



## CREDIT APPLICATION & TERMS OF SALE AGREEMENT

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Glendene  
Auckland  
Telephone: 0-9 8184148/58

PO Box 39617  
Howick  
Auckland  
Fax: 0-9 818 9387

COMPANY		PARTNERSHIP		ORGANISATION (INC SOCIETY)		SOLE TRADER		Please ✓ as applicable
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FULL LEGAL NAME					
TRADING NAME (if different from above)					
POSTAL ADDRESS					
DELIVERY ADDRESS					
EMAIL ADDRESS					
TELEPHONE		FAX		OPENING TIME	
BANK NAME		BANK BRANCH		BANK A/C No.	

### ALL COMPANIES

REGISTERED OFFICE		CO. REG. No.	
		COMPANY ACCOUNTANTS	

### PRIVATE COMPANIES • PARTNERSHIPS • ORGANISATIONS (President & Secretary) • SOLE TRADERS

PARTICULARS OF DIRECTORS				THE GUARANTEE MUST BE COMPLETED	
FULL NAME	PRIVATE ADDRESS	PVTE TEL	DATE OF BIRTH	POSITION HELD	
Contact Person Accounts Payable				Telephone No. Accounts Payable	

### FACTORING/INVOICE FINANCING

Details of any factoring or invoice finance	
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The organisation named above ("Customer") agrees with Fresh Chicken Company ("J and P Trade Ltd t/a Fresh Chicken Company") as follows:

- The Customer warrants that all information in and attached to this credit application and terms of sale agreement is true, accurate and complete, and acknowledges it will be relied upon by Fresh Chicken Company in granting or continuing to grant credit to the Customer.
- The Customer has read Fresh Chicken Company Terms of Sale attached to this document and agrees that those terms are the terms which will apply for all contracts for the supply of goods despite any contrary indication by the Customer unless Fresh Chicken Company expressly agrees otherwise in writing (or the Terms of Sale are amended or replaced in the manner set out in the Terms of Sale).
- The Customer agrees to continue to make at all times full and accurate disclosure to Fresh Chicken Company of any material information that may affect Fresh Chicken Company decision to continue granting credit to the Customer.
- This credit application and terms of sale agreement constitutes a security agreement for the purposes of section 36 of the Personal Property Securities Act 1999 and the Customer grants Fresh Chicken Company a security interest in all goods supplied and their proceeds in the manner set out in the Terms of Sale provided that if Fresh Chicken Company already has a perfected security interest, that security interest continues under this credit application and terms of sale agreement.
- The Customer must not factor or otherwise sell its accounts receivable, or grant or permit to continue a security interest over goods purchased from Fresh Chicken Company or their proceeds (other the security interest granted to Fresh Chicken Company) without Fresh Chicken Company prior written approval.

### AGREED AND ACCEPTED BY THE CUSTOMER

SIGNED		DATE	NAME	
		/ /	POSITION/TITLE	

SIGNED		DATE	NAME	
		/ /	POSITION/TITLE	

## GUARANTEE OF THE CUSTOMER'S OBLIGATIONS

In consideration of Fresh Chicken Company (**Fresh Chicken Company (NZ) Limited**) agreeing to supply the Customer named above with goods on credit at my/our request, I/we the persons named below as Guarantor jointly and severally agree with Fresh Chicken Company that:

1. I/We shall with the Customer be jointly and severally liable to Fresh Chicken Company for the due and punctual performance by the Customer of the Customer's obligations under the Customer's credit application and terms of sale agreement above and all other agreements for the supply of goods to the Customer by Fresh Chicken Company, including (without limitation) the Customer's obligations to pay money to Fresh Chicken Company;
2. I/We shall indemnify Fresh Chicken Company from and against all losses, expenses and costs, including but not limited to all legal and collection costs and costs incurred in connection with Fresh Chicken Company enforcements of its securities (including on a solicitor/client basis), which Fresh Chicken Company may suffer or incur as a result of the Customer's default or failure to comply with any obligation of the Customer to Fresh Chicken Company;
3. I/We agree that notwithstanding that as between me/us and the Customer, I/We may be a surety only, I/We shall be liable to Fresh Chicken Company as a principal debtor jointly and severally with the Customer;
4. I/We agree that this guarantee shall be a continuing guarantee for all future obligations of the Customer and shall not be discharged or affected by any of the following: the granting of time, indulgence, extension of credit or other concession to the Customer; any modification, variation or addition to any agreement between Fresh Chicken Company and the Customer for the supply of goods or other services (including, without limitation, any amendment to, or replacement of, Fresh Chicken Company Terms of Sale and any increase in the Customer's credit limit); the insolvency; liquidation or receivership of the Customer or any change in the shareholding or directorship of the Customer; or any other act, event or omission (including Fresh Chicken Company failure to register its security on the PPSR) which but for this clause might operate to discharge, or otherwise affect this guarantee and my/our obligations under this guarantee. I/We agree that this guarantee shall only be released by the express written agreement of Fresh Chicken Company.
5. I/We am/are aware of all the provisions of the Customer's credit application and terms of sale agreement and the terms upon which credit is to be provided to the Customer.
6. I/We agree that clause 11 of Fresh Chicken Company Terms of Sale shall apply to me/us (with references to the Customer replaced with I/We where necessary) as if set out in full in this guarantee.
7. I/We agree that the doctrine of marshalling shall not apply to or in respect of this guarantee.
8. I/We agree not to dispose of my/our assets nor release any debts owed to me/us at any time during the term of this guarantee.

### Signed as a deed by:

Guarantor Legal Full Name (Individual)	Date of birth	Address (post and physical)	Signature
.....	.....	.....	.....
.....	...	.....	.....
.....	.....	.....	.....
.....	...	.....	.....

Guarantor Full Name (Company).....by: Director  
Signature.....

Director Signature.....

### In the presence of:

#### Witness Full

Name.....Signature.....

Occupation.....

City/town.....Dated.....



## TERMS OF SALE

**Placing Orders:** The Customer agrees to place orders in accordance with Fresh Chicken Company ordering procedures as advised by Fresh Chicken Company from time to time.

**Contract for Sale:** The Customer agrees that each order accepted by Fresh Chicken Company will constitute a separate contract for the sale of goods on these terms of sale. Each order from the Customer is an offer to purchase the relevant goods on such terms, and Fresh Chicken Company may accept or reject the order at its discretion.

### PRICE

**Prices:** Unless otherwise agreed to in writing by Fresh Chicken Company, Fresh Chicken Company prices are subject to change without notice and the price for any order of goods is Fresh Chicken Company current price at the relevant time. If Fresh Chicken Company agrees to fixed pricing or a quotation in writing, Fresh Chicken Company prices for the applicable goods will be fixed for the agreed period or, if no period is agreed, until the expiry of reasonable notice from Fresh Chicken Company.

**Taxes:** The price for goods will be increased by the amount of any applicable GST and other taxes and duties, except to the extent that such taxes or duties are expressly included in any quotation or fixed pricing given or agreed by Fresh Chicken Company.

### PAYMENT TERMS

**Credit sales:** Payment for all goods supplied will be in cash on delivery (in cleared and immediately available funds) of the goods unless other terms are agreed by Fresh Chicken Company and the Customer in writing. Fresh Chicken Company may vary or cancel those terms of credit at any time without prior notice.

**Payment in full:** The Customer must pay each invoice in full without set-off, counterclaim, deduction or withholding, except as required by law or as specifically agreed in writing by Fresh Chicken Company.

**Application of Payments:** Fresh Chicken Company may apply any payments received from or on behalf of the Customer in reduction of the Amount Owing in such order as Fresh Chicken Company thinks fit (despite any direction to the contrary from the Customer and whether before or after the occurrence of an Event of Default).

### DELIVERY OF GOODS

**Domestic Delivery:** Where delivery is to be made in New Zealand Fresh Chicken Company will deliver or arrange delivery of the goods to the place specified in the Customer's order (**Delivery Address**). Unless otherwise stated in the Order Confirmation Fresh Chicken Company agrees to bear the reasonable costs of transportation and delivery of the goods to the Delivery Address during Fresh Chicken Company normal delivery hours, provided that the Delivery Address is accurate and suitable for the purposes of delivery. Delivery shall be deemed to have occurred when the goods arrive at the Delivery Address ready for unloading. Unloading is to be the Customer's responsibility unless otherwise agreed.

**Refusal to accept delivery:** If the Customer refuses to accept delivery of goods or delays in doing so, Fresh Chicken Company may charge the Customer for any additional costs or losses incurred as a result, including storage and transportation costs. The Customer will also indemnify Fresh Chicken Company in the manner set out in clause 5 of these terms of sale.

**Fulfilling Orders:** Fresh Chicken Company will use reasonable endeavours to fulfil orders which have been accepted by Fresh Chicken Company but will not be liable for any failure to deliver or delay in delivery.

**Delivery Date:** Any date or time given by Fresh Chicken Company for the arrival of the goods is only an estimate and Fresh Chicken

Company does not guarantee delivery on that date or at that time.

### RISK AND OWNERSHIP

**Risk:** Risk of any loss, damage or deterioration of or to the goods passes to the Customer on delivery of the goods to the place specified in the Customer's order **provided that** if the Customer wrongfully rejects, refuses to accept or delays acceptance of the goods, risk in the goods will pass to the Customer from such rejection, refusal or delay. If the Customer wrongfully rejects or refuses to accept delivery of goods, the Customer shall indemnify Fresh Chicken Company for any and all losses arising from the Customer's rejection or refusal, including but not limited to any damage or deterioration of the goods. The Customer will insure the goods from the time of delivery and undertakes to provide Fresh Chicken Company with evidence of insurance if so required by Fresh Chicken Company.

**Ownership:** Despite any period of credit, ownership of the goods remains with Fresh Chicken Company and does not pass to the Customer until the Customer:  
pays the Amount Owing in full; or  
resells the goods pursuant to these terms of sale.

**Dealing with goods:** While ownership of the goods remains with Fresh Chicken Company:

the Customer covenants to store them separately in a saleable condition (satisfactory to Fresh Chicken Company) as fiduciary, bailee and agent of Fresh Chicken Company and clearly identify them as belonging to Fresh Chicken Company; and

the Customer may (until advised to the contrary in writing by Fresh Chicken Company or until an Event of Default occurs), in the ordinary course of its business, use the goods or sell them for full value.

**Proceeds in trust:** If the Customer resells or uses the goods before ownership in the goods has passed to the Customer, the Customer must hold the proceeds of such sale or use (separately and in identifiable form and to the extent their value does not exceed the Amount Owing) in trust for Fresh Chicken Company, and pay the proceeds into a bank account nominated by Fresh Chicken Company if Fresh Chicken Company requests this in writing.

### WARRANTIES

**Exclusion:** All warranties, descriptions, representations or conditions whether implied by law or otherwise and, subject to clause 7.2, all other liability of Fresh Chicken Company, whether in contract, tort (including negligence) or otherwise is, expressly excluded to the fullest extent permitted by law.

**Consumer Guarantees:** The Customer acknowledges that if the goods acquired from Fresh Chicken Company are for the purposes of business then nothing in the Consumer Guarantees Act 1993 will apply.

### INSPECTION, CLAIMS

**No credit for returned goods:** The Customer must not return goods unless Fresh Chicken Company has specifically agreed with the Customer in writing to this effect in advance.

**Defective Goods:** On the delivery of goods to the Customer, the Customer must immediately inspect the goods in order to satisfy itself as to the goods' merchantable quality, fitness for purpose and compliance with the Customer's order. If the Customer considers that the goods are defective, not of merchantable quality, unfit for their purpose or not in compliance with the Customer's order (**the claimed defect**), the Customer must immediately (and within 48 hours of delivery) advise Fresh Chicken Company in writing of the claimed defect. On receiving such advice from the Customer, Fresh Chicken Company may elect whether to replace the goods or refund the price paid by the Customer for the goods.

Fresh Chicken Company will have no liability whatsoever to the Customer for any claimed defect if it has not been advised of the claimed defect within 48 hours of delivery. The Customer will give Fresh Chicken Company the opportunity to inspect the goods and must (at the Customer's cost) store the goods separately and in the state and condition in which they were supplied by Fresh Chicken Company until Fresh Chicken Company inspection.

**Fresh Chicken Company liability:** The Customer agrees that Fresh Chicken Company will have no liability to the Customer or to any other person for Claims arising from:

- a claimed defect that has been advised to Fresh Chicken Company if Fresh Chicken Company has complied with its obligation to either replace the defective goods or refund the price paid by the Customer for the defective goods;
- a claimed defect that has not been advised to Fresh Chicken Company in writing within 48 hours of delivery;
- representations, warranties or agreements purported to be made by an agent or representative of Fresh Chicken Company that have not been confirmed by Fresh Chicken Company in writing;
- late or non-delivery of goods;
- inability to fulfill the Customer's order;
- damage or deterioration to the goods occurring after delivery or deemed delivery of the goods to the Customer;
- anything the Customer has done which has caused or contributed to the claimed defect;
- loss of profits, or any indirect or consequential loss or damage;
- and the Customer agrees to indemnify Fresh Chicken Company against any such Claim.

**Limitation on liability:** If Fresh Chicken Company is liable notwithstanding clauses 6 and 7.2, then notwithstanding any other provision of these terms of sale, to the maximum extent permitted by law Fresh Chicken Company liability under any Claim made by the Customer or third party will not exceed the price of the goods actually paid by the Customer in respect of which the Claim is made.

#### **PERSONAL PROPERTY SECURITIES ACT 1999 ("PPSA")**

**Security Interest:** The Customer grants to Fresh Chicken Company a security interest in all goods previously supplied by Fresh Chicken Company to the Customer and all goods that Fresh Chicken Company will supply to the Customer in the future, together with their proceeds to secure the payment of the Amounts Owed. When goods supplied by Fresh Chicken Company to the Customer have become an accession or have been manufactured, processed, commingled or affixed with other property, the Customer will ensure that goods supplied by Fresh Chicken Company and their proceeds will remain identifiable. The Customer acknowledges that Fresh Chicken Company security interest continues in the accession or the processed or commingled goods and their proceeds.

**Verification Statement:** The Customer waives its right to receive a copy of any verification statement or a financing change statement in respect of Fresh Chicken Company security interest.

**Contracting out:** Fresh Chicken Company and the Customer agree that to the fullest extent permitted by law, nothing in sections 114(1)(a) and 133 of the PPSA shall apply in respect of Fresh Chicken Company and the Customer. The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129 and 131 of the PPSA.

**Customer undertakings:** The Customer undertakes to:

- Promptly do all things, sign any further documents and/or provide any information which Fresh Chicken Company may reasonably require to enable Fresh Chicken Company to perfect and maintain the perfection of its security interest.
- Give Fresh Chicken Company (addressed to the Financial Controller or equivalent) not less than 14 days prior written notice of any proposed change in the Customer's name and/or any other change in the Customer's details (including, but not limited to, changes in the Customer's address, facsimile number, trading name or business practice).
- Indemnify (and if requested by Fresh Chicken Company reimburse) Fresh Chicken Company for all expenses that Fresh Chicken Company incurs in registering a financing statement or financing change statement.

The Customer warrants and agrees that any transfer or on-sale of goods will be for fair and reasonable value and the proceeds of sale or transfer of the goods by the Customer shall be retained by the Customer and held separately and on trust for Fresh Chicken Company pursuant to the terms of Fresh Chicken Company security interest until Fresh Chicken Company has been paid for the goods in full.

To protect Fresh Chicken Company security interest, the Customer agrees to notify Fresh Chicken Company in writing before making supplies to connected entities of goods purchased from Fresh Chicken Company on credit where the purchase price remains unpaid. Connected entities include any company associated with the Customer or any of its shareholders or directors.

#### **FACTORING AND SECURITY INTERESTS**

The Customer must not factor or otherwise sell its accounts receivable, or grant or permit to continue a security interest over goods purchased from Fresh Chicken Company or their proceeds (other than the security interest granted to Fresh Chicken Company) without Fresh Chicken Company prior written approval.

#### **DEFAULT**

**Suspension/Termination:** If an Event of Default occurs:

Fresh Chicken Company may suspend or terminate any contract between Fresh Chicken Company and the Customer;

The Amount Owed shall immediately become due and payable notwithstanding that the due date has not arisen;

Fresh Chicken Company may enforce the security interest; and Fresh Chicken Company may (without the consent of the Customer) appoint a receiver in respect of any goods and their proceeds and any receiver is authorised to do anything referred to in these terms of sale and otherwise as may be necessary to exercise all rights and powers conferred on a receiver by law (including, without limitation, the sale of goods and collection of proceeds and accounts receivable in respect of those goods).

**Possession and sale:** The Customer agrees that, at any time after an Event of Default has occurred or at any time if any goods are at risk, Fresh Chicken Company may:

Take possession of any goods; and/or

Sell or otherwise dispose of any goods,

in each case in such manner and generally on such terms and conditions as it thinks fit, and, in each case, otherwise do anything the Customer could do in relation to those goods. As the Customer's agent, Fresh Chicken Company (and its employees, agents or appointed receiver) may and is irrevocably authorised to, without prior notice, enter any land or premises where the goods are kept in order to take possession of and/or remove them and for the purpose of facilitating the collection of proceeds and accounts receivable in connection with the goods, without being responsible for any damage caused in doing so. The Customer agrees to procure all other rights (including consents) necessary to enable, and to indemnify Fresh Chicken Company (and its employees, agents or appointed receiver) against any liability incurred in connection with, such entry, taking of possession and removal. Fresh Chicken Company (and its employees, agents or appointed receiver) may resell any of the goods, collect the proceeds from the Customer and apply the proceeds in reduction of the Amount Owed.

**Default interest:** In an Event of Default, the Customer will compensate Fresh Chicken Company by immediately making payment as liquidated damages (in addition to the amount due) of interest at a rate of 2% per month calculated on a daily basis on the unpaid portion of the price from due date until payment in full.

**Costs and expenses:** The Customer will pay all costs, incurred by Fresh Chicken Company, including legal costs on a solicitor-client basis and debt collectors' costs, in the recovery or attempted recovery of outstanding money and the enforcement of these terms of sale.

#### **INFORMATION ABOUT CUSTOMER**

**Change of circumstances:** The Customer must notify Fresh Chicken Company of any change in circumstances that may affect the

accuracy of the information provided by the Customer to Fresh Chicken Company or any company related to Fresh Chicken Company.

**Personal or credit information:** Any personal or credit information provided by the Customer or obtained by Fresh Chicken Company will be held by Fresh Chicken Company and may be used by it for any of the following purposes: determining eligibility and terms for the provision of credit to the Customer, supplying the Customer with goods, enforcing debts and other legal obligations owing to Fresh Chicken Company and disclosure to third parties associated with any of those purposes (including a credit reporting agency).

**Authorisation:** The Customer irrevocably authorises all persons, companies, credit reporting agencies and other entities to provide Fresh Chicken Company with such information as it may at any time request about the Customer (including where applicable, its principals and directors) in relation to any of the purposes listed in clause 11.2 of these terms of sale and/or any directly related purposes.

## MISCELLANEOUS

**Force Majeure:** Non-performance or partial performance by Fresh Chicken Company of any of its obligations will be excused, without liability, during the time and to the extent that such performance is prevented, wholly or substantially, by any cause beyond the control of a party including but not limited to any order of a government or other authority, strike, lockout, labour dispute, delays in transit, difficulty in procuring goods, embargo, accident, emergency, outbreak of disease or restrictions imposed to prevent or restrict an outbreak of disease, act of God or other contingency. Following such an event Fresh Chicken Company may, at its discretion, reallocate goods between its customers and its own requirements.

**Notices:** Notices under these terms of sale must (unless otherwise provided) be in writing and will (without limitation) be deemed validly given if posted, delivered by hand or sent by email to the address nominated by the recipient from time to time or the recipient's principal business address.

**Waiver:** If Fresh Chicken Company exercises or fails to exercise any right or remedy available to it this will not prejudice Fresh Chicken Company rights in exercising that or any other right or remedy Fresh Chicken Company. Any waiver of any term of these terms of sale must be in writing and signed by an authorised officer of Fresh Chicken Company.

**Assignment:** The Customer may not transfer its rights in respect of the purchase of goods to any other party without Fresh Chicken Company prior written consent. Fresh Chicken Company may, without prior notice to the Customer, assign or novate its rights in respect of the purchase of goods to any third party and the Customer agrees to consent to any such assignment or novation.

**Variation to terms of sale:** Fresh Chicken Company may vary or replace these terms of sale from time to time by notice in writing to the Customer, which may be by email.

**Invalidity:** Where any provision of these terms of sale is rendered void, unenforceable or otherwise ineffective by operation of law, that will not affect the enforceability or effectiveness of any other provision of these terms of sale.

**Confidentiality:** The parties agree to keep the existence of and the terms of, the agreement to supply goods confidential to themselves.

**Governing law and jurisdiction:** This agreement is to be governed by and construed by the laws of New Zealand in English and each of the parties submits to the non-exclusive jurisdiction of the courts of New Zealand.

**Arbitration:** Any party may give written notice of an unresolved dispute to the other party at any time. If the parties do not resolve the dispute within 10 working days of such notice, then the parties will, on request from either party, within a further five working days appoint one arbitrator to adjudicate on the dispute. If the parties cannot or otherwise do not agree on the arbitrator within that five working day period, the arbitrator shall be appointed by the President of the Auckland branch of the New Zealand Law Society for the time being (or his or her nominee), at the request of either party. The appointment of an arbitrator will be a submission to arbitration for the purposes of the Arbitration Act 1996. The costs of the arbitration will be payable as determined by the arbitrator. The place of arbitration shall be Auckland and the language shall be English. Nothing in this

clause shall preclude either party from taking immediate steps to seek urgent equitable relief before a New Zealand Court.

## DEFINITIONS AND INTERPRETATION

For the purposes of these terms of sale:

**"Amount Owning"** means at any time, the unpaid price charged by Fresh Chicken Company for goods supplied, and any other sums which Fresh Chicken Company is entitled to charge under these terms of sale or which are otherwise owing by the Customer to Fresh Chicken Company (in whatever capacity).

**"Claim"** includes any claim, whether in contract, tort, equity or otherwise: For damages of any kind, including, but not limited to damages for breach of contract; or For loss of profits; or For any consequential, indirect or special loss, damage or injury of any kind for compensation, or any other remedy; arising directly or indirectly from: Any breach of Fresh Chicken Company obligations; or Any cancellation of these terms of sale; or Any negligence, misrepresentation, breach of warranty or other act or omission by Fresh Chicken Company or its employees, agents or contractors.

**"Customer"** means the person, partnership or organisation named as the Customer in the attached credit application & terms of trading agreement or other agreement with Fresh Chicken Company incorporating these terms of sale.

An **"Event of Default"** means an event where:

The Customer fails to comply with these terms of sale or any other agreement with Fresh Chicken Company; or

The Customer is subject to any actual or threatened dissolution, winding up, bankruptcy, liquidation, statutory management, insolvency or receivership or any event which generally precedes such an event; or

An event occurs or information becomes known to Fresh Chicken Company, which in Fresh Chicken Company opinion might materially affect the Customer's creditworthiness, the value of the goods the subject of the Security Interest or the Customer's ability or willingness to comply with its obligations under these terms of sale or any other agreement with Fresh Chicken Company; or

Any guarantor of the Customer's obligations under these terms of sale is in default under any agreement with Fresh Chicken Company (in any capacity).

**"goods"** means all tangible and intangible personal property supplied by Fresh Chicken Company to the Customer (or the Customer's nominated recipient) and includes all accessions, co-mingled goods or any product or mass which the goods subsequently become part of and (unless the context requires otherwise) includes all proceeds of such goods.

**"security interest"** means the security interest granted in favour of Fresh Chicken Company under these terms of sale or any other agreement between the Customer and Fresh Chicken Company.

**"Fresh Chicken Company"** means J and P Trade Limited t/a Fresh Chicken Company.

**Interpretation:** References to the PPSA include such legislation from time to time amended, re-enacted or substituted and any statutory instruments, regulations and orders issued under such legislation.

A reference to the Customer or Fresh Chicken Company under these terms of sale includes that person's successors and permitted substitutes and assigns.

Unless the context otherwise requires, words and phrases have the meanings given to them in, or by virtue of the PPSA.