

Terms & Conditions

THE BREUKR (“the Company”) agrees to sell to the Customer the products named in this document and the Customer agrees to purchase those products subject to and in accordance with the following provisions:

General

1. Definitions

- 1.1 “Contract” means the contract constituted by the Terms and Conditions, together with any other document expressly incorporated into this document.
- 1.2 “The Company” means Breukr.
- 1.3 “The Customer” means the Applicant named in section 1 of this document.
- 1.4 “Terms and Conditions” means these terms and conditions, which form part of the Contract.

2. Entire Agreement & General Provisions

- 2.1 The Contract governs the trading relationship between the Company and the Customer. All sales made by the Company to the Customer shall incorporate these Terms and Conditions and these Terms and Conditions constitute the entire agreement between the parties, and no variation to these Terms and Conditions will be made or binding unless reduced to writing and signed by both the Company and the Customer or their duly authorized representatives, servants or agents.
- 2.2 The Contract shall prevail and take precedence over any document or verbal exchanges between the parties, any terms or conditions contained or referred to elsewhere or implied by trade custom, practice or course of dealing. The Customer agrees to the Contract irrespective of anything in any other document, unless the Company expressly agrees in writing with reference to the Contract.
- 2.3 Each party must do or cause to be done all things necessary or reasonably desirable to give full effect to the Contract and the transactions contemplated by it.
- 2.4 The rights and obligations of the parties under the Contract do not merge on completion of any transaction contemplated by the Contract.

3. Change in Ownership

- 3.1 The Customer undertakes to advise the Company in writing seven (7) days in advance of any intended change in ownership or control, including any change of legal or beneficial interests, in the Customer or the Customer's business or employment. The Customer acknowledges s/he remains liable for any products and services s/he receives during periods of change including any change of legal or beneficial interests, in the Customer or the Customer's business or employment. The notice advising the Company of the change is to clearly state the name of the new employment or business and the date and time the change will take place. In the event that the Customer engages a third party such as a solicitor, or a professional person or organization, to handle such change, then the Customer authorizes the Company to contact the third party for the purpose of confirming the particulars of the notice. The Customer must provide contact details of the third party to the Company as and when requested. Further, in the event that the Company will only be paid any amounts owing to it by the Customer from proceeds of sale of the Customer's business or property, then the Customer authorizes the Company to contact the third party for the purpose of instructing them to hold a proportion of the sales proceeds equivalent to the amount owing to the Company at that time in the third party's Trust account. Once this directive is made in writing by the Company to the third party (a copy of which is to be sent to the Customer), it legally binds the third party to act on the Company's behalf and to pay out in full all amounts owing to the Company from the said Trust account.

4. Variations

- 4.1 The Company reserves the right to vary the Contract and its terms and conditions at its discretion.

5. No Waiver

- 5.1 The Company's failure to insist upon strict performance of any provision of the Contract shall not be deemed to be a waiver of its rights or remedies in respect of any present or future default of the Customer in performance or compliance of any of the Contract. A waiver of a right, power or remedy must be in writing and signed by the party giving the waiver.

6. Force Majeure

- 6.1 In the event that the Company is prevented from carrying out its obligations under the Contract as a result of any cause beyond its reasonable control such as but not limited to Acts of God, war, strikes, block-outs, flood and failure of third parties to deliver products, the Company shall be relieved of, and will not be liable for any delay or failure to perform, any of its obligations and liabilities under the Contract for as long as such performance is prevented.

7. Severability

- 7.1 If any clause or part clause of these Terms and Conditions shall for any reason be declared or become unenforceable, invalid, illegal or otherwise incapable of enforcement for any reason whatsoever, that clause or part clause shall be deemed to be severed from these Terms and Conditions and of no force and effect, but all other clauses and parts of clauses shall nevertheless prevail and remain in force and effect and be valid and fully enforceable and no clause or part clause shall be construed to be dependent upon any other clause or part clause unless so expressed herein.

8. Privacy Act & Credit Reference Authorization

- 8.1 The Customer acknowledges and agrees that the Company:

- (a) Has informed the Customer that it may give information about the Customer to a credit reporting agency.
- (b) May request and obtain a credit report from a credit reporting agency for the purpose of:
 - Assessing the Customer's application for trade credit;
 - Assessing whether to accept the Customer or guarantor in respect of credit provided by the Company;
 - Collecting amounts that are overdue in respect of trade credit provided by the Company to the Customer.
- (c) May use information obtained from any person, or body carrying on a business or undertaking involving the provision of information about the commercial creditworthiness of persons, that concerns the Customer's commercial activities or commercial creditworthiness, for the purpose of assessing the Customer's application for credit.
- (d) Has received the Customer's authorization to obtain any and all information it deems necessary from any source listed on the Company's Credit Application Form. The Customer hereby authorizes each of the sources listed to supply the Company with such information necessary to assist in the consideration of creditworthiness of the Customer.

- 8.2 The Customer expressly authorizes the Company to do all things described in clause 8.1 above.

9. Termination of Contract

- 9.1 The Company may terminate the Contract, without having to perform any of its obligations under the Contract, immediately by notice in the event the Customer:
 - (a) breaches any clause of the Contract and such breach is not remedied within 7 days of written notice to the Customer;
 - (b) materially breaches the Contract and the breach is incapable of remedy; or
 - (c) becomes insolvent, or a liquidator, administrator, receiver or other controller is appointed over the Customer and his/her assets, or the financial position of the Customer, or some other fact or circumstance, leads the Company to believe on reasonable grounds that the Customer is likely to materially fail to complete its obligations under the Contract.
- 9.2 Termination of the Contract shall not relieve the Customer of:
 - (a) its obligation to pay all money owed by it to the Company on any account whatsoever, and all monies shall be payable immediately notwithstanding the date for payment of the money which may not have arrived; and
 - (b) liability arising from any antecedent breach of the terms of the Contract.
- 9.3 Upon termination of the Contract for any reason the Company:
 - (a) may retain any monies paid by the Customer;
 - (b) charge a reasonable sum for products and services supplied in respect of which no such amount has previously been charged and the Customer agrees to pay such charge;
 - (c) demand immediate repayment of all credit then outstanding to the Company;
 - (d) retake possession of all property of the Company in the possession of the Customer; and
 - (e) pursue any additional or alternative remedies provided by law.
- 9.4 The termination of the Contract is without prejudice to any rights which have accrued to a party before the date of termination.

10. Jurisdiction

- 10.1 These Terms and Conditions shall be governed by and construed in accordance with the laws of The Federal Republic of Nigeria, or at the option of the Company, the State or Territory of The Federal Republic of Nigeria in which the relevant products or services are being provided from or to.

Each party submits to the non-exclusive jurisdiction of the courts of that State or Territory.

Sale of Products and Services

11. Orders & Delivery

- 11.1 Orders are subject to approval and acceptance by the Company in its absolute discretion. The Company may in its absolute discretion refuse to supply products to the Customer without giving any reason for its decision.
- 11.2 Delivery shall be made to the Customer at the address provided to the Company by the Customer as set out in this document.
- 11.3 Delivery of products will be accepted in writing by the Customer or its duly authorized representative, servant or agent by placing a signature upon this document and that signature shall constitute conclusive evidence of delivery to the Customer of the products ordered in the quantity set out in this document. Where there is no signature on the document as a result of the Company following verbal instructions from the Customer to deliver the products without signature, or delivering products as a matter of routine without signature, then the notes written on this document by the Company's representatives shall constitute conclusive evidence of delivery.
- 11.4 The Company will use its best endeavours to deliver the products in accordance with its estimated delivery dates. However, the Company does not warrant that it will deliver within this time frame.
- 11.5 The Company shall not be liable in any way whatsoever for any losses, costs, damages or expenses incurred by the Customer as a result of non-availability, non-delivery or non-supply of products, purported late or late delivery by the Company to the Customer, or any failure to meet an estimated delivery date provided by the Company to the Customer and generally the time of delivery shall not be of the essence. In the instance where delivery is made to the Customer and no signature is recorded on this document and it has previously been agreed (whether verbally or in writing) between the Company and the Customer that no signature is required, the Company shall not be liable for any losses incurred by the Customer as a result of purported non-delivery or shortage of delivery.

12. Ownership and Risk

- 12.1 The risk in the products shall pass to the Customer upon delivery or into custody on the Customer's behalf.
- 12.2 The Company remains the legal owner of the products, with full legal title and property to the products, until full payment has been made by the Customer to the Company for the products.
- 12.3 If products are sold or used by the Customer prior to payment for such products then the proceeds of use, sale and any book debt resulting from such use or sale shall be the property of and shall be held in trust for the Company. The right to resell products, title to which has not passed, may be revoked by the Company at any time.
- 12.4 While any monies are outstanding by the Customer, the Customer grants to the Company the free and uninterrupted right, without liability in trespass or otherwise, to enter any premises at which any products, title to which has not passed, are situated and to uplift and take possession of such products that have not been used.
- 12.5 In the event that the Customer cannot prove that specific products relate to invoices for which the Company has already been paid, the Company shall be entitled to assume that all stock in the premises supplied by the Company relates to invoices that are unpaid by the Customer.

13. Passing of Risk & Limitation of Liability

- 13.1 The Customer shall immediately upon delivery make an inspection of the products. The Customer shall be deemed to have accepted the products as to the quantity set out herein upon delivery. In the event that the Customer claims the products are defective, spoiled or in any other way unfresh then such a claim must be communicated to the Company no later than 2 hours after delivery in writing and the products must be made available to the Company for reinspection. If the Customer fails to notify the Company of a claim within 2 hours of delivery, the products will be deemed to have been received and accepted by the Customer in merchantable and faultless quality and condition at the time of receipt and the Company will have no further liability whatsoever in relation to the products.
- 13.2 Upon acceptance of delivery the Customer accepts any liability for loss damage or injury or any other consequences arising out of the use of the products whether singularly or in combination with other products (for example the cooking process), and the Customer shall indemnify the Company from and against any and all claims, demands, obligations, causes of action, liabilities, expenses and damages which arise or relate to any alleged defects whether latent or patent in the products purchased.
- 13.3 Except as expressly provided to the contrary in this Contract and to the maximum extent permitted by law, all terms, conditions, warranties, undertakings, inducements or representations whether express, implied, statutory or otherwise, relating in any way to the supply of the Products under this Contract are excluded. Without limiting the generality of the preceding sentence, the Company will not be under any liability to the Customer in respect of any loss or damage (including consequential loss or damage and loss of profits) however caused, which may be suffered or incurred or which may arise directly or indirectly in respect of a negligent or willful act or omission of the Company or a failure or omission on the part of the Company to comply with its obligations under this Contract.
- 13.4 The Company's liability for loss and damages is limited, to the maximum extent permitted by law, to the sale price of the products.
- 13.5 The Customer warrants that it has not relied on any term, condition, warranty, undertaking, or representation made by or on behalf of the Company which has not been stated expressly in this Contract or upon any descriptions or illustrations or specifications contained in any document.
- 13.6 The Customer covenants and agrees to release the Company, its successors and assigns, as well as its officers and agents from all actions, claims, demands and causes of action which they may have against the Company, its officers or agents in respect of, arising out of or resulting from the supply of the products and services.
- 13.7 The indemnities and releases in the Contract are continuing obligations independent from the other obligations of the parties under the Contract and will continue after the Contract ends.

14. Fitness for purpose

- 14.1 The Company makes no warranty as to the fitness for purpose of its products.
- 14.2 The Company shall be entitled to assign the benefit of these terms in its absolute discretion.

15. Storage and handling

- 15.1 The Customer will store and handle the products as may be directed by the Company from time to time, or otherwise in accordance with State or Federal health regulations passed from time to time and inspect the products for defect or spoilage both upon delivery and when the products are defrosted.

Trade Credit & Payment

- 16.1 Payment must be made in accordance with the terms set out in this document or if not stated, within 30 days of delivery or on pay day (whichever comes first).
- 16.2 Interest of on overdue invoices shall accrue from the date upon which payment is due on a weekly basis and at a rate determined pursuant to Central Bank of Nigeria (CBN) lending rate or such other rate as the Company determines. In addition it should be noted that in the event the Company is required to commence debt recovery or legal proceedings for recovery of overdue and outstanding amounts, it shall be entitled to recover, in addition to the interest determined above, its legal costs (including court and solicitors fees), debt collection agent's commission and other collection fees, including internal accounting and administration charges determined with reference to independent third party invoices and internally generated time sheets completed by the Company's staff. Time may be charged out at a rate determined by the Company based on the experience and skill level of the Company's staff.

17. Guarantors

- 17.1 The Company is entitled to full recourse to the Guarantors for any and all amounts outstanding including interest, legal and court costs and debt recovery costs as stipulated in clause 16.

18. Set Off

- 18.1 The Customer acknowledges that s/he has no right to set off, withholding or counter claim in respect of any monies which are or become payable by it under the Contract against any monies or claims which the Company may be liable for in connection with the Contract.

19. Notices

- 19.1 Any notice, request, demand, consent or approval sent pursuant to the Contract must be legible and in English addressed to the appropriate party and is deemed received:
 - (a) where posted, 3 business days from and including the date of postage;
 - (b) where delivered by hand, when delivered to the addressee; or
 - (c) where faxed, when received by the addressee or if receipt is on a non-business day or after 5.00pm (addressee time) then at 8.00am the following business day.