

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

### 1. Definition and Interpretation

1. In these Conditions the following words shall have the following meanings:-
- (a) "FDUK" – Fresh Direct (UK) Limited, a company registered in England with company number 3053702, whose registered office is at Bicester Distribution Park, Charbridge Way, Bicester, Oxon, OX26 4SW, or any of its subsidiary companies;
- (b) "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 places an Order;
- (c) "Contract" – any contract formed between the Buyer and FDUK for the sale and purchase of Products;
- (d) "Products" – the products which are to be supplied by FDUK pursuant to any Contract;
- (e) "Delivery" – the delivery of the Products to the Buyer 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
- (f) "Order" – any Order placed with FDUK by the Buyer for Products;
- (g) "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;
- (h) "Conditions" – these terms and conditions of trade.
2. References in these Conditions are, unless otherwise stated, to conditions in these Conditions.
3. The headings are inserted for convenience only and shall have no legal effect.
- 2. Basis of Sale**
- 2.1. All Contracts shall be concluded upon the basis of these Conditions together with any special conditions issued in writing by FDUK to the Buyer at any time prior to FDUK's acceptance of an Order.
- 2.2. Variations of these Conditions or any special conditions can only be effected by a document signed by a Director of FDUK.
- 2.3. These Conditions apply to the Contract to the exclusion of any other terms that the Buyer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.4. Any Order shall be deemed to be an offer by the Buyer to purchase Products pursuant to these Conditions.
- 2.5. The Contract will come into existence upon acceptance of the Order by FDUK, which shall occur upon dispatch of the Products by FDUK.
- 2.6. The Contract constitutes the entire agreement between the parties. The Buyer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of FDUK which is not set out in the Contract.
- 3. Quotations**
- 3.1. Quotations are not offers and may be withdrawn or varied by FDUK at any time prior to acceptance by FDUK of a Buyer's Order.
- 3.2. Orders shall be given by a Buyer in writing or orally. Orders made orally 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 shall be FDUK's quoted price in the Contract, or where no price has been quoted the price listed in FDUK's price list current at the date of the Buyer's placing of the Order.
- 4.2. All prices quoted are, unless otherwise specified or agreed in writing, exclusive of VAT or any other taxes or duties but inclusive of Delivery by FDUK to such address as is agreed by FDUK except that (i) carriage and packaging costs 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 Orders of a non-routine nature.
- 4.3. 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, and shall be the responsibility of and payable by the Buyer.
- 4.4. FDUK reserves the right to invoice the Buyer on an interim basis to cover any instalments of Products delivered.
- 4.5. The Buyer shall pay FDUK the price of the Products and any related costs incurred by FDUK (without any deduction, counterclaim or set off) within 28 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.
- 4.6. In the event of any payment becoming overdue then without prejudice to any other right or remedy available to FDUK, 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, at its sole option:-
- (a) Terminate the Contract; or
- (b) Suspend performance of the Contract until payment is received in full; or
- (c) 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.
- 4.7. 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 during the term of the Contract FDUK 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 may, by giving notice to the Buyer at any time before Delivery, increase the price of the Products to reflect any increase in the cost of the Products that is due to:
- (a) any factor beyond FDUK's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- (b) any request by the Buyer to change the delivery dates, quantities or types of Products ordered; or
- (c) any delay caused by any instructions of the Buyer or failure of the Buyer to give FDUK adequate or accurate information or instructions.
- 5.2. FDUK reserves the right to automatically substitute any Products 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 products 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 FDUK in the Order.
- 6. Delivery**
- 6.1. 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.
- 6.2. Any dates quoted for Delivery are approximate only and time for Delivery shall not be of the essence of the Contract.
- 6.3. FDUK may effect Delivery by instalments in which case these Conditions 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.
- 6.4. 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.
- 6.5. If the Buyer fails to take Delivery of the Products or fails to give FDUK adequate Delivery instructions, FDUK may, at its option:-
- (a) Store the Products until actual Delivery or sale and charge the Buyer for the reasonable costs of storage; or
- (b) Sell the Products at the best price readily obtainable and charge the Buyer for any shortfall below the price under the Contract.
- 6.6. For the avoidance of doubt, the Buyer shall-
- (a) Not be entitled to refuse to accept Delivery after the estimated date for Delivery by reason of the consequent failure of those Products to meet any shelf-life requirement or otherwise; and
- (b) 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.
- 6.7. 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.
- 6.8. Given the nature of the Products it is reasonable that time shall be of the essence for claims made in respect of the quality of the Products. On Delivery the Buyer shall mark the Delivery advice note with full details of any shortages and/or damaged Products received and shall deliver to FDUK within 24 hours of Delivery a damage report signed by the Buyer in such form as FDUK shall request. In the case of non-delivery of the Products, the Buyer must inform FDUK by written notice within 24 hours of the date of the delivery note/invoice for allowances or credits. 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. All claims made thereafter shall be void and FDUK shall have no liability for claims not notified to FDUK within this time limit.
- 6.9. These Conditions shall apply to any replacement Products supplied by FDUK.
- 6.10. Requests for historical POD's must be communicated to FDUK within 28 days of the actual Delivery date.
- 7. Title**
- 7.1. Risk of damage to or loss of the Products shall pass to the Buyer on Delivery.
- 7.2. The whole right, title and interest both legal and equitable in and to the Products shall remain with FDUK and shall not pass to the Buyer until FDUK has received in full in cleared funds all sums due to it in respect of:
- (a) payment in full of the price of the Products; and
- (b) all other sums which are or which become due to FDUK from the Buyer.
- 7.3. Until title of the Products has passed to the Buyer, the Buyer shall:
- (a) hold the Products on a fiduciary basis as FDUK's bailee;
- (b) store the Products separately from all other goods held by the Buyer so they remain readily identifiable as FDUK's property;
- (c) not remove, destroy, obscure or deface any mark or packaging on or relating to the Products;
- (d) maintain the Products in satisfactory condition and insure them on FDUK's behalf for their full price against all risks; and
- (e) notify FDUK immediately if it becomes subject to any of the events listed in clause 11.1.
- 7.4. Subject to clause 7.3, the Buyer may use the Products in the ordinary course of its business before title in the Products has passed to the Buyer but shall account to FDUK for the proceeds of sale or otherwise of the Products and shall hold such proceeds on trust for FDUK.
- 7.5. If before title to the Products passes to the Buyer the Buyer becomes subject to any of the events listed in clause 11.1, or FDUK reasonably believes that any such event is about to happen and notifies the Buyer accordingly, then, provided that the Products have not been resold and without limiting any other right or remedy FDUK may have, FDUK may at any time require the Buyer to deliver up the Products and, if the Buyer fails to do so promptly, enter any premises of the Buyer or of any third party where the Products are stored in order to recover them.
- 7.6. On termination of the Contract, howsoever caused, FDUK's (but not the Buyer's) rights contained in this clause 7 shall remain in effect.
- 7.7. The Buyer's right to use or re-sell the Products under this Condition:-
- (a) 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
- (b) shall automatically cease if the Buyer becomes subject to any of the events listed in clause 11.1.
- 7.8. 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.
- 8. Warranties and Liability**
- 8.1. Nothing in these Conditions shall limit or exclude FDUK'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) defective products under the Consumer Protection Act 1987.
- 8.2. FDUK excludes from the Contract all warranties relating to the Products, including but not limited to the terms implied by sections 13 to 15 of the Sale of Goods Act 1979, to the fullest extent permitted by law.
- 8.3. FDUK warrants that on Delivery:
- (a) the Products will materially comply with their description and quantity expressed in the Contract;
- (b) the Products are of reasonably satisfactory quality and fit for purpose.
- 8.4. Subject to clause 8.1 the total aggregate liability of FDUK to the Buyer arising out of or in connection (howsoever caused or arising) with the supply of Products under the Contract (whether in contract, tort (including negligence), breach of statutory duty, or otherwise) shall not exceed the invoice value of the Products in question as described in the Contract.
- 8.5. Notwithstanding any other provision of these Conditions, but subject to clause 8.1, FDUK shall not be liable to the Buyer arising out of or in connection with Contracts accepted and supplied by FDUK for:
- (a) any loss of or damage to the following (whether such loss or damage is direct or indirect): (i) profit; (ii) revenue; (iii) savings; (iv) use; (v) contract; (vi) goodwill; or (vii) business; or
- (b) any indirect or consequential financial loss or damage,
- in each case howsoever arising.
- 9. Force Majeure**
- 9.1. FDUK shall not be in breach of any Contract, nor liable for any failure or delay in performance of its obligations under any Contract to the extent that such delay or non-performance is due to circumstances beyond FDUK's reasonable control.
- 10. Consumer Complaints**
- 10.1. 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 by FDUK.
- 11. Termination**
- 11.1. 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:-
- (a) 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
- (b) the Buyer 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 or limited liability partnership) 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;
- (c) the Buyer 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 other than (where the Buyer is a company) where these events take place for the sole purpose of a scheme for a solvent amalgamation of the Buyer with one or more other companies or the solvent reconstruction of the Buyer;
- (d) (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 Buyer, other than for the sole purpose of a scheme for a solvent amalgamation of the Buyer with one or more other companies or the solvent reconstruction of the Buyer;
- (e) (being an individual) the Buyer is the subject of a bankruptcy petition or order;
- (f) a creditor or encumbrancer of the Buyer 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;
- (g) (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 Buyer;
- (h) (being a company) the holder of a qualifying charge over the Buyer's assets has become entitled to appoint or has appointed an administrative receiver;
- (i) a person becomes entitled to appoint a receiver over the Buyer's assets or a receiver is appointed over the Buyer's assets;
- (j) any event occurs, or proceeding is taken, with respect to the Buyer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 11.1(b) to clause 11.1(i) (inclusive);
- (k) the Buyer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business;
- (l) the Buyer's financial position deteriorates to such an extent that in FDUK's opinion the Buyer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; and
- (m) (being an individual) the Buyer 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; or
- (n) in the opinion of FDUK serious doubts arise as to the solvency of the Buyer; or

- (o) 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
- (p) the Buyer fails to take delivery of Products or fails to give FDUK adequate delivery instructions prior to the time stated for Delivery.
12. **Termination Consequences**
- 12.1. In the event of any contract being terminated in accordance with these Conditions the Buyer shall pay to FDUK at the price set out in the Contract 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.
- 12.2. Termination 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.
13. **Confidential Information**
- 13.1. 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.
14. **General**
- 14.1. 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 supersedes all previous agreements between the parties with respect to its subject matter. The Buyer agrees with FDUK that FDUK shall be entitled to set off against any sums due or payable by the Buyer for the time being to FDUK any sums (or part thereof) due or payable by FDUK for the time being to the Buyer howsoever arising.
- 14.2. 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.
- 14.3. 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.
- 14.4. 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).
- 14.5. These Conditions and each Contract shall be governed by English law and subject to the exclusive jurisdiction of the English Courts.
- 14.6. The parties agree that the provisions of the Contracts (Rights of Third Parties) Act 1999 will not apply to any Contract or these Conditions.
- 14.7.