

Charem Limited T/A La Boulangerie Des Gourmets – Terms & Conditions of Trade

| | |
|--|--|
| 1. Definitions | |
| 1.1 "Seller" shall mean Charem Limited T/A La Boulangerie Des Gourmets its successors and assigns or any person acting on behalf of and with the authority of Charem Limited T/A La Boulangerie Des Gourmets. | (d) the Seller will not be liable for Goods which have not been stored or used in a proper manner; and |
| 1.2 "Buyer" 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 mean any person acting on behalf of and with the authority of such person or entity. | (e) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances. |
| 1.3 "Guarantor" means that person (or persons), or entity, who agrees to be liable for the debts of the Buyer on a principal debtor basis. | 9.2 The Seller may (in its discretion) accept the return of Goods for credit or refund. |
| 1.4 "Equipment" shall mean display equipment, freezers, storage freezers and associated equipment. | 10. Warranty |
| 1.5 "Goods" shall mean Goods supplied by the Seller to the Buyer (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 the Seller to the Buyer. | 10.1 To the extent permitted by statute, no warranty is given by the Seller as to the quality or suitability of the Goods for any purpose and any implied warranty is expressly excluded. The Seller shall not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising. |
| 1.6 "Services" shall mean all services supplied by the Seller to the Buyer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above). | 11. Sale of Goods Act 1893 and Sale of Goods and Supply of Services Act 1980 |
| 1.7 "Price" shall mean the cost of the Goods as agreed between the Seller and the Buyer subject to clause 3 of this contract. | 11.1 This agreement is subject to the provisions of the Sale of Goods Act 1893 and the Sale of Goods and Supply of Services Act 1980 in all cases except where the Buyer is contracting within the terms of a trade/business (which cases are specifically excluded). |
| 1.8 "FSAI" shall mean Food Safety Authority of Ireland. | 11.2 Notwithstanding clause 11.1 nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Sale of Goods Act 1893 (in particular sections 12-15), or the Sale of Goods and Supply of Services Act 1980, or any laws or legislation governing the rights of consumers, except to the extent permitted by those Acts laws or legislation. |
| 2. Acceptance | 11.3 In particular where the Buyer buys Goods as a consumer the provisions of Clauses 8, 9 and 10 above shall be subject to any laws or legislation governing the rights of consumers. |
| 2.1 Any instructions received by the Seller from the Buyer for the supply of Goods and/or the Buyer's acceptance of Goods supplied by the Seller shall constitute acceptance of the terms and conditions contained herein. | 12. Default & Consequences of Default |
| 2.2 Where more than one Buyer has entered into this agreement, the Buyers shall be jointly and severally liable for all payments of the Price. | 12.1 Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 2.5% per calendar month and such interest shall compound monthly at such a rate after as well as before any judgment. |
| 2.3 Upon acceptance of these terms and conditions by the Buyer the terms and conditions are irrevocable and can only be amended with the written consent of the Seller. | 12.2 If the Buyer defaults in payment of any invoice when due, the Buyer shall indemnify the Seller from and against all costs and disbursements incurred by the Seller in pursuing the debt including legal costs on a solicitor and own client basis and the Seller's collection agency costs. |
| 2.4 The Buyer undertakes to give the Seller at least fourteen (14) days notice of any change in the Buyer's name, address and/or any other change in the Buyer's details. | 12.3 Without prejudice to any other remedies the Seller may have, if at any time the Buyer is in breach of any obligation (including those relating to payment); the Seller may suspend or terminate the supply of Goods to the Buyer and any of its other obligations under the terms and conditions. The Seller will not be liable to the Buyer for any loss or damage the Buyer suffers because the Seller exercised its rights under this clause. |
| 3. Price And Payment | 12.4 Without prejudice to the Seller's other remedies at law the Seller shall be entitled to cancel all or any part of any order of the Buyer which remains unperformed in addition to and without prejudice to any other remedies and all amounts owing to the Seller shall, whether or not due for payment, become immediately payable in the event that: |
| 3.1 At the Seller's sole discretion the Price shall be either; | (a) any money payable to the Seller becomes overdue, or in the Seller's opinion the Buyer will be unable to meet its payments as they fall due; or |
| (a) as indicated on invoices provided by the Seller to the Buyer in respect of Goods supplied; or | (b) the Buyer 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 |
| (b) the Seller's quoted Price (subject to clause 3.2) which shall be binding upon the Seller provided that the Buyer shall accept the Seller's quotation in writing within thirty (30) days. | (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Buyer or any asset of the Buyer. |
| 3.2 The Seller reserves the right to change the Price in the event of a variation to the Seller's quotation. | 13. Security and Charge |
| 3.3 The quantity, quality, description of and any specification for the Goods shall be those set out in the Seller's quotation. | 13.1 Despite anything to the contrary contained herein or any other rights which the Seller may have howsoever: |
| 3.4 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 thirty (30) days following the date of the invoice. | (a) where the Buyer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Buyer 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 the Seller or the Seller's nominee to secure all amounts and other monetary obligations payable under the terms and conditions. The Buyer and/or the Guarantor acknowledge and agree that the Seller (or the Seller'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. |
| 3.5 At the Seller's sole discretion payment for approved Buyer's shall be due thirty (30) days following the end of the month in which an invoice is raised by the Seller to the Buyer. | (b) should the Seller elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Buyer and/or Guarantor shall indemnify the Seller from and against all the Seller's costs and disbursements including legal costs on a solicitor and own client basis. |
| 3.6 Payment will be made by cash, or by cheque, or by bank cheque, or by direct credit, or by any other method as agreed to between the Buyer and the Seller. | (c) The Buyer and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint the Seller or the Seller's nominee as the Buyer's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 13.1. |
| 3.7 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. | 14. Cancellation |
| 4. Delivery Of Goods | 14.1 The Seller 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 the Seller shall repay to the Buyer any sums paid in respect of the Price. The Seller shall not be liable for any loss or damage whatever arising from such cancellation. |
| 4.1 At the Seller's sole discretion delivery of the Goods and shall take place when the Buyer takes possession of the Goods at the Buyer's address (in the event that the Goods are delivered by the Seller or the Seller's nominated carrier). | 14.2 In the event that the Buyer cancels delivery of Goods the Buyer shall be liable for any loss incurred by the Seller (including, but not limited to, any loss of profits) up to the time of cancellation. |
| 4.2 At the Seller's sole discretion the costs of delivery are included in the Price. | 15. Data Protection Act 1988 & Data Protection Act 2003 |
| 4.3 The Buyer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. In the event that the Buyer is unable to take delivery of the Goods as arranged then the Seller shall be entitled to charge a reasonable fee for redelivery. | 15.1 The Buyer and the Guarantor/s (if separate to the Buyer) authorises the Seller to: |
| 4.4 Delivery of the Goods to a third party nominated by the Buyer is deemed to be delivery to the Buyer for the purposes of this agreement. | (a) collect, retain and use any information about the Buyer, for the purpose of assessing the Buyer's creditworthiness or marketing products and services to the Buyer; and |
| 4.5 The failure of the Seller to deliver shall not entitle either party to treat this contract as repudiated. | (b) to disclose information about the Buyer, whether collected by the Seller from the Buyer directly or obtained by the Seller 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 (whether before or after judgement) a default by the Buyer on publicly accessible credit reporting databases. |
| 4.6 The Seller shall not be liable for any loss or damage whatever due to failure by the Seller to deliver the Goods (or any of them) promptly or at all. | 15.2 Where the Buyer is an individual the authorities under (clause 15.1) are authorities or consents for the purposes of the Data Protection Act 1988 & Data Protection Act 2003. |
| 5. Risk | 15.3 The Buyer shall have the right to request the Seller for a copy of the information about the Buyer retained by the Seller and the right to request the Seller to correct any incorrect information about the Buyer held by the Seller. |
| 5.1 If the Seller retains ownership of the Goods nonetheless, all risk for the Goods passes to the Buyer on delivery. | 16. Seller's responsibilities |
| 5.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Buyer, the Seller is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Seller is sufficient evidence of the Seller's rights to receive the insurance proceeds without the need for any person dealing with the Seller to make further enquiries. | 16.1 The Seller's business is governed by the standards, regulations and technical requirements as set out by the FSAI and the Seller is compliant with all relevant EU legislation on food safety and handling. |
| 6. Title | 17. Buyer's responsibilities |
| 6.1 It is the intention of the Seller and agreed by the Buyer that ownership of the Goods shall not pass until: | 17.1 It is the Buyer's responsibility to: |
| (a) the Buyer has paid all amounts owing for the particular Goods, and | (a) ensure that the order has been placed accurately; and |
| (b) the Buyer has met all other obligations due by the Buyer to the Seller in respect of all contracts between the Seller and the Buyer. | (b) ensure that the premises and equipment where the Goods are stored and displayed are suitable and in good condition and in accordance with the Seller's instructions and regulations of FSAI and EU legislation on food safety. |
| 6.2 Receipt by the Seller 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 the Seller's ownership or rights in respect of the Goods shall continue. | 18. General |
| 6.3 It is further agreed that: | 18.1 Each clause of this contract is severable and distinct from the others. If any provision of these terms and conditions is or becomes invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired. |
| (a) where practicable the Goods shall be kept separate and identifiable until the Seller shall have received payment and all other obligations of the Buyer are met; and | 18.2 No waiver by the Seller of any breach of contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other of these terms and conditions. |
| (b) until such time as ownership of the Goods shall pass from the Seller to the Buyer the Seller may give notice in writing to the Buyer to return the Goods or any of them to the Seller. Upon such notice the rights of the Buyer to obtain ownership or any other interest in the Goods shall cease; and | 18.3 These terms and conditions and any contract to which they apply shall be governed by the laws of the Republic of Ireland and are subject to the jurisdiction of the courts of the Republic of Ireland. |
| (c) the Seller shall have the right of stopping the Goods in transit whether or not delivery has been made; and | 18.4 The Seller shall be under no liability whatever to the Buyer for any indirect loss and/or expense (including loss of profit) suffered by the Buyer arising out of a breach by the Seller of these terms and conditions. |
| (d) if the Buyer fails to return the Goods to the Seller then the Seller or the Seller's agent may enter upon and into land and premises owned, occupied or used by the Buyer, or any premises as the invitee of the Buyer, where the Goods are situated and take possession of the Goods; and | 18.5 In the event of any breach of this contract by the Seller the remedies of the Buyer shall be limited to damages. Under no circumstances shall the liability of the Seller exceed the Price of the Goods. |
| (e) the Buyer is only a bailee of the Goods and until such time as the Seller has received payment in full for the Goods then the Buyer shall hold any proceeds from the sale or disposal of the Goods on trust for the Seller; and | 18.6 The Buyer shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Buyer by the Seller. |
| (f) the Buyer shall not deal with the money of the Seller in any way which may be adverse to the Seller; and | 18.7 The Seller 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 the Seller notifies the Buyer of such change. Except where the Seller supplies further Goods to the Buyer and the Buyer accepts such Goods, the Buyer shall be under no obligation to accept such changes. |
| (g) the Buyer shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of the Seller; and | 18.8 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. |
| (h) the Seller can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Buyer. | |
| 7. Buyer's Disclaimer | |
| 7.1 The Buyer hereby disclaims any right to rescind, or cancel the contract or to sue for damages or to claim restitution arising out of any misrepresentation made to the Buyer by the Seller and the Buyer acknowledges that the Goods are bought relying solely upon the Buyer's skill and judgment. | |
| 8. Defects | |
| 8.1 The Buyer shall inspect the Goods on delivery and shall within twenty four (24) hours notify the Seller of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Buyer shall afford the Seller an opportunity to inspect the Goods within a reasonable time following delivery if the Buyer believes the Goods are defective in any way. If the Buyer shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which the Seller has agreed in writing that the Buyer is entitled to reject, the Seller's liability is limited to either (at the Seller's discretion) replacing the Goods or repairing the Goods. | |
| 8.2 No Goods shall be accepted for return except in accordance with 8.1 above. | |
| 9. Returns | |
| 9.1 Returns will only be accepted provided that: | |
| (a) the Buyer has complied with the provisions of clause 8.1; and | |
| (b) the Seller has agreed in writing to accept the return of the Goods; and | |
| (c) the Goods are returned at the Buyer's cost within twenty four (24) hours of the delivery date; and | |

I/We agree to the above terms and conditions.

Signature(s): _____ Please print name(s): _____

Company Name: _____