parties to this contract then either party shall send to the other party a notice of dispute in writing adequately identifying and providing details of the dispute. Within fourteen (14) days after service of a notice of dispute, the parties shall confer at least once, to attempt to resolve the dispute. At any such conference each party shall be represented by a person having authority to agree to a resolution of the dispute. In the event that the dispute cannot be so resolved either party may, by further notice in writing delivered by hand or sent by certified mail to the other party, refer such dispute to arbitration. Any arbitration shall be:
- referred to a single arbitrator to be nominated by the President of the Institute of Arbitrators Australia; and
 - conducted in accordance with the Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitration.

20. Cancellation

- 20.1 The Seller may cancel any contract to which these terms and conditions apply or cancel delivery of Goods/Equipment at any time before the Goods/Equipment are due to be delivered by giving written notice to the Customer. On giving such notice the Seller shall repay to the Customer any money paid by the Customer for the Goods/Equipment. The Seller shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 20.2 If the Customer cancels the function for which the Seller is providing its Goods/Equipment then the Customer shall be liable to the Seller for any losses or costs incurred by the Seller (including, but not limited to, any loss of profits) up to the time of, or as a result of the cancellation, notwithstanding that at the Seller's sole discretion:
- if the Customer cancels delivery of the Goods/Equipment giving more than two (2) months notice of the booking a full one hundred per cent (100%) refund of the deposit will be credited back to the Customer's nominated account; or
 - if the Customer cancels delivery of the Goods/Equipment giving less than two (2) months notice of the booking no refund will be made of the deposit paid. In this instance the Seller will offer rescheduling of the Customer's event and if rescheduled the Seller will hold the paid deposit as confirmation of rescheduling; or

- if the Customer cancels delivery of the Goods/Equipment within seven (7) days of the booking, but not more than forty eight (48) hours of the booking the Customer shall be liable for up to fifty per cent (50%) of the total cost of the event; or
- if the Customer cancels delivery of the Goods/Equipment within forty eight (48) hours of the event the Customer shall be liable for any and all loss incurred (whether direct or indirect) by the Seller as a direct result of the cancellation (including, but not limited to, any loss of profits).

21. Privacy Act 1993

- 21.1 The Customer authorises the Seller or the Seller's agent to:
- access, collect, retain and use any information about the Customer;
 - (including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Customer's creditworthiness; or
 - for the purpose of marketing products and services to the Customer.
 - disclose information about the Customer, whether collected by the Seller from the Customer directly or obtained by the Seller 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 Customer.
- 21.2 Where the Customer is an individual the authorities under clause 21.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 21.3 The Customer shall have the right to request from the Seller a copy of the information about the Customer retained by the Seller, and the right to request the Seller to correct any incorrect information about the Customer held by the Seller.

22. Equipment Hire

- 22.1 Equipment shall at all times remain the property of the Seller and is returnable on demand by the Seller. In the event that Equipment is not returned to the Seller in the condition in which it was delivered the Seller retains the right to charge the Customer the full cost of repairing the Equipment. In the event that Equipment is not returned at all the Seller shall have right to charge the Customer the full cost of replacing the Equipment.
- 22.2 The Customer shall:
- keep the Equipment in their own possession and control and shall not assign the benefit of the Equipment, nor be entitled to a lien over the Equipment.
 - not alter or make any additions to the Equipment including, but without limitation, altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Equipment, or in any other manner interfere with the Equipment.
 - keep the Equipment, complete with all parts and accessories, clean and in good order as delivered, and shall comply with any maintenance schedule as advised by the Seller to the Customer.
- 22.3 The Customer accepts full responsibility for the safekeeping of the Equipment and the Customer agrees to insure, or self insure, the Seller's interest in the Equipment and agrees to indemnify the Seller against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will effect adequate Public Liability Insurance covering any loss, damage or injury to property or persons arising out of the use of the Equipment. Further the Customer will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.

23. General

- 23.1 The failure by the Seller to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Seller'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.
- 23.2 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 courts of New Zealand.
- 23.3 The Seller shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by the Seller of these terms and conditions (alternatively the Seller's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods/Equipment hire).
- 23.4 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by the Seller, nor to withhold payment of any invoice because part of that invoice is in dispute.
- 23.5 The Seller may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
- 23.6 The Customer agrees that the Seller may amend these terms and conditions at any time. If the Seller makes a change to these terms and conditions, then that change will take effect from the date on which the Seller notifies the Customer of such change. The Customer will be taken to have accepted such changes if the Customer makes a further request for the Seller to provide Goods/Equipment to the Customer.
- 23.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lockout, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 23.8 The Customer 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.

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