

## **Gilmours Service Delivery Terms of Trade**

These terms of trade ("Terms") govern all supplies from Manukau Cash'n Carry Limited ("Gilmours") to you (the Customer named in the attached schedule).

1. Pricing
  - 1.1. All prices for goods exclude Goods and Services Tax ('GST'). In addition to the price, you must pay GST on the supply at the rate applicable at the time of supply. Gilmours will issue you with a GST invoice.
  - 1.2. All prices and any additional delivery fees for the goods are as determined by Gilmours from time to time. These prices and delivery fees are subject to change at any time without any notice.
  - 1.3. The prices and delivery fees that apply will be set out in your invoice, receipt or other documentation provided by Gilmours.
2. Refunds and claims
  - 2.1. Any claims concerning goods must be made within 48 hours of receipt of the goods for faulty goods, damaged goods or goods sent in error or the due date for delivery for missing goods. Invoice number/s and dates must be supplied as proof of purchase. Where Gilmours accepts liability for damaged, faulty or missing goods, Gilmours' only liability is to either, at its option, resupply the goods to you or credit or refund you with all or part of the purchase price. Any refund or credit for the goods will only be applied once the goods have been returned to Gilmours' possession. Any request for a credit must be approved by an authorised representative of Gilmours before processed.
3. Time for payment of invoices
  - 3.1. In the event that any invoice has not been paid in full by the due date, Gilmours may at its option:
    - 3.1.1. charge interest compounding monthly on the unpaid overdue balance at the default rate which Gilmours may be charged by its lenders from time to time;
    - 3.1.2. charge you costs it incurs (including collection costs and legal costs); and
    - 3.1.3. suspend sale or delivery of further goods until the account is paid in full.
4. Events upon which immediate payment required
  - 4.1. All amounts outstanding will become immediately due and owing and you will be in breach of these Terms if the information given in your application for credit is not correct and you have failed to correct this information within 5 days of Gilmours' request, or if, in Gilmours' opinion, there is a significant risk that you cannot or will become unable to pay your debts as they fall due including if you become insolvent, enter into a compromise with your creditors, commit any act of bankruptcy, or if a receiver, liquidator, administrator or statutory manager is appointed over any of your assets or undertakings.
5. Time that risk passes
  - 5.1. Risk in any goods that Gilmours supplies to you will pass to you on the earlier of actual receipt by you or delivery to the address for delivery specified by you.

6. Personal Property and Securities Act 1999 (“PPSA”)
  - 6.1. Legal and equitable ownership of all goods supplied by Gilmours is retained by Gilmours until full payment is made by you of all amounts you owe to Gilmours. You acknowledge Gilmours’ right to register a security interest under the PPSA. You further acknowledge that:
    - 6.1.1. You will promptly execute any documents and do anything else required by Gilmours to ensure that the security interest in the goods constitutes a perfected security interest.
    - 6.1.2. Nothing in s114(1)(a), 133, and 134 of the PPSA, or your rights under the sections of the PPSA listed in section 107(2) of the PPSA, will apply to the goods or these Terms.
    - 6.1.3. You waive your right to receive a copy of the verification statement confirming registration of a financing statement or a financing change statement relating to the security interest created by these Terms.
    - 6.1.4. The goods will be stored in a way which allows the goods supplied or delivered at different times by Gilmours to be identified to a particular delivery and/or invoice by Gilmours.
    - 6.1.5. Notwithstanding any appropriation by you, Gilmours is entitled to apply any payment you make as it sees fit.
7. Power of entry to recover goods
  - 7.1. On request, you will give Gilmours details of all premises where you hold the goods. Subject to any rights you have under the Credit (Repossession) Act 1997, where you are in breach of these Terms, Gilmours may, without further notice, use reasonable force to enter any premises under your control to remove any goods which are the property of Gilmours. You indemnify Gilmours against all costs and claims in respect of its exercise of rights under this clause.
8. Personal Guarantee
  - 8.1. If we have received a personal guarantee from you it is agreed that you jointly and severally guarantee to Gilmours the due and punctual payment of all monies payable by the customer named in the Application to Trade which that customer owes to Gilmours from time to time, and will pay Gilmours those monies on demand.
9. Your Privacy
  - 9.1. Your personal information will be collected, used, stored and disclosed in accordance with the Gilmours Privacy Policy, available at <https://www.gilmours.co.nz/assets/Gilmours-Privacy-Policy-Final-August-2020.pdf>.
10. Obligation to maintain confidentiality and prevent fraud
  - 10.1. Your pricing and any credit terms with Gilmours is confidential and you must maintain that confidentiality. You are responsible for ensuring that your Gilmours’ card and Gilmours’ account details are not provided or disclosed to any person other than those persons within your organisation who are expressly authorised to act on your behalf. You are liable for all purchases on your Gilmours’ account including those made fraudulently where you have failed to comply with this clause. You will not be liable for purchases by unauthorised persons from the time Gilmours’ receives your advice in writing of a lost or stolen card or account details.

## 11. Exclusions and limitation of liability

- 11.1. You warrant that all your purchases from Gilmours are for the purposes of a business (including a company, club, institution, charity or community group).
- 11.2. You acknowledge that, to the fullest extent permitted by the law:
  - 11.2.1. All guarantees, warranties and conditions implied by the Consumer Guarantees Act 1993 or the Contract and Commercial Law Act 2017 or otherwise, are expressly excluded.
  - 11.2.2. Subject to any mandatory labelling or other requirements, Gilmours does not warrant that any goods it sells will meet any particular specifications or be fit for any particular purpose.
  - 11.2.3. Any claims concerning goods must be made within 48 hours of receipt of the goods for damaged goods or the due date for delivery for missing goods. Invoice number/s and dates must be supplied as proof of purchase. Where Gilmours accepts liability for damaged or missing goods, Gilmours' only liability is to either, at its option, resupply the goods or refund all or part of the purchase price of the goods.
- 11.3. Gilmours will not in any circumstances be liable for any indirect or consequential loss or damage nor for any loss of business, loss of production, property, profit, goodwill, or business opportunity or overheads however caused, which may be suffered or incurred or which may arise directly or indirectly in respect of Gilmours' failure or omission to comply with its obligations, even if Gilmours had been advised of the possibility of such damage or loss, and whether such claim is made in contract, tort or otherwise.
- 11.4. Subject to the rest of this clause and to the maximum extent permitted by law, Gilmours' total liability to you under or in connection with the Terms is the total fees paid by you to Gilmours in the 30 days prior to the relevant liability event.

## 12. Product recall

- 12.1. You must co-operate fully with Gilmours if Gilmours decides or is required to recall goods supplied to you.

## 13. Terms enforceable by all Gilmours Stores

- 13.1. For the purpose of section 12 of the Contract and Commercial Law Act 2017, the provisions contained in this agreement that refer to Gilmours constitute promises that are intended to confer a benefit on and be enforceable at the suit of each Gilmours store.

## 14. General Conditions

- 14.1. Gilmours may change or replace these Terms at any time immediately by notice in writing or email to you, or by posting updated or new Terms on a Foodstuffs North Island Limited website. If Gilmours fails to enforce any term or fails to exercise any right under these Terms at any time, Gilmours has not waived that term or right.
- 14.2. If any provision of these Terms is held to be invalid or unenforceable for any reason, the remaining provisions remain in full force.
- 14.3. You consent to receiving promotional material, special offers and other correspondence from Gilmours by electronic email.
- 14.4. Gilmours may assign any of its rights under these Terms.