

Terms and Conditions for Purchase of Goods or Services

“Seller” means a seller of Goods or Services to the Company, or person from whom the Company orders Goods or Services, as set out in a purchase order.

“Company” means (i) Fayman Food Group LLC, a Delaware limited liability company, and/or (ii) ESRO Food Group LLC, a Delaware limited liability company, as applicable.

Background

- A. The Seller owns the Goods or is in the business of providing the Services.
- B. The Company wishes to purchase the Goods or Services from the Seller and the Seller wishes to sell the Goods or Services to the Company.
- C. The Seller has agreed to sell, and the Company has agreed to buy, the Goods or Services on these Terms and Conditions.

Operative part

1. DEFINITIONS AND INTERPRETATIONS

1.1 Definitions

In these Terms and Conditions the following terms have the following meanings unless the context otherwise requires:

- (a) **“Bank”** means any institution organized under the laws of the United States, any State of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa or the Virgin Islands which engages in the business of banking, including (without limitation) a savings bank, savings and loan association, credit union, and trust company;
- (b) **“Business Day”** means any day except any Saturday, any Sunday, any day which is a federal legal holiday in the United States or any day on which banks in the States of New York are authorized or required by other Governmental Authority to close;
- (c) **“Claim”** includes any claim, demand, Remedy, suit, injury, damage, loss, Cost, Liability, action, proceeding, right of action, claim for compensation and claim for abatement of any Obligation;
- (d) **“Consequential Loss”** means loss of profits, loss of revenue, loss of any contract value, loss of anticipated profit or damages for lost opportunity, loss or corruption of data, or cost of finance, but, in each case, except where the loss, damage or cost arises naturally (that is, in the usual course of things) from the relevant act or omission.
- (e) **“Cost”** includes any cost, charge, expense, outgoing, payment or other expenditure of any nature whatever, including where appropriate all reasonable and proper legal fees charged on a solicitor/own client basis;
- (f) **“Delivery Address”** has the meaning in clause 5.1;
- (g) **“Encumbrance”** includes an interest or power:
 - (i) reserved in or over an interest in any asset including, but not limited to, any retention of title; or
 - (ii) created or otherwise arising in or over any interest under a bill of sale, mortgage, charge, lien, pledge, trust or power by way of security for the payment of a debt, right of set-off, any other monetary obligation or the performance of any other obligation or other third party right or interest (whether legal or equitable), and includes, but is not limited to, any other security interest of any kind, howsoever created or arising, or any other agreement or arrangement having similar effect and includes the creation or perfection of a ‘security interest’ as defined in the UCC;
- (h) **“Event of Default”** means any of the following events:
 - (i) if the Seller fails to punctually and properly comply with any of its Obligations under these Terms and Conditions;
 - (ii) if an Insolvency Event occurs in respect of the Seller;
 - (iii) if a person holding any form of security granted by the Seller becomes entitled to take any action to enforce its security rights or if any form of execution is levied or enforced in respect of any of the assets of the Seller and is not discharged within two (2) Business Days of being levied or enforced;

- (iv) if the Seller is a natural person and if that person becomes, because of any form of mental or physical infirmity, a person whose assets or affairs becomes subject to administration or control by a third person;
- (i) **"Force Majeure Event"** means an event or circumstance:
 - (i) that is beyond the reasonable control of a Party;
 - (ii) which that Party is not reasonably able to prevent or overcome; and
 - (iii) which prevents that Party from performing a material obligation under these Terms and Conditions, including, subject to satisfaction of the foregoing:
 - a. extreme weather events, fire or natural disaster;
 - b. acts of war, riots, terrorism or vandalism;
 - c. failure or shortage of power supplies or other essential utility;
 - d. pandemic, epidemic or other widespread threat to human health (including an outbreak or recurrence);
 - e. strike, embargo or industrial disturbance;
 - f. a change in a relevant Law.
- (j) **"Goods"** mean the items set out in a purchase order which the Seller proposes to sell or sells to the Company and the Company proposes to buy or buys from the Seller;
- (k) **"Governmental Authority"** means any federal, state, local, or foreign government or political subdivision thereof, or any agency or instrumentality of such government or political subdivision, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that the rules, regulations, or orders of such organization or authority have the force of Law), or any arbitrator, court, or tribunal of competent jurisdiction;
- (l) **"Incoterm"** means the International Chamber of Commerce Incoterms® (2020);
- (m) **"Insolvency Event"** means the happening of any of the following events:
 - (i) if the Seller is or states that it is unable to pay its debts when they fall due;
 - (ii) if any action or step is taken to appoint, in the case of the Seller being a corporation, a liquidator (including provisional liquidator), a receiver, a receiver and manager, an administrator or any other external administrator of any of that corporation's assets;
 - (iii) if any action or step is taken, in the case of the Seller being a natural person, to have that person made bankrupt;
 - (iv) if any action or step is taken to obtain protection from creditors under any Law;
 - (v) if anything occurs which is similar to or which has a substantially similar effect to any of the events set out above;
- (n) **"Intellectual Property Rights"** includes all patents, illustrations, photographs, artwork, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, and all other intellectual property rights, whether registered or unregistered, and all similar or equivalent rights or forms of protections which subsist now or in the future anywhere in the world;
- (o) **"IRC"** means the Internal Revenue Code of 1986;
- (p) **"Law"** includes any requirement of any statute, rule, regulation, proclamation, ordinance, local law, by-law, or other provision having the force of law present or future, and whether State, Federal or otherwise;
- (q) **"Liability"** means any monetary, pecuniary or other Obligation due, owing or payable by any Person to any Person under these Terms and Conditions or in respect of any subject matter referred to in these Terms and Conditions;
- (r) **"Obligation"** includes any legal, equitable, contractual, statutory or other obligation, commitment, duty, responsibility, undertaking or Liability, whether created by any document, action, Law or otherwise;
- (s) **"Party"** means a party whose arrangements are covered by these Terms and Conditions;
- (t) **"Person"** includes any corporation and vice versa;
- (u) **"Price"** means the amount agreed by the Parties in a purchase order, to be the amount payable for the Goods or Services;
- (v) **"Remedy"** means any kind of relief, remedy, recourse, right of action or chose in action, whether curial or otherwise;
- (w) **"Services"** means the services set out in a purchase order which the Seller proposes to provide to the Company, and the Company proposes to engage the Seller to provide;
- (x) **"Tax Invoice"** means an instrument that Seller issues to the Company and which includes (without limitation) quantities, description, a list of the goods and services sold, transportation costs, delivery method, payment method, discounts, and any other charges in addition to applicable goods and services tax and any other applicable taxes;
- (y) **"Terms and Conditions"** means the terms and conditions set out in this document;
- (z) **"UCC"** means the Delaware Uniform Commercial Code;

- (aa) **“Warranty”** means the warranties set out in Section 9 and in Schedule A to these Terms and Conditions.

1.2 Interpretation

In the interpretation and application of these Terms and Conditions the following rules apply unless the context otherwise requires:

- (a) Words importing the singular include the plural and vice versa.
- (b) Words importing a gender include all other genders and vice versa.
- (c) Expressions importing a natural person include a corporation and vice versa.
- (d) A covenant, agreement, warranty, obligation, liability or similar on the part of two or more persons binds each of them jointly and severally.
- (e) No rule of construction applies to the disadvantage of a Party because that Party was responsible for the preparation of these Terms and Conditions.
- (f) These Terms and Conditions bind and inure for the benefit of successors and permitted transferees or assigns of the parties.
- (g) Headings or margin notes in these Terms and Conditions are for ease of reference only and do not affect the meaning or interpretation of these Terms and Conditions.
- (h) A reference to any Law includes that statutory enactment or Law as amended, modified or re-enacted from time to time and all rules regulations or other subordinate legislation made under that statute.
- (i) If the day on or by which anything is to be done is not a Business Day then that thing must be done on or by the next Business Day.
- (j) Where any time period is to be calculated from a specified date, that date must be included in the calculation.
- (k) These Terms and Conditions cannot be varied except by a subsequent document signed for by an authorized representative of each Party and which document is expressed to vary or be made in substitution for these Terms and Conditions.
- (l) It is not necessary for the Company to incur any expense or make any payment before enforcing a right of indemnity.
- (m) Time is of the essence in respect of the Seller’s obligations under these Terms and Conditions.
- (n) The parties agree that any reference to an Incoterm in the sales order form shall be for descriptive purposes only, and the actual rights, obligations, and responsibilities of the parties shall be governed by these Terms and Conditions. In the event of any conflict or inconsistency between these Terms and Conditions and the default rules applicable to any Incoterm referenced in the sales order form, these Terms and Conditions shall control and supersede the corresponding Incoterm provision

2. SALE AND PURCHASE

In consideration of the Company’s agreement to pay the Price, the Seller sells to the Company and the Company buys from the Seller the Goods or Services on the terms of these Terms and Conditions.

3. PASSING OF TITLE

Title to the Goods free of all Encumbrances passes to the Company on the day payment is made to the Seller for those Goods.

4. CANCELLATION

4.1 The Company may cancel any order placed with the Seller up until such time as:

- (a) the Goods have been delivered to the Company; or
- (b) the Seller has commenced providing the Services.

4.2 If the Company cancels any order placed with the Seller:

- (a) the Seller must promptly refund in full to the Company all moneys paid by the Company to the Seller; and
- (b) title to the Goods that are the subject of the cancelled order reverts to the Seller.

5. DELIVERY & PERFORMANCE

- 5.1 The Seller must deliver the Goods to the location nominated by the Company in the relevant purchase order (“**Delivery Address**”) no later than seven (7) Business Days from the date of the relevant purchase order, unless an alternate arrangement has been agreed to by the Parties in writing.
- 5.2 All Costs of delivery to the location nominated by the Company must be borne and paid for by the Seller and the Company has no responsibility or Liability in relation to those Costs unless an alternate arrangement has been agreed to by the Parties in writing.
- 5.3 The Seller must:
- (a) perform the Services in the manner and at such times, instructions or directions as directed by the Company.
 - (b) ensure the Goods and Services are fit for purpose;
 - (c) perform its obligations with a high level of skill and care, in a diligent and professional manner and to a professional standard of care and skill reasonably expected of a person engaged in providing the Goods and Services;
 - (d) use its own equipment and resources to provide the Goods and Services;
 - (e) comply with all relevant Company policies and procedures notified by the Company from time to time;
 - (f) act in the best interests of the Company and not engage in conduct which the Company considers may damage its business, reputation or goodwill; and
 - (g) comply with all applicable Laws, and ensure that it does not cause the Company to breach any Laws.

6. PASSING OF RISK

- 6.1 Risk in the Goods remains with the Seller until the earlier of:
- (a) the Goods have been successfully delivered to the Company at the Delivery Address; and
 - (b) the Company has accepted the Goods.
- 6.2 The Company will not be deemed to have accepted the Goods until:
- (a) the Goods are successfully delivered to the Company at the Delivery Address in accordance with these Terms and Conditions; and
 - (b) the Company has paid for the Goods to the Seller.
- 6.3 Acceptance of the Goods by the Company does not relieve the Seller from any responsibility or obligation under these Terms and Conditions.

7. PRICE

- 7.1 Unless otherwise stated, the Price is in United States Dollars and is inclusive of goods and services tax, tariffs, duties or any other taxes imposed or levied pursuant to the IRC or any Governmental Authority.
- 7.2 The Price cannot be increased unless a written agreement is entered into by the Parties to increase the Price.

8. PAYMENT

- 8.1 The Company will pay each valid Tax Invoice within thirty (30) Business Days of:
- (a) the Company’s acceptance of the Goods; or
 - (b) completion of the provision of the Services by the Seller;
- 8.2 The Company will pay the undisputed amount of the Tax Invoice to the Seller.
- 8.3 The Company may pay the Price by way of check, credit card, cash, letter of credit or any other method commonly accepted in business transactions.
- 8.4 The Company is not obliged to pay to the Seller the Price if the Seller commits an Event of Default and where the default can be remedied, does not rectify that default within seven (7) days of being notified in writing by the Company of that default.
- 8.5 The Company may set off any amounts owed to the Seller under these Terms and Conditions against any amount the Seller owes to the Company.
- 8.6 The Company is under no obligation to order a minimum quantity of Goods and Services from the Seller.

9. SELLER’S WARRANTIES AND INDEMNITIES

- 9.1 The Seller warrants to the Company on a continuing basis that the Warranties are true, complete, accurate and not misleading in any way.
- 9.2 The Warranties are not affected or limited in any way by information gathered by, or disclosed to, the Company.

- 9.3 Each Warranty is to be construed independently of the others and is not limited by reference to any other Warranty.
- 9.4 Each Warranty survives and continues notwithstanding that all other Obligations under these Terms and Conditions may have been satisfied.
- 9.5 The Seller indemnifies the Company from any Cost or Claim incurred or suffered, by or brought or made against the Company to the extent that such Cost or Claim is caused by or arises out of any breach of any of the Warranties, any Warranty proving to be incorrect or misleading or any other default by the Seller of these Terms and Conditions.
- 9.6 If the Seller breaches any Warranty, or any Warranty is incorrect or misleading, then without prejudice to any other Remedies the Company may have:
- (a) the Company may maintain an action for damages for all direct and Consequential Losses suffered or incurred by the Company; and
 - (b) the Company may recover interest or special damages in any case where by any Law interest or special damages may be recoverable.

10. LIMITATION OF LIABILITY

- 10.1 Notwithstanding anything else in these Terms and Conditions, the Company's maximum aggregate liability under these Terms and Conditions is limited to the total sum paid to the Seller under these Terms and Conditions in the six (6) months preceding the Claim.
- 10.2 To the fullest extent permitted by Law, the Company:
- (a) is not liable for (i) Consequential Loss suffered by the Seller or a third party or (ii) any indirect, incidental, special, exemplary, and punitive damages whether arising out of breach of contract, tort, or otherwise (regardless of whether such damages were foreseeable) suffered by the Seller or a third party, in each case which arises out of, or in connection with, these Terms and Conditions; and
 - (b) is not liable for any loss to property or for personal injury or death.

11. INDEMNITY

- 11.1 If the Company on-sells the Goods or Services to its own customers or other end users, then the Seller shall indemnify the Company against all Costs and Claims where those Costs and Claims arise out of or in respect of the supply to the Company's customers or other end users and:
- (a) any breach of any conditions or warranty in respect of the Goods or Services given by the Company to the Company's customers or other end users expressly or by operation of any statute in respect of any Goods; or
 - (b) the Company being deemed a "manufacturer" of the Good by operation of any Law;
 - (c) any Claim arising by reason of the normal or usual use of the Goods including all Claims for actual or alleged infringement of any Intellectual Property Rights whether granted by applicable Law.
- 11.2 The Seller agrees and declares that:
- (a) the existence of any Remedies to the Company will not operate to vary, affect or modify all or any one or more of the Obligations of the Seller;
 - (b) no extension of time, or other indulgence granted to any person or company by the Company has any effect on any of the Obligations of the Seller set out in these Terms and Conditions.

12. GUARANTEE

- 12.1 If the Company, in its discretion is not satisfied with the Goods for any reason, provided it has advised the Seller that it is not satisfied with the Goods and after such notice returns the Goods, the Seller must, at the direction of the Company:
- (a) promptly exchange the Goods for alternate goods of the same type and description as the exchanged items and of the same value as the items being exchanged; or
 - (b) refund the Company's money paid for such Goods immediately.
- 12.2 If the Company obtains an exchange of the Goods or a refund of the moneys paid, this does not have any effect on any Liability at Law of the Seller to the Company or have any effect on any other Remedy the Company may have.

13. TERMINATION OF SERVICES

- 13.1 If the Company, in its discretion, is not satisfied with the provision of the Services by the Seller and gives the Seller notice that its Services are no longer required, then:
- (a) the Seller will stop providing the Services; and
 - (b) the Company will have no obligations to pay for any further Services provided.

13.2 The Company's rights and remedies set out in clause 13.1 do not have any effect on any Liability at Law of the Seller to the Company or affect any other Remedy the Company may have.

14. DEFAULT AND TERMINATION

14.1 If an Event of Default occurs and without prejudice to any other Remedies the Company may have, the Company may sue the Seller and claim damages for all direct and Consequential Losses suffered or incurred by the Company as a result of the Event of Default.

14.2 The Company may also terminate these Terms and Conditions with immediate effect if the Seller:

- (a) commits a material breach that is incapable of remedy;
- (b) commits a material breach that is capable of remedy and fails to remedy that breach within 10 Business Days of receiving notice of the breach; or
- (c) suffers an Insolvency Event (and Delaware law does not prevent termination).

15. FORCE MAJEURE

15.1 Where the Company is unable, wholly or in part, by reason of any Force Majeure Event, to carry out its Obligations pursuant to these Terms and Conditions and the Company:

- (a) gives the Seller notice of that Force Majeure Event;
 - (b) uses reasonable diligence to mitigate that Force Majeure Event,
- then that Obligation is suspended so far as it is affected by a Force Majeure Event during the continuance of that event.

15.2 The requirements that any Force Majeure Event will be mitigated with reasonable diligence will not require the settlement of strikes, lockout or other labor disputes or Claims or demands by any government on terms contrary to those terms on which the Company is prepared to settle.

16. INSURANCE

The Seller must maintain the following insurances with a reputable insurer:

16.1 a policy insuring the Goods for full insurable value against damage by fire, water and all other perils to which those Goods are commonly insured;

16.2 a public risk policy for any single accident or event for the amount of \$20,000,000 or such other amount as the Company may require from time to time;

16.3 a product liability policy for any single accident or event for the amount of \$10,000,000 or such other amount as the Company may require from time to time;

16.4 professional indemnity insurance for no less than \$1,000,000 per Claim and unlimited in annual aggregate, to cover any Services provided by the Seller to the Company and governed by these Terms and Conditions.

16.5 The Seller must provide certificates of currency and any other details of the insurance policies, including excluding clauses and schedules to the policies, within two (2) Business Days of a request from the Company.

17. NOTICES

17.1 A notice or communication to be served or given under these Terms and Conditions must be in writing and may be served or given by any lawful means of service within the State of Delaware including without limitation service by hand delivery, ordinary, certified or registered pre-paid post. The date a notice is deemed served, given and received is:

- (a) if delivered by hand, the day of delivery but if delivery takes place after 4 pm on a Business Day or on a day that is not a Business Day then it is deemed served, given and received on the next Business Day;
- (b) if posted, five (5) Business Days (or ten (10) Business Days, if posted outside Delaware) after the day it is posted;
- (c) if sent by email, at the date and time the email was sent, as recorded by the sender's email server, unless

the sender receives an automated delivery failure notice, in which case notice is deemed not to be given or received.

17.2 The address and email at which a Party may be served or given notices under these Terms and Conditions is its address or email as appearing in this document or such other address or email for service it notifies the other Party of in writing.

18. NON MERGER

The provisions of these Terms and Conditions which are capable of having effect after completion of any transaction referred to in these Terms and Conditions including without limitation warranties and indemnities do not merge on completion of any transaction referred to in these Terms and Conditions.

19. FURTHER ASSURANCES

The Parties each agree to sign all documents and do all things reasonably required to give full effect to the transactions recorded in these Terms and Conditions.

20. SEVERABILITY

As far as is possible these Terms and Conditions are to be construed so as not to be void, voidable, unenforceable or illegal, but if any part of these Terms and Conditions are void, voidable, unenforceable or illegal by operation of any law, then the offending part of these Terms and Conditions as far as is possible is to be read down to the extent necessary to make sure that it is not invalid, unenforceable or illegal but if it cannot be so read down then it is to be deemed severed without affecting the remainder of these Terms and Conditions which will continue to apply as amended.

21. CONFIDENTIALITY

Each Party must keep the confidential information of the other Party confidential and not disclose it except:

- (a) for the purpose of performing its obligations under these Terms and Conditions;
- (b) as permitted or required by the other Party;
- (c) to its professional advisers engaged to provide legal, taxation or accounting advice and only to the extent necessary; or
- (d) as required by Law.

22. RELATIONSHIP OF THE PARTIES

Nothing in these Terms and Conditions is intended to create a partnership, employment or agency relationship between the parties.

23. ASSIGNMENT AND SUBCONTRACTING

The Seller must not:

- (a) assign its rights and Obligations under this Terms and Conditions; or
- (b) subcontract the performance of any part of these Terms and Conditions.

24. ENTIRE AGREEMENT

These Terms and Conditions (and all documents referred to in it) applies to the provision of the Goods and Services to the exclusion of any other terms, including in the Seller's estimates, proposals or insertion orders. These Terms and Conditions (and all documents referred to in it) constitutes the entire agreement between the Parties and supersedes all previous discussions, negotiations, understandings and agreements between them relating to its subject matter.

25. GOVERNING LAW

These Terms and Conditions and all related documents are governed by the laws of the State of Delaware, without giving effect to any choice or conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction) that would cause the application of the laws of any other jurisdiction. Any controversy or claim arising out of or relating to these Terms and Conditions or the transactions contemplated hereby shall be settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods does not apply to these Terms and Conditions or any matter arising from or related to these Terms and Conditions.

Schedule A

Warranties

- 1. Compliance with specifications**

The Seller warrants that the Goods comply strictly with every aspect of the specifications given to the Company (if any) and without limiting the foregoing that any variations in size, configuration or performance will be strictly within any specified tolerances.
- 2. Performance**

The Seller warrants that each of the Goods will operate within their usual and normal functionality, having regard to the nature of the Goods and the purpose for which the Goods of that description are used.
- 3. Testing**

The Seller warrants that prior to delivery of the Goods to the Company the Seller (where appropriate) tested and inspected the Goods to make sure that the Goods were:

 - (i) fully functional;
 - (ii) did not contain any latent or patent defect;
 - (iii) properly and professionally finished in accordance with the industry best practices;
 - (iv) reasonably fit for use;
 - (v) marked with a sticker or label indicating the date on which such quality assurance tests and inspections were carried out and the identity of the individual or work unit who conducted the relevant quality assurance tests and inspections.
- 4. Fit for purpose**

The Seller warrants to the Company that where the Goods are acquired by the Company for a particular purpose that was, expressly or by implication, made known to the Seller, either directly or indirectly, the Goods are reasonably fit for that purpose, whether or not that is the purpose for which those Goods are commonly supplied.
- 5. Correspondence with description**

The Seller warrants that the Goods correspond with their description (if any) given by the Seller to the Company.
- 6. Merchantable quality**

The Seller warrants to the Company that the Goods are of merchantable quality.
- 7. Correspondence with samples**

The Seller warrants to the Company that where the Goods have been supplied to the Company by reference to a sample, the bulk of the Goods corresponds with the sample in quality and appearance.
- 8. Title**

The Seller warrants to the Company that it has a right to sell the Goods and that the Company will acquire title to the Goods free of all Encumbrances on the date the Seller sells, and the Company buys, the Goods.
- 9. Regulations**

The Seller warrants to the Company that:

 - (i) it has complied with all Laws, in all relevant jurisdictions, including those relating to health, quarantine and safety issues and that where the Goods are food stuffs, those Goods are fit for consumption and use by their intended market; and
 - (ii) it will hold and maintain all necessary insurances, licenses, permits and other consents required to provide the Goods and Services;
- 10. Industry best practice**

The Seller warrants to the Company that it will provide the Services in a manner consistent with industry best practice, promptly, efficiently and ethically.
- 11. Qualified persons**

The Seller warrants to the Company that it has the necessary qualifications to provide the Services and will comply with all applicable Laws in providing the Services.
- 12. No illegal activity**

The Seller warrants that it is not required and will not carry on any illegal activity in performing its Obligations pursuant to these Terms and Conditions.
- 13. Re-supply of Goods**

The Seller warrants that there is no restriction on the Company's use or re-supply of the Goods or Services and warrants to the Company that no third party will have any claims against the Company for an interest in the Goods.