



DRINKS CHEF LIMITED

TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS AND SERVICES

1. Interpretation and Detailed Commercial Terms

The following definitions and rules of interpretation apply in these Conditions.

1.1 Definitions:

Business Day: a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

Business Hours: the period from 9.00 am to 5.00 pm on any Business Day.

Commencement Date: has the meaning given in clause 2.2.

Conditions: these terms and conditions as amended from time to time in accordance with clause 17.8.

Contract: the contract between the Supplier and the Client for the supply of Goods or Services or Goods and Services in accordance with these Conditions.

control: has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression **change of control** shall be interpreted accordingly.

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

Client Supplied Materials: raw materials which it has been agreed by the Supplier are to be delivered for the Supplier's use by the Client

Deliverables: the deliverables set out in the Order produced by the Supplier for the Client.

Delivery Location: has the meaning given in **Error! Bookmark not defined.****Error! Reference source not found..**

Force Majeure Event: has the meaning given to it in clause 16.

Goods: the goods (or any part of them) set out in the Order.

Goods Specification: any specification for the Goods, including any relevant plans in the case of labelling or sleeving or recipes, agreed by the Client and the Supplier.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up [and trade dress], goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use, and protect the confidentiality of,

confidential information (including know-how and trade secrets), 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.

Order: the Client's order for the supply of Goods or Services or Goods and Services, as set out the Client's written acceptance of the Supplier's quotation.

Regulations: the Novel Foods (England) Regulations 2018.

Services: the services, including the Deliverables, supplied by the Supplier to the Client as set out in the Service Specification, which would typically include one or more of the following: storage; production; development; sleeving and labelling; and/or ingredient or container procurement.

Service Specification: the description or specification for the Services provided in writing by the Supplier to the Client.

Supplier: Sourcing International Limited t/a Drinks Chef registered in England and Wales with company number 12943631.

Supplier Materials: has the meaning given in clause 8.1(h).

1.2 Interpretation:

- (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 successors and permitted assigns.
- (c) A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.
- (d) Any words following the terms **including, include, in particular, for example** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.
- (e) A reference to **writing** or **written** excludes fax but not email.

1.3 Detailed Commercial Terms:

- (a) **Time for delivery of Customer Supplied Materials:** Client Supplied Materials must be delivered no earlier than 3 days prior to the date provided by the Supplier for commencement of production quoting the delivery reference supplied by the Supplier. Any earlier deliveries or deliveries failing to quote the reference may at the option of the Supplier be refused or charged storage at prevailing rates.
- (b) **Delivery Manifest:** A full delivery manifest must be provided prior to production date being confirmed by the Supplier.

- (c) **Responsibility for Microbiology of Customer Supplied Materials:** Clients are responsible for the quality and microbiology of Client Supplied Materials. The Client warrants to the Supplier that they are safe to use and are less than 1 micro load count.
- (d) **Requirements for juices which are client supplied:** Any fresh juices which are Client Supplied Materials must arrive unopened and aseptic or with temperature-controlled history or they will not be used.
- (e) **Re-use of juices:** No juices from prior productions will be accepted for use.
- (f) **Ethanol:** All extracts in ethanol must be accompanied by COSHH paperwork satisfactory to the Supplier if they are to be used.
- (g) **Duty:** Alcohol must be accompanied by paperwork satisfactory to the Supplier evidencing the proper payment of duty if it is to be used.
- (h) **Pallet Specs:** Pallet specifications must be provided at least 10 days prior to production.
- (i) **Formats:** Labels and Sleeves must be formatted as required by the Supplier as follows:
 - (i) Sleeving Spec: Sheeted- Clients must send 50 Samples to test on the bottle 10 days prior to test day
 - (ii) Labelling Spec for Labeller: Outside wound; Left Hand Leading; Max label diameter spool 25cm; Max width 200mm; 76mm core- Clients must send 50 Samples to test on the bottle 10 days prior to test day. Sample application is included in test day.
- (j) **Disposal of left-overs:** Any left-over barrels or IBCs are to be collected at the same time as finished goods or a waste charge and/or storage charge will be applied by the Supplier as it may determine at its prevailing rates.
- (k) **Micro Results:** All micro results will be sent out by the Supplier after collection of finished Goods as soon as they have been processed by the laboratory- an estimate is 10 days but it may be longer at busy times.
- (l) **Mislabelling:** The Client agrees to fully indemnify and hold harmless the Supplier in respect of any loss, damage, claims or expenses (including professional fees) that it may suffer or incur as a result of any mislabelling or labelling non-compliance issues and/or in connection with any allergens in the finished Goods.
- (m) **Payment:** Final balances are due once recipes are ready for sign-off and prior to provision of recipes for sign-off. For each stage of a project the balance of payment will be due in full on stage completion. Failure to make final payment when due may result in delays in overall project delivery. All invoices must be settled in full prior to the Supplier being able to release any recipes, results or other Deliverables.

- (n) **Late Payment:** If full payment is not received by the Supplier as above (or for earlier payments if two email reminders have been sent and payment has still not been received) then the production booking will be cancelled without refund.
- (o) **Late Delivery In:** If Client Supplied Materials do not arrive in time for production the Client will lose the booked production slot and incur a downtime /lost productivity charge of £2,500 plus VAT for each allocated production day which the Client has not used.
- (p) **Late Collection Out:** if a Client fails to collect finished Goods during the allocated collection slot the finished Goods will automatically be sent to overflow storage at a cost of £20 plus VAT per pallet storage per week or part thereof or at the Supplier's discretion sent by pallet delivery to the Client at cost.
- (q) **Pre-production 1 litre test:** all productions include a 1 litre test to be signed off by the Client by way of approval prior to bulk mixing. This can either be done on-site at the production facility or the Client can arrange a taxi to collect the bottle for, and return the bottle same day after sign-off.
- (r) **Cold Brew Products:** All productions require a pre-signed and pre-approved calculation of recipe as Cold Brews can vary due to the time of year. The Client will need to sign off the brew prior to filtering to confirm that the Client is happy with the strength of the brew. As with the 1 litre test this can either be done on-site at the production facility or the Client can arrange a taxi to collect the bottle for, and return the bottle same day after sign-off.
- (s) **ABV Pre and Post-Production:** All alcohol products incur a Pre-production and Post-production ABV testing charge for testing carried out by a third party charged at £75 plus VAT per sample.
- (t) **Canning:** All products must have undergone a liquid PCD lab test and had real time shelf life tested to full expiry date at 30 degrees Celsius to minimise risk of leaking liners. We pasteurise all products at 75 degrees for 10 minutes. Any lower temperatures which a Client may request are at the Client's risk and the Client agrees to fully indemnify and hold harmless the Supplier in respect of any loss, damage, claims or expenses (including professional fees) that it may suffer or incur as a result.
- (u) **Deposits:** No deposits or full or part-payments are refundable.
- (v) **Changes to Formulae:** The proof-of-concept production is intended to establish whether the final product is scalable and stable. Where there are changes in formulation after this the Supplier will offer one further lab session to make final adjustments but reserves the right to charge for further lab sessions beyond this at its normal charging rates.
- (w) **Outside Production:** The Supplier accepts no responsibility for the formulation failing outside the Supplier's production facilities.
- (x) **Responsibility for Innovation:** While the Supplier will act in good faith and adhere to all usually applicable industry-wide requirements, if the Services requested by the Client do not adhere to laws, regulations, legislation or other restrictions on using innovative ingredients and production processes, marketing claims, nutritional profiles and/or any other elements of the recipes for developed products which were not widely known and used by the food industry before commencing the Services (for example but without limitation so as to fall under the Regulations) , it is ultimately the Client's responsibility to ensure that products and services that result from the

Services carried out by the Supplier at the Client's request meet all legal and industry requirements. Although the Supplier will co-operate fully and give the Client the benefit of its experience in relation to the relevant innovation including suggesting a suitable third-party agency to advise if required, the final responsibility for this rests with the Client. The Client agrees to fully indemnify and hold harmless the Supplier in respect of any loss, damage, claims or expenses (including professional fees) that it may suffer or incur in connection with such innovation.

- (y) **Storage Charges:** Without prejudice to its other remedies the Supplier is authorised to dispose of uncollected goods to defray storage charges incurred by the Client.
- (z) **Out-of-date Product:** any product which has not been collected before its sell by ,use by or best before date if not collected within 30 days will automatically be destroyed at the fee specified in the Supplier's current price list.
- (aa) **Cost Overruns:** The costs provided in the Proposal are calculated based on anticipated development time and production requirements based on previous experience typical processes, client co-operation in both provision of content and meeting deadlines and assisting with sign-off approval. Additional charges may be payable if there are significant variations.
- (bb) **Errors:** The Supplier cannot guarantee that the Services will be completely error free. If an error is identified the Supplier will work to rectify its error if reasonably possible, at no additional cost and in a timely manner.
- (cc) **Accuracy of information supplied:** the Client accepts full responsibility for the accuracy of the information which it provides and for the consequences of any inaccuracy.
- (dd) **Delays by the Client:** Where the Supplier in its complete discretion believes that any project has entered into a period of inactivity as a result of delays by the Client it may place a project on hold and will no longer be required to provide periodic updates. If the project is put on hold, or the Supplier receives no correspondence from the Client, for a period of one calendar month then the project will be interim-billed for costs and Services provided to date.
- (ee) **Usual Timeline and Overruns:** Unless otherwise agreed in writing, work will usually commence within ten working days of deposit receipt. Any anticipated completion date provided by the Supplier is subject to concepts chosen and client co-operation in provision of information, resources and approvals. The Supplier will endeavour to ensure that agreed timelines are adhered to, but the Client accepts that circumstances outside the Supplier's control, requested changes, and/or additional Client requirements may result in delays. Any timelines provided are estimates only and the Agency will not be held liable if the project overruns due to delays outside its control. The Supplier may charge for changes, additional requests for support, or requests to review and sign additional contracts which may cause the Supplier to incur and pass on external legal costs.
- (ff) **Travel:** Travel which is not costed as part of the original contract for the Services will be charged separately as an additional disbursement.
- (gg) **Sourcing Third Party Suppliers:** Although the Supplier may assist the Client in sourcing options for potential co-manufacturers, ingredient and packaging suppliers and any other Third Party vendors, and will assess areas such as quality, MOQs, accreditation and pricing, it cannot

guarantee being able to find vendors which that meet all of the Client's requirements. Since many Third Parties will request to see final recipes, projected volume estimations, brand designs and/or a business plan before they will consider a new project, if this information is not available, the Client should be aware that the Supplier may not be able to contact potential Third Parties until the Supplier is confident that they have a valid sufficiently detailed proposition with which to approach suitable Third Parties. This is to ensure that the Supplier does not damage relationships with existing partners, and to help achieve overall the best results for its clients.

- (hh) **Sourcing Raw Materials:** Any raw material sourcing carried out within the Services will be focused on finding suitable suppliers, who are reliable and offer good quality materials at a competitive price. The Agency has an extensive directory of suppliers and will always try to achieve the best balance of availability, cost, quality and consistency of materials for The Client whilst carrying out the Services. It cannot be held responsible for the quality of services provided by any third party. Any further work requested by the Client for the Supplier to identify, contact, engage and/or negotiate with further suppliers including in the interest of potentially lowering raw material costs for the Client will be regarded as Additional Services and costed accordingly.

2. Basis of contract

- 2.1 The Order constitutes an offer by the Client to purchase Goods or Services or Goods and Services in accordance with these Conditions.
- 2.2 The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order, at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 2.3 Any samples, drawings or advertising issued by the Supplier and any descriptions of the Goods or illustrations or descriptions of the Services contained in the Supplier's catalogues or brochures are issued or published 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 nor have any contractual force.
- 2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 2.5 Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue.
- 2.6 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.
- 2.7 The Client waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Client that is inconsistent with these Conditions.

3. Goods

- 3.1 The Goods are described in the Goods Specification.
- 3.2 To the extent that the Goods are to be manufactured in accordance with a Goods Specification supplied by the Client, the Client shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Supplier arising out of or in connection with any claim made against the Supplier for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with the Supplier's use of the Goods Specification. This clause 3.2 shall survive termination of the Contract.
- 3.3 The Supplier reserves the right to amend the Goods Specification if required by any applicable statutory or regulatory requirement, and the Supplier shall notify the Client in any such event.

4. Delivery of Goods

- 4.1 The Supplier shall ensure that:
- (a) each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, 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 Client to return any packaging materials to the Supplier, that fact is clearly stated on the delivery note. The Client 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.
- 4.2 The Client shall collect the Goods from the Supplier's premises at Unit 1A Bowbridge Works, Chartwell Drive, Leicester, Leicestershire, United Kingdom, LE18 2FL or such other location as may be agreed with the Client before delivery (**Delivery Location**) within three Business Days of the Supplier notifying the Client that the Goods are ready.]
- 4.3 Delivery of the Goods shall be completed on the Goods being made available for unloading/loading at the Delivery Location.
- 4.4 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Client's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.5 If the Supplier fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Client in obtaining replacement goods of similar description and quality in the cheapest market available, less

the price of the Goods. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Client's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.6 If the Client fails to accept delivery of the Goods within three Business Days of the Supplier notifying the Client that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by the Supplier's failure to comply with its obligations under the Contract in respect of the Goods:

- (a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the [third] Business Day following the day on which the Supplier notified the Client that the Goods were ready; and
- (b) the Supplier shall store the Goods until actual delivery takes place, and charge the Client for all related costs and expenses (including insurance).

4.7 If ten Business Days after the day on which the Supplier notified the Client that the Goods were ready for delivery the Client has not taken actual delivery of them, 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 Client for any excess over the price of the Goods or charge the Client for any shortfall below the price of the Goods.

4.8 If the Supplier delivers up to and including 5% more or less than the quantity of Goods ordered the Client may not reject them, but on receipt of notice from the Client that the wrong quantity of Goods was delivered, the Supplier shall make a pro rata adjustment to the invoice for the Goods.

4.9 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 Client to cancel any other instalment.

5. **Quality of Goods**

5.1 The Supplier warrants that on delivery, and for a period of from the date of delivery to the expiry of the nest before/use by date (**Warranty Period**), the Goods shall:

- (a) conform in all material respects with [the Goods Specification];
- (b) be free from material defects in design, material and workmanship; and
- (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and
- (d) be fit for any purpose held out by the Supplier

subject always to clause 2.7.

5.2 Subject to clause 5.3, if:

- (a) the Client correctly gives notice in writing to the Supplier during the Warranty Period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 5.1;
- (b) the Supplier is given a reasonable opportunity of examining such Goods; and

- (c) the Client (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Supplier's cost,

the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

5.3 The Supplier shall not be liable for the Goods' failure to comply with the warranty set out in clause 5.1 if:

- (a) the Client makes any further use of such Goods after giving a notice in accordance with clause 5.2;
- (b) the defect arises because the Client failed to follow the Supplier's oral or written instructions as to the storage, mixing, use or maintenance of the condition of Goods or (if there are none) good trade practice regarding the same;
- (c) the defect arises as a result of the Supplier following any recipe or specification supplied by the Client;
- (d) the Client alters the packaging of such Goods without the written consent of the Supplier;
- (e) the defect arises as a result of wilful damage, negligence, damage in transit, or abnormal storage conditions; or
- (f) the Goods differ from the Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

5.4 Except as provided in this clause 5, the Supplier shall have no liability to the Client in respect of the Goods' failure to comply with the warranty set out in clause 5.1.

5.5 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.

6. Title and risk

6.1 The risk in the Goods shall pass to the Client on delivery.

6.2 Title to the Goods shall not pass to the Client until

- (a) the Supplier receives payment in full (in cash or cleared funds) for the Goods and any other goods that the Supplier has supplied to the Client in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums.

6.3 Until title to the Goods has passed to the Client, the Client shall:

- (a) store the Goods separately from all other goods held by the Client so that they remain readily identifiable as the Supplier's property;
- (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (c) store and maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf from the date of delivery;

- (d) notify the Supplier immediately if it becomes subject to any of the events listed in clause 13.2(b) to clause 13.2(d); and
- (e) give the Supplier such information as the Supplier may reasonably require from time to time relating to:
 - (i) the Goods; and
 - (ii) the ongoing financial position of the Client.

6.4 At any time before title to the Goods passes to the Client, the Supplier may

- (a) require the Client to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product and if the Client fails to do so promptly, enter any premises of the Client or of any third party where the Goods are stored in order to recover them.

7. Supply of Services

7.1 The Supplier shall supply the Services to the Client in accordance with the Service Specification in all material respects.

7.2 The Supplier shall use all reasonable endeavours to meet any performance dates for the Services specified in the purchase order and/or Service Specification but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.

7.3 The Supplier reserves the right to amend the Service Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and the Supplier shall notify the Client in any such event.

7.4 The Supplier warrants to the Client that the Services will be provided using reasonable care and skill.

8. Client's obligations

8.1 The Client shall:

- (a) ensure that the terms of the Order and any information it provides in either or both the Service Specification and the Goods Specification are complete and accurate;
- (b) co-operate with the Supplier in all matters relating to the Services;
- (c) provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Client's premises, office accommodation and other facilities as reasonably required by the Supplier to provide the Services;
- (d) provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
- (e) if applicable prepare the Client's premises for the supply of the Services;

- (f) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
- (g) comply with all applicable laws, including health and safety laws and the Regulations;
- (h) keep all materials, equipment, documents and other property of the Supplier (**Supplier Materials**) at the Client's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation; and
- (i) comply with any additional obligations as set out in the Service Specification or the Goods Specification or both.

8.2 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Client or failure by the Client to perform any relevant obligation (**Client Default**):

- (a) without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend performance of the Services until the Client remedies the Client Default, and to rely on the Client Default to relieve it from the performance of any of its obligations in each case to the extent the Client 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 Client arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 8.2; and
- (c) the Client shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Client Default.

9. Charges and payment

9.1 The price for Goods:

- (a) shall be the price set out in the Order or, if no price is quoted, the price set out in the Supplier's published price list as at the date of delivery; and
- (b) shall be exclusive of all costs and charges of packaging, insurance, warehouse storage and transport of the Goods, which shall be invoiced to the Client.

9.2 The charges for Services shall be calculated on a time and materials basis:

- (a) the charges shall be calculated in accordance with the Supplier's daily fee rates, as set out in its current price list at the date of the Contract;
- (b) the Supplier's daily fee rates for each individual person are calculated on the basis of an eight-hour day from 8.00 am to 5.00 pm worked on Business Days;
- (c) the Supplier shall be entitled to charge an overtime rate of 150% of the daily fee rate on a pro rata basis for each part day or for any time worked by individuals whom it engages on the Services outside the hours referred to in clause 9.2(b); and

- (d) the Supplier shall be entitled to charge the Client for any expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services including travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Supplier for the performance of the Services, and for the cost of any materials.

9.3 The Supplier reserves the right to:

- (a) increase the charges for the Services on an annual basis with effect from each anniversary of the Commencement Date in line with the percentage increase in the Consumer Prices Index in the preceding 12-month period and the first such increase shall take effect on the first anniversary of the Commencement Date and shall be based on the latest available figure for the percentage increase in the Consumer Prices Index;
- (b) increase the price of the Goods, by giving notice to the Client at any time before delivery, to reflect any increase in the cost of the Goods to the Supplier that is due to:
 - (i) any factor beyond the control of the Supplier (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
 - (ii) any request by the Client to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification; or
 - (iii) any delay caused by any instructions of the Client in respect of the Goods or failure of the Client to give the Supplier adequate or accurate information or instructions in respect of the Goods.

9.4 In respect of Goods, the Supplier shall invoice the Client on or at any time after completion of delivery. In respect of Services, the Supplier shall invoice the Client monthly in arrears.

9.5 The Client shall pay each invoice submitted by the Supplier:

- (a) within 30 days of the date of the invoice or in accordance with any credit terms agreed by the Supplier and confirmed in writing to the Client; and
- (b) in full and in cleared funds to a bank account nominated in writing by the Supplier, and

time for payment shall be of the essence of the Contract.

9.6 All amounts payable by the Client under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Client, the Client 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 Services or Goods or both, as applicable, at the same time as payment is due for the supply of the Services or Goods.

9.7 If the Client fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting the Supplier's remedies under clause 13, the Client shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 9.7 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.

9.8 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

10. Intellectual property rights

10.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any recipe provided by the Client) shall be owned by the Supplier.

10.2 The Supplier grants to the Client, or shall procure the direct grant to the Client of, a fully paid-up, worldwide, non-exclusive, royalty-free perpetual and irrevocable licence to use the Deliverables (excluding materials provided by the Client) for the purpose of receiving and using the Services and the Deliverables in its business. If rights to use a recipe are to be licensed this will be specified in the Service Specification. Where this is not expressly licensed the Client shall not copy and formula or recipe or attempt to extract an ingredients list from laboratory analysis of any Product supplied. The Supplier does not assign outright any intellectual property rights in its Products or Services.

10.3 The Client shall not sub-license, assign or otherwise transfer the rights granted by clause 10.2.

11. Data protection

11.1 The following definitions apply in this clause 11:

- (a) **Controller, Processor, Data Subject, Personal Data, Personal Data Breach, processing and appropriate technical and organisational measures:** as defined in the Data Protection Legislation.
- (b) **Data Protection Legislation:** all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR, the Data Protection Act 2018 (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (*SI 2003/2426*) and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a party.
- (c) **Domestic Law:** the law of the United Kingdom or a part of the United Kingdom.
- (d) **UK GDPR:** has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

11.2 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 11 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.

- 11.3 The parties acknowledge that for the purposes of the Data Protection Legislation, the Client is the Controller and the Supplier is the Processor.
- 11.4 Without prejudice to the generality of clause 11.2, the Client will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Supplier and/or lawful collection of the Personal Data by the Supplier on behalf of the Client for the duration and purposes of the Contract.
- 11.5 Without prejudice to the generality of clause 11.2, the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under the Contract:
- (a) process that Personal Data only on the documented written instructions of the Client unless the Supplier is required by Domestic Law to otherwise process that Personal Data. Where the Supplier is relying on Domestic Law as the basis for processing Personal Data, the Supplier shall promptly notify the Client of this before performing the processing required by the Domestic Law unless the Domestic Law prohibits the Supplier from so notifying the Client;
 - (b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Client, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
 - (c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
 - (d) not transfer any Personal Data outside of the UK unless the prior written consent of the Client has been obtained and the following conditions are fulfilled:
 - (i) the Client or the Supplier has provided appropriate safeguards in relation to the transfer;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;
 - (iii) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - (iv) the Supplier complies with reasonable instructions notified to it in advance by the Client with respect to the processing of the Personal Data;
 - (e) assist the Client, at the Client's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

- (f) notify the Client without undue delay on becoming aware of a Personal Data Breach;
- (g) at the written direction of the Client, delete or return Personal Data and copies thereof to the Client on termination of the Contract unless required by Domestic Law to store the Personal Data; and
- (h) maintain complete and accurate records and information to demonstrate its compliance with this clause 11 and immediately inform the Client if, in the opinion of the Supplier, an instruction infringes the Data Protection Legislation.

12. Limitation of Liability

- 12.1 The limits and exclusions in this clause reflect the insurance cover the Supplier has been able to arrange and the Client is responsible for making its own arrangements for the insurance of any excess liability.
- 12.2 References to liability in this clause 12 include every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 12.3 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:
- (a) death or personal injury caused by negligence;
 - (b) fraud or fraudulent misrepresentation; and
 - (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 12.4 The Supplier's total liability to the Client shall not exceed the contract sum in the individual Goods Specification or Services Specification.
- 12.5 This clause 12.5 sets out specific heads of excluded loss:
The following types of loss are wholly excluded:
- (i) loss of profits;
 - (ii) loss of sales or business;
 - (iii) loss of agreements or contracts;
 - (iv) loss of anticipated savings;
 - (v) loss of use or corruption of software, data or information;
 - (vi) loss of or damage to goodwill; and
 - (vii) indirect or consequential loss.
- 12.6 The Supplier has given commitments as to compliance of the Goods and Services with relevant specifications in clause 5 and clause 7. In view of these commitments, the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

12.7 This clause 12 shall survive termination of the Contract.

13. Termination

13.1 Without affecting any other right or remedy available to it, either party may terminate the Contract by giving the other party not less than thirty days' written notice. Termination shall not prejudice the enforceability of rights accrued. The Supplier may charge the Client for all work which has been done before the expiry of the notice period.

13.2 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of any term of the Contract and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
- (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- (d) the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.

13.3 Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by giving written notice to the Client if:

- (a) the Client fails to pay any amount due under the Contract on the due date for payment; or
- (b) there is a change of control of the Client.

13.4 Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Client and the Supplier if the Client fails to pay any amount due under the Contract on the due date for payment, the Client becomes subject to any of the events listed in clause 13.2(b) to clause 13.2(d), or the Supplier reasonably believes that the Client is about to become subject to any of them.

14. Consequences of termination

14.1 On termination of the Contract:

- (a) the Client shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Goods and Services supplied but for which no invoice has been

submitted, the Supplier shall submit an invoice, which shall be payable by the Client immediately on receipt;

- (b) the Client shall return all of the Supplier Materials and any Deliverables or Goods which have not been fully paid for. If the Client fails to do so, then the Supplier may enter the Client's premises and take possession of them. Until they have been returned, the Client shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.

14.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

14.3 Any provision of the Contract that expressly or by implication is intended to have effect after termination or expiry shall continue in full force and effect.

15. Confidentiality

15.1 Each party undertakes that it shall not at any time during the Contract, and for a period of ten years after termination or expiry of the Contract, disclose to any person any confidential information concerning the business, assets, affairs, Clients, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by clause 15.2.

15.2 Each party may disclose the other party's confidential information:

- (a) to its employees, officers, representatives, contractors or subcontracts or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Contract. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 15; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

15.3 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

16. Force majeure

Neither party shall be in breach of the Contract or otherwise liable for any failure or delay in the performance of its obligations if such delay or failure results from events, circumstances or causes beyond its reasonable control (a **Force Majeure Event**). The time for performance of such obligations shall be extended accordingly.

If the period of delay or non-performance continues for six months, the party not affected may terminate the Contract by giving 30 days' written notice to the affected party.

17. General

17.1 Assignment and other dealings

- (a) The Supplier may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.
- (b) The Client shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the Supplier.

17.2 Notices.

- (a) Any notice given to a party under or in connection with the Contract shall be in writing and shall be:
 - (i) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if the Client) or its principal place of business (in the case of the Supplier); or
 - (ii) sent by email to the following addresses (or an address substituted in writing by the party to be served):

Supplier: <eoghan@drinkschef.com>
- (b) Any notice shall be deemed to have been received:
 - (i) if delivered by hand, at the time the notice is left at the proper address;
 - (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
 - (iii) if sent by email, at the time of transmission, or, if this time falls outside Business Hours in the place of receipt, when Business Hours resume.
- (c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

17.3 Severance. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision or part provision of the Contract is deemed deleted under this clause 17.3_the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the commercial result of the original provision.

17.4 Waiver.

- (a) A waiver of any right or remedy is only effective if given in writing [and shall not be deemed a waiver of any subsequent right or remedy.

- (b) A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

17.5 No partnership or agency. Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.

17.6 Entire agreement.

- (a) The Contract constitutes the entire agreement between the parties.
- (b) Each party acknowledges that in entering into the Contract it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation [or negligent misstatement] based on any statement in the Contract.

17.7 Third party rights.

- (a) The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- (b) The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

17.8 Variation. Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).

17.9 Governing law. The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

17.10 Jurisdiction. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.