

# OFNZ B2B MARKETPLACE TERMS AND CONDITIONS

## 1 APPLICATION OF TERMS

- 1.1 These Terms apply to your use of the OnlyFromNZ B2B Marketplace (the Marketplace). By accessing and using the Marketplace:
- a you accept and agree to be bound by these Terms; and
  - b where your access and use is on behalf of another person (e.g. a company), you confirm that you are authorised to, and do in fact, agree to these Terms on that person's behalf and that, by agreeing to these Terms on that person's behalf, that person is bound by these Terms.
- 1.2 If you do not agree to these Terms, you are not authorised to access and use the Marketplace, and you must immediately stop doing so.
- 1.3 If the processing of Content (as defined below) is governed by the GDPR (as defined below), the additional terms in the Data Processing Addendum (as defined below) also form part of these Terms.

## 2 CHANGES

- 2.1 We may change these Terms at any time by updating them on the Marketplace. Unless stated otherwise, any change takes effect immediately. You are responsible for ensuring you are familiar with the latest Terms. By continuing to access and use the Marketplace, you agree to be bound by the changed Terms.
- 2.2 We may change, suspend, discontinue, or restrict access to, the Marketplace without notice or liability.
- 2.3 **Terms and Conditions last updated: These Terms were last updated on 6 August 2021.**

## 3 DEFINITIONS AND INTERPRETATION

- 3.1 Definitions: In these Terms:

**Agent** means an intermediary whose role is to connect sellers with buyers within the Marketplace.

**Buyer** means a Marketplace user who purchases Samples or accepts a Quote for goods or services advertised by a Producer in a Listing on the Marketplace

**Content** means content, data, and information (including personal information) that is owned, held, used or created by you or on your behalf, and that is then stored, transmitted via, input into or displayed via the Marketplace including, in the case of a Producer, all content, data and

information uploaded into the Marketplace by us on the Producer's behalf when creating a Listing

**Customers** means Buyers and Producers with valid user accounts on the Marketplace.

**Data Processing Addendum** means the data processing addendum attached to these Terms (<https://onlyfromnz.co.nz/gdpr-data-processing-addendum/>)

**Fees** means the fees payable by Producers to us in respect of the Marketplace as set out in clause 9.4.

**GDPR** means the General Data Protection Regulation of the European Union

**Intellectual Property Rights** includes copyright and all rights anywhere in the world conferred under statute, common law or equity relating to inventions (including patents), registered and unregistered trademarks and designs, circuit layouts, data and databases, confidential information, know-how, and all other rights resulting from intellectual activity. **Intellectual Property** has a consistent meaning, and includes any enhancement, modification or derivative work of the Intellectual Property

**Listing** means an advertisement or post by a Producer on the Marketplace offering goods and/or services to Marketplace users

**Loss** includes loss of profits, savings, revenue or data, and any other claim, damage, loss, liability and cost, including legal costs on a solicitor and own client basis

**Marketplace** means the Website and/or the Marketplace mobile app (as applicable)

**Objectionable** includes being objectionable, defamatory, obscene, harassing, threatening or unlawful, in any way, or is otherwise offensive to Muslim communities

**Order** means a written request by a Buyer to a Producer via OFNZ to provide goods and/or services

**Outward** means the escrow payment service provider available at [www.outward.nz/](http://www.outward.nz/) and our nominated payment provider

**Personal information** means information about an identifiable, living person

**Producer** means a person who has set up an account with the Marketplace to list goods and/or services and offers such goods and/or services to Marketplace users. Producers are also referred to as **Artisans** on the Marketplace and the terms are interchangeable.

**Quote** has the definition given to it in clause 6.7

**Sales Tax** means sales tax, goods and services tax, value added tax or equivalent tax payable under any applicable law, but excludes customs duties and product registration costs

**Sample** means a one-off sample supply of goods and/or services purchased by and provided to the Buyer

**Service** means the work and investment done by OnlyFromNZ on behalf of Producers and Buyers to ensure the success of the Marketplace.

**Terms** means these terms and conditions titled *OnlyFromNZ B2B Marketplace Terms and Conditions* including, if the processing of Content is governed by the GDPR, the Data Processing Addendum

**Underlying Systems** means the IT solutions, systems and networks (including software and hardware) used to provide the Marketplace, including any third-party solutions, systems and networks

**User ID** means a unique name and/or password allocated to you to allow you to access the Marketplace

**We, us or our** means the OnlyFromNZ Limited, NZBN 9429046774606

**Website** means [www.onlyfromnz.co.nz](http://www.onlyfromnz.co.nz)

**You** means you or, if clause 1.2c applies, both you and the other person on whose behalf you are acting

### 3.2 In these Terms:

- a clause and other headings are for ease of reference only and do not affect the interpretation of these Terms;
- b words in the singular include the plural and vice versa; and
- c a reference to:
  - i. a **person** includes an individual, a body corporate, an association of persons (whether corporate or not), a trust, a government department, or any other entity;
  - ii. **including** and similar words do not imply any limit; and
  - iii. a statute includes references to regulations, orders or notices made under or in connection with the statute or regulations and all amendments, replacements or other changes to any of them.

## **4 ABOUT THE ONLYFROMNZ MARKETPLACE**

4.1 We provide, manage and own *an online B2B curated Marketplace offering high-quality New Zealand-made goods and (eventually) services to buyers in the GCC and beyond.*

4.2 We act as an Agent for Marketplace users to transact and are not a party to any an agreement to buy, sell or provide the goods or services advertised on the Marketplace. We are not an auctioneer or broker. When a Buyer purchases goods and/or services and a Producer agrees

to provide goods and/or services, they are entering into an agreement directly with each other, including where payment is made through the Marketplace or Outward.

- 4.3 Any interaction between you and another Marketplace user, including any agreement entered into between you and another Marketplace user, is a matter directly between you and them only. Other than our obligations set out in these Terms, we are not liable to you for any failure by any Marketplace user to comply with these Terms or any other legal obligation.
- 4.4 We will use reasonable efforts to provide Marketplace in accordance with these Terms and New Zealand law.
- 4.5 Our provision of the Marketplace to you is non-exclusive. Nothing in these Terms prevents us from providing the Marketplace to any other person.
- 4.6 Subject to clause 4.7, we will use reasonable efforts to ensure the Marketplace is available on a 24/7 basis. However, it is possible that on occasion the Marketplace may be unavailable to permit maintenance or other development activity to take place, or due to an event that is beyond our reasonable control.
- 4.7 Through the use of web services and APIs, the Marketplace may interact with a range of third-party service features. We do not make any warranty or representation on the availability or performance of those features. Without limiting the previous sentence, if a third-party feature provider ceases to provide that feature or ceases to make that feature available on reasonable terms, we may cease to make available that feature to you. To avoid doubt, if we exercise our right to cease the availability of a third-party feature, you are not entitled to any refund, discount or other compensation.

## **5 USE OF THE MARKETPLACE**

- 5.1 You must:
  - a use the Marketplace in accordance with these Terms solely for lawful purposes (including complying with the Unsolicited Electronic Messaging Act 2007); and
  - b not resell or make available the Marketplace to any third party, or otherwise commercially exploit the Marketplace.
- 5.2 You must provide true, current and complete information in your dealings with us (including when setting up an account), and must promptly update that information as required so that the information remains true, current and complete.
- 5.3 You must keep your User ID secure and:
  - a not permit any other person to use your User ID, including not disclosing or providing it to any other person; and
  - b immediately notify us if you become aware of any unauthorised use or disclosure of your User ID, by sending an email to [info@onlyfromnz.co.nz](mailto:info@onlyfromnz.co.nz)

5.4 You must obtain our written permission to establish a link to the Marketplace. If you wish to do so, email your request to [info@onlyfromnz.co.nz](mailto:info@onlyfromnz.co.nz). Any websites or social media linked to our Marketplace must:

- a comply with all applicable laws; and
- b not contain any Objectionable, incorrect or misleading content.

5.5 When accessing and using the Marketplace, you must:

- a not impersonate another person or misrepresent authorisation to act on behalf of others or us;
- b not attempt to undermine the security or integrity of the Underlying Systems;
- c not use, or misuse, the Marketplace in any way which may impair the functionality of the Underlying Systems or impair the ability of any other user to use the Marketplace;
- d not attempt to view, access or copy any material or data other than:
  - i. that which you are authorised to access; and
  - ii. to the extent necessary for you to use the Marketplace in accordance with these Terms;
- e neither use the Marketplace, nor transmit, input or store any Content, that breaches any third party right (including Intellectual Property Rights and privacy rights) or is Objectionable, incorrect or misleading; and
- f unless with our agreement, access the Marketplace via standard web browsers and not by any other method. Other methods include scraping, deep-linking, harvesting, data mining, use of a robot or spider, automation, or any similar data gathering, extraction, monitoring or input method.

5.6 You are responsible for procuring all licences, authorisations and consents required for you to access and use the Marketplace, including to use, store and input Content into, and display Content using, the Marketplace.

5.7 You indemnify us against all Loss we suffer or incur as a direct or indirect result of:

- a any actual or alleged claim by a third party that any Content infringes the rights of that third party (including Intellectual Property Rights and privacy rights) or that the Content is Objectionable, incorrect or misleading;
- b your failure to comply with these Terms, including any failure of a person who accesses and uses the Marketplace by using your User ID; or

- c any Loss arising from or in connection with an actual or alleged breach by you of any legal or regulatory requirements which occurs in connection with a contract or as a result of any other relationship established through the Marketplace.

## **6 ADDITIONAL TERMS FOR PRODUCERS**

6.1 This clause 6 applies to Producers.

6.2 To create a Listing, you must provide to us:

- a accurate information on the goods and/or services offered (including recommended retail pricing and wholesale pricing, in US dollars, and minimum order quantities);
- b any additional terms and conditions that apply to the goods and/or services offered;
- c any other information reasonably requested by us, including your profile information;
- d details of any existing commercial relationships in Indonesia or the Cooperation Council for the Arab States of the Gulf (**GCC**) region
- e a minimum of six Samples, couriered to our nominated address, including fees to cover our reasonable costs of photographing the Samples.

6.3 All descriptions and information provided to us for use in a Listing must be accurate, complete, up-to-date and truthful to the best of your knowledge and belief.

6.4 If goods and/or services become unavailable for any reason, you agree to notify us immediately, so that we may remove or suspend the Listing as soon as practicable.

6.5 You must not:

- a complete or attempt to complete a transaction with any Marketplace user outside of the Marketplace process or otherwise seek to avoid the Fees; or
- b ask for or accept direct payment of the price payable for the goods and/or services by a Marketplace user by any payment method other than payment through the Marketplace or Outward.

6.6 You acknowledge and agree that you are responsible for all Content and Listings that you provide to us for display on the Marketplace. Accordingly, you represent and warrant that any Listing, or a Marketplace user's use of, goods and/or services will:

- a comply with any agreements you have entered into with any third parties;
- b comply with all applicable laws (including the GCC overseas market access requirements); and
- c not conflict with the rights of third parties.

- 6.7 We may make additional related services available to Producers to supplement our provision of the Marketplace, including assistance with Buyer identification and validation, pricing guidance, packaging and labelling regulations, and product registration (**Related Services**). You access and use the Related Services at your own risk and are solely responsible to decisions relating to your business.
- 6.8 Producers must liaise with us to prepare a wholesale quote in response, and include Sample pricing, minimum order quantities, shipping and handling costs, payment terms, the recall or returns process, and any additional terms and conditions (**Quote**).

## **7 ADDITIONAL TERMS FOR BUYERS AND MARKETPLACE USERS**

- 7.1 This clause 7 applies to Marketplace users where the user is not using the Marketplace as a Producer.
- 7.2 Your use of the Marketplace is subject to you passing our validation procedure.
- 7.3 You must not:
- a complete or attempt to complete a transaction with any Producer outside of the Marketplace process; or
  - b ask the Producer to accept direct payment of the price payable for the goods and/or services or pay the Producer by any payment method other than payment through the Marketplace or Outward.

## **8 MAKING PURCHASES FROM PRODUCERS**

- 8.1 To purchase goods and/or services from a Listing, Buyers and Producers must follow the request for quote process set out below (**Request for Quote**).
- a Buyers must place an Order through a Marketplace Listing and include the goods and/or services it wishes to purchase, a requested delivery date, and any other information reasonably required by the Buyer. The Producer may accept or reject any Order, on reasonable grounds.
  - b We will provide the Quote to the Buyer on the Producer's behalf. The Quote is valid from 90 days following receipt by the Buyer.
  - c If the Buyer accepts the Quote, it becomes a binding agreement between the Buyer and the Producer for the provision of goods and/or services on the terms set out in the Quote.
    - i the Buyer may decline to continue with the Order; or
    - ii the Buyer proceeds with an Order that meets the minimum order quantities set out in the Quote, at which point it becomes a binding, non-refundable agreement between the Buyer and the Producer for the provision of the goods and/or services on the terms out in the Quote.

- d The Buyer is responsible for payment of Customs duties and local product registration costs.
- 8.2 To purchase Samples of goods from a Listing, Buyers must place an Order for Samples through a Listing, and include the Samples it wishes to purchase, a requested delivery date, and any other information reasonably required by the Buyer.
- 8.3 The Producer may accept or reject any Order for Samples, on reasonable grounds.
- 8.4 A Sample will be couriered by us to the Buyer at the Buyer's expense.
- 8.5 The cost of these Samples will be refunded when the Buyer makes their first commercial order of the goods ordered as Samples.

## **9 FEES AND PAYMENT**

- 9.1 To make or receive payments on the Marketplace, you must use Outward, Stripe (credit card payment) or Direct Bank Transfer. Your use of the Marketplace is subject to your acceptance of and compliance with our and Outward's terms and conditions and privacy policies.
- 9.2 We will issue quarterly statements to Producers. These statements will set out:
  - a the amounts received for goods and/or services sold through the Marketplace;
  - b the Fees payable to us; and
  - c the net amount due to you.
- 9.3 We will pay the net amount due to you within 24 hours following receipt of the net amount from the Buyer in the same currency we receive payment in, less our commission and any fees or commissions associated with the payment method.
- 9.4 Our fees for selling product on the Marketplace are 25% of the total contract value (excluding freight) for the first sale and 15% of the total contract values (excluding freight) for every sale thereafter, plus GST or Sales Tax as applicable.
- 9.5 We may, by giving at least 30 days' notice, increase the Fees from time to time. We will notify you of any increase and the effective date of the increase by emailing you at the email contact address that you have most recently supplied to us. If you do not wish to pay the increased Fees, you may remove your Listings and/or your account. If you do not remove your Listings before the effective date of the increase, you are deemed to have accepted the increased Fees.

## **10 PRODUCERS' CONTENT**

- 10.1 Title to, and all Intellectual Property Rights in, the Content (as between the parties) remains your property. This includes ownership of your product imagery paid by you and shot by us.

You grant us a worldwide, non-exclusive, fully paid up, transferable, irrevocable licence to use, store, copy, modify, make available and communicate the Content for any purpose:

- a in connection with the exercise of our rights and performance of our obligations in accordance with these Terms; or
- b to promote, advertise or market the Marketplace to prospective users including on social media or in direct advertising.

10.2 Without limiting clause 10.1, you acknowledge that we may use Content for our internal research, analytical and product development purposes, to conduct statistical analysis and identify trends and insights (on an anonymised and aggregated basis) and for our internal reporting requirements (and these rights will survive termination and expiration of these Terms).

10.3 You acknowledge and agree that to the extent Content contains personal information, in collecting, holding and processing that information through the Service, we are acting as your Agent for the purposes of any applicable privacy law and as a processor for the purposes of the GDPR. You must ensure you have obtained all necessary consents for us to access, collect, hold, process and distribute the Content as described in these Terms.

10.4 While we will use reasonable endeavours to back up all Content stored using the Marketplace, you must keep separate and regular back-up copies of all Content supplied to us for use on the Marketplace.

## **11 OUR INTELLECTUAL PROPERTY**

11.1 Other than your Content, we (and our licensors) own all proprietary and intellectual property rights in the Marketplace and the Underlying Systems, including all information, data, text, graphics, artwork, photographs, trademarks, logos, icons, sound recordings, videos and *look and feel*, and including any modification, enhancement or derivative work of any of the foregoing.

11.2 If you provide us with ideas, comments or suggestions relating to the Marketplace or Underlying Systems (together **feedback**):

- a all Intellectual Property Rights in that feedback, and anything created as a result of that feedback (including new material, enhancements, modifications or derivative works), are owned solely by us; and
- b we may use or disclose the feedback for any purpose.

## **12 CONFIDENTIALITY**

12.1 You must treat all information available and otherwise provided through the Marketplace as strictly confidential and may only use that information for the purpose of buying, selling and providing goods and/or services through the Marketplace.

12.2 Confidential Information expressly includes contact details of each Marketplace user but does not include any information already in the public domain, or independently known to you.

### **13 PRIVACY**

13.1 You are not required to provide personal information to us, although in some cases if you choose to not do so then we will be unable to make certain functions of the Marketplace available to you.

13.2 When you provide personal information to us, we will comply with the New Zealand Privacy Act 2020, the GDPR and with our Privacy Policy set out at <https://onlyfromnz.co.nz/gdpr-privacy-policy/>

### **14 DISCLAIMERS**

14.1 To the extent permitted by law, we have no liability or responsibility to you or any other person for any Loss in connection with:

- a the Marketplace being unavailable (in whole or in part) or performing slowly;
- b the failure of any Marketplace user to comply with these Terms;
- c any error in, or omission from, any information made available through the Marketplace;
- d any exposure to viruses or other forms of interference which may damage your computer system or expose you to fraud when you access or use the Marketplace. To avoid doubt, you are responsible for ensuring the process by which you access and use the Marketplace protects you from this;
- e any Related Services we provide to you; and
- f any site linked from the Marketplace. Any link on the Marketplace to other sites does not imply any endorsement, approval or recommendation of, or responsibility for, those sites or their contents, operations, products or operators.

14.2 All advertisements, arrangements and agreements to buy, sell or provide goods and/or services through the Marketplace are carried out entirely at your own risk. We exclude to the fullest extent permitted by applicable law all liability for any Loss arising out of or in any way connected with any other arrangements that you may have made in connection with the Marketplace, or your use of the Marketplace.

14.3 Without limiting clause 14.2:

- a you rely on information provided by other Marketplace users at your own risk;
- b you acknowledge we do not, control, inspect, endorse, approve or check the availability, condition or nature of any advertised goods and/or services or the accuracy, currency, truth or completeness of the information provided by Marketplace users and it is your responsibility to do so; and

- c it is your responsibility to take any other necessary precautions before entering an agreement to buy, sell or provide goods and/or services.

## **15 LIABILITY**

15.1 To the maximum extent permitted by law:

- a you access and use the Marketplace at your own risk; and
- b we are not liable or responsible to you or any other person for any Loss under these Terms or in connection with the Marketplace, or your access and use of (or inability to access or use) the Marketplace. This exclusion applies regardless of whether our liability or responsibility arises in contract, tort (including negligence), equity, breach of statutory duty, or otherwise.

15.2 Except to the extent permitted by law, nothing in these Terms has the effect of contracting out of the New Zealand Consumer Guarantees Act 1993 or any other consumer protection law that cannot be excluded. To the extent our liability cannot be excluded but can be limited, our liability will be limited to NZD100.00.

15.3 To the maximum extent permitted by law and only to the extent clauses 15.1 and 15.2 of these Terms do not apply:

- a our total liability to you in connection with these Terms or the Marketplace will not exceed NZD100.00; and
- b we will not be liable to you under or in connection with these Terms or our provision of the Marketplace for any:
  - i. loss of profit, revenue, savings, business, use, data (including Content), and/or goodwill; or
  - ii. consequential, indirect, incidental or special damage or loss of any kind.

15.4 Clauses 15.1 to 15.3 do not apply to limit:

- a our liability under or in connection with these Terms:
  - i. for personal injury or death; or
  - ii. for fraud or wilful misconduct; or
- b any liability that cannot be excluded by law.

## **16 SUSPENSION AND TERMINATION**

16.1 If you are a Producer, you may suspend or terminate your account by providing us with three months' notice in writing.

- 16.2 Subject to clause 16.1, if you are a Buyer, you may cease using the Marketplace at any time by removing your account from the Marketplace. If you do this, these Terms and your right to access and use the Marketplace will terminate immediately.
- 16.3 Either party may, by notice to the other party, immediately terminate these Terms and your right to access and use the Marketplace if the other party:
- a breaches any material provision of the Agreement and the breach is not:
    - i. remedied within 10 days or the receipt of a notice from the first party requiring it to remedy the breach; or
    - ii. capable of being remedied; or
  - b becomes insolvent, liquidated, bankrupt, has an administrator, receiver, liquidator, statutory manager, mortgagee's or chargee's agent appointed or becomes subject to any form of insolvency action of external administration, or ceases to continue business for any reason.
- 16.4 Termination of these Terms does not affect either party's rights and obligations that accrued before that termination.
- 16.5 Clauses which, by their nature, are intended to survive termination of your right to access and use the Marketplace, including clauses 10 to 15, 16.4, 16.5 and 17.2.
- 16.6 Subject to clause 16.4, no compensation is payable by us to you as a result of termination of these Terms for whatever reason, and you will not be entitled to a refund of any amount that you have already paid to us.
- 16.7 Without limiting any other right or remedy available, we may restrict or suspend your access to the Marketplace if we consider you have:
- a undermined, or attempted to undermine, the security or integrity of the Marketplace or any Underlying Systems;
  - b used, or attempted to use, the Marketplace for improper purposes or in a manner, other than for normal operational purposes, that materially reduces the operational performance of the Marketplace;
  - c transmitted or stored any Content that breaches or may breach these Terms or any third party right (including Intellectual Property Rights and privacy rights), or that is, or may be, Objectionable, incorrect or misleading;
  - d failed to pay any amount when due in accordance with clause 9; or
  - e otherwise materially breached these Terms.

## **17 GENERAL**

- 17.1 If we need to contact you, we may do so by email or by posting a notice on the Marketplace. You agree that this satisfies all legal requirements in relation to written communications.
- 17.2 These Terms, and any dispute relating to these Terms or the Marketplace, are governed by and must be interpreted in accordance with the laws of New Zealand. Each party submits to the non-exclusive jurisdiction of the Courts of New Zealand in relation to any dispute connected with these Terms or the Marketplace.
- 17.3 We are not liable to you for any failure to perform our obligations under these Terms to the extent caused by an event that is beyond our reasonable control.
- 17.4 You may not assign, novate, subcontract or transfer any right or obligation under these Terms without our prior written consent, that consent not to be unreasonably withheld. You remain liable for your obligations under these Terms despite any approved assignment, subcontracting or transfer.
- 17.5 No person other than us and you has any right to a benefit under, or to enforce, these Terms.
- 17.6 Subject to clause 2.1, any variation to these Terms must be in writing and signed by both parties.
- 17.7 For us to waive a right under these Terms, that waiver must be in writing and signed by us.
- 17.8 If any part or provision of these Terms is or becomes illegal, unenforceable, or invalid, that part or provision is deemed to be modified to the extent required to remedy the illegality, unenforceability or invalidity. If a modification is not possible, the part or provision must be treated for all purposes as severed from these Terms. The remainder of these Terms will be binding on you.
- 17.9 These Terms set out everything relating to your access and use of the Marketplace and supersede and cancel anything discussed, exchanged or agreed prior to you agreeing to these Terms. The parties have not relied on any representation, warranty or agreement relating to the Marketplace that is not expressly set out in the Terms, and no such representation, warranty or agreement has any effect from the date you agree to these Terms.