

Coffee makes
everything
possible

These Terms and Conditions are comprised of the following sections:

- (A) **Section A** - General Terms and Conditions of Supply (Goods and Services), which apply to all Orders and Contracts;
- (B) **Section B** – Quality of Goods, Delivery, Inspection and Recall, which (in addition to Section A) apply to Sale Goods and Hire Equipment;
- (C) **Section C** – Sale Goods, which (in addition to Section A and Section B) apply to the sale of Sale Goods;
- (D) **Section D** – Hire Equipment, which (in addition to Section A and Section B) apply to the hire of Hire Equipment;
- (E) **Section E** – Installation Services, which (in addition to Section A) apply to the provision of Installation Services; and
- (F) **Section F** – Maintenance Services, which (in addition to Section A) apply to the provision of Maintenance Services.

1 INTERPRETATION

1.1 The following definitions apply in these Conditions:

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

Consumables: any and all consumables which are to be sold by FreshGround to the Customer under the Contract, as specified in the Order Acknowledgement.

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

Conditions: these terms and conditions as amended from time to time.

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

Equipment: Sale Equipment and/or Hire Equipment (as the case may be).

Extended Maintenance Term: has the meaning given to it in clause 23.2.

Extended Rental Period: has the meaning given to it in clause 19.4.

Force Majeure Event: an event or circumstance beyond a party's reasonable control including, without limitation:

- (a) Acts of God, flood, drought, earthquake or other natural disaster.
- (b) Epidemic or pandemic.
- (c) Terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations.
- (d) Nuclear, chemical or biological contamination or sonic boom.
- (e) Any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent.
- (f) Collapse of buildings, fire, explosion or accident.
- (g) Any labour or trade dispute, strikes, industrial action or lockouts.

Free-on-Loan: in respect of Equipment hired by FreshGround to the Customer, the provision of such Equipment free of charge subject to the Customer purchasing Consumables and/or Spare Parts to the minimum values as set out in clause 5.3.

FreshGround: The Fresh Ground Coffee Service LLP (OC389860), with its registered office at Synergy House Fakenham Road, Morton On The Hill, Norwich, Norfolk, United Kingdom, NR9 5SP.

Goods: the Hire Equipment and/or Sale Goods (as the case may be), as set out in the Order Acknowledgement.

Goods Specification: any technical specification for the Goods as set out in FreshGround's quotation or as otherwise agreed in writing by the Customer and FreshGround.

Hire Equipment: means any and all Equipment and other goods which are to be taken on hire

(including without limitation on a Free-on-Loan basis) by the Customer from FreshGround under the Contract, as specified in the Order Acknowledgement.

Initial Maintenance Term: has the meaning given to it in clause 23.2.

Initial Rental Period: has the meaning given to it in clause 19.4.

Installation Services: installation services provided by FreshGround to the Customer in respect of the Equipment hired or sold under the Contract, as specified in the Order Acknowledgement.

Installation Charges: charges payable by the Customer in respect of Installation Services.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, moral rights, trade marks and service 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, rights in computer software, 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 in or associated with the Goods or Services.

Maintenance Charges: charges payable by the Customer in respect of Maintenance Services.

Maintenance Commencement Date: means the earlier of: i) the date of installation of the Equipment at the Site, or ii) 60 days from the date when FreshGround notified the Customer that it is ready to install the Equipment.

Maintenance Services: the maintenance services provided by FreshGround to the Customer in respect of the Equipment hired or sold under the Contract, or Third Party Equipment, in accordance with the relevant Maintenance Services Package.

Maintenance Services Package(s): the relevant FreshGround maintenance services package as shall be set out in the Service Specification, details of which are available on the website as may be updated from time to time, which may include without limitation, Total Care package, Re-Active plan, Total Care Pro-active Plan or other maintenance service package offered by FreshGround from time to time.

Maintenance Term: the term of Maintenance Services as set out in clause 23.2.

Normal Working Hours: the period from 8.30 am to 5.00 pm on any Business Day.

Order: the Customer's order for the sale or hire of Goods and/or supply of Services.

Order Acknowledgement: the written confirmation sent by FreshGround to the Customer (which may be by way of an email) acknowledging the receipt and acceptance of the Order.

Rental Charges: charges payable by the Customer in respect of Hire Equipment.

Rental Commencement Date: means the earlier of: i) the date of installation of Hire Equipment at the Site, or ii) 60 days from the date when FreshGround notified the Customer that it is ready to install Hire Equipment.

Rental Period: the period of loan or hire of Equipment (as the case may be) as set out in clause 19.4.

Sale Equipment: means any and all Equipment which is to be sold by FreshGround to the Customer under the Contract, as specified in the Order Acknowledgement.

Sale Goods: means any and all Sale Equipment, Consumables and/or other goods which are to be sold by FreshGround to the Customer under the Contract, as specified in the Order Acknowledgement.

Services: Installation Services, Maintenance Services and/or any other services supplied by FreshGround to the Customer as set out in the Service Specification.

Service Specification: the description or specification for the Services provided in writing by FreshGround to the Customer, as set out in the Order Acknowledgement.

Site: the location(s) at which the Equipment is to be installed as specified in the Order Acknowledgement or otherwise agreed between the parties in writing.

Spare Parts: all spare components and subassemblies of the Equipment.

Third Party Equipment: any third-party equipment owned by the Customer in respect of which FreshGround has agreed to provide Maintenance Services.

1.2 Interpretation:

A **person** includes a natural person, corporate or unincorporated body (whether or not **having** separate legal personality).

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.

A reference to **writing** or **written** includes email but not fax.

SECTION A – General Terms and Conditions of Supply (Goods and Services)

2 APPLICATION OF CONDITIONS

- 2.1 These Conditions apply to all Contracts and override all conditions stipulated by the Customer (even if submitted in a later document); any other agreements between the parties relating to the subject matter of the relevant Order are terminated (except an agreement into which these Conditions are incorporated or as otherwise may be agreed between the parties in writing).
- 2.2 An Order submitted by a Customer constitutes an offer by that Customer to purchase or the Goods and/or to purchase Services (as the case may be) in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order are complete and accurate.
- 2.3 The Order shall only be deemed to be accepted when FreshGround issues an Order Confirmation, at which point the Contract shall come into existence.

3 SUPPLY OF GOODS AND SERVICES

- 3.1 The Goods are described in the applicable Goods Specification.
- 3.2 FreshGround reserves the right to amend the Goods Specification if required by any applicable statutory or regulatory requirement, and FreshGround shall notify the Customer in any such event.
- 3.3 FreshGround shall supply the Services to the Customer in accordance with the Service Specification in all material respects.
- 3.4 FreshGround 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 FreshGround shall notify the Customer in any such event.
- 3.5 FreshGround warrants to the Customer that the Services will be provided using reasonable care and skill.
- 3.6 FreshGround shall use reasonable endeavours to meet any delivery dates and/or performance dates in respect of Goods and/or Services but any such dates are approximate only and time for delivery or performance (as the case may be) by FreshGround shall not be of the essence. FreshGround shall not be responsible for any loss or damage arising from any delay in delivering all or part of any Goods ordered or for any delay in the provision of any Services.
- 3.7 Any Goods ordered will be sold or hired and Services will be supplied subject to availability and subject to such Order(s) not exceeding the Customer's credit limit agreed from time to time by the parties.

4 PRICE

- 4.1 The price to be paid by the Customer for the Goods and the charges to be paid by the Customer for the Services will be as set out in the Order Acknowledgement or, if no price is quoted, the price set out in FreshGround's published price list at the date when the Goods are despatched or the Services are provided.
- 4.2 The price of the Goods includes the cost of FreshGround's standard packaging but does not include delivery, which shall be set out in the Order Acknowledgement and payable by the Customer in addition to the price of Goods.
- 4.3 All amounts payable by the Customer to FreshGround under the Contract shall be exclusive of amounts in respect of value added tax and any similar sales tax and all other government taxes, duties or levies relating to the Goods and/or Services, which shall be paid by the Customer in addition to those amounts. If the Customer is required under any applicable law to withhold or deduct any amount from the payments due to FreshGround, the Customer shall increase the sum it pays to FreshGround by the amount necessary to leave FreshGround with an amount equal to the sum it would have received if no such withholdings or deductions had been made.

5 PAYMENT

- 5.1 FreshGround may invoice the Customer at any time on or before delivery of Goods or completion of the Services (as applicable), except that (unless otherwise agreed between the parties in writing):
- 5.1.1 In respect of Sale Equipment, the Customer shall pay the price of Equipment in full on acceptance of the Customer's Order by FreshGround;
- 5.1.2 In respect of Hire Equipment, the Customer shall pay Rental Charges quarterly in advance.
- 5.1.3 In respect of Maintenance Services, the Customer shall pay Maintenance Charges quarterly in advance. The first payment of Maintenance Charges shall be due following installation of the Equipment.
- 5.2 Rental Charges and Maintenance Charges shall be fixed for the initial 12 months' period from installation. Thereafter, FreshGround reserves the right to increase the Rental Charges and/or Maintenance Charges annually by no more than the greater of i) 5% or ii) the annual increase for the preceding year in the Consumer Prices Index (CPI)(all items)(United Kingdom), and any such increase shall be based on the latest available figure for the percentage increase in the CPI.
- 5.3 Free-on-Loan Equipment shall be provided subject to the Customer placing monthly orders for Consumables to the minimum values as shall be set out in the Order Acknowledgement. In the event that the Customer fails to meet the required minimum values, the Customer shall pay the Rental Charges for the month in which minimum values were not met.
- 5.4 The Customer shall pay each invoice submitted by FreshGround in the currency in which the Goods or Services are invoiced within 30 days of the date of the invoice (or in accordance with any credit terms agreed by FreshGround and confirmed in writing to the Customer) to the bank account nominated by FreshGround, unless otherwise agreed between the parties in writing. Rental Charges and Maintenance Charges shall be paid by Direct Debit Mandate.
- 5.5 FreshGround reserves the right to charge interest on overdue sums at the rate of 4% per annum above the base rate for the time being of the Bank of England calculated on a daily basis from the due date of payment until the date upon which payment is made.
- 5.6 If the Customer fails to make payment by the due date or when required, FreshGround may (without

prejudice to any other remedy which it may have) cancel the Contract and/or suspend the supply of Services and/or all further deliveries of Goods under the Contract or any other contract until payment is made.

- 5.7 All amounts due under the Contract shall be paid by the Customer to FreshGround in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law and in accordance with clause 4.3).

6 LIABILITIES

- 6.1 Nothing in these Conditions shall exclude or restrict FreshGround's liability for death or personal injury resulting from FreshGround's negligence or, where applicable, the negligence of its employees, agents or subcontractors, or any other liability which cannot be limited or excluded by any relevant law.
- 6.2 Subject to clause 6.1, FreshGround will not be liable for:
- 6.2.1 loss of profits;
 - 6.2.2 loss of sales or business;
 - 6.2.3 loss of agreements or contracts;
 - 6.2.4 loss of anticipated savings;
 - 6.2.5 loss of use or corruption of software, data or information;
 - 6.2.6 loss of or damage to goodwill; and
 - 6.2.7 any consequential or indirect loss or damage (whether for loss of profit or otherwise) costs, expenses or other claims for consequential compensation whatsoever suffered by the Customer, whether such loss or damage arises from a breach of duty, in contract or in tort or in any other way (including loss or damage arising from FreshGround's negligence).
- 6.3 Subject to clause 6.1, FreshGround will not be liable for loss caused as a result of the Customer's failure to follow any instructions of FreshGround in relation to the use, maintenance and safety of the Equipment.
- 6.4 Except as set out in these Conditions, all warranties and conditions, whether expressed or implied, statutory or otherwise are excluded to the fullest extent permissible at law.
- 6.5 The Customer is responsible for obtaining, at its own cost, such import licences and other consents in relation to the Goods as are required from time to time and, if required by FreshGround, the Customer shall make those licences and consents available to FreshGround prior to the relevant shipment. The Customer shall also pay any local import taxes and/or duty that is required.
- 6.6 Subject to clauses 6.1 - 6.3 (inclusive), the liability of FreshGround to the Customer:
- 6.6.1 In respect of damage to property as a result of a malfunction of the Hire Equipment, including the instances where damage is caused from water escaping from the water supply or its connection, shall at all times be limited to the amount equal to 18 months Rental Charges (excluding VAT) in respect of the Hire Equipment that are subject of the claim;
 - 6.6.2 In respect of damage to property caused as a result of a malfunction of the Sale Equipment within 12 months from installation, including the instances where damage is caused from water escaping from the water supply or its connection, shall at all times be limited to the cost of repair of the Equipment or the connecting pipe (as the case may be) that are subject of the claim. For the avoidance of doubt, FreshGround shall have no liability in relation to any events occurring under this clause 6.6.2 if damage to property occurred after the expiration of a period of 12 months from installation of the Sale Equipment.; and in respect of all other claims arising out of or in connection to the Contract in each contract year

shall at all times be limited to the price of Goods or Services paid by the Customer to FreshGround under the Contract in the 12 months preceding the relevant claim.

- 6.7 The provisions of this clause 6 set out the entire liability of FreshGround (including any liability for the acts or omissions of any of its officers, employees, agents, representatives and/or sub-contractors) to the Customer in respect of any breach of the Contract, any representation, statement or tortious or other act or omission, including but without limitation, negligence or breach of any statutory or other duty arising under or in connection with the Contract.

7 TERMINATION

- 7.1 Without limitation to its other rights or remedies, FreshGround may cancel an Order and/or the Contract or any part of the same remaining unfulfilled with immediate effect by giving to the Customer notice in writing where:
- 7.1.1 the Customer commits a material breach under the Contract. FreshGround may, at its absolute discretion, decide to give the Customer an opportunity to remedy the breach (if such breach is remediable) and FreshGround will be able to terminate if, after having given an opportunity to remedy, the Customer fails to remedy that breach within 10 days of the Customer being notified in writing to do so;
 - 7.1.2 a receiver administrator or administrative receiver of the Customer's property or assets or any part of them is appointed, or a court Order is made or a resolution is passed for the winding-up of the Customer (except for the purpose of amalgamation or reconstruction) or if any bankruptcy petition is presented against the Customer (or any analogous proceedings in any jurisdiction are commenced);
 - 7.1.3 the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
 - 7.1.4 the Customer's financial position deteriorates to such an extent that in FreshGround's opinion the Customer's capability to adequately fulfil its obligations under the Contract have been placed in jeopardy.
- 7.2 On termination of the Contract the Customer shall immediately pay to FreshGround all of FreshGround's outstanding unpaid invoices and interest and, in respect of Services and Goods supplied but for which no invoice has been submitted, FreshGround shall submit an invoice, which shall be payable by the Customer immediately on receipt.
- 7.3 On expiry or termination of the Contract in respect of Hire Equipment, however caused:
- 7.3.1 FreshGround's consent to the Customer's possession of the Equipment shall terminate; and
 - 7.3.2 FreshGround may, by its authorised representatives, without notice and at the Customer's expense, retake possession of the Equipment and for this purpose may enter the Site or any premises at which the Equipment is located.
- 7.4 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.
- 7.5 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.

8 FORCE MAJEURE

FreshGround shall not 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 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 45 Business Days, the Customer may terminate the Contract by giving 5 Business Days' written notice to FreshGround.

9 INTELLECTUAL PROPERTY

9.1 The Customer acknowledges that:

9.1.1 the Intellectual Property Rights are FreshGround's (or its licensor's) property;

9.1.2 nothing in this agreement shall be construed as granting any rights in favour of the customer in relation to the Intellectual Property Rights other than as expressly set out in the contract. FreshGround asserts its full rights to control the use of its trade marks within the United Kingdom and the EEA and the Customer shall assist FreshGround as required in preventing parallel importers from diluting FreshGround's rights; and

9.1.3 any reputation in any trademarks affixed or applied to the Goods shall accrue to the sole benefit of FreshGround or any other owner of the trademarks from time to time.

9.2 The Customer shall not use (other than pursuant to the Contract) or seek to register any trademark or trade name (including any company name) which is identical to, confusingly similar to or incorporates any trademark or trade name which FreshGround or any associated company of FreshGround owns or claims rights in anywhere in the world.

10 DATA PROTECTION

To the extent that personal data is processed in connection with the Contract, the parties shall comply with all applicable privacy and data protection laws and regulations.

11 COMPLIANCE WITH LAWS

In performing its obligations under the Contract, each party shall comply with all applicable laws, statutes, regulations and codes from time to time in force.

12 CONFIDENTIALITY

12.1 Each party undertakes that it shall not at any time during the Contract, and for a period of two years after termination or expiry of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, 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 12.2.

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

12.2.1 to its employees, officers, representatives, contractors, subcontractors 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, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 12; and

12.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

12.3 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.

13 GENERAL

13.1 FreshGround shall be entitled to make public statements or press releases in relation to Goods and/or Services supplied to the Customer and shall be entitled to name the Customer in any such public statements and press releases for marketing purposes, subject to clause 10 (Data Protection) and clause 12 (Confidentiality).

13.2 FreshGround 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.

13.3 The Customer 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 FreshGround.

13.4 These Conditions and the Contract, together with any documents referred to in them, constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter of the Contract.

13.5 Both parties acknowledge that, in entering into the Contract it does not rely on any statement, representation, assurance or warranty of any person (whether a party to the Contract or not) other than as expressly set out in the Contract.

13.6 Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties.

13.7 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall, to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness, be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

13.8 Failure or delay by a party in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.

13.9 Except as set out in the Contract, no variation of the Contract shall be effective unless it is expressly agreed in writing by FreshGround. FreshGround may vary these Conditions from time to time. Any such variation by FreshGround will take effect:

13.9.1 immediately in respect of new orders;

13.9.2 immediately if any variation is required by applicable law; and

13.9.3 on the expiration of a 30 days' period from the date when FreshGround notified the Customer of any variation in respect of existing Orders.

13.10 The Contract does not give rise to any rights of a third party which is not a party to it.

13.11 The formation, existence, construction, performance, validity and all aspects of the Contract and any and all matters relating to it shall be governed by English law and the parties submit to the exclusive jurisdiction of the courts of England and Wales.

SECTION B – Goods

14 QUALITY OF GOODS

- 14.1 FreshGround warrants that on delivery the Goods will comply with the Goods Specification.
- 14.2 Except as provided in clause 14.1, FreshGround makes no other warranty and makes no representation as to description or quality.
- 14.3 Any suggestion or representation concerning any possible use of the Goods made by FreshGround in literature or in any response to specific enquiry is given in good faith, but it is entirely for Customer (and Customer's customers) to satisfy themselves fully as to the suitability of the Goods for any particular purpose. No warranty or representation relating to such possible use shall be implied (whether by any relevant legislation or otherwise) and shall be excluded, so far as legally permissible.
- 14.4 These Conditions shall apply to any repaired or replacement Goods supplied by FreshGround.
- 14.5 The Equipment shall be delivered with FreshGround standard settings. FreshGround shall be under no obligation to calibrate the Equipment to the Customer's preferred settings.

15 DELIVERY OF GOODS

- 15.1 Delivery shall be made in accordance with any delivery terms agreed between FreshGround and set out in the Order Acknowledgement or as otherwise agreed between the parties in writing.
- 15.2 FreshGround may effect delivery in one or more instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 15.3 FreshGround will use all reasonable endeavours to supply the Goods, but shall not be liable to the Customer in any way for shortfall or delay in delivery due to the Goods (or their constituents) being unavailable or not obtainable on commercially reasonable terms for whatever reason.

16 INSPECTION OF GOODS

- 16.1 Customer shall examine the Goods as soon as reasonably practicable after delivery.
- 16.2 If the Goods or any part of them are lost or do not comply with clause 14.1, FreshGround will (at its option) either replace such Goods or refund to the Customer the cost or price of them, unless in accordance with the applicable delivery terms the risk of loss has passed to the Customer on or before delivery to the carrier, but FreshGround's liability in connection with any such Goods at all times will not exceed the cost of replacement of them or the price paid by the Customer. For the avoidance of doubt, once FreshGround has complied with this clause 16.2, it shall have no further liability to the Customer for the Good's failure to comply with clause 14.1.
- 16.3 FreshGround will not be under any liability under clause 16.2 above unless the following conditions are strictly complied with:
- 16.3.1 in the event of non-delivery of a whole consignment of Goods, the Customer must inform FreshGround in writing within ten days of the date of the invoice; and
- 16.3.2 in the case of damage to Goods or loss of part of a consignment, the consignment must be inspected in the presence of the carrier. If any Goods are damaged or lost, the consignment note must be endorsed accordingly and the Customer must notify FreshGround within twenty-four hours of delivery, such notification to be confirmed in writing within the next

five days, failing which Customer shall be treated as having waived all claims connected with such incomplete or failed delivery and all claims connected with such loss or damage.

- 16.4 FreshGround shall not be liable for the Goods' failure to comply with the warranty set out in clause 14.1 in any of the following events:
- 16.4.1 the Customer makes any further use of those Goods after giving notice in accordance with clause 16.3.2;
 - 16.4.2 the defect arises because the Customer failed to follow FreshGround's oral or written instructions for the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
 - 16.4.3 the defect arises as a result of FreshGround following any drawing, design or Specification supplied by the Customer;
 - 16.4.4 the Customer alters or repairs those Goods without the written consent of FreshGround;
 - 16.4.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
 - 16.4.6 the Goods differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 16.5 No Goods may be returned without prior arrangement. Where Goods correctly supplied are subsequently returned for credit, a 10% handling charge will be implemented. A credit note will only be issued provided the Goods are undamaged and are suitable for resale.
- 16.6 The terms of these Conditions shall apply to any repaired or replacement Goods supplied by FreshGround.

17 PRODUCT RECALL

- 17.1 If the Customer becomes aware of or is the subject of a request, court Order or other directive of a governmental or regulatory authority to withdraw any Goods from the market (Recall Notice) it must immediately notify FreshGround in writing and attach a copy of the Recall Notice.
- 17.2 Unless required by law, the Customer may only undertake a recall or withdrawal of the Goods from the market with the written permission of FreshGround and in accordance with clause 17.4.
- 17.3 FreshGround may issue a notice to recall or withdraw the Goods from the market (Voluntary Recall Notice) if FreshGround reasonably believes, or has cause to believe, that the Goods are or may be unsafe.
- 17.4 The Customer must (at its own cost):
- 17.4.1 comply with any Recall Notice or Voluntary Recall Notice; and
 - 17.4.2 give such assistance as FreshGround reasonably requires to recall or withdraw the Goods from the market, and comply with FreshGround's instructions about the process of implementing that recall or withdrawal.

SECTION C – Sale Goods

18 SALE GOODS - RISK AND PROPERTY

- 18.1 Risk in Sale Goods will pass to the Customer on delivery.
- 18.2 The Sale Goods supplied to the Customer will remain the property of FreshGround until full payment in cleared funds has been received by FreshGround for those Goods and for all other Goods delivered

or Services supplied by FreshGround to the Customer in respect of which payment is outstanding.

18.3 Until title to the Sale Goods passes to the Customer, the Customer shall:

18.3.1 hold those Sale Goods as FreshGround's bailee;

18.3.2 protect and store the Sale Goods separately from all other Goods held by the Customer so that they remain readily identifiable as the property of FreshGround; and

18.3.3 maintain the Sale Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;

18.4 The Customer may use the Sale Goods or sell them in the ordinary course of its business (but not otherwise) before title passes to Customer, provided that:

18.4.1 it does so as principal and not as FreshGround's agent; and

18.4.2 title to the Sale Goods shall pass from FreshGround to the Customer immediately before the time at which resale by the Customer occurs.

18.5 If the Customer is in breach of any of its obligations to FreshGround under the Contract, or the Order or the Contract is cancelled or capable of being cancelled in accordance with these Conditions, and provided the Sale Goods are still in existence and have not been resold, FreshGround may:

18.5.1 by notice to the Customer terminate the Customer's right under clause 18.4 to resell the Sale Goods or use them in the ordinary course of its business: and/or

18.5.2 with or without previous notice, retake possession of the Sale Goods and sell the Sale Goods.

18.6 For the purpose of this clause 18, the Customer irrevocably authorises FreshGround's representatives (including, without limitation its agents and employees) to enter the premises on which the Sale Goods are stored and remove the Sale Goods at the Customer's expense.

SECTION D – Hire Equipment

19 HIRE EQUIPMENT – GENERAL AND HIRE PERIOD

19.1 In respect of Hire Equipment, the Customer shall purchase all of its requirement of cleaning products, Consumables and Spare Parts for Hire Equipment from FreshGround.

19.2 Hire Equipment shall be supplied subject to satisfactory credit checks which may be carried out by FreshGround at its own discretion prior to installation of the Equipment. FreshGround reserves the right to cancel any Orders and not to carry out the installation in the event that any such credit checks are not satisfactory in FreshGround's sole opinion.

19.3 Hire Equipment shall not be provided Free-on-Loan, unless agreed by FreshGround in writing and expressly set out in the Order Acknowledgment.

19.4 The Rental Period shall commence on the Rental Commencement Date and shall continue, unless terminated earlier in accordance with clause 7 (Termination), for the initial period as set out in the Contract ("Initial Rental Period"), when the Contract in respect of Hire Equipment shall extend for a further period of 12 months ("Extended Rental Period") at the end of the Initial Rental Period and at the end of each Extended Rental Period. Either party may give written notice to the other party, not later than 60 days before the end of the Initial Rental Period or the relevant Extended Rental Period, to terminate this agreement at the end of the Initial Rental Period or the relevant Extended Rental Period (as the case may be).

20 HIRE EQUIPMENT – RISK AND PROPERTY

- 20.1 Risk in Hire Equipment will pass to the Customer on delivery.
- 20.2 The Hire Equipment shall at all times remain the property of FreshGround, and the Customer shall have no right, title or interest in or to the Hire Equipment (save the right to possession and use of the Hire Equipment subject to the terms and conditions of these Conditions).
- 20.3 FreshGround shall not, other than in the exercise of its rights under the Contract or applicable law, interfere with the Customer's quiet possession of the Hire Equipment.
- 20.4 The Hire Equipment shall remain at the sole risk of the Customer during the Rental Period and any further term during which the Hire Equipment is in the possession, custody or control of the Customer (Risk Period) until such time as the Hire Equipment is redelivered to FreshGround.
- 20.5 During the Rental Period and the Risk Period, the Customer shall, at its own expense, obtain and maintain full value insurance of the Hire Equipment against loss, damage, theft and such other risks as may from time to time be reasonably necessary and/or as FreshGround may advise to the Customer from time to time.
- 20.6 On FreshGround's request, all insurance policies procured by the Customer shall name FreshGround on the policies as a loss payee in relation to any claim relating to the Hire Equipment. The Customer shall be responsible for paying any deductibles due on any claims under such insurance policies.
- 20.7 The Customer shall give immediate written notice to FreshGround in the event of any loss, accident or damage to the Hire Equipment arising out of or in connection with the Customer's possession or use of the Hire Equipment.
- 20.8 If the Customer fails to effect or maintain any of the insurances required under these Conditions, FreshGround shall be entitled to effect and maintain the same, pay such premiums as may be necessary for that purpose and recover the same as a debt due from the Customer.
- 20.9 The Customer shall, on demand, supply copies of the relevant insurance policies or other insurance confirmation acceptable to FreshGround and proof of premium payment to FreshGround to confirm the insurance arrangements.

21 HIRE EQUIPMENT - RESPONSIBILITIES OF THE CUSTOMER

- 21.1 The Customer is responsible for providing an adequate supply of good quality drinking water and a safe supply of electricity for the operation of the Hire Equipment.
- 21.2 In the event of any fault or damage becoming apparent in the Hire Equipment the Customer is required to immediately stop use and isolate the Hire Equipment from any mains electric (and water) supply and notify FreshGround.
- 21.3 The Customer shall during the Rental Period:
- 21.3.1 ensure that the Hire Equipment is kept and operated in a suitable environment, used only for the purposes for which it is designed, and operated in a proper manner by trained competent staff in accordance with any operating instructions (which may be oral or written) provided by FreshGround;
 - 21.3.2 take such steps (including compliance with all safety and usage instructions provided by FreshGround) as may be necessary to ensure, so far as is reasonably practicable, that the Hire Equipment is at all times safe and without risk to health when it is being set, used, cleaned or

- maintained by a person at work;
- 21.3.3 subject to any applicable Maintenance Services provided by FreshGround, maintain at its own expense the Hire Equipment in good and substantial repair in order to keep it in as good an operating condition as it was on the Delivery Date (fair wear and tear only excepted) including replacement of worn, damaged and lost parts, and shall make good any damage to the Hire Equipment;
- 21.3.4 carry out all regular general cleaning and routine maintenance of the Equipment using products recommended by FreshGround, including without limitation, replacement of filters, regular de-scaling of hot water boilers and coffee machines, the routine emptying of the drip tray, daily and weekly milk and coffee clean routines and ensuring the Hire Equipment is hygienically clean at all times, in accordance with any instructions (which may be oral or written) provided by FreshGround;
- 21.3.5 carry out periodic electrical 'PAT' tests on the Equipment and keep appropriate and adequate records of such tests;
- 21.3.6 carry out any necessary pressure vessel inspections (if required, as shall be notified by FreshGround);
- 21.3.7 make no alteration to the Hire Equipment and shall not remove any existing component (or components) from the Hire Equipment without the prior written consent of FreshGround unless to comply with any mandatory modifications required by law or any regulatory authority and/or unless the component (or components) is (or are) replaced immediately (or if removed in the ordinary course of repair and maintenance as soon as practicable) by the same component or by one of a similar make and model or an improved or advanced version of it. Title and property in all substitutions, replacements, renewals made in or to the Hire Equipment shall vest in FreshGround immediately on installation;
- 21.3.8 keep FreshGround fully informed of all material matters relating to the Hire Equipment;
- 21.3.9 if required by FreshGround, keep the Hire Equipment at all times at the Site (unless otherwise agreed in writing) and shall not move or attempt to move any part of the Hire Equipment to any other location without FreshGround's prior written consent or at all times keep the Hire Equipment in the possession or control of the Customer and keep FreshGround informed of its location;
- 21.3.10 permit FreshGround or its duly authorised representative to inspect the Hire Equipment at all reasonable times and for such purpose to enter on the Site or any premises at which the Hire Equipment may be located, and shall grant reasonable access and facilities for such inspection;
- 21.3.11 maintain operating and maintenance records of the Hire Equipment and make copies of such records readily available to FreshGround, together with such additional information as FreshGround may reasonably require;
- 21.3.12 not, without the prior written consent of FreshGround, part with control of (including for the purposes of repair or maintenance), sell or offer for sale, underlet or lend the Hire Equipment or allow the creation of any mortgage, charge, lien or other security interest in respect of it;
- 21.3.13 not without the prior written consent of FreshGround, attach the Hire Equipment to any land or building so as to cause the Hire Equipment to become a permanent or immovable fixture on such land or building. If the Hire Equipment does become affixed to any land or building then the Hire Equipment must be capable of being removed without material injury to such land or building and the Customer shall repair and make good any damage caused by the affixation or removal of the Hire Equipment from any land or building and indemnify FreshGround against all losses, costs or expenses incurred as a result of such affixation or removal;
- 21.3.14 not do or permit to be done any act or thing which will or may jeopardise the right, title or interest of FreshGround in the Hire Equipment and, where the Hire Equipment has become affixed to any land or building, the Customer must take all necessary steps to ensure that FreshGround may enter such land or building and recover the Hire Equipment both during the term of these Conditions and for a reasonable period thereafter, including by procuring from any person having an interest in such land or building, a waiver in writing and in

favour of FreshGround of any rights such person may have or acquire in the Hire Equipment and a right for FreshGround to enter onto such land or building to remove the Hire Equipment;

- 21.3.15 not suffer or permit the Hire Equipment to be confiscated, seized or taken out of its possession or control under any distress, execution or other legal process, but if the Hire Equipment is so confiscated, seized or taken, the Customer shall notify FreshGround and the Customer shall at its sole expense use its best endeavours to procure an immediate release of the Hire Equipment and shall indemnify FreshGround on demand against all losses, costs, charges, damages and expenses incurred as a result of such confiscation;
- 21.3.16 not use the Hire Equipment for any unlawful purpose;
- 21.3.17 ensure that at all times the Hire Equipment remains identifiable as being FreshGround's property and wherever possible shall ensure that a visible sign to that effect is attached to the Equipment;
- 21.3.18 deliver up the Hire Equipment at the end of the Rental Period at such address as FreshGround requires, or if necessary allow FreshGround or its representatives access to the Site or any premises where the Equipment is located for the purpose of removing the Hire Equipment; and
- 21.3.19 not do or permit to be done anything which could invalidate the insurances referred to in clause 20.5.

- 21.4 The Customer acknowledges that FreshGround shall not be responsible for any loss of or damage to the Equipment arising out of or in connection with any negligence, misuse, mishandling of the Equipment or otherwise caused by the Customer or its officers, employees, agents and contractors, and the Customer shall indemnify FreshGround in full 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 FreshGround arising out of, or in connection with any failure by the Customer to comply with the terms set out in this clause 21.
- 21.5 FreshGround reserves the right to charge the Customer a call-out fee in respect of any repairs made to Equipment because of a fault or damage caused (in FreshGround's reasonable opinion) by the Customer's failure to comply with any usage, operational, maintenance, cleaning or other instructions of FreshGround.
- 21.6 The Customer acknowledges that FreshGround shall not be responsible for any matters set out in clause 23.11 in respect of Hire Equipment (whether or not FreshGround provides Maintenance Services to the Customer under the Contract).

SECTION E – Installation Services

22 INSTALLATION SERVICES

- 22.1 Where the Customer purchases Installation Services in respect of Equipment, FreshGround shall install the Equipment at the Site.
- 22.2 The Customer shall pay the Installation Charges in addition to the price of Equipment and/or Rental Charges (as applicable) and any other applicable price or charges.
- 22.3 The Customer shall procure that a duly authorised representative of the Customer shall be present at the delivery and the installation of the Equipment. Acceptance by such representative of installation shall constitute conclusive evidence that the Customer has examined the Equipment and has found it to be in good condition, complete and fit in every way for the purpose for which it is intended (save as regards any latent defects not reasonably apparent on inspection). If required by FreshGround, the Customer's duly authorised representative shall sign a receipt confirming such

acceptance.

- 22.4 To facilitate delivery and installation, the Customer shall at its sole expense provide all requisite materials, facilities, access and suitable working conditions to enable delivery and installation to be carried out safely and expeditiously. To facilitate the installation of the Equipment, the Customer shall prepare at its sole expense the appropriate area for installation of the Equipment in accordance with the information provided by FreshGround in advance of delivery, including without limitation, the Customer shall ensure supply of potable water, electricity and (to the extent applicable) a waste facility within approximately 1 metre from the Equipment.

SECTION F – Maintenance Services

23 MAINTENANCE SERVICES

- 23.1 If the Contract includes the provision of Maintenance Services, FreshGround shall use reasonable endeavours to provide such services substantially in accordance with the agreed Maintenance Services Package.
- 23.2 Except as set out in clause 23.3, the Maintenance Services shall commence on the Maintenance Commencement Date and shall continue, unless terminated earlier in accordance with clause 7 (Termination), for the initial period as set out in the Contract (“Initial Maintenance Term”), when the Maintenance Services shall extend for a further period of 12 months (“Extended Maintenance Term”) at the end of the Initial Maintenance Term and at the end of each Extended Maintenance Term. Either party may give written notice to the other party, not later than 60 days before the end of the Initial Maintenance Term or the relevant Extended Maintenance Term, to terminate this agreement at the end of the Initial Maintenance Term or the relevant Extended Maintenance Term (as the case may be).
- 23.3 If Maintenance Services are provided in respect of Hire Equipment, Maintenance Services shall be provided for the duration of the Rental Period, unless otherwise set out in the Contract.
- 23.4 Except where the Contract for Hire Equipment expressly provides that Rental Charges include the cost of Maintenance Services, the Customer shall pay the Maintenance Charges in addition to the price of Equipment and/or Rental Charges (as applicable) and any other applicable price or charges.
- 23.5 Dependent on the applicable Maintenance Services Package, FreshGround may charge the Customer for the cost of and/or fitting or replacement of any Spare Parts, in addition to any applicable Maintenance Charges.
- 23.6 Any Spare Parts shall be supplied at FreshGround current list price.
- 23.7 The Customer shall accept routine deliveries of scale reducing filters as required from time to time (in the opinion of FreshGround). The Customer shall be responsible for the fitting of any replacement filters and shall ensure that any such replacement filters are fitted promptly after their delivery.
- 23.8 During the Maintenance Term, the Customer shall comply with the usage, operational, routine maintenance, cleaning or other requirements as set out in clause 21, provided that in such case a reference to Hire Equipment in clause 21 shall be a reference to Equipment, whether hired or sold, and a reference to Rental Period shall be a reference to the Maintenance Term.
- 23.9 Notwithstanding the Maintenance Term, FreshGround reserves the right to terminate the Maintenance Services in respect of any Sale Equipment or Third Party Equipment if in FreshGround’s sole opinion such equipment has passed its reasonable expected life span by giving the Customer 60 days’ prior written notice of termination.

23.10 Maintenance Services shall include:

- 23.10.1 In respect of Hire Equipment, parts and labour costs of repairing the Equipment where faults have occurred through fair wear and tear during the Rental Period. This service may be provided (at FreshGround's sole option) either on an 'exchange by carrier' basis or by engineer's visit. In the event that FreshGround provides this service by way of 'exchange by carrier', the Customer shall be responsible for ensuring that the Equipment is disconnected and (on its return) reconnected and the defective unit is repacked for the collection by the courier nominated by FreshGround;
- 23.10.2 In respect to Sale Equipment, parts and labour costs of repairing the Equipment for a period of 12 months from installation; and
- 23.10.3 In respect of Sale Equipment or Third Party Equipment, labour costs of repairing the Equipment where faults have occurred through fair wear and tear during the Maintenance Term. Unless otherwise agreed by FreshGround in writing, routine wearing Spare Parts (including without limitation valves, pumps and moving components) will be covered; major parts (including without limitation boards, brewers, and compressors and cosmetic parts) will not be covered.

23.11 Maintenance Services shall not include:

- 23.11.1 Call outs to make adjustments to the Equipment, including without limitation to add images to digital screens, adjust drink settings and change bean choices, unless otherwise specified in accordance with the relevant Maintenance Services Package;
- 23.11.2 Any necessary pressure vessel inspections, which shall be the responsibility of the Customer (if required);
- 23.11.3 Routine cleaning and maintenance of the Equipment, which shall be the responsibility of the Customer in accordance with clause 23.8;
- 23.11.4 Any Services provided by FreshGround outside of Normal Working Hours; and
- 23.11.5 Repairs to Equipment where damage was caused as a result of the Customer's failure to follow any instructions of FreshGround in relation to the use, maintenance and safety of the Equipment, including without limitation failure to comply with any of the applicable provisions set out in clause 21.

23.12 Other than as set out in clauses 23.10 and 23.11, the scope of Maintenance Services will vary depending on the specific Maintenance Service Package selected by the Customer. It is the Customer's responsibility to ensure that the Maintenance Service Package it has selected is suitable and satisfies the Customer's requirements.

24 SERVICE REQUESTS

- 24.1 Service requests may be logged by telephone during Normal Working Hours, by calling 020 7553 7900 and requesting the service helpdesk, or by email, to service@freshground.co.uk.
- 24.2 Prior to arranging a technician visit, FreshGround will attempt to resolve issues by telephone or email with tutorials and other assistance, and if this does not resolve the issue immediately, an engineer call will be booked.
- 24.3 Service engineers will report to the Customer's staff before leaving the building following completion of a breakdown call and submit a written report confirming that the problem has been resolved or explain any further action required.
- 24.4 Without prejudice to clause 23.11, Re-Active service cover does not cover the cost of service calls where maintenance or repairs are required due to:

- 24.4.1 a poor quality water supply or where filters recommended by us have not been fitted at their stipulated intervals;
- 24.4.2 the electricity or water supply has been interrupted; or
- 24.4.3 careless or malicious damage to the Equipment or where repairs have been made by persons not approved by FreshGround has caused the issue.

24.5 FreshGround will complete all necessary pro-active service visits, including the annual sanitisation visits for chilled water dispensers.

24.6 Where pro-active service visits are required, these will be carried out to standards set out by FreshGround for consistent quality assurance.

24.7 Where Total Care is selected, pro-active service visits will include the following service activities:

- 24.7.1 for Equipment dispensing hot water and coffee products the scale reducing filters will be exchanged;
- 24.7.2 all Equipment will be inspected to ensure it is compliant with current optimum machine set-up standards;
- 24.7.3 any parts needing pro-active replacement will be exchanged as set out in any applicable manufacturer schedules; and
- 24.7.4 for the avoidance of doubt, call outs requested to make adjustments to the Equipment, including but not limited to adding images to digital screens, adjusting drink settings and changing bean choices, are not covered by either the essentials Re-Active plan or the Total Care Pro-Active plan.



FreshGround