

## **Services Contract**

### **Terms & Conditions**

#### **1. Formation and Term**

1.1 Zion Fresh agrees to provide to the Customer, and the Customer agrees to accept from Zion Fresh, the Services on a non-exclusive basis, subject to the terms and conditions contained in this Services Contract.

1.2 A Services Contract comprises:

1.2.1 the Initial Proposal;

1.2.2 any Accepted Services Order;

1.2.3 these terms and conditions of the Service Contract (Services Terms); and

1.2.4 any ancillary documents incorporated by reference into any of the above documents.

1.3 In the event of any ambiguity, inconsistency or discrepancy between the documents forming the Services Contract, a descending order of priority will apply to those documents so that a document appearing higher in the list of documents in clause 1.2 will prevail over a document appearing lower in the list, to the extent of the ambiguity, inconsistency or discrepancy.

1.4 The Services Contract commences on the Commencement Date and continues until the Services Contract is terminated in accordance with clause 11 of this Services Contract.

#### **2. Not a common carrier**

Zion Fresh is not a common carrier and reserves the right to accept or refuse to carry any goods.

#### **3. Services Order**

3.1 To request Services from Zion Fresh, the Customer must place a services order with Zion Fresh setting out:

3.1.1 Services required;

3.1.2 a description of the Goods;

3.1.3 the quantity of Goods to which the Services apply (which, in respect of each services order, must meet any Minimum Delivery Quantity); and

3.1.4 any other information required by Zion Fresh,

(Services Order).

3.2 A Services Order is not binding until Zion Fresh has accepted the Services Order in writing in its discretion, or as otherwise advised by Zion Fresh to the Customer in writing (Accepted Services Order).

3.3 These Services Terms apply to any Accepted Services Order.

3.4 Unless otherwise agreed by Zion Fresh in writing, the Customer cannot terminate or change an Accepted Services Order.

3.5 Without limitation its discretion, Zion Fresh may reject a Services Order that is submitted by the Customer if the Customer fails to pay any money owing under the Services Contract.

3.6 By providing 2 days' prior written notice to the Customer, Zion Fresh may vary the Minimum Delivery Quantity, with the variation applying to future Services Orders.

#### **4. Pick up**

4.1 Subject to the Customer agreeing to pay a Pick-up Fee, Zion Fresh will use its reasonable endeavours to pick up the Goods at the Nominated Pick-up Location at the Nominated Pick-up Time.

4.2 The Nominated Pick-up Time may be varied by Zion Fresh from time to time without prior notice to the Customer. Zion Fresh is not in breach of the Services Contract or liable to the Customer if the Goods are not picked up by the Nominated Pick-up Time.

4.3 Without limiting clause 4.2, Zion Fresh is entitled to charge the Customer a Delay Fee (in addition to the Pick-up Fee) where pick up takes place on the same day as the Nominated Pick-up Time but is delayed beyond the Nominated Pick-up Time for a period that is equal to or greater than the period specified in the Accepted Services Order, provided that such delay is due to any fact, cause, thing or event beyond Zion Fresh's reasonable control, including delay due to the Customer not complying with clause 4.4 below.

4.4 Prior to the Goods being picked up by Zion Fresh, it is the Customer's responsibility to ensure that:

4.4.1 the Goods:

(a) comply with any applicable Laws;

(b) are properly and appropriately prepared and Packaged in accordance with any applicable Laws to protect from spoilage, contamination, perishing, deterioration and physical damage during handling, transportation and/or storage; and

(c) are properly placed in the Nominated Pick-up Location in accordance with pick up instructions (if any);

4.4.2 it has provided a Confirming Contact Number to Zion Fresh if it elects to do so in an Accepted Services Order;

4.4.3 the Customer has obtained express permission from the receiver of the Goods for Zion Fresh to leave the Goods at the Delivery Address whether or not the Deliver Address is attended (Authority to Leave);

4.4.4 Zion Fresh has all the information required to effect the delivery of the Goods (including any specific instructions in respect of handling of the Goods);

4.4.5 sufficient number of personnel is available at the Nominated Pick-up Location at the Nominated Pick-up Time to dispatch the Goods;

4.4.6 the Customer has provided, or made available, to Zion Fresh all things necessary to enable Zion Fresh to pick up the Goods at the Nominated Pick-up Location, including any permit or passes for getting to and from the Nominated Pick-up Location and/or Delivery Address, passwords or keys to the Nominated Pick-up Location if the place is unattended or any necessary inductions to the Nominated Pick-up Location.

4.5 The Customer is liable to pay a Futile Pick-up Fee if Zion Fresh is unable to pick up the Goods due to the Customer not complying with any requirements under clause 4.4 above.

## **5. Delivery**

5.1 Subject to the Customer complying with the requirements in clause 4.1 above and the Customer agreeing to pay a Delivery Fee, Zion Fresh will, upon picking up the Goods, use reasonable endeavours to deliver the Goods to the Delivery Address within the Estimated Delivery Timeframe.

5.2 The Estimated Delivery Timeframe is an estimate only and Zion Fresh is not in breach of the Services Contract or liable to the Customer if the Goods are not delivered within the Estimated Delivery Timeframe.

5.3 Unless agreed otherwise in writing by Zion Fresh no signature from a receiver is required in respect of any delivered Goods upon the Goods being delivered at the Delivery Location.

5.4 The Customer will be deemed to have given Zion Fresh the Authority to Leave in respect of any delivered Goods and the Customer accepts the risk of the Goods being left in circumstances where the receiver of the Goods has not exercised the ability to specify a signature on delivery.

5.5 Where the Customer elects to be notified by text message upon delivery and has provided one or more Confirming Contact Numbers to Zion Fresh, Zion Fresh will send a text message to the Confirming Contact Number(s) upon delivery of the Goods at the Delivery Address.

5.6 The Customer acknowledges and agrees that:

5.6.1 it is the Customer's responsible to ensure the validity of any Confirming Contact Number it provides to Zion Fresh; and

5.6.2 Goods will be deemed to have been delivered to the Delivery Address provided Zion Fresh is able to demonstrate that it has sent a text message to the Confirming Contact Number(s).

5.7 If Zion Fresh is unable to deliver the Goods for any reason (including the Delivery Address being incorrect or as a result of any cause or circumstance outside the reasonable control of Zion Fresh) Zion Fresh will:

5.7.1 return the Goods to the Customer at the Customer's risk if the Customer so specifies in an Accepted Services Order; or

5.7.2 if return instructions are not provided, then handle and store the Goods at the Customer's risk and in such manner as it may in its discretion determine, and make a reasonable charge in respect of such handling and/or storage and additional charges for each call until the delivery is accomplished.

5.8 Where Goods are returned to the Customer pursuant to clause 5.7.1:

5.8.1 unless otherwise agreed in writing, the Goods will be returned to the Return Location during the next Business Day; and

5.8.2 the Customer is liable to pay the Return Fee.

5.9 Notwithstanding any other provision in the Services Contract, the Customer acknowledges and agrees that:

5.9.1 risk in the Goods remains at all times during the Delivery Period with the Customer; and

5.9.2 Zion Fresh is not liable to the Customer, the receiver or any third party in tort (including negligence), contract (including a fundamental breach of contract) or for any act or omission, for

breach of duty as bailee, for contravention of any statute or breach of statutory duty or otherwise for any loss of, or damage to, failure to deliver, delay in delivery of, or misdelivery of the Goods, however caused.

## **6. Fees and payment**

6.1 The Fees for the Services will be as set out in Zion Fresh's Fee List current as at the date of a service order submitted by the Customer, or otherwise as notified by Zion Fresh to the Customer prior to the date of the Accepted Services Order.

6.2 Unless otherwise notified by Zion Fresh, the Fees for the Services are inclusive of all applicable charges and expenses.

6.3 The Customer must pay Zion Fresh within 7 days of receiving a tax invoice from Zion Fresh for the Fees.

6.4 All payments owed by the Customer to Zion Fresh under the Services Contract may be paid in cash (up to any limits specified by Zion Fresh), or by direct debit, electronic fund transfer or credit card, unless otherwise advised by Zion Fresh in writing.

6.5 Zion Fresh may charge the Customer interest on any unpaid amount payable by the Customer under the Services Contract at the rate of 5% per annum from the due date until the date of payment. Interest accrues daily, may be capitalised by Zion Fresh daily and is payable on demand.

6.6 Without limiting any of its other rights under the Services Contract, if Zion Fresh has concerns about the Customer's solvency or its ability to pay future invoices, or the Customer is currently in breach of the Services Contract by failing to pay amounts due to Zion Fresh, Zion Fresh may refuse to provide Services to the Customer, or only do so on cash.

## **7. GST**

7.1 In this clause 7, words that are defined in A New Tax System (Goods and Services Tax) Act 1999 (Cth) have the same meaning as their definition in that Act.

7.2 Except as otherwise provided by this clause, all consideration payable under the Services Contract in relation to any supply is inclusive of GST.

7.3 If GST is payable in respect of any supply made by Zion Fresh under the Services Contract then, subject to clause 7.4, the Customer will pay to Zion Fresh an amount equal to the GST payable on the supply at the same time and in the same manner as the consideration for the supply that is to be provided under the Contract.

7.4 Zion fresh must provide a tax invoice to the Customer before Zion Fresh will be entitled to payment of the GST payable under clause

## **8. Customer Warranties and Indemnity**

8.1 The Customer represents and warrants to Zion Fresh that:

8.1.1 the Customer:

- (a) has the right to the Goods for Zion Fresh to provide the Services;
- (b) has obtained express Authority to Leave from the receiver in respect of the Goods; and
- (c) handled the Goods in accordance with all applicable Laws prior to the Goods being picked up by Zion Fresh; and

8.1.2 the Goods are and will remain at all times during the Deliver Period:

- (a) compliant with any applicable Laws;
- (b) properly and appropriately prepared and Packaged in accordance with any applicable Laws and Industry Code to protect from spoilage, contamination, perishing, deterioration and physical damage during handling, transportation and/or storage; and
- (c) fit for their intended purpose.

8.2 The Customer indemnifies Zion Fresh from and against any Claim it may suffer or Liability it may incur arising directly or indirectly as a result of or in connection with:

8.2.1 any enforcement by Zion Fresh of the Services Contract;

8.2.2 any breach by the Customer of the Services Contract, including any warranties; and

8.2.3 any Claims by a third party in respect of personal injury, death or damage to property, that relate to the Goods delivered under the Services Contract.

## **9. Limitation of Liability**

9.1 To the extent Zion Fresh is legally permitted to limit the remedies available to the Customer under the Services Contract, Zion Fresh expressly limits its liability for breach of the Services Contract to the following remedies (at its election):

9.1.1 the supply of the Services again; or

9.1.2 payment of the cost of having the Services supplied again.

9.2 If clause 9.1 does not apply, then Zion Fresh's total aggregate liability (to the extent permitted by Law) for any Loss or damage arising under or in connection with the Services Contract or the performance of the Services whether arising out of breach of contract, in tort (including negligence), under a statute or otherwise will be limited to an amount equal to 70% of the Fees actually received by Zion Fresh from the Customer in the 1 month prior to the event giving rise to the liability occurring.

9.3 Zion Fresh is not liable to the Customer for any Consequential Loss in connection with the Services Contract.

9.4 To the maximum extent permitted by Law:

9.4.1 Zion Fresh does not give any guarantee, indemnity or warranty nor make any representation, express or implied, in respect of the Services Contract or its performance; and

9.4.2 all warranties, terms and conditions which save for this clause would be implied by use, statute or otherwise are excluded.

## **10. Dispute Resolution**

10.1 Where a dispute arises between the parties in connection with the Services Contract, the parties must enter into discussions in good faith to resolve the dispute before initiating court proceedings. Unless the parties otherwise agree, discussions between the parties under this clause 10 must continue for 30 days unless resolved earlier.

10.2 If the dispute is not resolved under clause 10.1, either party may refer the dispute for mediation administered by the Australian Disputes Centre Limited (ADC) in accordance with the ADC's guidelines for commercial mediation, as updated from time to time.

10.3 The mediator must be appointed by agreement between the parties but, failing agreement, will be appointed by the Chairperson of the ADC or the Chairperson's authorised representative

10.4 Where a dispute arising out of the Services Contract is not resolved within 30 days after the parties commencing discussion under clause 10.1 (or such longer period agreed by the parties in writing), either a party may commence court proceedings in respect of the dispute.

10.5 For the purposes of this clause 10, 'dispute' includes any disagreement, difference of opinion, or failure to agree on any matter related to the Services Contract or its performance.

10.6 Nothing in this clause 10 will prejudice the right of a party to seek urgent injunctive or declaratory relief in respect of any matter arising out of the Services Contract.

10.7 The parties must continue to perform their obligations under the Services Contract during the resolution of any dispute(s), including in respect to confidentiality.

## **11. Breach and Termination**

11.1 If the Customer:

11.1.1 breaches the Services Contract in a manner that cannot be remedied;

11.1.2 breaches the Services Contract and does not remedy the breach within 10 Business Days of receiving a written notice to do so from Zion Fresh; or

11.1.3 is the subject of an Insolvency Event,

Zion Fresh may:

11.1.4 cancel any unperformed Accepted Services Orders and where Goods have been picked up by Zion Fresh under the relevant Accepted Services Order prior to cancellation, Zion Fresh will return the Goods to the Customer and the Customer must pay the Return Fee; and/or

11.1.5 terminate the Services Contract,

immediately by written notice to the Customer.

11.2 The Services Contract may be terminated by either party without any cause by giving 5 Business Days' written notice of termination to the other party.

11.3 Where the Services Contract is terminated by Zion Fresh under clause 11.1.5 or by either party under clause 11.2:

11.3.1 all money owing and/or outstanding by the Customer to Zion Fresh becomes immediately due and payable without further notice needing to be given; and

11.3.2 subject to the Customer complying with clause 11.3.1 above, Zion Fresh must return all undelivered Goods in its possession at the time of termination, provided the Customer must pay the applicable Return Fees to Zion Fresh.

11.4 The termination of the Services Contract is without prejudice to any rights which may have acquired to either party before termination.

11.5 All of the rights and obligations of each party to the Services Contract which are expressed to survive termination of the Services Contract, or which by their nature or context are intended



to survive termination of the Services Contract, will survive the termination of the Services Contract.

## **12. Confidentiality and Intellectual Property**

12.1 The Customer must and ensure its employees and personnel, keep confidential and secure Zion Fresh's confidential information (including the terms of the Services Contract and the Fee List), except with the prior written consent of Zion Fresh or where disclosure is required by law, in which case disclosure must be only to the extent required by law.

12.2 The Customer acknowledges and agrees that all trademarks, patents and other intellectual property rights in or relating to the Services belong to and are the property of Zion Fresh and/or its affiliates. The Customer will not and will not attempt to directly or indirectly make any claim in connection with that intellectual property.

## **13. General**

13.1 Zion Fresh may cancel or suspend the Services in whole or in part due to any fact, cause, thing or event beyond Zion Fresh's reasonable control. Zion Fresh will not be deemed to be in breach of the Services Contract if it does so.

13.2 The Services Contract is personal to the Customer and the Customer must not transfer (either by assignment or novation), allow a change in Control to occur to it, or otherwise deal with the Services Contract except with the prior written consent of Zion Fresh, which consent must not be unreasonably withheld.

13.3 No agency, partnership, joint venture, or employment relationship is created as a result of the Services Contract and the Customer does not have any authority of any kind to bind Zion Fresh in any respect.

13.4 Zion Fresh may subcontract the performance of all or part of the Services.

13.5 Zion Fresh may vary or replace Services Terms in whole or in part by notifying the Customer in writing, including by email. Any amended or new terms and conditions will form part of the Services Terms and take effect from the date of the Customer submitting the next Services Order.

13.6 Notices under the Services Contract may be delivered by hand, by mail or by email to the addresses specified in the Initial Proposal or a relevant Accepted Services Order. Notice will be deemed given:

13.6.1 in the case of hand delivery, upon written acknowledgment of receipt by an officer or other duly authorised employee, agent or representative of the receiving party;

13.6.2 in the case of posting, three days after dispatch; and

13.6.3 in the case of email, upon receipt of transmission if received on a business day or otherwise at the commencement of the first business day following transmission.

13.7 Subject to clause 1.2, the Services Contract:

13.7.1 constitutes the entire agreement between the parties about the subject matter contained in it; and

13.7.2 supersedes and cancels any contract, deed, arrangement, related condition, collateral arrangement, condition, warranty, indemnity or representation relating to the subject matter contained in it, that was imposed, given or made by a party (or an agent of the party) prior to entering into the Services Contract.

13.8 The parties may sign and deliver the Services Contract, any Services Orders and/or Accepted Services Order or any amendment as complete documents or in separate counterparts (which will constitute one agreement), and either party may deliver the same by email.

13.9 If a provision of the Services Contract is held to be illegal, invalid, void, voidable or unenforceable, that provision must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable. If it is not possible to read down a provision as required by this clause, that provision is severable without affecting the validity or enforceability of the remaining part of that provision or the other provisions in the Services Contract.

13.10 The rights, powers, privileges and remedies provided under any provision of the Services Contract are cumulative and are not exclusive of any rights, powers, privileges or remedies provided under any other provision of the Services Contract or by applicable law or otherwise.

13.11 A single or partial exercise or waiver of a right relating to the Services Contract does not prevent any other exercise of that right or the exercise of any other right. No party will be liable for any loss or expenses incurred by another party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of the right.

13.12 Each party must promptly execute and deliver all documents and take all other action necessary or desirable to effect, perfect or complete the transactions contemplated by the Services Contract.

13.13 The Services Contract may be executed in counterparts, all of which taken together constitute one document.

13.14 The Services Contract is governed by the law in the State of Victoria and the parties agree to submit to the non-exclusive jurisdiction of the courts of that State.

## 14. Definitions

14.1 In the Services Contract, unless the contrary intention appears:

Accepted Services Order has the meaning given to that term in clause 3.2.

Authority to Leave has the meaning given to that term in clause 4.4.2.

Business Days means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in Melbourne.

Claims includes actions, proceedings, suits, causes of action, arbitrations, verdicts and judgements either at law or in equity or arising under a statute, debts, dues, demands, claims of any nature, costs and expenses.

Commencement Date means the date the Initial Proposal is executed by the Customer.

Conforming Contact Number means a contact number provided to Zion Fresh by the Customer in a format specified by Zion Fresh.

Consequential Loss means any loss or damage which does not arise in the ordinary course of events from the breach, including any loss of opportunity, business, goodwill or future reputation, any failure to realise anticipated savings, any damage to credit rating, and any penalties payable under any contracts, but does not include:

- (a) loss of or damage to data or revenue;
- (b) business interruption;
- (c) loss, damage, costs or expense incurred by the Customer in connection with a third party claim relating to the Services;
- (d) cost or expenses relating to or in connection with the procurement of replacement goods or services; or
- (e) other loss or damage that was in the reasonable contemplation of the parties at the time of entry into the Services Contract.

Control has the meaning given to that term in Section 50AA(1) of the Corporations Act 2001 (Cth).

Customer is the entity or individual to which the Initial Supply Proposal is provided.

Delay Fee means the amount payable by the Customer to Zion Fresh pursuant to clause 4.3 of the Services Terms.

Delivery Address means the address specified in an Accepted Services Order, or such other address as may be agreed in writing between Zion Fresh and the Customer from time to time.

Delivery Fee means the amount payable by the Customer to Zion Fresh pursuant to clause 5.1 of the Services Terms.

Delivery Period means the period commencing on the time the Goods are picked up by Zion Fresh and ending on the time the Goods are delivery at the Deliver Address.

Estimated Delivery Timeframe means the estimated delivery timeframe specified in an Accepted Services Order.

Fee List means the fee list for the Services published by Zion Fresh from to time and notified by Zion Fresh to the Customer (whether by email or otherwise).

Fees means the amounts payable by the Customer to Zion Fresh in connection with provision of Services under the Services Contract, including the Pick-up Fee, Delay Fee, Futile Pick-up Fee, Delivery Fee, Return Fee and any additional charges.

Futile Pick-up Fee means the amount payable by the Customer to Zion Fresh pursuant to clause 4.5 of the Services Terms.

Goods means the produce or items described in an Accepted Services Order.

Insolvency Event means, in relation to a person, any of the following:

- (a) the person, being an individual, becomes bankrupt;
- (b) the person becomes insolvent;
- (c) the person assigns any of its property for the benefit of creditors or any class of them;
- (d) a receiver, receiver and manager, administrator, controller, provisional liquidator or liquidator is appointed to the person or the person enters into a scheme of arrangement with its creditors or is wound up;
- (e) the holder of a security interest takes possession of any assets of the person or exercises any power of sale;

(f) a judgment or order is made against the person in an amount exceeding \$5,000 (or the equivalent in any other currency) and that judgment or order is not satisfied, quashed or stayed within 30 days after being made; and

(g) any event that is analogous or has a substantially similar effect to any of the events specified in this definition.

Initial Proposal means a proposal accepted by a Customer prior to the commencement of the provision of the Services by Zion Fresh.

Law includes, as amended from time to time and whether or not existing at the Commencement Date, all applicable:

(a) legislation, ordinance, regulation, bylaw, local law, order, proclamation, approval, authorisation, code of conduct, government policy, consent, exemption, filing, licence, notarisation, permit, registration, waiver and conditions attaching to any of them (as applicable) by any authority and includes any renewal of, or variation to, any of them;

(b) principles of law or equity;

(c) all applicable standards, codes and guidelines, and industry standards to the extent that such standards, codes and guidelines are relevant to a Customer, including where the Customer and/or its business is a 'food business' and/or a 'food premises' (as these terms are defined in the Food Act 1984 (Vic));

(d) directions or notices issued by any government authority; and

(e) fees, rates, taxes, levies and charges payable in respect of the things referred to in subparagraphs (a) to (d) of this definition,

and for the avoidance of doubt, includes the Food Act 1984 (Vic) as amended from time to time.

Liability includes all liabilities (whether actual, contingent or prospective), losses, damages, costs and expenses of whatever description.

Minimum Delivery Quantity means the minimum delivery quantity specified in an Accepted Services Order as amended in accordance with clause 3.6.

Nominated Pick-up Location means the location from which Zion Fresh is to pick-up the Goods as specified in an Accepted Services Order.

Nominated Pick-up Time means the pick-up time specified in an Accepted Services Order, as varied by Zion Fresh from time to time in accordance with clause 4.2.

Package has the meaning given to that term in the Food Act 1984 (Vic) and Packaged has a corresponding meaning.

Pick-up Fee means the amount payable by the Customer to Zion Fresh pursuant to clause

Price List means the price list for the Goods published by Zion Fresh from to time and notified by Zion Fresh to the Customer (whether by email or otherwise).

Return Fee means the amount payable by the Customer to Zion Fresh pursuant to clause 5.8.2, 11.1.4 or 11.3.2 of the Services Terms.

Return Location means the location for which the Goods are to be return if undelivered, as specified in an Accepted Services Order.

Services means the services to be provided by the Zion Fresh under the Services Contract as further described in the Initial Proposal and/or an Accepted Services Order.

Service Order has the meaning given to that term in clause 3.1.

Services Term has the meaning given to that term in clause 1.2.3.

Zion Fresh means Mystic Concepts Pty Ltd ACN 144 495 456 trading as Zion Fresh.

## **15. Interpretation**

15.1 In the Services Contract, unless the contrary intention appears:

15.1.1 the clause headings are for ease of reference only and shall not be relevant to interpretation;

15.1.2 a reference to a clause number is a reference to its subclauses;

15.1.3 words in the singular number include the plural and vice versa;

15.1.4 words importing a gender include any other gender;

15.1.5 the word 'includes' in any form is not a word of limitation;

15.1.6 a reference to a person includes bodies corporate and unincorporated associations and partnerships;

15.1.7 a reference to a clause is a reference to a clause or subclause of the Services Contract;

15.1.8 a reference to a subclause is a reference to a subclause of the clause in which that reference is made;

15.1.9 where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;

15.1.10 the recitals to the Services Contract do not form part of the Services Contract;

15.1.11 monetary references are references to Australian currency.

15.2 In the interpretation of the Services Contract, no rule of construction applies to the disadvantage of the party preparing the document on the basis that it prepared or put forward this document or any part of it.