

## **SOLUFEED LTD. - CONDITIONS OF SALE**

### **1. Interpretation**

1.1 In these conditions:-

'BUYER' means the party which accepts a quotation given to it by the Seller for the sale of the Goods and/or the supply of services.

'CONDITIONS' means the standard terms and conditions of supply set out in this document and (unless the text otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and the Seller.

'CONTRACT' means the goods set out in the Quotation and/or Order Confirmation (including any instalment of the goods or any part of them) which the Seller is to supply and/or perform the Services upon in accordance with these Conditions.

'ORDER CONFIRMATION' means written confirmation or acknowledgement given by the Seller to the Buyer that the Seller agrees to supply an order of the Buyer on these Conditions.

'PRICE' means the price of Goods and/or the charge for the Services.

'QUOTATION' means a quotation, price list or pro-forma invoice given by the Seller to the Buyer on the basis of the Conditions.

'SELLER' means Solufeed Ltd. (Company registration number 3641737) whose registered office is situated at Highground Orchards Office, Highground Lane, Barnham, Nr. Bognor Regis, West Sussex, England PO22 0BT).

'SERVICES' means the services (if any) described in the Quotation and/or Order Confirmation

'SPECIFICATION' includes any plans, drawings, data, formulae, instructions or other information relating to the Goods and Services.

'WRITING' includes telex, cable, facsimile transmissions and comparable means of communication.

1.2 Any reference in these Conditions to a statute or a provision of a statute shall be construed as a reference to that statute or provision as amended, re-enacted or extended at the relevant time.

1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation

### **2 Basis of supply**

2.1 The Quotation shall constitute an invitation to treat by the Seller

2.2 An order submitted by the Buyer shall constitute an offer by the buyer to purchase the Goods and/or acquire the benefit of the Services subject to these Conditions.

2.3 No order shall be accepted or deemed to be accepted by the Seller unless and until confirmed in Writing by the Seller's authorised representative on behalf of the Seller by way of Order Confirmation.

2.4 The Seller shall supply and the Buyer shall acquire the Goods and/or the benefit of the Services in accordance with the Seller's Order Confirmation subject to these Conditions, which shall govern the Contract to the exclusion of any other terms and

- conditions subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made, by the Buyer.
- 2.5 No variation of these Conditions shall be binding unless agreed in Writing between the authorised representatives of the Buyer and the Seller.
  - 2.6 The Seller's employees or agents are not authorised to make any representations concerning the Goods or the Services unless confirmed by the Seller in Writing. In entering into the Contract the Buyer acknowledges that it does not rely on any such representations which are not so confirmed.
  - 2.7 The Seller is not liable for any loss, damage, costs or expenses to the Buyer for any advice or recommendation given by the Seller or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Goods or Services unless it is first confirmed in Writing by the Seller.
  - 2.8 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, order confirmation, invoice or other document or information issued by the Seller shall be subject to correction without liability on the part of the Seller.
  - 2.9 The Buyer shall be solely responsible for the efficacy or otherwise of any information, advice or instructions regarding the Goods which the Buyer attaches to the Goods on the Buyer's instructions. The Buyer shall be liable for and shall indemnify the Seller against all losses damages costs and expenses awarded against or incurred by the Seller in connection with or paid or agreed to be paid by the Seller in settlement of any claim arising from such information, advice or instructions.

#### **8.0 Orders and specifications**

- 3.1 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer.
- 3.2 The quantity, quality and description of the Goods and/or the Services shall, subject as provided in these Conditions, be as specified in the Quotation and/or Order Acknowledgement and/or in any applicable Specification supplied by the Buyer to the Seller and agreed in Writing by the Buyer.
- 3.3 If the Goods are to be manufactured by the Seller in accordance with a specification submitted by the Buyer, the Buyer shall indemnify the Seller against all loss, damages, costs and expenses awarded against or incurred by the Seller in connection with or paid or agreed to be paid by the Seller in settlement of any claim for infringement of any patent, copyright, design, trademark or other industrial or intellectual property rights of any other person which results from the Seller's use of the Buyer's specification.
- 3.4 The Seller reserves the right to make any changes in the specification of the Goods or the Services which are required to conform with or any applicable statutory or EC requirements or, where the Goods or the Services are to be supplied to the Seller's specification, which do not materially affect their quality or performance.
- 3.5 No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in Writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs (including the cost of all labour and material used), damages, charges and expenses incurred by the Seller as a result of the cancellation.

#### **4 Price**

- 4.1 The Price shall be the Seller's quoted price from time to time. Unless expressly stated to be firm for a period, the Seller's prices are subject to variation and may be altered by the Seller without giving notice to the Buyer.
- 4.2 The Seller reserves the right, by giving notice to the Buyer at any time before delivery, to increase the Price to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant

increase in the costs of labour, material or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.

- 4.3 All prices are exclusive of VAT and other duties or taxes that are applicable which will be charged at the appropriate rate.

## **5 Terms of Payment**

- 5.1 Subject to any special terms agreed in Writing between the Buyer and the Seller, the Seller shall be entitled to invoice the Buyer for the Price on or at any time after delivery of the Goods, unless the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods, in which event the Seller shall be entitled to invoice the Buyer for the Price at any time after the Seller has notified the Buyer that the Goods are ready for collection or (as the case may be) the Seller has tendered delivery of the Goods.
- 5.2 The Buyer shall pay the Price without any deductions on or before the due payment date as described on the Quotation and/or Order Confirmation and the seller shall be entitled to recover the Price, notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Buyer. The time of payment of the Price shall be of the essence of the Contract. Receipts for payment will be issued only on request.
- 5.3 If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:
- 5.3.1 cancel the contract or suspend any further deliveries;
- 5.3.2 appropriate any payment made by the Buyer to such of the Goods or the Services (or the Goods or Services supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer); and
- 5.3.3 charge the Buyer interest (both before and after any judgement) on the amount unpaid, at the rate of 4 percent per annum above Lloyds Bank base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).
- 5.4 Payment by letter of credit may be required and this will be stated on the Quotation and/or Order Confirmation. Any letter of credit must be confirmed, irrevocable, established with a first-class bank and be worded "by acceptance" unless otherwise agreed by the Seller in writing.
- 5.5 No bank, courier or other charges related to the establishment of letters of credit are to be charged to the account of the Seller unless agreed by the Seller in writing beforehand.
- 5.6 Charges related to amending letters of credit are for the account of the Buyer unless agreed by the seller in writing.
- 5.7 Payment is deemed not to have been made until any and all cheques, drafts and bills by which payment is to be effected have been cleared or honoured (as the case may be).

## **6 Shipment and delivery conditions**

- 6.1 Terms of delivery are shown on the quotation and/or order confirmation using standard abbreviations that are fully described in the International Chamber of Commerce publications INCOTERMS<sup>®</sup> 2010.
- 6.2 The transfer of risk, licences, authorisations and formalities shall be appropriate to the terms of the delivery as described in the International Chamber of Commerce publications INCOTERMS<sup>®</sup> 2010.

- 6.3 The Buyer shall be responsible for complying with any legislation or regulations governing the importation of goods into the country of destination and for the payment of clearance charges, handling charges and any duties unless agreed by the Seller in writing.
- 6.4 Any dates quoted for delivery of the Goods are approximate only and the Seller shall not be liable for any delay in delivery of the Goods howsoever caused. Time for delivery shall not be of the essence of the Contract unless previously agreed by the Seller in writing. The Goods may be delivered by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Buyer.
- 6.5 Where the Goods are delivered in instalments, each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.
- 6.6 If the Seller fails to deliver the Goods (or any instalment) for any reason other than any cause beyond the Seller's reasonable control or the Buyer's fault, and the Seller is accordingly liable to the Buyer, the Seller's liability shall be limited to the excess (if any) of the cost the Buyer (in the cheapest available market) of similar goods to replace those not delivered over the Price.
- 6.7 If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control and by reason of the Seller's fault) then, without prejudice to any other right or remedy available to the Seller, the Seller may:
- 6.7.1 store the Goods until actual delivery and charge the Buyer for reasonable costs(including insurance) of storage; or
- 6.7.2 sell the Goods at the best price readily obtainable and (after deducting all reasonable selling and storage expenses) account to the Buyer for the excess over the Price under the Contract or charge the Buyer for any shortfall below the Price under the Contract.
- 6.8 If the agreed terms of delivery, as described in INCOTERMS® 2010, and confirmed on the Order Acknowledgement require the Seller to effect delivery, then the Seller will provide the delivery documentation described in the INCOTERMS® 2010 that is relevant to the terms agree.
- 6.9 It is the responsibility of the Buyer to confirm in writing any supplementary documents that the Seller must provide to facilitate delivery, import and clearance of the Goods.
- 6.10 Unless agreed in the initial Quotation and confirmed on the Order Acknowledgement, any costs associated with obtaining documentation, certification, analysis reports or other supplementary documentation shall be for the account of the Buyer.

## **7 Risk and property**

- 7.1 Risk of damage to or loss of the Goods shall pass to the Buyer at the time appropriate to the terms of the delivery as described in the International Chamber of Commerce publication INCOTERMS® 2010.
- 7.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the property in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the Price and the price of all other Goods and Services agreed to be supplied by the Seller to the Buyer for which payment is then due.
- 7.3 Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as the seller's fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and

insured and identified as the Seller's property, but shall be entitled to resell or use the Goods in the ordinary course of its business.

- 7.4 Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold), the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.
- 7.5 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller, but if the Buyer does so all moneys owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.
- 7.6 The Seller shall have a first and paramount lien over any goods or paramount lien over any goods or property of the Buyer in its possession for all sums due and payable to the Seller.
- 7.7 Risk of damage to or loss of any free issue material supplied by the Buyer to the Seller remain at all time with the Buyer who shall bear full responsibility for insuring or otherwise safeguarding such material.

## **8 Warranties and liability**

- 8.1 Subject to the conditions set out below the Seller warrants that the Goods and Services will correspond with the Specification at the time of delivery
- 8.2 The above warranty is given by the Seller subject to the following conditions:
  - 8.1.1 the Seller shall be under no liability in respect of any defect in the Goods or Services arising from any specification supplied by the Buyer
  - 8.1.2 the Seller shall be under no liability in respect to any defect arising from fair wear and tear, wilful damage, negligence, improper or unsuitable storage conditions, mishandling in transit, abnormal working conditions, failure to follow the Seller's instructions (whether oral or in writing), misuse or alteration of the Goods without the Seller's approval.
  - 8.1.3 The Seller shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total Price has not been paid by the due date for payment;
  - 8.1.4 The above warranty does not extend to goods or material not manufactured by the Seller, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Seller.
- 8.2 Subject as expressly provided in these Conditions all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 8.3 The application use and processing of the Goods and or Services is the absolute responsibility of the Buyer. Any technical and other advice information and date provided by the Seller, whether verbally, in writing or by way of tests or trials is given without warranty, to the full extent permitted by law.
- 8.4 Any claim by the Buyer which is based on any defect in the quality or condition of the Goods or the Services or their failure to correspond with the Specification shall (whether or not delivery is refused by the Buyer) be notified to the Seller within 7 days from date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not refused, and the Buyer does not notify the Seller accordingly, the Buyer shall not be entitled to reject the Goods and the Seller shall have no liability for such defect or failure, and the Buyer shall be bound to pay the Price as if the Goods had been delivered in accordance with the Contract.

- 8.5 Where the Seller is responsible for the delivery of the Goods, then Goods delivered which are immediately usually ascertainable as damaged must be signed for as such and retained at the buyers risk and expense for inspection by the seller or sellers agent. Such inspection will be carried out by the Seller within fourteen days on receipt by the Seller of the delivery note duly signed.
- 8.6 Where any valid claim in respect of any of the Goods or the Services which is based on any defect in the quality or condition thereof or their failure to meet the Specification is notified to the Seller in accordance with these Conditions, the Seller shall be entitled to replace the Goods or Services (or the part in question) free of charge or, at the Seller's sole discretion, refund to the Buyer the Price (or a proportionate part of the price), but the Seller shall have no further liability to the Buyer.
- 8.7 Nothing in these terms and conditions shall limit or exclude the Seller's liability for:
- 8.7.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- 8.7.2 fraud or fraudulent misrepresentation;
- 8.7.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
- 8.7.4 defective products under the Consumer Protection Act 1987.
- 8.8 The Seller shall not be liable to the Buyer by reason of any representation (unless fraudulent) or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any indirect, special or consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of the Seller, its employees, or agents or otherwise) which arise out of or in any connection with the supply of the Goods or the Services or their use or resale by the Buyer, and the entire liability of the Seller under or in connection with the Contract shall not exceed the Price, except as expressly provided in these Conditions.
- 8.9 The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Goods or the Services, if the failure was due to any cause beyond the Seller's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Seller's reasonable control:
- 8.9.1 Act of God, explosion, flood, tempest, fire or accident.
- 8.9.2 War or threat of war, terrorist act, sabotage, insurrection, civil disturbance or requisition;
- 8.9.3 Acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
- 8.9.4 Import or export regulations or embargoes;
- 8.9.5 Strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or a third party);
- 8.9.6 Difficulties in obtaining raw materials, labour, fuel, parts or machinery;
- 8.9.7 Power failure or breakdown in machinery.

## **9 Insolvency of the Buyer**

9.1 This clause applies if:

- 9.1.1 the Buyer makes any voluntary arrangement with its creditors or (being an individual or firm) becomes the subject of a bankruptcy petition or (being a company) becomes or is likely to become subject to administration proceedings, or becomes or is likely to become the subject of a winding up petition, is unable to pay its debts or has no reasonable prospect of so doing, commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts or

goes or becomes likely to go into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or

- 9.1.2 the Buyer ceases, or threatens to cease, to carry on business; or
- 9.1.3 the Seller reasonably apprehends that any of the events mentions above is about to occur in relation to the Buyer and notifies the Buyer accordingly.

- 9.2 If this clause applies then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Goods have been delivered but not paid for the Price shall become immediately due and payable notwithstanding any previous agreement to the contrary.

## **10 Return of Goods**

- 10.1 Unless otherwise specified packages and pallets are non-returnable by the Buyer.
- 10.2 No goods will be accepted for return without the Seller's written authorisation. Carriage on return is the responsibility of the Buyer unless agreed in writing by the Seller.

## **11 Buyers Undertakings**

The Buyer undertakes to use, handle and store the Goods in accordance with the Seller's written Recommendations for Use and all relevant statutory provisions and will notify any person to whom he passes the Goods for the need to comply with such Recommendations for Use and will at all times indemnify the Seller in respect of loss or damage suffered by any person firm company or property and against all actions claims demands costs charges or expenses in connection therewith for which the Seller may become liable in respect of the Goods.

## **12 Health and Safety**

The Seller gives notice to the Buyer that the Seller has available information and literature concerning the conditions necessary to ensure that the goods supplied in accordance with these Conditions will be safe and without risk to health when properly used. If the Buyer is not already in possession of such literature or requires any information or advice in connection with the safe use of the goods at work the Buyer must immediately contact the Seller.

## **13 General**

- 13.1 Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
- 13.2 No waiver by the Seller or any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 13.3 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected.

13.4 The Contract shall be governed by the laws of England and Wales and the Buyer and Seller agree to submit to the non-exclusive jurisdiction of the English courts.