



**TERMS AND CONDITIONS APPLICABLE ON OPENING THIS ACCOUNT:**

These terms and conditions of Sale for Goods and Provision of Services, together with the terms of trade for Juicy Isle Pty Ltd account customers set forth in any customer application form signed by the customer, represent the entire agreement between the parties unless otherwise expressly agreed in writing.

**1. Payment:**

- (a) Payment is due and is to be made in accord within the time set forth on the face of this Tax Invoice, and where sought to be made by cheque is deemed not to have been made until the cheque is cleared.
- (b) It is agreed by the customer and Juicy Isle Pty Ltd that all monies paid by the customer to Juicy Isle Pty Ltd shall be applied first in reduction of all recovery costs, secondly in reduction of all interest due and payable by the customer to Juicy Isle Pty Ltd and thirdly in payment of goods sold and services provided.

**2. Interest:**

Juicy Isle Pty Ltd shall be entitled to interest on any overdue accounts at the rate of 5% per month calculated monthly in arrears from the due date until such time as the account has been paid.

**3. Property:**

- (a) Property in the goods, being all of the packaged goods and post mix syrup from time to time offered for sale by Juicy Isle Pty Ltd ("the goods"), shall not pass to the Customer until payment in full of all moneys owed by the Customer to Juicy Isle Pty Ltd, for those goods and Juicy Isle Pty Ltd reserves the right to take possession of and dispose of the goods as it sees fit at any time until full payment has been made. The customer hereby grants permission to Juicy Isle Pty Ltd to enter upon any land or premises where the goods are in order to do so and authorises Juicy Isle Pty Ltd to use all reasonable steps as are necessary to do so and Juicy Isle Pty Ltd shall be deemed for the purposes of the Corporations Law to have entered possession, assumed control or exercised a power in relation to goods supplied under this contract.
- (b) Immediately upon delivery the Customer accepts liability for the safe custody of the goods and dispensing equipment and indemnifies and agrees to keep Juicy Isle Pty Ltd indemnified against any losses sustained in any manner whatsoever in relation thereto.
- (c) Until payment in full is made the Customer agrees:
  - (i) To keep all the goods unpaid for as fiduciary for Juicy Isle Pty Ltd as owner.

- (ii) To only sell the goods or any part thereof in the usual course of its business upon condition that the Customer holds any and all proceeds of sale relating to the goods on trust for Juicy Isle Pty Ltd. Sale on terms or for less than cost or after default or deemed default by the Customer shall not be "in the usual course".
- (iii) Upon termination of this agreement for any reason the fiduciary relationship herein shall cease and the Customer shall not sell or convert any of the goods in its possession.
- (d) The Customer agrees that a certificate purporting to be signed by an officer of Juicy Isle Pty Ltd identifying goods as "unpaid for" shall be conclusive evidence that the goods identified have not been paid for, and of Juicy Isle Pty Ltd's title to those goods.
- (e) These Terms and Conditions of Sale for Goods and Provision of Services are not intended to create a charge, and will be read down to the extent necessary to prevent creating a charge.
- (f) The Customer acknowledges and agrees that the proceeds of the sale of any goods supplied by Juicy Isle Pty Ltd are to be kept clearly identifiable by reference to the Customer's business records and if necessary, can be traced for the absolute benefit of Juicy Isle Pty Ltd.

#### **4. Authority and Consent:**

The Customer authorises Juicy Isle Pty Ltd and/or its agent to enter upon the Customer's premises or any premises in the Customer's possession or control and to retake possession of the goods for which payment has not been received by Juicy Isle Pty Ltd and the Customer shall obtain the consent of its mortgagee, landlord or other secured lender to the terms and conditions hereof and in particular to the rights of Juicy Isle Pty Ltd pursuant to this clause of this agreement. Further Juicy Isle Pty Ltd shall not be liable to the Customer for any loss or damage caused in recovery of the goods in accordance with this clause.

#### **5. Admission of liability:**

Insofar as is lawful:

- (a) Juicy Isle Pty Ltd shall not be liable for any claim loss or expense whatsoever or whatsoever arising which is made after the expiration of forty-eight (48) hours from the date of delivery (or at all once the goods have been unpacked, on sold or otherwise used or applied) after which there shall be deemed to have been unqualified acceptance.
- (b) Juicy Isle Pty Ltd shall not be liable in any event in any way whatsoever or howsoever arising for any contingent consequential, direct or indirect, special or punitive damage arising in any way whatsoever in relation to the goods and the Customer acknowledges this express limit of liability and agrees to limit any claim accordingly.

#### **6. Exclusions:**

- (a) Sample: No contract between Juicy Isle Pty Ltd and the Customer shall be or be deemed to be a sale by sample.
- (b) If, from time to time Juicy Isle Pty Ltd publishes material concerning its products and prices, anything published therein which is incompatible with these Terms and Conditions is expressly excluded.

- (c) In the event that Juicy Isle Pty Ltd sells goods manufactured by any company other than Juicy Isle Pty Ltd it will accept no liability or give no greater warranty than that accepted and given by the actual manufacturer of the goods.

#### **7. Returns:**

- (a) Juicy Isle Pty Ltd reserves the right in its complete discretion to refuse to accept any returns whatsoever. Juicy Isle Pty Ltd will not accept any claims whatsoever or howsoever arising made after the expiration of forty-eight (48) hours of the date of delivery.
- (b) The Customer acknowledges its obligation to inspect all of the goods within forty-eight (48) hours of delivery.
- (c) If Juicy Isle Pty Ltd for any reason elects to take back any of the goods it will be on terms agreed and a return fee of not less than 15% of invoice value will apply unless otherwise agreed.
- (d) No cash refund will be payable in any event whatsoever.
- (e) Product made to order cannot be returned at all.
- (f) The Customer agrees not to deduct any amount from any account including one for equipment, repairs, maintenance, services or delivery due to a dispute regarding the account or quality of the goods received and agrees that once forty-eight (48) hours has expired after the goods are signed for as being delivered and received, the quantity of the goods received and/or the condition of the goods cannot be disputed.

#### **8. Telephone Orders:**

The Customer agrees that in the event of a dispute arising concerning a telephone order the internal written records of Juicy Isle Pty Ltd will be conclusive evidence of what was sought and ordered by telephone in all respects including (inter alia) quantity, quality, size, price, discount, etc.

#### **9. Purchase Price:**

- (a) Unless otherwise agreed in writing, all sales are made by Juicy Isle Pty Ltd at its ruling price on the date of invoice and the Customer acknowledges that any price quoted by Juicy Isle Pty Ltd at the time of enquiry or purchase or in any price list or goods information of Juicy Isle shall be deemed an estimate only.
- (b) If Juicy Isle Pty Ltd publishes from time to time trade price lists for its products or any other material, which notes current prices, the prices will exclude Goods and Services Tax (GST) and government imposts unless expressly noted thereon.
- (c) Prices are subject to changes without notice.
- (d) The invoiced amount total shown on the face of this Tax Invoice shall include the selling price of the goods, (inclusive of any recycling deposits) and services supplied and will separately itemise any applicable GST.
- (e) All discounts and rebates allowed to the Customer are discounts and rebates off the selling price of the goods or services, no matter what method of calculation is adopted.

## **10. Stock Rotation and Storage:**

Juicy Isle Pty Ltd hereby agrees to comply with its obligations pursuant to the Food Act 2003 and in particular to mark a use by date on its goods. The Customer hereby agrees to rotate the goods purchased from Juicy Isle Pty Ltd so that the goods are sold by the Customer prior to the expiry of the use by date, to comply with its obligations set forth in the Food Act 2003 and to store perishable goods at temperatures between 0 and 4 degree. The customer hereby indemnifies Juicy Isle Pty Ltd against any loss or damage arising out of or in connection with its failure to comply with its obligations set forward in this clause.

## **11. Services:**

Unless otherwise agreed, Juicy Isle Pty Ltd shall provide under a separate contract from the sale of goods, on the Customer's behalf at the Customer's cost, for installation maintenance and repair services on dispensing equipment.

## **12. Customer's Terms and Conditions:**

- (a) No terms and conditions sought to be imposed by the Customer upon Juicy Isle Pty Ltd shall prevail except where consistent with these terms and Conditions, and the written opinion of the solicitor for the time being of Juicy Isle Pty Ltd will be conclusive evidence of consistency or otherwise.
- (b) The customer warrants that it will not sell any goods after the expiration of the use by date stamped upon the goods.
- (c) The customer will not adulterate, contaminate, nor add to or alter in any way any goods sold, supplied or provided, by Juicy Isle Pty Ltd to the customer.

## **13. Recovery Costs:**

The Customer will pay to Juicy Isle Pty Ltd the cost and expense incurred by it or Juicy Isle Pty Ltd solicitors, legal advisers, mercantile agents and other agents acting on Juicy Isle Pty Ltd behalf in respect of any recovery instituted or being considered against the customer whether for debt, possession of the goods or otherwise. Where the customer pays by cheque and that cheque is dishonoured, an administration fee will be charged to the customer's account.

## **14. Variation:**

Juicy Isle Pty Ltd must approve any variation or cancellation of any order in writing.

## **15. Defaults:**

- (a) In the event of any default or breach hereof by the Customer, Juicy Isle Pty Ltd may (inter alia) call up all moneys owed by the Customer, retain all moneys paid and cease further deliveries and recover from the Customer all loss of profits arising there from and/or at its discretion take immediate possession of any goods not paid for without prejudice to any other rights of Juicy Isle Pty Ltd, without Juicy Isle Pty Ltd being liable in any way to any party whatsoever or howsoever.
- (b) The Customer will be deemed to be in default under these terms and conditions, if it commits any act of insolvency or, in the case of of a Customer which is a company, there is any change in controlling shareholding (unless otherwise agreed in writing by Juicy Isle Pty Ltd).

## **16. Severability:**

Any covenant or agreement herein whether a whole clause or part of a clause shall be capable of severance without affecting any other of these Terms and Conditions.

## **17. Customer Restructure:**

The Customer will notify Juicy Isle Pty Ltd in writing of any change in its structure or management including (inter alia) a change in director, shareholder or management or change in partnership or trusteeship or proposed sale of the Customer's business within seven (7) days of the date of any such change. In such event Juicy Isle Pty Ltd may, at its election terminate this agreement.

## **18. Credit Limit:**

- (a) If Juicy Isle Pty Ltd grants any credit facility or nominates any credit limit this is an indication only of its intention at the time of such granting or nomination. Juicy Isle Pty Ltd can vary or withdraw any credit facility at any time at its complete and unfettered discretion and without any liability whatsoever or howsoever to the Customer or any party claiming through the Customer and without affecting or derogating from these Terms and Conditions or any obligation of the Customer whatsoever or howsoever arising in any way.
- (b) Juicy Isle Pty Ltd may from time to time nominate or vary the period for payment or the amount of the Customer's maximum credit in any separate period.

## **19. Credit Information:**

- (a) The Customer irrevocably authorises Juicy Isle Pty Ltd, its servants and agents to make such enquiries, as it deems necessary to investigate the credit worthiness of the Customer from time to time, including (but without limiting the generality of the foregoing) the making of enquiries with persons nominated as trade references, the bankers of the Customer, any other credit provider or a credit reporting agency (hereinafter called "the information sources"). The Customer hereby authorises the information sources to disclose to Juicy Isle such information concerning the Customer which is within their possession and which is requested by Juicy Isle Pty Ltd.
- (b) The Customer agrees that the information provided on the Credit Application concerning the Customer may be disclosed to a credit reporting agency or any other interested person.

## **20. Waiver:**

In the event that Juicy Isle elects not to exercise any of its right arising as a result of any breach of their terms hereby by the Customer, any such action shall not constitute a waiver of any right of Juicy Isle Pty Ltd relating to any subsequent breach by the Customer.

## **21. Jurisdiction:**

The Customer agrees that all contracts made with Juicy Isle Pty Ltd shall be deemed to be made in the State of Tasmania and submits to the jurisdiction of the appropriate Tasmanian court nearest Hobart.

## **22. Entity:**

If there is any change in the trading identity of the Customer, the Customer who signs the Credit Application agrees to be liable for all moneys owed to Juicy Isle Pty Ltd by any such new entity

until such time as that new entity completes and signs its own credit application form and is accepted as a credit Customer by Juicy Isle Pty Ltd.

**23. Trust:**

These Terms and Conditions shall be binding upon the Customer in its personal capacity and in its capacity as trustee of any trust.

**24. Disclaimer:**

Juicy Isle Pty Ltd will not be liable for any costs, claims, damages or demands arising from personal injury, loss or damage whatsoever occurring to the Customer and/or its servants and agents as a result of either the acts and/or omissions of the Customer, its servants and agents and in no case shall Juicy Isle Pty Ltd be liable for any consequential loss or damage.

**25. Conclusive Evidence:**

The Customer agrees that a certificate purporting to be signed by an officer of Juicy Isle Pty Ltd certifying any of the matters hereinbefore set out shall be conclusive evidence of the contents of the certificate in every respect.