

TERMS AND CONDITIONS OF SUPPLY OF PRODUCTS

1. DEFINITIONS AND INTERPRETATION

1.1. In these Terms and Conditions the following words and expressions shall have the following meanings (unless the context requires otherwise):

- "Agreement" means the Agreement for the provision of the Products between us and you constituted by the submission of the Letter together with these Terms and Conditions and acceptance thereof in accordance with Clause 3 and any Delivery Schedules;
- "Brexit" means the date on which the United Kingdom ceases to be a member state of the European Union;
- "Brexit Event" means any circumstance resulting from Brexit, including the repercussions of the introduction of any new Brexit-related legislation/regulation, that adversely affects our ability to perform our obligations under the Agreement;
- "Commencement Date" shall mean the commencement date set out in the Letter;
- "Confidential Information" means any and all information of a confidential or proprietary nature concerning the research and business in general of the party to whom such information belongs or relates which is disclosed to the other party hereunder whether or not designated as confidential;
- "COVID-19 Event" means any circumstance resulting from the COVID-19 pandemic and restrictions and/or actions related to the COVID-19 pandemic that adversely affects our ability to perform our obligations under the Agreement;
- "Delivery Schedule" means the delivery schedule as set out in the Letter;
- "Duration" shall have the meaning set out in the Letter;
- "Force Majeure" means in relation to any party any circumstances beyond the reasonable control of that party including, without limitation, an act of God, extreme weather conditions, fire, biological, ecological and meteorological factors, fish health, well-being and husbandry, labour shortages or issues regarding labour availability, mechanical failures, war, strike, lock-out or other form of industrial action, restrictions on trade, importation restrictions and/or tariffs, exportation restrictions and/or tariffs, mandated or directed government closures or shut downs or restrictions, epidemic or pandemic, disease or ailment in relation to the Products which affects (or could potentially affect) our ability to provide the Products in whole or in part under this agreement;
- "Intellectual Property" means any intellectual property rights of any nature in the Products, or any ancillary documentation which for the avoidance of doubt shall include without being limited to, copyrights, patents, trademarks, know-how, design rights (registered or unregistered) and database rights whether

	recorded in any manner or otherwise and all rights pertaining thereto;
"Letter"	means the letter between us and you detailing the order for Products to which these Terms and Conditions shall always apply;
"Lot number"	means the harvest number detailed on the Delivery Schedule;
"Memorandum"	has the meaning given in Clause 24.1;
"Price(s)"	means the Price(s) as detailed in the Letter or the price to be calculated as detailed in the Letter (subject to Clause 4);
"Products"	means the products as set out in the Letter and more particularly described in the Specification;
"Specification"	means the Specification as detailed and attached to the Letter;
"Terms and Conditions"	means the terms and conditions herein;
"us"	means Bakkafrost Scotland Limited (previously known as The Scottish Salmon Company), a company incorporated in Scotland with company number SC107275 and having its registered office at 28 Drumsheugh Gardens, Edinburgh, EH3 7RN ("our" and "we" being construed accordingly);
"VAT"	means value added tax as defined in the Value Added Tax Act 1994; and
"WDE number"	means the WDE number detailed on the Delivery Schedule;
"you"	means the Customer as detailed in the Letter ("your" being construed accordingly).

1.2. In these Terms and Conditions:

- 1.2.1. the clause headings are included for convenience only and shall not affect the construction of this Agreement;
 - 1.2.2. words denoting the singular shall include the plural and vice versa;
 - 1.2.3. words denoting any gender shall include a reference to each other gender;
 - 1.2.4. references to persons shall be deemed to include references to natural persons, firms, partnerships, companies, corporations, associations, organisations, foundations and trusts (in each case whether or not having separate legal personality); and
 - 1.2.5. words and expressions defined in the Companies Act 2006 shall, unless they are otherwise defined herein or unless the context otherwise requires, bear the same meanings in these Terms and Conditions.
- 1.3. References in these Terms and Conditions to statutory provisions shall (save where the context otherwise requires or unless otherwise expressly provided) be construed as references to those provisions as respectively amended, consolidated, extended or re-enacted as at the date of these Terms and Conditions and to any orders, regulations, instruments or other subordinate legislation made under the relevant statutes.
- 1.4. References to Clauses are to clauses of these Terms and Conditions.

2. **DURATION**

Subject to the provisions for termination contained herein, this Agreement shall commence on the Commencement Date and shall continue for the Duration unless terminated sooner in terms of Clause 13.

3. **ACCEPTANCE OF TERMS AND CONDITIONS**

- 3.1. The Letter submitted by us to you, together with the Specification will lapse and cease to be enforceable if it is not accepted by the Customer in accordance with the timescales set out within the Letter.
- 3.2. All contracts between you and us are, unless otherwise agreed in writing between the parties, are subject to these Terms and Conditions which shall be deemed incorporated into any and all contracts whether or not these Terms and Conditions are attached to the Letter(s) or any relevant letters and/or Delivery Schedules.
- 3.3. The Letter and Specification and Terms and Conditions and any Delivery Schedule shall constitute the whole agreement between you and us to the exclusion of all other terms and conditions which may have been submitted by you or subject to which the Letter is accepted or purported to be accepted by you, unless otherwise expressly agreed by a Director of Bakka Frost Scotland in writing or permitted in terms of these Terms and Conditions (and any conditions from you diverging from these Terms and Conditions shall not be valid even if we effected delivery without reservation). In the event of any conflict between these Terms and Conditions and the Letter, these Terms and Conditions shall prevail. These Terms and Conditions may not be modified or varied unless specifically agreed by both parties in writing and signed by a Director of us.
- 3.4. These Terms and Conditions shall apply exclusively to the entire commercial relationship between us and you, irrespective of whether the Terms and Conditions have been explicitly referred to in any of our communications. Further, and without prejudice to Clause 3.3 above, in the event of any conflict between these Terms and Conditions and the conditions in any communications from you whether upon initial acceptance of these Terms and Conditions or at any time thereafter (which are expressly agreed in writing by both parties as forming part of the Agreement), these Terms and Conditions shall always prevail.

4. **PRICE AND PAYMENT**

- 4.1. Unless otherwise stated in the Letter (and/or unless expressly agreed by us in writing), the Price(s) shall be exclusive of VAT and any other applicable taxes or charges (including but not limited to import and/or export duties, tariffs and/or charges) which shall be payable by you at the applicable rate from time to time. All Price(s) are fixed and may not be changed without our written agreement.
- 4.2. Upon the occurrence of a Brexit Event, we reserve the right, upon one (1) months' written notice to you, to increase the Price(s) in order to mitigate the effect of a Brexit Event.
- 4.3. Time of payment by you is of the essence of this Agreement.
- 4.4. If you fail to pay on the due date any amount which is payable to us under this Agreement, then such amount shall bear interest from the due date until payment is made in full at the rate of 4% per cent per annum above the base rate from time to time of a clearing bank in Scotland nominated from time to time by us, such interest to accrue daily.
- 4.5. If you fail to pay the Price(s) when due and any sums remain outstanding after fourteen (14) days of notice being served by us to you of such failure, then we shall have the option at our sole discretion to:

- 4.5.1. reduce any quantity to be supplied to you;
- 4.5.2. to suspend deliveries of Products until all outstanding sums have been paid in full and/or
- 4.5.3. set off any such amount against any amount owed by us to you.

5. **SUPPLY AND DELIVERY OF THE PRODUCTS**

- 5.1. Subject to the availability of the Products (as shall be notified to you by us) we will use reasonable endeavours to supply the Products to you in accordance with the Delivery Schedule, unless otherwise agreed in writing by the parties. Except as set out in this Clause 5, all volumes are non-binding and no volumes in any other communication from us or from you (or any party acting on behalf of us or you) shall be binding on us to supply any specific volume of Products.
- 5.2. We shall take reasonable care that the provisions of all relevant safety, environmental and other legislation as may from time to time be in force in respect of the maintenance of the Products, are complied with at all times until such time as risk in the Products passes to you.
- 5.3. While we undertake to use reasonable endeavours to have the Products delivered to you or available for collection by you on any stipulated delivery date, time is not of the essence and we shall not be in breach of the Agreement or have any liability whatsoever to you or any third party for failing to make the Products available on the agreed delivery or collection date.
- 5.4. In the event that you wish to vary any of the timescales, volumes of Product or details set out in the Delivery Schedule (or notified by us to you in writing) then you shall notify us of same in writing. We shall use reasonable endeavours to accommodate such variation, always subject to the availability of the Products, but we shall not be obliged to do so. In the event that such variation is likely to increase the costs of the Products or the delivery thereof then we shall notify you of such cost increase in writing and shall not implement any such variation until you have approved such cost in writing (such approval not to be unreasonably withheld or delayed).
- 5.5. Products delivered by airfreight and/or road are DAT (Incoterms: Delivered and Terminal) and/or CPT (Incoterms: Carriage Paid to Terminal) to a named terminal, i.e. specified Delivery Location unless otherwise specified in the Delivery Schedule.

6. **INSPECTION AND ACCEPTANCE**

- 6.1. The Products shall be deemed accepted as conforming to the terms of this Agreement unless we are notified in writing of any material defect in accordance with the acceptance details set out in the Letter. You will specify the nature of any defect, shall advise on the Lot number, order number and/or WDE number (as available) quantity delivered, quantity affected and shall provide details to us of:
 - 6.1.1. damage which may reasonably be discovered on inspection;
 - 6.1.2. damage arising in transit (where applicable);
 - 6.1.3. any shortage or over delivery of the Products; and/or
 - 6.1.4. loss of Products.
- 6.2. You agree to provide photographic evidence of any defect. You agree and acknowledge that the Products you claim as being defective may be required to be made available to us to investigate if requested and you agree to make such Products available as soon as reasonably possible.

- 6.3. For the avoidance of doubt, we shall have no liability in respect of any Products which are considered by you to be defective unless notification has been duly received in accordance with Clause 6.1.
- 6.4. We shall not be responsible for any defect and/or fault in the Products arising due to or attributable to your fault and/or any negligence, act or omission and/or your failure to treat, handle or store the Products in accordance with good practice and/or any instructions given by us.
- 6.5. We shall not be responsible for any defect and/or fault in the Products under your control and/or instruction and/or the control and/or instruction of any individual or company acting on your behalf arising due to or during transit and/or export of the Products.

7. **RISK AND TITLE**

- 7.1. Risk of loss of or damage to each ordered and delivered quantity of the Products shall pass to you on delivery being effected pursuant to the terms of the Delivery Schedule set out in the Letter and the parties shall be responsible for effecting insurance accordingly. For the avoidance of doubt we shall be responsible for the Products until delivery to you (where we have arranged delivery) or until collection of the Products by you (including collection by your carrier, agent or other transport arranged by you or on your behalf). Risk in such Products shall immediately pass to you upon receipt by you of Products if delivered by us or when uplifted by you or on your behalf regardless of whether you may later notify us of any defect in accordance with Clause 6.
- 7.2. Notwithstanding Clause 7.1 hereof:
 - 7.2.1. property and title in and to the Products shall remain with us until all monies due by you to us (including interest and charges) for the relevant Products have been paid in full. Where you are in default in respect of any payment due under the Agreement (other than where a bona fide dispute has arisen), you shall be obliged to allow us full access to the Products in order to repossess them;
 - 7.2.2. if you become apparently insolvent or compound with your creditors or have a liquidator, receiver or administrator appointed over all or any of your assets prior to property in any quantity of the Products passing as aforesaid, your right to resell or otherwise deal in the Products shall automatically terminate and we shall be entitled to repossess any such Products;
 - 7.2.3. for the purposes of Clauses 7.2 (a) and 7.2 (b) hereof, you will assist and allow us so to repossess the Products and admit or procure the admission of us or our employees or any party acting on our behalf to the premises at which the Products are situated; and
 - 7.2.4. until such time as the Products are repossessed in accordance with the above Clauses 7.2 (a) and 7.2 (b), you shall at all times hold the Products in accordance with our reasonable instructions and good industry practice.
- 7.3 From the time of collection until such time as property and title in the Products passes to you in terms of Clause 7.2 (a), you shall hold the Products on behalf of us, acting as our

agent. During this period and until payment for the Products has been received in full, you shall:

- 7.3.1 keep the Products separate from any other products of yours or any third party;
- 7.3.2 protect, store appropriately in accordance with good industry practice, cultivate and insure the Products at your expense;
- 7.3.3 not be entitled to resell the Products unless our written consent has been obtained (in which case, until payment has been received in full, the proceeds from such a sale shall be deemed the property of the Supplier); and
- 7.3.4 endorse our interest on all insurance policies relating to the Products and provide to us proof of such endorsement immediately upon request by us.

8. **WARRANTY**

- 8.1. We warrant to you that the Products supplied shall substantially meet the Specification and to our reasonable knowledge are free of defects at the time of delivery or collection. If there is a dispute between the parties as to whether any Products supplied are of the quality detailed in this Agreement either party may refer the dispute for determination by the Technical Expert (as defined in Clause 23) and the decision of the Technical Expert as to the resolution of the dispute will be binding on both parties (including any decision as regards the apportionment of any costs/expenses incurred by the Technical Expert in determining the dispute).
- 8.2. You warrant to us that you have:
 - 8.2.1. informed us of the country to which the Products are to be exported; and
 - 8.2.2. informed us of all laws; regulations and other legislative provisions which apply to the export and import of the Products in the relevant country and any documentation required by us for the export and/or import and/or any further movement of the Products and will provide us with any such documentation which requires to be completed or signed by you, timeously, for the export and/or import and/or any further movement of the Products.

9. **LIABILITY**

- 9.1. Subject to Clause 9.4 below, we shall, under no circumstances, be liable to you, whether in contract, delict (including negligence), breach of statutory duty, or otherwise, for any loss of profit, production or business revenue, goodwill, anticipated savings, time, delay or any indirect, incidental, special or consequential loss or damage arising under or in connection with the Agreement.
- 9.2. Subject to Clause 9.4, we shall, under no circumstances be liable to you in respect of any liability to third parties suffered by any person arising out of this Agreement, the Products, or any use of the Products except insofar as such liability arises solely from our action, omission or negligence.
- 9.3. Subject to Clauses 9.1, 9.2 and 9.4, our aggregate liability under this Agreement for all loss or damage shall in no event exceed a sum equal to the Price(s) paid by you in any twelve (12) month period starting on the Commencement Date and any anniversary thereof.
- 9.4. Nothing in this Agreement shall limit or exclude either party's liability for:

- 9.4.1. death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- 9.4.2. fraud or fraudulent misrepresentation;
- 9.4.3. breach of the terms implied by section 12 of the Sale of Goods Act 1979;
- 9.4.4. defective products under the Consumer Protection Act 1987; or
- 9.4.5. any matter in respect of which it would be unlawful to exclude or restrict liability.

10. CONFIDENTIAL INFORMATION

- 10.1. Each party agrees and undertakes that during this Agreement and thereafter it shall keep secret and shall not without the prior written consent of the other party, disclose to any third party any Confidential Information of the other party which has been disclosed pursuant to this Agreement for a period of 5 years from the expiry of the Duration.
- 10.2. The provisions of Clause 10.1 shall not apply to any information which:
 - 10.2.1. is in or enters the public domain except as a result of breach of this Agreement; or
 - 10.2.2. the recipient is required by law or any recognised stock exchange to disclose.
- 10.3. Any press release or other public information about or concerning the provisions of this Agreement or the supply of the Products under this Agreement will require to be agreed among the parties in advance.
- 10.4. The obligations of the parties pursuant to this Clause 10 shall survive termination of this Agreement, howsoever caused.

11. INTELLECTUAL PROPERTY

- 11.1. Nothing in this Agreement shall, or is intended to, grant you any intellectual property rights in the Products, health certificates or any ancillary documentation which for the avoidance of doubt shall include without being limited to, copyright, patents, trademarks, know-how, design rights (registered or unregistered) and database rights. You acknowledge that nothing in this Agreement is to be interpreted as granting a license of or effecting a transfer of any Intellectual Property to you.
- 11.2. For the avoidance of doubt nothing in this agreement permits or authorises you to use the name, logo or any other intellectual property rights belonging to or associated with us and any of our Products for any purpose (including but not limited to packaging and marketing materials) without our express prior written permission or authorisation on terms to be approved by us in writing.

12. TERMINATION

- 12.1. Notwithstanding any provisions herein contained, this Agreement may be terminated immediately by either party by notice in writing from the party not at fault if any of the following events shall occur, namely:
 - 12.1.1. if the other party presents a petition or has a petition presented by a creditor for its winding up or enters into any liquidation (other than for the purposes of reconstruction or amalgamation), calls a meeting of its creditors, has a receiver of all or any of its undertakings or assets appointed, or is deemed by virtue of the relevant statutory provisions under applicable law to be unable to pay its debts, or ceases to carry on business or undergoes analogous proceedings in any other jurisdiction; or

- 12.1.2. if the other party shall at any time be in material breach of this Agreement and such breach is irremediable or if remediable, remains unremedied thirty (30) days from receipt by the party in breach of notice in writing from the other party specifying the breach and the action required to remedy same. For these purposes, non payment of sums due by you hereunder for a period of thirty (30) days or more or any breach by you of the terms of Clauses 10 or 11 shall constitute a material breach of this Agreement.
- 12.2. Without limiting its rights or remedies, we may terminate this Agreement by giving you one (1) months' written notice.
- 12.3. Without limiting our rights or remedies, we may terminate this Agreement in accordance with Clauses 13.3, 14.3 and 15.1 below.
- 12.4. On termination of this Agreement for any reason:
 - 12.4.1. you shall immediately pay to us all of the outstanding unpaid invoices and interest, in respect of the Products supplied, but for which no invoice has been submitted, we shall submit an invoice, which shall be payable by you immediately on receipt;
 - 12.4.2. you shall immediately pay to us any third party charges.

13. **FORCE MAJEURE**

- 13.1. If any party is affected by Force Majeure it shall forthwith notify the other party in writing of the nature and extent thereof.
- 13.2. Without prejudice to this Clause 13, neither party shall be deemed to be in breach of this Agreement, or otherwise be liable to the other party or any third party, where there is a delay in performance, non-performance, or an event or circumstance otherwise adversely affects the ability of a party to perform any of its obligations (in whole or in part) hereunder to the extent that such delay, non-performance, or adverse effect is due to Force Majeure of which it has notified the other party, and the time for performance of that obligation shall be extended accordingly as notified by us to you in writing.
- 13.3. In the event that Force Majeure affects (in whatsoever way and/or for whatever other reason including but not limited to increased costs) our ability to supply Products to you at all i.e. we cannot supply any Products (at our sole discretion (including but not limited to where our costs have increased), acting reasonably) and/or are restricted from supplying and/or selling any Products, we shall be entitled to provide notice to you that the nature of the Force Majeure affecting us will have the effect of preventing and/or restricting any supply of the Products under this Agreement and giving notice of termination (with immediate effect) to you that the Agreement is terminated. In these circumstances and in accordance with Clause 13.2 above, it is agreed that we shall not be liable to you, subject to Clause 9.4 above for such termination.
- 13.4. If a Force Majeure prevents the supply of Products in part under this Agreement and if such Force Majeure prevails for a continuous period in excess of 72 hours, the parties shall enter into bona fide discussions with a view to alleviating its effects, or to agreeing upon such alternative arrangements as may be fair and reasonable.
- 13.5. If agreement cannot be reached between the parties in accordance with clause 13.4 above, both acting reasonably, we shall be entitled to reduce the volume of Products being supplied under this Agreement to such quantities that it considers (at its sole discretion) it is able to provide, including not supplying the Products at all, during the Force Majeure and to increase the Price(s) of the Products continued to be supplied, where reasonable, to take into account of inter alia any increased costs incurred by us due to the such Force Majeure.

14. **COVID-19**

- 14.1. If any party is affected by a COVID-19 Event it shall forthwith notify the other party in writing of the nature and extent thereof.

- 14.2. We shall not be deemed in breach of this Agreement, or otherwise be liable to the other party or any third party, where a COVID-19 Event results in a delay in performance, non-performance, or otherwise adversely affects our ability to perform our obligations (in whole or in part) hereunder to the extent that such delay, non-performance, or adverse effect is due to a COVID-19 Event of which it has notified the other party, and the time for performance of that obligation shall be extended accordingly as notified by us to you in writing.
- 14.3. In the event that a COVID-19 Event affects (in whatsoever way and/or for whatever other reason including but not limited to increased costs) our ability to supply Products to you at all i.e. we cannot supply any Products (at our sole discretion, acting reasonably) and/or are in any way restricted from supplying and/or selling any Products, we shall be entitled to provide notice to you that the nature of the COVID-19 Event affecting us will have the effect of preventing, suspending and/or restricting any supply of the Products under this Agreement and giving notice of termination (with immediate effect) to you that the Agreement is terminated. In these circumstances and in accordance with clause 13.2 above, it is agreed that we shall not be liable to you, subject to clause 9.4 above for such termination.
- 14.4. If a COVID-19 Event prevents the supply of Products in part under this Agreement and if such COVID-19 Event prevails for a continuous period in excess of 72 hours, the parties shall enter into bona fide discussions with a view to alleviating its effects, or to agreeing upon such alternative arrangements as may be fair and reasonable.
- 14.5. If agreement cannot be reached between the parties in accordance with clause 13.4 above, both acting reasonably, we shall be entitled to reduce or suspend the volume of Products being supplied under this Agreement to such quantities that it is considers (at its sole discretion) it is able to provide during the COVID-19 Event and to increase the Price(s) of the Products, where reasonable, to take into account of inter alia any increased costs incurred by us due to the such COVID-19 Event.
- 14.6. Save as expressly provided under this clause, a COVID-19 Event shall not terminate or alter (or give any party a right to terminate or alter) this Agreement, or invalidate any of its terms or discharge or excuse performance under it. If there is an inconsistency between the provisions of this clause and any other provision of this agreement, the provisions of this clause shall prevail.

15. **BREXIT**

- 15.1. If a Brexit Event occurs, we may notify you, and on our request, at our sole discretion, the parties shall use reasonable commercial endeavours to negotiate any change to the Agreement in order to mitigate the effect of any Brexit Event within thirty (30) days of the occurrence of the Brexit Event for the purposes of ensuring the continuation or commercial viability of the Agreement. If agreement cannot be reached in respect of any required alterations to the Agreement in the aforesaid timeframe, we may terminate the Agreement by giving thirty (30) days written notice to you.
- 15.2. We shall not be deemed in breach of this Agreement, or otherwise be liable to the other party or any third party, where a Brexit Event results in a delay in performance, non-performance, or otherwise adversely affects our ability to perform our obligations (in whole or in part) hereunder.
- 15.3. Save as expressly provided under this clause, a Brexit Event shall not terminate or alter (or give any party a right to terminate or alter) this Agreement, or invalidate any of its terms or discharge or excuse performance under it. If there is an inconsistency between the provisions of this clause and any other provision of this agreement, the provisions of this clause shall prevail.

16. **ASSIGNATION AND SUB-CONTRACTING**

- 16.1. You shall not part with, assign, mortgage, charge or execute a declaration of trust in respect of or in any other way deal with your interest under this Agreement or any part thereof without our prior written consent and any such purported assignation, mortgage, charge, declaration of trust or otherwise shall be deemed to be null and void and of no effect.
- 16.2. We shall be entitled to freely assign, mortgage, charge or execute a declaration of trust and/or sub-contract our rights and obligations under this Agreement.

17. **WAIVER**

Any failure by any party to exercise and any delay, forbearance or indulgence by any party in exercising, any right, power or remedy under this Agreement shall not operate as a waiver of that right, power or remedy or preclude its exercise at any subsequent time or on any subsequent occasion. The single or partial exercise of any right, power or remedy shall not preclude any other or further exercise of that right, power or remedy. The rights, powers and remedies provided in this Agreement are cumulative and not exclusive of any rights, powers or remedies provided by law.

18. **ENTIRE AGREEMENT/VARIATION**

This Agreement constitutes the entire agreement between the parties with respect to all matters referred to herein. All separate agreements, undertakings and obligations between the parties in relation to matters dealt with in this Agreement are hereby superseded and terminated.

19. **SEVERABILITY**

If any one or more of the provisions of this Agreement is declared by a Court or other competent authority to be invalid, illegal, void or unenforceable, such provision(s) shall be deemed to be deleted from this Agreement and the remaining provisions of this Agreement shall continue in full force and effect. Notwithstanding the foregoing the parties shall thereupon negotiate in good faith in order to agree the terms of a mutually satisfactory provision to be substituted for the provision so found to be void or unenforceable.

20. **NOTICES**

- 20.1. Any notice required to be given under this Agreement may be served personally or by pre-paid, registered or recorded delivery letter or by e-mail, addressed to the relevant party at its registered office or address stated within this Agreement or to such other postal address which has been intimated to the other party for this purpose. Letters addressed to us should be marked for the attention of the Chief Executive or to such other address or e-mail address or addressed to such contact as that party may have notified to the other for this purpose.
- 20.2. Any notice so given by letter shall be deemed to have been served 48 hours after the same shall have been posted.
- 20.3. Any notice so given by e-mail shall be deemed to have been served when an email receipt is received from the other party acknowledging receipt of the same (which shall be deemed to be the time it is sent if sent during normal working hours in the recipient's local time zone or 9am in the recipient's local time zone on the following working day in any other case).
- 20.4. In proving service of a notice it shall be sufficient to prove the letter or e-mail was properly addressed or numbered and, as the case may be and posted in accordance with the provisions of this Clause or a confirmatory transmission report was received.

21. **FURTHER ASSURANCES**

The parties shall, and shall use their respective reasonable endeavours to procure that any necessary third parties shall, do, execute and perform all such further deeds, documents, assurances, acts and things as either of the parties hereto may reasonably request in order to carry the provisions of this Agreement into full force and effect.

22. NATURE OF AGREEMENT

Nothing in this Agreement shall constitute a partnership or joint venture between the parties hereto or the relationship of agency or employment.

23. TECHNICAL EXPERT

- 23.1. In the event of any dispute or disagreement of a technical nature between the parties which arises out of or in connection with this Agreement, the outcome of such dispute will be determined by an independent third party investigation and recommendation. The parties shall select and agree the identity of the technical expert who is to carry out an investigation, in writing, in the event of any dispute or disagreement (both parties acting reasonably and in good faith).
- 23.2. The decision of the Technical Expert (which shall be given by the Technical Expert in writing stating their reasons for the decision made) shall be final and binding on the parties.
- 23.3. Each party shall provide the Technical Expert with such information as the Technical Expert may reasonably require for the purposes of the determination, if either party claims such information to be confidential to it then, provided that in the opinion of the Technical Expert that party has properly claimed the same as confidential, the Technical Expert shall be required to not disclose the same to the other party or to any third party and may be required to sign a confidentiality agreement or non disclosure agreement if it is reasonably required by either party, taking account of the nature of the information being shared with the Technical Expert.
- 23.4. The cost of such Technical Expert shall be borne in such proportions as the Technical Expert may determine to be fair and reasonable in all the circumstances or, if no such determination is made by the Technical Expert, the cost shall be borne by the parties in equal proportions.

24. DISPUTE RESOLUTION

- 24.1. Subject to Clause 3, in the event of any dispute or disagreement between the parties arising out of or in connection with this Agreement, (other than a technical dispute which shall be dealt with in accordance with Clause 3 above) a party may give written notice to the others. Within 7 days of the date of service of such notice each party shall prepare and send to the others a memorandum stating its understanding of the matter in dispute or disagreement, its reasons for taking such position and any proposals for resolving such dispute or disagreement (the "Memorandum"). Following delivery of the Memorandum, the matter shall in the first instance be considered jointly by the parties at a special meeting which such party shall be entitled to convene at any time during normal business hours upon giving at least 7 days' notice to the other parties.
- 24.2. If the representatives of the parties attending such a meeting believe that a resolution of such dispute or disagreement will not or is unlikely to be achieved by them, both parties shall refer the matter for resolution within a further period of 7 days to their respective Chief Executives.
- 24.3. If the parties fail to resolve the matter having followed the procedures referred to in Clauses 24.1 and 24.2 then such matter (which, for the avoidance of doubt, may include any question regarding the existence, validity or termination of this Agreement) may be dealt with by the parties as they deem fit.

24.4. The provisions of this Clause 4 shall not be deemed to:

- 24.4.1. preclude a party from seeking interdict or other discretionary relief to protect or enforce its rights under this Agreement; or
- 24.4.2. prohibit any Court from making preliminary findings of fact in connection with granting or denying such interdict or other discretionary relief; or
- 24.4.3. preclude a party from bringing any claim as a result of a breach by the other party of its obligations to carry out actions to give effect to this Clause 4.

25. **GOVERNING LAW AND JURISDICTION**

25.1. This Agreement (consisting of the Letter, the Specification and these Terms and Conditions) shall be governed by and construed in accordance with Scots law.

25.2. The parties hereby prorogate the exclusive jurisdiction of the Scottish Courts in relation to any claim, dispute or difference concerning this Agreement and any matter arising from this Agreement.