

Libra Seafood Processing Ltd

Cold Store Conditions of Business

1. Undertaking. By Libra Seafood Processing Ltd

- 1.1 Libra Seafood Processing Ltd undertakes services subject solely to these Conditions to the exclusion of any terms and conditions which the Buyer purports to apply or which are implied by trade, custom or course of dealing. These Conditions can only be varied in writing signed by a Director or the Secretary of Libra Seafood Processing Ltd or by such other officer or employee of Libra Seafood Processing Ltd who shall have clear ostensible authority in that behalf and contracts for itself and as agent of and trustee for its employees, agents and sub-contractors.
- 1.2 Libra Seafood Processing Ltd's employees are not authorised to make any representation covering the Goods unless confirmed in writing and the Buyer acknowledges that it does not rely on and waives any claim for breach of, any such representation (unless such representation is made fraudulently).

2. Interpretation

2.1 In these Conditions:

'LSP Ltd' means Libra Seafood Processing Ltd (registered number:4601151)

'Customer' means the party contracting with LSP Ltd;

'Owner' means the person or persons owning the Goods;

'Goods' means the Customer's goods (or any part of them) which are more particularly described in the Contract and includes pallets, palletainers, converters and/ or other equipment associated with these goods.

'Contract' means the Contract subject to these Conditions entered into between LSP Ltd and the Customer for the storage of the Goods and confirmed in writing by LSP Ltd to the Customer relating to the services to be provided to the Customer including (but without limitation) the price to be charged for the services, the nature of the Goods and any special conditions for the storage of the Goods that LSP Ltd agrees to provide;

'Premises' means LSP limited's premises situated at [Unit D, Viking Business Park, Rolling Mill Road, Jarrow, Tyne & Wear, NE32 3DP] or such other premises as LSP Limited may determine at its sole discretion;

'Regulations' means the Regulations (if any) published by LSP Ltd or notified to the Customer from time to time relating to the regulation of its provision of the services to which these Conditions apply and either notified to the Customer at the time of entry into the Contract or (in the case of subsequent publication or variation thereof by LSP Ltd) as notified to the Customer to take effect upon the expiration of reasonable notice; and

'Services' means the provision of cold storage services for the Goods.

- 2.2 The headings in these Conditions are for convenience only and shall not effect their interpretation.

3. Services

- 3.1 The Customer agrees to purchase and LSP Ltd agrees to provide the Services at the Premises in accordance with these Conditions, the Regulations and the Contract to the levels and in the manner set out in the Contract.
- 3.2 Each Contract shall have effect from the date of that Contract and shall continue for the period specified in the Contract or if no period is specified a minimum period of [2] months unless terminated by either party giving notice to the other in accordance with clause 10.

4. Customer's Warranties.

- 4.1 The Customer warrants to LSP Ltd that it is the Owner or is authorised by the Owner to accept these Conditions on behalf of the Owner and undertakes either as, or on behalf of, the Owner and on behalf of all persons acting on behalf of the Customer and/ or Owner to comply with or procure compliance with the Contract, the Regulations and these Conditions.
- 4.2 The Customer warrants that the Goods are as described to LSP Ltd in the Contract and in particular as to nature, weight, quantity, condition and dimensions.
- 4.3 The Customer shall be responsible for the completeness, suitability, legal compliance, accuracy and timely delivery of all necessary information, goods and materials to enable LSP Ltd to perform the Services in accordance with the Contract.

5. Condition of the Goods

- 5.1 Goods shall be presented in good and wholesome condition and in the form and at such temperature as may be required by the Contract and / or the Regulations but shall not be presented if they require any special treatment outside the ordinary course of business of LSP Ltd unless LSP Ltd has agreed in writing prior to such presentation to provide such special treatment. If any special treatment within the ordinary course of the business of LSP Ltd (or specially agreed as aforesaid) is required the Goods shall be accompanied by written information concerning such special treatment. In this Condition 'ordinary course of business' shall (without prejudice to its generality) exclude any treatment not capable of performance save with undue inconvenience or extra cost to LSP Ltd.
- 5.2 Goods which in the reasonable opinion of LSP Ltd appear either not to be in a. good and wholesome condition or to be likely (by reason of such deficiency in condition or otherwise) to cause damage to other goods or property must be removed by the Customer forthwith on receipt of notice requiring the same. Provided always that if LSP Ltd is unable to give such notice or if in LSP Ltd's reasonable opinion the Goods require immediate removal to avoid or mitigate such damage, LSP Ltd may at the Customer's expense and risk arrange for alternative storage or disposal or (if appropriate) destruction of such Goods. The Customer will be liable to LSP Ltd for and shall indemnify LSP Ltd in respect of all claims against, and damage, costs and expenses suffered or incurred by, LSP Ltd in consequence of the condition of or any deficiency in the Goods save to the extent that LSP Ltd may be liable therefore under condition 8.3 if applicable.
- 5.3 Although undertaking no duty to do so, LSP Ltd, may for the purpose of detecting or ascertaining whether or not there exists any deficiency as referred to in Condition 4.2, break bulk and open packages when Goods are presented and at any time thereafter. Following examination of the Goods, LSP Ltd will restore the packages as near as practicably possible to the condition in which received.
- 5.4 In the absence of agreement by LSP Ltd for any special treatment of the Goods pursuant to condition 4.1, LSP Ltd may treat the Goods in such a way as in its opinion is best able to preserve them but (save to the extent that LSP Ltd may be liable under Condition 8.3), without responsibility for the suitability of the treatment selected.

6. Bulk Storage

Except as necessary to apply any special treatment agreed by LSP Ltd pursuant to Condition 4.1, LSP Ltd shall be entitled to store in bulk all Goods of apparently similar nature received from the same Customer and shall not be required to identify individual consignments of Goods so stored. If the Customer requires LSP Ltd not to store the Goods in bulk then LSP Ltd shall (if prepared to comply) be entitled to a reasonable upward adjustment of its charges for complying with such requirement.

7. Charges

- 7.1 LSP Ltd's charges are in respect of Goods presented in accordance with these Conditions, the Contract and the Regulations. If Goods are not so presented, LSP Ltd may either reject them or (in consideration of an extra charge to be agreed with the Customer) retain them. LSP Ltd also reserves the right to refuse to accept Goods for any other reason.
- 7.2 LSP Ltd may vary its charges at any time by giving a minimum of twenty-eight days written notice thereof to the Customer.
- 7.3 Charges shall be payable in accordance with the terms of the Contract or within seven days from the date of LSP Ltd's invoice if no other condition has been agreed in writing between the parties. Interest at 3% over the base lending rate of Royal Bank of Scotland calculated on a daily basis shall be payable on all overdue amounts unless otherwise specifically agreed by LSP Ltd in writing.
- 7.4 The Customer will be charged a reasonable proportion of any expenses necessarily incurred by LSP Ltd in complying with the Prevention of Damage by Pests Act 1949 (as amended or reenacted from time to time) or in complying with any other statutory duties imposed from time to time in relation to the Goods provided that if the Goods are the Direct cause of introduction of pests into the store the whole of the expenses of complying with the said Act shall be reimbursed by the Customer.

8. Insurance Liability

- 8.1 LSP Ltd will not insure the Goods on behalf of the Customer for any loss of or damage to the Goods howsoever arising (other than due to the negligence of LSP Ltd), and the Customer shall be responsible at all times for keeping the Goods adequately insured, including (but not limited to) arranging relevant cover for any loss or damage due to fire, floods, equipment failure and theft or malicious damage by a third party.
- 8.2 The Customer shall indemnify and hold harmless LSP Ltd, its employees, agents and sub-contractors against all claims in respect of which LSP Ltd, its employees, agents or sub-contractors are expressed not to be liable in accordance with Condition 11 and to the extent that any claim admissible under Condition 11 shall exceed the limit of liability of LSP Ltd, its employees, agents or sub-contractors specified there under.
- 8.3 The Customer shall indemnify and hold harmless LSP Ltd, its employees, agents and sub-contractors against all claims and losses (and all costs and expenses reasonably incurred relating there to) occasioned by the nature or condition of the Goods save to the extent that LSP Ltd, its employees, agents or sub-contractors may be liable under Condition 11.

(Note: the Customer should have regard (so far as is applicable) to the effect on the terms of the Customers insurance(s) (if any) of the indemnities under Conditions 8.2 and 8.3 and to LSP Ltd's limitation of liability under Condition 8.3.)

9. Transfer of Goods

LSP Ltd will transfer Goods from the account of the Customer to the account of any other person ('the transferee') on receipt of a written authorisation from the Customer, but only on terms that:

- 9.1 The transferring Customer has caused the transferee to forthwith notify to LSP Ltd of the transferees acceptance of these Conditions (and any revised relative charging referred to in the note to this Condition) as if the transferee were the Customer;
- 9.2 The transferring Customer guarantees payment by the transferee of the cost of any movement of the Goods and of charges accruing in respect of such Goods during the period of fourteen days after transfer; and
- 9.3 Any lien against the Customer existing prior to the transfer shall remain exercisable.

(Note: the charges made to the transferee will not necessarily be at the same rate as the charges to the transferring Customer).

10. Termination

- 10.1 The Contract shall terminate immediately upon the happening of any one or more of the following:-
 - 10.1.2 the Customer is dissolved or has a bankruptcy order made against him or makes an arrangement or composition with his creditors; or
 - 10.1.3 the Customer (being a body corporate) convenes a meeting of creditors or enters into liquidation (whether voluntary or compulsory); or
 - 10.1.4 the Customer has a receiver, manager or administrative receiver appointed of the whole or any part of its undertaking, property or assets; or
 - 10.1.5 a resolution is passed or a petition presented to any court for the winding-up of the Customer or any person takes any step to appoint an administrator of the Customer; or
 - 10.1.6 any proceedings are commenced relating to the insolvency or possible insolvency of the Customer in any jurisdiction to which the Customer or any of its assets is subject.
- 10.2 The Contract shall terminate immediately upon service of written notice of termination by LSP Ltd or the Customer on the happening of any one or more of the following:-
 - 10.2.1 the Customer commits a material breach of any of its obligations under the Contract or under any other contract with LSP Ltd, which is not remedied within 14 days of a notice from LSP Ltd notifying the Customer of its breach and requiring remedy of the same; or
 - 10.2.2 the Customer is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
 - 10.2.3 the Customer ceases or threatens to cease to trade.
- 10.3 The Contract may be terminated by either party giving to the other not less than 1 month's notice in writing.
- 10.4 Termination of the Contract shall not affect rights and duties of the parties accrued before termination.

11. Liability

- 11.1 The following sets out the entire financial liability of LSP Ltd (including any liability for the acts or omissions of its employees, agents or subcontractors) to the Customer in respect of any breach of these Conditions, and any representation, statement or act or omission (including negligence) arising under or in connection with the Contract and in respect of any contemplated performance or lack of performance.
- 11.2 Nothing in these Conditions excludes or limits LSP Ltd's liability for death or personal injury caused by LSP Ltd's negligence or for fraudulent misrepresentation.

11.3 Subject to condition 11.4:-

11.3.1 LSP Ltd shall not be liable to the Customer for:-

11.3.1.1 any loss of profit, loss of production, financial loss, depletion of goodwill; and

11.3.1.1 any indirect loss, damage, costs or expenses whatsoever;

in each case which arise out of or in connection with the Contract or its contemplated performance or lack of performance; and

11.3.2 subject to condition 11.3.1, LSP Ltd's total liability for all and any claims in contract, tort including negligence or breach of statutory duty, misrepresentation or otherwise, arising out of or in connection with the performance or contemplated performance or lack of performance of the Contract shall be limited to **[specify insurance level]**.

12. Lien

LSP Ltd shall have a general lien on the Goods and all the property (including for the avoidance of doubt any other Goods the subject of a separate contract for the provision of cold storage services) of the Customer or Owner within the control of LSP Ltd for payment of all debts accrued or accruing to LSP Ltd on any account whatsoever with the Customer. If such lien is not satisfied after thirty days written notice of its exercise has been given to the Customer the Goods or any part of them or said other property or Goods may be sold to defray the lien and all proper expenses incurred.

13. Engagement of other Parties

LSP Ltd may engage the services of others within a reasonable distance of the LSP Ltd premises for the purpose of fulfilling the Contract in whole or in part and may, after endeavoring to consult with the Customer, transfer at its own expense any Goods between or within stores.

14. Notices

Any notice falling to be given by LSP Ltd to the Customer pursuant to these Conditions or otherwise shall be duly given if posted by prepaid letter to the last notified address of the Customer and such notice shall be deemed to have been received by the Customer three clear working days after posting by prepaid letter (or in the case of the exercise of a lien hereunder by recorded delivery).

15. Governing Law

Contracts intended to be performed by LSP Ltd wholly in Scotland shall be governed by the Law of Scotland and all other contracts shall be governed by the law of England.

16. Removal of Goods

LSP Ltd may at any time give not less than fourteen days written notice to the Customer requiring removal of the Goods. If the Goods are not so removed LSP Ltd shall be entitled after the expiration of such notice (or earlier if the necessities of the case reasonably so required) to give not less than seven days written notice of LSP Ltd intention to sell the Goods and deduct from the proceeds all outstanding charges, and any interest due thereon, and the cost of disposal and, upon the expiration of such further notice, so to deal (accounting to the Customer for the net proceeds of sale, if any, after such deductions).

17. Supplementary Services

If LSP Ltd agrees with the Customer to arrange for any other person(s) to perform for the Customer any supplementary services which have not been undertaken by LSP Ltd, it does so only on terms that LSP Ltd is in no way whatsoever responsible therefore to the Customer, although LSP Ltd will endeavor to inform the Customer of the identity of and the terms and conditions to be imposed by such person(s) proposed of the purpose.

18. Force Majeure

LSP Ltd shall be relieved of its contractual obligations to the extent that performance thereof is prevented, frustrated, impeded or delayed directly or indirectly by or in consequence of any default of the Customer, statute, regulation or order of any government, council or other authority, riot strike, lockout, industrial dispute or other labour disturbance, storm, flood, fire, explosion, power failure, or breakdown of machinery.

19. Third Party Rights

Nothing in these Conditions shall confer on any third party any benefit whatsoever or the right to enforce any term of any contract to which these Conditions relate and the Contracts (Rights of Third Parties) Act 1999 shall not apply.

