



FOODBANK CUSTOMER MEMBERSHIP AGREEMENT CONDITIONS

1. Definitions

In these Terms and Conditions, unless the context requires otherwise:

Board: Means the Board of Directors of Foodbank of SA Inc.

Chief Executive Officer: Means the person designated by the board as Chief Executive Officer of Foodbank of South Australia Inc.

Customer Member: Means an agency whose application for customer membership of Foodbank of SA has been accepted in accordance with clause 2 and which has agreed to be bound by these Terms and Conditions.

Customer Membership Fee: means the fee paid by Customer Members on an annual basis in the amount set out in Schedule 1

Consequential Loss means any loss of revenue, loss of income, loss of business, loss of profits, loss of production, loss of or damage to goodwill or credit, loss of business reputation, future reputation or publicity, loss of use, loss of interest, losses arising from claims by third parties, loss of or damage to credit rating, loss of anticipated savings, loss or denial of opportunity or any other loss, damage, cost or expense incurred by a Customer Member or any other person that is indirect or consequential.

Foodbank: Means Foodbank of South Australia Inc (ABN: 70 673 398 230)

Food Withdrawal: means the distribution of food and grocery products by Foodbank to a particular Customer Member following the submission of a request by the Customer Member.

Handling Fee: means the fee charged to each Customer Member by Foodbank for a Food Withdrawal, which is used to offset the operating cost of Foodbank. This fee is set out in Schedule 1 and must be paid by the Customer Member pursuant to clause 7.

Intellectual Property Rights includes all rights throughout the world in relation to patents, copyright (including moral rights), designs, registered and unregistered trade marks, trade secrets, know-how, confidential information and all other intellectual property and any right to register those rights, whether created before or after the date of this

agreement and in all cases for the duration of those rights and any renewal.

Marketing Materials includes, but is not limited to, all documents, forms, brochures, signage, social media posts, presentations, information and other materials, whether in written or electronic format, distributed by the Customer Member to members of the public for the purpose of promoting its activities, events or objectives.

2. Customer membership

- a. Customer Membership allows access to Food Withdrawal from Foodbank.
- b. In order to qualify as a Customer Member, an agency must:
 - i. be a registered charity or other not for profit organisation holding an authority to fundraise for charitable purposes or deductible gift recipient status;
 - ii. be engaged in (or plan to commence) food relief activities to assist South Australian's in need; and
 - iii. hold a current product/public liability insurance policy with a minimum \$10m policy limit.
- c. The Board may, on the recommendation of the Chief Executive Officer, accept applications for customer membership from organisations,
 - i. which do not satisfy the requirements of clause 2(b) but which provide food assistance to low income families, children, the aged, the homeless and unemployed, or other persons requiring food assistance, or
 - ii. have requested exemption from other terms and conditions
- d. The Board will be under no obligation to accept or act on a recommendation by the Chief Executive Officer.
- e. In order to become a Customer Member, an agency applying for Customer Membership must agree to be bound by these conditions and must forward to the Chief Executive Officer the following documents when submitting an application for customer membership:
 - i. signed Customer Membership Agreement;
 - ii. a Certificate of Currency in respect of the agency's current product/public liability insurance (minimum \$10m policy limit);
 - iii. a copy of the agency's mission statement and/or any documentation which confirms the agency's not-for-profit activities related to food relief;
 - iv. a copy of either the agency's registration certificate from Australian Charities & Not-for-Profits Commission (**ACNC**) or other documentation evidencing authority to fundraise for charitable purposes, or the grant of deductible gift recipient status by the Australian Taxation Office; and
 - v. any additional information as requested by the Chief Executive Officer.
- f. The Chief Executive Officer will recommend to the Board whether an application for customer memberships

should be accepted or rejected within one month of the date on which they are received – provided all information requested has been submitted and forms completed.

3. Payment of Customer Membership Fee

- a. Customer Members must pay the Customer Membership Fee on a date to be determined by the Board from time to time.
- b. The Board of Foodbank may vary the Customer Membership Fee from time to time at its discretion.
- c. Customer Members who fail to pay the Customer Membership Fee within three months after the relevant date automatically cease to be a Customer Member on the expiry of that period.

4. Customer Member Obligations

- a. Customer Members must not sell for profit, barter or exchange food for money, goods or services, except as part of a site meal program, such as a soup kitchen, drop-in centre or supported accommodation, where a nominal charge or gold coin donation may be levied for prepared meals.
- b. Where charges for food services are made, the agency must declare and explain the relevant circumstances to Foodbank within the customer membership application form.
- c. Customer Members are prohibited from using food provided by Foodbank for fundraising activities.
- d. Customer Members must comply with, and ensure that their employees, volunteers and agents comply with all applicable laws concerning the storage, preparation, and distribution of food. In particular, where chilled, frozen, or otherwise perishable items are withdrawn from Foodbank, the Customer Member must provide adequate refrigeration and freezer space to ensure the safe and hygienic storage of all perishable food items in accordance with applicable health and safety laws and to prevent product deterioration.
- e. Customer Members must provide their own transport for the purpose of collecting food from Foodbank, or otherwise be responsible for hiring a contractor to collect the food. Customer Members may request delivery by Foodbank, subject to payment of a delivery fee.
- f. Customer Members must pay the prescribed Handling Fee in accordance with clause 7.
- g. Customer Members must keep such records as are considered reasonably necessary in respect of the receipt and distribution of food for the purpose of assisting in, inter alia, effecting any product recall or withdrawal.
- h. Customer Members must, at all times, retain current Public Liability insurance that covers their food relief program to a minimum value of \$10 million.
- i. Customer Members must complete and return Foodbank's annual Hunger Survey within the timeframe specified by Foodbank.
- j. Representatives of Customer Members who visit any Foodbank site must produce Foodbank ID cards to identify themselves.
- k. Representatives of Customer Members who visit a Foodbank site must wear closed toe shoes and adhere to any work

health and safety guidelines issued by Foodbank and the instructions of Foodbank staff.

5. Marketing

- a. Customer Members must acknowledge the support they receive from Foodbank by including the phrase "Proudly supported by Foodbank SA" followed by the Foodbank logo on its website, and at their warehouse or premise where food is distributed that is obtained from Foodbank SA.
- b. The Customer Member must obtain the written approval of Foodbank before it distributes any Marketing Materials that contain the name and logo of Foodbank.
- c. Foodbank may use the Customer Member's name and logo on its website, and in any Marketing Materials it distributes, for the sole purpose of informing the public of those Customer Members to which it provides support.
- d. Customer Members are expressly prohibited, in any way, from appropriating or utilising any fundraising or marketing campaign devised and run by Foodbank, whether in electronic or written form, for the purpose of eliciting donations from members of the public for its own gain.
- e. It is acknowledged and agreed by both parties that they each retain sole ownership of any Intellectual Property Rights comprised in, and associated with, their own name and logo, and that neither party has a right or entitlement to access, use or deal with the Intellectual Property Rights of the other except as otherwise expressly provided for in this agreement.

6. Food Withdrawals

- a. Customer Members acknowledge that Foodbank may not have the capacity to meet the food needs of all its Customer Members.
- b. Despite clause 6a, Foodbank will attempt, to the extent that it is reasonable and practicable, to ensure that all food under its control is distributed between its Customer Members in an equitable manner.

7. Handling Fee

- a. Each Customer Member is required to pay the Handling Fee, as set out in Schedule 1, in respect of all Food Withdrawals made by the relevant Customer Member in accordance with the requirements of clause 7e and 7f of these Terms and Conditions.
- b. For the purpose of clause 7a, a Food Withdrawal will be deemed to have been made by a Customer Member when it has been allocated to that Customer Member following a request made by that Customer Member, notwithstanding that the Customer Member has not collected the food.
- c. The Board of Foodbank may vary the Handling Fee from time to time in its absolute discretion.
- d. Foodbank reserves the right to waive or reduce the Handling Fee on selected items generally, on such terms and conditions as the Chief Executive Officer may from time to time determine.
- e. Foodbank will forward invoices in respect of Handling Fees incurred by a Customer Member to each Customer Member after each Food Withdrawal.
- f. Payment in respect of any Handling Fee must be made within 14 calendar days of the date of the relevant invoice, as directed

in Schedule 1, unless otherwise specified on the invoice.

- g. Customer Members are permitted to recoup Handling Fees by passing on the Handling Fees it pays to Foodbank to their clients. The Handling Fee charged by a Customer Member to its clients cannot be greater than the Handling Fee charged by Foodbank under clause 7a for that specific product, unless specifically authorised by the Foodbank Chief Executive Officer. Notwithstanding the above, Customer Members must not charge a Handling Fee on any products sourced from Foodbank that it has received free of charge.

8. Term of Customer Membership

- a. Unless terminated earlier in accordance with clause 9, customer membership will be for a calendar year, January 1 to December 31.

9. Termination

- a. The Board may issue a notice proposing to expel a Customer Member if a Customer Member:
 - i. is engaging in conduct detrimental to the interests of Foodbank;
 - ii. has breached these Terms and Conditions; or
 - iii. has ceased to qualify as a Customer Member in accordance with clause 2b.
- b. Before a Customer Member can be expelled, the Board must follow the process set out in Rule 10 of the Foodbank SA Rules.
- c. A Customer Member may resign from membership of Foodbank at any time by written notice to either the Public Officer of Foodbank, or Board Member of Foodbank.

10. Dispute Resolution

- a. In the event of a dispute between a Customer Member and Foodbank, the Customer Member and the Chief Executive Officer will negotiate to resolve the dispute.
- b. If following discussions in accordance with clause 10a the parties are unable to agree, the dispute will be referred to the Board, which may invite written submissions from the Customer Member and the Chief Executive Officer. The Board will attempt to resolve the dispute within 14 days after the dispute is referred to the Board.
- c. For the purposes of this clause 10, the decision of the Board will be final.
- d. Any termination of Customer Membership shall not be deemed to be subject to dispute resolution and the decision of Foodbank will be final.

11. Disclaimers and Warranties

- a. Customer Members warrant that any food supplied by Foodbank will be transported, stored, prepared and distributed in accordance with all applicable health and safety laws and having regard to the perishable nature of certain food items and the use-by-date of all food items.
- b. Customer Members acknowledge that they, not Foodbank, are responsible for ensuring that their food handling and storage facilities comply with the applicable health and safety laws, and that it is their responsibility to seek the support and guidance of municipal/local health authorities to ensure compliance.
- c. Foodbank will advise Customer Members of any limitations placed upon particular

foods or grocery products at the point of Food Withdrawal.

- d. Customer Members warrant that they will, in all transactions, abide by any limitations upon particular foods or grocery products that Foodbank has advised them of in accordance with clause 11c.
- e. Customer Members will dispose of food items or grocery products if the quality or suitability of food for a given use is in doubt. Customer Members undertake to examine the appearance, smell and storage history of food carefully, and warrant that any items with doubtful smells, colours, textures, broken or swollen packaging or which have been incorrectly stored will be immediately thrown out.

12. Entire Agreement

- a. This agreement states all of the express terms of the agreement between Foodbank and the Customer Member of its subject matter. It supersedes all prior discussions, negotiations, understandings and agreements in respect of its subject matter.
- b. To the extent permitted by law and other than as set out in this agreement, Foodbank expressly excludes all terms, conditions, warranties and statements, whether express, implied, oral, written collateral, statutory or otherwise pertaining to the relationship between Foodbank and the Customer Member or the provision of food items by Foodbank.

13. Limitation of Liability

- a. Customer Members acknowledge and agree that they will each have no claim against Foodbank arising out of the failure or inability of Foodbank to provide food items requested by the Customer Member.
- b. To the extent permitted by law, Foodbank's liability for any loss or damage arising out of or in connection with the sale or use of its food items will be limited to the replacement of any defective food items or the cost of resupply of the relevant defective food items to the Customer Member.
- c. To the extent permitted by law, the liability of Foodbank excludes any liability in respect of:
 - i. loss or damage incurred as a result of or in connection with the act or omission (including negligence) of a Customer Member;
 - ii. Consequential Loss arising from or in any way related to the agreement between Foodbank and the Customer Member; and
 - iii. any term, condition or warranty that may otherwise be implied into this agreement between Foodbank and a Customer Member.

SCHEDULE 1

A. Customer Membership Fee

As of the date of this Schedule, the annual customer membership fee set for the year 1 January to 31 December each year is **(\$55.00 GST inclusive)**

B. Handling Fees

Current Handling Fees are as per our online ordering page and also accessible via our website www.foodbanksa.org.au