

# Terms of Trade

## For FeedMe Limited (Trading as Ezlunch)

By registering as a Food Supplier with Ezlunch, you accept the following terms and conditions and agree to be bound by the same.

### 1. DEFINITIONS

- 1.1 “*Agreement*” means these terms of trade and any variations updated from time to time by mutual agreement, including the Schedule.
- 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 Food Supplier by Ezlunch or its authorized agents, whether before or after the date of this Agreement.
- 1.3 “*Customer*” means a person on whose behalf the Family Account Holder place the Orders, and the person to whom the Orders will be delivered.
- 1.4 “*Delivery Site*” means the location where the Orders are to be delivered by the Food Suppliers to the Customer.
- 1.5 “*Ezlunch*” means FeedMe Limited and its successors and assigns.
- 1.6 “*Family Account Holder*” means an individual or organization who has registered as an account holder with Ezlunch.
- 1.7 “*Fee*” means an amount calculated and paid to Ezlunch in accordance with clause [ ] and Schedule A of this Agreement.
- 1.8 “*Food Supplier*” means a supplier of Meal Items who has registered as a food supplier with Ezlunch to prepare, assemble and deliver the Orders.
- 1.9 “*Institution*” means any school or organization to which the Customer belongs and through whom delivery of the Orders will be facilitated.
- 1.10 “*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 property or like right or form of intellectual property pertaining to the Services, the Website or the business of Ezlunch.

- 1.11 “*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.
- 1.12 “*Orders*” means any order for Meal Items placed through the Ezlunch Website.
- 1.13 “*Sale Price*” means the price charged to the Family Account Holder in respect of the Meal Items.
- 1.14 “*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.
- 1.15 “*Term*” means the period commencing on the date of this Agreement, and ending on the date this Agreement is terminated.
- 1.16 “*Website*” means the website located at [www.ezlunch.co.nz](http://www.ezlunch.co.nz) or any related services (website or SMS-based) and websites through which the Ezlunch Service is offered
- 1.17 The plural includes the singular, and vice versa.

### 2. AGREEMENT TO SUPPLY

- 2.1 In consideration for the provision of Service and linking Customers to its business, the Food Supplier agrees to be advertised on the Website as a registered Food Supplier, pay the Fee and deliver the Meal Items in accordance with this Agreement.

### 3. MENU LISTING

- 3.1 The Food Supplier shall supply Ezlunch with a menu of its available Meal Items upon entering into this Agreement, to be advertised on the Website and updated each school term.
- 3.2 The Food Supplier will keep its menu listings current, accurate and include all relevant information (including full ingredients lists for each Meal Item), to be

updated in the last week of each school term for the following school term.

- 3.3 Any Meal Items which are no longer available shall be removed from the menu listings without delay.
- 3.4 The Food Supplier acknowledges that some Meal Items may be included by some Family Account Holders as part of a "Favourite Combo" or long term Orders. Therefore all updates and amendments to the menu listings of all Meal Items on the Website are subject to Ezlunch's final approval, whose consent shall not be unreasonably withheld.

#### 4. **PRODUCTION, PACKAGING AND DELIVERY**

- 4.1 The Food Supplier shall purchase and maintain any equipment reasonably required by Ezlunch to receive and manage Orders.
- 4.2 The Food Supplier shall prepare, assemble and handle each of the Meal Items strictly in accordance with best industry standard for quality, health and hygiene at all times, and using only ingredients of the specification and quality mutually agreed by Ezlunch and the Food Supplier.
- 4.3 The Food Supplier shall prepare Meal Items fresh every day of sufficient quantity to fill all orders received through Ezlunch
- 4.4 The Food Supplier shall at its own cost package the Meal Items strictly in accordance with the specification mutually agreed by Ezlunch and the Food Supplier, and maintain a supply of packing for the Meal Items sufficient to meet normal production requirements.
- 4.5 From time to time, Ezlunch may alter the specifications of the ingredient and/or packaging of the Meal Items upon request by the Family Account Holders, Customers or Institutions, and the Food Supplier shall in its best endeavour meet such specification as far as practicable.
- 4.6 Orders will be processed by Ezlunch and will be available for download by the Food Supplier no later than the time specified in Schedule A.
- 4.7 The Food Supplier acknowledges that "on time in full" delivery of Orders to the Customers together with highest standards of quality is essential, and the Food Supplier agrees to:
- 4.7.1 Deliver each Order to the Customer at the Delivery Site in full and within the timeframe reasonably required by the Family

Account Holder and the Institution through Ezlunch; and

- 4.7.2 Immediately inform the Institution and Ezlunch of any matters which may prevent it from fulfilling its production or delivery obligations.

#### 5. **COMPLIANCE**

- 5.1 The Food Supplier shall comply with all applicable health, workplace and food safety laws and regulations for the production, preparation and handling of food and beverages, and ensure its premises at have all necessary permits and licences for the provision of Meal Items at all times.

#### 6. **PRICE AND PAYMENT**

- 6.1 For a period of one school term, the Sale Price for each of the Meal Items shall be as set out in the menu submitted by the Food Supplier for such school term.
- 6.2 The Fee will be automatically deducted from the payment received by Ezlunch for the Orders. The balance of the payment received will be deposited into the Food Supplier's nominated bank account in full on or before midnight each Tuesday for Orders delivered in the preceding week.
- 6.3 The parties shall review the Sale Price once every school term, and in good faith negotiate to reach consensus on any changes in the same, provided that any increase in the Sale Price must be restricted to legitimate and verifiable cost increases.
- 6.4 Ezlunch will review the Fee once every 6 months at its discretion and any change in the Fee will be notified in writing.
- 6.5 From time to time Ezlunch shall be entitled to run special promotions and otherwise discount the Meal Items provided that no such promotion or price discounts shall be made without the Food Supplier's prior consent.

#### 7. **RECORDS AND REPORTING**

- 7.1 The Food Supplier agrees to maintain complete and accurate records and accounts of all its activities under this Agreement and all transactions relating to the Service and Orders throughout the Term, including (but not limited to) its monthly supply, sales, credits, customer complaints and returns.
- 7.2 The Food Supplier shall keep such records and accounts in safe and secure storage throughout the Term, and promptly provide

the same to Ezlunch within five (5) working days of a request from Ezlunch.

## 8. **INSURANCE**

8.1 The Food Supplier shall keep and maintain an insurance policy covering public liability of no less than NZD \$200,000.00 and upon request by Ezlunch, supply a copy of the insurance policy and any evidence of its currency to Ezlunch.

## 9. **PROMOTION**

9.1 The Food Supplier agrees to display Ezlunch signage in a prominent position in its retail premises.

9.2 Ezlunch agrees to display the logo and contact details of the Food Supplier on the Website with its menu listings.

9.3 From time to time, the Food Supplier shall assist Ezlunch with any promotion, sale and demonstration in relation to the Service, subject to mutual agreement.

## 10. **COMPLAINTS AND RETURN OF PRODUCTS**

10.1 The Food Supplier acknowledges that it is solely responsible for the quality and standard of its Meal Items and delivery.

10.2 In the event of any complaints arising relating to damaged Meal Items, damaged packaging, expiry of shelf life, inferior quality or complaints of a similar nature, the Food Supplier shall, at its own cost, promptly provide credit reimbursement or product replacement at the option of the Institution and Family Account Holder.

10.3 Should the Food Supplier fail to address the complaints in clause 10.2 to a satisfactory standard, Ezlunch may investigate and remedy the subject of such complaints at the cost of the Food Supplier, to be deducted from the weekly payment at Ezlunch's sole discretion.

## 11. **NO AGENCY**

11.1 Nothing in this Agreement is intended to constitute a joint venture, partnership or employment relationship, and the parties acknowledge that neither party is authorized to act as an agent of the other party, unless otherwise provided by this Agreement.

## 12. **SUB-CONTRACTING AND ASSIGNMENT**

12.1 Ezlunch may assign any of its rights or obligations under this Agreement without

obtaining the prior approval of the Food Supplier.

12.2 The Food Supplier must not sub-contract, assign or delegate any of its rights or obligations under this Agreement without the prior written consent of Ezlunch.

## 13. **CONFIDENTIALITY AND INTELLECTUAL PROPERTY**

13.1 The Food Supplier acknowledges and agrees that all Intellectual Property rights relating to the Service and the Website are owned by Ezlunch and will not:

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

13.1.2 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.

13.2 The Food Supplier acknowledges that, through its association with Ezlunch, it has and will come into possession of Confidential Information. The Food Supplier agrees that it 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, including its employees other than on a "need-to-know" basis.

13.3 The Food Supplier agrees 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.

13.4 The obligations under this clause 13 shall survive termination of this Agreement

## 14. **LIABILITY AND INDEMNITY**

14.1 The Food Supplier agrees to be solely responsible for 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, action,

liability or injury in connection with the Food Supplier, or arising directly or indirectly from breach of this Agreement by the Food Supplier or its employees, authorized representatives or agents.

14.2 Except as otherwise provided by statute Ezlunch shall in no event be liable for any consequential, incidental or indirect loss or expense incurred by the Food Supplier in connection with this Agreement, including without limitation any delay, increase in operating costs, liability to a third party, loss or contamination of or damage to food or beverage, loss of profit, production, income, business, data, contract, goodwill or anticipated savings.

14.3 Any liability of Ezlunch to the Food Supplier 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.

## 15. RESTRAINT OF TRADE

15.1 Throughout the Term and for a period of two (2) years following the termination of this Agreement, the Food Supplier shall not, nor cause or allow any of its shareholders, directors, officers or employees or any spouse of any of them to be interested, engaged or involved in any business or undertaking in New Zealand which:

15.1.1 Provides an electronic online interface connecting individuals, schools or organizations with food and beverage providers for the purpose of ordering and delivering lunchtime meals which are, in the reasonable opinion of Ezlunch, in competition with the Service as defined in this Agreement; or

15.1.2 Approaches, solicits, procures, directs or otherwise be instrumental in the diversion of business relating to the provision of meals to any individual, schools or organization away from Ezlunch to any other party.

## 16. WARRANTY

16.1 The Food Supplier warrants that:

16.1.1 It has the power and authority to enter into this Agreement as a Food Supplier and has all the necessary resources, personnel and operational capacity to carry out its obligations under this Agreement.

16.1.2 It holds all current statutory or regulatory approved licence required to provide the Service from its premises, and is in strict compliance with all applicable health, workplace and food safety laws and regulations for the production, preparation and handling of food and beverages, including but not limited to a grade "A" or higher rating in food premises assessment under the Food Hygiene Regulations 1974.

## 17. TERMINATION

17.1 The Food Supplier may terminate its registration and this Agreement, either in whole or in relation to specified Family Account Holders and/or Institutions, by giving Ezlunch at least twenty (20) working days written notice prior to the end of the then current school term.

17.2 Notwithstanding clause 17.1, the Food Supplier's obligation to provide the Service under this Agreement shall continue until the end of the then current school term, unless expressly waived by EzLunch.

17.3 EzLunch may terminate the Agreement and the Food Supplier's registration:

17.3.1 immediately by notice in writing if the Food Supplier is in breach of any term of this Agreement provided that if such breach is capable of remedy the Food Supplier has failed to remedy that breach within twenty-four (24) hours of receipt by it of a written notice from Ezlunch requiring immediate remedy; or

17.3.2 without cause upon twenty (20) working days written notice.

17.4 Either party may terminate this Agreement immediately by notice in writing if:

17.4.1 The other party commits a crime for which it is (or if an individual would be) liable for a term of imprisonment exceeding one year; or

17.4.2 the other party is ordered or adjudged bankrupt or all or part of its assets are placed in the hands of a receiver or otherwise enters into any scheme or composition with its creditors, or an order or resolution is passed for its dissolution

17.5 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.

17.6 Upon termination of this Agreement for any reason, the Food Supplier shall inform all relevant personnel that the activities of the Food Supplier are terminated and that they are no longer authorised to provide the Service.

## 18. **DISPUTE RESOLUTION**

- 18.1 If any dispute arises between the parties out of or in relation to this Agreement:
- 18.1.1 the party claiming a dispute has arisen must give written notice to the other specifying the nature of the dispute;
- 18.1.2 the parties will endeavour, in good faith, to negotiate a resolution of the dispute;
- 18.1.3 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;
- 18.1.4 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;
- 18.1.5 pending resolution of the dispute, this Agreement will remain in full force and effect without prejudice to either parties' rights and/or remedies.

## 19. **PRIVACY**

19.1 The Food Supplier acknowledges that it may receive personal information of the Family Account Holder and the Customer submitted to EzLunch for the purpose of providing the Services.

19.2 The Food Supplier agrees to merely be in possession of such information and will not manipulate, alter, or disclose any such information without the express written consent of the Family Account Holder and Customer in question.

19.3 The Food Supplier agrees to comply with all obligations contained in the Privacy Act 1993, related regulations, guidelines and code of practice, and take all reasonable measures to ensure that such information is protected against loss, unauthorized access, use, modification, disclosure or other misuse and that only authorized personnel are allowed access to the same.

## 20. **MISCELLANEOUS**

20.1 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.

20.2 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.

20.3 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.

20.4 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.

20.5 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.

**SIGNED** by the Food Supplier

|

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

\_\_\_\_\_  
Director(s) Signature

Witness' Signature \_\_\_\_\_

Witness' Name \_\_\_\_\_

Witness' Occupation \_\_\_\_\_

Witness' Address \_\_\_\_\_

**SIGNED** by FeedMe Limited trading as Ezlunch

\_\_\_\_\_  
Director(s) Signature

Witness' Signature \_\_\_\_\_

Witness' Name \_\_\_\_\_

Witness' Occupation \_\_\_\_\_

Witness' Address \_\_\_\_\_

## **Schedule A**

1. Name of Institution
2. Number of customers (approximate)
3. Delivery site address
4. Contact name, phone, email
5. Service commencement date
6. Fee % of revenue
7. Time orders are ready for download

**9:15AM**

8. Institution delivery deadline: