

Homestyle Bakeries Pty Ltd atf the Pugh Pascoe Unit Trust T/A Homestyle Bakeries – Terms & Conditions of Trade

<p>1. Definitions</p> <p>1.1 "Homestyle Bakeries" means Homestyle Bakeries Pty Ltd atf the Pugh Pascoe Unit Trust T/A Homestyle Bakeries and its successors and assigns.</p> <p>1.2 "Customer" means the Customer or any person acting on behalf of and with the authority of the Customer.</p> <p>1.3 "Guarantor" means that person (or persons), or entity who has agreed to be liable for the debts of the Customer on a principal debtor basis.</p> <p>1.4 "Goods" means goods supplied by Homestyle Bakeries to the Customer (and where the context so permits shall include any supply of Services as hereinafter defined).</p> <p>1.5 "Services" means all services supplied by Homestyle Bakeries to the Customer and include any advice or recommendations (and where the context so permits shall include any supply of Goods as defined supra).</p> <p>1.6 "Price" means the cost of the Goods supplied to the Customer from time to time as determined by clause 4 of these terms and conditions and as .</p> <p>2. Acceptance and Application of Terms and Conditions</p> <p>2.1 The receipt by Homestyle Bakeries from the Customer of the first order for the supply of Goods shall constitute acceptance by the Customer of these terms and conditions.</p> <p>2.2 Where more than one Customer have together placed an order for Goods, the Customers are jointly and severally bound by these terms and conditions.</p> <p>2.3 Upon acceptance of these terms and conditions by the Customer, the terms and conditions apply to the supply of all Goods by Homestyle Bakeries to the Customer and displace any other terms and conditions, including the Customer's own trading terms and conditions.</p> <p>2.4 Nothing in these terms and conditions obliges the Customer to place any order with Homestyle Bakeries for the supply of Goods or for Homestyle Bakeries to accept any order for Goods placed by the Customer.</p> <p>2.5 None of Homestyle Bakeries' agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by a director of Homestyle Bakeries in writing nor is Homestyle Bakeries bound by any such unauthorised statements.</p> <p>2.6 The Customer must give Homestyle Bakeries not less than fourteen (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, or business practice).</p> <p>3. Goods</p> <p>3.1 The Goods will be as described on the invoices, quotation, work authorisation or any other work commencement forms as provided by Homestyle Bakeries to the Customer.</p> <p>4. Price And Payment</p> <p>4.1 At Homestyle Bakeries' sole discretion, the Price shall be either:</p> <p>(a) as indicated on the invoice for the Goods supplied by Homestyle Bakeries to the Customer ; or</p> <p>(b) Homestyle Bakeries current Price for the Goods at the date of delivery of the Goods, according to Homestyle Bakeries current Price list; or</p> <p>(c) Homestyle Bakeries quoted Price (subject to clause 4.2) which shall be binding upon Homestyle Bakeries provided that the Customer shall accept in writing Homestyle Bakeries quotation within thirty (30) days.</p> <p>4.2 Any variation from the plan of scheduled supply will be charged on the basis of Homestyle Bakeries' quotation and will be shown as variations on the invoice. Payment for all variations must be made in full at the time of completion.</p> <p>4.3 Time for payment for the Goods shall be of the essence and will be stated on the invoice, quotation or any other order forms. If no time is stated, then payment shall be on delivery of the Goods.</p> <p>4.4 If payment is required on or prior to delivery of the Goods, Homestyle Bakeries may withhold delivery of the Goods until the Customer has paid for them in full.</p> <p>4.5 At Homestyle Bakeries' sole discretion for approved Customers, payment will be due either seven (7) or thirty (30) days following the date of the invoice or as otherwise agreed in writing between Homestyle Bakeries and that Customer.</p> <p>4.6 Payments by direct debit will be subject to the terms and conditions of the direct debit request and direct debit request service agreement.</p> <p>4.7 The Prices are exclusive of any GST and other taxes and duties which may be applicable, except to the extent that such taxes are expressly included in any quotation given by Homestyle Bakeries.</p> <p>4.8 Homestyle Bakeries may change all or any of the Prices on the current Price List at any time by giving the Customer at least 30 days notice of the change in Price.</p> <p>5. Delivery Of Goods / Services</p> <p>5.1 Unless the Customer directs otherwise, delivery of the Goods shall be made to the Customer's address. The Customer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery or failing that, delivery of the Goods shall be made to the Customer at Homestyle Bakeries address.</p> <p>5.2 Delivery of the Goods to a carrier, whether nominated by the Customer or failing such nomination, to a carrier nominated at the discretion of Homestyle Bakeries for the purpose of delivery to the Customer, is deemed to be a delivery of the Goods to the Customer.</p> <p>5.3 The costs of carriage and any insurance which the Customer reasonably directs Homestyle Bakeries to incur, shall be reimbursed by the Customer (without any set-off or other withholding whatever) and shall be due on the date for payment of the Price. If the is nominated by the Customer, then that carrier is be deemed to be the Customer's agent.</p> <p>5.4 Delivery of the Goods to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of these terms and conditions.</p> <p>5.5 The Customer shall take delivery of the Goods tendered notwithstanding that the quantity so delivered shall be either greater or less than the quantity purchased provided that:</p> <p>(a) such discrepancy in quantity shall not exceed 5%, and</p> <p>(b) the Price shall be adjusted pro rata to the discrepancy.</p> <p>5.6 The failure of Homestyle Bakeries to deliver any Goods shall not entitle the Customer to treat these terms and conditions as repudiated.</p> <p>5.7 Homestyle Bakeries shall not be liable for any loss or damage whatsoever suffered by the Customer due to failure by Homestyle Bakeries to deliver the Goods (or any of them) promptly or at all.</p> <p>6. Risk</p> <p>6.1 Regardless of whether Homestyle Bakeries retains title in the Goods , all risk for the Goods passes to the Customer on delivery.</p> <p>6.2 If any of the Goods are damaged or destroyed prior to title in them passing to the Customer, Homestyle Bakeries is entitled, without prejudice to any of its other rights or remedies under these terms and conditions of trade (including the right to receive payment of the Price for the Goods), to receive all insurance proceeds payable for the Goods. This applies whether or not the Price has become payable under these terms and conditions. The production of these terms and conditions by Homestyle Bakeries is sufficient evidence of Homestyle Bakeries' rights to receive the insurance proceeds without the need for any person dealing with Homestyle Bakeries to make further enquiries.</p> <p>7. Customer's Disclaimer</p> <p>7.1 The Customer hereby disclaims any right to rescind, or cancel these terms and conditions or to sue for damages or to claim restitution arising out of any misrepresentation made to the Customer by any servant or agent of Homestyle Bakeries and the Customer acknowledges that it buys the Goods relying solely upon its own skill and judgement.</p> <p>8. Defects / Returns</p> <p>8.1 The Customer shall inspect the Goods on delivery and must within one (1) day of delivery notify Homestyle Bakeries of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford Homestyle Bakeries an opportunity to inspect the Goods within a reasonable time following delivery if the Customer believes the Goods are defective in any way. If the Customer shall fail to comply with these provisions, the Goods shall be conclusively presumed to be delivered in accordance with these terms and conditions and free from any defect or damage.</p> <p>8.2 For defective Goods which Homestyle Bakeries has agreed in writing that the Customer is entitled to reject, Homestyle Bakeries' liability is limited to either (at Homestyle Bakeries discretion) replacing the Goods or refunding the Price for those Goods.</p> <p>9. Unpaid Homestyle Bakeries Rights To Dispose Of Goods</p> <p>9.1 In the event that:</p> <p>(a) Homestyle Bakeries retains or regains possession or control of the Goods; and</p> <p>(b) payment of the Price for those Goods is due to Homestyle Bakeries; and</p> <p>(c) Homestyle Bakeries has made a demand in writing of the Customer for payment of the Price in terms of these terms and conditions; and</p> <p>(d) Homestyle Bakeries has not received the Price of the Goods,</p> <p>then, whether title in the Goods has passed to the Customer or has remained with Homestyle Bakeries, Homestyle Bakeries may dispose of the Goods and may claim from the Customer the loss to Homestyle Bakeries on such disposal.</p> <p>10. The Competition and Consumer Act 2010 (Cth)</p> <p>10.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Competition and Consumer Act 2010 (Cth), except to the extent permitted by that Act where applicable.</p> <p>11. Cancellation</p> <p>11.1 Homestyle Bakeries may cancel these terms and conditions and/or cancel the delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. Homestyle Bakeries shall not be liable for any loss or damage whatever arising from such cancellation.</p> <p>12. Default & Consequences Of Default</p> <p>12.1 Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 10% compounding per calendar month and shall accrue at such a rate after as well as before any judgement.</p> <p>12.2 If the Customer defaults in payment of any invoice when due, the Customer indemnifies Homestyle Bakeries from and against all Homestyle Bakeries costs and disbursements including on an indemnity basis and all of</p>	<p>Homestyle Bakeries agent's costs of collection, including any costs of engaging a debt collection agency to recover any amounts owing to Homestyle Bakeries.</p> <p>12.3 Without prejudice to any other remedies Homestyle Bakeries may have if at any time the Customer is in breach of any obligation (including those relating to payment) of these terms and conditions, Homestyle Bakeries may suspend or terminate the supply of Goods to the Customer and any of its other obligations under the terms and conditions. Homestyle Bakeries will not be liable to the Customer for any loss or damage the Customer suffers because Homestyle Bakeries exercises its rights under this clause.</p> <p>12.4 If any account remains unpaid at the end of the second month after supply of the Goods or Services an immediate amount of the greater of \$20.00 or 10.00% of the amount overdue shall be levied for administration fees which sum shall become immediately due and payable by the Customer.</p> <p>12.5 In the event that:</p> <p>(a) any money payable to Homestyle Bakeries becomes overdue, or in Homestyle Bakeries' opinion the Customer will be unable to meet its payments as and when they fall due; or</p> <p>(b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes to or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or</p> <p>(c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer,</p> <p>then without prejudice to Homestyle Bakeries other remedies at law and the right of Homestyle Bakeries in clause 9.1:</p> <p>(i) Homestyle Bakeries shall be entitled to cancel all or any part of any order of the Customer which remains unperformed in addition to and without prejudice to any other remedies; and</p> <p>(ii) all amounts owing to Homestyle Bakeries shall, whether or not due for payment, immediately become payable in addition to the interest payable under clause 12.1 hereof.</p> <p>13. Title</p> <p>13.1 Title in all Goods shall not pass until:</p> <p>(a) The Customer has paid all amounts owing for those particular Goods, and</p> <p>(b) The Customer has met all other obligations due by the Customer to Homestyle Bakeries in respect of all contracts between Homestyle Bakeries and the Customer, and that where practicable the Goods shall be kept separate until Homestyle Bakeries shall have received payment and all other obligations of the Customer are met.</p> <p>13.2 Receipt by Homestyle Bakeries 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 Homestyle Bakeries ownership of rights in respect of the Goods shall continue.</p> <p>13.3 It is further agreed that:</p> <p>(a) Until such time as ownership of the Goods shall pass from Homestyle Bakeries to the Customer Homestyle Bakeries may give notice in writing to the Customer to return the Goods or any of them to Homestyle Bakeries. Upon such notice the rights of the Customer to obtain ownership or any other interest in the Goods shall cease.</p> <p>(b) Homestyle Bakeries has the right to stop the Goods in transit whether or not delivery has been made; and</p> <p>(c) If the Customer fails to return the Goods to Homestyle Bakeries, then Homestyle Bakeries or its agent may enter upon and into land and premises owned, occupied or used by the Customer, or any premises as the invitee of the Customer, where the Goods are situated and take possession of the Goods.</p> <p>(d) The Customer is only a bailee of the Goods and until such time as Homestyle Bakeries has received payment in full for the Goods then the Customer shall hold any proceeds from the sale or disposal of the Goods on trust for Homestyle Bakeries.</p> <p>(e) The Customer shall not deal with the money of Homestyle Bakeries in any way that may be adverse to Homestyle Bakeries.</p> <p>(f) The Customer shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of Homestyle Bakeries.</p> <p>(g) Homestyle Bakeries can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Customer.</p> <p>(h) Until such time that ownership in the Goods passes to the Customer, if the Goods are so converted, the parties agree that Homestyle Bakeries will be the owner of the end products.</p> <p>14. Security And Charge</p> <p>14.1 Despite anything to the contrary contained herein or any other rights which Homestyle Bakeries may have howsoever:</p> <p>(a) Where the Customer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Customer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to Homestyle Bakeries to secure all amounts and other monetary obligations payable under the terms and conditions. The Customer and/or the Guarantor acknowledge and agree that Homestyle Bakeries shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met.</p> <p>(b) Should Homestyle Bakeries elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Customer and/or Guarantor indemnifies Homestyle Bakeries from and against all Homestyle Bakeries costs and disbursements including legal costs on a solicitor and own client basis.</p> <p>(c) To give effect to the provisions of clauses 14.1 (a) and (b) inclusive hereof the Customer and/or the Guarantor (if any) do hereby irrevocably nominate constitute and appoint Homestyle Bakeries as the Customer's and/or Guarantor's true and lawful attorney to execute mortgages and charges (whether registrable or not) including such other terms and conditions as Homestyle Bakeries shall think fit in its absolute discretion against the joint and/or several interest of the Customer and/or the Guarantor in any land, realty or asset in favour of Homestyle Bakeries and in the Customer's and/or Guarantor's name as may be necessary to secure the said Customer's and/or Guarantor's obligations and indebtedness to Homestyle Bakeries and further to do and perform all necessary and other acts including instituting any necessary legal proceedings, and further to execute all or any documents in Homestyle Bakeries absolute discretion which may be necessary or advantageous to give effect to the provisions of this clause.</p> <p>15. Privacy Act 1988</p> <p>15.1 The Customer and/or the Guarantor/s agree for Homestyle Bakeries to obtain from a credit-reporting agency a credit report containing personal credit information about the Customer and Guarantor/s in relation to credit provided by Homestyle Bakeries.</p> <p>15.2 The Customer and/or the Guarantor/s agree that Homestyle Bakeries may exchange information about Customer and Guarantor/s with those credit providers named in the Application for Credit account or named in a consumer credit report issued by a reporting agency for the following purposes:</p> <p>(a) To assess an application by Customer;</p> <p>(b) To notify other credit providers of a default by the Customer;</p> <p>(c) To exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and</p> <p>(d) To assess the credit worthiness of Customer and/or Guarantor/s.</p> <p>15.3 The Customer consents to Homestyle Bakeries being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).</p> <p>15.4 The Customer agrees that personal information about the Customer and the Guarantors provided to Homestyle Bakeries may be used and retained by Homestyle Bakeries for the following purposes and for other purposes as shall be agreed between the Customer and Homestyle Bakeries or required by law from time to time:</p> <p>(a) provision of Services & Goods;</p> <p>(b) marketing of Services and/or Goods by Homestyle Bakeries, its agents or distributors in relation to the Services and Goods;</p> <p>(c) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to provision of Services/Goods;</p> <p>(d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by Customer; and</p> <p>(e) enabling the daily operation of Customer's account and/or the collection of amounts outstanding in the Customer's account in relation to the Services and Goods.</p> <p>15.5 Homestyle Bakeries may give, information about the Customer to a credit reporting agency for the following purposes:</p> <p>(a) to obtain a consumer credit report about the Customer; and/or</p> <p>(b) allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.</p> <p>16. General</p> <p>16.1 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.</p> <p>16.2 All Goods supplied by Homestyle Bakeries are subject to the laws of Queensland.</p> <p>16.3 Homestyle Bakeries shall be under no liability whatever to the Customer for any indirect or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by Homestyle Bakeries of these terms and conditions.</p> <p>16.4 In the event of any breach of these terms and conditions by Homestyle Bakeries the remedies of the Customer shall be limited to damages. Under no circumstances shall the liability of Homestyle Bakeries to the Customer exceed the Price of the Goods supplied to the Customer.</p> <p>16.5 The Customer may not set off against any monies owing by the Customer to Homestyle Bake any amounts owing to the Customer by Homestyle Bakeries.</p> <p>16.6 Homestyle Bakeries may license or sub-contract all or any part of its rights and obligations without the Customer's consent.</p> <p>16.7 Homestyle Bakeries may review these terms and conditions at any time and from time to time. If, following any such review, there is to be any change in such terms and conditions, that change will take effect from the date which is 30 days after the date on which Homestyle Bakeries notifies the Customer of such change.</p> <p>16.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock out, industrial action, fire, flood, drought, storm or other similar event that is beyond the reasonable control of either party.</p>
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