

CONDITIONS OF SALE

Entire Agreement

1. Barker Fruit Processors Limited ("Barkers") agrees to supply and you agree to purchase on the terms now set out:
 - the "made to order" products detailed in the Barker's Product Specification, the Order Form, and Barkers' Confirmation of Order; or
 - the Barker's brand/stock line products detailed in the Order Form and Barkers' Confirmation of Order. (both referred to in these conditions as the "Goods").
2. These Conditions of Sale together with the Barker's Product Specification and/or the Order Form (as applicable) and Barkers' Confirmation of Order constitute the entire contract between Barkers and you as buyer and can not be altered or amended unless agreed in writing. Barkers will not be bound by any terms in your correspondence or order documents unless Barkers specifically accepts them in writing.

Delivery

3. Delivery arrangements will be specified in the confirmation of order. You will be deemed to have accepted the Goods when you receive the Goods at your premises or the stipulated place of delivery.
4. Barkers 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.
5. Risk in the goods passes upon delivery to you or your agent or your carrier whichever event occurs first
6. Barkers is not liable for any failure to deliver Goods or delay in delivery where such failure or delay is caused by strike, lock out, shortage of materials or any other circumstance (not including the foregoing) beyond Barkers' control. Any delivery date indicated will approximate only and will not constitute the essence of the contract.
7. All claims for credits due, or errors or deficiencies in delivery must be made in writing within 7 days of delivery of the Goods.

Payment

8. Payment for goods supplied is due on the date specified in the Barkers' confirmation of order form unless special terms have been agreed in writing.
9. Barkers reserve the right to charge interest on any overdue amount at 4% above the current overdraft rate charged by ANZ Banking Group (New Zealand) Limited (as varied from time to time) and calculated on a daily basis from the due date until payment is received in full by Barkers, including after any court judgment or order.
10. You will pay all costs incurred by Barkers for recovery of any overdue amount, including legal costs as between solicitor and client and disbursements.

Liability/Suitability of Goods

11. If the Goods supplied are "made to order" products (as described in clause 1 above), Barkers warrant that the Goods supplied conform with the signed Product Specification including any specific variation agreed. Any advice, information or recommendation provided by Barkers in relation to the Goods is given in good faith but without any liability or responsibility on the part of Barkers.
12. The "*best before*" date is stated on the label attached to the packaging of the Goods or the recommended shelf life is recorded in the Product Specification. You must ensure that the Goods are used or sold by you before the "*best before*" date or expiry of the recommended shelf life.
13. You acknowledge that you are not a consumer and that you are acquiring or holding yourself out as acquiring the Goods for business purposes. The Consumer Guarantees Act 1993 will therefore not apply
14. Subject to clause 13 above nothing in these Conditions of Sale will effect any right you have as a consumer under the Consumer Guarantees Act 1993.
15. Subject to clauses 11 - 13 above:
 - a. All warranties, descriptions, representations or conditions whether implied by law or otherwise and all liabilities of Barkers are expressly excluded to the extent permitted by law; and
 - b. Barkers' total liability under these Conditions of Sale will be the lesser of the cost of replacing the damaged or defective Goods or the actual loss or damage suffered by you. Barkers will not be liable for any loss of profits or indirect or consequential loss or damage.
16. When any provision of these Conditions of Sale is rendered unenforceable or otherwise ineffective by operation of law, that shall not affect the enforceability or effectiveness of any other provision.

Jurisdiction

17. The contract between Barkers and you is governed by the laws of New Zealand and it is agreed that all disputes arising from the contract will be determined in a New Zealand court of law or by arbitration under the Arbitration Act 1996 in accordance with New Zealand Law.

Privacy Act

18. You hereby authorise:
 - a. Barkers to provide any agency (within the meaning of the term under the Privacy Act 1993) with information collected by Barkers from you to any third party in response to a credit enquiry made by the third party or for debt collection purposes;
 - b. Barkers to obtain any information from any agency about you for credit assessment or debt collection purposes;
 - c. Barkers to use information supplied by or obtained about you for the purposes of assessing your credit application, trading history and trade practices.