



## TERMS OF TRADE

### 1. Acceptance

- (a) These Terms of Trade ("Terms") govern the purchase of any Goods or Services you ("the Buyer" or "you") make from Punchbowl Packco Limited ("Punchbowl"). By placing an order for Goods, or engaging Punchbowl to provide Services, you are deemed to have read and accepted these Terms and agree to be bound by them even if you have not returned a signed copy of these Terms. These Terms apply in preference to any terms supplied by you.
- (b) Punchbowl reserves the right to amend these Terms from time to time, including by way of replacing these Terms in their entirety with new terms. Amendments will be effective immediately upon being placed on Punchbowl's website at [www.punchbowl.co.nz](http://www.punchbowl.co.nz) ("Website"). Placing an order for Goods or engaging Punchbowl to provide Services following such amendments being placed on the Website will represent an agreement by you to be bound by the Terms as amended.

### 2. Contract, Ordering, Delivery and Price

- (a) These Terms shall be applied in every contract between Punchbowl and the Buyer relating to Goods sold or Services provided to the Buyer, provided that where the provision of the relevant Goods and/or Services is specifically covered by a separate written agreement between Punchbowl and the Buyer (such as an Orchard Management Agreement or a Packing Agreement), to the extent there is any inconsistency between these Terms and the separate written agreement, the provisions of the separate written agreement shall prevail.
- (b) Punchbowl shall provide a quote for all Goods and Services requested ("Quote"). The Quote shall be valid for 30 days from the date of the Quote unless otherwise stated on the Quote or withdrawn by Punchbowl prior to acceptance.
- (c) A Quote may be accepted and orders may be placed with Punchbowl:
  - (i) By telephone; or
  - (ii) By email; or
  - (iii) Via the Website.
- (d) All orders must specify:
  - (i) Your name;
  - (ii) Your delivery address;
  - (iii) Your contact phone number and email address;
  - (iv) The required type, size and quantity of Goods and/or the required Services
  - (v) Any Quote reference number supplied.
- (e) Punchbowl shall confirm your order either verbally or in writing. No order is binding upon Punchbowl until its acceptance has been confirmed. Punchbowl may withhold acceptance in its discretion and may require certain information requests and/or other conditions to be satisfied prior to accepting any order.
- (f) The Buyer may not cancel an order once it has been confirmed by Punchbowl.
- (g) A target delivery date will be agreed at the time an order is confirmed. Punchbowl will use all reasonable endeavours to provide the Services or deliver the Goods to the address notified at the time of order in accordance with the agreed target delivery date but shall not be liable for any delay in delivery.
- (h) Punchbowl may cancel an order after it has been accepted where due to circumstances beyond its control it is impossible or materially impractical to fulfil the order. In such cases, any amount paid by the Buyer will be refunded.
- (i) The Buyer is responsible for examining the Goods upon delivery and/or inspecting any Service deliverables upon completion and must notify Punchbowl of any defects, whether as to quantity or quality within 7 days of delivery of the Goods or Services (as applicable).
- (j) Prices for the Goods and/or Services are as specified in the Quote. All prices are expressed in New Zealand dollars unless otherwise stated in the Quote and all prices are exclusive of goods and services tax chargeable under the Goods and Services Tax Act 1985, as well as any other applicable sales tax or duty ("GST"). GST will be added to the Price and is payable by the Buyer in accordance with the payment provisions set out in the Quote and these Terms.
- (k) Prices also exclude freight, insurance and delivery charges. Such charges are additional and are payable by the Buyer in accordance with the payment provisions set out in the Quote and these Terms. Any quoted freight, insurance or delivery charges are estimates only and the Buyer will be charged the actual cost incurred, plus any margin specified in the Quote.
- (l) Where material input cost increases, labour cost increases, currency variations, supply chain disruptions, or other delays or challenges outside the reasonable control of Punchbowl increase the cost of delivering the Goods and/or Services, the increased costs incurred by Punchbowl may be passed on to the Buyer and will be payable by the Buyer upon invoice.

- (m) Any increased costs resulting from any modifications or changes to the Goods or Services requested by the Buyer will be on charged as and when they occur and are payable by the Buyer upon invoice.

### 3. **Payment**

- (a) Unless specified in the Quote or otherwise agreed in writing, the terms of payment are:
  - (i) **Credit Terms:** If Punchbowl has agreed to extend credit terms to the Buyer, payment is due in full, without any deductions or offsets, on or before the 20th day of the month following the date of invoice.
  - (ii) **Cash on Delivery:** If Punchbowl has not agreed to extend credit terms, payment is due in cleared funds, without any deductions or offsets, upon delivery of the Goods.
  - (iii) Punchbowl reserves the right to treat each separate delivery as a separate contract for payment purposes.
- (b) Payment is to be made in cleared funds, by electronic bank transfer into the bank account noted on the invoice, or by any other method as agreed between Punchbowl and the Buyer.
- (c) Any dispute in relation to the price payable must be notified to Punchbowl in writing prior to the due date for payment. The parties will use commercially reasonable efforts to resolve the dispute in good faith.
- (d) If the Buyer fails to make any payment due to Punchbowl by the due date the Buyer is liable to pay Punchbowl interest on the overdue amount at the rate of 15% per annum. Interest will be calculated daily from the due date until payment in full is received by Punchbowl, accruing on a compounding basis. The Buyer is also liable to pay all reasonable expenses and legal costs of Punchbowl in relation to the late payment including but not limited to collection fees and legal expenses. This provision is not a waiver of the Buyer's default and the interest rate is not an extension of credit to the Buyer but is a genuine pre-estimate of Punchbowl's loss caused by the Buyer's failure to pay on the due date.
- (e) In addition to the right to charge interest, where there is any default in payment, Punchbowl reserves the right to suspend supply and/or decline supply of any future orders.
- (f) Where a default in payment exceeds two months Punchbowl is entitled to repossess the Goods. Punchbowl reserves the right to charge the Buyer for all reasonable costs associated with the repossession.

### 4. **Risk**

- (a) The risk of any loss or damage to or deterioration of the Goods supplied by Punchbowl to the Buyer shall pass and be borne by the Buyer upon delivery of the Goods to the Buyer's delivery address.

### 5. **Ownership of the Goods**

- (a) Notwithstanding clause 4, ownership in any Goods delivered by Punchbowl to the Buyer does not pass (and the Buyer is a bailee only in respect of such Goods) until payment in full has been received by Punchbowl.
- (b) After delivery, but while ownership remains with Punchbowl, the Buyer must ensure:
  - (i) The Goods are clearly identified as belonging to Punchbowl;
  - (ii) Any proceeds from a subsequent sale are held in trust for the benefit of Punchbowl;
  - (iii) No interest or charge over the Goods is granted to a third party;
  - (iv) That the Goods are insured against all risks, at the Buyer's cost, naming Punchbowl as loss payee, for the Goods' full replacement value.
- (c) The buyer acknowledges that until such time as payment in full has been received by Punchbowl, Punchbowl has a Security Interest in the Goods (as that term is defined in the Personal Property Securities Act 1999 (PPSA)) and that these Terms constitute a Security Agreement for the purpose of the PPSA in respect of the Goods supplied to the Buyer and their proceeds for the purpose of securing payment of all amounts owed by the Buyer to Punchbowl from time to time, and at any time. You agree that you will, when requested by Punchbowl, promptly execute any documents and do anything else required by Punchbowl to ensure the Security Interest created under these Terms constitutes a first ranking Security Interest over the relevant Goods and their proceeds, including any information Punchbowl reasonably requires to complete a Financing Statement or Financing Change Statement.
- (d) The Buyer agrees that nothing in sections 114(1)(a), 116, 120(2), 121, 125, 126, 127, 129, 131, 133 and 134 of the PPSA shall apply to these terms, or the security under these terms.
- (e) The Buyer waives its rights under the PPSA to receive a copy of any verification statement or financing change statement.

### 6. **Liability and Warranty**

- (a) The Goods are subject to standard tolerances of the industry.
- (b) The only warranties provided in respect of Goods or Services supplied are as set out in the Quote or in a written and signed agreement between Punchbowl and the Buyer. All other guarantees, warranties and representations which are or might be implied by law, trade, custom or otherwise, that are capable of being legally excluded, are expressly excluded.
- (c) The Buyer agrees that the Buyer is acquiring the Goods and/or Services from Punchbowl for business purposes and accordingly the guarantees and rights expressed or implied in the Consumer Guarantees 1993 Act in favour of the Buyer do not apply.
- (d) Except as may be expressly provided in a Quote or other separate written agreement signed between us, to the maximum extent permitted by law Punchbowl, its employees or agents will not be liable to you in contract, tort, negligence, equity, statute, regulation or otherwise for any loss, damage, costs, legal costs, professional and other expenses of any nature whatsoever incurred or suffered by the Buyer or by any other third party, whether direct or consequential which relates to the purchase and/or use of the Goods, or which relates to the provision of Services by Punchbowl or any subcontractor appointed by Punchbowl.
- (e) To the extent Punchbowl is found liable for any reason for any loss, damages or costs suffered or incurred by the Buyer arising from any breach of these Terms or for any other reason, to the maximum extent permitted by law any such liability of Punchbowl to the Buyer is limited to the lesser of:

- (i) The price paid for the relevant Goods or Services to which the liability relates; or
  - (ii) The actual loss, damage or cost suffered by the Buyer; or
  - (iii) The amount recoverable and recovered by Punchbowl under its insurance policies.
- (f) The Buyer agrees to assume all responsibility for any third party claims that may arise in connection with the use of the Goods where the Buyer has a relationship with that third party and has supplied the Goods to that third party for use, for example, where the Buyer uses the Goods to pack a third party's kiwifruit pursuant to a packing agreement between the Buyer and the third party.
- (g) Any defects in Goods or Services supplied must be notified to Punchbowl within 7 days of the date the relevant Good is first used or the Services are supplied.
- (h) Punchbowl may, in its discretion, repair or replace any defective Goods or re-perform any defective Services, or refund the amount of those Goods or Services, provided that clause 6(g) has been complied with and further provided that:
- (i) The Buyer must supply the date and number of any invoice relating to the Goods or Services;
  - (ii) Punchbowl must have a reasonable opportunity to inspect the Goods or Services complained of;
  - (iii) Punchbowl shall have no obligation to remedy any damage or defect caused by:
    - Any willful act or negligence of the Buyer or any other person other than Punchbowl or its agents, employees or subcontractors;
    - Faulty materials or workmanship other than the work or materials provided by Punchbowl;
    - Design faults, errors or discrepancies where Punchbowl was not responsible for design;
    - Unintended use of the Goods or failure to maintain the Goods in accordance with the stated or recommended instructions or requirements provided by Punchbowl, including, without limitation, any instructions regarding shelf life and storage.
  - (iv) Punchbowl may charge the Buyer a reasonable re-stocking fee in respect of Goods returned.
  - (v) The Buyer must meet any freight costs associated with the return of Goods unless otherwise agreed with Punchbowl.

**7. Setoff**

- (a) Punchbowl shall have the right without prior notice to the Buyer to setoff in discharge or reduction of any debt payable to it by the Buyer, any monies payable on whatever account by Punchbowl to the Buyer, including monies payable to the Buyer by Punchbowl as agent for a third party.

**8. Use of goods**

- (a) The Buyer will use the Goods for either the purpose specified by Punchbowl or in accordance with the provisions of any agreement or contract the Buyer has with Punchbowl. The Buyer shall not use the Goods in any manner which breaches the intellectual property rights attaching to the Goods.
- (b) The Buyer must comply with any instructions provided by Punchbowl with regard to the shelf life and storage conditions for Goods supplied.

**9. Force Majeure**

- (a) Punchbowl does not breach these Terms if its breach is caused by any matter beyond the reasonable control of Punchbowl, not including financial difficulty ("force majeure").
- (b) Where Punchbowl is unable, wholly or in part, by reason of a force majeure event to carry out any obligation under these Terms and:
- (i) Gives the Buyer notice of the force majeure event;
  - (ii) Uses all reasonable diligence to remove the force majeure event as quickly as possible; that obligation is suspended so far as it is affected by the force majeure event during its continuance.

**10. Intellectual Property**

- (a) The Buyer acknowledges that all intellectual property in the Goods belong to Punchbowl, or Punchbowl is otherwise entitled to such intellectual property rights under licence. The Buyer further acknowledges that all intellectual property arising out of the provision of the Services shall be the exclusive property of Punchbowl unless otherwise agreed in writing and signed by the parties.

**11. Buyer Default and Termination**

- (a) If Punchbowl has reasonable grounds to believe the Buyer is in material breach of these Terms; or the Buyer commits an act of bankruptcy or is placed into liquidation, or a receiver or manager is appointed in respect of any part or the whole of the Buyer's assets, Punchbowl may withhold delivery of the Goods or Services; or treat any order for Goods or Services to have been cancelled and enforce its security interest.
- (b) Termination or cancellation of any order will not affect the rights, powers, remedies, obligations, duties and liabilities of either party which have accrued before termination.

**12. Privacy**

- (a) The Buyer authorises Punchbowl to:
- (i) Collect, retain and use information about the Buyer from any person for the purpose of assisting its creditworthiness;
  - (ii) Disclose information about the Buyer to such persons as may be necessary or desirable to enable Punchbowl to exercise any power or attempt to enforce any of its rights, remedies and powers under these Terms.
- (b) Further information on Privacy is available in Punchbowl's Privacy Policy, accessible from the Website.

13. **Health and Safety**
- (a) To the extent any employee, contractor or agent of Punchbowl is required to enter onto any property owned or occupied by you, for the purposes of delivery Goods or providing Services, you agree to comply with all obligations imposed on you as a PCBU under the Health and Safety at Work Act 2015 and shall advise any such employee, contractor or agent of any hazards on the property.
14. **General**
- (a) If any of these Terms are held to be invalid, void, unenforceable or illegal for any reason, such provision shall be deemed to be severed from these Terms and the remaining Terms shall continue in force.
  - (b) If Punchbowl delays or does not exercise any of its rights or remedies under these Terms that will not be a waiver of the right or remedy.
  - (c) Any notice may be given in person, posted or sent by fax or email. Where a notice is given in person delivery occurs at the time of physical delivery; where a notice is sent by fax or email, delivery occurs at the time of transmission without any notification of error or failed delivery.
  - (d) The Buyer may not assign or subcontract its rights or obligations under these Terms without the prior written consent of Punchbowl. Punchbowl may, however, sub-contract the provision of certain Services without the need for Buyer consent.
  - (e) These Terms apply in preference to any terms supplied by the Buyer. Except as may be set out in a separate written and signed agreement between Punchbowl and the Buyer, these Terms, together with the Quote provided, represent the entire agreement of Punchbowl and the Buyer in relation to the supply of Goods and Services.
15. **Governing Law**
- (a) These Terms are governed by, and are to be construed in accordance with the laws of New Zealand and the Buyer agrees to submit to the non-exclusive jurisdiction of the Courts of New Zealand.
16. **Interpretation**
- (a) In these Terms:  
 "Punchbowl" means Punchbowl Packco Limited together with its successors and permitted assigns.  
 "The Buyer" means the person, firm or company buying Goods or acquiring Services from Punchbowl together with that person, firm or company's executors, administrators, successors and permitted assigns.  
 "Goods" means all products or goods of whatever kind that Punchbowl agrees to supply the Buyer from time to time.
  - (b) "Services" means all services Punchbowl agrees to provide the Buyer from time to time.
  - (c) Headings are used as a matter of convenience only and shall not affect the interpretation of these Terms.
  - (d) Words referring to the singular include the plural and vice versa.
  - (e) A reference to a person includes any other entity or association recognised by law.
  - (f) A reference to "\$" and "dollars" are references to New Zealand currency unless otherwise stated.
  - (g) Everything expressed or implied in these terms which involves more than one person binds and benefits those people jointly and severally.
  - (h) The provisions of these Terms shall be given a fair large and liberal interpretation so that the contra proferentum rule shall not in any case apply against or to the disadvantage of Punchbowl.

**I/we warrant that I/we am/are authorised to sign these Terms of Trade on behalf of the Buyer and that the Buyer will be legally bound as a result.**

Company Name \_\_\_\_\_

Signature \_\_\_\_\_

Position \_\_\_\_\_

Date \_\_\_\_\_