

FRESH DIRECT UK Limited and Any Subsidiary Companies – Terms and Conditions of Trade

1. Definition and Interpretation

- 1.1 In these Terms and Conditions of Trade, the following words shall have the following meanings:-
- "FDUK" – Registered office is at, Fresh Direct (UK) Ltd, Charbridge Way, Bicester Distribution Park, Bicester, Oxon, OX26 4SW, or any of its subsidiary companies. Registered in England No 3053702.
 - "Buyer" – the person, firm or company with whom FDUK makes a Contract and which expression shall include (jointly and severally) any principal on whose behalf the Buyer Orders Products;
 - "Contract" – any contract formed between the Buyer and FDUK for the sale and purchase of Products;
 - "Products" – the products which are to be supplied by FDUK pursuant to any Contract;
 - "Delivery" – the delivery of the Products by FDUK whether by way of delivery by or for and on behalf of FDUK, direct delivery by a supplier of FDUK or other third party or otherwise; and
 - "Order" – any Order placed with FDUK by the Buyer for Products.
 - "Guarantor" – any person firm or company who agrees (whether in accordance with the terms of the FDUK credit account application form or otherwise) to guarantee the payment by the Buyer of, or to be responsible for, any amount due to FDUK including without limitation the purchase price and costs referred to in Condition 4.5.
- 1.2 References in these Terms and Conditions of Trade are, unless otherwise stated, to conditions in these Terms and Conditions of Trade.

1.3 The headings are inserted for convenience only and have no legal effect.

2. Basis of Sale

- 2.1 All Contracts shall be concluded upon the basis of these Terms and Conditions of Trade together with any special conditions issued by FDUK to the Buyer at any time prior to or with FDUK's acceptance of a Buyer's Order. Variations and/or qualifications of such conditions can only be effected by a document signed by a Director of FDUK.
- 2.2 No terms or conditions submitted by any Buyer to FDUK, irrespective of their date, shall prevail over these conditions.
- 2.3 Any Order shall be deemed to be an offer by the Buyer to purchase Products pursuant to these Terms and Conditions of Trade and acceptance of Delivery of those Products shall be deemed conclusive evidence of the Buyer's acceptance of these Terms and Conditions of Trade.
- 2.4 FDUK's employees or agents are not authorised to make any representations concerning the Products unless confirmed by FDUK in writing. In entering into a Contract, the Buyer acknowledges that it does not rely upon and waives any claim for any breach of any such representations, which are not so confirmed.

3. Quotations

- 3.1 Quotations are not offers and may be withdrawn or varied at any time prior to acceptance by FDUK of any Buyer's Order for Products.
- 3.2 Orders shall be given by any Buyer in writing or orally. Oral Orders shall, upon their acceptance by FDUK, be binding notwithstanding any failure on the part of the Buyer to confirm the same in writing.

4. Price and payment

- 4.1 The price of the Products are the subject of any Contract shall be FDUK's quoted price or where no price has been quoted the price listed in FDUK's price list current at the date of acceptance of the Order.
- 4.2 Unless otherwise agreed the price of the Products includes the cost of delivery to such address as is agreed by FDUK but does not include VAT or any other taxes or duties.
- 4.3 All prices quoted are, except as set out below, exclusive of VAT but inclusive of delivery by the seller unless otherwise specified or agreed in writing except that (i) carriage and packaging of £50 plus VAT will be charged on orders of £150 (exclusive of VAT) or less and (ii) for the avoidance of doubt prices quoted do not include carriage and packing on special or urgent deliveries or on those of a non-routine nature.
- 4.4 If additional charges arise from delivery by way of demurrage or otherwise all additional packing, transport, insurance demurrage and other costs, expenses or charges shall be added to the price of the Products, shall be the responsibility of, and paid by the Buyer.
- 4.5 FDUK reserves the right to invoice the Buyer on an interim basis to cover any instalments of Products delivered.
- 4.6 The Buyer shall pay the price of the Products and any costs incurred by FDUK (without any deduction) within Twenty-Eight days of the date of FDUK's invoice notwithstanding that Delivery may not have taken place. The Guarantor irrevocably and unconditionally guarantees to FDUK the due and punctual performance by the Buyer of its obligations contained in these Conditions, including without limitation the obligation to pay set out in this Condition 4.5 and agrees that FDUK shall not be obliged to take steps against the Buyer, to enforce any rights or remedy before enforcing the terms of the guarantee of the Guarantor pursuant to this Condition. The time of payment of the price and/or such costs (whether by the Buyer or the Guarantor) shall be of the essence of the Contract.
- 4.7 In the event of any payment becoming overdue then without prejudice to any other right or remedy available to it notwithstanding any credit terms agreed with the Buyer (including without limitation those set out in Condition 4.5 above) the price in respect of each and all Contracts shall forthwith become immediately due and payable and FDUK may:-
- Terminate the Contract; or
 - Suspend performance of the Contract until payment is received in full; or
 - Charge interest on the unpaid amount at the rate of 2% over the current base lending rate of The Bank of Scotland Plc after as well as before commencement of proceedings for recovery of the same.

4.8 Each Contract shall be subject to FDUK being satisfied as to the Buyer's credit status. If FDUK becomes dissatisfied with any Buyer's credit status it shall be entitled to suspend performance of any Contract until it is satisfied as to the Buyer's creditworthiness or is given such security for the price as FDUK shall deem appropriate.

5. Price Contract variation

- 5.1 FDUK shall be entitled to increase its prices for Products if it considers the same to be justified by any increase in cost prices to FDUK.
- 5.2 The seller reserves the right to automatically substitute any lines that are Not Available at the time of order pick with a similar product in terms of type and size. The price for the substitute goods will be as per the current price list and not the price of the product it is replacing. Should the buyer not require automatic substitution this needs to be notified to the seller before the order is picked.

Delivery

- 5.3 Delivery of the Products shall be made to the Buyer's address or, if the Products are to be collected by the Buyer, upon collection from FDUK's address at any time after FDUK has notified the Buyer that the Products are ready for collection.
- 5.4 Any dates quoted for Delivery are approximate only and time for Delivery shall not be of the essence of the Contract.
- 5.5 FDUK may affect Delivery by instalments in which case these Terms and Conditions of Trade shall apply to each instalment as though a separate Contract and any failure or defect in any one Delivery will not entitle the Buyer to repudiate the Contract as a whole.
- 5.6 If FDUK fails to deliver the Products for any reason (other than a cause beyond FDUK's reasonable control or the Buyer's fault) and FDUK is liable to the Buyer, FDUK's liability shall be strictly limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods to replace those not delivered. FDUK shall not under any circumstances be liable for any consequential loss or other damage in connection with any such non-delivery.
- 5.7 If the Buyer fails to take Delivery of the Products or fails to give FDUK adequate Delivery instructions, FDUK may, at its option:-
- Store the Products until actual delivery or sale and charge the Buyer for the reasonable costs of storage; and/or
 - Sell the Products at the best price readily obtainable and charge the Buyer for any shortfall below the price under the Contract.
- 5.8 For the avoidance of doubt, the Buyer shall-
- Not be entitled to refuse to accept Delivery after the agreed date for Delivery by reason of the consequent failure of those Products to meet any shelf-life requirement or otherwise; and

- Fully indemnify and keep indemnified FDUK from and against all costs, claims, damages, losses, liabilities and expenses incurred or suffered by FDUK by reason of the failure by the Buyer to take Delivery or to give FDUK adequate Delivery instructions.
- 5.9 The Buyer is deemed to have inspected the Products on delivery and unless the Delivery advice note is marked with any details of any shortage, loss or damage the correct quantity and quality of Products will be deemed to have been delivered.
- On Delivery the Buyer shall mark the Delivery advice note with details of any shortages and/or damaged Products received and shall forthwith deliver to FDUK a damage report signed by the Buyer in such form as FDUK shall request. In the case of non-delivery of the Goods, the Buyer must inform FDUK by Written notice within 24 hours for allowances or credits from the date of the delivery note/invoice. If the Buyer fails to deliver any such report then the correct quantity and quality of Products shall be conclusively presumed to have been delivered.

5.10 Any requests for historical POD's will end after 28 days passed the actual delivery date

6. Title

- 6.1 Risk of damage to or loss of the Products shall pass to the Buyer on Delivery to the Buyer.
- 6.2 Property in the Products shall pass to the Buyer on the later of payment in full of the price of the Products and payment in full of every other sum whatsoever, which is due from the Buyer to FDUK whether under any Contract or otherwise and until the happening of the last such event. The whole right, title and interest both legal and equitable in and to the Products shall remain with FDUK and the Buyer shall keep the Products as FDUK's fiduciary agent and bailee properly stored, protected and insured in such a way that they are identifiable as the property of FDUK and separate from all other goods of the Buyer. Until that event the Buyer shall be entitled to use or re-sell the Products in the ordinary course of business but shall account to FDUK for the proceeds of sale or otherwise of the Products and shall hold such proceeds on trust for FDUK.
- 6.3 The right to use or re-sell the Products granted to the Buyer under the terms of this condition:-
- may be terminated by FDUK forthwith upon oral or written notice to the Buyer if the Buyer defaults in payment of any sum for more than 7 days after such sum fell due; or
 - shall automatically cease if a receiver is appointed over any of the assets of the Buyer or a petition is presented for an administration Order in respect of the Buyer or a petition is presented or notice is given of a resolution to wind-up the Buyer or if the Buyer is deemed to be unable to pay its debts within the meaning of s123 of the Insolvency Act 1986 or (in the event of the Buyer being a sole trader or partnership) a petition is presented for the bankruptcy of the Buyer or any partner of the Buyer or if the Buyer shall make any composition with its creditors or if any distress, execution or other process is levied or enforced upon or sued against all or any of the assets of the Buyer.
- 6.4 Upon the Buyer ceasing to have any right of use or re-sale, FDUK shall be entitled at any time without notice to enter the Buyer's premises to repossess the Products.

7. Warranties

- 7.1 FDUK excludes all warranties relating to the goods so far as permitted by applicable law.
- 7.2 Except in respect of death or personal injury caused by FDUK's negligence FDUK shall not be liable to the Buyer by reason of any misrepresentation or breach of any implied warranty condition or other term or breach of any duty at common law or under the express terms of the Contract for any direct loss or expense or any indirect loss or expense suffered by the Buyer or liability to third parties incurred by the Buyer or for any consequential loss or damage which arise out of or in connection with the supply of the Products or their use or re-sale by the Buyer except as expressly provided in these Conditions of Sale.

8. Force Majeure

If FDUK is unable to supply Products by reason of events beyond its control, the specified Delivery date shall be extended for a period equal to the delay caused by such event.

9. Consumer Complaints

9.1 The Buyer shall maintain a proper and efficient procedure for reporting and dealing with consumer complaints but shall not settle any such complaints or otherwise compromise the position of FDUK in respect thereto without FDUK's prior written consent. Full details of all such complaints must be referred to FDUK forthwith upon notification together with packaging and/or batch code of the relevant Products without which no complaints shall be considered.

10. Termination

- The Buyer shall not be entitled to terminate any Contract although FDUK shall be entitled to terminate any Contract with the Buyer forthwith by notice without prejudice to any of its other rights:-
- if the Buyer (under any contract between the Buyer and FDUK) is overdue with any payment or commits any breach of Contract which is incapable of remedy or which if the same is capable of remedy it fails to remedy within 7 days of FDUK's notice so to do; or
 - if any distress or execution shall be levied on the Buyer's assets or if the Buyer shall make or offer to make any arrangement or composition with creditors or commit any act of bankruptcy or if any petition or receiving order in bankruptcy or administration order shall be presented or made against the Buyer or if the Buyer is the subject of any resolution or petition to wind-up the Buyer (other than for the purposes of solvent reconstruction or amalgamation) or if a receiver or administrator is appointed over the assets of the Buyer or any part thereof; or
 - If in the opinion of FDUK serious doubts arise as to the solvency of the Buyer; or
 - if the results of any credit rating obtained against the Buyer by FDUK fall below any threshold from time to time in place by FDUK; or
 - If the Buyer fails to take delivery of Products or fails to give FDUK adequate delivery instructions prior to the time stated for Delivery.

11. Termination Consequences

- 11.1 In the event of any contract being terminated in accordance with these conditions the Buyer shall pay to FDUK at the Contract rate for all Products purchased and/or delivered prior to termination and shall indemnify FDUK against any resulting loss (including loss of profits and other consequential loss) damage or expense incurred by FDUK in connection with the non-performance of the Contract.
- 11.2 Determination of the Contract shall not effect or prejudice any rights and remedies of FDUK under the Contract and the Buyer shall be and remain liable to perform all outstanding liabilities under any Contract notwithstanding that FDUK may have exercised one or more of the rights of remedies against it.

12. Confidential Information

The Buyer agrees with FDUK to maintain secret and confidential all the information of a confidential nature (including, without limitation, any price sensitive information) obtained from FDUK pursuant to the Contract and agrees to procure that its employees who have access to any information of FDUK be made aware of and subject to these obligations.

13. General

- 13.1 The Buyer acknowledges that in entering into any Contract it does not do so on the basis of or in reliance upon any representation, warranty or other provision except as expressly provided in these conditions. Each party acknowledges that any Contract together with any variations and/or qualifications made pursuant to these conditions of sale contains the whole agreement between the parties and supercedes all previous agreements between the parties with respect to its subject matter.
- 13.2 The Buyer agrees with the Seller that the Seller shall be entitled to set off against any sums due or payable by the Buyer for the time being to the Seller any sums (or part thereof) due or payable by the Seller for the time being to the Buyer howsoever arising.
- 13.3 Each Contract is personal to the parties and neither of them may, without the written consent of the other, assign, mortgage, charge or dispose of any of its rights hereunder.
- 13.4 No failure of or delay or forbearance by FDUK (whether express or implied) in asserting or exercising any rights or remedies under any Contract shall affect its rights to do so in the future.
- 13.5 Any notice to be served under any Contract shall be delivered by hand or sent by first class post or facsimile to the relevant party at, in the case of the Buyer, the address contained in the files of FDUK on the Buyer whether in the form of the completed application for credit or first order for Products or in the case of FDUK at its registered office. Notice shall be deemed served on delivery if delivered by hand on the third day after posting if posted or 24 hours after despatch by facsimile (weekends and bank holidays excepted).
- 13.6 These conditions of sale and each and every Contract shall be governed by English law and subject to the exclusive jurisdiction of the English Courts.
- 13.7 The parties agree that the provisions of the Contracts (Rights of Third Parties) Act 1999 will not apply to any Contract or these conditions of sale.