
DAILY FRESH FOOD SERVICE
Online Terms & Conditions

1. Definitions

- 1.1 *'Us', 'We' or 'Our'* means Erinfen Pty Ltd T/A Daily Fresh Food Service, its successors and assigns or any person acting on behalf of and with the authority of Erinfen Pty Ltd T/A Daily Fresh Food Service.
- 1.2 *'You' or 'your'* means the person/s ordering or buying the Goods as specified in any invoice, receipt, document or Order, and if there is more than one person is a reference to each person jointly and severally.
- 1.3 *'CCA'* means the Competition and Consumer Act 2010 (Cth).
- 1.4 *'Goods'* means all Goods or Services ordered by you or supplied by us to you from time to time (where the context so permits the Terms *'Goods'* or *'Services'* shall be interchangeable for the other).
- 1.5 *'Delivery Address'* means the address specified by you during the customer registration process for the delivery of Goods that we will supply to you under these Terms and conditions.
- 1.6 *'Delivery Fee'* means the delivery fee provided to you at the time when placing your Order.
- 1.7 *'Authorised Personnel'* means, if you are a company, your personnel including but not

limited to your officers, employees, contractors, consultants and agents.

- 1.8 *"Order"* means any order for a Good or Service submitted using the Site.

2. General Use

- 2.1 These terms of use ('Terms') govern your use of the website www.dailyfresh.com.au and all related sites and App and mobile site ("Site"). By accessing, using and entering into this Site you are agreeing to these Terms and conditions. This agreement is made between you and Erinfen Pty Ltd.
- 2.2 By accessing and using the Site, including placing Orders for Goods through the Site, you agree that you will be subject to and will comply with these Terms (including our privacy policy) by completing your registration through the Site and using the Site to obtain Goods from us.
- 2.3 To register an account and use the Site you must be at least 18 years old, have a current residential address and have capacity to enter into a legally binding agreement with us.
- 2.4 The Site and the content on the Site is operated and owned by us.
- 2.5 You agree to make your own enquiries to verify information provided and to assess the suitability of the Goods before you Order such Goods through the Site.

- 2.6 We may change these Terms and conditions at any time, and such modifications will be effective as soon as they are posted.

- 2.7 The failure by us to enforce any provision of these Terms and conditions shall not be treated as a waiver of that provision, nor shall it affect our 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.

- 2.8 These Terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales. Each party submits to the non-exclusive jurisdiction of the courts of that place.

- 2.9 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.

3. User Requirements and Customer Accounts

- 3.1 You and any Authorised Personnel warrant that:
- (a) all information and data provided by you or the Authorised Personnel to us through the Site (including as part of the customer registration process) is true, accurate, complete and up to date;

- (b) the person receiving the Goods at the Delivery Address or collecting the Goods on your behalf is authorised by you to do so; and
- (c) you and the Authorised Personnel will comply with all relevant laws relating to your use of the Site and your placement of any Order to us.

3.2 If you are registering an account to use the Site as a company, your Authorised Personnel represents, warrants and undertakes that he or she is a duly authorised representative of yours for the purposes of entering into and accepting these Terms and conditions on your behalf and has all necessary, current and valid legal authority to enter into these Terms and condition your behalf and to bind you to them.

3.3 By using the Site and its associated functionality, you grant your express consent to us to send you direct marketing communications to the email address you provide.

3.4 Your account with us is non-transferable.

4. Access and Use of the Site

4.1 You and any Authorised Personnel of yours must not (or attempt to):

- (a) interfere (or attempt to interfere) or disrupt (or attempt to disrupt) the Site or the servers or networks that host the Site;

- (b) use (or attempt to use) data mining, robots, screen scraping or similar data gathering and extraction tools on the Site;
- (c) use, copy or distribute (or attempt to use, copy or distribute) content
- (d) by any means copy, reproduce, republish, adapt, upload, link, post, frame, translate, transmit or distribute any part of the Site or any content contained on the Site without express written permission by us;
- (e) breach, interfere (or attempt to interfere) the security of the Site, test or scan the vulnerability of the Site, or make any unauthorised modifications to the Site;
- (f) interfere with any other persons use or enjoyment of the Site;
- (g) post, or transmit to the Site any abusive, obscene, defamatory, or otherwise inappropriate material;
- (h) make fraudulent or speculative enquiries, purchases or requests through the Site;
- (i) use another person or customer's details without their permission or impersonate another customer or person when using the Site;
- (j) tamper with or hinder the operation of the Site;
- (k) remove any copyright, trade mark or other proprietary rights notices contained in or on the Site;
- (l) create accounts by automated means or under false or fraudulent pretences;

- (m) use the Site or any content in any way that is unlawful, illegal or breaches our rights or the rights of any third party; and

- (n) use the Site in any way that otherwise breaches these Terms.

4.2 We reserve our rights to refer fraudulent or abusive or illegal activity to the relevant authorities. You are solely responsible for the activity that occurs on your account (including Orders placed using your account).

4.3 We may immediately suspend, terminate or limit your access to and use of the Site and (where relevant) your account if your or any of your Authorised Personnel is in breach of these Terms and conditions and:

- (a) the breach cannot be remedied; or

- (b) you fail to the remedy the breach within 10 days of our notice to you of that breach; or

- (c) if there is an emergency.

4.4 We do not warrant that the Site will be available at all times and without disruption and we provide no warranties in relation to the content of any other website linked to or from the Site.

4.5 We have processes in place to assist in detecting transactions that may be illegal or in breach of these Terms. We may contact you by telephone or email to confirm your payment and information details. If we are

unable to confirm your details, we may make further inquiries or cancel your Order.

5. Placing an Order

5.1 You and any Authorised Personnel are responsible for all Orders placed on your account, including any discrepancies or errors in your Order caused by you.

5.2 You acknowledge that any Order placed through this Site for Goods is an offer by you to purchase that particular Good for the price notified at the time you place the Order.

5.3 You acknowledge and agree that:

- (a) we do not guarantee the Site's performance or availability of any of its Goods; and
- (b) online ordering may be unavailable from time to time; and
- (c) there are inherent hazards in electronic distribution and as such we cannot warrant against delays or errors in transmitting data between the customer and us including Orders, and you agree that to the maximum extent permitted by law, that we will not be liable for any losses which you suffer or may suffer as a result of online ordering not being available or for delays or errors in transmitting Orders.
- (d) we do not accept any responsibility or liability for Orders not received by us.
- (e) we reserve the right to reject or refuse, in

our absolute discretion, any Order made for Goods at any time.

(f) we reserve the right to terminate your Order if we learn that you have provided false or misleading information, interfered with other users or our administration, or violated these Terms and conditions.

(g) reserve the right to notify you that Goods for which you placed Orders have become unavailable for reasons beyond our control.

6. Acceptance or Rejection of Order

6.1 We reserve the right to accept or reject your Order for any reason, including if the requested Good is not available, if there is an error in the price or the goods description posted on the Site or an error in your Order.

6.2 Each Order placed Goods through the Site that we accept results in a separate binding agreement between you and us for the supply of those Goods.

6.3 If for any reason we reject an Order placed through the Site, then we will endeavour to notify you of that rejection within a reasonable time after you submit your Order.

6.4 We may cancel any Order or part of an Order (including any Orders that we have accepted) without any liability to you for that cancellation at any time if:

(a) the requested Goods are not available; or

(b) there is an error in the price or the product description posted on the Site in relation to the relevant Goods; or

(c) that Order has been placed in breach of these Terms and conditions.

7. Price and Payment

7.1 We will charge you, and you agree to pay, the following fees and charges in relation to an Order that we accept (as applicable):

- (a) the purchase price of each Good that is ordered;
- (b) the Delivery Fee;
- (c) any cancellation fees for an Order that is cancelled; and
- (d) any other fees and charges set out in these Terms and conditions.

7.2 All payments must be received in full prior to dispatch of Goods.

7.3 Prices for Goods change from time to time and we do not provide any notice of these changes. Once we have accepted your Order, we will not change any prices that apply to the Goods in that Order.

7.4 You must pay the fees and charges online using the online payment methods that we have available.

7.5 If we are unable to successfully process your payment for your Order that is accepted by us, then we may notify you of dishonour and cancel your Order.

7.6 You authorise us to debit the amount that is payable for an accepted Order from your nominated credit card to pay for the fees and charges.

7.7 You acknowledge that Goods that you Order may be out of stock or temporarily unavailable. If this happens, then we will not be able to provide you with that Good.

7.8 You acknowledge that for online purchases made with AMEX a surcharge of up to 3.5% of the purchase price will apply.

7.9 Unless otherwise stated the price does not include GST. In addition to the price you must pay to us an amount equal to any GST. In addition to the price, you must also pay any other applicable taxes and duties.

7.10 We reserve the right to impose a credit limit on your account by giving you prior notice.

8. Shipping and Delivery

8.1 We will use our best endeavours to meet stated timeframes for delivery, however, from time to time, our shipping service providers may suffer delays beyond our control.

8.2 A signature may be required for some delivery, and you are responsible for ensuring you are able to accept delivery.

8.3 We will not be held liable for:

(a) late delivery where attempted delivery has occurred on or before the delivery time-frames;

(b) a parcel has been signed for delivery has occurred.

8.4 We will deliver the Goods to the front door at the relevant Delivery Address. If you ask us to deliver inside a premise or building at the Delivery Address and we agree to do so, then you are responsible for all loss or damage suffered by us in connection with our delivery of the Goods beyond the front door of the Delivery Address.

8.5 We will require the person accepting the delivery of your Order to provide us with proof of that person's identity.

8.6 If you request us to leave Goods outside a Delivery Address for collection or to deliver the Goods to an unattended location then such Goods shall be left at your sole risk.

8.7 You acknowledge and agree that any person at the Delivery Address who receives the Goods is authorised by you to receive your Order and, where relevant, make payment for that Order.

8.8 Delivery of the Goods ("Delivery") is taken to occur at the time that:

(a) you or your nominated carrier takes possession of the Goods; or

(b) we deliver the Goods to the Delivery Address even if you are not present at the address.

8.9 You must take delivery by receipt or collection of the Goods whenever they are tendered for delivery. In the event that you are unable to take delivery of the Goods as arranged then we shall be entitled to charge a reasonable fee for redelivery and/or storage.

8.10 Any time or date given by us to you is an estimate only. You must still accept delivery of the Goods even if late and we will not be liable for any loss or damage incurred by you as a result of the delivery being late.

8.11 We reserve the right to change, modify or discontinue any delivery options at our absolute discretion.

9. Your General Obligations

You:

(a) must ensure that your login and password that is used by you or your Authorised Personnel to access the Site and the details of your account are kept in a safe and secure manner;

(b) must notify us during Contact Hours you (or your Authorised Personnel) is or becomes aware that there is or has been an unauthorised use of your login and password or account, or any other security breach relating to your account;

(c) must promptly advise us of any changes

to your information provided to us as part of registration process;

- (d) are responsible for any costs associated with your (or your Authorised Personnel's) access to or use of the Site, including Internet access fees;
- (e) are responsible and liable for any person that uses your login and password to Order Goods through the Site; and
- (f) agree that we may charge you for all Goods that we agree to supply to you that have been ordered using your login and password through the Site.

10. Risk

- 10.1 Responsibility, risk of damage to or loss of the Goods passes to you on Delivery and you must insure the Goods on or before Delivery.
- 10.2 If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to you, we are entitled to receive all insurance proceeds payable for the Goods. The production of these Terms and conditions by us is sufficient evidence of our rights to receive the insurance proceeds without the need for any person dealing with us to make further enquiries.

11. Title

- 11.1 Ownership of the Goods shall not pass until the later of:
 - (a) us receiving payment of all amounts

owing to us;

- (b) delivery of the Goods to the Delivery Address; and
- (c) you meeting all of your other obligations under these Terms.

11.2 Until ownership of the Goods passes to you:

- (a) you are only a bailee of the Goods and must return the Goods to us upon request.
- (b) you hold the benefit of your insurance of the Goods on trust for us and must pay to us the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
- (c) you must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If you sell, disposes or part with possession of the Goods then you must hold the proceeds of any such act on trust for us and must pay or deliver the proceeds to us upon demand.
- (d) you should not convert or process the Goods or intermix them with other goods but if you do so then you hold the resulting product on trust for the benefit of us and must sell, dispose of or return the resulting product to us as we so direct.

- (e) you irrevocably authorise us to enter any

premises at any reasonable time where we believe the Goods are kept in order to recover possession of the Goods and/or inspect, repose or remove the Goods.

- (f) we may recover possession of any Goods in transit whether or not delivery has occurred.
- (g) you shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain our property.
- (h) we may commence proceedings to recover the price of the Goods sold notwithstanding that ownership of the Goods has not passed to you.

12. Defects, Warranties and Returns, Competition and Consumer Act 2010 ('CCA')

- 12.1 You must inspect the Goods on delivery and must within twenty-four (24) hours being applicable to fresh foods, or within seven (7) days for dry foods, of delivery notify us in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description. You must notify any other alleged defect in the Goods as soon as reasonably practicable after any such defect becomes evident. Upon such notification you must allow us to inspect the Goods.
- 12.2 Under applicable State, Territory and Commonwealth Law (including, without

limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these Terms and conditions (**Non-Excluded Guarantees**).

- 12.3 We acknowledge that nothing in these Terms and conditions purport to modify or exclude the Non-Excluded Guarantees.
- 12.4 Except as expressly set out in these Terms and conditions or in respect of the Non-Excluded Guarantees, we make no warranties or other representations under these Terms and conditions including but not limited to the quality or suitability of the Goods. Our liability in respect of these warranties is limited to the fullest extent permitted by law.
- 12.5 If you are considered to be a consumer within the meaning of the CCA, our liability is limited to the extent permitted by section 64A of Schedule 2.
- 12.6 If we are required to replace the Goods under this clause or the CCA, but we are unable to do so, we may refund to you any money that you have paid for the Goods.
- 12.7 If you are not considered a consumer within the meaning of the CCA, our liability for any defect or damage in the Goods is:
- (a) limited to the value of any express warranty or warranty card provided to you by us at our sole discretion;

- (b) limited to any warranty to which we are entitled, if we did not manufacture the Goods;

- (c) otherwise negated absolutely.

12.8 Any refunds will be issued using the payment method used for purchase.

12.9 Subject to this clause 12, returns will only be accepted provided that:

- (a) you have complied with the provisions of clause 12.1; and

- (b) we have agreed that the Goods are defective; and

- (c) the Goods are returned within a reasonable time at your cost (if that cost is not significant); and

- (d) the Goods are returned in as close a condition to that in which they were delivered as is possible.

12.10 Notwithstanding clauses 12.1 to 12.9 but subject to the CCA, we shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:

- (a) you failing to properly maintain or store any Goods;

- (b) you using the Goods for any purpose other than that for which they were designed;

- (c) you continuing the use of any Goods after any defect became apparent or

should have become apparent to a reasonably prudent operator or user;

- (d) you failing to follow any instructions or guidelines provided by us;

- (e) fair wear and tear, any accident, or act of God.

12.11 We may in our absolute discretion accept non-defective Goods for return in which case you may be required to pay handling fees of up to ten percent (10%) of the value of the returned Goods plus any freight costs.

12.12 Notwithstanding anything contained in this clause if we are required by a law to accept a return then we will only accept a return on the conditions imposed by that law.

13. Default and Liability

13.1 If you owe us any money you hereby indemnify us from and against all costs and disbursements incurred by us in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, contract default fees, and bank dishonour fees).

13.2 You will be in breach and default of these Terms and conditions if you:-

- (a) fail to pay any of your accounts with us on time and in accordance with the payment terms pursuant to these Terms and conditions;

(b) breach or default on any of your obligations under these Terms and conditions;

13.3 If at any time you are in breach or default of any of these Terms and conditions or of any obligation (including those relating to payment) under these Terms and conditions we:-

(a) may suspend or terminate your account with us. We will not be liable to you for any loss or damage you suffer because we have exercised our rights under this clause.

(b) shall be entitled to cancel all or any part of any Order which remains unfulfilled and all amounts owing to us shall, whether or not due for payment, become immediately payable.

13.4 On breach or default of these Terms and conditions or of any of the your obligations under these Terms and conditions, you irrevocably permits us, or a person authorised by us, to enter any premises at any reasonable time to recover and retrieve the Goods held in your possession.

13.5 You indemnify and hold us harmless for any and all losses, costs, damages, and expenses incurred or suffered directly or indirectly by us as a result of:-

(a) recovering the Goods held in your possession;

(b) exercising or attempting to exercise our rights under this clause or under these Terms and conditions as a result of your failure to comply with these Terms and conditions.

(c) any breach or default of these Terms and conditions or any other agreement you have with us.

13.6 We will not be liable to you for indirect and consequential loss arising from or connected to this agreement in contract, tort, under any statute or otherwise (including, without limitation, for loss of revenue, loss of profits, failure to realise expected profits or savings, loss or corruption of data and any other commercial or economic loss of any kind) unless such loss arises as a result of our own negligence or wilful misconduct.

13.7 Our liability to you for loss or damage of any kind arising out of this agreement or in connection with the relationship established by it is reduced to the extent (if any) that you cause or contribute to the loss or damage. This reduction applies whether our liability is in contract, tort (including negligence), under any statute or otherwise.

14. Termination

14.1 You may stop using the Site at any time for any reason.

14.2 We reserve the right in our absolute discretion to immediately suspend, terminate or limit access to and use of this Site at any time without notice for any

reason, including but not limited to a breach of these Terms and conditions. The suspension or termination shall not affect either party's rights or liabilities.

14.3 We may stop making the Site (or any part of it) available without prior notice. If so, any Orders that we have accepted will not be affected by this unless the Goods that have been ordered are no longer available or we are prevented from supplying the Goods.

15. Intellectual Property

15.1 All copyright, data, text, software, images, graphics, trademarks, logos, interfaces, photographs, and other intellectual property (Content) on the Site is owned, controlled by, or licensed to us. Except for viewing the Content for your own personal non-commercial use, we do not grant you any rights to use the Site or Content for any other purpose unless we express consent in writing.

15.2 You:

(a) must not modify, copy, adapt, store in a retrieval system, reproduce, upload, post, transmit, sell, distribute in any way or communicate to the public a Material without our prior written consent;

(b) must not frame or embed in another website any of the material appearing on this Site without our prior written consent;

- (c) must not use any of the marks or trade marks appearing on the Site or our name or the names of our related bodies corporate without our prior written consent; and
- (d) must not use any of the other company, products, goods and services marks on the Site that are owned by other third parties (including our suppliers) without obtaining the relevant third party owner's consent.

16. Click and Collect

- 16.1 Click & Collect is only available from the location/s as shown on the Site.
- 16.2 You agree to comply with the following:
 - (a) you (or your Authorised Personnel) must collect your Order from the available location;
 - (b) photo identification and a signature must be provided by and Authorised Personnel when he or she collects the Order; and
 - (c) the card used for payment is required to be shown when you (or your Authorised Personnel) collects the Order.
 - (d) If you or your Authorised Personnel do not supply the required identification then we may not allow collection of the Goods Ordered and we may charge you a reasonable fee for any perishable Goods in the Order that we have

accepted.

17. Miscellaneous

- 17.1 The Site may contain links to external websites that are not operated by us or our related bodies corporate. These links are provided for your convenience only and you agree that:
 - (e) we make no representations or warranties, and have no responsibility or liability for those websites;
 - (f) we make no representations about the quality or accuracy of material available on such third party websites, or that such material does not infringe the intellectual property rights of a third party.
 - (g) these links do not indicate, expressly or impliedly, that we endorse the site or the Goods or Services that are provided at those sites; and
 - (h) you may access and use the goods and services made available at those external websites solely at your own risk.
- 17.2 If any provision of these Terms is not enforceable in accordance, other provisions which are self-sustaining are, and continue to be, enforceable in accordance with their terms.
- 17.3 If any part of these Terms is invalid or unenforceable, that part is deleted and the

remainder of these Terms remains effective and in full force.

18. Privacy Policy

- 18.1 Our privacy policy is available on the Site and forms part of these Terms and conditions.
 - 18.2 By accessing or using the Site, you agree to the terms of our Privacy Policy.
- We collect personal information for the purposes of conducting our business as an online retailer and trader.
- 16.2 By using the Site and agreeing to this policy, you grant us permission to place and store cookies on your browser. Cookies may be used by us to collect the following information:
 - (a) your computer's operating system;
 - (b) your computer's browser type and capabilities;
 - (c) your computer's Internet Protocol (IP) address and geolocation;
 - (d) web pages visited, including how you were referred to each web page; and
 - (e) web page usage statistics, including the time spent on each web page.
 - 16.3 We will generally use or disclose your personal information only for the primary purpose for which it was collected; or for a related secondary purpose where you would reasonably expect us to use or disclose the personal information for that secondary purpose. We may otherwise use and disclose your personal information if you have given us consent for the use or

disclosure or it is required or authorised by
law.