

1. APPLICATION OF THESE TERMS

These terms and conditions together with any Quotation: (a) apply, unless stated otherwise, to all contracts between Star and the Customer for the supply of Services; and (b) are subject to any conditions specified in the Quotation which will take precedence over these terms and conditions. Words defined in the attached Quotation have the same meanings in these terms and conditions. No other terms apply.

In these terms and conditions:

“**Analysis**” means any analysis, recommendation or report provided by Star to the Customer as part of the Services;

“**Ethos Consultancy**” means a temporary Installation for the period specified in the Quotation;

“**Contract**” means these terms and conditions and the Quotation;

“**Contract Period**” means the period during which the Services are to be provided as specified in Condition 10;

“**Customer**” means the customer detailed in the Quotation;

“**Customer Data**” means all comments or content the Customer or Portal users upload to the Portal;

“**Customer Plant**” means the Equipment and the Customer location specified in the Quotation;

“**Data**” means data relating to the Customer recorded by the Equipment;

“**Equipment**” means the equipment specified in the Quotation including the data logger and any equipment provided following any Survey;

“**Ethos Management**” means a permanent Installation;

“**Fees**” means the amounts to be paid by the Customer to Star for the Services as specified in any Quotation or agreed by Star and the Customer following a Survey or otherwise;

“**Installation**” means the installation of the Equipment at the Customer Plant as specified in the Quotation;

“**Portal**” means the online website where the Customer accesses the Analysis;

“**Quotation**” means the final quotation agreed between the parties detailing the Ethos Consultancy or Ethos Management to be provided by Star;

“**Services**” means Ethos Consultancy or Ethos Management as set out in any Quotation;

“**Star**” means Star Refrigeration Limited, a company incorporated in Scotland with registered number SC048005 and whose registered office is at Thornliebank Industrial Estate, Glasgow G46 8JW, trading as Star Technical Solutions; and

“**Survey**” means the survey by Star referred to in Condition 3.1.

2. EQUIPMENT, TITLE AND RISK

2.1 The Quotation will indicate if the Equipment is supplied on an Ethos Consultancy basis or an Ethos Management basis.

2.2 Title to Equipment supplied for Ethos Consultancy, shall at all times remain with Star and the Customer shall not sub-let, lend, sell, assign, charge, or otherwise encumber or part with the possession, dispose of or hold itself out as the owner of the Equipment (or any part) and shall return the Equipment to Star at the end of the Contract Period. If the Equipment is not returned at the end of the Contract Period, Fees will continue to accrue and be payable by the Customer.

2.3 Title to Equipment supplied for Ethos Management shall pass to the Customer only once the first 12 months’ instalments of the Fees have been paid.

2.4 Risk of loss, theft, damage or destruction to the Equipment shall pass to the Customer on completion of the Installation. Damage to, or destruction of, the Equipment must be reported to Star immediately.

3. SURVEY AND INSTALLATION

3.1 Star will carry out a survey of the Customer Plant to determine its suitability for the Installation (“**Survey**”). If Star determines that the Customer Plant is not suitable or the Customer elects not to proceed with the Installation (or does not give its decision on this within 14 days of Star’s written request), the Contract shall be deemed to be terminated and the Customer’s liability to Star shall be an amount equal to the cost of the Survey.

3.2 If Star determines that the Customer Plant is suitable, Star will carry out the Installation, based on the results of the Survey, in a workmanlike manner and to the best of its ability, but shall not be liable for any damage caused to property in or about the Customer Plant caused by reasons beyond the control of Star or its employees.

3.3 The availability of the Services is dependent upon mobile network connectivity.

3.4 If, after completion of the Installation, damage to, or destruction of, any part of the Equipment occurs, arising from any accident, theft, fire, tampering or malicious intent or from any cause beyond Star’s control, Star shall make good the damage or destruction and will make an extra charge to the Customer in respect thereof which the Customer must pay. The extra charge will be calculated in accordance with Star’s standard charges and terms. If Star deems further work to be impractical, the Customer shall pay for the Equipment and Services already supplied and the Contract shall be at an end with no further liability on either party.

3.5 The Customer shall bear any liability arising from, or contributed to by, the installation or other operations by the Customer or by other contractors employed by the Customer.

3.6 Where the Customer is to provide materials or services they must be in good condition and suitable for the purpose for which they are intended. Any replacement found necessary after inspection and/or testing by Star (whose decision in this respect is final) will be charged for in addition to the quoted price.

3.7 The Customer shall provide all reasonable co-operation to Star to facilitate the Installation including, unless otherwise provided in the Quotation, the provision of a **qualified electrician in attendance to power the Equipment**, and to make any necessary modifications to its plant to enable the Installation to take place. In the event that the Customer does not do so, Star shall not be obliged to continue and/or complete the Installation and to treat the Contract as terminated. For the avoidance of doubt, the Customer shall be obliged to pay for the Services supplied to the date of termination.

4. STAR’S RESPONSIBILITIES

4.1 Subject to the terms of the Contract, Star will: (a) carry out the Installation; (b) provide the Services within any time period agreed in the Quotation or, if none is specified, a reasonable time; and (c) provide the Customer with access to the Portal and Data. Star shall have no liability whatsoever for any delays in the provision of Services or its compliance with the Contract which results from any delay or default on the part of the Customer.

4.2 Star warrants that the Services will be provided with reasonable care and skill, commensurate with good industry practice for services similar to the Services.

4.3 Star will endeavour to minimise damage or inconvenience caused by the Installation, however, unless otherwise specified in the Quotation or agreed by Star following a Survey, Star is not responsible for (a) making good insulation or holes made for routing of cables, ducts or pipes; (b) restarting the Customer Plant; or (c) making, or making safe, electrical connections. Star may charge for its reasonable costs where it carries out these works.

5. CUSTOMER’S RESPONSIBILITIES

5.1 The Customer shall provide Star with any assistance required by Star to undertake the Services and shall provide Star with details of individuals who are authorised to communicate with, and give instructions to, Star.

5.2 The Customer must provide a valid email address and any other requested information necessary to complete access to the Portal prior to the provision of the Services. This email address shall be the primary means of contact for managing access to the Services. The Customer is responsible for communicating using this email address when granting users access to the Portal and determining the level of permissions and administrative capabilities an individual user may have. The Customer shall ensure it has appropriate permissions for any personal information of Portal users that are provided to Star.

5.3 The Customer is responsible for safeguarding passwords issued by Star for accessing the Portal, ensuring its Portal users keep passwords confidential and do not share or authorise a third party to use passwords.

5.4 The Customer is responsible, at its own cost, for: (a) the provision of a suitable power supply in order for Star to provide the Services; and (b) the maintenance of the Customer Plant.

5.5 The Customer shall, at its own expense, obtain and maintain insurance of the Equipment against all usual risks of loss, damage or destruction to its replacement cost.

5.6 The Customer acknowledges that any recommendations derived from the Services are indicative only, cannot be guaranteed and are provided solely as a tool to assist the Customer in making informed decisions. It is the Customer's sole responsibility to decide whether any recommendations should be implemented.

6. CHARGES AND PAYMENT

6.1 The Customer shall pay the Fees to Star. Star shall invoice the Customer at the intervals set out in the Quotation upon completion of the Services and the Customer shall pay Star in cleared funds, within 30 days from the date of invoice.

6.2 The Customer acknowledges that the provision by Star of free text and/or email alerts to the Customer is subject to Star's reasonable usage policy which may be disabled if this is abused.

6.3 Unless otherwise specified in the Contract, VAT shall be payable in addition to the Fees.

7. OPERATIONAL AND OTHER MATTERS

7.1 Without prejudice to Condition 7.2, the Customer and Star will comply with any operational procedures agreed in writing between them.

7.2 The Customer shall be responsible for all aspects of its business and all other material, information, goods and services made available or supplied by it and shall indemnify and keep indemnified Star against any and all loss, costs, claims, liabilities, damages and expenses arising in connection with, or resulting from, such matters or use of Data or Analysis.

8. IP, DATA, AND ANALYSIS

8.1 Upon payment of the Fees (but not otherwise), the Customer shall own its Data and shall have a perpetual, sole, royalty-free, fully paid up, non-transferable licence to the Analysis for internal business operations subject to the condition that the Customer shall not use Analysis in a manner which is misleading.

8.2 Subject to Condition 8.1, title, all ownership rights, and any and all intellectual property rights in and to the Services are reserved exclusively to Star and/or its licensors and equipment suppliers. The Contract provides no rights of ownership to the technology or software used by Star to provide the Services.

9. PORTAL

9.1 Subject to Conditions 9.2 and 9.3 and any downtime for routine maintenance or caused by matters outside Star's control, Star shall use reasonable commercial efforts to provide continuous access for the Customer to the Portal during the Contract Period.

9.2 Star shall be entitled to suspend access to the Portal in the event of non-payment of the Fees or an actual or suspected material breach of the provisions of this Contract.

9.3 Star will be responsible for the maintenance and upkeep of the Portal environment, including any associated storage and backups listed in the Quotation and the Customer acknowledges that Star will monitor the Portal throughout the Contract Period for the purpose of improving its service.

10. DURATION AND TERMINATION

10.1 Ethos Management shall commence as soon as Star sends an email link for the Customer to complete the registration process for access to the Portal and, subject to Condition 10.3, shall continue in force until terminated by either party giving to the other party 30 days' notice in writing of termination to be given no earlier than 12 months after the date such email link is sent by Star to the Customer. Following the first 12 months the Contract shall continue on a monthly rolling basis.

10.2 Ethos Consultancy shall commence as soon as Star sends an email link for the Customer to complete the registration process for access to the Portal and, subject to Condition 10.3, shall continue in force for

the period specified in the Quotation or as otherwise agreed between the parties following the subsequent Survey (if any).

10.3 Either party may terminate this Agreement by written notice if: (a) the other **commits a material breach of this Agreement and such breach (if capable of remedy) is not remedied within 30 days of written notice to do so;** or (b) the other takes, or there are taken in respect of it, any step, action, application or proceeding in relation to the whole or any part of its undertaking for a voluntary arrangement or composition or reconstruction of its debts or its winding-up, dissolution, administration, receivership (administrative or otherwise) or bankruptcy, or if any equivalent step, action, application or proceeding is taken in any relevant jurisdiction.

10.4 Rights and obligations accrued at termination or expiry of this Contract shall not be affected by such termination or expiry. Any provisions of this Contract intended to apply after termination or expiry shall survive termination or expiry.

10.5 The Customer is solely responsible for downloading any Data and Analysis it requires before the Contract Period ends. All Customer access to the Portal, Data and Analysis shall cease immediately at the end of the Contract Period. Star is entitled to use such Data (on an anonymised basis) for service improvement and promotional activities during and after the expiry of the Contract Period.

11. WARRANTIES

11.1 Star warrants at the Installation date that: (a) it is the owner or licensee of all intellectual property rights in and to the software and technology provided by it for the Services; (b) there is no current, pending or threatened litigation against Star which could materially impact upon its ability to perform its obligations under these terms and conditions; and (c) the Services shall operate in all material respects in accordance with the Quotation.

11.2 Star shall have no obligation or other liability with regard to (a) modifications or alterations to the Equipment made by the Customer; (b) use of the Services by the Customer other than as contemplated herein; (c) products or services not provided by Star; or (d) the negligence or wilful misconduct of Customer or persons other than Star.

11.3 The Equipment is warranted for 12 months from Installation against defects in manufacturing and workmanship. **This warranty does not apply if the Customer is in arrears of payment** to Star or interferes in any way with the Equipment.

11.4 Subject to Condition 11.3, Star does not provide warranties for the Services. Star provides the Services "AS IS" with no warranties of any kind expressed or implied, whether for fitness, merchantability or otherwise. No warranties shall arise out of course of performance, course of dealing, or usage of trade. Star does not warrant that the Services, or any materials obtained by the Customer through the Services, will meet the Customer's specific requirements or that the Services will be uninterrupted, timely, secure, or error-free.

12. INDEMNIFICATION

12.1 Subject to the Customer's obligations relating to the Contract, Star agrees to indemnify and hold harmless the Customer from and against any and all third party claims or actions, including any losses, costs, liabilities, reasonable legal fees and other expenses arising from such claims or actions, alleging that the Equipment or the provision of the Portal to the Customer infringes or violates any copyright, trademark, patent or trade secret of a third party, provided: (i) the Customer gives written notice of any claim to Star as soon as is reasonably practicable to do so; and (ii) the Customer shall not make any admission of liability, agreement or compromise in relation to any claim without the prior written consent of Star. In the event of any infringement claim Star may, in its sole discretion, terminate the Services by notice in writing or provide the Services by alternative means achieving the same overall functionality.

13. LIMITATION OF LIABILITY

13.1 Neither party excludes or limits its liability to the other for personal injury or death resulting from a party's negligence; for fraud or fraudulent misrepresentation; or for any matter which it would be illegal to exclude or attempt to exclude or limit its liability.

13.2 Subject to Condition 13.1, under no circumstances shall Star's aggregate liability to the Customer arising out of or related to these terms and conditions exceed the aggregate Fees due or paid to Star from the Customer at the time of the Customer's claim. The Customer hereby releases Star from all obligations, liability, claims or demand in excess of this limitation.

- 13.3 Subject to Condition 13.1, neither party shall be liable for any special, indirect, incidental, or consequential damages or for any loss of revenues, lost profits, loss of or inaccuracy of data, or lost or interrupted business, however caused and whether based in tort (including negligence), contract, or any other theory of liability, even if such entity has been advised of the possibility of such damages. This limitation of liability shall apply to the maximum extent permitted by law but neither party excludes any liability for death or personal injury covered by the negligence, fraud or wilful misconduct of that party.
- 13.4 The Customer agrees that the foregoing provisions of this Condition 13 are reasonable having regard to the nature of the Services and the level of the Fees.
- 14. MISCELLANEOUS**
- 14.1 These terms and conditions and any other documents forming part of the Contract contain the entire understanding of the parties with respect to its subject matter. These terms and conditions supersede all prior agreements and understandings between the parties with respect to its subject matter.
- 14.2 Subject to the provisions of Condition 8.1, each party shall keep any information supplied to it by the other which is not publicly available, together with the content of the Contract, strictly private and confidential and will not without the other's prior written consent disclose or permit disclosure of all or part of that information to anyone else unless required to comply with law. Star may disclose the existence and content of the Contract in respect of any financing of Star or any of its group companies.
- 14.3 Neither party shall be liable for any breach of its obligations resulting from causes beyond its reasonable control. In such event the affected party shall give notice in writing to the other as soon as reasonably practicable and shall use reasonable endeavours to mitigate the effect and to perform its obligations in a similar way wherever possible.
- 14.4 Each party shall comply with all laws, statutes and regulations concerning its activities in relation to the Contract including the Bribery Act 2010.
- 14.5 Any reference to a party includes its permitted successors and assignees. Star may assign the Contract to a company succeeding to its business or as part of a financing transaction without the need for the Customer's prior written consent. Neither party may otherwise assign, novate or transfer any of its rights or obligations under this Contract. Star may use sub-contractors to carry out any part of the Services.
- 14.6 These terms and conditions do not create a partnership or agency between the parties. Neither party may bind the other. Save as expressly provided, a person who is not a party to these terms and conditions has no right under any statutory or other provision to enforce any of its terms.
- 14.7 If any provision of the Contract is held invalid or unenforceable, that provision will be enforced to the maximum extent permitted by law and the remaining provisions will remain in full force.
- 14.8 Any notice shall be in writing and shall be served if delivered personally or sent by pre-paid post to the address of the respective party set out above or other contact address provided for this purpose in accordance with this condition, or by facsimile to such facsimile number as the addressee may have specified for this purpose.
- 14.9 The Contract shall be governed by Scots law and the Scottish courts shall have the exclusive jurisdiction to settle any disputes.