

STANDARD TERMS AND CONDITIONS FOR SALE OF GOODS AND SERVICES

OF

FOODMEK LIMITED  
17 Shanwell Road South, Tayport, Fife. DD6 9EA

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## 1. Definitions

**"Buyer"** means the person, firm or entity by whom the Order is issued.

**"General Terms and Conditions"** means these General Terms and Conditions ('Conditions') as attached to and applicable to the Order.

**"Order"** means the contract formed by the acceptance of a purchase order or work order hereunder, of which these terms and conditions form part, and any other written material specifically incorporated herein by the Seller.

**"Party"** means each of the Seller and the Buyer as appropriate, and **"Parties"** means both of the Seller and the Buyer.

**"Seller"** means **Foodmek Limited** (Registered in Scotland under SC048716) having its registered office at 17 Shanwell Road South, Tayport, Fife, DD6 9EA.

**"Work"** means all services and/or goods subject to this Order and all components and materials to be incorporated therein or ancillary thereto and all articles, materials, supplies, drawings, data, documentation specified or required and carried out as part of this Order and all services including manufacture, modification, delivery, installation, testing and commissioning as required by the Buyer.

**"Variation Order"** means an order, agreed in writing between the Seller and the Buyer and delivered in terms of clause 8 below, which varies the terms of the contract.

A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors and permitted assigns.

Words in the singular shall include the plural and vice versa.

A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.

Where the words include(s), including or in particular are used in these

General Terms and Conditions, they are deemed to have the words without limitation following them and where the context permits, the words other and otherwise are illustrative and shall not limit the sense of the words preceding them.

Any obligation in these General Terms and Conditions on a person not to do something includes an obligation not to agree, allow, permit or acquiesce in that thing being done.

References to conditions and schedules are to the conditions and schedules of these General Terms and Conditions.

## 2. General

These Terms and Conditions shall apply to all contracts for the supply of Goods and Services by the Supplier to the Customer and shall prevail over any other documentation or communication from the Customer.

Any variation to these Terms and Conditions shall be inapplicable unless agreed in writing by the Supplier.

Nothing in these Terms and Conditions shall prejudice any condition or warranty, express or implied, or any legal remedy to which the Supplier may be entitled in relation to the Goods and Services, by virtue of any statute, law or regulation.

Nothing in these Terms and Conditions shall affect the Customer's statutory rights as a Consumer.

## 3. Quotations & Orders

Quotations and tenders issued by the Seller provide estimates only and unless otherwise stated in the respective quote or tender the referenced documents are valid for a period of 30 days from the issue date. The Seller shall always be able to withdraw said documents.

Orders issued by the Buyer are binding only upon the Seller written acceptance. The Buyer may revoke the Order at any time before receipt of the Seller's written order confirmation.

The Seller shall not be liable for any Orders or amendments other than those issued or confirmed on the Buyer's official printed Order. Amendments instructed verbally must be followed up by written confirmation from both parties; by way of a Variation

Order otherwise same will not be recognized by the Seller.

## 4. Delivery

Unless otherwise stated on the Order or agreed in writing by both Party the delivery of goods will be the responsibility of the Buyer, the Seller will make goods available at the Sellers premises Ex Works (As defined in Incoterms 2010 issued by International Chamber Of Commerce) on the delivery date(s) as indicated in the Order.

Where appropriate the Work shall be marked with reference to the order number and other relevant data, and shall be packed and secured in accordance with the specifications of the Order, where the Work consists of several parts, each part shall be marked and identified as aforesaid, showing the total number of parts of the Work. Work shall be supplied in such place and subject to such conditions as may be agreed under the Order

If the Work is to be delivered or performed by instalments the Buyer will not be entitled to treat the late or non-delivery of Work in any one Instalment as a repudiation of the whole order.

## 5. Transfer of Ownership

The Work supplied by the Seller shall remain the property of the Seller for as long as the Buyer fails to pay the price, interest and costs in respect to all Work delivered or to be delivered. During that period the Buyer shall be responsible for the maintenance and care of the Work

## 6. Force Majeure

Neither Party shall be liable for any delay or failure to perform any of its obligations if the delay or failure results from events or circumstances outside its reasonable control, including but not limited to acts of God, strikes, lock outs, accidents, war, fire, breakdown of plant or machinery or shortage of unavailability of raw materials from natural source of supply, and the party shall be entitled to a reasonable extension of its obligations.

## 7. Warranty

The Seller warrants to the Buyer that the Work:

(i) will be of satisfactory quality, in accordance with the requirements set out in the Order and for the normal usage of such Work.

(ii) will be free from defects in material and workmanship;

(iii) will correspond with any relevant specifications or sample;

The Seller warrants to the Buyer that the Work will be performed by appropriately qualified and trained personnel, with due care and diligence and to such standard of quality as it is reasonable for the Buyer to expect in all the circumstances.

If the Work is not supplied or performed in accordance with the Order and/or the Seller fails to meet the requirements of the Order, then the Buyer shall be entitled to require the Seller to promptly repair the Work or to promptly supply replacement Work meeting the requirements of the Order.

Should the Seller fail or refuse to effect the repair or replace as required, the Buyer shall be entitled to effect the repair or to obtain replacement itself, or by means of others at the Seller's cost. Provided however the Seller's liability in respect of such cost shall be limited to 125% of the price that the Seller would have charged had the Seller performed the corrective or replacement work and the Seller has first been afforded the opportunity to put right the issue.

Replacements, repairs and corrective work shall not extend the warranty but shall be warranted for the warranty term remaining at the time of the replacement, repair or corrective work. In respect of components and goods which have not been manufactured by the Seller this guarantee shall not apply and the Buyer is entitled to benefit of the guarantee offered by the manufacturer.

This warranty does not apply to refurbished or reworked goods, which shall be covered by a separate warranty available from the Seller upon request.

The Seller will request an order number prior to attending site for warranty visits. Should the visit prove to be covered by the warranty then no charge would be made for the costs covered by the warranty. Should the cause of the problem prove not to be covered by the warranty the full cost of time, material and expenses would be born by the Buyer.

All warranties (unless specifically agreed at time of entering contract) are subject to the following limitations and exclusions:

(i) Warranty covers cost of replacement materials where these are under warranty and time for rectifying fault where workmanship is at fault. However as equipment can be installed anywhere in the world, in order to keep costs competitive, the Seller cannot normally cover the costs of traveling to site nor any costs for labour which are out with the Sellers control such as travel time, waiting time, site inductions etc. Hence whenever a Sellers Service Technician or Technical Engineer is required to attend site whether the issue is believed to be warranty or not a PO will be required and all time (from leaving the Sellers base to return to base) and expenses will be charged except for time spent directly diagnosing and repairing a fault which upon inspection is deemed to be a warranty issue.

(ii) Any modification work hardware or software carried out by personnel other than the Seller (or those Authorised by the Seller) will invalidate warranty.

(iii) Any substandard repair work carried out by personnel other than those supplied by the Seller will invalidate warranty.

(iv) Failure to undertake recommended (or normal good practice) maintenance work will invalidate warranty.

(v) Failure to Pay for the equipment supplied in line with agreed (or the Seller

Standard) payment terms will invalidate warranty.

## 8. Price and Payment

All prices quoted for supply of goods and / or services are exclusive of Value Added Tax and are valid for 30 days only or until earlier acceptance by Seller and are deemed to be in Pounds Sterling (GBP) and shall apply ex works and encompass all costs associated with the performance of the work, including but not limited to packaging, inspections (excluding third party Inspections) and tests as detailed in the quotation document.

The Seller shall be entitled to invoice the Buyer as per the payment provisions stated in the corresponding Order.

If the Buyer fails to make payment in full of any invoice by the due date then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:

- (i) Cancel the Order or suspend any further deliveries or supplies of Work to the Buyer
- (ii) Vary or withdraw any discount or credit offered to the buyer
- (iii) Invalidate or suspend any Warranty either permanently or until payment is made
- (iv) Appropriate any payment made by the Buyer to such of Work (or Work supplied under any other contract between the Buyer and Seller) as Seller may think fit (notwithstanding any purported appropriation by Buyer) and;
- (v) Charge Buyer interest (both before and after any Judgement ) on the amount unpaid, at the rate which is two percent over base rate from the time to time of The Royal Bank Of Scotland plc.

If before delivery is effected there arises reasonable grounds for the Seller to Believe that the Buyer will not be able to fulfil its payment obligations the Seller shall have the right to demand from the Buyer security for payment. From the date of the demand for security until the date of satisfactory

provision of the same the Seller shall be under no obligation to do any act or thing to implement any part of the Order. If security acceptable to the Seller is not offered within such reasonable period as may be specified by the Seller the Seller may terminate the Order without further liability on its part but the Buyer shall be liable to the Seller in respect of any direct and documented costs incurred by the Seller as a consequence of such termination

All payments due from the Buyer hereunder shall be made in full to the Seller without any claim for set-off or counterclaim or other deduction whatsoever.

## 9. Variation to Orders

No variation to the Order or to the conditions within by either Party shall be binding unless agreed in writing by both Parties and confirmed and outlined by a Variation Order.

The Buyer may at any time by giving written notice to the Seller, instruct a variation which may include but not be limited to additions to, reduction, quantity or suspension of the Work. Such variation will not be binding unless it is an agreed Variation Order.

Upon receipt of an oral or written instruction of a variation by the Buyer, or if in the Seller's opinion that the occurrence or act may constitute a variation, the Seller shall immediately advise the Buyer of reasonable effect on the price and/or delivery date(s) of such variation.

Upon agreement by the parties on the effects of such variation, the Buyer will issue a formal Variation Order confirming the effects of the variation including adjustments to the price, delivery, scope of work or services and specifications, where appropriate. If the parties are unable to agree to a variation, the Buyer shall, within five (5) days provide written notice to the Seller either continuing the Order unvaried or terminating for convenience according to the terms of section 10(ii) of this agreement.

The Seller reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Work to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as, without limitation currency regulation, cost increases for labour and or materials) and which increase the Sellers costs of Work or Service by

a factor of 20% or more. This increase in price is not subject to the requirement to agree a Variation Order in terms of this condition 9.

## 10. Termination

- (i) The Buyer shall be entitled, at the Buyer's convenience or the Seller's default, to terminate the Order in part or whole by giving notice to the Seller. The Seller shall cease performance of its obligations to the extent instructed in the notice and shall take all reasonable steps to mitigate liabilities arising from the termination.
- (ii) If the Buyer terminates the Order out of convenience the Seller shall be entitled to receive: (a) payment in full for all WORK performed by the Seller up to the date of termination; (b) reimbursement of all documented direct and reasonable charges incurred by the Seller due to the termination; (c) reimbursement of all cancellation charges under the Seller's subcontracts, if any, and (d) payment of five percent (5%) of the CONTRACT PRICE quoted for the cancelled WORK in lieu of profit.
- (iii) If the Buyer terminates the Order due to the Seller's default, the Seller shall pay to the Buyer the amount of documented and direct costs incurred by the Buyer in completing or causing the completion of the Work in excess of the costs that would have been incurred by the Buyer if the Seller had not defaulted. The Seller's liability in respect of such excess of costs shall be limited to a maximum of 25% of the price that the Seller would have charged had the Seller completed the Work. The Buyer shall pay to the Seller all compensation earned by the Seller which remains unpaid on the date of termination
- (iv) If the Buyer defaults or commits a breach of these Conditions or of any other of his obligations to the Seller, or if any distress or execution shall be levied upon the Buyer's property or assets, or if the Buyer makes or offers to make any arrangement or composition with creditors, or commits any act of bankruptcy or if any petition or receiving order in bankruptcy is presented or made against the Buyer or if the Buyer is a limited company and any resolution or petition to wind up such company's business

(other than for the purpose of amalgamation or reconstruction) or to appoint an administrator or if a receiver of such company's undertaking property of assets or any part thereof shall be appointed, the Seller shall have the right forthwith to terminate the Order upon written notice of such termination to the Buyer, the contract shall be deemed to have been terminated without prejudice to any claim or right the Seller may otherwise exercise and the price of Work supplied by the Seller to the Buyer shall immediately become due and payable.

## 11. Mutual Indemnification

To the fullest extent permitted by law, the parties hereto shall each defend, indemnify and hold harmless one another from and against any and all claims arising from the indemnifying party's use of the Premises, the building or the common areas, or the conduct of its business or from any activity, work or thing done, permitted or suffered by the indemnifying party, its agents, contractors, employees or invitees in or about the Premises, the building or the common areas, and shall further indemnify and hold harmless one another from and against any and all claims arising from any breach or default in the performance of any obligation on the indemnifying party's part to be performed hereunder or arising from any act, neglect, fault or omission of such indemnifying party or of its agents, employees, or invitees and from and against all costs, attorneys fees, expenses and liabilities incurred in or about such claim or any action or proceeding brought thereon. In case any action or proceeding be brought against one party by reasons of any such claim, the other party, upon notice from the first, shall defend the same at the others expense by counsel reasonably acceptable to the first party.

## 12. Dispute Notifications

The Parties shall endeavour to settle by negotiation any dispute arising out of or in connection with the Order and/or these General Sales Conditions, including any disputes regarding the existence, validity or termination and all the consequences thereof. Such dispute shall be duly notified by the claiming Party to the other Party, and the Parties shall endeavour to settle such dispute by negotiation within thirty (30) days from receipt of said

notice. In case of failure to settle the dispute within the period of time above-mentioned the dispute shall be then submitted to the exclusive jurisdiction of the Scottish Courts.

### 13. Special Conditions

Where special conditions are stated on the front of the Order, those conditions shall apply equally with the General Terms and Conditions of Sale, except where there is an inconsistency between the General Terms and Conditions of Sale and special conditions, the special conditions shall apply.

### 14. Confidentiality

Each party shall protect from disclosure information of the other party to which it receives access regarding; pricing, financial information, operational information and any other disclosure which the disclosing party marks as "Confidential". The parties shall keep all such information confidential.

### 15. Governing Law

The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by Scottish law and the parties submit to the exclusive jurisdiction of the Scottish courts.

### 16. Entire Agreement

The Order and documents made a part hereof by express reference constitute the entire agreement between the parties and supersede all prior agreements and understandings written or oral.