

TERMS AND CONDITIONS FOR THE SUPPLY OF SERVICES

**NUTRIFRESH
A COMPANY OF RANTREE LIMITED**

1. INTERPRETATION

1.1 Definitions. In these Conditions, the following definitions apply:

Business Day: a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

Charges: the charges payable by the Customer for the supply of the Services in accordance with clause 5.

Commencement Date: has the meaning set out in clause 2.1.

Conditions: these terms and conditions as amended from time to time in accordance with clause 14.8.

Contract: the contract between the Supplier and the Customer for the supply of Services in accordance with these Conditions.

Contract Period does not include any term breaks, holidays or planned closures.

Customer: any person, firm, customer or other legal entity which places an order, or who purchases Services from the Supplier and includes the employees, servants, agents, principals (whether disclosed or undisclosed) or sub-contractors of any such person, firm, company or legal entity.

Deliverables: the deliverables set out in the Order.

Force Majeure Event: has the meaning given set out in clause 14.

Intellectual Property Rights: all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

Order: the Customer's order for Services as set out in the Customer's written acceptance of the Supplier's

specification and also refers to customer weekly order forms.

Services: the services supplied by the Supplier to the Customer as set out in the Specification including deliverables.

Specification: the description or specification of the Services provided in writing by the Supplier to the Customer. Including customer orders.

Supplier: Rantree Limited registered in England and Wales with company number 10667620

Supplier Materials: has the meaning set out in clause 4.1(f).

1.2 **Construction.** In these Conditions, the following rules apply:

- (a) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- (b) a reference to a party includes its personal representatives, successors or permitted assigns;
- (c) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- (d) any phrase introduced by the terms **including, include, in particular** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- (e) a reference to **writing** or **written** includes emails and faxes.

2. BASIS OF CONTRACT

2.1 The Order constitutes an offer by the Customer to purchase Services in accordance with these Conditions.

2.2 The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order at

which point and on which date the Contract shall come into existence (**Commencement Date**).

2.3 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Supplier which is not set out in the Contract.

2.4 Any samples, drawings, descriptive matter or advertising issued by the Supplier, and any descriptions or illustrations contained in the Supplier's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.

2.5 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.6 Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 28 Business Days from its date of issue.

2.7 The contract will automatically become a rolling contract after the expiry of the initial term, unless one of the parties provides notice to terminate the agreement in line with termination clause.

3. SUPPLY OF SERVICES

3.1 The Supplier shall provide the Services to the Customer in accordance with the Specification in all material respects.

3.2 The Supplier shall use all reasonable endeavours to meet any performance dates specified in the Order, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.

3.3 The Supplier shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do

not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.

3.4 The Service is subject to availability of stock and materials and the Supplier reserves the right to vary or alter the specification of the Services without notice.

3.5 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

4. CUSTOMER'S OBLIGATIONS

4.1 The Customer shall:

- (a) ensure that the terms of the Order and applicable specification or any information it provides are complete and accurate;
- (b) co-operate with the Supplier in all matters relating to the Services;
- (c) provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises and other facilities as reasonably required by the Supplier;
- (d) provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects;
- (e) obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start. For the avoidance of doubt, the Supplier has no responsibility for advising the Customer what license, permissions and consents may be required;
- (f) keep and maintain all materials, equipment, documents and other property of the Supplier (**Supplier Materials**) at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in

accordance with the Supplier's written instructions or authorisation; and

- (g) that all meals and food products supplied by the Supplier are stored in accordance with instructions provided by the Supplier.

4.2 If the Supplier's performance of any of its obligations in respect of the Services/Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):

- (a) the Supplier shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
- (b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 4.2; and
- (c) the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

5. DELIVERY

5.1 Deliveries shall be in accordance with the Service Period attached to this Contract. The Supplier shall ensure that:

- (a) Each delivery is accompanied by a delivery form which shows the date of the order, all relevant Customer and Supplier information;
- (b) the type of quantity and description of goods;
- (c) if the Supplier requires the Customer to return any packaging material to the

Supplier, that fact is clearly stated on the delivery note. The Customer shall make such packaging material available for collection at such times as the Supplier shall reasonably request.

5.2 The Supplier shall deliver to the location set out in the Order or such other location as the parties may agree (Delivery Location). Changes to Delivery Location must be notified in writing with adequate time.

5.3 The Supplier shall not be liable for any delay in delivery of the Service that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of Service.

5.4 The Customer shall allow the Supplier access to Delivery Location and shall use best endeavours to ensure that a responsible person shall be at the Delivery Location to take delivery and to sign for them. In the event of no such person being present at the time of delivery the Customer hereby consents to the Supplier leaving the products supplied at the Delivery Location and the risk in such products shall pass to the Customer and no liability shall remain with the Supplier.

5.5 If the Customer fails to take delivery or fails to give the Supplier adequate delivery instructions at the time stated for delivery then without prejudice to any other right or remedy available to the Supplier, the Supplier shall be entitled to:

- (a) charge the Customer for all related costs of carriage of the refused delivery both to and from the Delivery Location;
- (b) charge the Customer the full cost of the product and supplies.

6. CHARGES AND PAYMENT

6.1 The Charges for the Services shall be on a time and deliverable basis:

- (a) the Charges shall be calculated in accordance with the Supplier's standard

rates, as set out in the schedule annexed hereto [Contractual Agreement];

6.2 The Supplier reserves the right to increase its standard rates for the Services. The Supplier will give the Customer written notice of any increase at least 30 days before the proposed date of the increase. If such increase is not acceptable to the Customer, it shall notify the Supplier in writing within 7 days from the date of the Supplier's notice and the Supplier shall have the right without limiting its other rights or remedies to terminate the Contract by giving 4 weeks written notice to the Customer

6.3 The Customer shall pay each invoice submitted by the Supplier:

- (a) within 7 working days of the date of the invoice; and
- (b) in full and in cleared funds to a bank account nominated in writing by the Supplier, and time for payment shall be of the essence of the Contract.

6.4 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.

6.5 An initial late charge of £45 can be applied per invoice overdue. Subsequently, if the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment (**Due Date**), the Supplier shall have the right to charge interest on the overdue amount at the rate of 5% per cent per annum above the then current Bank base rate ("Bank" refers to the bank used by RANTREE LIMITED) accruing on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly.

6.6 The Customer shall pay all amounts due under the Contract in full without any credit, set-off,

counterclaim, deduction or withholding (except for any deduction or withholding required by law) deduction or withholding except as required by law. The Supplier may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

6.7 If the Customer fails to pay the full amount due for payment, in accordance to the Contract, the Supplier has the right to suspend any or all of its Services by giving not less than 7 days' notice for the Customer of its intentions to do so and stating the ground(s) on which it intends to suspend service.

7. LIMITATION OF THE SUPPLIER'S LIABILITY

7.1 The Supplier limits its liability to the maximum extent permitted by law as follows:

(a) In respect of food products, the Supplier's liability shall be limited to Food Products consumed up to and including the 'Best Before Date' or 'Use by' date.

(b) The Supplier's liability shall be limited at its option to replacing the product found to be defective or refunding or crediting the purchase price or a pro rata portion of the purchase price.

7.2 The Supplier shall have no liability for any loss or damage suffered by the Customer or any other person:

(a) as a consequence of any defect caused by abnormal conditions of storage, treatment or handling or any negligence or wrongful act on the part of the Customer or its employees or agents;

(b) for claims for damage reasonably apparent on inspection at the time of delivery or for short delivery.

- (c) for any claim arising on an invoice issued more than one month before the date upon which such claim is received by the supplier.
- (d) for any loss of profit, loss of sale, loss of goodwill, loss of reputation, loss of customers and any other similar indirect or consequential losses caused by the Supplier's negligence or other wrongful act on the Supplier's part or that of its employees or agents or otherwise
- (e) for any failure by the Supplier to perform any of its obligations in this Contract caused by circumstances beyond its reasonable control

8. INTELLECTUAL PROPERTY RIGHTS

- 8.1 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by the Supplier.
- 8.2 The Customer acknowledges that, in respect of any third party Intellectual Property Rights, the Customer's use of any such Intellectual Property Rights is conditional on the Supplier obtaining a written licence from the relevant licensor on such terms as will entitle the Supplier to license such rights to the Customer.
- 8.3 All Supplier Materials are the exclusive property of the Supplier.

9. CONFIDENTIALITY

A party (**Receiving Party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party (**Disclosing Party**), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or

subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This clause 9 shall survive termination of the Contract.

10. LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

- 10.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:
 - (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
 - (b) fraud or fraudulent misrepresentation; or
 - (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 10.2 Subject to clause 10.1:
 - (a) the Supplier shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
 - (b) the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the agreed price of the goods or services supplied pursuant to this Contract .
- 10.3 The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 10.4 This clause 10 shall survive termination of the Contract.

10.5 The Contract constitutes the entire agreement between the parties and the Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Supplier which is not set out in this Contract.

10.6 Any drawings, descriptions or serving suggestions contained in any of the Supplier's brochures or on its website are produced for the sole purpose of giving an approximate idea of the Supplier's services and products. They shall not form part of the Contract or have any contractual force.

11. TITLE AND RISK

11.1 The risk of loss or damage to any products supplied by the Supplier shall pass to the Customer upon completion of the delivery to the customer's premises or collection from the Supplier's premises.

11.2 The Supplier shall not be responsible for any loss or damage sustained to any products supplied to the Customer sustained whilst on the Customer's premises but before completion of delivery. If such loss or damage arises as a consequence of the condition of the Customer's premises or the act, default or omission of the Customer or its representatives.

11.3 Title in any products supplied by the Supplier to the Customer shall not pass to the Customer until the Supplier has received in full (in cash or cleared funds) all sums due to it in respect of such products and all other sums which are or which become due to the Supplier from the Customer on any account.

11.4 Until title passes to the Customer, the Customer shall hold all products supplied by the Supplier on a fiduciary basis as the Supplier's bailee; store the products separately from all other products in such a way that they are clearly identifiable as the property of the Supplier; maintain such products in a satisfactory condition.

12. TERMINATION

12.1 Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of the Contract and (if such a breach is remediable) fails to remedy that breach within 7 days of that party being notified in writing of the breach;
- (b) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- (c) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (e) the other party (being an individual) is the subject of a bankruptcy petition or order;
- (f) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or

sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;

- (g) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);
- (h) a holder of a qualifying charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (i) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- (j) any event occurs or proceeding is taken with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 12.1(b) to clause 12.1(i) (inclusive);
- (k) the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
- (l) the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

12.2 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment.

12.3 Without limiting its other rights or remedies, each party shall have the right to terminate the Contract by giving the other party 8 weeks' written notice.

12.4 Without limiting its other rights or remedies, the Supplier shall have the right to suspend provision of the Services under the Contract or any other contract between the Customer and the Supplier if the

Customer becomes subject to any of the events listed in clause 12.1(b) to clause 12.1(l), or the Supplier reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.

13. CONSEQUENCES OF TERMINATION

On termination of the Contract for any reason:

- (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt. Also with an amount which represents the value of the minimum order specified in the schedule for the unexpired term of the Contract;
- (b) the Customer shall return all of the Supplier Materials and any Deliverables which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
- (c) the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- (d) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

14. GENERAL

14.1 Force majeure:

- (a) For the purposes of this Contract, **Force Majeure Event** means an event beyond

the reasonable control of the Supplier including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

- (b) The Supplier shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.
- (c) If the Force Majeure Event prevents the Supplier from providing any of the Services for more than 4 weeks, the Supplier shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.

14.2 Assignment and subcontracting:

- (a) The Supplier may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.
- (b) The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

14.3 Notices:

- (a) Any notice or other communication required to be given to a party under or in connection with this Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office

(if a company) or (in any other case) its principal place of business, or sent by fax to the other party's main fax number.

- (b) Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at the address referred to above or, if sent by prepaid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by fax, on the next Business Day after transmission.
- (c) This clause 14.3 shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this clause, "writing" shall not include e-mails and for the avoidance of doubt notice given under this Contract shall not be validly served if sent by e-mail.

14.4 Waiver:

A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

- (a) Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

14.5 Severance:

- (a) If a court or any other competent authority finds that any provision of the Contract (or

part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.

- (b) If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

14.6 **No partnership:** Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

14.7 **Third parties:** A person who is not a party to the Contract shall not have any rights under or in connection with it.

14.8 **Variation:** Except as set out in these Conditions, any variation, including the introduction of any additional terms and conditions, to the Contract, shall only be binding when agreed in writing and signed by the Supplier.

14.9 **Governing law and jurisdiction:** This Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.