

# Pure Gelato Enterprises Pty Ltd T/A Pure Gelato – Terms & Conditions

1. **Definitions**
  - 1.1 "Contract" means the terms and conditions contained herein, together with any Quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
  - 1.2 "Pure Gelato" means Pure Gelato Enterprises Pty Ltd T/A Pure Gelato, its successors and assigns or any person acting on behalf of and with the authority of Pure Gelato Enterprises Pty Ltd T/A Pure Gelato.
  - 1.3 "Client" means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting Pure Gelato to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
    - (a) if there is more than one Client, is a reference to each Client jointly and severally; and
    - (b) if the Client is a partnership, it shall bind each partner jointly and severally; and
    - (c) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
    - (d) includes the Client's executors, administrators, successors and permitted assigns.
  - 1.4 "Goods" means all Goods or Services supplied by Pure Gelato to the Client at the Client's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
  - 1.5 "Freezer" means any Freezer including any accessories supplied on hire by Pure Gelato to the Client (and where the context so permits shall include any supply of Services). The Freezer shall be as described on the invoices, quotation, authority to hire, or any other work authorisation form provided by Pure Gelato to the Client.
  - 1.6 "Minimum Hire Period" means the Minimum Hire Period as described on the invoices, quotation, authority to hire, or any other forms as provided by Pure Gelato to the Client.
  - 1.7 "Confidential Information" means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party's intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, "Personal Information" such as: name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
  - 1.8 "Cookies" means small files which are stored on a user's computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website, and can be accessed either by the web server or the client's computer. **If the Client does not wish to allow Cookies to operate in the background when ordering from the website, then the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to ordering Goods via the website.**
  - 1.9 "Price" means the Price payable (plus any GST where applicable) for the Goods and/or Freezer hire as agreed between Pure Gelato and the Client in accordance with clause 5 below.
  - 1.10 "GST" means Goods and Services Tax as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).
  2. **Acceptance**
  - 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts Delivery of the Goods/Freezer.
  - 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
  - 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
  - 2.4 These terms and conditions may be meant to be read in conjunction with Pure Gelato's Freezer Loan / Hire Form and/or the Terms and Conditions posted on Pure Gelato's website, and:
    - (a) where the context so permits, the terms 'Goods' or 'Services' shall include the supply of any Freezer; and
    - (b) only Goods purchased through Pure Gelato are to be stored or served in the Freezer. Furthermore, it is agreed by both parties that the Freezer is offered "Free on Loan" subject to the Client maintaining the agreed monthly purchases; and
    - (c) the hired Freezer is subject to a hire period and payment conditions as details on the Freezer Loan / Hire Form; and
    - (d) if there are any inconsistencies between the two documents then the terms and conditions contained therein shall prevail.
  - 2.5 The Client acknowledges that the supply of Goods/Freezer on credit shall not take effect until the Client has completed a credit application with Pure Gelato and it has been approved with a credit limit established for the account.
  - 2.6 In the event that the supply of Goods/Freezer request exceeds the Client's credit limit and/or the account exceeds the payment terms, Pure Gelato reserves the right to refuse Delivery.
  - 2.7 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.
  3. **Errors and Omissions**
  - 3.1 The Client acknowledges and accepts that Pure Gelato shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
    - (a) resulting from an inadvertent mistake made by Pure Gelato in the formation and/or administration of this Contract; and/or
    - (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by Pure Gelato in respect of the Services.
  - 3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or willful misconduct of Pure Gelato; the Client shall not be entitled to treat this Contract as repudiated nor render it invalid.
  4. **Change in Control**
  - 4.1 The Client shall give Pure Gelato not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, change of trustees, or business practice). The Client shall be liable for any loss incurred by Pure Gelato as a result of the Client's failure to comply with this clause.
  5. **Ordering and Specifications**
  - 5.1 Each order which is so accepted shall constitute an individual legally binding contract between Pure Gelato and the Client.
  - 5.2 All Goods and/or Freezer supplied by Pure Gelato shall be in accordance with the specifications or descriptions (if any) expressly listed or set out on the face of the quotation or order. No other specification, descriptive material, written or oral representation, correspondence or statement, promotional or sales literature shall form part of or be incorporated by reference into the order.
  6. **Price and Payment**
  - 6.1 At Pure Gelato's sole discretion the Price shall be either:
    - (a) as indicated on any invoice provided by Pure Gelato to the Client; or
    - (b) the Price as at the date of Delivery of the Goods/Freezer according to Pure Gelato's current price list.
  - 6.2 Time for payment for the Goods/Freezer being of the essence, the Price will be payable by the Client on the date/s determined by Pure Gelato, which may be:
    - (a) on Delivery of the Goods/Freezer;
    - (b) the date specified on any invoice or other form as being the date for payment; or
    - (c) failing any notice to the contrary, the date which is either seven (7) days or thirty (30) days following the date of any invoice given to the Client by Pure Gelato.
  - 6.3 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Client and Pure Gelato.
  - 6.4 Pure Gelato may in its discretion allocate any payment received from the Client towards any invoice that Pure Gelato determines and may do so at the time of receipt or at any time afterwards. On any default by the Client Pure Gelato may re-allocate any payments previously received and allocated. In the absence of any payment allocation by Pure Gelato, payment will be deemed to be allocated in such manner as preserves the maximum value of Pure Gelato's Purchase Money Security Interest (as defined in the PPSA) in the Goods/Freezer.
  - 6.5 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by Pure Gelato nor to withhold payment of any invoice because part of that invoice is in dispute.
  - 6.6 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to Pure Gelato an amount equal to any GST Pure Gelato must pay for any supply by Pure Gelato under this or any other agreement for the sale of the Goods/hire of the Freezer. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.
  7. **Delivery of Goods/Freezer**
  - 7.1 Delivery ("Delivery") of the Goods/Freezer is taken to occur at the time that:
    - (a) the Client or the Client's nominated carrier takes possession of the Goods/Freezer at Pure Gelato's address; or
    - (b) Pure Gelato (or Pure Gelato's nominated carrier) delivers the Goods/Freezer to the Client's nominated address even if the Client is not present at the address.
  - 7.2 At Pure Gelato's sole discretion the cost of Delivery is either included in the Price or is in addition to the Price.
  - 7.3 Pure Gelato may deliver the Goods/Freezer in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
  - 7.4 The Client must take Delivery by receipt or collection of the Goods/Freezer whenever either is tendered for Delivery. In the event that the Client is unable to take Delivery of the Goods/Freezer as arranged then Pure Gelato shall be entitled to charge a reasonable fee for redelivery of the Goods/Freezer and/or the storage of the Goods.
  8. **Out of Stock/Substitution**
  - 8.1 Pure Gelato will use its reasonable endeavours to ensure that all Goods ordered by the Client are supplied to the Client. If the Goods ordered are not available in stock or are discontinued, Pure Gelato shall work with the Client on a case by case basis where options may include back order of Goods or amendment to the order.
  9. **Risk to Goods**
  - 9.1 Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery.
  - 9.2 If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to the Client, Pure Gelato is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Pure Gelato is sufficient evidence of Pure Gelato's rights to receive the insurance proceeds without the need for any person dealing with Pure Gelato to make further enquiries.
  - 9.3 If the Client requests Pure Gelato to leave Goods outside Pure Gelato's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Client's sole risk.
  10. **Access**
  - 10.1 The Client shall ensure that Pure Gelato has clear and free access to the Delivery site at all times to enable them to effect Delivery of the Goods. Pure Gelato shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of Pure Gelato.
  11. **Compliance with Laws**
  - 11.1 Pure Gelato warrants that Goods manufactured, packaged and/or handled on its registered premises, and supplied to all Clients, shall meet all safety regulations and standards as defined by the Hazard Analysis and Critical Control Points (HACCP), Food Safety Programme, and is eminently suitable for public consumption and thereby compliant with the Australia and New Zealand Food Standards Code.
  - 11.2 Pure Gelato has product safety and product recall procedures in place which will conform to the requirements of all laws and the recommendations of the Australian and New Zealand Food Authority.
  - 11.3 Any alleged claims of contamination, accidental inclusion or food borne illnesses must be reported to Pure Gelato's management in writing as soon as reasonable practicable. Pure Gelato reserves the right to inspect any items attributed to the claim and have the items tested by an independent laboratory before any public claims, statements or dissemination of information in any format including social media.
  12. **Title to Goods**
  - 12.1 Pure Gelato and the Client agree that ownership of the Goods shall not pass until:
    - (a) the Client has paid Pure Gelato all amounts owing to Pure Gelato; and
    - (b) the Client has met all of its other obligations to Pure Gelato.
  - 12.2 Receipt by Pure Gelato of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
  - 12.3 It is further agreed that until ownership of the Goods passes to the Client in accordance with clause 12.1:
    - (a) the Client is only a bailee of the Goods and must return the Goods to Pure Gelato on request;
    - (b) the Client holds the benefit of the Client's insurance of the Goods on trust for Pure Gelato and must pay to Pure Gelato the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
    - (c) the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for Pure Gelato and must pay or deliver the proceeds to Pure Gelato on demand;
    - (d) the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of Pure Gelato and must sell, dispose of or return the resulting product to Pure Gelato as it so directs;
    - (e) the Client irrevocably authorises Pure Gelato to enter any premises where Pure Gelato believes the Goods are kept and recover possession of the Goods;
    - (f) Pure Gelato may recover possession of any Goods in transit whether or not Delivery has occurred;
    - (g) the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of Pure Gelato;
    - (h) Pure Gelato may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.
  13. **Personal Property Securities Act 2009 ("PPSA")**
  - 13.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
  - 13.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods/Freezer and/or collateral (account) – being a monetary obligation of the Client to Pure Gelato for Services – that have previously been supplied and that will be supplied in the future by Pure Gelato to the Client.
  - 13.3 The Client undertakes to:
    - (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Pure Gelato may reasonably require to:
      - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
      - (ii) register any other document required to be registered by the PPSA; or
      - (iii) correct a defect in a statement referred to in clause 13.3(a)(i) or 13.3(a)(ii);
  - (b) indemnify, and upon demand reimburse, Pure Gelato for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods/Freezer charged thereby;
  - (c) not register a financing change statement in respect of a security interest without the prior written consent of Pure Gelato;
  - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods/Freezer and/or collateral (account) in favour of a third party without the prior written consent of Pure Gelato;
  - (e) immediately advise Pure Gelato of any material change in its business practices of selling Goods which would result in a change in the nature of proceeds derived from such sales.
- 13.4 Pure Gelato and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 13.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 13.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 13.7 Unless otherwise agreed to in writing by Pure Gelato, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 13.8 The Client must unconditionally ratify any actions taken by Pure Gelato under clauses 13.3 to 13.5.
- 13.9 Subject to any express provisions to the contrary (including those contained in this clause 13), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 13.10 Only to the extent that the hire of the Freezer exceeds a two (2) year hire period with the right of renewal shall clause 13 apply as a security agreement in the form of a PPS Lease in respect of Section 20 of the PPSA, in all other matters this clause 13 will apply generally for the purposes of the PPSA.
14. **Security and Charge**
- 14.1 In consideration of Pure Gelato agreeing to supply the Goods/Freezer, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 14.2 The Client indemnifies Pure Gelato from and against all Pure Gelato's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Pure Gelato's rights under this clause.
- 14.3 The Client irrevocably appoints Pure Gelato and each director of Pure Gelato as the Client's true and lawful attorneys to perform all necessary acts to give effect to the provisions of this clause 14 including, but not limited to, signing any document on the Client's behalf.
15. **Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)**
- 15.1 The Client must inspect the Goods/Freezer on Delivery and must within seven (7) days of Delivery notify Pure Gelato in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect in the Goods/Freezer as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow Pure Gelato to inspect the Goods/Freezer.
- 15.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (**Non-Excluded Guarantees**).
- 15.3 Pure Gelato acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 15.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, Pure Gelato makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods/Freezer. Pure Gelato's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 15.5 If the Client is a consumer within the meaning of the CCA, Pure Gelato's liability is limited to the extent permitted by section 64A of Schedule 2.
- 15.6 If Pure Gelato is required to replace the Goods under this clause or the CCA, but is unable to do so, Pure Gelato may refund any money the Client has paid for the Goods.
- 15.7 If the Client is not a consumer within the meaning of the CCA, Pure Gelato's liability for any defect or damage in the Goods is:
  - (a) limited to the value of any express warranty or warranty card provided to the Client by Pure Gelato at Pure Gelato's sole discretion;
  - (b) limited to any warranty to which Pure Gelato is entitled, if Pure Gelato did not manufacture the Goods;
  - (c) otherwise negated absolutely.
- 15.8 Subject to this clause 15, returns will only be accepted provided that:
  - (a) the Client has complied with the provisions of clause 15.1; and
  - (b) Pure Gelato has agreed that the Goods are defective; and
  - (c) the Goods are returned within a reasonable time at the Client's cost (if that cost is not significant); and
  - (d) the Goods are returned in as close a condition to that in which they were delivered as is possible.
- 15.9 Notwithstanding clauses 15.1 to 15.8 but subject to the CCA, Pure Gelato shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
  - (a) the Client failing to properly maintain or store any Goods/Freezer;
  - (b) the Client using the Goods/Freezer for any purpose other than that for which they were designed;
  - (c) the Client continuing the use of the Goods/Freezer after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
  - (d) the Client failing to follow any instructions or guidelines provided by Pure Gelato;
  - (e) fair wear and tear, any accident, or act of God.
- 15.10 Notwithstanding anything contained in this clause if Pure Gelato is required by a law to accept a return then Pure Gelato will only accept a return on the conditions imposed by that law.
- 15.11 Subject to clause 15.1, customised, or non-stocklist items or Goods made or ordered to the Client's specifications are not acceptable for credit or return.
16. **Intellectual Property and Confidentiality**
- 16.1 The Client acknowledges Pure Gelato's ownership in any of the formulas, techniques, processes, documentation, labelling, and any other intangible property rights, including applications and registrations for any of the foregoing ("IP"), created, designed or developed for the Client by Pure Gelato, in any country, arising under statutory or common law or by contract and whether or not perfected, now existing or hereafter filed, issued, or acquired, relating to the supply of Goods/Freezer, shall remain the sole property of Pure Gelato.
- 16.2 Pure Gelato guarantees the Client an exclusive and non-transferable licence to use any IP created by Pure Gelato solely in relation to the operation of the Client's own business/commercial endeavours, and for the duration of this Contract only. Pure Gelato may, at their sole discretion, transfer the IP to the Client; however, the Client's rights in relation to the IP shall terminate on default of payment or any other terms of this Contract by the Client.
- 16.3 Pure Gelato and the Client agree to keep confidential any information in relation to the other party which is not in the public domain (including, but not limited to, trade secrets, processes, formulae, accounts, marketing, designs, databases and all other information held in any form).
- 16.4 The Client agrees that Pure Gelato may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which Pure Gelato has created for the Client.
17. **Default and Consequences of Default**
- 17.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%)

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- per calendar month (and at Pure Gelato's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 17.2 If the Client owes Pure Gelato any money the Client shall indemnify Pure Gelato from and against all costs and disbursements incurred by Pure Gelato in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Pure Gelato's contract default fee, and bank dishonour fees).
- 17.3 Further to any other rights or remedies Pure Gelato may have under this Contract, if a Client has made payment to Pure Gelato, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by Pure Gelato under this clause 17 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this Contract.
- 17.4 Without prejudice to Pure Gelato's other remedies at law Pure Gelato shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to Pure Gelato shall, whether or not due for payment, become immediately payable if:
- any money payable to Pure Gelato becomes overdue, or in Pure Gelato's opinion the Client will be unable to make a payment when it falls due;
  - the Client has exceeded any applicable credit limit provided by Pure Gelato;
  - the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
  - a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.
- 18. Cancellation**
- 18.1 Without prejudice to any other remedies Pure Gelato may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions Pure Gelato may suspend or terminate the supply of Goods/Freezer to the Client. Pure Gelato will not be liable to the Client for any loss or damage the Client suffers because Pure Gelato has exercised its rights under this clause.
- 18.2 Pure Gelato may cancel any contract to which these terms and conditions apply or cancel Delivery of Goods/Freezer at any time before the Goods/Freezer are delivered by giving written notice to the Client. On giving such notice Pure Gelato shall repay to the Client any money paid by the Client for the Goods/Freezer. Pure Gelato shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 18.3 In the event that the Client cancels Delivery of Goods, the Client shall provide not less than twenty-four (24) hours' notice of such to avoid a cancellation fee. Any request to cancel received outside the required minimum timeframe will incur a cancellation fee and the Client shall be liable for any and all loss incurred (whether direct or indirect) by Pure Gelato as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 18.4 Cancellation of orders for Goods/Freezer made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.
- 19. Privacy Policy**
- 19.1 All emails, documents, images or other recorded information held or used by Pure Gelato is Personal Information, as defined and referred to in clause 19.3, and therefore considered Confidential Information. Pure Gelato acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1988 ("the Act") including the Part IIC of the Act being Privacy Amendment (Notifiable Data Breaches) Act 2017 (NDB) and any statutory requirements, where relevant in a European Economic Area ("EEA"), under the EU Data Privacy Laws (including the General Data Protection Regulation ("GDPR") (collectively, "EU Data Privacy Laws"). Pure Gelato acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by Pure Gelato that may result in serious harm to the Client, Pure Gelato will notify the Client in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Client by written consent, unless subject to an operation of law.
- 19.2 Notwithstanding clause 19.1, privacy limitations will extend to Pure Gelato in respect of Cookies where transactions for purchases/orders transpire directly from Pure Gelato's website. Pure Gelato agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client's:
- IP address, browser, email client type and other similar details;
  - tracking website usage and traffic; and
  - reports are available to Pure Gelato when Pure Gelato sends an email to the Client, so Pure Gelato may collect and review that information ("collectively Personal Information")
- In order to enable / disable the collection of Personal Information by way of Cookies, the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable, provided on the website prior to proceeding with a purchase/order via Pure Gelato's website.
- 19.3 The Client agrees for Pure Gelato to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) about the Client in relation to credit provided by Pure Gelato.
- 19.4 The Client agrees that Pure Gelato may exchange information about the Client with those credit providers and with related body corporates for the following purposes:
- to assess an application by the Client; and/or
  - to notify other credit providers of a default by the Client; and/or
  - to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
  - to assess the creditworthiness of the Client including the Client's repayment history in the preceding two (2) years.
- 19.5 The Client consents to Pure Gelato being given a consumer credit report to collect overdue payment on commercial credit.
- 19.6 The Client agrees that personal credit information provided may be used and retained by Pure Gelato for the following purposes (and for other agreed purposes or required by):
- the provision of Goods/Freezer; and/or
  - analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Goods/Freezer; and/or
  - processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
  - enabling the collection of amounts outstanding in relation to the Goods/Freezer.
- 19.7 Pure Gelato may give information about the Client to a CRB for the following purposes:
- to obtain a consumer credit report;
  - allow the CRB to create or maintain a credit information file about the Client including credit history.
- 19.8 The information given to the CRB may include:
- Personal Information as outlined in 19.3 above;
  - name of the credit provider and that Pure Gelato is a current credit provider to the Client;
  - whether the credit provider is a licensee;
  - type of consumer credit;
  - details concerning the Client's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
  - advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Client no longer has any overdue accounts and Pure Gelato has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
- information that, in the opinion of Pure Gelato, the Client has committed a serious credit infringement;
  - advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 19.9 The Client shall have the right to request (by e-mail) from Pure Gelato:
- a copy of the Personal Information about the Client retained by Pure Gelato and the right to request that Pure Gelato correct any incorrect Personal Information; and
  - that Pure Gelato does not disclose any Personal Information about the Client for the purpose of direct marketing.
- 19.10 Pure Gelato will destroy Personal Information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
- 19.11 The Client can make a privacy complaint by contacting Pure Gelato via e-mail. Pure Gelato will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at [www.oaic.gov.au](http://www.oaic.gov.au).
- 20. Service of Notices**
- Any written notice given under this Contract shall be deemed to have been given and received:
- by handing the notice to the other party, in person;
  - by leaving it at the address of the other party as stated in this Contract;
  - by sending it by registered post to the address of the other party as stated in this Contract;
  - if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;
  - if sent by email to the other party's last known email address.
- 20.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.
- 21. Trusts**
- 21.1 If the Client at any time upon or subsequent to entering into to the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not Pure Gelato may have notice of the Trust, the Client covenants with Pure Gelato as follows:
- the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;
  - the Client has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity.
  - the Client will not without consent in writing of Pure Gelato (Pure Gelato will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
    - the removal, replacement or retirement of the Client as trustee of the Trust;
    - any alteration to or variation of the terms of the Trust;
    - any advancement or distribution of capital of the Trust; or
    - any resettlement of the trust property.
- 22. General**
- 22.1 Any dispute or difference arising as to the interpretation of these terms and conditions or as to any matter arising hereunder, shall be submitted to, and settled by, arbitration in accordance with the Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitration.
- 22.2 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 22.3 These terms and conditions and any contract to which they apply shall be governed by the laws of the state in which Pure Gelato has its principal place of business, and are subject to the jurisdiction of the courts in that state.
- 22.4 Subject to clause 15, Pure Gelato shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by Pure Gelato of these terms and conditions (alternatively Pure Gelato's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 22.5 Pure Gelato may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent.
- 22.6 The Client cannot licence or assign without the written approval of Pure Gelato.
- 22.7 Pure Gelato may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of Pure Gelato's sub-contractors without the authority of Pure Gelato.
- 22.8 The Client agrees that Pure Gelato may amend their general terms and conditions for subsequent future contracts with the Client by disclosing such to the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for Pure Gelato to provide Goods/Freezer to the Client.
- 22.9 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 22.10 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.
- Additional Terms & Conditions Applicable to Hire Only**
- 23. Deposit/Bond**
- 23.1 At Pure Gelato's sole discretion, a deposit (in the form of a bond) shall be required on Delivery of the Freezer, which shall be refunded to the Client by within thirty (30) days of the return of the Freezer, provided that the Client has complied with their obligations hereunder. The deposit may be used to offset any applicable charges payable by the Client under clause 28.2, and any outstanding balance thereof shall be due as per clause 6.2.
- 24. Licence to Use**
- 24.1 Pure Gelato grants to the Client a personal, non-exclusive, non-transferable, limited licence to use the Freezer, provided that:
- the Client ensures the Freezer is serviced at intervals commensurate with the Freezer usage or manufacturers recommendations exclusively by Pure Gelato or an authorised servicing agent, which shall be additionally charged to the Client; and
  - any consumables and sundry items which are to be utilised in conjunction with the Freezer are purchased exclusively from Pure Gelato.
- 24.2 If the Client fails to adhere to clause 24.1, Pure Gelato may (at their sole discretion) terminate the Hire Contract or apply penalty charges to the Client's account, the amount immediately becoming due and payable.
- 25. Hire Period**
- 25.1 Clients are required to pay Hire charges for the on-going use of the Freezer. The charges payable for the duration of the hire period is stipulated, and is due and payable, as per Pure Gelato's hire Contract.
- 25.2 Charges shall commence from either the time the Freezer is:
- collected by the Client from Pure Gelato's premises; or
  - delivered by Pure Gelato (or Pure Gelato's nominated carrier) to the Client's nominated address; or
  - the date specified on Pure Gelato's hire Contract (whichever first occurs).
- 25.3 Hire charges shall be paid on a weekly / monthly / quarterly / six monthly / annual basis, as specified on the Hire Contract, the first payment falling due on the date the Client accepts the hire Contract, with subsequent payments due on the same date in each weekly / monthly / quarterly / six monthly / annual period. To terminate the hire on, or after, the Minimum Hire Period, the Client must give Pure Gelato not less than one (1) month's notice of termination. The hire will then terminate on the last day of the notice period. If the Client does not terminate the hire at the end of the Minimum Hire Period, payments will continue at the same amount and frequency until notice is received.
- 25.4 At Pure Gelato's sole discretion, Hire charges on the Freezer may be waived for a stipulated period, depending on the amount of consumables the Client purchases from Pure Gelato.
- 25.5 The date upon which the Client advises of termination shall in all cases be treated as a full day's hire.
- 25.6 No allowance whatsoever can be made for time during which the Freezer is not in use for any reason, unless Pure Gelato confirms special prior arrangements in writing. In the event of Freezer breakdown provided the Client notifies Pure Gelato immediately, hiring charges will not be payable during the time the Freezer is not working, unless the condition is due to negligence or misuse on the part of or attributable to the Client.
- 26. Risk to Freezer**
- 26.1 Pure Gelato retains property in the Freezer nonetheless all risk for the Freezer passes to the Client on delivery.
- 26.2 The Client accepts full responsibility for the safekeeping of the Freezer and indemnifies Pure Gelato for all loss, theft, or damage to the Freezer howsoever caused and without limiting the generality of the foregoing whether or not such loss, theft, or damage is attributable to any negligence, failure, or omission of the Client.
- 26.3 The Client will insure, or self-insure, Pure Gelato's interest in the Freezer against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will effect adequate Public Liability Insurance covering any loss, damage or injury to property arising out of the Freezer. Further the Client will not use the Freezer nor permit it to be used in such a manner as would permit an insurer to decline any claim.
- 26.4 The Client accepts full responsibility for and shall keep Pure Gelato indemnified against all liability in respect of all actions, proceedings, claims, damages, costs and expenses in respect of any injury to persons, damage to property, or otherwise arising out of the use of the Freezer during the hire period and whether or not arising from any negligence, failure or omission of the Client or any other persons.
- 27. Title to Freezer**
- 27.1 The Freezer is and will at all times remain the absolute property of Pure Gelato.
- 27.2 If the Client fails to return the Freezer to Pure Gelato then Pure Gelato or Pure Gelato's agent may (as the invitee of the Client) enter upon and into land and premises owned, occupied or used by the Client, or any premises where the Freezer is situated and take possession of the Freezer.
- 27.3 The Client is not authorised to pledge Pure Gelato's credit for repairs to the Freezer or to create a lien over the Freezer in respect of any repairs.
- 28. Client's Responsibilities**
- 28.1 The Client shall:
- satisfy itself at commencement that the Freezer is suitable for its purposes and that all systems and controls are fully operational;
  - maintain the Freezer as is required by Pure Gelato;
  - notify Pure Gelato immediately by telephone of the full circumstances of any mechanical breakdown or accident. The Client is not absolved from the requirements to safeguard the Freezer by giving such notification;
  - only store or serve Pure Gelato Goods within the Freezer;
  - operate the Freezer safely, only for its intended use, and in accordance with any manufacturer's instruction whether supplied by Pure Gelato or posted on the Freezer;
  - ensure that all persons operating Pure Gelato are suitably instructed in its safe and proper use;
  - comply with all statutory, governmental and other legal requirement (including any work health and safety or environmental laws) relating to Pure Gelato and its operation;
  - make Pure Gelato available for inspections, examination, testing, repair or maintenance of the Freezer by Pure Gelato upon reasonable prior writing notice by Pure Gelato;
  - ensure that no components of the Freezer are removed or exchanged except where defective and in the course of usual and proper service or replacement;
  - on termination of the hire, deliver the Freezer complete with all parts and accessories, clean and in good order as delivered, fair wear and tear accepted, to Pure Gelato;
  - keep the Freezer in their own possession and control and shall not assign the benefit of the hire Contract nor be entitled to lien over the Freezer;
  - employ the Freezer solely in its own work and shall not permit the Freezer or any part thereof to be used by any other party for any other work;
  - not (or attempt to):
    - alter or make any additions to the Freezer including but without limitation affixing, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Freezer or in any other manner interfere with the Freezer;
    - exceed the recommended capacity limits of the Freezer;
    - fix any of the Freezer in such a manner as to make it legally a fixture forming part of any freehold;
- 28.2 Immediately on request by Pure Gelato the Client will pay:
- the new list price of any Freezer that is for whatever reason destroyed, written off or not returned to Pure Gelato;
  - all costs incurred in cleaning the Freezer;
  - all costs of repairing any damage caused by:
    - the ordinary use of the Freezer up to an amount equal to ten percent (10%) of the new list price of the Freezer;
    - the alteration, tampering, misuse or negligence of the Client or the Client's agent;
    - vandalism, or (in Pure Gelato's reasonable opinion) in any way whatsoever other than by the ordinary use of the Freezer by the Client;
  - any lost hire fees Pure Gelato would have otherwise been entitled to for the Freezer, under this, or any other hire Contract;
  - the cost of any consumables provided by Pure Gelato and used by the Client.
- 29. Warranty**
- 29.1 Subject to clause 15.1, the Client acknowledges and agrees that the Freezer may be covered by a manufacturer's express warranty and repairs to the Freezer may be affected under such warranty. In all other cases, repairs to the Freezer will be at the Client's cost.
- 30. Pure Gelato's Right to Terminate**
- 30.1 Without prejudice to any other remedies Pure Gelato may have against the Client, and notwithstanding the hire period, this Contract may be terminated by Pure Gelato:
- upon giving the Client forty-eight (48) hours verbal notice of termination at any time during the hire period;
  - without notice, and all amounts owing to Pure Gelato shall, whether or not due for payment, become immediately payable in the event that:
    - any money payable to Pure Gelato becomes overdue, or in Pure Gelato's opinion the Client will be unable to meet its payments as they fall due; or
    - the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
    - a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client; or
    - the Client commits a breach of any part of this Contract.