

# Festivé Terms and Conditions of Sale

## 1. DEFINITIONS

“Agreement” means any agreement for the provision of goods and/or services by Festivé to the Customer;

“Customer” means the person, jointly and severally if there is more than one, acquiring goods or services from Festivé;

“goods” means goods supplied by Festivé to the Customer;

“GST” means the Goods and Services tax;

“Intellectual Property” means all copyright, patents, trademarks, designs, specifications, confidential information, manufacturing processes and all modifications, improvements and derivations (whether registrable or not) owned or licensed by Festivé in respect of the goods and services;

“Terms” means these Terms and Conditions of Sale;

## 2. BASIS OF AGREEMENT

2.1 Any quotation provided by Festivé to the Customer for the proposed supply of goods or services is valid for **60 Days**;

## 3. PRICING

3.1 Prices quoted, whether in the Price List, by written quotation or verbally, for the supply of goods and services, exclude GST and freight, unless itemised in quotation;

3.2 If the Customer requests any variation to the Agreement, Festivé may increase the price to account for the variation;

3.3 Where there is any change in the costs incurred by Festivé in relation to the goods or services, Festivé may vary its price to take account of any such change, by notifying the Customer.

## 4. PAYMENT

4.1 Unless otherwise agreed in writing:

(a) Payment for the goods and/or services must be made strictly within 20 days of the end of month in which Festivé’s invoice is raised;

(b) Festivé reserves the right to require payment in full prior to the delivery of the goods;

(c) Payment terms may be revoked or amended at the sole discretion of Festivé immediately upon giving written notice to the Customer

## **5. PAYMENT DEFAULT**

If the Customer defaults in payment by the due date of any amount payable to Festivé, then all money which would become payable by the Customer to Festivé at a later date on any account, becomes immediately due and payable without the requirement of any notice to the Customer, and Festivé may, without prejudice to any of its other accrued or contingent rights:

- (a) charge the Customer interest on any sum due at the prevailing bank interest rate plus 2% for the period from the due date until the date of payment in full;
- (b) charge the Customer for, and the Customer must indemnify Festivé from, all costs and expenses (including without limitation all legal costs, collection agency costs and expenses) incurred by it resulting from the default or in taking action to enforce compliance with the Terms or to recover any goods;
- (c) cease or suspend supply of any further goods or services to the Customer;

## **6. PASSING OF PROPERTY**

6.1 Until full payment is received by Festivé for all goods and services supplied by it to the Customer, as well as all other amounts owing to Festivé

- (a) title and property in all goods remain vested in Festivé and do not pass to the Customer;
- (b) the Customer must hold the goods as fiduciary bailee and agent for Festivé;
- (c) the Customer must keep the goods separate from its goods and maintain the labelling of Festivé; by the Customer:
- (d) the Customer is required to hold the proceeds of any sale of the goods in trust for Festivé in a separate account with a bank to whom the Customer has not given security, however failure to do so will not affect the Customer's obligation as trustee;
- (e) in addition to its rights under the PPSA, Festivé may without notice, enter any premises where it suspects the goods may be and remove them, notwithstanding that they may have been attached to other goods not the property of Festivé, and for this purpose the Customer irrevocably licences Festivé to enter such premises and also indemnifies Festivé from and against all costs, claims, demands or actions by any party arising from such action.

## **7. RISK AND INSURANCE**

7.1 The risk in the goods and all insurance responsibility for theft, damage or otherwise will pass to the Customer immediately on the goods being delivered to the Customer from Festivé's premises.

7.2 The goods are sold to the Customer on the basis that the Customer has obtained all necessary licenses or permits under all relevant laws and regulations in relation to the goods.

## **8. PERFORMANCE OF AGREEMENT**

8.1 Any period or date for delivery of goods or provision of services stated by Festivé is intended as an estimate only and is not a contractual commitment. Festivé will use its reasonable endeavours to meet any estimated dates for delivery of the goods or completion of the services but will in no circumstances whatsoever be liable for any loss or damage;

## **9. DELIVERY**

9.1 Festivé will nominate and coordinate a carrier on the Customer's behalf unless otherwise instructed by the Customer;

9.2 The Customer will inform Festivé of all necessary details so that Festivé can affect the delivery of the goods;

9.3 The Customer may nominate its own carrier, in which case it must coordinate the delivery with Festivé;

9.4 The Customer must provide reasonable and proper access to the location specified for delivery;

9.5 Any extra carrier charges due to difficult access, wrong or misleading instructions provided by the Customer, frustrated delivery, or the requirement for extra personnel, will be charged to Customer at cost plus a 10% service fee plus GST charged by Festivé;

9.6 If Festivé does not receive sufficient forwarding instructions to enable it to despatch the goods within 14 days of notification that the goods are ready, the Customer shall be deemed to have taken delivery of the goods from such date. The Customer shall be liable for storage charges payable monthly on demand.

9.7 The Customer must advise Festivé in writing within 3 days of receipt:

- (a) of the non-arrival of any or all of the goods;
- (b) if there is damage to the goods;
- (c) that the wrong goods have been received;
- (d) that the quantity of the goods is incorrect; or
- (e) the goods do not meet specifications.

## **10. RETURNS**

10.1 Goods may only be returned to Festivé

- (a) if the request to return is made in writing to Festivé stating the reason for the requested return;
- (b) and, the return has prior written authority of Festivé;
- (c) and, if the Customer pays for all transport and handling costs to Festivé's warehouse;
- (d) and, if the goods are in an undamaged and unsoiled condition and in the original packaging, unless with the prior written consent of Festivé;
- (e) and, on the acceptance of the application of a restocking and handling charge, the amount of such charge to be determined solely by Festivé; except where the wrong goods were delivered by Festivé, in which case there will be no restocking or handling charge.

10 Notwithstanding the above Festive reserves the right to refuse return of custom and non-standard goods.

## **11. CANCELLATION**

11.1 If Festivé is unable to deliver or provide goods or services, then Festivé may cancel the Customer's order (even if it has been accepted) by written notice to the Customer;

11.2 Festivé, in its absolute discretion may review, alter or terminate the Customer's credit limit or payment terms without notice.

## **12. SPECIFICATIONS**

12.1 All specifications, drawings, illustrations descriptive matter and particulars contained in Festivé catalogues, website and marketing documents are indicative only, do not form part of this Agreement, and are not representations or warranties of any kind. Any discrepancy will not entitle the Customer to rescind this Agreement or seek compensation or damages.

12.2 Festivé reserves the right to make minor modifications to its goods without notice to the Customer and delivery such modified goods against any existing order, unless such right is waived by Festivé in writing to the Customer.

12.3 The Customer must not reverse engineer any goods provided to it by Festivé.

12.4 All drawings, descriptive mater and particulars supplied, remain Festivé property and are to be returned to Festivé on demand. The Customer must not publish or communicate any of them to any person or publish or permit them to be copied or communicate them to any other person without prior consent in writing from Festivé.

## **13. INTELLECTUAL PROPERTY**

13.1 The Customer acknowledges that it has no proprietary right or interest in the Intellectual Property.

13.2 The Customer must not register or record or attempt to register or record anywhere in the world the Intellectual Property or any part or any patents, inventions, trade-marks or designs derived from or similar to the Intellectual Property or aid or abet anyone else in doing so.

13.3 The Customer must not at any time create, sell, manufacture or process any goods or services using or taking advantage of the Intellectual Property.

13.4 Any Intellectual Property provided to the Customer by Festivé in connection with the goods and services remains the exclusive property of Festivé and must be returned to Festivé on demand and must not be copied or communicated to any third party without the express written consent of Festivé.

## **14. LIABILITY/WARRANTY**

14.1 Festivé is not liable for any indirect or consequential losses or expenses suffered by the Customer or any third party, howsoever caused, including but not limited to loss of perishables, loss of turnover, profits, business or goodwill or any liability to any other party except to the extent of any liability imposed by a statutory body.

14.2 Festivé in its reasonable discretion if it deems necessary, will repair any goods to remedy any fault covered by Warranty, provided that:

(a) the goods may have acceptable variance; and

(b) any replacement or repaired goods will only be warranted for the unexpired portion of the Warranty period attached to the original goods.

14.3 Festive's Warranty can be found at <https://festive.co.nz/wp-content/uploads/2015/10/Festive-Warranty.pdf>