

**Application of Terms.** *These terms and conditions apply to all quotations, orders, sales and supplies of goods or services by Triarc Limited (Triarc) to the Customer. They form part of each contract between Triarc and the Customer and prevail over any inconsistent terms contained in the Customer's purchase order, procurement portal, standard terms or other document, unless expressly agreed by Triarc in writing.*

## **1 Orders and Acceptance**

- 1.1 Orders become binding when accepted by Triarc by written confirmation, issuing an invoice, commencing production, ordering materials or supplying goods.
- 1.2 Triarc may accept or decline any order, in whole or in part, at its discretion.

## **2 Authorised Representatives**

- 2.1 Triarc may rely on instructions from any person the Customer has identified, expressly or by conduct, as authorized to place orders, approve proofs, approve artwork, request variations or otherwise communicate with Triarc.
- 2.2 The Customer is responsible for all resulting charges, costs and obligations arising from those instructions.

## **3 Quotations and Pricing**

- 3.1 Quotations are valid for 30 days unless stated otherwise.
- 3.2 Prices may change if specifications, quantities, artwork, materials, freight, delivery requirements, exchange rates, supplier charges or other relevant inputs change.

## **4 Deposits**

- 4.1 Triarc may require a deposit before commencing work or ordering materials.
- 4.2 Deposits are non-refundable to the extent they cover costs, labour, materials, tooling, outsourced work or other commitments already incurred by Triarc.

## **5 Variations**

- 5.1 Customer-requested variations after acceptance may result in additional charges and revised delivery dates.
- 5.2 Triarc is not required to proceed with any variation unless the variation and any applicable price adjustment are accepted by Triarc and the Customer.

## **6 Electronic Communications**

- 6.1 The Customer may place orders, approve quotations, approve artwork, request variations and otherwise communicate with Triarc by email or other electronic means approved by Triarc.
- 6.2 Any order, instruction, approval or acceptance communicated electronically by, or appearing to come from, the Customer or an Authorised Representative is binding on the Customer.
- 6.3 Triarc may rely on any electronic communication that reasonably appears to have been sent by or on behalf of the Customer.

## **7 Artwork and Proof Approval**

- 7.1 The Customer is responsible for checking and approving all artwork, proofs, dimensions, colours, barcodes, copy, layout and specifications.
- 7.2 Triarc is not liable for errors approved by, supplied by, or resulting from information provided by the Customer.
- 7.3 Production may proceed once approval is received electronically, verbally or in writing.

## **8 Colour and Quantity Tolerances**

- 8.1 Exact colour matching cannot be guaranteed. Commercial colour variation is acceptable.
- 8.2 Unless agreed otherwise, production quantities may vary by plus or minus 10 % and the Customer will be invoiced for the actual quantity supplied.

## **9 Intellectual Property**

- 9.1 The Customer warrants that all artwork, designs, logos, trademarks, specifications, files, content and other materials supplied to Triarc may be used by Triarc for the purpose of manufacturing and supplying the goods or services.
- 9.2 The Customer warrants that the manufacture, supply and use of goods or services in accordance with the Customer's instructions will not infringe the intellectual property rights or other rights of any third party.
- 9.3 The Customer indemnifies Triarc against all claims, demands, losses, liabilities, damages, costs and expenses arising from any allegation that materials, instructions or specifications supplied by the Customer infringe the intellectual property rights or other rights of any third party.
- 9.4 Unless otherwise agreed in writing, all intellectual property created by Triarc in connection with layouts, concepts, production files, designs, tooling, dies, plates, cylinders, processes, know-how or production materials remains owned by Triarc.

## **10 Customer Property**

- 10.1 Customer-supplied stock, tooling, dies, files, materials or other property is held at the Customer's risk.
- 10.2 Triarc is not obliged to insure Customer property.
- 10.3 Triarc may dispose of uncollected Customer property after giving reasonable notice where it has been left with Triarc for more than 12 months.

## **11 Ownership of Production Materials**

- 11.1 Unless otherwise agreed in writing, dies, plates, cylinders, tooling, layouts, production files and other ancillary materials created, obtained or used by Triarc remain Triarc's property, whether or not the Customer has contributed to their cost.

## **12 Delivery and Storage**

- 12.1 Delivery dates are estimates only. Triarc is not liable for delay or failure to meet an estimated delivery date.
- 12.2 Risk passes to the Customer on delivery, collection, or when goods are made available for collection, whichever occurs first.
- 12.3 Goods not collected within 14 days after notification may incur storage charges and remain at the Customer's risk.

## **13 Payment**

- 13.1 Payment is due in accordance with the agreed trading terms, or otherwise on the due date stated in Triarc's invoice.
- 13.2 If payment is not made in full by the due date, Triarc is entitled to charge the Customer interest on the unpaid overdue balance from the due date for payment at the rate of 5% per annum above the current commercial overdraft rate charged by Triarc's bank, compounding monthly on the unpaid balance owing on the first day of each month until payment in full is received by Triarc.
- 13.3 Triarc may allocate payments received from the Customer against any amount owing by the Customer in any manner Triarc determines.

## **14 Retention of Title and PPSA**

- 14.1 Ownership of the goods remains with Triarc until Triarc has received payment in full of all amounts owing by the Customer to Triarc on any account.
- 14.2 The Customer grants Triarc a purchase money security interest and a security interest in the goods, any proceeds of the goods and any other Customer property held by Triarc as security for all obligations owed by the Customer to Triarc.
- 14.3 The Customer shall promptly do all things and sign all documents required by Triarc to enable Triarc to perfect, register, maintain or enforce its security interest under the Personal Property Securities Act 1999.

- 14.4 Until ownership passes, the Customer must store the goods separately and in a manner that clearly identifies them as the property of Triarc.
- 14.5 If the Customer defaults in payment or otherwise breaches these Terms, Triarc may, without notice and without prejudice to any other rights, enter any premises where the goods are located, repossess the goods, dispose of or resell the goods, and apply the proceeds towards amounts owing.
- 14.6 To the maximum extent permitted by law, the Customer waives any rights under the PPSA that may be waived and agrees that sections 114(1)(a), 116, 120(2), 121, 125, 129, 131, 132 and 133 of the PPSA do not apply.
- 14.7 The Customer waives the right to receive a verification statement under section 148 of the PPSA.
- 14.8 The Customer shall immediately notify Triarc of any change in its name, trading name, address, contact details, ownership or corporate structure.
- 15 Returns, Refunds and Defective Goods**
- 15.1 Claims must be made within 7 days of delivery.
- 15.2 No goods may be returned without Triarc's prior written approval.
- 15.3 If goods are accepted by Triarc as defective, Triarc may repair, replace, credit or refund the defective goods at its option.
- 15.4 Custom-manufactured goods are not returnable unless defective.
- 16 Cancellation**
- 16.1 Orders may only be cancelled with Triarc's written agreement.
- 16.2 If cancellation is accepted, the Customer must pay all costs incurred by Triarc, including artwork, labour, materials, tooling, outsourced work, freight and administration.
- 16.3 Custom-manufactured orders cannot be cancelled once production has commenced or materials have been ordered, unless Triarc agrees otherwise in writing.
- 17 Lien**
- 17.1 Triarc may retain any Customer goods, stock, tooling, files, materials or other property while any amount remains overdue.
- 17.2 The lien is in addition to Triarc's rights under the PPSA and any other rights available at law.
- 18 Suspension, Cancellation and Insolvency**
- 18.1 Triarc may suspend performance, withhold delivery, require advance payment, cancel any order or terminate any credit arrangement immediately by notice if any amount owing becomes overdue, Triarc reasonably considers the Customer's creditworthiness has deteriorated, the Customer commits a material breach of these Terms, or an Insolvency Event occurs.
- 18.2 An Insolvency Event includes where the Customer becomes unable to pay its debts when due, enters into any arrangement or compromise with creditors, has a receiver, liquidator, administrator or statutory manager appointed, ceases or threatens to cease carrying on business, or commits an act of insolvency under applicable law.
- 18.3 All amounts owing to Triarc immediately become due and payable upon the occurrence of an Insolvency Event.
- 19 Limitation of Liability**
- 19.1 To the fullest extent permitted by law, Triarc's total liability arising out of or in connection with the supply of goods or services shall not exceed the amount paid by the Customer for the particular goods or services giving rise to the claim.
- 19.2 Triarc shall not be liable for any indirect, consequential, special or exemplary loss or damage, including loss of profit, loss of revenue, loss of production, loss of opportunity, wasted expenditure, loss of goodwill or any third-party claim.
- 19.3 Triarc shall not be liable for errors in materials, specifications or information supplied by the Customer, defects resulting from Customer instructions, errors contained in artwork, proofs or specifications approved by the Customer, or ordinary colour, material or production tolerances.
- 19.4 The remedies set out in clause 15 are the Customer's sole remedies in relation to defective goods.
- 20 Indemnity**
- 20.1 The Customer indemnifies Triarc, its directors, officers, employees and contractors from and against all claims, demands, losses, damages, liabilities, costs and expenses, including legal costs on a solicitor-client basis, arising directly or indirectly from any breach of these Terms by the Customer, any negligent or wrongful act or omission of the Customer, materials, instructions or specifications supplied by the Customer, or any third-party claim relating to the Customer's use, resale or distribution of the goods.
- 21 Personal Guarantee**
- 21.1 Where the Customer is a company or trust, the director(s) of the company or trustee(s) of the trust, by signing at the bottom of this document, undertake to personally pay Triarc the unpaid overdue balance and any interest accrued pursuant to clause 13 immediately on written request from Triarc.
- 22 Consumer Guarantees Act and Fair Trading Act
- 22.1 Where the Customer acquires goods or services for the purposes of a business, the parties agree that the Consumer Guarantees Act 1993 does not apply, and sections 9, 12A and 13 of the Fair Trading Act 1986 are contracted out of, to the maximum extent permitted by law.
- 22.2 The parties acknowledge that the goods and services are supplied and acquired in trade and that it is fair and reasonable that they be bound by this clause.
- 23 Force Majeure
- 23.1 Triarc is not liable for any delay or failure to perform caused by events beyond its reasonable control, including supplier delay, transport disruption, labour shortage, equipment failure, material shortage, natural disaster, epidemic, pandemic, strike, civil disturbance, governmental action or utilities failure.
- 24 Privacy**
- 24.1 The Customer authorises Triarc to collect, use and disclose personal information for the purposes of assessing and administering credit, recovering amounts owing, carrying out credit checks, verifying identity, supplying goods and services, administering customer accounts and complying with legal obligations.
- 24.2 The Customer authorises Triarc to obtain and exchange information with credit reporting agencies, trade referees, credit providers, insurers, professional advisers and debt collection agencies.
- 24.3 The Customer shall ensure that any individuals whose personal information is provided to Triarc are aware of, and have consented to, that disclosure where required by law.
- 25 General**
- 25.1 These Terms prevail over any terms contained in the Customer's order, procurement platform, purchase order, standard terms or other document unless expressly agreed by Triarc in writing.
- 25.2 Triarc may vary these Terms from time to time. The terms applying to a contract are the terms in force when the relevant order is accepted, unless otherwise agreed in writing.
- 25.3 If any provision of these Terms is invalid or unenforceable, the remaining provisions continue in full force.
- 25.4 These Terms are governed by New Zealand law.