

# Bake Shack – Terms and Conditions of Trade

1. **Definitions**
  - 1.1 "Bake Shack" means Enriched Baking Ltd T/A Bake Shack, its successors and assigns, or any person acting on behalf of, and with the authority of, Enriched Baking Ltd T/A Bake Shack.
  - 1.2 "Customer" means the person/s purchasing the Goods, as specified in any quotation, order, invoice, or other document, and if there is more than one Customer is a reference to each Customer jointly and severally.
  - 1.3 "Goods" means all Goods or Services supplied by Bake Shack to the Customer, at the Customer's request, from time to time (where the context so permits the terms "Goods" or "Services" shall be interchangeable for the other).
  - 1.4 "Price" means the Price payable for the Goods as agreed between Bake Shack and the Customer in accordance with clause 4 below.
2. **Acceptance**
  - 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for Goods, or accepts Delivery.
  - 2.2 These terms and conditions may only be amended with Bake Shack's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and Bake Shack.
  - 2.3 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 22 of the Electronic Transactions Act 2002 or any other applicable provisions of that Act or any Regulations referred to in that Act.
3. **Change in Control**
  - 3.1 The Customer shall give Bake Shack not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address, contact phone or fax number/s, or business practice). The Customer shall be liable for any loss incurred by Bake Shack as a result of the Customer's failure to comply with this clause.
4. **Price and Payment**
  - 4.1 At Bake Shack's sole discretion, the Price shall be either:
    - (a) as indicated on any invoice provided by Bake Shack to the Customer; or
    - (b) the Price as at the date of Delivery, according to Bake Shack's current price list; or
    - (c) Bake Shack's quoted price (subject to clause 4.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
  - 4.2 The Price is subject to final confirmation by Bake Shack at the time of each order, and Bake Shack may withdraw any price list or quotation at any time prior to either the Customer's acceptance of Bake Shack's quotation, or acceptance by Bake Shack of the Customer's order.
  - 4.3 Bake Shack reserves the right to change the Price:
    - (a) if a variation to the Goods which are to be supplied is requested; or
    - (b) in the event of increases to Bake Shack in the cost of labour or ingredients, which are beyond Bake Shack's control.
  - 4.4 Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by Bake Shack, which may be:
    - (a) before Delivery; or
    - (b) twenty (20) days following the end of the month in which any invoice/s and/or statement is furnished to the Customer by Bake Shack; or
    - (c) the date specified on any invoice or other form as being the date for payment; or
    - (d) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice/s furnished to the Customer by Bake Shack.
  - 4.5 Payment may be made by cheque, credit card, direct debit, or by any other method as agreed to between the Customer and Bake Shack.
  - 4.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to Bake Shack an amount equal to any GST Bake Shack must pay for any supply by Bake Shack under this contract, or any other agreement, for the sale of the Goods. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition the Customer must pay any other taxes and duties that may be applicable in addition to the Price, except where they are expressly included in the Price.
5. **Customer's Obligations**
  - 5.1 Any specifications of the Goods relating to food allergies that may be applicable must be disclosed to Bake Shack at the time that the order is placed, as some food allergies can be serious, and even fatal. Bake Shack will accept no liability for the supply of Goods that cause an allergic reaction where disclosure by the Customer has not occurred.
6. **Delivery**
  - 6.1 Delivery of the Goods ("Delivery") is taken to occur at the time that:
    - (a) the Customer or the Customer's nominated carrier takes possession of the Goods at Bake Shack's premises; or
    - (b) Bake Shack (or Bake Shack's nominated carrier) delivers the Goods to the Customer's nominated address, even if the Customer is not present at the address.
  - 6.2 At Bake Shack's sole discretion, the cost of Delivery is in addition to the Price.
  - 6.3 The Customer must take Delivery, by receipt or collection of the Goods, whenever they are tendered for Delivery. In the event that the Customer is unable to take Delivery as arranged then Bake Shack shall be entitled to charge a reasonable fee for redelivery and/or storage.
  - 6.4 Bake Shack may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
  - 6.5 The Customer shall take Delivery 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.
  - 6.6 Bake Shack will make all reasonable efforts to have the Goods delivered to the Customer (or the Customer's designated agent) on the morning of the business day following receipt of the Customer's order, provided such order is received by Bake Shack by 1:00pm on the business day prior; however, any time or date given by Bake Shack to the Customer is an estimate only. The Customer must still accept Delivery even if late and Bake Shack will not be liable for any loss or damage incurred by the Customer as a result of Delivery being late.
  - 6.7 The Customer acknowledges that all perishable Goods are to be stored at no higher than five degrees (5°C); it is the Customer's responsibility to ensure that the Goods are stored in the proper manner.
7. **Risk**
  - 7.1 Risk of damage to or loss of the Goods passes to the Customer on Delivery, and the Customer must insure the Goods on, or before, Delivery.
  - 7.2 If any of the Goods are damaged or destroyed following Delivery, but prior to ownership passing to the Customer, Bake Shack is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Bake Shack is sufficient evidence of Bake Shack's rights to receive the insurance proceeds without the need for any person dealing with Bake Shack to make further enquiries.
- 7.3 If the Customer requests Bake Shack to leave Goods outside Bake Shack's premises for collection, or to deliver the Goods to an unattended address, then such Goods shall be left at the Customer's sole risk.
8. **Title**
  - 8.1 Bake Shack and the Customer agree that ownership of the Goods shall not pass until:
    - (a) the Customer has paid Bake Shack all amounts owing to Bake Shack; and
    - (b) the Customer has met all of its other obligations to Bake Shack.
  - 8.2 Receipt by Bake Shack 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 Bake Shack's rights and ownership in relation to the Goods, and this contract, shall continue.
  - 8.3 It is further agreed that, until ownership of the Goods passes to the Customer in accordance with clause 8.1:
    - (a) the Customer is only a bailee of the Goods and must return the Goods to Bake Shack on request; and
    - (b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for Bake Shack and must pay to Bake Shack the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed; and
    - (c) the Customer 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 the Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for Bake Shack and must pay or deliver the proceeds to Bake Shack on demand; and
    - (d) the Customer should not convert or process the Goods or interact with them other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of Bake Shack and must sell, dispose of or return the resulting product to Bake Shack as it so directs; and
    - (e) the Customer irrevocably authorises Bake Shack to enter any premises where Bake Shack believes the Goods are kept and recover possession of the Goods; and
    - (f) Bake Shack may recover possession of any Goods in transit whether or not Delivery has occurred; and
    - (g) the Customer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of Bake Shack; and
    - (h) Bake Shack may commence proceedings to recover the Price notwithstanding that ownership of the Goods has not passed to the Customer.
9. **Personal Property Securities Act 1999 ("PPSA")**
  - 9.1 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that:
    - (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
    - (b) a security interest is taken in all Goods and/or any monetary obligation of the Customer to Bake Shack for Services, that have previously been supplied (if any), and that will be provided in the future, by Bake Shack to the Customer.
  - 9.2 The Customer undertakes to:
    - (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Bake Shack may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register; and
    - (b) indemnify, and upon demand reimburse, Bake Shack for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any registration made thereby; and
    - (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of Bake Shack; and
    - (d) immediately advise Bake Shack of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
  - 9.3 Bake Shack and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
  - 9.4 The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
  - 9.5 Unless otherwise agreed to in writing by Bake Shack, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
  - 9.6 The Customer shall unconditionally ratify any actions taken by Bake Shack under clauses 9.1 to 9.5.
10. **Defects and Returns**
  - 10.1 The Customer must inspect the Goods on Delivery and, due to the perishable nature of the Goods, must immediately (by not later than twenty-four (24) after Delivery) notify Bake Shack in writing of any alleged defect/damage, error or omission, shortage in quantity, or failure to comply with the description or quotation (including any defect in the Goods that may be of concern to the health and safety of any party). The Customer shall afford Bake Shack an opportunity to inspect the Goods, and (where deemed necessary by Bake Shack) have independent testing performed on the Goods, within a reasonable time following such notification if the Customer believes the Goods are defective in any way. Bake Shack shall be entitled to request the Customer provide it with temperature check records from the date of Delivery until the date of return of the Goods if the Customer shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which Bake Shack has agreed in writing that the Customer is entitled to reject, Bake Shack's liability is limited to either (at Bake Shack's discretion) replacing the Goods or rectifying the Goods.
  - 10.2 Subject to this clause 10, returns will only be accepted provided that:
    - (a) the Customer has complied with the provisions of clause 10.1; and
    - (b) Bake Shack has agreed in writing to accept the return of the Goods; and
    - (c) the Goods are returned, at the Customer's cost, within forty-eight (48) hours of Delivery; and
    - (d) the Goods are returned in as close a condition to that in which they were delivered as is possible.
  - 10.3 Notwithstanding clauses 10.1 and 10.2, Bake Shack shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
    - (a) the Customer failing to properly store the Goods; or
    - (b) the Customer continuing to use the Goods after any defect became apparent or should have become apparent to a reasonably prudent operator; or
    - (c) the Customer failing to follow any instructions or guidelines provided by Bake Shack; or
    - (d) fair wear and tear, any accident, or act of God.
  - 10.4 Subject to clause 10.1, non-stocklist items or Goods made to the Customer's specifications are under no circumstances acceptable for credit or return.
11. **Default and 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 a half percent (2.5%) per calendar month (and at Bake Shack's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
  - 11.2 If the Customer owes Bake Shack any money, the Customer shall indemnify Bake Shack from and against all costs and disbursements incurred by Bake Shack in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Bake Shack's collection agency costs, and bank disbursement fees).
  - 11.3 Further to any other rights or remedies Bake Shack may have under this contract, if the Customer has made payment to Bake Shack by credit card, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by Bake Shack under this clause 11 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this contract.
  - 11.4 Without prejudice to any other remedies Bake Shack may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions Bake Shack may suspend or terminate the supply of Goods to the Customer. Bake Shack will not be liable to the Customer for any loss or damage the Customer suffers because Bake Shack has exercised its rights under this clause.
  - 11.5 Without prejudice to Bake Shack's other remedies at law, Bake Shack shall be entitled to cancel all, or any part, of any order of the Customer which remains unfulfilled, and all amounts owing to Bake Shack shall, whether or not due for payment, become immediately payable if:
    - (a) any money payable to Bake Shack becomes overdue, or in Bake Shack's opinion the Customer will be unable to make a payment when it falls due; or
    - (b) the Customer 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 Customer or any asset of the Customer.
12. **Cancellation**
  - 12.1 Bake Shack may cancel any contract to which these terms and conditions apply, or cancel Delivery at any time before the Goods are delivered, by giving written notice to the Customer. On giving such notice Bake Shack shall repay to the Customer any money paid by the Customer for the Goods. Bake Shack shall not be liable for any loss or damage whatsoever arising from such cancellation.
  - 12.2 In the event that the Customer cancels this contract, or Delivery:
    - (a) notice of cancellation must be received either by email or in writing by Bake Shack by 11:00am on the business day preceding the specified date of Delivery; and
    - (b) the Customer shall be liable for any and all loss incurred (whether direct or indirect) by Bake Shack as a direct result of the cancellation (including, but not limited to, any loss of profits).
  - 12.3 Cancellation of orders for Goods made to the Customer's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.
13. **Privacy Act 1993**
  - 13.1 The Customer authorises Bake Shack (or Bake Shack's agent) to:
    - (i) access, collect, retain and use any information about the Customer;
    - (ii) including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Customer's creditworthiness; or
    - (iii) for the purpose of marketing products and services to the Customer.
  - (b) disclose information about the Customer, whether collected by Bake Shack from the Customer directly or obtained by Bake Shack from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Customer.
  - 13.2 Where the Customer is an individual the authorities under clause 13.1 are authorities or consents for the purposes of the Privacy Act 1993.
  - 13.3 The Customer shall have the right to request Bake Shack for a copy of the information about the Customer retained by Bake Shack and the right to request Bake Shack to correct any incorrect information about the Customer held by Bake Shack.
14. **General**
  - 14.1 The failure by Bake Shack to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Bake Shack's 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.
  - 14.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand, and are subject to the jurisdiction of the Tauranga Courts of New Zealand.
  - 14.3 Bake Shack shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by Bake Shack of these terms and conditions (alternatively Bake Shack's liability shall be limited to damages which under no circumstances shall exceed the Price).
  - 14.4 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by Bake Shack nor to withhold payment of any invoice because part of that invoice is in dispute.
  - 14.5 The Customer hereby disclaims any right to rescind, or cancel any contract with Bake Shack or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Customer by Bake Shack, and the Customer acknowledges that the Goods are bought relying solely upon the Customer's skill and judgment.
  - 14.6 Bake Shack may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
  - 14.7 The Customer agrees that Bake Shack may amend these terms and conditions at any time. If Bake Shack makes a change to these terms and conditions, then that change will take effect from the date on which Bake Shack notifies the Customer of such change. The Customer will be taken to have accepted such changes if the Customer makes a further request for Bake Shack to supply Goods to the Customer.
  - 14.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike or labour disputes, lock-out, industrial action, severe economic dislocation, failure of the manufacturers or suppliers, inability to obtain any necessary ingredients, materials, equipment, facilities or services, or fire, flood, storm, power or water shortage, accidents or breakdowns of plant, machinery, software, hardware or communication network, perils of the sea, earthquake, or other event beyond the reasonable control of either party.
  - 14.9 The Customer warrants that it has the power to enter into this contract and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this contract creates binding and valid legal obligations on it.

Please note that a larger print version of these terms and conditions is available from Bake Shack on request.