

## **TERMS AND CONDITIONS OF BUSINESS**

### **1. Definitions**

In these terms and conditions the following words and expressions have the following meanings unless inconsistent with the context:

'The Company' shall mean Frederic Smart & Son Limited, Orchard Farm, Fowlmere Road, Foxton, Cambridge CB22 6TA

'Customer' shall mean any person, firm or Company who have requested The Company to do any of the following – storing and/or processing of goods, supply of goods and any other services.

'Insolvency Event' shall mean a petition being presented or a notice being given, an order made or resolution passed for the Customer's winding up or bankruptcy or an administrator or receiver being appointed over the Customer or any of its assets or the Customer entering into an arrangement with creditors or suffering any similar consequences of debt.

'Processing' shall mean some or all of the following – unloading incoming goods, repacking, labelling and palletising and any other processes that may from time to time be requested by the Customer.

'Goods' shall mean any material sent to The Company by a Customer for processing or storage and shall be deemed to include any such Goods following Processing.

### **2. Intake & Storage**

- (1) The Customer is responsible for ensuring that no goods are sent to The Company which present any hazard to human or animal health unless prior arrangements are made in writing with the Company and the Customer warrants that it has taken all reasonable steps and made all reasonable enquiry to ensure that no such hazard is presented.
- (2) Unless otherwise agreed, all goods taken in by The Company are subject to a Receiving/Handling/Loading-out (RH&D) charge and storage charges from the date of receipt by The Company of such goods.
- (3) The Company reserves the right to refuse delivery of any Goods in its discretion.
- (4) It is the policy of The Company to maintain GMO (Genetically Modified Organism) Free status at all its storage facilities. No products known to contain GMOs will be accepted for storage. The Customer shall notify the Company if it has reason to believe any Goods destined for storage might contain GMOs. The Company's GMO Policy applies to all goods received for storage under these terms and conditions.
- (5) .

### **3. Verbal Instructions**

The Company recommends and requests that verbal instructions are confirmed with written instructions sent to The Company to arrive within two working days from the date of such verbal instructions. The Company will not be responsible for any loss caused by failure to receive such written confirmation or any error, misunderstanding or ambiguity which may arise from or be reasonably attributable to such failure.

### **4. Payment**

- (1) Subject to sub-clause (3) below, and unless otherwise agreed, payment of The Company's invoice for storage, handling and processing charges is due 28 days from the date of the invoice.
- (2) Statements will not be sent by The Company unless specifically requested by the Customer.
- (3) The Company reserves the right to withhold the delivery of Goods by exercising a lien over such Goods where any payment is outstanding from the Customer to The Company on any account whatsoever. The Company reserves the right to receive payment in cleared funds of any unpaid

invoices prior to releasing any Goods. Clause 5 will continue to apply in respect of any Goods so withheld.

- (4) The Company may, following 28 days' written notice to the Customer, dispose of any of the Goods as it sees fit in its discretion and apply the proceeds to meet any of the Customer's liabilities to the Company which are overdue and all costs of the Company arising from the disposal. The Company will account to the Customer for any balance remaining but will not be liable to the Customer in respect of the amount of the value it realises.
- (5) A minimum monthly invoice value of £25.00 will apply.
- (6) VAT will be added to all invoices where applicable.
- (7) The Company may charge interest on any outstanding sums at the annual rate of 4% above the base rate from time to time of HSBC Bank PLC accruing on a daily basis and whether before or after any judgement. The Company may claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

## **5. Liability and Customer's indemnity**

- (1) Except as provided in sub-clause (3) below, risk in the Goods shall be the Customer's at all times. The Company does not insure the Goods and it shall be the Customer's responsibility to insure against all risks and liabilities usually covered by insurance by persons carrying on business of the same type as the Customer.
- (2) Subject only to sub-clause (3) below, the Company excludes all liability for risks, liabilities or losses however arising, and whether under any contract or otherwise.
- (3) If the loss is directly caused to the Customer by the Company's or its subcontractors' negligence, the Company will accept liability for loss up to the limit fixed by sub-clause (4) below subject to sub-clause (5).
- (4) In no case shall the liability of the Company exceed a limit per tonne weight of that part of the Goods in respect of which a claim arises as follows:
  - (a) If a higher limit has not been arranged under (b) below the limit shall be a maximum of £100.00 per tonne.
  - (b) The Customer may request a higher limit per tonne by notice in writing at least 14 days before the date on which the limit is to be effective and the Company will accept this limit subject to being able to arrange appropriate insurance and subject to payment by the Customer of the Company's costs in insuring the increased liability.
- (5) Under no circumstances shall the Company be liable for loss of profit or business or indirect or consequential loss of any kind.
- (6) Any claim by the Customer made under this clause must be received in writing by the Company within 14 days (or 7 days in the case of claims arising from haulage carried out by the Company's sub-contractor) of the Customer becoming aware of the circumstances or event giving rise to the claim, failing which the claim will be invalid.
- (7) The Company shall not be liable for any obligation under contract or otherwise, or in respect of any undertaking, representation, statement or assurance (even if given negligently), except to the extent explicitly included in these terms and 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 between The Company and the Customer.
- (8) Nothing in these terms and conditions shall exclude liability for death or personal injury caused by negligence or any other liability not permitted to be excluded by law.
- (9) The Customer shall indemnify The Company against all costs, expense, claims, loss and damage arising from the provision of services by The Company, except to the extent arising from The Company's or its subcontractor's neglect or default for which The Company is liable under these terms and conditions.

## **6. Change of Customer.**

- (1) The Customer may transfer any part of the Goods to the account of another party on giving written notice to the Company subject to ensuring that the other party acknowledges that it is to be bound by these terms and conditions
- (2) Notwithstanding (1) above the Customer agrees to continue to be bound by these terms and conditions and to be jointly and severally liable with the transferee to pay the Company's charges in relation to the Goods and any other sums due under these terms and conditions..

## **7. Acceptance**

The Customer is required to acknowledge in writing receipt and acceptance of these terms and conditions prior to the delivery of any goods for storage. Notwithstanding this requirement, the delivery

of goods for storage or the ordering of any goods and services shall signify acceptance of these terms and conditions in full to the exclusion of any terms and conditions put forward by the Customer.

### **8. Responsibility of performance**

The Company shall be relieved of its obligation to process and/or store Goods to the extent that performance of the obligation is prevented by failure of the Customer, fire, weather conditions, industrial dispute, labour disturbance or other cause beyond the reasonable control of The Company, and The Company shall have no liability in respect of any such cause.

### **9. Termination and Removal of Goods**

- (1) The Company may in its discretion terminate or suspend any services and/or any agreement between The Company and the Customer in the event that (i) any payment is outstanding from the Customer beyond the due date (ii) the Customer is in material breach of these terms and conditions and/or (iii) the Customer suffers an Insolvency Event. These terms and conditions will continue to bind the Customer following any such termination or suspension.
- (2) In the event of termination of any services and/or any agreement by The Company pursuant to sub-clause (1) above all charges in respect of goods and/or services provided by the Company to The Customer on any account whatsoever shall be deemed to be immediately due and payable.
- (3) The Goods shall be removed by the Customer from the custody or control of the Company at such date as may have been agreed between the parties. In the absence of such agreement, on termination of any services pursuant to sub-clause (1) above, and otherwise where reasonably necessary, The Company may at any time by notice in writing to the customer require the removal of the goods within 28 days from the date of such notice. If the Customer does not remove the Goods pursuant to this Clause (or pursuant to clause 2(5)), The Company may without further notice dispose of any of the Goods as it sees fit in its discretion and apply the proceeds to meet any of the Customer's liabilities to the Company which are overdue and all costs of the Company arising from the disposal. The Company will account to the Customer for any balance remaining but will not be liable to the Customer in respect of the amount of the value it realises. If following termination pursuant to sub-clause (1) above the Company in its discretion undertakes to deliver or continue to store any of the Goods then that undertaking shall only be on the basis that the Company is secured in advance to its satisfaction in respect of its charges and costs of doing so.

### **10. Severance/waiver**

- (1) If any provision of these terms and conditions is invalid or unenforceable then the relevant provision shall be deemed deleted and shall not affect the validity of the remainder of the terms and conditions.
- (2) No failure or delay by the Company in exercising any right or remedy shall constitute a waiver of that (or any other) right or remedy or prevent or restrict any further exercise of that right or remedy. No single or partial exercise by the Company of any right or remedy shall prevent or restrict the further exercise of that (or any other) right or remedy.

### **11. Law**

The construction, performance and validity of these terms and conditions shall in all respects be governed by the law of England.

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