

Terms and Conditions of Trade

These terms and conditions apply to all orders of Goods from Mills Bay Mussels Limited (“the Company”) for domestic delivery, any orders placed by you (“the Customer”) with the Company constitutes your agreement to be bound by these terms. Any additional or different terms you stipulate or state in any communication with the Company (including an order) are hereby rejected and will not bind the Company unless agreed to prior in writing.

No salesperson, representative or agent is authorised by the Company to give any guarantee, warranty or representation in addition to, or contrary to these terms. In any event, receipt of Goods by you (or another as you direct) upon delivery constitutes your agreement to be bound by these terms.

1 ORDERS OF GOODS

- 1.1 Orders must be placed by 7.30 am on the day prior to delivery i.e. for a Tuesday delivery orders must be received by the Company by 7.30am Monday
- 1.2 Orders cannot be cancelled or reduced after 7.30am on the day prior to delivery
- 1.2 Supply of Live Greenshell Mussels can at times be limited due to harvest restrictions and weather conditions that are beyond the control of the Company. The Company does not accept liability for any costs in respect of non-supply
- 1.3 Orders required for a Saturday delivery will incur a Saturday delivery freight charge unless the Company has stated otherwise
- 1.4 Pricing is exclusive of GST, refer to Appendix A the Company’s Pricing Schedule for current pricing details.

2 DELIVERY

- 2.1 We will deliver the Goods to the address or addresses nominated by you from time to time
- 2.2 Risk in all Goods passes to you when the Goods are delivered
- 2.3 If an order is not delivered as expected you must contact the Company at the earliest possible time you become aware of non-delivery. This allows the Company to rectify any issue immediately
- 2.4 You agree to inform the Company within 5 working days of the date of invoice if proof of delivery is required, after this period no liability will lie with the Company for proof of delivery
- 2.5 Goods shall not be required to be delivered within a specified time frame unless the time frame is recorded on the written order and acknowledged on the Company’s advice of acceptance

3 PAYMENT

- 3.1 Payment is due 14 days from date of invoice, you will receive a fortnightly statement to your nominated email address
- 3.2 All payments shall be made without set-off or deduction and you remain liable for payment until payment is received by us
- 3.3 Where multiple invoices are paid together we require a remittance advice to be sent to accounts@millsbaymussels.co.nz. In the absence of a remittance advice we may apportion payments to outstanding invoices as we see fit
- 3.4 Any disputed invoice or part of an invoice must be notified to the Company immediately with an email of explanation setting out the particulars of the dispute, this notification must be within three days of the invoice date.

4 DEFAULT

- 4.1 You will be in default if:
 - a you fail to pay an amount due under these Terms by the due date for payment; or
 - b you commit a breach of any of your other obligations under these Terms

- 4.2 If you are in Default then we may do any one or more of the following:
- a charge you default interest at a rate of 21% per annum on any late payments, calculated in accordance with clause 4.3;
 - b require you to remedy the default in the manner and within a period that we tell you;
 - c require you to pay to us all amounts you owe us immediately;
 - d suspend or terminate your account with us;
 - e exercise any rights that we have under these Terms or that are available to us at law.
- 4.3 Default interest shall accrue on a daily basis from the due date until the date payment is received. If that default interest is not paid we may compound the interest charged so that it becomes part of the total outstanding amount
- 4.4 We may suspend or terminate your account with us at any time at our sole discretion. If your account is terminated, you must immediately pay us any amount you owe us. Termination will not affect any of our rights that have arisen before termination
- 4.5 You agree to reimburse the Company for all and any costs and expenses charged to or incurred by the Company in respect of the collection or attempted collection of any amount owing by you to the Company and any such amounts may be charged by the Company to you and added to the sum owing to the Company.
- 5 CREDIT POLICY
- 5.1 The Company will provide a credit for mussels which are rejected due to an unacceptable temperature on delivery provided the procedure for ascertaining the mussel temperature follows the Company's Mussel Care Instructions, refer to Appendix B, this document is based on the Company's Food Safety Certification.
- 5.2 If upon delivery, some mussels are found to be in a condition unfit for sale, you must contact the Company within 24 hours to discuss the condition of the mussels. A photo of the mussels must be emailed to the Company to help identify the problem and resolve the issue
- 5.3 Where the Company agrees to issue a credit you must provide us with the invoice number to which the credit relates, the credit will be for the weight of mussels found to be unfit for sale.
- 6 PRIVACY ACT
- 6.1 The Customer authorises the Company to collect, retain, and use personal information about the Customer (including the information collected in this document) for the following purposes only:
- a assessing the Customer's creditworthiness;
 - b disclosing to a third party details of this application and any subsequent dealings it may have with the Company for the purpose of recovering amounts payable by you and providing credit references;
 - c marketing Goods and services provided by the Company to the Customer.
- 6.2 You have the right of access to personal information held by the Company. You may request correction of that information and may require that the request be stored with that information. The Company may charge reasonable costs for providing access to that information.
- 7 LIMITATION OF LIABILITY
- 7.1 All food products sold by the Company are processed, prepared and despatched in accordance with all New Zealand applicable health and hygiene regulations and are sold as fit for human consumption unless expressly stated otherwise on the packaging
- 7.2 You acknowledge that people may have allergy, health or other medical conditions that affect the suitability of certain foods for them and that the Company is not responsible where such conditions make any Goods sold by the Company unsuitable for a particular consumer or cause an adverse reaction on the consumption of such Goods
- 7.3 You are responsible for using all necessary skill and care in handling, storing and using the Goods including use within the good's use by date and assume all risks and liabilities for consequences arising from the use of the Goods whether singly or in combination with other Goods

7.4 Subject to your statutory rights including under the Contract and Commercial Law Act 2017 ("CCA"), the Consumer Guarantees Act 1993 ("CGA") or Fair Trading Act 1986 ("FTA"), the Company's liability in respect of the sale of any damaged or defective material/goods will not exceed the sale price of the Goods concerned for the sale and the Company shall not be liable to you or any person claiming through you whether in contract, tort or otherwise for any loss, damage or injury arising indirectly from any defect in, or non-compliance of any Goods, delay in delivery or any other breach and to the fullest extent otherwise permitted at law, all liability on the Company for indirect, consequential, punitive or special damage or loss of any kind whatsoever is excluded.

8 FORCE MAJEURE

8.1 The Company shall not be obliged to supply and may cancel an order for supply and thereafter shall have no liability to you in respect of its failure to supply any order if the Company is prevented or delayed in performing its obligations in respect of such order as a result of a force majeure event (which shall include accident, storm, act of God, natural disaster, fire, epidemic, pandemic, covid (or like) restrictions imposed by regulatory authorities or the impact on the Company of such restrictions, strikes, labour disputes, shortage of labour, any law, order, proclamation, regulation, demand or requirement of any government or local government agency, shortage or unavailability of raw product or transport facilities, delay in transit by third parties, electricity mechanical or communications failures, or any other causes whatsoever beyond the Company's reasonable control).

8.2 Where you have paid for an order and the Company cancels the same as a result of a force majeure event it shall refund you the amount paid by you for the order.

9 GENERAL

9.1 These Terms replace any earlier representations, warranties, understandings and agreements (whether oral or written), and together with your Credit Application constitute the entire agreement between us and you relating to their subject matter

9.2 You shall not transfer or assign your rights or obligations under these Terms without our prior written consent. If the customer is a company, any effective change in control of the company will be an assignment of these Terms requiring our prior written consent.

9.3 We may change these Terms at any time, any change applies from when we notify you of that change

9.4 Any notice may be given by phone, in person, posted, or emailed to you or where you are a company, to any of your directors.

9.5 Your Credit Application may be executed by each signatory in separate counterparts which together shall constitute one agreement

9.6 The person/s signing this application warrants that the information supplied on this application is true and accurate as at the date on which it is given

9.7 This contract is governed by the laws of New Zealand and the Buyer submits to the jurisdiction of all New Zealand Courts which, unless otherwise agreed in writing, shall have exclusive jurisdiction to determine any dispute.

9.8 In these terms we have used "us" and "the Company" to refer to Mills Bay Mussels Ltd, and "you" and "the Customer" to refer to our Customer.

APPENDIX A: PRICING SCHEDULE

All pricing is exclusive of GST

Unless agreed otherwise, freight is additional to product prices

Please contact info@millsbaymussels.co.nz for your personalised pricing schedule

Note: Responsibility for freight and delivery lies with the courier or freight company once the product has been despatched from our packhouse facility. We will work with you to resolve any freighting disputes that may eventuate.

APPENDIX B: MUSSEL CARE INSTRUCTIONS

The safe temperature for Live Greenshell™ Mussels as set out in the Company's Food Safety Plan is between 4-16°C. The ideal holding temperature to maximise shelf life is 6 – 10 °C. Mussels can be stored in a chiller without water and we recommend rinsing the mussels every second day with fresh water. Mussels can also be stored in a live mussel tank with salt water. The recommended salinity for mussel storage is 2.5% (25 g salt per litre of water).

The Company is aware that some customer's Food Safety Plans stipulate a lower temperature range for Live Greenshell™ Mussels.