

# THE MULBERRY KITCHEN

## TERMS AND CONDITIONS OF BUSINESS

### 1. Definitions

In these Terms and Conditions and the Agreement the following expressions shall have the following meanings:

1.1 'Additional Costs' means such additional costs attributable to the provision of Additional Services to the Customer by the Caterer together with ancillary charges for delivery and collection of supplies within Central London, storage, corkage and handling charges that may be charged by the Caterer from time to time (which shall include VAT where applicable and/or other taxes, duties and appropriate other charges) details of which will be set out in the relevant Invoice.

1.2 'Additional Services' means any additional services the Caterer may agree to provide to the Customer in accordance with clause 7 of these Terms and Conditions.

1.3 'Agreement' means any agreement (including a quotation and its associated signed acceptance form) between the Caterer and the Customer for the provision of Catering Services incorporating these Terms and Conditions.

1.4 'Catering Services' means the Catering Services set out in the Agreement together with any Additional Services to be provided to the Customer by the Caterer under the terms of the Agreement.

1.5 'Facilities' means the facilities and/or equipment to be provided by or on behalf of the Customer at the Premises on the Function Date.

1.6 'Function Date' means the date and time of the function specified in the Agreement.

1.7 'Invoice' means any invoice given or despatched to the Customer detailing the Catering Services, the Price, Additional Services and any Additional Costs.

1.8 'Price' means the price to be paid by the Customer to the Caterer for the Catering Services as specified in the Agreement which shall include VAT where applicable and/or other taxes, duties and appropriate other charges.

1.9 'Premises' means the Premises specified in the Agreement at which the Catering Services are to be provided.

### 2. Application Of Terms

2.1 Upon signature of the Agreement, the Customer and the Caterer shall be legally bound in respect of the supply of Catering Services at the Premises on the Function Date on these Terms and Conditions.

2.2 Subject to any variation under clause 2.4, the Agreement will be on these Terms and Conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply under any order form, specification or other document).

2.3 No terms or conditions endorsed upon, delivered with or contained in the Customer's order form, specification or other document will form part of the Agreement simply as a result of such document being referred to in the Agreement.

2.4 These Terms and Conditions apply to the Catering Services provided by the Caterer to the Customer and any variation to these Terms and Conditions and any representations about the Catering Services shall have no effect unless set out in the Agreement or as expressly agreed in writing and signed by the Caterer.

2.5 Each order for Catering Services placed by the Customer with the Caterer shall be deemed to be an offer by the Customer to purchase Catering Services subject to these Terms and Conditions.

2.6 No order placed by the Customer shall be deemed to be accepted by the Caterer until the Agreement is signed by the Caterer or (if earlier) the Caterer delivers the Catering Services to the Customer.

2.7 The Customer shall ensure that the terms of its order and any applicable specifications are complete and accurate.

### 3. Caterer's obligations

3.1 The Caterer shall be responsible for:

3.1.1 providing the Catering Services at the Premises on the Function Date;

3.1.2 ordering and purchasing all supplies and equipment other than the Facilities to be used by the Caterer to provide the Catering Services such supplies to be ordered in the name and on behalf of the Caterer and not the Customer and to remain the property of the Caterer;

3.1.3 choosing, preparing and pricing all food and beverages supplied (subject to prior consultation with the Customer);

3.1.4 providing staff as is required for the provision of the Catering Services and all administration relating thereto;

3.1.5 paying all suppliers with whom the Caterer shall enter into contracts in accordance with clause 3.1.2;

3.1.6 effecting and maintaining insurance cover in respect of the following risks arising from the provision of the Catering Services:

3.1.6.1 employer's liability,

3.1.6.2 public and product liability (including cover in respect of food poisoning and deleterious substances in foodstuffs and beverages due to the negligence of the Caterer) but not for more than £10 million in respect of any one incident or period of insurance, and

3.1.7 the operational requirements of all statutory provisions or regulations relating to the provision of the Catering Services.

3.2 Specific items on menus, decoration or other items to be supplied by the Caterer are subject to market availability and the Caterer shall notify the Customer as soon as practicable if any item will not be available on the Function Date.

### 4. The grant and the Customer's obligations

4.1 The Customer grants to the Caterer the right to supply the Catering Services and any Additional Services at the Premises on the Function Date and shall be responsible for:

4.1.1 providing the Facilities and paying all suppliers whom the Customer enters into contracts to provide the Facilities;

4.1.2 paying the Price and any Additional Costs in accordance with clause 5;

4.1.3 providing and maintaining of (renewing and repairing where necessary):

4.1.4 first aid and fire fighting equipment, and

4.1.5 such other plant or equipment as may be agreed in writing between the Customer and the Caterer or as may be reasonably required by the Caterer for the provision of the Catering Services;

4.1.6 providing water heating lighting electricity gas and any other fuel required together with sewerage and refuse collection facilities;

4.1.7 all cleaning (other than that which is the responsibility of the Caterer under clause 3.5 including the cleanliness of walls above the level of 6 feet from floor level windows ceilings lighting and ventilation fittings and floor surfaces and furniture in dining areas; and)

4.1.8 effecting and maintaining all insurance (other than that which is the responsibility of the Caterer under clause 3.7) including insurance for the Premises and loss or damage to the plant and equipment.

4.1.9 ensuring that no smoking is permitted in the Premises in accordance with the Smoke-Free Premises and Enforcement Regulations 2006".

4.2 The matters to be undertaken or provided in accordance with clause 4.1 are to be undertaken and provided at the Customer's cost and subject to all statutory provisions or regulations relating thereto.

### 5. Price and Payment

5.1 The Price shall be paid by the Customer to the Caterer as follows and time for payment shall be of essence:

5.1.1 20% upon signing of the Acceptance Form; and

5.1.2 the balance, together with any Additional Costs within 14 days of the date of the Invoice.

5.2 Rates, prices and discounts published in catalogues, lists, mail shots, advertisements and other documents issued by the Caterer are subject to variation at any time without prior notice.

5.3 The Invoice shall be given or despatched by the Caterer to the Customer on the Function Date or as soon as reasonably practicable thereafter.

5.4 If any instalment of the Price is not paid in full by the due date, the Caterer may;

5.4.1 cancel or suspend commencement of the Catering Services;

5.4.2 charge the Customer interest (both before and after any judgment) on the outstanding amount at a rate of 4% per annum above the base rate of the Barclays Bank Plc from time to time, until payment is made in full (a part of a month being treated as a full month for the purposes of calculating interest).

5.5 The Customer shall reimburse the Caterer (on a full indemnity basis) all costs and expenses incurred by the Caterer in connection with the recovery of any money due to the Caterer under the Agreement.

5.6 Except with the express agreement in writing of the Caterer, no deduction shall be made by the Customer from any payment for or on account of any matter or thing whatsoever including, but not limited to any set-off, compensation, counter-claim or present or future taxes.

5.7 Any changes to guest numbers made by the Customer should be made in writing to the Caterer not less than 7 days prior to the Function Date. After this time the Caterer will make reasonable endeavours to accommodate any increase in numbers but no decrease in numbers will be accepted.

#### **6. Force Majeure**

The Caterer shall not have any liability under or be deemed to be in breach of the Agreement for any delays or failures in performance of this Agreement which result from circumstances beyond the reasonable control of the Caterer. The Caterer shall promptly notify the Customer in writing when such circumstances cause a delay or failure in performance.

#### **7. Additional Services**

7.1 At any time not less than 7 days prior to the Function Date, the Customer may submit a written request to the Caterer for the provision of Additional Services.

7.2 The Caterer may at its sole discretion either accept or reject such request, subject to the Customer's acceptance of the Additional Costs arising from the provision of such Additional Services.

7.3 In order to maintain and ensure compliance with food safety hygiene and health and safety legislation and regulations the Customer shall not itself provide or engage any person organization or firm other than the Caterer to provide catering services at the Premises on the Function Date unless agreed in writing by the Customer and the Caterer prior to the Function Date.

#### **8. Limitation of Liability**

8.1 Neither party excludes or limits liability to the other party for death, personal injury or fraud.

8.2 Subject to clause 8.1 above, this clause sets out the Customer's sole and exclusive remedies in respect of the Caterer's performance, non-performance or poor performance of the Catering Services.

8.3 Save as provided in clause 8.1, the Caterer shall not be responsible for any losses, charges, costs and expenses (whether such losses or damages were foreseen, foreseeable, known or otherwise) whatsoever incurred or suffered of an indirect or consequential nature including but not limited to:

8.3.1 loss of sales or turnover;

8.3.2 loss of actual or anticipated profit;

8.3.3 loss of opportunity;

8.3.4 loss of goodwill; or

8.3.5 loss of reputation

which arise out of or in connection with the Catering Services (including but not limited to any advice or recommendation provided by the Caterer) and in no event shall the Caterer be liable for any losses, charges, costs and expenses arising from the Customer's provision of the Facilities hereunder or for any food or beverage supplied by the Customer or a third party.

8.4 Subject to clause 8.1 above, the Caterer's aggregate liability in contract, tort (including negligence), breach of statutory duty (misrepresentation or otherwise) arising under or in connection with the Agreement or any act or omission by the Caterer in the performance of its obligations under the Agreement shall not exceed the Price plus any Additional Costs received by the Caterer.

8.5 If you are a consumer (meaning an individual who is not acting in their business, trade or profession) you shall not be subject to clauses 8.2, 8.3 or 8.6.

8.6 Any advice or recommendation given by the Caterer or its employees shall be followed or acted upon entirely at the Customer's risk.

#### **9. Termination by notice**

9.1 Subject to clause 9.2, the Customer may terminate this Agreement by giving the Caterer notice in writing.

9.2 In the event of termination under clause 9.1 within 28 days of the Function Date or in the event of force majeure, the Caterer shall be entitled to retain such element of the Price paid in accordance with clause 5.1 above required to cover the Caterer's costs incurred prior to such cancellation or event of force majeure subject to the Caterer using its reasonable endeavours to mitigate its losses.

9.3 In the event of the cancellation of a party the following percentages of the sales value will be charged. Food - within 2 days 100% of quoted cost; within 7 days, 50% of quoted cost. Hired Equipment - within 5 days 100% of quoted cost. Marquee, bands, lighting and production - 100% within 14 days, or the sum of any deposits monies paid on behalf of the Customer. Staff - within 3 days 50%; within 2 days 100%.

#### **10. Termination on default etc**

Either party may at any time by written notice terminate the Agreement without liability for compensation or damages if:

10.1 the other fails to comply with any of its obligations under this agreement or any agreement supplemental to it and the failure (if capable of being remedied) remains unremedied for 28 days after being called to its attention by written notice from the party not in default;

10.2 the other purports to assign the burden or benefits or charge the benefits of the Agreement;

10.3 the other convenes a meeting of its creditors or suffers a petition to be presented or a meeting to be convened or other action to be taken with a view to its liquidation except (with the written approval of the other) for the purposes of and followed by amalgamation or reconstruction;

10.4 the Customer is unable to pay his debts as they fall due or is made bankrupt; or

10.5 a receiver or administrative receiver is appointed of any of the other's or the respective parties sub-contract's property.

#### **11. Entire understanding**

The Agreement embodies the entire understanding of the parties in respect of the matters contained or referred to in it and there are no promises, terms, conditions or obligations oral or written express or implied other than those contained in the Agreement. Nothing said by any salesperson, agent, employee or other representative on the Caterer's behalf should be understood as a variation of the Agreement or an authorised representation about the nature or quality of the Catering Services. Save for fraud or fraudulent misrepresentation, the Caterer shall have no liability for any such representation being untrue or misleading.

#### **12. Law and Jurisdiction and mediation**

This Agreement shall be governed by and constructed in accordance with English Law and the parties hereto submit to the exclusive jurisdiction of the English Court in respect of any dispute or matter arising out of or connected with this Agreement. Notwithstanding the jurisdiction of the English Court the parties will attempt in good faith to resolve any dispute or claim arising out of or relating to this agreement promptly through negotiations between the parties or the respective Senior Executives of the parties who have authority to settle the same. If the matter is not resolved through negotiations, the parties will attempt in good faith to resolve the dispute or claim through an Alternative Dispute Resolution (ADR) procedure recommended to the parties by the Centre for Dispute Resolution.

#### **13. Third party rights**

For the purposes of the Contracts (Rights of Third Parties) Act 1999 and (notwithstanding any other provision of the Agreement) this is not intended to, and does not, give any person who is not a party to it any right to enforce any of its provisions.

#### **14. Notices**

14.1 Any notice given under the Agreement shall be in writing and may be served:

14.1.1 personally;

14.1.2 by registered or recorded delivery mail;

14.1.3 by e-mail, or facsimile transmission (the latter confirmed by post); or

14.1.4 by any other means which any party specifies by notice to the others.

14.2 Each party's address for the service of notice shall be the above mentioned address or such other address as it specifies by notice to the others.

14.3 Notice shall be deemed to have been served:

14.3.1 if it was served in person, at the time of service;

14.3.2 if it was served by post, 48 hours after it was posted; and

14.3.3 if it was served by e-mail or facsimile transmission, at the time of transmission.

#### **15. Miscellaneous**

15.1 Complaints must be addressed in writing to the Owner of the Caterer at 92 Abercrombie Street, London SW11 2JD within 14 days of the event

15.2 Cloakrooms: The Caterer does not accept responsibility for lost, missing or damaged items

15.3 Overtime is payable after 1am at time and a half.