

## 1. INTERPRETATION

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

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

**Commencement Date:** has the meaning set out in clause 2.2.

**Conditions:** these terms and conditions as amended from time to time in accordance with clause 15.7.

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

**Customer:** the person or firm who purchases the Food and/or Services from the Supplier.

**Delivery Location:** has the meaning set out in clause 4.2.

**Food:** the catering set out in the Order.

**Force Majeure Event:** has the meaning given to it in clause 14.1.

**Intellectual Property Rights:** patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Order:** the Customer's order for the supply of Food and/or Services, as set out the Customer's written acceptance of the Supplier's quotation.

**Services:** the catering services supplied by the Supplier to the Customer as set out in the Service Specification below.

**Service Specification:** the description or specification for the Services provided in writing by the Supplier to the Customer.

**Supplier:** The Real Taste of Northumberland Limited registered in England and Wales with company number 09985809.

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 faxes and e-mails.

## **2. BASIS OF CONTRACT**

- 2.1 The Order constitutes an offer by the Customer to purchase Food and/or 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, representation, assurance or warranty made or given by or on behalf of the Supplier which is not set out in the Contract.
- 2.4 Any samples, descriptive matter or advertising issued by the Supplier and any descriptions of the Food or photographs or descriptions of the Services contained in the Supplier's brochures are issued or published for the sole purpose of giving an approximate idea of the Services and Food 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 14 days from its date of issue.
- 2.7 All of these Conditions shall apply to the supply of both Food and Services except where application to one or the other is specified.

## **3. FOOD**

- 3.1 The Food is described in the Order.
- 3.2 The Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional

costs and expenses) suffered or incurred by the Supplier in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of the Order. This clause 3.2 shall survive termination of the Contract.

- 3.3 The Supplier reserves the right to amend the specification of the Food if required by any applicable statutory or regulatory requirements.

#### **4. DELIVERY OF FOOD**

- 4.1 The Supplier shall ensure that:

- (a) each delivery of the Food is accompanied by a delivery note which shows the date of the Order, the type and quantity of the Food; and
- (b) 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 any such packaging materials available for collection at such times as the Supplier shall reasonably request. Returns of packaging materials shall be at the Supplier's expense.

- 4.2 The Supplier shall deliver the Food to the location set out in the Order or such other location as the parties may agree (**Delivery Location**) at any time after the Supplier notifies the Customer that the Food is ready.

- 4.3 Delivery of the Food shall be completed on the Food' arrival at the Delivery Location.

- 4.4 Any times quoted for delivery of the Food is approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Food 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 the Food.

- 4.5 The Supplier shall have no liability for any failure to deliver the Food to the extent that such failure is caused by a Force Majeure Event the Customer's failure to provide the Supplier with adequate delivery instructions for the Food or any relevant instruction related to the supply of the Food.

- 4.6 If the Supplier has notified the Customer that the Food were ready for delivery and the Customer has not accepted delivery of them, the Supplier may resell or otherwise dispose of part or all of the Food.

#### **5. QUALITY OF FOOD**

- 5.1 The Supplier warrants that on delivery the Food shall conform with the Order.

- 5.2 Subject to clause 5.3, if:

- (a) the Customer gives notice in writing within a reasonable time of discovery that some or all of the Food do not comply with the warranty set out in clause 5.1;
- (b) the Supplier is given a reasonable opportunity of examining such Food; and
- (c) the Supplier shall, at its option, replace such Food, or refund the price of the such Food in full.

5.3 The Supplier shall not be liable for the Food' failure to comply with the warranty in clause 5.1 if:

- (a) the Customer makes any further use of such Food after giving a notice in accordance with clause 5.2;
- (b) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage of the Food or (if there are none) good trade practice;
- (c) the defect arises as a result of the Supplier following any Order supplied by the Customer;
- (d) the Customer alters such Food without the written consent of the Supplier;
- (e) the defect arises as a result of negligence or abnormal conditions;
- (f) the Food differ from the Order as a result of changes made to ensure they comply with applicable statutory or regulatory standards.

5.4 Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the Food' failure to comply with the warranty set out in clause 5.1.

5.5 The terms of these Conditions shall apply to any repaired or replacement Food supplied by the Supplier under clause 5.2.

## **6. TITLE AND RISK**

6.1 The risk in the Food shall pass to the Customer on completion of delivery.

## **7. SUPPLY OF SERVICES**

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

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

7.3 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.

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

## **8. CUSTOMER'S OBLIGATIONS**

8.1 The Customer shall:

- (a) ensure that the terms of the Order and (if submitted by the Customer) the Order are complete and accurate;
- (b) ensure punctual attendance at the time specified in the Order for the delivery of the Food and/or Services;
- (c) notify the Supplier in writing with full details of any allergies or other dietary requirements when placing the Order;
- (d) co-operate with the Supplier in all matters relating to the Services;
- (e) provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier to provide the Services;
- (f) provide the Supplier with such information and materials as the Supplier may reasonably require to supply the Services, including access to safe and suitable cooking facilities and equipment for the supply of the Food and/or Services as necessary, and ensure that such information is accurate in all material respects;
- (g) prepare the Customer's premises for the supply of the Services; and
- (h) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start; and
- (i) notify the Supplier of any amendments to the Order. Whilst the Supplier will endeavour to accommodate any amendments to the Order after it has been submitted, this may not always be possible. This may result in an additional charge to the price stated in the Order.

8.2 If the Supplier's performance of any of its obligations in respect of the Services 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 8.2; 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.

## **9. CHARGES AND PAYMENT**

- 9.1 The price for Food shall be the price set out in the Order or, if no price is quoted, the price set out in the Supplier's published price list as at the date of delivery.
- 9.2 The Supplier may require payment of a deposit. The amount of payment terms of this will be specified in the Order.
- 9.3 The Supplier reserves the right to increase the price of the Food, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Food to the Supplier that is due to:
- (i) any factor beyond the control of the Supplier (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
  - (ii) any request by the Customer to change the delivery date(s), quantities or types of Food ordered, or the Order; or
  - (iii) any delay caused by any instructions of the Customer in respect of the Food or failure of the Customer to give the Supplier adequate or accurate information or instructions in respect of the Food.
- 9.4 The Supplier shall invoice the Customer prior to or on completion of the delivery.
- 9.5 The Customer shall pay each invoice submitted by the Supplier:
- (a) within 14 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, or alternatively as agreed in writing with the Supplier; and
  - (c) time for payment shall be of the essence of the Contract.
- 9.6 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**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 or Food at the same time as payment is due for the supply of the Services or Food.

9.7 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 4% per annum above Barclays Bank PLC's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

9.8 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, 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.

## **10. INTELLECTUAL PROPERTY RIGHTS**

10.1 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by the Supplier.

10.2 The Customer acknowledges that, in respect of any third party Intellectual Property Rights in the Services, 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.

## **11. 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, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This clause 11 shall survive termination of the Contract.

## **12. LIMITATION OF LIABILITY**

12.1 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;

- (c) breach of the terms implied by section 2 of the Supply of Food and Services Act 1982 (title and quiet possession);
- (d) breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or
- (e) defective products under the Consumer Protection Act 1987.

12.2 The Supplier will not be liable for:

- (a) any illness, injury or death caused as a result of any allergies or other dietary requirements which have not been fully disclosed by the Customer to the Supplier in the Order;
- (b) any spoiled Food or any failure to supply the Food and/or Services caused by the Customer's failure to provide safe and suitable cooking facilities and equipment; or
- (c) any spoiled food or other loss as a result of the Customer being unavailable at the Delivery Location at the time specified in the Order. In such circumstances the Supplier may levy an additional charge upon the Customer and/or the Food and/or Services may not be delivered.

12.3 Subject to clause 12.1:

- (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 total value of the Goods and Services or the

12.4 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Food and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

12.5 This clause 12 shall survive termination of the Contract.

### **13. TERMINATION**

13.1 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 its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within 7 days after receipt of notice in writing to do so;
- (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 or limited liability partnership) 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 the other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the 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) the holder of a qualifying charge over the assets of the 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 13.1(b) to clause 13.1(i) (inclusive);
- (k) the other party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business;
- (l) the other party's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or

- (m) 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.
- 13.2 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.
- 13.3 Without limiting its other rights or remedies, the Supplier may suspend the supply of Services or all further deliveries of Food under the Contract or any other contract between the Customer and the Supplier if the Customer fails to pay any amount due under this Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 13.1(b) to clause 13.1(m), or the Supplier reasonably believes that the Customer is about to become subject to any of them.
- 13.4 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 yet been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
  - (b) the accrued rights and remedies of the parties as at 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
  - (c) clauses which expressly or by implication have effect after termination shall continue in full force and effect.
- 13.5 If the Customer cancels an Order for any other reason than contained within clause 13.1 then the Supplier may retain any deposit paid in addition to requiring the immediate payment of some or all of the Charges.

#### **14. FORCE MAJEURE**

- 14.1 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.
- 14.2 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.
- 14.3 If the Force Majeure Event prevents the Supplier from providing any of the Services and/or Food for more than two 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.

**15. GENERAL**

**15.1 Assignment and other dealings.**

- (a) The Supplier may at any time assign, transfer, mortgage, 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.
- (b) The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.

**15.2 Notices.**

- (a) Any notice or other communication given to a party under or in connection with this Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally or sent by prepaid first-class post or other next working day delivery service, or by commercial courier, or e-mail.
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 12.2(a); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by e-mail, one Business Day after transmission.
- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action

**15.3 Severance.**

- (a) If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- (b) If one party gives notice to the other of the possibility that any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended,

it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

- 15.4 **Waiver.** A waiver of any right under the Contract or law 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 prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 15.5 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, nor constitute either party the agent of another party for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.
- 15.6 **Third parties.** A person who is not a party to the Contract shall not have any rights to enforce its terms.
- 15.7 **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions shall be effective unless it is agreed in writing and signed by the Supplier.
- 15.8 **Governing law.** This agreement 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 the law of England and Wales.
- 15.9 **Jurisdiction** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).