

**1. Definitions**

- 1.1 "ACS" shall mean Almond's Catering Supplies Ltd, its successors and assigns or any person acting on behalf of and with the authority of Almond's Catering Supplies Ltd.
- 1.2 "Client" shall mean the person or entity described as such on the invoices, application for credit, quotation, work authorisation or any other forms to which these terms and conditions apply, and shall include any person acting on behalf of and with the authority of such person or entity.
- 1.3 "Guarantor" means that person (or persons), or entity, who agrees to be liable for the debts of the Client on a principal debtor basis.
- 1.4 "Goods" shall mean Goods supplied by ACS to the Client (and where the context so permits shall include any supply of Services as hereinafter defined) and are as described on the invoices, quotation, work authorisation or any other forms as provided by ACS to the Client.
- 1.5 "Services" shall mean all Services supplied by ACS to the Client and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).
- 1.6 "Price" shall mean the cost of the Goods as agreed between ACS and the Client subject to clause 5 of this contract.

**2. Application of these terms and conditions to consumers**

- 2.1 Where the Client buys Goods as a consumer these terms and conditions (in particular clauses relating to Risk, Disclaimer, Defects, Returns, Warranties, and Limitation of Liability) shall be subject to any laws or legislation governing the rights of consumers and shall not affect the consumer's statutory rights.

**3. Sale of Goods Act 1979 and Supply of Goods and Services Act 1982**

- 3.1 This agreement is subject to the provisions of the Sale of Goods Act 1979 and the Supply of Goods and Services Act 1982 (or any replacement or re-enactment thereof) in all cases except where the Client is contracting within the terms of a trade/business (which cases are specifically excluded).
- 3.2 Notwithstanding clause 3.1 nothing in this agreement is intended to have the effect of contracting out of any applicable provisions the Sale of Goods Act 1979 and the Supply of Goods and Services Act 1982 or any laws or legislation governing the rights of consumers, except to the extent permitted by those Acts, laws or legislation.

**4. Acceptance**

- 4.1 Any instructions received by ACS from the Client for the supply of Goods and/or the Client's acceptance of Goods supplied by ACS shall constitute acceptance of the terms and conditions contained herein.
- 4.2 Where more than one Client has entered into this agreement, the Clients shall be jointly and severally liable for all payments of the Price.
- 4.3 Upon acceptance of these terms and conditions by the Client the terms and conditions are irrevocable and can only be amended with the written consent of ACS.
- 4.4 The Client undertakes to give ACS at least fourteen (14) days notice of any change in the Client's name, address and/or any other change in the Client's details.

**5. Price and Payment**

- 5.1 At ACS's sole discretion the Price shall be either:
  - (a) as indicated on invoices provided by ACS to the Client in respect of Goods supplied; or
  - (b) ACS's current price at the date of delivery of the Goods according to ACS's current Price list; or
  - (c) ACS's quoted Price (subject to clause 5.2) which shall be binding upon ACS provided that the Client shall accept ACS's quotation in writing within thirty (30) days.
- 5.2 ACS reserves the right to change the Price in the event of a variation to ACS's quotation.
- 5.3 Time for payment for the Goods shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due fourteen (14) days following the date of issue of ACS's monthly statement.
- 5.4 Payment will be made by cash, or by cheque, or by bank cheque, or by credit card, or by direct credit, or by any other method as agreed to between the Client and ACS.
- 5.5 VAT and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

**6. Delivery of the Goods**

- 6.1 At ACS's sole discretion delivery of the Goods shall take place when:
  - (a) the Client takes possession of the Goods at ACS's address; or
  - (b) the Client takes possession of the Goods at the Client's nominated address (in the event that the Goods are delivered by ACS or ACS's nominated carrier).
- 6.2 At ACS's sole discretion the costs of delivery are included in the Price.
- 6.3 The Client shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. In the event that the Client is unable to take delivery of the Goods as arranged then ACS shall be entitled to charge a reasonable fee for redelivery.
- 6.4 Delivery of the Goods to a third party nominated by the Client is deemed to be delivery to the Client for the purposes of this agreement.
- 6.5 The Client shall take delivery of the Goods tendered notwithstanding that the quantity so delivered shall be either greater or lesser than the quantity purchased provided that:
  - (a) such discrepancy in quantity shall not exceed five percent (5%); and

(b) the Price shall be adjusted pro rata to the discrepancy.

6.6 The failure of ACS to deliver shall not entitle either party to treat this contract as repudiated.

6.7 ACS shall not be liable for any loss or damage whatsoever due to failure by ACS to deliver the Goods (or any of them) promptly or at all, where due to circumstances beyond the control of ACS.

## 7. Risk

7.1 If ACS retains ownership of the Goods nonetheless, all risk for the Goods passes to the Client on delivery.

7.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, ACS is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by ACS is sufficient evidence of ACS's rights to receive the insurance proceeds without the need for any person dealing with ACS to make further enquiries.

7.3 Due to the nature of fresh and/or frozen Goods, ACS does not guarantee the supply of any specific type of Goods at any particular time (including but not limited to the weather, algae bloom).

## 8. Title

8.1 It is the intention of ACS and agreed by the Client that ownership of the Goods shall not pass until:

(a) the Client has paid all amounts owing for the particular Goods; and

(b) the Client has met all other obligations due by the Client to ACS in respect of all contracts between ACS and the Client.

8.2 Receipt by ACS of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then ACS's ownership or rights in respect of the Goods shall continue.

8.3 It is further agreed that:

(a) until such time as ownership of the Goods shall pass from ACS to the Client ACS may give notice in writing to the Client to return the Goods or any of them to ACS. Upon such notice the rights of the Client to obtain ownership or any other interest in the Goods shall cease; and

(b) ACS shall have the right of stopping the Goods in transit whether or not delivery has been made; and

(c) if the Client fails to return the Goods to ACS then ACS or ACS's agent may enter upon and into land and premises owned, occupied or used by the Client, or any premises as the invitee of the Client, where the Goods are situated and take possession of the Goods; and

(d) the Client is only a bailee of the Goods and until such time as ACS has received payment in full for the Goods then the Client shall hold any proceeds from the sale or disposal of the Goods on trust for ACS; and

(e) the Client shall not deal with the money of ACS in any way which may be adverse to ACS; and

(f) the Client shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of ACS; and

(g) ACS can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Client; and

(h) until such time that ownership in the Goods passes to the Client, if the Goods are converted into other products, the parties agree that ACS will be the owner of the end products.

## 9. Defects

9.1 The Client shall inspect the Goods on delivery and shall within twenty-four (24) hours (for fresh and/or frozen Goods) of delivery notify ACS of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford ACS an opportunity to inspect the Goods within a reasonable time following delivery if the Client believes the Goods are defective in any way. If the Client shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage.

9.2 For defective Goods, which ACS has agreed in writing that the Client is entitled to reject, ACS's liability is limited to replacing the Goods provided that:

(a) the Client has complied with the provisions of clause 9.1; and

(b) the Goods have been stored appropriately and/or used for their intended purpose; and

(c) the Goods are returned in the condition in which they were delivered; and

(d) the Goods have not been thawed out or partially used.

9.3 Due to the perishable nature of the Goods, ACS will not accept the return of Goods other than in accordance with clause 9.2.

## 10. Warranty

10.1 ACS warrants that Goods supplied to the Client shall meet all safety regulations and standards as defined by the Food Safety Act 1999, and is eminently suitable for public consumption.

## 11. Default and Consequences of Default

11.1 Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of two and a half percent (2.5%) per calendar month and such interest shall compound monthly at such a rate after as well as before any judgment.

11.2 In the event that the Client's payment is dishonoured for any reason the Client shall be liable for any dishonour fees incurred by ACS.

- 11.3 If the Client defaults in payment of any invoice when due, the Client shall indemnify ACS from and against all costs and disbursements incurred by ACS in pursuing the debt including legal costs on a solicitor and own client basis and ACS's collection agency costs.
- 11.4 Without prejudice to any other remedies ACS may have, if at any time the Client is in breach of any obligation (including those relating to payment), ACS may suspend or terminate the supply of Goods to the Client and any of its other obligations under the terms and conditions. ACS will not be liable to the Client for any loss or damage the Client suffers because ACS exercised its rights under this clause.
- 11.5 If any account remains overdue after thirty (30) days then an amount of £20.00 shall be levied as an administration fee and shall be levied for each month that the account remains overdue, which sums shall become immediately due and payable.
- 11.6 Without prejudice to ACS's other remedies at law ACS shall be entitled to cancel all or any part of any order of the Client which remains unperformed in addition to and without prejudice to any other remedies and all amounts owing to ACS shall, whether or not due for payment, become immediately payable in the event that:
- any money payable to ACS becomes overdue, or in ACS's opinion the Client will be unable to meet its payments as they fall due; or
  - the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
  - a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

## 12. Security and Charge

- 12.1 Despite anything to the contrary contained herein or any other rights which ACS may have howsoever:
- where the Client and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Client and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to ACS or ACS's nominee to secure all amounts and other monetary obligations payable under the terms and conditions. The Client and/or the Guarantor acknowledge and agree that ACS (or ACS's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met.
  - should ACS elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Client and/or Guarantor shall indemnify ACS from and against all ACS's costs and disbursements including legal costs on a solicitor and own client basis.
  - The Client and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint ACS or ACS's nominee as the Client's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 12.1.

## 13. Cancellation

- 13.1 ACS may cancel these terms and conditions or cancel delivery of Goods at any time before the Goods are delivered by giving written notice. On giving such notice ACS shall repay to the Client any sums paid in respect of the Price. ACS shall not be liable for any loss or damage whatever arising from such cancellation.
- 13.2 In the event that the Client cancels delivery of Goods the Client shall be liable for any loss incurred by ACS (including, but not limited to, any loss of profits) up to the time of cancellation.
- 13.3 Cancellation of orders for Goods made to the Client's specifications or non-stocklist items will definitely not be accepted, once production has commenced.

## 14. Data Protection Act 1998

- 14.1 The Client and the Guarantor/s (if separate to the Client) authorises ACS to:
- collect, retain and use any information about the Client, for the purpose of assessing the Client's creditworthiness or marketing products and services to the Client; and
  - to disclose information about the Client, whether collected by ACS from the Client directly or obtained by ACS from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or of listing a default by the Client on publicly accessible credit reporting databases.
- 14.2 ACS may also use information about the Client to monitor and analyse its business. In this connection the Client authorises ACS to disclose personal information to agents or third parties engaged by ACS.
- 14.3 The Client consents to the transfer of information outside of the European Economic Area for the purposes listed above.
- 14.4 Where the Client is an individual the authorities under (clause 14.1) are authorities or consents for the purposes of the Data Protection Act 1998.
- 14.5 The Client shall have the right to request ACS for a copy of the information about the Client retained by ACS and the right to request ACS to correct any incorrect information about the Client held by ACS.

## 15. Limitation of Liability

- 15.1 ACS shall be under no liability whatever to the Client for any indirect loss and/or expense (including loss of profit or goodwill) suffered by the Client or any third party arising out of a breach by ACS of these terms and conditions.
- 15.2 In the event of any breach of this contract by ACS the remedies of the Client shall be limited to damages and ACS's liability (if any) whether in contract, tort or otherwise in respect of any defect in the Goods, or for any breach

of these terms and conditions, or of any duty owed to the Client in connection with them shall be limited to the amount of the Price.

15.3 For the avoidance of doubt, nothing in these terms and conditions shall exclude or restrict ACS's liability for the death or personal injury to any person resulting from ACS's negligence.

**16. Client's Disclaimer**

16.1 The Client hereby disclaims any right to rescind, or cancel the contract or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Client by ACS and the Client acknowledges that the Goods are bought relying solely upon the Client's skill and judgment.

**17. Consumer Protection (Distance Selling) Regulations 2000 (DSR's)**

17.1 Where the Client purchases Goods as a consumer under the Consumer Protection (Distance Selling) Regulations 2000, the Client shall be entitled to cancel this contract for any reason without penalty within seven (7) days of the date of delivery of the Goods. Cancellation of orders for custom-made or clearly personalised Goods, Goods made to the Client's specifications, or Goods which by reason of their nature cannot be returned or are liable to deteriorate or expire rapidly, will definitely not be accepted.

17.2 In the event the Client cancels any contract prior to delivery of the Goods (and the Goods are in transit), the Client must refuse delivery of the Goods.

17.3 Upon cancellation, it shall be the Client's responsibility to return the Goods (at their own cost) to ACS. ACS may, at their sole discretion, arrange collection of the Goods and any costs incurred shall be deducted from the Client's refund.

17.4 The Client is under a statutory duty to retain possession of the Goods and take reasonable care of them. Reasonable care means the Client must take care to ensure that ACS receives the returned Goods, and that those Goods are not damaged in transit.

17.5 ACS shall refund the Client the full amount paid for the Goods (less any costs to collect the Goods) within thirty (30) days of receipt of the cancellation notice.

**18. General**

18.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

18.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Scotland, England and Wales and are subject to the jurisdiction of the courts of Liverpool.

18.3 The Client shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Client by ACS.

18.4 ACS may license or sub-contract all or any part of its rights and obligations without the Client's consent.

18.5 ACS reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which ACS notifies the Client of such change. Except where ACS supplies further Goods to the Client and the Client accepts such Goods, the Client shall be under no obligation to accept such changes.

18.6 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.