

GOURMET FOODS LTD TERMS AND CONDITIONS

As of 16 October 2008

GENERAL

1.1 Definitions

1. "Customer" means you and all other persons who purchase the products under your Login, and, as the context requires, includes any person browsing Gourmet Foods Ltd Website who is not registered to use Gourmet Foods Ltd Website.
2. "Delivery Point" means an outside area of the Premises, such as the Customer's front door, or any particular outside area specified by the Customer on a particular Product order form. If the Premises are a multi-level building, the Delivery Point shall be located on the ground floor of such building. For customers who live rural, the delivery point may not be the residence stated.
3. "Delivery Fee" means the fee you as the customer must pay to have your order picked, packed and delivered and may also be referred to as "delivery fee".
4. "GST" means goods and services tax chargeable in accordance with the Goods and Services Tax Act 1985.
5. "Intellectual Property" means all intellectual property rights of whatsoever nature, including (without limitation) patents, designs, present and future trademark or copyright, and whether or not registered or registrable by any means, and the right to file an application for registration thereof.
6. "Login" means a Customer's personal email address and password used to access Gourmet Foods Ltd Website under that Members's registration.
8. "Premises" means the premises at the address specified by the Customer on their registration application, as amended from time to time.
9. "Products" means the products for sale in Gourmet Foods Ltd Website.
10. "Website Policies" means the Website policies of Gourmet Foods Ltd Website, set out in the section of the same name on Gourmet Foods Ltd Website.
11. "Gourmet Foods Ltd" means Pats Pantry and Ponsonby Pies brands which is the seller of these said brands.
12. "Gourmet Foods Ltd " means Gourmet Foods Ltd, its related companies, brands and directors, officers, employees or agents of Gourmet Foods Ltd or its related companies.
13. "Gourmet Foods Ltd Website" means this internet site owned by Gourmet Foods Ltd, being the medium by which Products are offered for sale online by Gourmet Foods Ltd to the Customer.

TERMS AND CONDITIONS

1.1 Use of Gourmet Foods Ltd Website subject to terms and conditions

Your access to, and use of, Gourmet Foods Ltd Website is subject to the following terms and conditions. By using Gourmet Foods Ltd Website you represent that you have read, understood and accepted these terms and conditions, and agree to be bound by them. Orders placed through Gourmet Foods Ltd Website constitute legal offers to purchase, and are capable of being accepted by Gourmet Foods Ltd without any further reference to the Customer

1.2 Terms and conditions to prevail

These terms and conditions shall prevail over any other document purporting to have a contractual effect, including the Website Policies.

1.3 Gourmet Foods Ltd discretion to accept registration

Gourmet Foods Ltd has the absolute discretion to refuse the registration application of a

potential Customer for any reason whatsoever.

1.4 Gourmet Foods Ltd discretion to accept orders

Gourmet Foods Ltd has the absolute discretion as to whether an order placed on its website is accepted and fulfilled. Gourmet Foods Ltd may cancel an order for any reason whatsoever.

1.5 Registration and access costs

No costs are payable to register to use Gourmet Foods Ltd Website, but Customers are responsible for any costs incurred in using Gourmet Foods Ltd Website, including any charges imposed by their internet service provider.

1.6 Suspension or termination

Gourmet Foods Ltd may, at its absolute discretion, suspend or terminate the ability of any Customer to purchase Products through Gourmet Foods Ltd Website for any reason whatsoever.

1.7 Customer liable for every order

Customers are liable for every order made under their Login.

1.8 Trading hours

Orders submitted will be dispatched as quickly as possible and be shipped to the customer within 48 hours. Notwithstanding any other term, no member of Gourmet Foods Ltd shall be liable for failure to deliver on a timely basis, whether the delay has been due to causes beyond the control of Gourmet Foods Ltd or otherwise.

1.9 Security of information

Gourmet Foods Ltd shall use its reasonable endeavours to prevent any unauthorised entry into Gourmet Foods Ltd Website. However, no member of Gourmet Foods Ltd will be liable for any direct or indirect damage or loss whatsoever if any third party gains unauthorised access.

Why is Gourmet Foods Ltd Website safe?

Safe technology systems - Gourmet Foods Ltd Website uses an internationally recognised encryption protocol to encrypt all personal data that you type into our site before it travels across the internet. Once we receive your data it is Webited on a secure server behind Gourmet Foods Ltd' firewalls, so that your personal details are not accessible from the internet by any third party.

Safe payment systems - Gourmet Foods Ltd uses "National Bank Buypoint" to securely authorise credit card payments before any charges are made. For further information regarding " National Bank Buypoint " and how it encrypts and processes transactions, please visit www.nationalbank.co.nz/business/banking/products/buypoint.aspx.

Alternate methods of payment - If you do not wish to use your credit card to pay for orders you place at Gourmet Foods Ltd Website, you have the option to set up payment by direct debit or use Internet Bank Transfer. The option of using your credit card will remain available to you.

1.10 Site content

While Gourmet Foods Ltd has endeavoured to ensure that the information provided on Gourmet Foods Ltd Website is free from error, no member of Gourmet Foods Ltd warrants its accuracy, adequacy or completeness, and no member of Gourmet Foods Ltd shall be responsible or liable for any error in, or omission from, the information provided on Gourmet Foods Ltd Website.

We reserve the right to make changes to the information provided on Gourmet Foods Ltd Website at any time and without notice.

1.11 Use of the site

The Customer agrees not to use Gourmet Foods Ltd Website for any purpose that is unlawful or prohibited by these terms and conditions. Customers may download the information on Gourmet Foods Ltd Website for their own personal use but otherwise neither Gourmet Foods Ltd Website, nor any material on it, may be altered, modified, reproduced, transmitted or distributed without Gourmet Foods Ltd' prior written consent. The Customer agrees that it will not interfere with any other party's use and enjoyment of Gourmet Foods Ltd Website, or damage the operation of Gourmet Foods Ltd Website, or Gourmet Foods Ltd' systems or those of other persons who use Gourmet Foods Ltd Website, whether by way of a virus, corrupted file, any other software or program, or otherwise.

2. PRICE

2.1 Pricing

The Customer shall pay Gourmet Foods Ltd for the Products ordered at the price displayed at the time the order is submitted. No adjustments are made if the price of any Product ordered increases or decreases between the time the order is submitted and the time when that Product is delivered.

Any prices and specials available on Gourmet Foods Ltd Website will only apply to Products purchased through Gourmet Foods Ltd Website if those prices or specials are specifically displayed on Gourmet Foods Ltd Website, and vice versa.

Gourmet Foods Ltd may vary the prices of the Products at any time without notice.

2.2 Currency

The prices of Products are displayed in New Zealand currency.

2.3 Prices inclusive of GST

The prices of the Products are inclusive of GST.

2.4 Delivery fee

In addition to the price of Products ordered, the Customer shall pay Gourmet Foods Ltd a Delivery fee. This fee covers the costs associated with picking, packing and the delivery of your order. The fee shall be identified and included in the total price at the point of checkout. Gourmet Foods Ltd may change this fee at any time, and may reduce this fee if the Customer collects the Products ordered and this has been previously agreed to by Gourmet Foods Ltd.

For orders in excess of reasonable quantities (whether in respect of any one Product or the total size of the order), Gourmet Foods Ltd reserves the right to adjust the Delivery fee to reflect the actual cost of delivery. Whether any order exceeds a reasonable quantity or not will be determined by Gourmet Foods Ltd in its absolute discretion. If Gourmet Foods Ltd chooses to adjust the Delivery fee, the Customer will be contacted prior to the order being delivered to confirm acceptance of the revised fee. Deliveries of such orders will not be made unless and until this confirmation is obtained. No member of Gourmet Foods Ltd shall be liable to the Customer for any delivery delays resulting from the need to obtain approval of the revised fee prior to delivery.

2.5 Adjustments to price

The Customer will be notified of any adjustments made to the total price of their order on the invoice which will accompany the purchased Products on delivery.

2.6 Variation of order and price

If the Customer requests a variation to the order under clause 6.1 which Gourmet Foods Ltd accepts then the price payable for the order will be adjusted accordingly to reflect the variation and recorded on the invoice.

2.7 Gourmet Foods Ltd may set minimum order amounts

Gourmet Foods Ltd may set minimum order amounts for Customers.

3. PRODUCT AVAILABILITY, RANGE, SPECIALS AND QUALITY

3.1 Product availability

Every effort will be made to fulfil orders placed with Gourmet Foods Ltd Website, but no member of Gourmet Foods Ltd shall be liable to any person if Gourmet Foods Ltd is unable to or declines to supply a Product for any reason whatsoever.

Gourmet Foods Ltd reserves the right to limit quantities able to be ordered by, or delivered to, Customers. If a Customer's order is reduced in accordance with this clause, the price payable by the Customer for that order will be adjusted accordingly.

Gourmet Foods Ltd may delay dispatch of orders that exceed reasonable quantities due to stock availability.

3.2 Product range

Gourmet Foods Ltd reserves the right to limit the range of products available to certain areas.

3.3 Specials

Specials are subject to availability while stocks last. Gourmet Foods Ltd Website does not allow back orders for specials that are out of stock.

3.4 Product quality

If Gourmet Foods Ltd agrees that a Product was delivered to a Customer in a damaged or spoiled condition, Gourmet Foods Ltd shall, at the request of the Customer, refund the value of the relevant Product to the Customer (as at the date on which the Product was originally ordered).

3.5 Product labelling information

All products are sold in compliance with the labelling provisions of the Australia New Zealand Food Code. If the product delivered contains labelling information that does not meet with the customer's requirements (e.g. ingredients, allergens, nutritional information etc.) the customer may contact Gourmet Foods Ltd for a refund, or replacement product to an equivalent value, upon presentation of the accompanying Website invoice.

4. PAYMENT

4.1 Method of Payment

Customers must pay Gourmet Foods Ltd for the Products purchased by direct debit, Direct Credit, Gift Voucher or by credit card. Gourmet Foods Ltd Website does not accept EFTPOS, Cash, Cheque or any other form of payment.

4.2 Payment by direct debit

If a Customer chooses to pay by direct debit, he or she must complete and return a direct debit instruction form, available by contacting Customer Service (0800-677-900).

Following receipt of a valid direct debit instruction form, Gourmet Foods Ltd will process payment for all future orders placed by the Customer in accordance with that instruction form, unless otherwise instructed by the Customer.

The Customer shall notify Customer Services (0800-677-900) immediately if there is any

change to the bank account number which the Customer wishes to use to pay by direct debit.

4.3 Payment by Direct Credit

Following receipt of monies from Direct Credit transfers, Gourmet Foods Ltd will process the order placed by the Customer for dispatch.

4.4 Payment by credit card

If a Customer's credit card is declined by its financial institution, delivery of the relevant order will not be made, and Gourmet Foods Ltd will contact the Customer to make alternative payment arrangements.

Gourmet Foods Ltd reserves the right to refuse to accept payment from any particular Customer by credit card for any reason whatsoever.

4.5 Adjustments

If a Customer is invoiced an incorrect amount for any Product ordered, Gourmet Foods Ltd shall be paid by, or refund to, the Customer the necessary adjustment amount to reflect the correct amount which should have been invoiced.

4.6 Debt collection

The Customer is liable for all costs associated with debt collection where the Customer defaults in payment for any order.

4.7 Change to payment policy

Gourmet Foods Ltd may change at any time the way in which a Customer pays for Products, and any change will be notified to the Customer prior to the change coming into effect.

4.8 Vouchers

Gift vouchers may be purchased through Gourmet Foods Ltd Website.

5. DELIVERY

5.1 Delivery areas

If a delivery suburb is listed in the registration area, this does not imply that Gourmet Foods Ltd Website will deliver to all addresses within that suburb.

5.2 Right to withhold delivery

Gourmet Foods Ltd reserves the right to withhold the delivery of any Products to a Customer for any reason whatsoever.

5.3 Delivery and liability

Deliveries will be made to the Delivery Point. If the courier brings the Products inside the Premises, beyond the Delivery Point, at the request of the Customer, or other person accepting delivery of the Products on behalf of the Customer, whether on any particular occasion or pursuant to a standing instruction or request, no member of Gourmet Foods Ltd shall be liable for any direct or indirect damage or loss (including in negligence) suffered by the Customer or any third party in doing so. In addition, the Customer indemnifies each member of Gourmet Foods Ltd for any direct or indirect damage or loss (including in negligence) that that member incurs in connection with any third party claim arising out of or in connection with any deliveries brought beyond the Delivery Point.

Gourmet Foods Ltd shall be entitled to assume that any person accepting delivery of the Products is authorised to do so on behalf of the Customer.

5.4 Accessibility and safety

Customers shall ensure that their Delivery Point is easily accessible to Gourmet Foods Ltd's couriers, and that it is safe for those couriers to enter the Customer's premises in order to complete the delivery. If in the courier's opinion the Delivery Point is not easily accessible, or it is unsafe to deliver the Products, the delivery will not be made, and the Customer will be contacted to make alternative arrangements. Gourmet Foods Ltd reserves the right to charge Customers an additional Delivery fee in respect of any deliveries repeated in accordance with this clause. If alternative arrangements acceptable to Gourmet Foods Ltd are not reached, the Customer will be deemed to have cancelled the order, and will incur a \$20 cancellation fee.

5.5 Change of address

The Customer shall notify Customer Services (0800-677-900) immediately of a change to its delivery address.

5.6 Delays to delivery

Notwithstanding any other term, no member of Gourmet Foods Ltd shall be liable for failure to deliver on a timely basis, whether the delay has been due to causes beyond the control of Gourmet Foods Ltd or otherwise.

If Gourmet Foods Ltd considers that the delivery of a Customer's order is likely to be substantially delayed, Gourmet Foods Ltd may, but shall not be obliged to, contact the Customer to arrange an alternative delivery timeframe. If that timeframe is unacceptable to the Customer, the Customer may cancel the order, without incurring any fee for doing so.

5.7 Delivery deemed to have taken place

Subject to clause 5.3, if no person is present at the Delivery Point at the time of delivery, or the Customer or any other person fails or refuses to take delivery of the Products, the Products will be left at the Delivery Point and be deemed to have been delivered at that point in time.

5.8 Incorrectly or undelivered Products

If any product delivered does not correspond with a product ordered, the customer may:

(a) reject the incorrectly-delivered Product, in which case Gourmet Foods Ltd will, at the request of the Customer, either replace that Product with the Product that was originally ordered, or refund the value of the Product that was originally ordered (as at the date on which the Product was ordered).

(b) If a Customer has been charged for a Product that has not been delivered, if the Product is in stock, Gourmet Foods Ltd will, at the request of the Customer, deliver that Product at no extra charge to the Customer.

6. VARIATION/CANCELLATION OF ORDER

6.1 Variation/cancellation of order

The Customer may vary or cancel the order up to the point in time that Gourmet Foods Ltd has commenced packing the order by contacting Customer Services (0800-677-900). If the Customer wishes to cancel the order after the order has been packed and prior to dispatch, the Customer will incur a \$20 cancellation restocking fee. If the order has been dispatched, the order can not be cancelled.

7. PROPERTY/RISK

7.1 Products

Property and risk in the Products shall pass to the Customer on delivery to the Delivery Point.

7.2 Login

The Customer shall keep their Login details safe and confidential at all times.

8. WARRANTIES

All representations, terms, warranties, guarantees, or conditions whether implied by statute, common law or custom of the trade or otherwise, including, but not limited to, implied warranties, guarantees or conditions of merchantability and/or fitness for a particular purpose, tolerance to any conditions or similarity to sample are excluded to the fullest extent permitted by law. The Customer acknowledges that the Customer does not rely on any representation or statement made by or on

behalf of any member of Gourmet Foods Ltd other than the express provisions of these terms and conditions. The Customer shall ensure that the Products are not used for any purpose for which they are not suitable and shall be responsible for using all necessary skill and care in handling and using the Products. The Customer expressly acknowledges and agrees that no member of Gourmet Foods Ltd assumes any obligation or liability for any advice given, and that all such Products are accepted by the Customer entirely at the Customer's risk.

9. LIABILITY AND INDEMNITY

9.1 Product liability

The liability of the Gourmet Foods Ltd Group whether in contract, tort or otherwise for any loss, damage or injury arising directly or indirectly from any defect in, or non-compliance of, a Product or any other breach of Gourmet Foods Ltd' obligations hereunder shall not in any event exceed an amount equivalent to the price of the relevant Product.

9.2 No liability for indirect loss

No member of the Gourmet Foods Ltd Group shall be liable for any consequential, indirect or special damage or loss of any kind whatsoever arising from or in relation to the Customer's use of, or inability to use, Gourmet Foods Ltd Website, or the delivery or failure to deliver any Products.

10. INTELLECTUAL PROPERTY

All right, title and interest in all Intellectual Property in all concepts, systems, written, graphic and other material relating to Gourmet Foods Ltd Website and its contents is owned by, and shall at all times remain the exclusive property of, Gourmet Foods Ltd, its licensors and the providers of any other products and services accessible through Gourmet Foods Ltd Website, and is protected by New Zealand and international law. Nothing in these terms and conditions shall constitute any licence of intellectual property rights to the Customer.

11. FORCE MAJEURE

If the performance by Gourmet Foods Ltd of its obligations under these terms and conditions is prevented by reason of "force majeure" (which shall include prevention

occasioned by fire, casualty, accident, act of God, natural disaster, any law, order, proclamation, regulation, demand or requirement of any government or government agency, strikes, labour disputes, shortage of labour or lack of skilled labour, shortage or unavailability of Products or raw materials, delay in transit, electricity or communications failures, or other causes whatsoever (whether similar to the foregoing or not) beyond the reasonable control of Gourmet Foods Ltd) Gourmet Foods Ltd shall be excused from such performance to the extent of such prevention.

12. PRIVACY ACT

12.1 Collection of information

Gourmet Foods Ltd Website contains applications which collect personal information about the Customer. Gourmet Foods Ltd will only use this information to the extent authorised by the Customer, and will only disclose it in the manner set out below.

In using Gourmet Foods Ltd Website the Customer authorises Gourmet Foods Ltd to collect, retain and use their personal information for the purposes of:

- (a) processing the Customer's registration application;
- (b) undertaking any dealings or transactions with the Customer;
- (c) enforcing any legal or other rights Gourmet Foods Ltd may have against the Customer in any manner that Gourmet Foods Ltd sees fit;
- (d) sending the Customer any advertising or promotional material; and
- (e) enhancing Gourmet Foods Ltd Website so that Gourmet Foods Ltd may offer you a better, more personalised and tailored service.

12.2 Gourmet Foods Ltd' right to refuse application

If sufficient personal information is not supplied, or is not satisfactory to Gourmet Foods Ltd, then Gourmet Foods Ltd reserves the right to refuse to accept the person's application to register to use Gourmet Foods Ltd Website.

12.3 Information retained by Gourmet Foods Ltd

Any personal information supplied by the Customer may be retained by Gourmet Foods Ltd until such time as the Customer requests that the information be removed.

12.4 Storage of personal information

Gourmet Foods Ltd has taken many steps, from both technical and systems perspectives, to ensure that Customers' information is well protected. However it is important that Customers remember to never share their Login with any other person.

While Gourmet Foods Ltd endeavours to keep the Customer's personal information collected on Gourmet Foods Ltd Website secure and confidential, no member of Gourmet Foods Ltd shall be responsible for any breach of security caused by third parties, nor represents that Gourmet Foods Ltd Website is completely secure.

12.5 Customer's rights of access

The Customer has the right under the Privacy Act 1993 to access and request to update and/or correct their personal information held by Gourmet Foods Ltd. The Customer agrees to pay Gourmet Foods Ltd the reasonable charges requested by Gourmet Foods Ltd in relation to time and attendances involved in complying with the Customer's request in this regard.

13. CONSUMER GUARANTEES ACT

The Customer acknowledges that where the Products are ordered for business purposes (as the term "business" is defined in the Consumer Guarantees Act 1993 ("CGA")), the provisions of the CGA shall not apply to the sale of the Products by Gourmet Foods Ltd.

The Customer agrees that nothing in these terms and conditions is intended to have the effect of contracting out of the provisions of the CGA except to the extent permitted by the CGA, and all provisions of these terms and conditions shall be read as modified to the extent necessary to give effect to that intention.

14. LINKS TO AND FROM OTHER WEBSITES

14.1 Links to third party websites

Any links to third party websites are provided for convenience only, and the inclusion of any link does not imply any endorsement or verification by the Gourmet Foods Ltd Group. The Gourmet Foods Ltd Group does not monitor the content of any other website and is not liable or responsible in relation to any content on them. For the purposes of this clause a "third party website" is any website other than Gourmet Foods Ltd Website.

14.2 Hyperlinks

The Customer agrees that it will not create a hyperlink to Gourmet Foods Ltd Website without Gourmet Foods Ltd' express written permission. If a Customer does create a hyperlink to Gourmet Foods Ltd Website, that Customer is responsible for all losses any member of the Gourmet Foods Ltd Group may suffer as a result of that link, whether direct or indirect. Linking to Gourmet Foods Ltd Website is at the Customer's own risk.

15. VARIATION OF TERMS AND CONDITIONS

From time to time Gourmet Foods Ltd may vary these terms and conditions without notice. Please check these terms and conditions periodically for changes. Your continued use of Gourmet Foods Ltd Website after the terms and conditions have been changed indicates your acceptance of those changes.

16. GOVERNING LAW

New Zealand law governs the use of Gourmet Foods Ltd Website and these terms and conditions.