



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 and the Order Form; or
 - the Barker's brand/stock line products detailed in the Order Form(both referred to in these conditions as the "Goods").
2. These Conditions of Sale together with the Barker's Product Specification and/or Order Form (as applicable) 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. Barkers will, unless otherwise agreed, arrange delivery of the Goods, which may be by instalment. You will be deemed to have accepted the Goods when your employee or authorised agent signs or receives the Goods.
4. 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

5. Payment for goods supplied on credit account is strictly 20th of the month following date of invoice unless special terms have been agreed in writing.
6. 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.
7. You will pay all costs incurred by Barkers for recovery of any overdue amount, including legal costs as between solicitor and client and disbursements.

Reservation of Title

8. Risk in the Goods passes to you on delivery but ownership will not pass until payment in full is made to Barkers.
9. Until ownership passes, Barkers remain the legal and beneficial owner of the Goods and you will hold them as bailee for Barkers. You will store the Goods in such a manner that they can be readily identified as the property of Barkers. If the Goods are incorporated into any other property, ownership of the combined property will pass to Barkers. If you sell the Goods, including if the Goods are incorporated into any other property, you will receive and hold the proceeds of sale in trust for Barkers and immediately account to Barkers for any overdue amount or otherwise pay the proceeds into a separate bank account.
10. You irrevocably consent to Barkers, its employees and authorised agents, entering into or onto any premises where Barkers reasonably believe that Goods supplied to you are stored and taking possession of such Goods by way of recovery of any overdue amount, without prejudice to any of Barkers' other remedies. If the value of Goods recovered is less than the overdue amount, due to deterioration of the quality of the Goods, you will pay to Barkers the total overdue amount less the market value of the Goods as determined by Barkers in its sole discretion.
11. You irrevocably authorise Barkers to perfect their security interest under clause 9 above pursuant to the Personal Properties Securities Act 1999 and undertake to supply to Barkers all information required to enable perfection of that security interest.

Liability/Suitability of Goods

12. 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.
13. The "*best before*" date is stated on the label attached to the packaging of the Goods or the 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 shelf life.
14. If you are a consumer under the Consumer Guarantees Act 1993 and are acquiring or holding yourself out as acquiring the Goods for business purposes, then the Consumer Guarantees Act 1993 will not apply. If you are acquiring the Goods for the purposes of resupplying them in trade, or consuming them in the course of a process of production or manufacture, then you will:
- a. Include in your conditions of sale a clause to the effect that the Consumer Guarantees Act 1993 will not apply where a customer acquires or holds itself out as acquiring the Goods for a business purpose; and
 - b. Notify your customers of the effect of subclause (a) above; and
 - c. Indemnify Barkers against all losses, cost, damages or liabilities which Barkers may incur or be liable to pay arising out of your failure to take the action required under subclauses (a) and (b).
15. Subject to clause 14 above nothing in these Conditions of Sale will effect any right you have as a consumer under the Consumer Guarantees Act 1993.
16. Subject to clause 14 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.
17. Barkers is not liable for any failure to deliver Goods or delay in delivery where such failure or delay is caused by strike, lockout, shortage of materials or any other circumstance beyond Barker's control.
18. 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

19. 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

20. 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.