



Potato Storage Insight Ltd

TERMS AND CONDITIONS

1. Interpretation

1.1 Definitions. In these Conditions, the following definitions apply:

PSI: Potato Storage Insight Limited registered in England and Wales with company number 13636700.

PSI Materials: has the meaning set out in clause 4.1(f).

Charges: the charges payable by the Customer for the supply of the Services in accordance with clause 5.

Conditions: these terms and conditions as amended from time to time in accordance with clause 12.7.

Contract: the contract between PSI and the Customer for the supply of Services in accordance with these Conditions.

Customer: the person or firm who purchases Services from PSI.

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

Hourly Rate: the standard hourly fee rate set out in the Schedule.

Intellectual Property Rights: patents, 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, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Services: the services supplied by PSI to the Customer as set out in the Schedule, plus any additional services that PSI agrees in writing to supply to the Customer from time to time.

1.2 Construction

In these Conditions, the following rules apply:

- (a) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- (b) a reference to a party includes its personal representatives, successors or permitted assigns;
- (c) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- (d) any phrase introduced by the terms **including, include, in particular** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- (e) a reference to **writing** or **written** includes e-mail but not fax.

2. Basis of contract

- 2.1 The Customer agrees to purchase and PSI agrees to supply the Services in accordance with these Conditions.
- 2.2 This Contract shall commence on the date on which it has been signed by the Customer and PSI.
- 2.3 The Contract constitutes the entire agreement between the parties. It supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between us, whether written or oral, relating to its subject matter. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of PSI which is not set out in the Contract.
- 2.4 Any drawings, descriptive matter or advertising issued by PSI, and any descriptions or illustrations contained on PSI's website or in PSI's marketing literature, are issued or published for the sole purpose of giving an approximate idea of the services provided by PSI. They shall not form part of the Contract or have any contractual force.
- 2.5 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.6 Any estimate or quotation given by PSI shall not constitute an offer.

3. Supply of Services

- 3.1 PSI shall supply the Services to the Customer.
- 3.2 PSI shall use all reasonable endeavours to meet any reasonable performance deadlines notified to PSI by the Customer, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 3.3 PSI shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and PSI shall notify the Customer in any such event.
- 3.4 PSI warrants to the Customer that the Services will be provided using reasonable professional care and skill.

4. Customer's obligations, including health & safety

- 4.1 The Customer shall:
- (a) co-operate with PSI in all matters relating to the Services;
 - (b) provide PSI, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by PSI;
 - (c) ensure all legal health & safety provisions are met in respect of PSI, its employees, agents, consultants and subcontractors at the Customer's site(s);
 - (d) provide PSI with such information, data and materials as PSI may reasonably require in order to supply the Services, in such form as PSI may reasonably require and ensure that such information is clear, complete and accurate in all material respects;
 - (e) obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start;
 - (f) keep and maintain all materials, equipment, documents and other property of PSI (PSI Materials) at the Customer's premises in safe custody at its own risk, maintain PSI Materials in good condition until returned to PSI, and not dispose of or use PSI Materials other than in accordance with PSI's written instructions or authorisation.
- 4.2 If PSI's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (Customer Default):
- (a) PSI shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its

obligations to the extent the Customer Default prevents or delays PSI's performance of any of its obligations;

- (b) PSI shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from PSI's failure or delay to perform any of its obligations as set out in this clause 4.2; and
- (c) the Customer shall reimburse PSI on written demand for any costs or losses sustained or incurred by PSI arising directly or indirectly from the Customer Default.

5. Charges and payment

5.1 Unless the parties agree otherwise in writing, the Charges for the Services shall be on a time and materials basis:

- (a) the Charges shall be calculated in accordance with PSI's agreed quotation (based on its rates at the time of order) for the time input engaged on the Services;
- (b) PSI shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom PSI engages in connection with the Services, including, but not limited to, travelling expenses at £0.45 per mile, and for the cost of services provided by third parties and required by PSI for the performance of the Services, and for the cost of any materials.

5.2 PSI reserves the right to increase its charges, provided that such charges cannot be increased more than once in any 12 month period. PSI will give the Customer written notice of any such increase at least one month before any proposed date of the increase. If such increase is not acceptable to the Customer, it shall notify PSI in writing within 2 weeks of the date of PSI's notice and PSI shall have the right without limiting its other rights or remedies to terminate any Contract by giving 2 weeks' written notice to the Customer.

5.3 PSI shall invoice the Customer either:

- (a) on completion of the Services;
- (b) monthly in arrears; or
- (c) at such other intervals as the parties agree in writing.

5.4 The Customer shall pay each invoice submitted by PSI:

- (a) within 28 days of the date of the invoice; and
- (b) in full and in cleared funds to a bank account nominated in writing by PSI, and time for payment shall be of the essence of the Contract.

- 5.5 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by PSI to the Customer, the Customer shall, on receipt of a valid VAT invoice from PSI, pay to PSI such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 5.6 If the Customer fails to make any payment due to PSI under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 4% per cent per annum above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 5.7 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). PSI may at any time, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by PSI to the Customer.

6. Intellectual property rights

- 6.1 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by PSI.
- 6.2 The Customer acknowledges that, in respect of any third party Intellectual Property Rights, the Customer's use of any such Intellectual Property Rights is conditional on PSI obtaining a written licence from the relevant licensor on such terms as will entitle PSI to license such rights to the Customer.
- 6.3 All PSI Materials are the exclusive property of PSI.

7. Confidentiality

A party (**Receiving Party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party (**Disclosing Party**), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business, its products and services which the receiving party may obtain. The Receiving Party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The Receiving Party may also disclose such of the Disclosing Party's confidential information as is required to be disclosed by law, any governmental or

regulatory authority or by a court of competent jurisdiction. This clause 7 shall survive termination of the Contract.

8. Limitation of liability

8.1 Nothing in these Conditions shall limit or exclude PSI's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- (b) fraud or fraudulent misrepresentation; or
- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

8.2 Subject to clause 8.1 PSI shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract.

8.3 The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

8.4 This clause 8 shall survive termination of the Contract.

9. Termination

9.1 Without limiting its other rights or remedies, either party may terminate the Contract by giving the other party one months' written notice.

9.2 Without limiting its other rights or remedies, PSI may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment and fails to pay all outstanding amounts within 14 days after being notified in writing to do so.

9.3 Without limiting its other rights or remedies, PSI may suspend provision of the Services under the Contract or any other contract between the Customer and PSI if the Customer fails to pay any amount due under this Contract on the due date for payment.

10. Consequences of termination

On termination of the Contract for any reason:

- (a) the Customer shall immediately pay to PSI all of PSI's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, PSI shall submit an invoice, which shall be payable by the Customer immediately on receipt;

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- (b) the Customer shall return all of PSI Materials. If the Customer fails to do so, then PSI may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
- (c) the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall be unaffected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- (d) clauses which expressly or by implication survive termination shall continue in full force and effect.

11. Force majeure

- 11.1 For the purposes of this Contract, **Force Majeure Event** means an event beyond the reasonable control of PSI including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of PSI or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.
- 11.2 PSI shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.
- 11.3 If the Force Majeure Event prevents PSI from providing any of the Services for more than 4 weeks, PSI shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.

12. General

12.1 Assignment and other dealings

- (a) PSI may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.
- (b) The Customer shall not, without the prior written consent of PSI, assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract.

12.2 Notices

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it

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is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier or e-mail.

- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 12.2(a); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Day of Business after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by e-mail, one Day of Business after transmission.
- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

12.3 Severance

- (a) If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- (b) If any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

12.4 Waiver

A waiver of any right under the Contract or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

12.5 No partnership, joint venture or agency

Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, nor constitute either party the agent of the other for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

12.6 Third parties

A person who is not a party to the Contract shall not have any rights to enforce its terms.

12.7 Variation

Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by PSI.

12.8 Governing law

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

12.9 Jurisdiction

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).