

FERRYFAST PRODUCE LIMITED TERMS AND CONDITIONS

Interpretation

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

Business Day: any day which is not a Saturday, Sunday or public holiday in England.

Charges: the price for the Services as determined in accordance with clause 7.2 below.

Conditions: the terms and conditions set out in this document as amended from time to time in accordance with clause 11.6.

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

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

Force Majeure Event: has the meaning given in clause 10.

Goods: fresh fruit, vegetables and other produce, fresh flowers and all other goods (or any part of them) set out in the Order.

Open Price Terms: the price for the Goods as agreed between the Supplier and the Customer on or following the date of delivery taking into account the saleability of the Goods by Customer.

Order: the Customer's order for the Goods and/or Services.

Services: chilled storage and other storage services, including, but not limited to, repacking, sorting and labelling, offered by the Supplier from time to time and as set out in the Order.

Supplier: Ferryfast Produce Limited (registered in England and Wales with company number 1486489) and whose registered office is at Ascot Road, Pershore, Worcestershire WR10 2JJ. Ferryfast Produce Limited also trades under the names Worcester Produce and/or Zeus Logistics respectively. The terms for all three trading names are viewable on the Ferryfast website as per clause 6.1

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 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) A reference to writing or written includes faxes and e-mails.

2. BASIS OF CONTRACT

- 2.1 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.
- 2.2 The Order constitutes an offer by the Customer to purchase the Goods and/or Services in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order are complete and accurate.
- 2.3 All telephone Orders submitted by the Customer shall be deemed to be accepted by the Supplier upon verbal confirmation by the Supplier's authorised representative of the price and quantity of the Goods so ordered and/or the price and duration of the Services so ordered, at which point the Contract shall come into existence. Provided the Customer gives an email address or a fax number to the Supplier, the Supplier will provide confirmation of the Order and the price in writing to the Customer on the day the telephone Order is placed or as soon as is reasonably practicable. All written Orders shall only be deemed to be accepted when the Supplier issues a written acceptance of the Order or where the Supplier has begun to execute the Order, at which point the Contract shall come into existence.
- 2.4 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Supplier which is not set out in the Contract.
- 2.5 Any samples, descriptive matter, or advertising produced by the Supplier and any descriptions or illustrations contained in the Supplier's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods and Services described in them. They shall not form part of the Contract or have any contractual force.
- 2.6 Any quotation given by the Supplier shall not constitute an offer, and is only valid at the time of quotation.
- 2.7 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

3. GOODS - DELIVERY

- 3.1 The Supplier shall ensure that:
 - (a) each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, relevant Customer and Supplier reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
 - (b) if the Supplier requires the Customer to return any packaging materials to the Supplier, 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.
- 3.2 The Supplier shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (Delivery Location).
- 3.3 Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location.
- 3.4 The Supplier will use all reasonable endeavours to ensure that they comply with the date quoted for delivery to the Customer. The Supplier shall not be liable for any delay in delivery of the Goods 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 Goods.
- 3.5 If the Customer fails to take delivery of the Goods then, except where such failure or delay is caused by a Force Majeure Event or the Supplier's failure to comply with its obligations under the Contract, the Supplier may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.
- 3.6 The Supplier may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate Contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

4. GOODS - QUALITY

- 4.1 The Supplier warrants that on delivery the Goods shall conform in all material respects with their description and will be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).
- 4.2 The Customer must check the Goods upon delivery. Any claims relating to the Goods delivered in a damaged or defective state or any shortfall in any delivery must be notified in writing, quoting the delivery date and advice note number, to the Supplier within 24 hours of the time of delivery and the Supplier must be given a reasonable opportunity of examining such Goods (either on site at the Customer or via the Customer returning the Goods to the Supplier or by providing photographic evidence). In the absence of any such claim, the Customer acknowledges and agrees that such Goods are accepted irrevocably and unconditionally by the Customer. Any shortfall in the quantity of the Goods delivered from that stated in the Order shall not give rise to a claim for breach of contract solely as a result of such shortfall but the Customer shall be obliged to pay for the quantity of Goods delivered.
- 4.3 The Supplier shall not be liable for Goods' failure to comply with the warranty set out in clause 4.1 or otherwise found to be defective in any of the following events:
 - (a) the Customer makes any further use of such Goods after giving notice in accordance with clause 4.2; or
 - (b) the defect arises because the Customer (or any third party carrier) failed to follow the Supplier's oral or written instructions as to the storage of the Goods or (if there are none) good trade practice regarding the same (including, without limitation, as to air temperature, air flow and humidity).
- 4.4 Except as provided in this clause 4, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 4.1 or owing to the Goods being otherwise defective.
- 4.5 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 4.6 These Conditions shall apply to any replacement Goods supplied by the Supplier.

5. GOODS - TITLE AND RISK

- 5.1 The risk in the Goods shall pass to the Customer on completion of delivery.

- 5.2 Title to the Goods shall not pass to the Customer until the Supplier has received payment in full (in cash or cleared funds) for:
 - (a) the Goods; and
 - (b) any other goods or services that the Supplier has supplied to the Customer in respect of which payment has become due.
- 5.3 Until title to the Goods has passed to the Customer, the Customer shall:
 - (a) hold the Goods on a fiduciary basis as the Supplier's bailee;
 - (b) as far as is reasonably practicable, store the Goods in such a way so that they remain readily identifiable as the Supplier's property; not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
 - (d) notify the Supplier immediately if it becomes subject to any of the events listed in clause 8.2; and
 - (e) give the Supplier such information relating to the Goods as the Supplier may require from time to time, but the Customer may resell or use the Goods in the ordinary course of its business.
- 5.4 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 8.2, or the Supplier reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided that the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy the Supplier may have, the Supplier may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

6. SUPPLY OF SERVICES

- 6.1 Where the Supplier is providing carriage and transportation services, such services shall be governed by the Road Haulage Association ("RHA") Limited's Conditions of Carriage 2009 ("Conditions of Carriage") from time to time, the current version of which is set in appendix A and can also be viewed at any time on the Supplier's website which is www.ferryfast.co.uk. If the RHA conditions are amended in the future, the most current conditions apply and will also be displayed on the Supplier's website.
- 6.2 The Supplier shall use all reasonable endeavours to meet any performance dates for the Services specified by the Customer, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 6.3 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.
- 6.4 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.
- 6.5 The Supplier shall notify the Customer of any pre-existing damage to and/or deficiency in the Stored Goods (as defined in clause 6.6 below) promptly following the Supplier becoming aware of such damage or deficiency.
- 6.6 The Customer warrants that he is the owner of all goods to be stored by the Supplier (being a single item or in bulk contained in one parcel, package or container, as the case may be, or any number of the same) ("Stored Goods") or is authorised by such owner to accept these Conditions on such owner's behalf.
- 6.7 The Customer warrants that the Stored Goods are as described to the Supplier with regard to the nature, weight, quantity, condition and dimensions.
- 6.8 The Customer shall (i) co-operate with the Supplier in all matters relating to the Services, (ii) provide the Supplier with such information as the Supplier may reasonably require to supply the Services, including information pertaining to the correct storage temperature and ensure that such information is accurate in all material respects, (iii) ensure that all goods which are stored by the Supplier on behalf of the Customer are sufficiently and properly packed, marked and labelled, and (iv) disclose any Dangerous Goods and, if the Supplier agrees to accept and store the same, classify, pack, mark and label such Dangerous Goods in accordance with all applicable laws, regulations and requirements. "Dangerous Goods" means goods named individually in the Approved Carriage List issued from time to time by the Health and Safety Commission, explosives, radioactive material, and any other goods presenting a similar hazard.
- 6.9 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 6.5; 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.
- 7. PRICE AND PAYMENT**
- 7.1 Save where Goods are sold to the Customer on Open Price Terms, the price of the Goods shall be the price set out in the Order/ price confirmation, or, if no price is quoted, the price set out in the Supplier's published price list in force as at the date of the Order.
- 7.2 The Charges for the Services shall be the price set out in the Order for the duration specified in the Order, or, if no price is quoted, the price set out in the Supplier's published price list in force as at the date of the Order.
- 7.3 The price of the Goods and/or the Services is exclusive of amounts in respect of value added tax (VAT). 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 Goods and/or the Services.
- 7.4 Credit accounts are available to Customers on receipt of satisfactory trade references at the discretion of the Supplier. Should a Customer wish to apply for a credit account, they must complete and sign a credit application form. Credit accounts are based on agreed terms and will be subject to a credit limit set by the Supplier. The Supplier reserves the right to ask the Customer to provide financial information to facilitate the setting of a credit limit. Credit accounts may be suspended at any time by the Supplier, when any outstanding balance will become immediately payable in full.
- 7.5 The Supplier may invoice the Customer for the Goods and/or the Services on or at any time after the completion of delivery.
- 7.6 The Customer shall pay the invoice in full and in cleared funds. Payment shall be made within agreed terms. Payment shall be made to the bank account nominated in writing by the Supplier, or by cheque, cash, debit card or credit cards, at our discretion, the latter will incur a 2% administrative fee in respect of the relevant invoice. Time of payment is of the essence.
- 7.7 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment (due date), then the Customer shall pay interest on the overdue amount at the rate of 8% per annum above HSBC Bank plc's base rate from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 7.8 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against the Supplier in order to justify withholding payment of any such amount in whole or in part. The Supplier may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.
- 8. CUSTOMER'S INSOLVENCY, INCAPACITY AND TERMINATION**
- 8.1 If the Customer becomes subject to any of the events listed in clause 8.2, or the Supplier reasonably believes that the Customer is about to become subject to any of them and notifies the Customer accordingly, then, without limiting any other right or remedy available to the Supplier, the Supplier may cancel or suspend all further deliveries under the Contract or under any other contract between the Customer and the Supplier without incurring any liability to the Customer, and all outstanding sums in respect of Goods delivered to the Customer and/or the Services shall become immediately due.
- 8.2 For the purposes of clause 8.1, the relevant events are:
- (a) the Customer 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) 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;
- (b) the Customer 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;
- (c) (being a company) 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 Customer, other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
- (d) (being an individual) the Customer is the subject of a bankruptcy petition or order;
- (e) a creditor or encumbrancer of the Customer 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;
- (f) (being a company) 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 Customer;
- (g) (being a company) a floating charge holder over the Customer's assets has become entitled to appoint or has appointed an administrative receiver;
- (h) a person becomes entitled to appoint a receiver over the Customer's assets or a receiver is appointed over the Customer's assets;
- (i) any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 8.2(a) to clause 8.2(h) (inclusive);
- (j) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business;
- (k) the Customer'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; and
- (l) (being an individual) the Customer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.
- 8.3 In relation to the supply of the Services:
- (a) either the Supplier or the Customer may at any time give not less than 21 days notice in writing to the other of its intention to terminate the Contract and notwithstanding that the Supplier may have released the Stored Goods before the expiry of such notice, all Charges shall be payable to the date when the notice would have expired;
- (b) the Supplier may require the immediate removal of any Stored Goods (or any part thereof) if, in the Supplier's opinion, (i) the Stored Goods pose a risk to the health and safety of the Supplier, its servants, agents or any third party or to the Supplier's or any third party's property, or (ii) the continued storage of the Stored Goods will result in the Stored Goods perishing or otherwise deteriorating.
- 8.4 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.
- 9. LIMITATION OF LIABILITY**
- 9.1 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 (as applicable);
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
- (d) any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.
- 9.2 Subject to clause 9.1:
- (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, loss of business opportunity, loss of anticipated savings, loss of goodwill or injury to reputation 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 (a) in respect of the sale and supply of the Goods, the price of the Goods, and (ii) in respect of the supply of the Services, the Charges for the same.
- 10. FORCE MAJEURE**
- Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A Force Majeure Event means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, infestation, disease, mildew or default of suppliers or subcontractors.
- 11. GENERAL**
- 11.1 Assignment and subcontracting.
- (a) The Supplier may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- (b) The Customer may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of the Supplier.
- 11.2 Notices.
- (a) Any notice or other communication given to a party under or in connection with the 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, sent by pre-paid first class post, recorded delivery, commercial courier, fax 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 10.2(a); if sent by pre-paid first class post or recorded delivery, 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 fax or 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.
- 11.3 Severance.
- (a) If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- (b) If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.
- 11.4 Waiver. A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- 11.5 Third party rights. A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 11.6 Variation. Except as set out in these Conditions, any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by the Supplier.
- 11.7 Governing law and jurisdiction. The Contract, 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, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.
- Appendix A**
- Road Haulage Association Limited – Conditions of Carriage 2009