

BEWLEY'S TEA AND COFFEE UK LIMITED (BEWLEY'S) TERMS & CONDITIONS OF SUPPLY

Part 1 - General

1 BEWLEY'S TERMS & CONDITIONS

- 1.1 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Supplier which is not set out in the Contract.
- 1.2 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 1.3 Any variation, including the introduction of any additional terms and conditions, to the Contract shall only be valid if made in writing and signed by an Officer of both parties.
- 1.4 Parts 1 and 2 of these Conditions shall apply to the supply of both Goods and Services, Parts 1 and 3 shall apply to the sale of Equipment and Parts 1 and 4 shall apply to the rental of Equipment.

2 INTERPRETATION

- 2.1 Definitions. In these Conditions, the following definitions apply:

Applicable Laws: all applicable laws, statutes, regulations, guidelines and codes of practice from time to time in force.

Brands: the following brands used by Bewley's from time to time:

- (a) "Bewley's";
- (b) "Eros";
- (c) "Grumpy Mule";
- (d) "BE";
- (e) "One World Bakery"; and
- (f) any other brands or trading names agreed between the parties in writing from time to time.

Brexit: the UK ceasing to be a member state of the European Union, regardless of which countries comprise the UK at such date.

Brexit Trigger Event: any and all of the following to the extent caused by Brexit or any discussions, proposals, negotiations, or any other steps taken by the UK government or a body in any other jurisdiction in anticipation of, or related to the preparation for, Brexit:

- (a) any change in the law or a new requirement to comply with any existing law or any existing law ceasing to apply to a party;
- (b) in any jurisdiction, the imposition of, or a change to, any duty, tax or levy on the import or export of: (i) the Goods; (ii) any products, raw materials or components necessary to manufacture, package and/or transport the Goods; or (iii) any products into which the Goods are to be incorporated or in conjunction with which the Goods are to be commercially exploited;

- (c) in any jurisdiction, the loss of, a change to or the imposition of a new requirement for any licence or consent required by the Supplier to perform any of its obligations under the Contract;
- (d) depreciation of the value of sterling as against foreign currency by more than 10% since the price payable for the Goods, Services or Equipment was last determined under the Contract. The rate of exchange that shall be used to determine the rate of any such depreciation shall be [the daily spot exchange rate published by the Bank of England]; or
- (e) an increase in the costs incurred by the Supplier in performing its obligations under the Contract of at least 10% since the price payable for the Goods, Services or Equipment was last determined.

Business Day: a day (other than a Saturday, Sunday or a public holiday) when banks in the City of London are open for business.

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

Confidential Information: any and all information provided by either party under the Contract that is marked as being confidential or of a type that the other party could reasonably have been expected to know that the information was confidential, including: (i) the terms of the Contract; (ii) any information obtained during the negotiation of and/or in connection with the Contract; and/or (iii) any information connected with the business or finances of the disclosing party.

Contract: the contract between the Supplier and the Customer for the supply of Goods and/or Services and/or for the sale and/or rental or loan of Equipment in accordance with these Conditions.

Customer: the person or firm who purchases the Goods and/or Services from the Supplier or who purchases or rents the Equipment from the Supplier.

Delivery Location: has the meaning set out in clause 24.2.

Equipment: shall include coffee machines, boilers and related equipment supplied by the Supplier to the Customer in accordance with Part 3 or Part 4 of these Conditions by way of sale, loan or hire.

Equipment Request Form: a written request to the Supplier in a form approved by the Supplier, from time to time, for the purchase, loan or hire of Equipment.

Force Majeure Event: has the meaning given to it in clause 3.1.

Goods: the goods to be supplied by the Supplier to the Customer under this Contract, including dry coffee and tea products and related ancillary products and any other product supplied by the Supplier from time to time.

Insolvency Event means in relation to a Party:

- (a) if a petition is filed, a notice is given, an order is made or a resolution is passed for the winding up of the other party or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order of the other party; or
- (b) an order is made for the appointment of an administrator to manage the affairs, business and property of the other party or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the other party or notice of intention to appoint an administrator is given by the other party or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986); or

- (c) a receiver is appointed over any of the other Party's assets or undertaking or if circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the other party or if any other person takes possession of or sells the other party's assets; or
- (d) a floating chargeholder over a Party's assets becomes entitled to appoint or appoints an administrative receiver; or
- (e) the other party makes any arrangement or composition with all or any class of its creditors or makes an application to a court of competent jurisdiction for the protection of its creditors in any way; or
- (f) the other party is, or is reasonably considered to be unable to pay its debts when they fall due as defined in Section 123 of the Insolvency Act 1986; or
- (g) any distraint is levied against the other party or its property by any third party provided always that such event is material in nature and not remedied or corrected within a reasonable period of time; or
- (h) if such party suspends, or threatens to suspend, or ceases, or threatens to cease, to carry on business; or
- (i) any event analogous to the circumstances in sub-clauses (a) – (h) above occurs in any relevant jurisdiction.

Intellectual Property Rights: all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

Normal Hours: shall have the meaning given in clause 26.3.

Officer: a director or duly authorised signatory of the Supplier.

Order: the Customer's order for

- (a) the Goods and/or for the Services whether made in writing or orally, or otherwise; and/or
- (b) for the purchase, loan or hire of Equipment (as appropriate) as set out in an Equipment Request Form, to the Supplier or any agent or other person authorised by the Supplier to accept such orders.

Rental Agreement: means the agreement between the Supplier and the Customer in respect of any Equipment to be provided to the Customer on a rental or free on loan basis under the Contract, which is subject to these Conditions.

Returns Request: means a request made in accordance with clause 25.7.

Services: the services supplied by the Supplier to the Customer in relation to the care, maintenance and repair of Equipment.

Services Agreement: means the agreement between the Supplier and the Customer in respect of any Services to be provided to the Customer by the Supplier under the Contract, which is subject to these Conditions.

Supplier: Bewley's.

Supplier Materials: has the meaning given to it in clause 16.1.7.

2.2 In these Conditions, the following rules apply:

- 2.2.1 unless the context requires otherwise, words denoting the singular shall include the plural and vice versa and words denoting a person shall include a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- 2.2.2 a reference to a party includes its personal representatives, successors or permitted assigns;
- 2.2.3 a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended, replaced or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- 2.2.4 any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms;
- 2.2.5 a reference to writing or written includes faxes and electronic mails;
- 2.2.6 any headings in these Conditions are for ease of reference only and shall not affect the interpretation or construction of these Conditions; and
- 2.2.7 these Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. .

3 FORCE MAJEURE AND BREXIT TRIGGER EVENTS:

- 3.1 For the purposes of this Contract, Force Majeure Event means an event beyond the reasonable control of the Supplier including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the party or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.
- 3.2 The Supplier shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event or a Brexit Trigger Event.
- 3.3 If the circumstances of the Force Majeure Event or the Brexit Trigger Event persist for a period of at least 1 month, then either party may terminate the Contract with immediate effect by providing written notice to the other party.

4 ASSIGNMENT AND SUBCONTRACTING:

- 4.1 The Supplier may at any time assign, novate, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract to any third party.
- 4.2 The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

5 NOTICES

Any notice or other communication required to be given to a party under or in connection with this Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other party's main fax number.

6 WAIVER AND CUMULATIVE REMEDIES:

- 6.1 A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- 6.2 Unless specifically provided otherwise, any rights or remedies arising under the Contract are cumulative and do not exclude any rights or remedies provided by law.

7 SEVERANCE:

- 7.1 If a court or any other competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- 7.2 If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

8 NO PARTNERSHIP:

Nothing in the Contract is intended to, nor shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

9 TERM & TERMINATION

- 9.1 Without limiting its other rights or remedies, the Supplier may terminate the Contract at any time by giving the Customer 1 (one) month's written notice.
- 9.2 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if:
 - 9.2.1 The Customer commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within 14 days after receipt of notice in writing of the breach;
 - 9.2.2 the Customer is subject to an Insolvency Event;
 - 9.2.3 the Customer fails to pay any amount due under this Contract on the due date for payment;
 - 9.2.4 the Customer uses non-approved product or product not supplied by the Supplier;
 - 9.2.5 in the reasonable opinion of the Supplier, the Customer acts in a manner which may harm or bring into disrepute the name, goodwill, reputation, image or appeal of the Supplier;
 - 9.2.6 the Customer breaches any Applicable Law;
 - 9.2.7 the performance of any of the Supplier's obligations under the Contract becomes unlawful, including as a result of a Brexit Trigger Event; or
 - 9.2.8 the Customer provides incomplete, materially inaccurate or misleading facts and/or information in connection with this Contract to the Supplier.

- 9.3 Without limiting its other rights or remedies, the Supplier shall have the right to suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and the Supplier if:
- 9.3.1 the Customer fails to pay any amount due under this Contract on the due date for payment;
 - 9.3.2 a Brexit Trigger Event occurs; or
 - 9.3.3 the Customer becomes subject to an Insolvency Event, or the Supplier reasonably believes that the Customer is about to become subject to an Insolvency Event.

10 CONSEQUENCES OF TERMINATION

- 10.1 On termination of the Contract for any reason:
- 10.1.1 the Customer shall return, at the cost of the Customer, any rented Equipment to the Supplier or make such Equipment available for collection by the Supplier and pay to the Supplier all sums payable under this Contract in respect of any Equipment which it has rented from the Supplier. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
 - 10.1.2 any amounts owing by the Supplier to the Customer will be subject to the right of full set off should the Customer default in paying amounts due by the Customer to the Supplier;
 - 10.1.3 the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has yet been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
 - 10.1.4 the accrued rights and remedies of the parties as at termination shall not be affected, 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; and
 - 10.1.5 clauses which expressly or by implication have effect after termination shall continue in full force and effect.

11 USE OF LOGO, NAMES AND MARKS

- 11.1 Where the Supplier grants to the Customer the right to use the Supplier's name, the Brands, logos, icons and other marks (the "**Marks**") such use is permitted solely in connection with the sale of the Supplier's coffee and related products. The Customer agrees to uphold the quality standards and specifications required by the Supplier in the preparation and service of the Supplier's products. If the Customer ceases the exclusive use of the Supplier's coffee and related products, any rights granted to the Customer shall automatically terminate and the Customer shall immediately desist from further use of the Marks and take all steps necessary to completely remove the Marks from its premises.
- 11.2 The Customer agrees and acknowledges that any rights granted under clause 11.1 are personal to the Customer and may not be assigned, sub-licensed or transferred to any third party without the prior written consent of the Supplier.
- 11.3 The Marks may not be altered or reproduced in any form without the prior written consent of the Supplier.

- 11.4 The Supplier shall at all times retain full ownership of the Marks, including any marks that are altered or reproduced by the Customer pursuant to the terms above, any benefit thus accruing is solely for the benefit of the Supplier.
- 11.5 The Supplier reserves the right to periodically audit the Customer's premises for compliance with the Supplier's quality standards and brand specifications (a copy of which shall be made available to the Customer upon request).
- 11.6 All Intellectual Property Rights in or arising out of or in connection with any Goods or Services shall be owned by the Supplier.
- 11.7 The Customer acknowledges that, in respect of any third party Intellectual Property Rights in the Services, the Customer's use of any such Intellectual Property Rights is conditional on the Supplier obtaining a written licence from the relevant licensor on such terms as will entitle the Supplier to license such rights to the Customer.
- 11.8 All Supplier Materials are the exclusive property of the Supplier and, except as expressly set out herein, no rights are granted to the Customer in respect of the Supplier Materials.

12 CONFIDENTIALITY

- 12.1 Each party shall, and shall procure that their employees, agents, representatives and sub-contractors shall, keep secret and not disclose any Confidential Information in relation to the other party obtained by reason of the Contract.
- 12.2 The obligations under clause 12.1 will not apply to the extent that the Confidential Information (based on documentary evidence):
- 12.2.1 is already publicly known at the time it is disclosed to the receiving party;
 - 12.2.2 later becomes publicly known other than as a result of a breach by the receiving party of clause 12.1;
 - 12.2.3 was already known to the receiving party before it was disclosed; or
 - 12.2.4 is required to be disclosed by the receiving party by a court order or statutory law, provided that the receiving party will inform the disclosing party as soon as possible of any such obligation to disclose.
- 12.3 This clause 12 shall continue to apply following termination or expiry of the Contract howsoever arising.

13 CHARGES AND PAYMENT

- 13.1 The Customer shall pay each invoice submitted by the Supplier in full within 30 days of the date of the invoice and time for payment shall be of the essence of the Contract.
- 13.2 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (VAT).
- 13.3 Without limiting any other right or remedy of the Supplier, if the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, as specified on the relevant invoice (**Due Date**), the Supplier shall have the right to charge interest on the overdue amount at a rate of 8% above the base rate of the Bank of England per annum, accruing on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly.

- 13.4 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against the Supplier in order to justify withholding payment of any such amount in whole or in part.
- 13.5 The Supplier may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.
- 13.6 If at any time before the delivery of the Goods or the Equipment the cost to the Supplier of performing any of its obligations under the Contract (in whole or in part) is increased for any reason outside the control of the Supplier (including a Brexit Trigger Event) then the price payable by the Customer for the relevant Goods, Services and/or Equipment shall be increased proportionately and the Customer agrees to pay such increased price.

14 GOVERNING LAW AND JURISDICTION

This Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the laws of England and Wales and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

15 LIMITATION OF LIABILITY

- 15.1 Nothing in these Conditions shall limit or exclude the Supplier's liability:
- 15.1.1 for death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
 - 15.1.2 for fraud or fraudulent misrepresentation;
 - 15.1.3 to the extent that under such liability cannot be limited or excluded as a matter of law.
- 15.2 Subject to clause 15.1, the Supplier shall under no circumstances whatsoever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for the following losses, whether direct or indirect:
- 15.2.1 loss of profit or anticipated profit;
 - 15.2.2 loss of revenue or anticipated revenue;
 - 15.2.3 loss of business or business interruption;
 - 15.2.4 loss of opportunity or loss of contract;
 - 15.2.5 loss of goodwill;
 - 15.2.6 loss of reputation;
 - 15.2.7 any loss or corruption of data,
- or for any indirect or consequential loss, howsoever caused or arising, in connection with the Contract.
- 15.3 Subject to clause 15.1, the total aggregate liability of the Supplier under the Contract shall under no circumstances exceed the lower of: (i) the total amount of charges received from the Customer by the Supplier pursuant to the Contract; or (ii) £1,000,000.
- 15.4 This clause 15 shall survive termination of the Contract.

16 CUSTOMER'S OBLIGATIONS

- 16.1 The Customer shall:
- 16.1.1 co-operate with the Supplier in all matters relating to the Services;
 - 16.1.2 provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier to provide the Services;
 - 16.1.3 provide the Supplier with such information and materials as the Supplier may reasonably require to supply the Services, and ensure that such information is accurate in all material respects;
 - 16.1.4 prepare the Customer's premises for the supply of the Services;
 - 16.1.5 obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
 - 16.1.6 comply with all Applicable Laws in relation to the subject matter of the Contract;
 - 16.1.7 keep and maintain all materials, equipment, documents, point of sale materials and other property of the Supplier (**Supplier Materials**) at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's instructions or authorisation;
 - 16.1.8 notify the Supplier immediately in writing of any proposed material change to the contents of this Contract and/or business performance. This includes but is not limited to the following:
 - (a) change of location of any Equipment;
 - (b) change of control of the Customer or ownership of the business carried on by the Customer;
 - (c) a change of address of the Customer;
 - (d) changes in the viability of the business carried on by the Customer;
 - (e) the existence of a Brexit Trigger Event;
 - (f) the appointment of a liquidator or examiner to the Customer or a receiver over any or all of its assets; and
 - (g) the Customer entering into any agreement or arrangement to purchase coffee/tea from a supplier other than the Supplier,
 - 16.1.9 maintain in effect during the term of this Contract adequate levels of public liability insurance and employer's liability insurance to the satisfaction of the Supplier with a recognised insurance company;
 - 16.1.10 produce, at the Supplier's request, copies of its insurance policies and appropriate endorsements and its premium payment receipts;
 - 16.1.11 shall ensure that persons (employees, agents and/or consumers) under sixteen years of age do not operate any Equipment supplied;
 - 16.1.12 (for safety and quality reasons) when Equipment is not in use, turn off the water supply at source;

- 16.1.13 when Equipment is not in use, switch off the power supply at the electrical socket;
- 16.1.14 in areas of lime-scale or poor water quality, or when requested to do so by the Supplier, ensure a suitable water treatment system is in place;
- 16.1.15 at all times comply and procure that its employees, agents and contractors comply with any and all laws and regulations and all directions and guidelines of the Supplier in relation to hygiene, health and safety, including (without limitation) the Health and Safety at Work Act 1974 and any regulations issued from time to time thereunder, or any comparable legislation in the country where the Customer's premises are located;
- 16.1.16 ensure that the Equipment is only used for the permitted and intended use;
- 16.1.17 ensure that the Equipment shall be operated only by trained and competent employees and contractors and that they shall operate the Equipment supplied by the Supplier with all due care, skill, prudence and diligence; and
- 16.1.18 give notice to the Supplier of any claim by any third party arising out of or in connection with the supply of Goods, the Equipment and/or Services within 7 Business Days from the date when the Customer became aware of such claim.

17 ANTI-BRIBERY

- 17.1 The Customer shall:
 - 17.1.1 comply with all Applicable Laws relating to anti-bribery and anti-corruption including the Bribery Act 2010 (**Relevant Requirements**);
 - 17.1.2 not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK; and
 - 17.1.3 have and shall maintain in place throughout the term of the Contract its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements.

18 DATA PROTECTION

- 18.1 Within this clause, "Personal Data", "Process" and "Processing" shall have the meanings set out in the Data Protection Legislation.
- 18.2 The parties acknowledge and agree that neither party shall Process any Personal Data in connection with the Contract or any of its obligations thereunder. To the extent that any aspect of the Contract requires a party to carry out any Processing in respect of any Personal Data, such party shall immediately notify the other party, and the parties hereby acknowledge and agree that they will enter into a data processing agreement ("**DPA**") in respect of any such Processing that is deemed necessary. The DPA shall be in a form acceptable to the Supplier, and shall set out the purpose and terms of any such Processing. For the avoidance of doubt, neither party shall Process any Personal Data prior to the execution of a DPA in accordance with this clause 18.2.

Part 2 – Conditions applicable to supply of Goods and Services

19 ORDERS FOR GOODS AND SERVICES

- 19.1 An Order in respect of Goods constitutes an offer by the Customer to purchase Goods in accordance with these Conditions. The Order shall not become binding on the parties until such Order is acknowledged by the Supplier.
- 19.2 An Order in respect of Services constitutes an offer by the Customer to purchase Services in accordance with these Conditions. The Order shall not become binding on the parties until the parties have signed a Services Agreement.
- 19.3 Any samples, drawings, descriptive matter or advertising issued by the Supplier and any descriptions of the Goods or illustrations or descriptions of the Services contained in the Supplier's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of the Contract or have any contractual force.
- 19.4 The Customer acknowledges that the Goods and Services are bought relying solely upon the Customer's skill and judgement and, subject to clause 15.1, the Customer hereby disclaims any right to rescind or cancel the Contract or to sue for damages or to claim restitution arising out of any misrepresentation made to the Customer by the Supplier..

20 SUPPLY OF GOODS

The Supplier reserves the right at any time to replace ordered Goods with alternative goods of the same quality or to adjust the goods specification.

21 CUSTOMER DEFAULT

- 21.1 If the Supplier's performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):
- 21.1.1 the Supplier shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
- 21.1.2 the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 21; and
- 21.1.3 the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

22 INDEMNITY

- 22.1 The Customer acknowledges and agrees that the Supplier cannot supervise the use and care of the Goods in the Customer's premises. Therefore, the Customer shall at all times indemnify, and keep indemnified, the Supplier against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Supplier arising out of or in connection with:

- 22.1.1 any claim made against the Supplier by a third party arising out of or in connection with the use of the Goods by the Customer, to the extent that such claim arises, directly or indirectly, out of the negligence of the Customer, its employees, agents or subcontractors;
- 22.1.2 any claim made against the Supplier by a third party for death, personal injury or damage to property arising out of or in connection with defective Goods, to the extent that the defect in the Goods is attributable to the acts or omissions of the Customer, its employees, agents or subcontractors, provided always this indemnity shall not cover the Supplier to the extent that a claim under it results from the Supplier's negligence or wilful misconduct.

23 RESERVATION OF TITLE

- 23.1 The risk in the Goods shall pass to the Customer on completion of delivery in accordance with clause 24.3 or 24.6.1 (as applicable).
- 23.2 Title to the Goods shall not pass to the Customer until the Supplier has received payment in full (in cash or cleared funds) in respect of any and all payments due to the Supplier for any Goods, Services or other products provided to the Customer, whether under the Contract or any other agreements between the Customer and the Supplier, including any applicable interest thereon.
- 23.3 Until title to the Goods has passed to the Customer, the Customer shall:
 - 23.3.1 hold the Goods on a fiduciary basis as the Supplier's bailee;
 - 23.3.2 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
 - 23.3.3 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - 23.3.4 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf from the date of delivery;
 - 23.3.5 notify the Supplier immediately if it becomes subject to Insolvency Event; and
 - 23.3.6 promptly provide the Supplier with such information relating to the Goods as the Supplier may require from time to time, but the Customer may resell or use the Goods in the ordinary course of its business.
- 23.4 If before title to the Goods passes to the Customer the Customer becomes subject to an Insolvency Event, or the Supplier reasonably believes that an Insolvency Event is about to happen, and notifies the Customer accordingly, then, provided the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy the Supplier may have, the Supplier may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

24 DELIVERY OF GOODS

- 24.1 The Supplier shall ensure that each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, all relevant Customer and Supplier reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable).
- 24.2 The Supplier shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (**Delivery Location**).
- 24.3 Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location.

- 24.4 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods or any failure to deliver the Goods on the date quoted by the Supplier.
- 24.5 Goods are delivered on normal Supplier delivery schedules. The Supplier will endeavour, but shall be under no obligation, to meet requests for specific delivery times outside of these schedules, but an additional charge may apply. The Customer will be advised of the Supplier's ability to meet any specific delivery time within [2] Business Days of the date on which an Order is made in accordance with clause 19.1.
- 24.6 If the Customer fails to accept or take delivery of the Goods within 3 Business Days of the Supplier notifying the Customer that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by the Supplier's failure to comply with its obligations under the Contract in respect of the Goods:
- 24.6.1 delivery of the Goods shall be deemed to have been completed at 9.00 am on the fourth Business Day following the day on which the Supplier notified the Customer that the Goods were ready; and
- 24.6.2 the Supplier shall store the Goods, and the Customer shall be liable for all related costs and expenses (including any storage and transport costs and insurance).
- 24.7 If ten Business Days after the Supplier notified the Customer that the Goods were ready for delivery the Customer has not accepted or taken delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods.
- 24.8 The Customer shall not be entitled to reject the Goods if the Supplier delivers more or less than the quantity of Goods specified in the Order, but a pro-rata adjustment shall be made to the Order invoice on receipt of notice from the Customer that the wrong quantity of Goods was delivered, such notice to be delivered within two Business Days from the date of delivery of the Goods.
- 24.9 The Supplier may, at its sole option, deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

25 QUALITY OF GOODS

- 25.1 The Supplier warrants that on delivery, the Goods shall:
- 25.1.1 conform in all material respects with their description; and
- 25.1.2 be free from material defects in design, material and workmanship.
- 25.2 Subject to clause 25.3, if:
- 25.2.1 the Customer gives notice in writing, within two (2) Business Days of delivery of the Goods, that some or all of the Goods do not comply with the warranty set out in clause 25.1;
- 25.2.2 the Supplier is given a reasonable opportunity of examining such Goods and, following such examination, agrees that the Goods do not conform with the warranty set out in clause 25.1; and
- 25.2.3 the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business,

the Supplier shall, at its sole option, repair or replace the defective Goods, or refund the price of the defective Goods in full. This shall be the sole and exclusive remedy of the Customer in respect of any breach of the warranties contained at clause 25.1.

- 25.3 The Supplier shall not be liable for the Goods' failure to comply with the warranty in clause 25.1 if:
- 25.3.1 the Customer makes any further use of such Goods after giving a notice in accordance with clause 25.2.1;
 - 25.3.2 the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;
 - 25.3.3 the defect arises as a result of the Supplier following any drawing, design or Goods Specification supplied by the Customer;
 - 25.3.4 the Customer alters or repairs such Goods without the written consent of the Supplier;
 - 25.3.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions;
 - 25.3.6 the Goods differ from the Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.
- 25.4 Except as provided by section 12 of the Sale of Goods Act 1979 and in this clause 25, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract and the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 25.1.
- 25.5 The terms of these Conditions shall apply to any repaired or replacement Goods supplied by the Supplier under clause 25.2.
- 25.6 The Customer will be liable for delivered goods unless notice of the alleged non-delivery is sent to the Supplier within two (2) Business Days of the receipt of the relevant invoice.
- 25.7 Subject to clause 25.2, if the Customer wishes to return goods, a valid returns request must be communicated to the Supplier's customer care team (on 01494 436426 or via email at orders@bewleys.co.uk) within two (2) Business Days of delivery of the goods and approved by the Customer Care Manager. Valid reasons for return of goods include fulfilment error and defective product. Non-valid reasons for return of goods include out of date stock, short dated stock (where such stock has been in Customer storage), product damaged by Customer or over stocking by Customer. On receipt of an approved Returns Request, a returns order number will be issued to the Customer. Goods returned will be checked by the Supplier and a Credit note if required will be raised by the Customer Accounts team.

26 PAYMENTS AND CHARGES

- 26.1 The price for Goods shall be the price agreed between the Supplier and Customer at the time the Order is placed or the price specified in the invoice issued by the Supplier.
- 26.2 The charges for Services shall be on a time and materials basis or, where it is agreed that the Services are to be provided on a fixed term basis, the charges shall be on a fixed rate as agreed between the parties in writing from time to time.
- 26.3 Where the charges are to be on a time and materials basis, they shall be calculated on the basis of an 8.5 hour day from 8:30 am to 5.00 pm worked on Business Days (**Normal Hours**). The Supplier's standard hourly rates shall be as determined by the Supplier from time to time and the details of which shall be available on request to the Supplier.

- 26.4 The Supplier shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Supplier for the performance of the Services, and for the cost of any materials.
- 26.5 Where a fixed term charge for Services has been agreed, exclusions in respect of the work which is covered by such charge are set out in clauses 28 and 29 hereof. Such excluded work shall be charged on a time and materials basis in accordance with this clause 26.
- 26.6 If replacement Equipment is required on a temporary basis while the Services are being provided, the Supplier will use reasonable endeavours to provide suitable Equipment on a rental basis, such rental to be governed by these Conditions.
- 26.7 The Supplier reserves the right to:
- 26.7.1 increase its standard hourly fee rates for the charges for the Services; and/or
- 26.7.2 increase the price of the Goods, by giving notice to the Customer at any time before delivery to reflect any increase in the cost of the Goods to the Supplier,
- provided that such increase is due to:
- (a) any factor beyond the control of the Supplier;
 - (b) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification;
 - (c) any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give the Supplier adequate or accurate information or instructions in respect of the Goods; or
 - (d) a Brexit Trigger Event.
- 26.8 In respect of Goods, the Supplier shall invoice the Customer on or at any time after completion of delivery. In respect of Services, the Supplier shall invoice the Customer on or at any time after the provision of the Services or the commencement of the fixed term service period (as set out in the Services Agreement).

27 SUPPLY OF SERVICES

- 27.1 The Supplier shall provide the Services to the Customer in accordance with the terms of these Conditions for the duration of the Contract, as set out in the Services Agreement.
- 27.2 The Supplier shall have the right to make any changes to the Services which are necessary to comply with any Applicable Law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.
- 27.3 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.
- 27.4 Any request for the provision of Services will be dealt with as promptly as is reasonably possible by the Supplier upon notification by the Customer in the designated form (call-centre, web or email).
- 27.5 For the avoidance of doubt, the Supplier is unable to carry out work or supply any spare parts for Equipment not supplied by the Supplier unless there is a specific service agreement with the Customer.

27.6 The Customer will be liable for Services delivered unless notice is sent to the Supplier of the service-related query within two (2) Business Days of receipt of the relevant Services.

28 HOURS OF BUSINESS

All Services to be supplied by the Supplier will be supplied during Normal Hours. Any work required outside these Normal Hours will be subject to prior approval and will incur an additional charge as specified in clause 26.5.

29 EXCLUSIONS (CHARGEABLE CALLS)

29.1 Where a fixed term charge has been agreed in respect of the provision of Services in accordance with clause 26.5, any and all work in relation to, or required as a result of, the following shall not be covered by such fixed term charge:

29.1.1 issues in connection with the cleaning of Equipment which remain the sole responsibility of the Customer in accordance with clause 47;

29.1.2 inadequate drainage facilities or poor water quality;

29.1.3 defective or unstable power supply to the Equipment;

29.1.4 failure to follow the Supplier's or the relevant manufacturers' instructions in relation to the use of the Equipment, whether oral or written;

29.1.5 any repair or movement of the Equipment without the Supplier's consent or by any party other than the Supplier or a party engaged by the Supplier for that purpose;

29.1.6 any misuse, malicious or wilful damage, accident damage, neglect, burglary, fire or theft or the loss of parts by the Customer or the Customer's clients;

29.1.7 a request for a beverage temperature and/or volume adjustment;

29.1.8 where the Equipment display prompts the Customer that machine needs maintenance and the Customer fails to attend to Equipment or notify the Supplier accordingly;

29.1.9 any fault that was not caused by a failure of the Equipment;

29.1.10 a request by the Customer for a complete refurbishment of the Equipment off-site;

29.1.11 where the Supplier is unable to carry out a service call due to circumstances outside of the Supplier's reasonable control (e.g. a failure to gain access to the Customer's premises or where the site is not ready for installation etc.); and

29.1.12 the installation, repair or replacement of the parts listed in clause 36.2,

and the Supplier reserves the right to levy a charge, and the Customer agrees to pay such charge, for all such call-outs in accordance with the Supplier's standard call-out rates.

Part 3 – Conditions Applicable to Purchase of Equipment

30 ORDERS FOR PURCHASE OF EQUIPMENT

30.1 The Order constitutes an offer by the Customer to purchase the Equipment in accordance with these Conditions. The Order shall not become binding on the parties until the Supplier has issued an acknowledgment of the Order to the Customer in writing.

31 CHARGES IN RESPECT OF PURCHASED EQUIPMENT

- 31.1 The price for any Equipment purchased by the Customer from the Supplier shall be the price agreed between the Supplier and Customer at the time the Order is placed and as specified in the Equipment Request Form.
- 31.2 The Supplier shall invoice the Customer upon, or at any time after, delivery of the Equipment and the Customer shall pay such invoice in accordance with clause 13.1.

32 DELIVERY OF EQUIPMENT

- 32.1 The Supplier shall ensure that each delivery of the Equipment is accompanied by a delivery note which shows the date of the Order, all relevant Customer and Supplier reference numbers and the type and quantity of the Equipment.
- 32.2 The Supplier shall deliver the Equipment to the Delivery Location.
- 32.3 Delivery of the Equipment shall be completed on the Equipment's arrival at the Delivery Location.
- 32.4 Any dates quoted for delivery of the Equipment are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Equipment or any failure to deliver the Equipment on the date quoted by the Supplier.
- 32.5 If the Customer fails to accept or take delivery of the Goods within 3 Business Days of the Supplier notifying the Customer that the Equipment is ready, then except where such failure or delay is caused by a Force Majeure Event or by the Supplier's failure to comply with its obligations under the Contract in respect of the Equipment:
- 32.5.1 delivery of the Equipment shall be deemed to have been completed at 9.00 am on the fourth Business Day following the day on which the Supplier notified the Customer that the Equipment was ready; and
- 32.5.2 the Supplier shall store the Equipment, and the Customer shall be liable for all related costs and expenses (including any storage and transport costs and insurance).
- 32.6 If ten Business Days after the Supplier notified the Customer that the Equipment was ready for delivery the Customer has not accepted or taken delivery of them, the Supplier may resell or otherwise dispose of part or all of the Equipment.

33 RESERVATION OF TITLE

- 33.1 The risk in the Equipment which the Customer has agreed to purchase from the Supplier shall pass to the Customer on completion of delivery in accordance with clause 32.3 or 32.5.1 (as applicable).
- 33.2 Title to the Equipment which the Customer has agreed to purchase from the Supplier shall not pass to the Customer until the Supplier has received payment in full (in cash or cleared funds) for such Equipment.
- 33.3 Until title to Equipment which the Customer has agreed to purchase from the Supplier has passed to the Customer, the Customer shall:
- 33.3.1 hold such Equipment on a fiduciary basis as the Supplier's bailee;
- 33.3.2 store such Equipment separately from all other goods held by the Customer so that it remains readily identifiable as the Supplier's property;
- 33.3.3 not remove, deface or obscure any identifying mark or packaging on or relating to the Equipment;

- 33.3.4 maintain the Equipment in satisfactory condition and keep it insured against all risks for their full price on the Supplier's behalf from the date of delivery;
 - 33.3.5 notify the Supplier immediately if it becomes subject to an Insolvency Event; and
 - 33.3.6 give the Supplier such information relating to the Equipment as the Supplier may require from time to time, but the Customer may use the Equipment in the ordinary course of its business.
- 33.4 If before title to Equipment which the Customer has agreed to purchase from the Supplier passes to the Customer the Customer becomes subject to an Insolvency Event, or the Supplier reasonably believes that an Insolvency Event is about to happen and notifies the Customer accordingly, then, provided the Equipment has not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy the Supplier may have, the Supplier may at any time require the Customer to deliver up the Equipment and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Equipment is stored in order to recover it.

34 INDEMNITY

- 34.1 The Supplier carefully selects the Equipment from reputable suppliers and uses best practice in any service and maintenance of the Equipment (if applicable). However, the Supplier cannot supervise the use and care of the Equipment placed in the Customer's premises. Therefore, the Customer shall at all times indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Supplier arising out of or in connection with:
- 34.1.1 any claim made against the Supplier by a third party arising out of or in connection with the use of the Equipment by the Customer, to the extent that such claim arises, directly or indirectly, out of the negligence of the Customer, its employees, agents or subcontractors;
 - 34.1.2 any claim made against the Supplier by a third party for death, personal injury or damage to property arising out of or in connection with defective Equipment, to the extent that the defect in the Equipment is attributable to the acts or omissions of the Customer, its employees, agents or subcontractors, provided always this indemnity shall not cover the Supplier to the extent that a claim under it results from the Supplier's negligence or wilful misconduct.

35 INSTALLATION OF EQUIPMENT

- 35.1 If the Supplier is engaged to install the Equipment purchased by the Customer, the Customer is obliged to complete an installation checklist and return such checklist to the Supplier's Service Department before installation of Equipment. If installation fails as a result of a Customer error, then a charge will be levied on the Customer and the installation will be re-scheduled to the next available slot.
- 35.2 The Customer hereby authorises the Supplier to enter the Customer's premises to install the Equipment supplied as necessary and in accordance with the terms and conditions of this Contract.
- 35.3 It is the Customer's responsibility to notify the Supplier of any specific site requirements (including health and safety and security requirements) which will affect the installation of the Equipment.

- 35.4 The Customer must provide a safe and appropriate working environment in accordance with Applicable Laws for safety, health and welfare at work to facilitate any installation of Equipment. Adequate end-user lighting and power supplies must be provided. It is also the responsibility of the Customer to provide adequate protection for any floor covering, furniture or other vulnerable items prior to and during installation of Equipment. If the Customer's site is non-compliant with this clause 35.4, the Supplier will not proceed with the installation of Equipment.
- 35.5 The Customer shall provide appropriate water and electrical supply and services for the Equipment. The Customer shall also provide adequate space and drainage within the premises for the operation and installation of the Equipment and all power and water "ON/OFF" points at the Customer's premises must be accessible to the Supplier.
- 35.6 All electrical supplies for the operation of the Equipment must meet British Standard BS7671. Available power sockets/isolators should be terminated less than 1.5 metres from the proposed Equipment location and should be located either to the side or behind the Equipment and remain accessible at all times.

36 WARRANTY

- 36.1 In respect of any new Equipment which is purchased by the Customer from the Supplier, the first 12 months post-installation (the **Equipment Warranty Period**) will be covered by a warranty agreement (labour and parts) provided that such warranty agreement shall not include the work referred to in clauses 29.1.1 to 29.1.12 or to parts referred to in clause 36.2. For the avoidance of doubt, following the expiry of the Equipment Warranty Period, in order to receive any maintenance and repair services, previously provided by the Supplier under the warranty agreement, the Customer will need to enter into a Services Agreement with the Supplier.
- 36.2 The following parts shall not be covered by a warranty agreement referred to in clause 36.1 above:
- 36.2.1 Milk restrictor, Milk churn, Frother, Filter pans, Coffee outlet, Bean hopper, Perspex condiment, CIS Unit, Drip tray, Drain pipes, Milk Container, Splash guard, Bulbs/Lights, Cleaning brushes, Group handles, Milk container lid, Urn lid, 1/2/3 Cup Baskets, Milk Fridge – refrigerant gas/ compressor, Keys.

Except as provided by section 12 of the Sale of Goods Act 1979 and the warranty agreement referred to in clause 36.1 above, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

Part 4 – Conditions Applicable to Rental of Equipment (including Free on Loan Equipment)

37 ORDERS FOR RENTAL OF EQUIPMENT

- 37.1 The Order constitutes an offer by the Customer to hire the Equipment in accordance with these Conditions. The Order shall not become binding on the parties until the Supplier has issued an acknowledgment of the Order to the Customer in writing.

38 TERM OF RENTAL

- 38.1 The term of rental shall commence on the date specified in the Rental Agreement and shall continue for the minimum hire period, as set out in the Rental Agreement (**Rental Term**).

39 CHARGES IN RESPECT OF RENTAL OF EQUIPMENT AND USE OF EQUIPMENT

- 39.1 The price for any Equipment hired by the Customer from the Supplier shall be the rental charge (in line with rates specified by the Supplier from time to time) for the period for which any Equipment was in place together with all re-possession costs incurred by the Supplier. The rental charge will be specified in the Rental Agreement.
- 39.2 Equipment provided to the Customer on either a rental or free on loan basis will remain the property of the Supplier at all times.

- 39.3 The Customer commits that only products supplied by the Supplier will be used in Equipment supplied on a rental basis. Failure to comply fully with this requirement may result, at the Supplier's discretion, in withdrawal of the Equipment.
- 39.4 Notwithstanding clause 13.1, the Customer shall pay the Equipment rental charge specified in clause 39.1 to the Supplier monthly by way of an electronic transfer of funds (BACS) or by way of direct debit in accordance with the payment terms specified in the Rental Agreement.
- 39.5 The Customer shall:
- 39.5.1 not remove any labels from and/or interfere with the rented Equipment and take reasonable care of such Equipment and only use it for its proper purpose in a safe and correct manner in accordance with any operating and /or safety instructions provided or supplied to the Customer;
 - 39.5.2 notify the Supplier immediately after any breakdown, loss and/or damage to the Equipment or where the Equipment display prompts the customer that Equipment needs attention;
 - 39.5.3 take adequate and proper measures to protect the Equipment from theft, damage and/or other risks;
 - 39.5.4 permit the Supplier at all reasonable times to inspect the Equipment including procuring access to any property where the Equipment is situated;
 - 39.5.5 be responsible for the conduct and cost of any cleaning, maintenance and checks in relation to the Equipment required by operating instructions, best practice and/or Applicable Law (except to the extent that the Supplier has agreed to provide them as part of the Services);
 - 39.5.6 not continue to use the Equipment where it has been damaged and notify the Supplier immediately if the Equipment is involved in an accident resulting in damage to the Equipment, other property and/or injury to any person;
 - 39.5.7 ensure that the Equipment is returned to the Supplier in good working order and condition (fair wear and tear excepted) and is in a clean condition; and
 - 39.5.8 not repair or attempt to repair or engage any third party to repair the Equipment unless authorised to do so in writing by the Supplier.

40 DELIVERY OF EQUIPMENT

- 40.1 The Supplier shall ensure that each delivery of the Equipment is accompanied by a delivery note which shows the date of the Order, all relevant Customer and Supplier reference numbers and the type and quantity of the Equipment.
- 40.2 The Supplier shall deliver the Equipment to the Delivery Location.
- 40.3 Delivery of the Equipment shall be completed on the Equipment's arrival at the Delivery Location.
- 40.4 Any dates quoted for delivery of the Equipment are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Equipment or any failure to deliver the Equipment on the date quoted by the Supplier.
- 40.5 If the Customer fails to accept or take delivery of the Goods within 3 Business Days of the Supplier notifying the Customer that the Equipment is ready, then except where such failure or delay is caused by a Force Majeure Event or by the Supplier's failure to comply with its obligations under the Contract in respect of the Equipment:

- 40.5.1 delivery of the Equipment shall be deemed to have been completed at 9.00 am on the fourth Business Day following the day on which the Supplier notified the Customer that the Equipment was ready; and
- 40.5.2 the Supplier shall store the Equipment, and the Customer shall be liable for all related costs and expenses (including any storage and transport costs and insurance).
- 40.6 If ten Business Days after the Supplier notified the Customer that the Equipment was ready for delivery the Customer has not accepted or taken delivery of them, the Supplier may resell or otherwise dispose of part or all of the Equipment.

41 TITLE, RISK AND INSURANCE

- 41.1 Title to the Equipment shall remain with the Supplier at all times and the Customer shall have no right, title or interest in the Equipment save for the right to possession and use of the Equipment in accordance with the Contract.
- 41.2 The Customer shall not do, or permit to be done, anything which may, in the reasonable opinion of the Supplier, jeopardise the right, title or interest of the Supplier in the Equipment or which could invalidate the insurances at clause 41.4 below.
- 41.3 The risk in the Equipment which the Customer has agreed to hire from the Supplier shall pass to the Customer on completion of delivery in accordance with clause 40.3. The Equipment shall remain at the sole risk of the Customer during the Rental Term and any further term during which the Equipment is in the possession, custody or control of the Customer (**Risk Period**).
- 41.4 During the Risk Period the Customer shall, at its own cost and expense, maintain the following insurances:
 - 41.4.1 insurance of the equipment, to a value not less than its full replacement value, against all risk of loss, damage or destruction by fire, theft or accident and any other risks which the Supplier may specify to the Customer in writing from time to time;
 - 41.4.2 insurance for such amounts as a prudent owner or operator of the Equipment would insure for, or such amount as the Supplier may reasonably require, to cover any third party or public liability risks of whatever nature and howsoever arising in relation to the Equipment; and
 - 41.4.3 insurance against such other risks relating to the Equipment as may be required by Applicable Law.
- 41.5 If the Customer becomes subject to an Insolvency Event, or the Supplier reasonably believes that an Insolvency Event is about to happen and notifies the Customer accordingly, then, without limiting any other right or remedy the Supplier may have, the Supplier may at any time require the Customer to deliver up the Equipment and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Equipment is stored in order to recover it.

42 SERVICE COVER

- 42.1 The Supplier shall provide maintenance and repair services in respect of any Equipment which is hired by the Customer from the Supplier for the duration of the Rental Agreement, provided that such services shall not include the work referred to in clauses 29.1.1 to 29.1.12 or to parts referred to in clause 42.2.
- 42.2 The following parts shall not be covered by a warranty agreement referred to in clause 36.1 above:

42.2.1 Milk restrictor, Milk churn, Frother, Filter pans, Coffee outlet, Bean hopper, Perspex condiment, CIS Unit, Drip tray, Drain pipes, Milk Container, Splash guard, Bulbs/Lights, Cleaning brushes, Group handles, Milk container lid, Urn lid, 1/2/3 Cup Baskets, Milk Fridge – refrigerant gas/ compressor.

42.3 Except as provided by section 12 of the Sale of Goods Act 1979, all warranties, conditions and other terms implied by statute or common law in respect of Equipment hired by the Customer are, to the fullest extent permitted by law, excluded from the Contract.

43 LIABILITY FOR RENTAL EQUIPMENT

43.1 The Customer shall be responsible for all expenses, loss and/or damage suffered by the Supplier from any breakdown of the Equipment due to the Customer's negligence, misdirection and/or misuse of the Equipment.

43.2 If the Equipment is returned in a damaged, unclean and/or defective state, except where due to fair wear and tear or an inherent fault in the Equipment, the Customer shall be liable to pay the Supplier for the cost of any repair and/or cleaning required to return the Equipment to a condition, which, in the reasonable opinion of the Supplier, is fit for rental.

43.3 The Customer will pay to the Supplier, immediately on demand, the replacement cost and any other incurred costs and expenses arising in respect of any Equipment which is lost, stolen and/or damaged beyond economic repair, [including any unpaid rental charges up until the end of the Rental Term].

44 INDEMNITY

44.1 The Supplier carefully selects the Equipment from reputable suppliers and uses best practice in the service and maintenance of the Equipment. However, the Supplier cannot supervise the use and care of the Equipment placed in the Customer's premises. Therefore, the Customer shall at all times indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Supplier arising out of or in connection with:

44.1.1 any claim made against the Supplier by a third party arising out of or in connection with the use of the Equipment by the Customer, to the extent that such claim arises, directly or indirectly, out of the negligence of the Customer, its employees, agents or subcontractors;

44.1.2 any claim made against the Supplier by a third party for death, personal injury or damage to property arising out of or in connection with defective Equipment, to the extent that the defect in the Equipment is attributable to the acts or omissions of the Customer, its employees, agents or subcontractors, provided always this indemnity shall not cover the Supplier to the extent that a claim under it results from the Supplier's negligence or wilful misconduct.

45 INSTALLATION OF EQUIPMENT

45.1 The Customer is obliged to complete an installation checklist and return such checklist to the Supplier's Service Department before installation of Equipment. If installation fails as a result of a Customer error, then a charge will be levied on the Customer and the installation will be re-scheduled to the next available slot.

45.2 It is the Customer's responsibility to notify the Supplier of any specific site requirements e.g. security/safe pass etc. which will affect the installation of Equipment.

- 45.3 The Customer must provide a safe and appropriate working environment in accordance with regulations for safety, health and welfare at work to facilitate any installation of Equipment. Adequate end-user lighting and power supplies must be provided. It is also the responsibility of the Customer to provide adequate protection for any floor covering, furniture or other vulnerable items prior to and during installation of Equipment. If the Customer's site is non-compliant with these regulations, the Supplier will not proceed with the installation of Equipment.
- 45.4 The Customer shall provide appropriate water and electrical supply and services for the Equipment. The Customer shall also provide adequate space and drainage within the premises for the operation and installation of the Equipment.
- 45.5 All electrical supplies for the operation of the Equipment must meet British Standard BS7671. Available power sockets/isolators should be terminated less than 1.5 metres from the proposed Equipment location. They should be located either to the side or behind the Equipment and remain accessible at all times.

46 WATER SUPPLY AND DRAINAGE

- 46.1 The Customer shall provide a safe potable water supply with a hardness level between 2kh and 7kh for the Equipment. If a Customer's water supply hardness level is outside this range, the Supplier will require a suitable solution to be in place and the Supplier will provide a quotation for same before supplying Equipment on a rental/loan basis.
- 46.2 Water supply for the Equipment is to come directly from a rising mains, finishing with an individual ball valve 3/4" fitting (for each piece of Equipment) suitable for a washing machine hose. Water valves should remain accessible at all times.
- 46.3 Water Pressure for the Equipment should be minimum 2 bar and maximum 6 bar.
- 46.4 Access to an External Drain for the Equipment must be at least 1.5" wide.
- 46.5 The Customer shall be responsible for service costs arising from failure to comply with the water and drainage standards (set out in this clause 46) including, but not limited to, Equipment damage.

47 CLEANING OF EQUIPMENT

- 47.1 The Customer shall clean the Equipment in such manner and at such intervals as shall be stipulated by the Supplier and agrees to submit to regular cleaning audits.
- 47.2 The Customer shall use the methods and the cleaning and filtration products supplied by the Supplier in connection with such cleaning of the Equipment. The Supplier will not be liable for any costs or damages as a result of inadequate cleaning of the Equipment and any service calls generated as a result of inadequate cleaning will be charged at full tariff by the Supplier.

48 ACCESS TO PREMISES

The Customer authorises the Supplier to enter the Customer's premises to install, maintain and remove Equipment supplied (as necessary) and in accordance with the terms and conditions of this Contract. All power and water ON/OFF points at the Customer's premises must be accessible to the Supplier.