

STANDARD SALES ORDER TERMS AND CONDITIONS (“Terms and Conditions”)

These Terms and Conditions apply to and govern any sales order, acknowledgment, invoice and transaction for the purchase of Goods, to the exclusion (except as specifically identified in these Terms and Conditions) of all other terms and conditions, including, without limitation, any terms or conditions which you may purport to apply under any purchase order, confirmation of order or similar document. Any such terms and conditions from you are objected to and disallowed. “You” or “your” shall mean the customer listed on the sales order to which these Standard Sales Order Terms and Conditions apply and are made a part of. “f’real” shall mean F’real! Foods, LLC. “Sales Order” shall mean your express, signed order to purchase the Goods, which such order shall be deemed to incorporate and be governed by these Terms and Conditions.

1. **Offer and Acceptance; Transfer of Title and Risk.** Any Sales Order from you to f’real shall be an offer by you to purchase the equipment (including any part or parts thereof) and any services agreed upon to be purchased by you pursuant to a Sales Order (collectively, the “Goods”) subject to these Terms and Conditions. No Sales Order shall be accepted until f’real either expressly, by giving notice of acceptance, or impliedly, by fulfilling the Sales Order, accepts the offer. Unless stated otherwise in a Sales Order, the Goods will be shipped CIP Destination designated on the Sales Order, and risk and title to all Goods sold by f’real to you shall transfer from you upon f’real’s delivery of the Goods to the first carrier.

2. **Price and Payment.** You shall pay to f’real the price on the Sales Order immediately when due. If f’real incurs extra cost or suffers any loss in supplying the Goods because of a lack of, or defects in, instructions given by you or any other conduct by you, f’real may increase the price by the amount of the extra costs or loss without affecting any other remedy available. If you fail to pay the price when due, then (a) f’real may suspend any deliveries; and (b) f’real may charge interest on all sums due and outstanding at the rate of 1.5% per month or at the maximum amount permitted by law, whichever is less. f’real reserves the right, at its sole discretion, to refuse to execute, perform or proceed further with the execution or performance of any Sales Order or transaction if your arrangements for payment or credit appear to be or become unsatisfactory.

3. **Delivery.** Unless otherwise stated in a Sales Order, delivery of the Goods shall be made to you at CIP Destination designated on the Sales Order. If different delivery terms are set forth in a Sales Order, f’real may select and engage carriers, truckmen, agents, and others (collectively, “Carriers”) to transport, store, deal with and/or deliver the Goods to you, and unless otherwise stated in a Sales Order, delivery will be deemed to take place when the Goods are delivered to the first such Carrier. Any date of delivery specified by f’real is an estimate only. Time for delivery shall not be of the essence. Goods not delivered on a delivery date shall not give you the right to cancel the Sales Order, in whole or in part. You must make all arrangements to take delivery of Goods when they are tendered for delivery. If you fail to take delivery of Goods or fail to give f’real adequate instructions at the time stated for delivery of Goods: (a) risk in the Goods shall pass to you if it has not already passed; and (b) you shall be liable to f’real for all loss and damage caused by such failure; additionally, without affecting such rights, f’real may choose to store Goods until actual delivery and charge to you the reasonable costs (including insurance) of storage. You agree to accept delivery and pay for the Goods. You shall not cancel or change the accepted Sales Order without f’real’s prior written consent.

4. **Quality.** THE WARRANTIES SET FORTH IN THE TERMS AND CONDITIONS OR IN F’REAL’S WARRANTY DOCUMENTS WITH RESPECT TO THE GOODS ARE THE ONLY WARRANTIES MADE BY F’REAL IN CONNECTION WITH THE GOODS AND THE TRANSACTIONS CONTEMPLATED AS A RESULT OF THIS SALE. F’REAL MAKES NO OTHER WARRANTY AS TO THE GOODS OR SERVICES DESCRIBED HEREIN AND EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. F’REAL’S SOLE OBLIGATION FOR A REMEDY TO YOU SHALL BE REPAIR, REPLACEMENT OR REFUND OF NON-CONFORMING GOODS. YOU ASSUME ALL RISK WHATSOEVER AS TO THE RESULT OF THE USE OF THE GOODS PURCHASED, WHETHER USED ALONE OR IN COMBINATION WITH OTHER PRODUCTS OR SUBSTANCES. You shall inspect the Goods promptly upon receipt (including, but not limited to, for non-conformity for quantity, quality, and/or defects). Your failure to provide f’real with written notice of a claim within fifteen (15) days from the date of delivery shall constitute a waiver by you of all claims with respect to such Goods. If any of the Goods fail to comply with the provisions set forth in this Section 4, f’real may, at its option, repair, replace or refund the price of any Goods which f’real is satisfied were defective at the time of delivery, provided that: (a) written notice has been given to f’real within fifteen (15) days of the date of delivery; (b) Goods have not been used, processed, sold, transferred or otherwise disposed of; (c) no defect has arisen from your failure to follow f’real’s instructions as to storage or usage of Goods; and (d) the defective Goods are held by you, at your expense, for f’real’s inspection. You shall not be entitled to cancel the Sales Order as a result of delivery of defective Goods. It shall be your responsibility to pursue claims against the carrier for Goods which have been lost or damaged in transit.

5. **f’real’s Liability, Indemnity, Remedies.** Without prejudice to the effect or operation of any of these Terms and Conditions, f’real’s aggregate liability for any loss or damage of any nature, including, but not limited to, claims for indemnification, whether arising out of f’real’s breach of contract, negligence, breach of statutory duty or otherwise shall be limited to and shall not exceed a sum equal to the price of the Goods. f’real shall not be liable to you in contract, tort or otherwise, for the cost of any labor or machine time or for any loss of profit, loss of business or depletion of goodwill, and in each case, whether direct, indirect or consequential, whatsoever and howsoever caused, which arise out of or in connection with the sale of Goods. In no event shall f’real be liable for or have any responsibility for any misuse of the Goods or any action or omission regarding the Goods in violation of any manual, labels, warnings or instructions to the Goods. f’real shall not be responsible for any actions taken or fines or penalties assessed by any governmental agency against shipment of the Goods because of your failure to comply with any laws or regulations or with a notification issued to you by any such governmental agency. Nothing in this clause shall operate to restrict or exclude f’real’s liability for any matter which it would be illegal to restrict or exclude or attempt to restrict or exclude. **Indemnity.** You shall save, defend, indemnify and hold harmless f’real, and its successors, assigns and agents, affiliated, associated, parent and subsidiary companies and its officers, directors, agents and employees (the “Seller Parties”) from and against any and all liabilities, losses, damages, claims, injury, actions, proceedings, costs and expenses (“Claims”), including without limitation loss of profit, loss of business, depletion of goodwill, legal fees and other professional fees and expenses, awarded against or incurred or paid by any of f’real or the Seller Parties as a result of or in connection with your breach of these Terms and Conditions, negligence, breach of statutory duty, improper use, handling or maintenance of the Goods (including, without limitation, in violation of any manual, instructions, warnings or labels) or other misconduct. **Remedies.** If you breach any of these Terms and Conditions, f’real shall have, in addition to other rights specified herein, all of the rights provided for under the Uniform Commercial Code as applied in New York or other applicable law. Each right or remedy of f’real shall be cumulative, non-exclusive and without prejudice to any other right or remedy of f’real to the extent permitted by law. You acknowledge that a breach of this agreement may not be adequately remedied by monetary damages and f’real shall have available any and all equitable remedies, including injunctive relief and specific performance.

6. **Confidentiality; f’real’s Property.** You shall keep in strict confidence all technical or commercial know-how, specifications, inventions, formulas, manufacturing processes, financial information, initiatives or similar documents, products or information which are of a confidential nature and have been disclosed to you by f’real or its agents and any other confidential information concerning f’real’s business or its

products which you may obtain (“Confidential Information”), and you shall restrict disclosure of such Confidential Information to your employees, agents, or sub-contractors as need to know the same and shall ensure that they are subject to the same obligations of confidentiality as bind you. Your obligation of confidentiality and non-use for Confidential Information hereunder shall continue beyond performance of the Sales Order. Materials, formulas, copyright, design rights, or any other forms of intellectual property rights in all specifications and data supplied by f’real, shall, at all times, be and remain the exclusive property of f’real but shall be held by you in safe custody at your risk and maintained and kept in good condition by you until returned to f’real. The f’real foods Cellular Modem Agreement for FRLB4 & FRLB6 between you and f’real is incorporated herein by reference.

7. Miscellaneous. Force Majeure. If f’real is prevented, hindered or delayed from manufacturing or delivering the Goods by reason of any cause beyond f’real’s control, f’real may give notice in writing to you either (a) canceling f’real’s outstanding obligations or (b) extending the time for delivery of Goods by such period as f’real may reasonably require. f’real will not be liable to you for any damage or loss of any nature, whether direct or indirect, or any late deliveries, as a result of giving such notice. Assignment. You may not assign the Sales Order or these Terms and Conditions or any part thereof without f’real’s prior, express written consent. Notice. Any notice required or permitted to be given by either party under these Terms and Conditions shall be in writing and shall be delivered or sent by pre-paid post sent first class addressed to the party as indicated on the Sales Order, or such other address as may be notified by that party, pursuant to these Terms and Conditions. Any notice which is delivered shall be deemed to be served when handed to the addressee and any notice sent by pre-paid post first class shall be deemed to be served two business days after posting. Governing Law; Venue; Severability. These Terms and Conditions, the Contract, and all transactions contemplated hereby shall be governed and construed in all respects in accordance with the laws of the State of New York without regard to its conflicts of law rules. The parties agree to submit to the jurisdiction of any state or federal court in Erie County in the State of New York in any action or dispute resolution process arising out of the terms, enforcement or breach of the Contract or these Terms and Conditions. Any provision or provisions of the Contract which are found to be invalid shall be deemed inoperative without invalidating or otherwise affecting any other provisions of the Contract. Modification and Waiver. No amendment, variation, waiver, alteration, or modification to the Contract and these Terms and Conditions shall have effect unless expressly agreed upon in writing and signed by f’real. Failure or delay by f’real in enforcing or partially enforcing any provision of these Terms and Conditions shall not be construed as a waiver of any of f’real’s rights. Any waiver by f’real of any breach of, or any default under, any provision of the Terms and Conditions by you shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Terms and Conditions. Entire Agreement. These Terms and Conditions and the Sales Order constitute the entire agreement between the parties and you acknowledge that you have not relied on any representations relating to the Goods or these Terms and Conditions made by any of f’real’s directors, employees or agents. Any course of prior dealings, promise or condition in connection herewith, or usage of trade not incorporated herein, shall not be binding upon either party.