

## Flavours Catering + Events – Terms and Conditions of Trade

### 1. Definitions

- 1.1 “Flavours” shall mean Matthew Sullivan Constructions Pty Ltd T/A Flavours Catering & Events its successors and assigns or any person acting on behalf of and with the authority of Matthew Sullivan Constructions Pty Ltd T/A Flavours Catering & Events.
- 1.2 “Client” shall mean the Client (or any person acting on behalf of and with the authority of the Client) as described on any quotation, work authorisation or other form as provided by Flavours to the Client.
- 1.3 “Guarantor” means that person (or persons), or entity, who agrees to be liable for the debts of the Client on a principal debtor basis.
- 1.4 “Goods” shall mean Goods supplied by Flavours to the Client (and where the context so permits shall include any supply of Equipment and/or Services as hereinafter defined) and are as described on the invoices, quotation, work authorisation or any other forms as provided by Flavours to the Client.
- 1.5 “Equipment” shall mean all Equipment including any accessories supplied on hire by Flavours to the Client (and where the context so permits shall include any supply of Goods and/or Services). The Equipment shall be as described on the invoices, quotation, hire form, or any other authorisation form provided by Flavours to the Client.
- 1.6 “Services” shall mean all Services supplied by Flavours to the Client and includes any advice or recommendations (and where the context so permits shall include any supply of Goods and/or Equipment as defined above).
- 1.7 “Price” shall mean the price payable for the Goods as agreed between Flavours and the Client in accordance with clause 4 of this contract.

### 2. The Commonwealth Trade Practices Act 1974 (“TPA”) and Fair Trading Acts (“FTA”)

- 2.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the TPA or the FTA in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.

### 3. Acceptance

- 3.1 Any instructions received by Flavours from the Client for the supply of Goods and/or the Client’s acceptance of Goods supplied by Flavours shall constitute acceptance of the terms and conditions contained herein.
- 3.2 Where more than one Client has entered into this agreement, the Clients shall be jointly and severally liable for all payments of the Price.
- 3.3 Upon acceptance of these terms and conditions by the Client the terms and conditions are binding and can only be amended with the written consent of Flavours.
- 3.4 The Client shall give Flavours not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client or any change in the Client’s name and/or any other change in the Client’s details (including but not limited to, changes in the Client’s address, facsimile number, or business practice). The Client shall be liable for any loss incurred by Flavours as a result of the Client’s failure to comply with this clause.

## Flavours Catering + Events – Terms and Conditions of Trade

3.5 Goods are supplied by Flavours only on the terms and conditions of trade herein to the exclusion of anything to the contrary in the terms of the Client's order notwithstanding that any such order is placed on terms that purport to override these terms and conditions of trade.

### 4. Price And Payment

- 4.1 At Flavours' sole discretion the Price shall be either:
- (a) as indicated on invoices provided by Flavours to the Client in respect of Goods supplied; or
  - (b) Flavours' quoted Price (subject to clause 4.2) which shall be binding upon Flavours provided that the Client shall accept Flavours' quotation in writing within thirty (30) days.
- 4.2 Flavours reserves the right to change the Price in the event of a variation to Flavours' quotation.
- 4.3 At Flavours' sole discretion a deposit may be required.
- 4.4 At Flavours' sole discretion:
- (a) payment shall be due on delivery of the Goods; or
  - (b) payment shall be due before delivery of the Goods.
- 4.5 Time for payment for the Goods shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due seven (7) days following the date of the invoice.
- 4.6 Payment will be made by cash, or by cheque, or by bank cheque, or by credit card (plus a surcharge of up to five percent (2.5%) of the Price), or by direct credit, or by any other method as agreed to between the Client and Flavours.
- 4.7 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

### 5. Delivery

- 5.1 At Flavours' sole discretion delivery of the Goods shall take place when:
- (a) the Client takes possession of the Goods at Flavours' address; or
  - (b) the Client takes possession of the Goods at the Client's nominated address (in the event that the Goods are delivered by Flavours or Flavours' nominated carrier); or
  - (c) the Client's nominated carrier takes possession of the Goods in which event the carrier shall be deemed to be the Client's agent.
- 5.2 At Flavours' sole discretion the costs of delivery are:
- (a) in addition to the Price; or
  - (b) for the Client's account.
- 5.3 The Client shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. In the event that the Client is unable to take delivery of the Goods as arranged then Flavours shall be entitled to charge a reasonable fee for redelivery.
- 5.4 Delivery of the Goods to a third party nominated by the Client is deemed to be delivery to the Client for the purposes of this agreement.
- 5.5 Flavours may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.

## Flavours Catering + Events – Terms and Conditions of Trade

- 5.6 The Client shall take delivery of the Goods tendered notwithstanding that the quantity so delivered shall be either greater or lesser than the quantity purchased provided that:
- (a) such discrepancy in quantity shall not exceed five percent (5%); and
  - (b) the Price shall be adjusted pro rata to the discrepancy.
- 5.7 The Client shall be required, upon delivery of the Goods, to sign Flavours' "Delivery Docket" acknowledging the accuracy of the quantity and specifications of the Goods delivered.
- 5.8 The failure of Flavours to deliver shall not entitle either party to treat this contract as repudiated.
- 5.9 Flavours shall not be liable for any loss or damage whatever due to failure by Flavours to deliver the Goods (or any of them) promptly or at all, where due to circumstances beyond the control of Flavours.

### 6. Risk

- 6.1 If Flavours retains ownership of the Goods nonetheless, all risk for the Goods passes to the Client on delivery.
- 6.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, Flavours is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Flavours is sufficient evidence of Flavours' rights to receive the insurance proceeds without the need for any person dealing with Flavours to make further enquiries.

### 7. Title

- 7.1 Flavours and Client agree that ownership of the Goods shall not pass until:
- (a) the Client has paid Flavours all amounts owing for the particular Goods; and
  - (b) the Client has met all other obligations due by the Client to Flavours in respect of all contracts between Flavours and the Client.
- 7.2 Receipt by Flavours 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 and until then Flavours' ownership or rights in respect of the Goods shall continue.
- 7.3 It is further agreed that:
- (a) where practicable the Goods shall be kept separate and identifiable until Flavours shall have received payment and all other obligations of the Client are met; and
  - (b) until such time as ownership of the Goods shall pass from Flavours to the Client Flavours may give notice in writing to the Client to return the Goods or any of them to Flavours. Upon such notice the rights of the Client to obtain ownership or any other interest in the Goods shall cease; and
  - (c) Flavours shall have the right of stopping the Goods in transit whether or not delivery has been made; and

## Flavours Catering + Events – Terms and Conditions of Trade

- (d) if the Client fails to return the Goods to Flavours then Flavours or Flavours' agent may enter upon and into land and premises owned, occupied or used by the Client, or any premises as the invitee of the Client, where the Goods are situated and take possession of the Goods; and
- (e) the Client is only a bailee of the Goods and until such time as Flavours has received payment in full for the Goods then the Client shall hold any proceeds from the sale or disposal of the Goods, up to and including the amount the Client owes to Flavours for the Goods, on trust for Flavours; and
- (f) the Client shall not deal with the money of Flavours in any way which may be adverse to Flavours; and
- (g) the Client shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of Flavours; and
- (h) Flavours can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Client; and
- (i) until such time that ownership in the Goods passes to the Client, if the Goods are converted into other products, the parties agree that Flavours will be the owner of the end products.

### 8. Errors and Omissions

- 8.1 The Client shall inspect the Services on delivery and shall within twenty-four (24) hours of delivery (time being of the essence) notify Flavours of any alleged defect, shortage in quantity, errors, omissions or failure to comply with the description or quote. The Client shall afford Flavours an opportunity to inspect the Services within a reasonable time following delivery if the Client believes the Services are defective in any way. If the Client shall fail to comply with these provisions, the Services shall be conclusively presumed to be in accordance with the terms and conditions and free from any defect or damage. For defective Services, which Flavours has agreed in writing that the Client is entitled to reject, Flavours' liability is limited to either (at Flavours' discretion) rectifying the Services or repairing the Services, except where the Client has acquired Services as a consumer within the meaning of the Trade Practices Act 1974 (Cwth) or the Fair Trading Acts of the relevant state or territories of Australia, and is therefore also entitled to, at the consumer's discretion either a refund of the purchase price of the Services, or repair of the Services, or rectification of the Services.

### 9. Intellectual Property

- 9.1 Where Flavours has designed, drawn or written Goods for the Client, then the copyright in those designs and drawings and documents shall remain vested in Flavours, and shall only be used by the Client at Flavours' discretion.
- 9.2 The Client warrants that all designs or instructions to Flavours will not cause Flavours to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify Flavours against any action taken by a third party against Flavours in respect of any such infringement.

## Flavours Catering + Events – Terms and Conditions of Trade

### 10. Equipment Hire

- 10.1 The Equipment shall at all times remain the property of Flavours and is returnable on demand by Flavours. In the event that the Equipment is not returned to Flavours in the condition in which it was delivered, then Flavours retains the right to charge the Price of repair or replacement of the Equipment.
- 10.2 The Client shall;
- (a) keep the Equipment in their own possession and control and shall not assign the benefit of the Equipment nor be entitled to lien over the Equipment.
  - (b) 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.
  - (c) 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 Flavours to the Client.
- 10.3 The Client accepts full responsibility for the safekeeping of the Equipment and the Client agrees to insure, or self insure, Flavours' interest in the Equipment and agrees to indemnify Flavours 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 Client will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.

### 11. Default & Consequences of Default

- 11.1 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 one half percent (2.5%) per calendar month (and at Flavours' sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 11.2 In the event that the Client's payment is dishonoured for any reason the Client shall be liable for any dishonour fees incurred by Flavours.
- 11.3 If the Client defaults in payment of any invoice when due, the Client shall indemnify Flavours from and against all costs and disbursements incurred by Flavours in pursuing the debt including legal costs on a solicitor and own client basis and Flavours' collection agency costs.
- 11.4 Without prejudice to any other remedies Flavours may have, if at any time the Client is in breach of any obligation (including those relating to payment), Flavours may suspend or terminate the supply of Goods to the Client and any of its other obligations under the terms and conditions. Flavours will not be liable to the Client for any loss or damage the Client suffers because Flavours has exercised its rights under this clause.

## Flavours Catering + Events – Terms and Conditions of Trade

- 11.5 If any account remains overdue after thirty (30) days then an amount of the greater of twenty dollars (\$20.00) or ten percent (10.00%) of the amount overdue (up to a maximum of two hundred dollars (\$200.00)) shall be levied for administration fees which sum shall become immediately due and payable.
- 11.6 Without prejudice to Flavours' other remedies at law Flavours shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to Flavours shall, whether or not due for payment, become immediately payable in the event that:
- (a) any money payable to Flavours becomes overdue, or in Flavours' opinion the Client will be unable to meet its payments as they fall due; or
  - (b) 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
  - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

## 12. Security And Charge

- 12.1 Despite anything to the contrary contained herein or any other rights which Flavours may have howsoever:
- (a) where the Client and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Client and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to Flavours or Flavours' nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Client and/or the Guarantor acknowledge and agree that Flavours (or Flavours' nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.
  - (b) should Flavours elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Client and/or Guarantor shall indemnify Flavours from and against all Flavours' costs and disbursements including legal costs on a solicitor and own client basis.
  - (c) the Client and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint Flavours or Flavours' nominee as the Client's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 12.1.

## 13. Cancellation

- 13.1 Flavours 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 Flavours shall repay to the Client any sums paid in respect of the Price. Flavours shall not be liable for any loss or damage whatever arising from such cancellation.
- 13.2 In the event that the Client cancels delivery of Goods the Client shall be liable for any loss incurred by Flavours (including, but not limited to, any loss of profits) up to the time of cancellation.

## Flavours Catering + Events – Terms and Conditions of Trade

### 14. Privacy Act 1988

- 14.1 The Client and/or the Guarantor/s agree for Flavours to obtain from a credit reporting agency a credit report containing personal credit information about the Client and Guarantor/s in relation to credit provided by Flavours.
- 14.2 The Client and/or the Guarantor/s agree that Flavours may exchange information about the Client and the Guarantor/s with those credit providers either named as trade referees by the Client or named in a consumer credit report issued by a credit reporting agency for the following purposes:
- (a) to assess an application by Client; and/or
  - (b) to notify other credit providers of a default by the Client; and/or
  - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
  - (d) to assess the credit worthiness of Client and/or Guarantor/s.
- 14.3 The Client consents to Flavours being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 14.4 The Client agrees that personal credit information provided may be used and retained by Flavours for the following purposes and for other purposes as shall be agreed between the Client and Flavours or required by law from time to time:
- (a) provision of Goods; and/or
  - (b) marketing of Goods by Flavours, its agents or distributors in relation to the Goods; and/or
  - (c) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to provision of Goods; and/or
  - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by Client; and/or
  - (e) enabling the daily operation of Client's account and/or the collection of amounts outstanding in the Client's account in relation to the Goods.
- 14.5 Flavours may give information about the Client to a credit reporting agency for the following purposes:
- (a) to obtain a consumer credit report about the Client; and/or
  - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Client.

### 15. General

- 15.1 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.
- 15.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales and are subject to the jurisdiction of the courts of New South Wales.
- 15.3 Flavours shall be under no liability whatever to the Client for any indirect loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by Flavours of these terms and conditions.
- 15.4 In the event of any breach of this contract by Flavours the remedies of the Client shall be limited to damages which under no circumstances shall exceed the Price of the Goods.

## **Flavours Catering + Events – Terms and Conditions of Trade**

- 15.5 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 Flavours.
- 15.6 Flavours may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 15.7 The Client agrees that Flavours may review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which Flavours notifies the Client of such change.
- 15.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.
- 15.9 The failure by Flavours to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Flavours' right to subsequently enforce that provision.