

## 1. DEFINITIONS

**"BF"**: Bidfresh Limited (04227047).

**"BF Special Terms"**: Special terms agreed by a BF Director or BF's In-house Solicitor on BF's standard special terms pro-forma.

**"Contract"**: the contract between BF and the Customer for the sale and purchase of Goods.

**"Customer"**: the purchaser of Goods.

**"Goods"**: the product(s) set out in the order.

**"TOB"**: these Terms of Business.

**1.1 "Writing" & "written"** includes emails.

**1.2** Headings shall not affect interpretation.

## 2. BASIS OF CONTRACT

**2.1** These TOB govern the relationship between BF and the Customer and apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate or which are implied by any trade, custom, practice or course of dealing.

**2.2** A quotation for Goods shall not constitute an offer. The order, howsoever placed, constitutes an offer by the Customer to purchase Goods from BF, in accordance with these TOB.

**2.3** The Customer must ensure that its order is complete and accurate.

**2.4** BF reserves the right to accept or refuse any order at its sole discretion. Where an order is accepted, it is accepted subject to the availability of Goods either when BF confirms acceptance of the order in writing (if applicable) or shall be deemed accepted if and when the Goods are dispatched for delivery to the Customer. Only after the order has been accepted will the Contract come into existence unless agreed otherwise in writing in advance.

**2.5** Quotations for Goods made to Customer specifications will be given upon request. Any such quotation is given on the basis that no contract will come into existence other than in accordance with clause 2.4.

**2.6** Any order which has been accepted by BF in accordance with clause 2.4 may only be cancelled, postponed or varied by the Customer with the prior written consent of BF and on terms that the Customer will indemnify BF in full against all losses (including but not limited to any loss of profits), costs (including but not limited to inventory and other commitments made by BF as a result of such order), damages, charges and expenses incurred (directly or indirectly) by BF as a result of such cancellation, postponement or variation.

**2.7** BF may at any time without liability to the Customer correct any clerical, typographical or other errors or omissions made by its employees.

## 3. DELIVERY

**3.1** Delivery shall be completed either:

(a) when BF delivers and unloads the Goods at the agreed delivery location (including where BF does so in accordance with the Customer's directions in the Customer's absence); or

(b) when the Customer or a carrier on the Customer's behalf collects the Goods, unless the Goods are to be collected at a specified time in which case delivery is deemed to be completed when BF notifies the Customer that the Goods are ready for collection.

**3.2** BF may deliver Goods in full or in instalments. In all cases where the Contract provides for delivery by instalments or part deliveries, each instalment or part delivery shall be deemed a separate Contract and the cancellation of one instalment or part delivery shall not vitiate or affect the Contract as to other instalments or part deliveries.

**3.3** Delivery dates and times are given in good faith but are estimates only. If no time is specified or agreed by BF, delivery will take place within a reasonable time. Unless agreed otherwise in writing, time shall not be of the essence regarding delivery.

**3.4** The Customer shall examine the Goods on delivery (save that BF will examine the Goods where they are delivered in accordance with the Customer's directions in the Customer's absence) and the Customer's consignee shall note any shortages and / or defects on BF's receipt note and provide his or her signature, full name and job title. A failure to do so, shall not exonerate the Customer from having to make payment for any Goods. BF shall be entitled to assume that any person signing a receipt note on behalf of the Customer and who appears or claims to have authority to accept delivery shall in fact have that authority.

## 4. QUALITY & RETURNS

**4.1** Subject to clause 4.2, BF warrants that on delivery, the Goods shall materially conform with their description and any agreed specification, and shall be free from material defects ("**Warranty**").

**4.2** BF will not be liable if Goods fail to comply

with the Warranty or the relevant order (even if caused by BF's negligence) unless BF is notified in writing of all relevant details by the Customer within 24 hours of delivery. If BF, in its sole discretion, is reasonably satisfied that it is at fault, then subject to clause 8.1, the Customer's remedies shall be limited to:

(a) BF delivering Goods that do comply with the Warranty or the relevant order; or

(b) receiving a refund for the full price of the affected Goods (where paid for); or

(c) BF crediting the relevant invoice for the full price of the affected Goods (where not paid for).

**4.3** Waste by-products will only be supplied at the Customer's request. Variances in weight shall be acceptable due to preparation, natural desiccation and / or drip loss. Goods made to Customer specifications, Goods stocked specifically for the Customer, perishable Goods and Goods subject to temperature controls that have left BF's possession, that are not defective will not be returnable under any circumstances. BF reserves the right to allow the return of any other Goods entirely at its discretion but only where they are in resalable condition.

## 5. RISK & OWNERSHIP

**5.1** Risk in the Goods shall pass to the Customer on delivery.

**5.2** Ownership of the Goods (both legal and equitable) shall not pass to the Customer until BF receives payment in full and cleared funds for the Goods. The Customer may use or resell the Goods (as principal and not as BF's agent) in the ordinary course of business before it has paid for the Goods, in which case ownership of the Goods shall pass to the Customer immediately before resale occurs.

**5.3** Until ownership of the Goods has passed to the Customer, it shall store the Goods on behalf of and in a fiduciary capacity for BF, in a way that readily identifies them as belonging to BF (by reference to the invoice or batch number), maintain the Goods in good condition and keep them insured against all risks from the time of delivery.

**5.4** BF shall be entitled to recover payment for Goods notwithstanding that ownership of such Goods has not passed from BF to the Customer.

**5.5** If the Customer becomes subject to any of the events listed in clauses 7.1(b) to (d), it must notify BF immediately. In respect of any Goods where ownership has not yet passed to the Customer, the Customer's right to use or resell those Goods shall cease immediately and BF may, without limiting any other rights or remedies it may have, require the Customer to deliver up all Goods in its possession immediately (at no cost to BF) and if the Customer fails to do so, BF or its agents may promptly enter any premises or vehicle of the Customer or any third party in order to recover them.

## 6. PRICE & PAYMENT

**6.1** Unless otherwise agreed, Goods will be charged by reference to BF's price list prevailing at the time of delivery and according to the quality and packing required.

**6.2** Prices may be altered by BF with or without notice, except where expressly stated otherwise and all prices exclude any applicable Value Added Tax.

**6.3** Unless otherwise agreed in writing, additional charges shall apply where the Customer retains packing trays or equipment in which Goods are delivered. The Customer shall dispose of all packaging in accordance with all applicable law in order to protect the environment.

**6.4** BF may invoice the Customer for Goods, and require payment of such invoices before delivery but if not, BF shall invoice the Customer for Goods on or after completion of delivery, and the Customer shall pay any such invoice within 15 days following the end of the month in which it is issued (unless BF expressly agrees otherwise in writing in advance). Time for payment of invoices is of the essence.

**6.5** The Customer shall pay all amounts due under the Contract in full without any set-off, counter-claim, deduction or withholding.

**6.6** Failure by the Customer to pay BF for Goods in accordance with agreed payment terms may result in:

(a) further deliveries being suspended until payment is received in full and cleared funds for all delivered Goods, whether or not payment for such Goods has become due and payable; or

(b) BF, without limiting any other rights or remedies it may have, requiring the Customer to deliver up all Goods in its possession immediately (at no cost to BF) and if the Customer fails to do so, BF or its agents may promptly enter any premises or vehicle of the

Customer or any third party in order to recover them.

**6.7** Notwithstanding any other provisions, under no circumstances shall BF be obliged to provide any Goods to the Customer at prices where BF will make a loss. Where applicable, BF shall notify the Customer in writing with supporting evidence and the parties shall act in good faith and use all reasonable endeavours to agree prices in respect of the affected Goods within 7 days of the Customer receiving written notification from BF. In the event that no agreement can be reached:

(a) under no circumstances shall BF be obliged to supply the affected Goods to the Customer at a loss;

(b) both parties shall use all reasonable endeavours to find suitable alternative Goods which BF shall supply to the Customer instead of the affected Goods;

(c) this shall not be considered grounds for termination of the Contract; and

(d) BF shall continue to supply all other Goods to the Customer in accordance with the terms of the Contract.

## 7. TERMINATION

**7.1** Without limiting its other rights or remedies, BF may, at its discretion, suspend the provision of Goods and / or terminate the Contract with immediate effect by giving written notice to the Customer, on the occurrence of any of the following events or if BF reasonably believes that any of the events listed in clauses 7.1(b) to (d) is about to occur:

(a) the Customer fails to pay any undisputed amount due under the Contract on the due date for payment;

(b) the Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors, being wound up, having a receiver appointed to any of its assets or ceasing to carry on business;

(c) the Customer's financial position deteriorates to such an extent that the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy;

(d) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or

(e) BF considers it appropriate for any reason.

**7.2** On termination of the Contract for any reason, the Customer shall immediately pay all of BF's unpaid invoices.

**7.3** Termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at the date of termination.

**7.4** Any provision of these TOB that is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

## 8. LIMITATION OF LIABILITY

**8.1** Nothing in these TOB shall limit or exclude BF's liability for any matter in respect of which it would be unlawful for BF to limit or exclude liability.

**8.2** Subject to clause 8.1, BF shall under no circumstances whatsoever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise, for any: damage to the Customer's reputation or goodwill; or any special, indirect or consequential loss or damage; or economic loss of any kind (save in respect of any payment made for Goods) including but not limited to loss of use, profits, anticipated profits, business, contracts, overhead recovery, machining costs, revenue or anticipated savings, arising out of or in connection with the Contract.

**8.3** Subject to clause 8.1, BF's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, howsoever arising, shall in no circumstances exceed the price of the Goods.

**8.4** For the avoidance of doubt, the provisions of this clause 8 shall survive the termination or expiry of the Contract.

## 9. CONFIDENTIALITY

No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract. Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group to which the other party belongs, except as permitted by this clause 9. Each party may disclose the other party's confidential information:

(a) to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Contract. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 9; and

(b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

## 10. FORCE MAJEURE

**10.1** BF shall not be in breach of the Contract nor liable for delay in performing or failure to perform, any of its obligations under the Contract due to any circumstances beyond its control including without limitation due to seasonal unavailability, lack of natural resources, bad weather, road accidents, road closures, traffic congestion or where BF is only able to perform such obligations at an unreasonable cost.

**10.2** If, because of such circumstances, BF is unable to supply the Goods ordered, BF may allocate its available supply as it sees fit and affected orders may be cancelled in full or in part as necessary without liability but the Contract between the parties shall otherwise remain unaffected.

## 11. ASSIGNMENT & OTHER DEALINGS

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

## 12. VARIATION

No variation of these TOB shall be effective unless it is in writing and signed by a BF Director.

## 13. WAIVER

No failure or delay by BF to exercise any right or remedy shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. If BF does waive a default by the Customer, BF shall only do so in writing, and that shall not mean that BF will automatically waive any later default by the Customer. No single or partial exercise of such right or remedy by BF shall prevent or restrict the further exercise of that or any other right or remedy.

## 14. SEVERANCE

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 14 shall not affect the validity and enforceability of the rest of the Contract.

## 15. THIRD PARTY RIGHTS

No one other than a party to the Contract and their permitted assignees shall have any right to enforce any of its terms.

## 16. ENTIRE AGREEMENT

The order(s), order confirmation(s) (if any), these TOB, the BF Special Terms (if any) and the receipt note constitute the entire Contract between the parties and supersede and extinguish all previous agreements, representations, assurances, warranties, promises and understandings between them, whether written or oral, relating to its subject matter. Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

## 17. IMPLIED TERMS

Warranties, conditions and terms implied into the Contract by law are, to the fullest extent permitted by law, excluded from the Contract.

## 18. GOVERNING LAW & JURISDICTION

The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the laws of England and Wales. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.