

TERMS AND CONDITIONS

1. DEFINITIONS

In these Conditions

The "Company"

means Fruitapeel Limited, Stopgate Lane, Simonswood, Liverpool L33 4YB.

"Intellectual Property Rights"

means patents, rights to interventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, recipes, 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.

"Information:

means any information in relation to any transaction or potential transaction between the Company and the Customer in the course of any dealings or potential dealings.

"Conditions"

means these Standard Conditions set out in this document and (unless the content otherwise requires) includes any special terms and conditions agreed in writing between the Company and the Purchaser.

"Contract"

means the contract for sale and purchase of the Goods and the supply and acquisition of the services between the Company and the Customer incorporating these Conditions.

"Delivery Address"

means the address stated on the order.

"Services"

means the services (if any).

"Purchaser"

means the person so described in the order.

"Writing"

includes telex cable facsimile transmission and comparable means of communication.

"Customer"

means any customer or potential customer of the Company to whom goods will be supplied or potentially supplied.

"Goods"

means the items (and services) being supplied to the Customer by the Company.

Any reference in these Conditions to a statute or a provision of a statute shall be construed as a reference to the statute or provision as amended, re-enacted, or extended at the relevant time.

The headings in these Conditions are for the convenience only and shall not affect their interpretation.

2. FORMATION OF CONTRACT

2.1 All Contracts made by the Company shall be deemed to incorporate these terms and conditions. No variation of or addition to these terms and conditions shall form part of any contract unless made or specifically accepted by the Company in writing signed by duty authorised representative of the Company

2.2 These terms and conditions shall override and take the place of any other terms and conditions in any document or other communication used by the Purchaser in concluding the contract with the Company.

3. PRICES

3.1 Unless otherwise stated in the Contract, the prices payable for Goods shall be the relevant price in the Company's published price list current at the date of delivery of the Goods.

3.2 Where the Company's quotation contains prices which are different from the published price list and the Contract is made within the period for acceptance stated in the Company's quotation (or if none, within 30 days from the date of the quotation), then the prices shown in the quotation shall be the prices payable for the Goods.

3.3 Unless otherwise stated in the Contract, prices are quoted exclusive of value added tax.

3.4 The prices in the Company's published price lists include packaging, carriage and freight within the UK.

4. DELIVERY

4.1 Whilst the Company will use all reasonable endeavours to keep to any specified delivery date it accepts no liability whatsoever for any loss or damage resulting from delay howsoever the same shall have been caused, nor unless such delay exceeds 90 days will any delay entitle the Purchaser to terminate or rescind the Contract.

4.2 The Company will notify the Customer when the Goods are ready for delivery. Delivery will occur when the Customer collects (or arranges collection) of the Goods from the Company's works, unless different arrangements are agreed in the Contract.

4.3 If the Customer fails to collect Goods within 7 days from being notified that these are ready for delivery, the Company reserves the right to charge for storage from the end of that period until the Goods are collected.

4.4 The Customer will be responsible for inspecting Goods upon delivery and it is a condition of the Contract that any shortage of defect in Goods at delivery are notified to the Company in writing within 3 working days from the delivery date.

4.5 The risk in the goods sold shall pass to the purchaser upon delivery. The Purchaser shall keep the goods fully insured in their full replacement value against all risks prudently insured at least throughout the period between the risk therein passing to the Purchaser and the property therein ceasing to remain with the Company.

5. TERMS OF PAYMENT

5.1 The Company shall be entitled to invoice the Purchaser on or at any time after delivery of the goods or performance of the services, as the case may be.

5.2 Unless otherwise stated in the order the Purchaser shall pay the price of the goods and services within 30 days of the invoice date.

5.3 Interest will be payable by the Purchaser to the Company at the contractual rate of 2% per month, upon any amounts outstanding after 30 days from the date of the invoice.

5.4 The Purchaser shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Company may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Purchaser against any amount payable by the Company to the Purchaser.

6. PROPERTY AND RISK

6.1 Notwithstanding delivery of any goods pursuant to the contract or of any documents representing any goods the property in such goods shall remain with the Company until receipt by the Company of payment of the whole of the price of the goods payable in accordance with the Contract and of any other sum which is at the date of the contract or may thereafter become due or owing from the Purchaser to the Company notwithstanding any work which may have been done in connection therewith.

6.2 If payment as above is overdue in whole or part the Company may (without prejudice to any of its other rights hereunder) for the purpose of recovery of its goods enter upon any premises owned or occupied by the Purchaser or under its control where such goods are stored or where they are reasonably thought to be stored and may repossess the same without liable for any damage caused thereby save to repair damage to tangible property caused by its negligence.

6.3 The Purchaser shall (unless otherwise agreed by the Company in writing) ensure that all goods that are in the possession or control of the Purchaser and the property in which remains with the Company are stored separately or marked so that they may be readily identified as the property of the Company.

6.4 If payment of the above is overdue in whole or in part the Company may (without prejudice to any of its other rights hereunder) for the purpose of recovery of its goods enter upon any premises owned or occupied by any third party or under that third party's control where such goods are stored or where they are reasonably thought to be stored and may repossess the same without being liable for any damage caused thereby save to repair damage to tangible property caused by its negligence that third party being a party to whom the Purchaser has passed such goods.

6.5 If payment of the above is overdue in whole or in part the Company may take action to recover all monies outstanding whether overdue or not.

6.6 Prior to property in the goods passing to the Purchaser, the Company permits the Purchaser to deliver the goods to a third party pursuant to a bona fide and arms length agreement to resell the goods but such liability will cease upon the termination of the Contract.

6.7 Where the Company is unable to determine whether any items are the goods the Purchaser shall be deemed to have sold all items of the kind sold by the Company to the Purchaser in the order in which they were invoiced to the Purchaser.

6.8 The Company with have the right to maintain an action against the Purchaser for the price of the goods notwithstanding that property in the goods has not passed.

6.9 Nothing in these Conditions will constitute the Purchaser the agent of the Company in respect of any resale of the goods by the Purchaser so as to confer upon a third party rights against the Company.

7. GENERAL LIABILITIES

7.1 The Company shall not be liable (whether in contract, tort or otherwise) for any loss, injury or damage of any nature whatsoever whether direct or consequential arising out of or in connection with any goods or services supplied (or not supplied) other than for death or personal injury resulting directly from the Company's own negligence.

7.2 The Purchaser shall not rely upon any representations concerning any goods supplied unless the same shall have been expressly made by the Company in writing. (But nothing herein shall exclude or limit the Company's liability (if any) for fraudulent misrepresentations).

7.3 The complete or partial invalidity or unenforceability of any provision hereof shall in no way affect the validity or enforceability of such provision or any other purpose of the remaining provisions thereof.

8. CLAIMS & RETURNS

8.1 On receipt of goods the Purchaser must inspect them forthwith and notify the Company in writing of any shortage or defect.

8.2 No claim can be entertained in respect of goods delivered unless such claim is received within 5 days of despatch of the goods.

8.3 Part losses or damage in transit must be notified to the Company within 7 days of receipt of the goods and non-delivery of any entire consignment must be notified to the Company within 7 days of the goods leaving the Company's warehouse as advised to the Purchaser by invoice.

8.4 No claims will be accepted unless the Purchaser has complied with his obligation to notify the Company in writing within the above limits.

8.5 On receipt of due notification of defects the Company will make good or replace at the Company's expense any defective goods or parts which are proved to the Company's satisfaction to be due to the use of defective materials or workmanship by the Company or not in accordance with representations expressly made in writing by the Company.

8.6 Claims under this condition must be accompanied by full details to enable the Company to identify the consignment and the contract under which goods were supplied and where appropriate the Company must be given all reasonable opportunity to verify the defects complained of.

8.7 Any defective goods so replaced remain the Company's property and shall be returned to the Company at the Purchaser's expense without delay. On discovery of any such defects the Purchaser will forthwith cease use and notify the Company in writing in accordance with the above time limits.

9. FORCE MAJEURE

The Company shall be entitled to cancel or rescind any contract or suspend any delivery without liability for loss or damage resulting therefrom if the performance of its obligations under the contract is in any way adversely affected by any cause whatsoever beyond the Company's reasonable control including war (whether declared or not) hostilities, civil disturbance, strike, lock out, sit in, trade dispute, flood, accident to plant or machinery, shortage of any material or labour, failure of performance of any supplier or sub-contractor to the Company, acts of God, acts of any Government or any branch or agency thereof.

10. INTELLECTUAL PROPERTY

The Company will take all necessary steps to protect the Customer against any claims that the Goods infringe any intellectual property rights of a third party. The Customer will promptly notify the Company of any such claim and will fully co-operate with the Company and permit the Company to conduct the defence of any proceedings. Under no circumstances will the Customer settle any such claim without the previous written consent of the Company.

All Intellectual Property Rights supplied to the Customer in or arising out of or in connection with the supply of goods or the potential supply of goods to the Customer shall be owned by the Company.

All information and Intellectual Property Rights supplied by the Company to the Customer are the exclusive property of the Company.

The Customer shall not use for its own purposes or distribute any information or Intellectual Property Rights to any other without the Company's consent given in writing.

11. NOTICES

Any notice to be given by either party to the other shall be in writing and sent by first class post, facsimile transmission or delivered by hand. Notice sent by post shall be treated as delivered after two working days. Notice delivered by hand or by facsimile will be treated as delivered on the day of delivery unless this occurs outside normal working hours, in which case on the next working day.

12. ASSIGNMENT AND SUB-CONTRACTING

12.1 Neither party will assign any of its interests in the Contract without the prior written consent of the other.

12.2 The Company is entitled to sub-contract all or part of its obligations with respect of the manufacture and delivery of Goods.

13. DEFAULT

13.1 If the Purchaser shall fail to make payment in full in accordance with the contract then (without prejudice to any other rights of the Company),

i The Company shall be entitled to suspend all or any other deliveries to be made under that or any other contract with the Purchaser. In such event the Purchaser shall not in any respect be released from its obligations to the Company under that or any other Contract or

ii Instead of suspension accordance with paragraph (i) above the Company should be entitled to terminate the relevant contract or any other contract with the Purchaser in accordance with this condition and to claim damages from the Purchaser for breach.

13.2 The Company may by notice in writing to the Purchaser terminate any contract forthwith if,

i The Purchaser shall commit any breach of any of the terms (including without limitation terms concerning the time for payment of the purchase price) of that or any other contract with the Company and on its part to be observed or performed PROVIDED that if such breach is remediable that the Company has previously given to the Purchaser notice thereof and the same has not been remedied within seven days thereafter.

ii The Purchaser compounds with or negotiates for any composition with its creditors generally or permits any judgement against it to remain unsatisfied for seven days.

iii Being an individual the Purchaser shall die or have a receiving order made against him or commit any act of bankruptcy or

iv The Purchaser makes any voluntary arrangement with its creditors (within the meaning of the Insolvency Act 1986) or (being a company) becomes subject to an administration order or goes into liquidation (otherwise and for the purpose of amalgamation or reconstruction) or has a receiver, manager, administrator or administrative receiver appointed.

v An incumbrancer takes possession or receivers appointed of any of the property or assets of the Purchaser.

vi The Purchaser ceases or threatens to cease to carry on business.

vii The Purchaser is unable to pay its debts as defined in Section 123 of the Insolvency Act 1986.

viii The Company reasonable apprehends at any of the events mentioned above is about to occur in relation to the Purchaser and notifies the Purchaser accordingly.

ix. The Purchaser undertakes or commits any act or makes any omission or makes any negligent, dishonest or fraudulent representation to others about the Company or its business, employees, directors or products that may result in loss or damage to the Company including without limitation damage to the Company's reputation.

13.3 In the event of any such termination,

i The Purchaser shall forthwith upon demand deliver to the Company of any goods which are in the possession control of the Purchaser and the property in which remains of the Company and in default thereof the Company should be entitled to repossess the same and for such purpose to enter into and upon the premises of the Purchaser and any third party without being liable for any damage caused thereby and the Purchaser shall indemnify the Company from and against any liability to any third party in respect of any such damage and from and against all actions, proceedings, claims, damages and expenses howsoever arising, and

ii The Company shall be entitled by notice in writing to the Purchaser to declare (and there shall forthwith become) immediately due and payable any amount outstanding from the Purchaser under that or any other contract.

13.4 The provisions of 13.2 and 13.3 above and the exercise by the Company of its right thereunder are without prejudice to any other rights of the Company.

13.5 Where goods have been manufactured against an official order number and the order is cancelled, the Purchaser will accept to take delivery with no less than two thirds of its remaining shelf life and make full payment as the goods will be deemed unusable by the Company.

14. INDEMNITY

The Purchaser shall indemnify the Company in full against all liability, loss, damages, costs and expenses (including legal expenses upon a full indemnity basis) awarded against or incurred or paid by the Purchaser in connection with this Contract.

15. JURISDICTION

This Contract shall be governed by the Law of England and subject to the non-exclusive jurisdiction of the English Courts.