

Terms of Trade

These terms of trade (“Terms”) form a contract between you (“Client”) and the GoFox Franchisee that you have engaged to provide you with goods or services (“Company”). The Company is an independently owned and operated business trading as a GoFox Franchise in New Zealand. Except as set out at clauses 12.8 and 12.9, no relationship, contract, arrangement or otherwise is created or exists between you and Trilogy Holdings Limited as the GoFox Franchisor in New Zealand (“Franchisor”) and the Franchisor has no obligations, responsibility or liability to you.

1. NATURE AND SCOPE OF TERMS OF TRADE

1.1 The Company provides goods and services to its clients and may provide goods on credit.

1.2 The Terms form a contract that applies between the Company and the Client in respect of any supply of goods or services provided to the Client by the Company, including, without limitation, providing credit for the purchase of such goods or providing the Company with security for goods supplied to the Client on credit.

1.3 Placement by the Client of any order with the Company for the supply of the goods or services constitutes an acknowledgement and acceptance by the Client that the contract between the Client and the Company shall be governed by these Terms.

1.4 From time to time, the Company may issue updated or amended terms of trade by notice in writing to the Client, which shall apply to any order of goods or services that the Client wishes to place following that date.

1.5 The Company and the Client may agree in writing or in other agreements on special terms and conditions that either vary or are additional to these Terms, but otherwise these Terms will apply to all transactions between the Company and the Client.

1.6 Subject to clause 1.5, all other terms and conditions, whether expressed or implied, are excluded from the Terms. The Client acknowledges that it has not entered into this contract on the basis of, or has relied on, any statement or representation except those expressly contained in the Terms.

1.7 The parties agree that the Construction Contracts Act 2002 (“the Act”) shall form part of these Terms and its provisions are additional to the rights and obligations of the parties under these Terms.

2. ORDERING

2.1 Any quotation provided by the Company shall be subject the following assumptions:

- (a) acceptance of the quotation by the Client in the timeframe notified in the quotation or otherwise notified by the Company;
- (b) no additional costs and expenses or delays arising from any defects or other problems not discovered by the Company by a normal inspection of the Client’s site or premises;
- (c) no additional costs and expenses or delays arising from any failure of supply of information by the Client or supply of erroneous information by the client;
- (d) no alteration or addition to the building, equipment, appliances, fittings or fixtures being made after the Company’s inspection or by any alteration made to plans where the quotation was based on such plans;
- (e) no alteration or additions being requested by the Client;
- (f) no additional costs and expenses or delays arising from any change in applicable law, direction of any regulatory authority (including any local authority) or any new fee, levy, charge or other requirement of any regulatory authority (including any local authority); and

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(g) the supply of goods or services commencing within the timeframe agreed with the Client or, failing such agreement, within the timeframe notified by the Company.

(together, Assumptions). In the event of any change in the Assumptions the Company reserves the right to provide an updated quotation and suspend the supply of goods and services pending acceptance of the quotation by the Client. If the quotation is not accepted by the Client within the timeframe notified by the Company, the Company may without prejudice to its other remedies and without prejudice to the Client's liability for goods and services previously ordered and/or supplied, cancel the supply of goods and services to the Client.

2.2 The Company solely provides electrical and/or plumbing goods and services (as applicable). The Company is not liable for and shall not be responsible for any costs associated with other work that may be necessary or required prior to the Company providing the goods or services or after the Company provides the goods or services including, without limitation, building and painting work, all such work being the responsibility of the Client and at the cost of the Client.

2.3 The Client will purchase the goods or request services by submitting written purchase orders and/or requests for services to the Company (hereafter referred to as an "order") in the form provided by the Company to the Client or in accordance with the procedures required by the Company from time to time (and whether based on acceptance of a quotation provided by the Company or otherwise). Each order:

- (a) is subject to these Terms except as is otherwise specified by the Company; and
- (b) at a minimum, must specify all of the matters required by the Company in respect of the order, including completion of a particular order form the Company may provide from time to time.

2.4 All orders submitted by the Client will be subject to acceptance in writing by the Company (in its absolute discretion) and will not become binding on the Company until such acceptance. Any variation, waiver or cancellation of any order or any amendment to terms or conditions of the order made by the Client shall be of no effect unless accepted in writing by the Company.

2.5 The Client acknowledges and agrees that the Company is not under any duty to accept orders from the Client and may cancel any credit limit or other arrangement with the Client at any time.

2.6 Once submitted under clause 2.2, the Client may not revoke or cancel an order without the Company's prior written consent which may be withheld at the Company's sole discretion.

2.7 The Company may cancel any order accepted by the Company, or refuse or suspend delivery of the goods or continuance of services or work on services under it:

- (a) if the Client fails to make any payment as provided in these Terms or under the payment terms set forth in any invoice or as otherwise agreed by the Company and the Client;
- (b) if the Client fails to meet reasonable credit or financial requirements established by the Company, including any limitations on allowable credit; or
- (c) if the Client otherwise fails to comply with these Terms or any other agreement; or
- (d) if the Company has reasonable grounds to doubt the Client's solvency and the Client does not make arrangements satisfactory to the Company to allow restoration of credit; or
- (e) if the due to the acts or omissions of the Client or for any reason beyond the control of the Company the supply of goods or services has not been able to occur within the timeframe agreed with the Client in any order or, failing such agreement, within the timeframe notified by the Company.

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Any such cancellation, refusal or suspension by the Company does not constitute a termination of any agreement with the Client (unless the Company so advises the Client) or breach of any such agreement on these Terms by the Company.

3. PRICE AND PAYMENT

3.1 The price payable by the Client for goods or services shall be the price agreed to in writing between the Company and the Client at the time the order is made or in the absence of such agreement the price notified to the Client by the Company on the date the goods are delivered or services provided.

3.2 The Company will deliver to the Client an invoice with each delivery of goods or following the delivery of services, and shall ensure that a delivery docket is provided with any goods delivery. The Client acknowledges that any invoice generated under these Terms, is a payment claim under the Act. The Client is hereby put on notice of the requirements of the Act in terms of the issuing of payment schedules.

3.3 Unless otherwise agreed in writing by the Company, payment of each invoice shall be made by the Client:

- (a) into such bank account as the Company notifies the Client;
- (b) free of any deduction or withholding, and with no right of set-off for on or account of any taxes or other duties, currency controls or any other matter;
- (c) within 7 days of the date the invoice was rendered by the Company; and
- (d) by way of direct debit if required by the Company.

3.4 Notwithstanding any other provision of these Terms, the Company reserves the right to change payment terms at any time as a condition of acceptance of any order or any variation to an order (including, without limitation, requiring payment in advance or requiring the Client to have issued an irrevocable letter of credit)

3.5 If the Client fails to pay an amount due under these Terms:

- (a) the Company may charge the Client interest on that amount from its due date until the date of payment at 24% per annum;
- (b) the Company may charge the Client all legal and other costs, charges and expenses incurred in connection with the recovery of all outstanding amounts including, without limitation, the Company's own solicitor/client costs and costs of any debt collection agency employed by the Company;
- (c) the Company's right to require payment of interest and other costs under clause 3.6 does not affect any other rights or remedies it may have relating to any failure to pay an amount due under these Terms; and
- (d) without limiting this clause or clause 3.9, the Client's payment obligation to the Company in accordance with these Terms is unconditional, and the Client's failure to pay any invoice on the due date shall be an automatic default of these payment terms and the Company shall not be required to give the Client any prior notice of default.

3.6 The Company reserves the right, on giving prior written notice to the Client before delivery, to vary the price of the goods ordered by the Client between the date of the Client's order and the date of delivery to take account of relevant changes such as (but without limitation) any increase in labour costs, manufacturing costs, costs of materials or any related services (including without limitation freight or delivery services, packaging services or insurance).

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3.7 Unless otherwise set out on its invoice, the Company's prices are quoted exclusive of taxes, duties and other imposts which, if chargeable, are payable by the Client whether they are imposed or brought into force before or after acceptance of the Client's order. Unless otherwise stated, the Company's price is exclusive of GST (as set out in clause 4 of these Terms) or any other charge including, if any, insurance and freight costs and any such amount that may be due is payable on the same date as payment for the goods and/or services.

3.8 Without prejudice to any other remedies which the Company might have:

- (a) in the event of failure by the Client to pay for goods or services in accordance with these Terms; or
- (b) if the Client otherwise fails to otherwise comply with these Terms; or
- (c) if the Company deems the Client's credit to be unsatisfactory,

the Company shall be entitled to cease supply of future goods and services to the Client and cancel any current orders for sale of goods and services. Upon such cancellation and without prejudice to any other remedies which the Company might have, all credit in favour of the Client will cease and all payments outstanding will become immediately due and payable to the Company. The Company may also take possession of such items of goods and otherwise exercise in relation to the goods any of its rights whether those rights are as owner/security interest holder and for unpaid seller or otherwise end whether those rights are conferred by these Terms, common law, contract, statute or in any other way.

3.9 In accepting any payments from the Client, the Company will not be bound by any conditions or qualifications or other terms which the Client may have attached to those payments.

4. GST

4.1 The Company's prices referred to in these Terms and in any quotation which may have formed the basis of an order are exclusive of GST (unless expressly stated otherwise). The Client shall pay GST on the goods or services the subject of these Terms, as invoiced by the Company on the payment terms on that invoice and, if rendered on the same date or on the same invoice as the goods supplied, at the same time as payment for the goods to which the GST relates.

5. DELIVERY OF GOODS

5.1 Delivery of goods is deemed to be made:

- (a) when the Client or the Client's agent is given possession of the goods at the Company's premises or elsewhere (loading is then at the Client's risk); or
- (b) when the goods arrive at the Client's premises (unloading is then at the Client's risk), whichever is the earlier.

5.2 On delivery of goods:

- (a) the goods are at the Client's sole risk; and
- (b) insurance is the Client's responsibility.

5.3 Where the Client requests a particular method of delivery of goods and if the Company agrees (in writing) then the Client will cover the cost of delivery by that method from the point of dispatch of the goods by the Company and the risk of such delivery shall be borne entirely by the Client unless otherwise agreed by the Company and the Client in accordance with these Terms.

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5.4 Any quotations of delivery times agreed by the Company are estimates and not commitments and no delay in delivery will entitle the Client to refuse to accept delivery or cancel its order or otherwise entitle the Client to any Damages whatsoever. Time for delivery is not of the essence.

6. RISK AND DAMAGE

6.1 Risk (including, without limitation, insurance responsibility) of any loss, damage or deterioration of or to the goods shall pass to the Client upon the delivery of goods to the Client.

6.2 Claims made for damage in respect of defective goods or goods lost or damaged in transit must be made against the Company in the following manner:

- (a) prior to accepting the goods and acknowledging delivery the Client must ensure that the complete consignment as per the delivery note has been received;
- (b) in the case of damage the delivery note must be endorsed by the Client setting out in full the reasons for non-acceptance of the goods; and
- (c) in any case where the defect or damage is not reasonably able to be ascertained upon delivery, the Client must notify the Company within 7 days of delivery of the full particulars of the defect and the Client must make the goods available for inspection by the Company.

6.3 To the maximum extent permitted by law, any liability of the Company for any defective goods or damaged goods shall, at the Company's election, be limited to replacement of the goods or a credit in respect of the goods.

6.4 The liability of the Company in respect of the failure to deliver due to loss in transit or damage in transit where risk has not passed to the Client shall be limited to paying the requisite insurance proceeds to the Client or assigning any such claim to the Client and in no event whatsoever shall any claim for defect in goods exceed the purchase price of the such defective goods supplied.

6.5 Risk shall pass back from the Client to the Company only if the Company repossesses the goods.

6.6 To the maximum extent permitted by law, any liability of the Company for any defective or faulty workmanship shall be limited to repair of such workmanship, such repair to be the sole remedy of the Client.

6.7 The Company shall not be liable under clause 6.3, clause 6.6 or otherwise for any loss, defect or damage arising directly or indirectly from:

- (a) any Force Majeure Event under clause 12.1;
- (b) any act or omission of the Client or any person other than the Company or an authorised sub-contractor of the Company;
- (c) any product or service supplied by or on behalf of the Client or any other contractor or supplier of the Client including, without limitation, any work undertaken by or on behalf the Client (including DIY work) before, during or after the engagement of the Company to provide goods and services;
- (d) any failure by the Client to carry out maintenance or comply with any manufacturer instructions or conditions of any manufacturer warranty;
- (e) any failure by the Client to follow any guidelines or instructions of the Company;
- (f) any moisture spillage or ingress, vermin or insect infestation, misuse or abusive use, accident or neglect or a failure to clean or improper cleaning,
- (g) use of non-authorised, defective or incompatible parts;

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- (h) repair, modification or other work carried out by any person other than by authorised or unqualified personnel;
- (i) continued use of any goods after any defect becomes apparent or would have become apparent to any reasonable person; or
- (j) fair wear and tear.

6.8 For the avoidance of any doubt, all materials, property, products, appliances or fittings supplied by or on behalf of the Client are supplied at the Client's risk and the Company shall not be directly or indirectly liable in relation to the selection or suitability of such items.

7. RETENTION OF TITLE AND INTELLECTUAL PROPERTY RIGHTS

7.1 Notwithstanding any other provision of these Terms, if title to goods is intended to pass to the Client, title in the goods does not pass from the Company until:

- (a) the Company has received full payment in cleared funds for the goods (together with an amount for GST, any accrued interest and any other amounts due in respect of the goods); or
- (b) the Client's earlier resale of those goods under clause 7.3.

7.2 Until title passes from the Company:

- (a) ownership of the goods remains with the Company;
- (b) the Client holds the goods as bailee for the Company; and
- (c) the Client must store the goods separately from any other goods and not commingle, mix the goods with other goods or otherwise add to or alter the goods in any way.

7.3 If goods which have not been paid for in full (together with an amount for GST, any accrued interest and any other amounts due in respect of those goods) ("the Company goods"), are sold by the Client, the Client must:

- (a) hold from the proceeds of any sale of the Company goods an amount equal to the payment due to the Company for those goods in a separate identifiable account as the beneficial property of the Company; and
- (b) pay such amounts to the Company upon request.

7.4 The Client acknowledges that the Company or its licensors own and retain the rights to all Intellectual Property in or relating to the goods and services supplied by the Company ("Company IP"). No such Intellectual Property is transferred to the Client with the goods and services.

7.5 If the Client fails to pay any amount of the Client's total indebtedness to the Company under these Terms when it is due to the Company or is otherwise in breach of these Terms then the Company and/or any of the Company's Personnel may, without notice and without prejudice to any of the Company's other rights and remedies, recover and/or re-sell the Company goods that have been delivered to the Client and the Client agrees the Company may enter upon the Client's premises for that purpose.

8. SECURITY – PERSONAL PROPERTY SECURITIES ACT 1999 ("PPSA")

8.1 The Client grants to the Company a specific security interest in the goods and the proceeds of the goods. The Client will, if the Company requests, sign any documents (including any new agreements), provide all necessary information and do or allow anything else required by the Company to ensure that the Company's security interest is a first ranking perfected security interest and to enable the Company to register a financing statement.

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8.2 The Client will not enter into any security agreement that permits any person to register any security interest in respect of the goods or the proceeds in priority to the security interest held by the Company.

8.3 The Client:

- (a) shall immediately notify the Company in writing of any change in the Client's name; and
- (b) shall immediately notify the Company of any other information the Company may need in order to complete a financing change statement.

8.4 The Client waives any right to receive a copy of a verification statement or financing statement under the PPSA.

8.5 The Client agrees that nothing in sections 114(1)(a), 117(1)(c), 133 and 134 of the PPSA shall apply to these Terms.

8.6 The Client agrees that its rights as debtor in sections 116, 119, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA shall not apply to these Terms.

9. THE CLIENT'S COVENANTS AND WARRANTIES

9.1 The Client agrees that it shall:

- (a) promptly on request provide all information that may be required by the Company to enable it supply the goods or services
- (b) promptly on request provide the Company and its Associates with all access the Company may require to the premises where the goods are to be delivered or services performed;
- (c) not undertake or perform any act or omission which brings or is reasonably likely to bring the Company or any other manufacturer and/or supplier of services or goods or the goods or services themselves into disrepute, and without limitation, shall not cause or allow any of its employees, agents, contractors, shareholders, principals, officers or directors to engage in any activity, conduct or otherwise that shall or may prejudicially affect the reputation or goodwill of the Company or Its business;
- (d) promptly submit to the Company complaints relating to goods or services together with all available evidence and other information relating to those complaints; and
- (e) not challenge the validity of the Company IP or do or permit anything to be done which impairs the rights of the Company or its licensors to the Company IP.

10. LIMITATION OF LIABILITY

10.1 If the Client is are acquiring the goods or services for the purposes of a business, or if the Client indicates it is doing so, then the Client and the Company acknowledge and agree that:

- (a) they are each in trade;
- (b) the goods and services supplied by the Company and acquired by the Client are done so for a business purpose; and
- (c) the Consumer Guarantees Act 1993 is excluded to the fullest extent permitted at law, and does not apply.

10.2 If the Client is acquiring any goods and services from the Company other than for the purposes of a business, then the Client may have the benefit of statutory guarantees under the Consumer Guarantees Act 1993. If the Act applies, all rights that the Client has under it will apply in addition to the rights set out in these Terms.

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10.3 The Company warrants all services will be provided with reasonable care and skill and all goods will comply with any warranty provided by the manufacturer of the goods (subject to the terms and conditions of such warranty). The sole remedy of the Client in respect of any breach of such warranties shall be as set out in clause 6.3 (for goods) and clause 6.6 (for services).

10.4 Subject to clause 10.2 and to the maximum extent permitted by law, the Company provides no other warranty, expressed or implied, and any warranties expressed or implied by law or statute, in respect of the goods or services whether in respect of quality, fitness for intended purposes or otherwise, are excluded.

10.5 Without prejudice to clauses 6.2 to 6.7 of these Terms, the parties acknowledge and agree that the Company shall not in any event whatsoever be liable, whether under these Terms, for negligence or otherwise, for:

- (a) any special, incidental, indirect, punitive or consequential Damages;
- (b) loss of profit or revenue, loss of goodwill or reputation or loss of business;
- (c) Damages, in the aggregate, exceeding the value of the payments actually received by the Company from the Client under these Terms in the preceding 12 months; or
- (d) Damages in respect of any claim made:
 - (i) more than six months from the date the Client becomes aware of the circumstances leading to that claim; or
 - (ii) more than 12 months after the relevant cause of action arose.

11. INDEMNITY

11.1 The Client indemnifies the Company and its Associates from and against all Damages arising out of or resulting from:

- (a) any breach of these Terms by the Client or its Associates;
- (b) any contravention of applicable laws or regulations by the Client or its Associates, including export and import control laws;
- (c) any claim by any third party arising from any act or omission of the Client or its Associates in connection with these Terms (whether negligent or not), including
 - (i) connected to or arising out of the Client's breach of clause 9; or
 - (ii) any misrepresentations, warranty or agreement, express or implied made by the Client with respect to the Company, or any third party supplier or manufacturer of the goods supplied by the Company;
- (d) without limiting clause (b), any negligent, wilful, reckless or unlawful act or omission of, or any intentional misconduct by the Client or its Associates in connection with these Terms; or
- (e) Any claim by the Client or its Associates, to the extent that such claim is beyond the scope of the Company's liability to the Client under these Terms.

12. GENERAL

12.1 The Company shall not be liable for any failure or delay in supply or delivery of the goods or services caused or occasioned by strike, lockout, Act of God, shortage of stocks, shortage of labour, lack of skilled labour, failure of a sub-contractor, delays in transit or delivery, legislative, governmental or other prohibitions or restrictions, fire, flood, hostilities, failure, delay or inability to obtain any necessary authorisation, legislative, departmental or other prohibition or restrictions, injunction or threat of injunction

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or threat of other legal action by any person against the Company or its suppliers or other causes whatsoever (whether similar or not to the foregoing) beyond the Company's reasonable control ("Force Majeure Event").

12.2 No waiver by the Company of any breach or failure to enforce any provision of the Terms shall in any way affect, limit or waive the Company's right to subsequently enforce and compel strict compliance with the Terms.

12.3 If any provision of the Terms is or becomes invalid or unenforceable, that provision shall be deemed deleted from the Terms and such invalidity or unenforceability shall not affect the other provisions of the Terms, all of which shall remain in full force and effect to the extent permitted by law, subject to any modifications made necessary by the deletion of the invalid or unenforceable provisions.

12.4 The rights and obligations contained in these Terms are entirely personal to the Client and accordingly the Client may not, without the prior written approval of the Company, assign or transfer such rights or obligations to any person. the Company may assign or transfer or sub-contract any rights and obligations under these Terms.

12.5 The Company is not bound by any error or omission on any invoice, order form or other document or statement issued by the Company.

12.6 Where the Company has rights and remedies at law or otherwise in addition to the rights set out in these Terms, those rights and remedies will continue to apply.

12.7 These Terms are governed by the law of New Zealand and each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of New Zealand.

12.8 For the purposes of the Contract and Commercial Law Act 2017, the Client acknowledges and agrees that these Terms of Trade are entered into with the expressed intention of conferring enforceable rights, entitlements and benefits upon the Franchisor; such rights, entitlements and benefits are expressly conferred with the intent that they are specifically enforceable by the Franchisor, pursuant to the provisions of section 12 of the Contract and Commercial Law Act 2017.

12.9 The Client acknowledges that the information in these Terms of Trade and otherwise provided by the Client to the Company will be disclosed to the Franchisor. The Franchisor will be bound by the Privacy Act 2020.

13. DEFINITIONS AND INTERPRETATION

In interpreting these Terms:

"Associates" means a subsidiary, holding company, associated company, related company or any director, officer, employee, agent, contractor, successor or assignee;

"Business Day" means any day not being a Saturday or Sunday or statutory holiday in Auckland, New Zealand;

"Damages" means all liabilities, expenses, losses, damages and costs (including legal costs on a full indemnity basis) whether incurred by or awarded against a party) including those associated with any third party claim, and whether arising under contract, tort (including negligence) or otherwise;

"GST" means Goods and Services Tax payable in accordance with the Goods and Services Tax Act 1986;

"Intellectual Property" includes (whether in visible, electronic or any other form) all brands, contracts, goodwill, logos, formulae, techniques, know-how, specifications, designs, drawings, copyright, manufacturing processes, patents and trademarks (if any) whether registered or not, software (in source and object code), business strategies, confidential business information including market and marketing

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strategies, business contracts and intellectual property relating to the business of, or goods or services of the Company

