

# Terms of Trade

## For FeedMe Limited (Trading as Ezlunch)

By registering as a Family Account Holder with Ezlunch, you accept the following terms and conditions and agree to be bound by them.

### 1. DEFINITIONS

The following definitions are used in these Terms:

- 1.1 “*Agreement*” means these terms of trade and any variations updated from time to time.
- 1.2 “*Confidential Information*” means any product, business, marketing, strategic, technical or other information relating to customers or suppliers, or data (including but not limited to information retained on all types of medium including written, diagrammatical, software, plans or other storage medium) relating to the Service, the Website or business or affairs of Ezlunch whether disclosed in writing, orally or by any other means, and whether or not that information is marked “confidential”, to the recipient party by Ezlunch or its authorized agents, whether before or after the date of this Agreement.
- 1.3 “*Ezlunch Credit Account*” means a credit account opened in the name of the Family Account Holder upon registration, from which all payments, deductions or reimbursements will be made.
- 1.4 “*Customer*” means a person on whose behalf the Family Account Holder place the Orders, and the person to whom the Orders will be delivered.
- 1.5 “*Delivery Site*” means the location where the Orders are to be delivered by the Food Suppliers to the Customer.
- 1.6 “*Ezlunch*” means FeedMe Limited and its successors and assigns.
- 1.7 “*Family Account Holder*” means an individual or organization who has registered as an account holder with Ezlunch who is also a party under this Agreement.
- 1.8 “*Fee*” means NZD \$0.30 per Meal, calculated and paid to Ezlunch in accordance with clause 6 of this Agreement.
- 1.9 “*Food Supplier*” means a supplier of Meal Items who has registered as a food supplier with Ezlunch to prepare, assemble and deliver the Orders.
- 1.10 “*Institution*” means any school or organization to which the Customer

belongs and through whom delivery of the Orders will be facilitated.

- 1.11 “*Intellectual Property*” includes (without limitation) all current and future patents or patent applications, copyright, designs, registered or unregistered trade marks, trade names, goodwill rights, trade secrets, Confidential Information and any other intellectual proprietary or like right or form of intellectual property pertaining to the Services, the Website or the business of Ezlunch.
- 1.12 “*Meal*” means a meal item or items ordered for a single Customer for a single delivery.
- 1.13 “*Meal Items*” mean any food, beverage or other goods that may be purchased and supplied through Ezlunch from the Food Supplier from time to time.
- 1.14 “*Orders*” means any order for Meal Items placed through the Ezlunch Website.
- 1.15 “*Sale Price*” means the price charged to the Family Account Holder in respect of the Meal Items, which shall be inclusive of GST.
- 1.16 “*Service*” means the ordering of Meal Items by registered Family Account Holders through the electronic online interface or other platforms provided by Ezlunch, and subsequent supply of Meal Items by the Food Supplier to the Customer.
- 1.17 “*Term*” means the period commencing on the date of this Agreement, and ending on the date this Agreement is terminated.
- 1.18 “*Website*” means the website located at [www.ezlunch.co.nz](http://www.ezlunch.co.nz) or any related services (blogs, website or SMS-based) and websites through which the Ezlunch Service is offered.
- 1.19 “*We*”, “*Us*” and “*our*” means Ezlunch.
- 1.20 “*You*”, “*yourself*” and “*your*” means the Family Account Holder.
- 1.21 The plural includes the singular, and vice versa.

### 2. AGREEMENT

- 2.1 Ezlunch agrees to provide the Service to you in accordance with this Agreement, subject to approval by the Institution (the school).

### 3. REGISTRATION AND WARRANTIES

If your institution (school) is registered, you may register to use ezlunch. There is no fee for registering as a Family Account Holder or Customer.

- 3.1 The Family Account Holder (you) must supply all information required by Ezlunch for registration. This is listed on the Website.
- 3.2 Ezlunch reserves the right to decline an application for registration by a Family Account Holder at any time without cause.
- 3.3 You must ensure all registration details are up to date and secure at all times, and not allow any other person to access your account without the express permission of Ezlunch.
- 3.4 You may not register more than one account with the Ezlunch Website.
- 3.5 Where you, or a Customer associated with you, use a mobile phone device to place an Order, you undertake to register its details as requested and keep the phone number and device secure.
- 3.6 By registering with us, you also warrant that:
  - 3.6.1 You are the legal guardian of the Customer.
  - 3.6.2 You are 18 years of age or over.
  - 3.6.3 You are not subject to any order or management pursuant to the Mental Health Act or similar.
  - 3.6.4 All the information provided in the registration is complete, accurate and current and you will ensure that it will remain so at all times.

### 4. ORDERS

- 4.1 The Family Account Holder may place an Order via the Website for any Meal Items displayed on the Customer's ordering page.
- 4.2 Orders will only be accepted upon receipt of payment for the order via the Ezlunch Credit Account.
- 4.3 All Orders and related payments must be confirmed and received by Ezlunch no later than 9:00am on the day of delivery.
- 4.4 An Order is deemed to be received by Ezlunch when payment has been made and an electronic confirmation has been generated by Ezlunch to the Family Account Holder via the website confirmation or SMS.
- 4.5 Ezlunch reserves the right to reject an Order at any time without cause.
- 4.6 The Food Supplier has put together a menu for the term, which will be reviewed and updated each term. Ezlunch shall in no

way be obliged to arrange for the supply of any food and beverage items that is not listed as a Meal Item on the menu for the customer. Sometimes menus will vary between schools, so some customers under your account may have different Meal Items available on their menus.

- 4.7 The Food Supplier will always do their best to ensure that they can fulfill your order. You acknowledge that the Meal Items listed on the Website are subject to availability. Where it is necessary you hereby authorize Ezlunch to replace any Meal Item or ingredient with a substitute of greater or approximately equal value without notice.
- 4.8 Any Orders made from your account via the Website and/or registered mobile device is considered a valid Order from the Family Account Holder, for which you are obliged to pay.
- 4.9 You may cancel or adjust an Order via the Website at any time prior to 9:00am on the day delivery is to be made. No refunds will be given for cancellations or adjustments after 9:00am, as the order will be produced and delivered.
- 4.10 Ezlunch will do our best to ensure that all orders are collated and passed to the Food Supplier shortly after 9:00am each day, with delivery details. The Food Supplier will then produce and package the order and deliver it to the Delivery Site on the specified day and at the time agreed with the Institution, to the best of their ability.
- 4.11 You will be taken to have read the ingredients list via the website when placing an order. You will therefore be taken to be aware of any foods that may cause an allergy if consumed by the Customer, and no responsibility for this will be accepted by ezlunch or the Food Supplier.

### 5. PRIVACY

- 5.1 Ezlunch is committed to protecting the privacy of all registered Family Account Holders.
- 5.2 Ezlunch and the Website gather the following information from the registered Family Account Holder:
  - 5.2.1 Family Account Name: this is used on the website and can be any name you choose.
  - 5.2.2 Email address: this is used as your login and will be used to send any notices to you. We ask for this twice to ensure that it is accurate, as it is important.
  - 5.2.3 Password: this is a security measure to ensure that only you

- can place orders using your account.
- 5.2.4 Child's Name: this is the Customer name. Each person that you will be placing orders for will need to be listed here. This information is used for delivery.
- 5.2.5 School: this information is used for delivery. Only registered institutions (schools) may have ezlunch delivered. If your school is registered it will be available to be selected. If your school is not registered you will not be able to use ezlunch. You may check whether your school is registered using the ezlunch website "Is ezlunch at my school?".
- 5.2.6 Class: this information is used for delivery. If meals are distributed to each class, the class number must be inserted here and updated each year as it changes. If the customer will collect their meal from a site at the institution, they may require an alternative identifier, such as Student ID.
- 5.2.7 The website will use a single cookie to maintain your identity during your session. It is deleted when you log out.
- 5.2.8 We record ip addresses against each user session for security purposes.
- 5.2.9 We maintain standard web server logs, for traffic analysis purposes. These record each request to the server, along with http headers and your ip address.
- 5.3 Further to clause 5.2, Ezlunch will not disclose any such information in relation to you or the Customer to any third party without consent, other than to:
- 5.3.1 Food Suppliers for the sole purpose of providing the Service; and
- 5.3.2 The New Zealand Government for any such information required or permitted by law.
- 5.3.3 Professional advisors and consultants who have entered into confidential undertaking with Ezlunch to provide research, administration or customer support services incidental to the Service, in which case only the minimum information required for such services will be supplied.
- 5.4 FeedMe Limited (New Zealand company number 3037933 and its successors and assigns) is the entity which collects,

- handles and holds all information provided by the Family Account Holder on the Website. Such information will only be stored in secure networks and facilities.
- 5.5 You are entitled to have access to any personal information related to you or the relevant Customer, which has previously been supplied to us. You shall be entitled to edit, amend or delete any such information unless prohibited by law.
- 5.6 In the event that Ezlunch, the Service or the Website is sold, acquired, merged, liquidated, restructured or otherwise transferred to another party, Ezlunch reserves the right to transfer to the extent permissible by law its user databases, together with any personal or non-personal information contained therein to such party acquiring the assets.
- 6. PRICE AND PAYMENT**
- 6.1 The Sale Price for each of the Meal Items shall be displayed on the menu on the Customer ordering page, and will be valid for that school term.
- 6.2 Upon registration, an Ezlunch Credit Account will be opened for you, from which all payments will be made.
- 6.3 You may top up your Ezlunch Credit Account using credit card or by bank transfer. Top ups by credit card must be a minimum of twenty dollars (\$20.00) each.
- 6.4 Should Ezlunch incur any losses, costs or damages as a direct or indirect result of the Family Account Holder's breach of this Agreement, Ezlunch may, in its absolute discretion, deduct any amount owing by the Family Account Holder from the Ezlunch Credit Account at any time without notice.
- 6.5 An Ezlunch Credit Account may be closed when:
- 6.5.1 You ask for its closure by emailing [enquiry@ezlunch.co.nz](mailto:enquiry@ezlunch.co.nz). You will need to provide your family name, login id, current account balance, and you must nominate a bank account for the balance of the Ezlunch Credit Account to be deposited into;
- 6.5.2 The Family Account Holder has not accessed the Website for a period of 14 months or more, in which case the balance remaining in the relevant Ezlunch Credit Account shall be forfeited to Ezlunch.
- 6.5.3 This Agreement is terminated pursuant to clause 13 of this Agreement.
- 6.6 Subject to clause 6.5, upon closure of an Ezlunch Credit Account, we shall refund the

balance (excluding vouchers and similar items) held in the credit account to you, after a processing fee of \$5 has been deducted. A processing fee will not be deducted if the closure is made at the end of the school year, provided that you email your details (as set out in clause 6.5.1) on or before 10 January.

6.7 The Sale Price and Fee for each Meal Item are subject to change by Ezlunch or the Food Supplier from time to time without notice. You are deemed to have accepted any such changes by continuing to use the Services.

## 7. ELECTRONIC COMMUNICATION AND WEBSITE INFORMATION

7.1 You agree to receive communication via email or SMS from Ezlunch relating to your registration, Ezlunch Credit Account, transactions or promotions, marketing and other updates regarding the Service or the Website. All regular updates from Ezlunch will contain clear instructions to unsubscribe.

7.2 You may post reviews, feedback and other comments on the blog on the Website. You grant Ezlunch and its affiliates the right to use, copy, reproduce, modify, delete, distribute and display any such reviews and comments in whatever form or medium.

7.3 Whilst ezlunch strives to ensure that our website is accurate, you acknowledge that you use any information and data provided on the Website at your own risk. Ezlunch does not warrant or guarantee the accuracy or currency of any information, data or material on the Website, and reserves the right to update, amend or delete the same at any time.

7.4 The Website may provide links to other websites not operated or controlled by Ezlunch. Ezlunch shall not be liable for any representation, services, content or data contained in such external sites.

## 8. COMPLAINTS AND RETURN OF PRODUCTS

8.1 Notwithstanding anything else in this Agreement, you acknowledge that the Food Supplier, not Ezlunch, is solely responsible for the quality and standard of its Meal Items and delivery.

8.2 In the event of any issues arising relating to damaged Meal Items, damaged packaging, expiry of shelf life, delay in delivery, inferior quality or complaints of a similar nature, you shall raise the complaint to the Food Supplier in first instance, who may provide

credit reimbursement or product replacement at the option of the Institution (school) and yourself.

8.3 Should the Food Supplier fail to address the complaints in clause 8.2 to a satisfactory standard, Ezlunch may investigate and remedy the complaint at your request, and at its discretion may provide you with a voucher for your next Order, to be used within 8 weeks from the date of issue.

## 9. NO AGENCY

9.1 The parties acknowledge that neither Ezlunch nor the Food Supplier is an agent or authorized representative of the other.

## 10. SUB-CONTRACTING AND ASSIGNMENT

10.1 Ezlunch may assign any of its rights or obligations under this Agreement without obtaining the prior approval of the Family Account Holder.

## 11. CONFIDENTIALITY AND INTELLECTUAL PROPERTY

11.1 You acknowledge and agree that all Intellectual Property rights relating to the Service or the Website are owned by Ezlunch and will not:

11.1.1 Display, copy, print, reproduce, adapt, reverse-engineer, distribute, store, public or create derivative works using the Intellectual Property or the Confidential Information; or

11.1.2 challenge, nor assist any other party (directly or indirectly), to challenge Ezlunch's sole ownership of the Intellectual Property, nor to use the same in services to any other party.

11.2 You acknowledge that, through your association with Ezlunch, you may come into possession of Confidential Information. You agree that you will treat such Confidential Information as confidential and not disclose it to any other party (nor allow it to be disclosed to any other party) and shall take appropriate steps to ensure that such information cannot be accessed or used by any unauthorised party.

11.3 You agree to, on the termination of this Agreement for any reason, return to Ezlunch (or destroy, at Ezlunch's sole discretion) all books of accounts, records, papers, correspondence and any other documents or electronic data concerning

and containing Confidential Information. All Confidential Information shall remain the exclusive property of Ezlunch.

11.4 The obligations under this clause 11 shall survive termination of this Agreement

## 12. LIABILITY AND INDEMNITY

12.1 You acknowledge that, despite best efforts, Ezlunch cannot guarantee the continued availability, currency, description, delivery capability and quality of the Service, advertisement, any particular Food Supplier or any Meal Items advertised on the Website, and will not be liable to you for any failure to provide the same.

12.2 You acknowledge that, while Ezlunch will actively encourage all Food Suppliers to offer nutritious Meal Items, Ezlunch has no control over, and will not be liable for any representation regarding the nutritional value of any Meal Item listed on the Website.

12.3 You agree to be solely responsible for the Customer and fully indemnify Ezlunch and its directors, employees and authorized representatives from any and all claims, liabilities, losses (including consequential loss), expenses and damages occasioned by reason of any claim, proceeding, delay, action, liability or injury in connection with the Food Supplier, yourself, the Customer or arising directly or indirectly from breach of this Agreement by yourself, the Institution or the actions of the Food Supplier and its employees, authorized representatives or agents.

12.4 To the extent permitted by law, Ezlunch excludes all liability and responsibility to the Family Account Holder in connection with the Service, the Website, or any acts or omission by other user, the Food Supplier or the Institution, whether such liability arises in contract, equity, tort, breach of statutory duty or otherwise. Any liability of Ezlunch to the Family Account Holder or the Customer relating to this Agreement shall be limited to the total value of all fees received by Ezlunch under this Agreement to a maximum of \$5,000.00 New Zealand Dollars.

## 13. TERMINATION

13.1 You may terminate your registration and this Agreement, either in whole or in relation to a specified Food Supplier and/or Institutions, by giving Ezlunch at least ten (10) working days written notice .

13.2 Ezlunch may terminate the Agreement and your registration:

13.2.1 immediately by notice in writing (including email) if you or any customer associated with you is in breach of any term of this Agreement. If the breach can be remedied and you have twenty-four (24) hours remedy that breach from receipt of a written notice (including email) from Ezlunch requiring immediate remedy; or

13.2.2 without cause upon ten (10) working days written notice.

13.2.3 Without cause and without notice, if the institution relationship has been terminated.

13.3 Upon termination of this Agreement the parties shall pay each other all sums of money which may be due or owing in respect of the Service under this Agreement prior to termination. Unredeemed vouchers and similar are not considered money owing to you.

## 14. DISPUTE RESOLUTION

14.1 If any dispute arises between the parties out of or in relation to this Agreement:

14.1.1 the party claiming a dispute has arisen must give written notice to the other specifying the nature of the dispute;

14.1.2 the parties will endeavour, in good faith, to negotiate a resolution of the dispute;

14.1.3 if the parties have not resolved the dispute within fourteen (14) days after the date notice of the dispute was given, the dispute is to be mediated by a mediator jointly agreed by the parties, or, if the parties are unable to agree, selected by the President of the Auckland District Law Society at the time the dispute arises. The costs of the mediation shall be shared equally between the parties unless otherwise agreed in the course of the mediation;

14.1.4 Should mediation fail to resolve the matter within 30 days, then the dispute may be referred to arbitration. The arbitration will be conducted by a single arbitrator, agreed between the parties or in default of agreement, by an arbitrator selected by the President of the Auckland District Law Society. The arbitration will be governed by the Arbitration Act 1996 (New Zealand) and the then current Arbitration Protocol. The

law of New Zealand will apply, and judgment upon the award rendered by the arbitrators may be entered in any Court having jurisdiction thereof;

14.1.5 pending resolution of the dispute, this Agreement will remain in full force and effect without prejudice to either parties' rights and/or remedies.

## 15. MISCELLANEOUS

- 15.1 The parties shall not be liable for delay or failure to perform its obligations if the cause of the delay or failure is beyond its control.
- 15.2 Failure by the parties to enforce any of the terms and conditions contained in this contract shall not be deemed to be a waiver of any of the rights or obligations it has under this contract.
- 15.3 This Agreement shall be governed by and interpreted in accordance with the laws of New Zealand. The Courts of New Zealand have jurisdiction to hear any dispute in connection with this Agreement.
- 15.4 Ezlunch may vary the terms and conditions contained in this Agreement from time to time, in its absolute discretion. You are deemed to have accepted such change by continuing use of the Service and/or the Website.
- 15.5 This Agreement contains the entire agreement and undertaking between the parties with respect to the subject matter hereof and supersedes all prior discussions, representations, understandings and agreements whether oral or in writing including, without limitation, the Non-Disclosure Agreement.
- 15.6 If any provision of this contract shall be invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.