



Version 1.0 27/06/2006

**BASKET USER LICENCE – FRONT SHEET**

DATE OF LICENCE		
“USER”, “YOU” “YOUR”	Company Number	
USER ADDRESS	Registered Office	
“BASCO”, “US”, “WE”	Bakers Basco Limited (Company Number 5713959) whose registered office is at 6 Catherine Street, London WC2B 5JW	
BASKET QUOTA	[ ] ( <i>insert in words as well</i> ) Baskets; and [ ] ( <i>insert in words as well</i> ) accompanying dollies, being 10% of the above number of Baskets	
LICENCE FEE	£[ ] ( <i>insert in words as well</i> ) pounds sterling)	
AUTHORISED RESTRICTION (if any)	Baskets must not be used in 'In Store Bakeries' at the premises of any Customer of the User. Baskets must not be used in third party production areas at the premises of any Customer of the User. Baskets must not be used for non-bakery products (including without limitation for the distribution of (i) sandwiches or (ii) any meat products or products containing meat).	
OPTIONAL SERVICES REQUIRED?	Yes/No (delete as appropriate)	
INSURANCE	Name of Insurer:  Branch Address:	Policy No.

**This Licence is subject to the terms and conditions and schedule continued on the next pages.**

**YOUR SIGNATURE**

**OUR SIGNATURE**

Signed	) .....	Signed on behalf of Bakers Basco	) .....
Print name	) .....	Print name	) .....
Witness	) .....	Witness	) .....
Print name	) .....	Print name	) .....
Address	) .....	Address	) .....
Occupation	) .....	Occupation	) .....

## MASTER BASKET USER LICENCE TERMS AND CONDITIONS

### 1. DEFINITIONS

- 1.1 "Approved Products" means those products contained on the current list of products approved by Basco for Use in the Baskets as provided by Basco to the User from time to time.
- 1.2 "Authorised Restriction" means (where applicable): the Basket Quota and such other restriction(s) as may be specified in the Front Sheet or as agreed between the parties from time to time.
- 1.3 "Authorised Purposes" means the supply of the Approved Products in accordance with both the provisions of these terms and conditions and the current handling, loading and performance specifications for the Basket as provided by Basco to the User from time to time.
- 1.4 "Baskets" means the baskets (together with all associated dollies and wheels) supplied by Basco for Use in the supply of Approved Products to retailers of those products.
- 1.5 "Basket Quota" means the authorised number of Baskets that the User is entitled to Use in accordance with this Licence, as specified in the Front Sheet.
- 1.6 "Collection Point" means the specific Customer premises (if any) which Basco notifies to the User initially pursuant to clause 3.4.2 and then from time to time thereafter, such premises being as close to the User's Premises as is reasonably practicable bearing in mind the usage patterns of all Baskets owned by Basco. For the avoidance of doubt, Basco shall not be required to notify the User of a collection point, provided that such failure to notify the User of a collection point would at no time leave the User with less Baskets than the Basket Quota without the User's prior consent (such consent not to be unreasonably withheld).
- 1.7 "Commencement Date" means the date of signature of this Licence.
- 1.8 "Confidential Information" means all information designated as such by either party in writing together with all such other information which relates to the business affairs, finance, products, data, software listings, source or object code, developments, trade secrets, know-how, personnel, users and suppliers of either party, together with all information which may reasonably be regarded as the confidential information of the disclosing party.
- 1.9 "Customers" means those third parties to whom the User supplies Approved Products.
- 1.10 "Delivery" means the first collection by the User, or delivery to the User, of Baskets in accordance with Clause 3.4 (whether before or after the date of this Licence).
- 1.11 "Front Sheet" means the front sheet to these terms and conditions, on which the User is granted the right to Use a specific quantity of Baskets subject to and in accordance with these terms and conditions. All Front Sheets are subject to acceptance and signature by Basco, and any purported variation to these terms and conditions contained therein shall be of no effect unless specifically signed by an authorised signatory of Basco.
- 1.12 "Intellectual Property Rights" means any patents, trade marks, service marks, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, know-how, trade or business names and other similar rights or obligations whether registerable or not, in any country including but not limited to the UK.
- 1.13 "Licence" means these terms and conditions, the Front Sheet, the current handling, loading and performance specifications for the Basket as provided by Basco to the User from time to time the current washing specifications for the Basket as provided by Basco to the User from time to time, and the current list of products approved by Basco for Use in the Baskets as provided by Basco to the User from time to time.
- 1.14 "Licence Fee" means the upfront non-refundable fee set out in the Front Sheet, which is payable by the User for the right to use the number of Baskets that make up the Basket Quota.
- 1.15 "Licence Term" means the period commencing on the date of Delivery until termination of this Licence in accordance with clause 11 below.
- 1.16 "Mandatory Services" has the meaning given in Clause 5.1.
- 1.17 "Optional Services" has the meaning given in Clause 5.2.
- 1.18 "Services" means the Mandatory Services and (if applicable) the Optional Services.
- 1.19 "Territory" means the United Kingdom (including without limitation Northern Ireland) (in any case) and (only in accordance with the

provisions of Clause 3.5) any other countries in Europe (including without limitation the Republic of Ireland).

1.20 "Use" or "Used" means use of the Baskets for the Authorised Purposes.

1.21 "Usage Charge" means (a) the amount per Use of each Basket that Basco charges at the relevant time in consideration for the provision of the Mandatory Services, together with (b) (if applicable) the amount per Use of each Basket that Basco charges at the relevant time in consideration for the provision of the Optional Services, such amounts having been calculated by Basco in each case on the basis that the terms on which Basco licences Baskets to a user shall not be influenced by whether such user is a shareholder in Basco or not, and that all users are treated equally, one 'Use' occurring for these purposes when a Basket containing any Approved Products is delivered by the User to the premises of one of its Customers.

1.22 "User's Premises" means those production, distribution or operational premises of the User which are notified by the User to Basco from time to time as being the premises at which the User requires to Use the Baskets.

### 2. OWNERSHIP AND CONFIDENTIALITY

2.1 The User acknowledges and agrees that (a) the Baskets are manufactured using the intellectual property, proprietary information and Confidential Information, of Basco, and that (b) Basco owns and shall retain title to all Baskets and all Intellectual Property Rights in and to all Baskets, subject only to the licence to Use granted to the User pursuant to clause 3 (Licence and Use).

2.2 Each party shall notify the other party immediately if either party becomes aware of any unauthorised Use of the whole or any part of the Baskets by any third party and shall take all such other steps as shall from time to time be reasonably necessary to protect the proprietary information, Confidential Information and Intellectual Property Rights of Basco in the Baskets.

2.3 The parties agree that any Confidential Information obtained from or relating to the other, its servants or agents is the property of such other party. The parties shall treat as confidential and neither party shall use or disclose any Confidential Information of the other party except to the extent necessary for those employees, agents and sub-contractors of either party who either have a need to know or who are engaged in the Use of the Baskets for the performance of this Licence and upon conditions of confidentiality.

2.4 The foregoing provisions shall not prevent the disclosure or use by either party of any Confidential Information which was in the lawful possession of the receiving party prior to disclosure under this Licence or which is or hereafter becomes, through no fault of that party, public knowledge or lawfully acquired or independently developed or to the extent permitted or required by law.

2.5 Notwithstanding this Clause, Basco may advertise or publicly announce that User is a client of Basco, and Uses the Baskets and Services without prior approval from the User.

### 3. LICENCE AND USE

3.1 Subject always to Clause 11 (Termination) and immediately following Delivery, Basco grants to the User a non-exclusive licence to Use in the Territory for the Licence Term in accordance with these terms and conditions such number of the Baskets that make up the Basket Quota, subject to and in consideration of the payment by the User of the Licence Fee.

3.2 A separate licence is required for any additional Baskets that the User may wish to Use in excess of the Basket Quota.

3.3 The User may assign or novate (on such terms as it sees fit) its rights and obligations under this Licence to any person provided that: (a) prior to the proposed assignment or novation the User notifies Basco of the proposed assignee and the number of Baskets it is proposed to assign or novate the rights in respect of; (b) such person is in the United Kingdom and has agreed in writing to Basco to be bound by the terms of this Licence, and (c) that Basco has given its consent to that assignment or novation (such consent not to be unreasonably withheld or delayed).

3.4 As soon as reasonably practicable following the payment by the User of the Licence Fee in accordance with Clause 7 (taking into account the number of Baskets tools owned by Basco, and the number of outstanding orders for Baskets already received by

	Basco from other users, as at the date of this Licence), Basco will:	4.3.3	(Unless it is specified in the Front Sheet that the User requires Basco to provide the Optional Services to that User) the User shall clean the Baskets in its possession with such frequency and to such standard as required pursuant to the current washing specifications for the Basket as provided by Basco to the User from time to time; and
3.4.1	procure that its Basket supplier manufactures such number of the Baskets as make up the Basket Quota and, once that number has been so manufactured, shall notify the User of the location of the Supplier's premises from which the User can collect that number of Baskets. As soon as reasonably practicable following such notification having been given, and in any event within five (5) days, the User shall collect those Baskets from that location. If Basco is required to arrange delivery of those Baskets direct to the User for whatever reason (including without limitation failure by the User to have collected those Baskets within the above time period) the User shall indemnify Basco and hold Basco harmless at all times, and on an after tax basis, from and against any and all liabilities, charges, costs, losses (whether direct or indirect) and expenses which may be suffered or incurred by Basco in arranging any such direct delivery; and	4.3.4	the User shall procure, at its expense, that such number of empty Baskets collected by it pursuant to Clause 4.3.2 above as Basco specifies to the User and as can be delivered by the User by way of a back-haul are delivered to such specific premises of other users as Basco specifies (such premises being as suitable for a back-haul by the User as is reasonably practicable bearing in mind the usage patterns of all Baskets owned by Basco), provided that at no time shall the User be left with less Baskets than the Basket Quota without the User's prior consent (such consent not to be unreasonably withheld); and
3.4.2	notify the User of the initial Collection Point from which the User is to collect additional Baskets pursuant to Clause 4.3.2 to replace those Baskets supplied by the User to any Customer.	4.3.5	The User shall comply with all laws, regulations and statutory obligations relating to the possession and Use of the Baskets; and
3.5	If the User wishes to Use any Basket in the Republic of Ireland or any other country in Europe other than the United Kingdom, the User shall notify Basco as soon as possible of the number of Baskets that it wishes to Use (the "Exported Number") and the applicable country in which it wishes to use them (the "Export Country"). The User shall then be permitted to use that number of Baskets in the Export Country subject to the following conditions:	4.3.6	The User shall implement as soon as reasonably practicable all reasonable Basket usage recommendations advised to it by Basco from time to time; and
3.5.1	The User shall be wholly responsible for ensuring that the entire amount of the Exported Number of Baskets are collected by or returned to the User completely undamaged following their Use in the Export Country; and	4.3.7	The User shall not Use in any way any broken and damaged Baskets, but instead shall segregate any such Baskets and notify Basco in accordance with Clause 6 of any such Baskets having been so segregated. The User shall retain all such segregated Baskets at its expense until those Baskets can be disposed of through any means either previously approved by Basco, or (at the User's request) expressly agreed to by Basco. The User shall not dispose of any Baskets through any other source. All costs of, and/or all proceeds generated by, any such disposal shall be for Basco's sole account; and
3.5.2	As soon as reasonably practicable following such collection or return of the exported Baskets, the User shall notify Basco in writing of the exact number of Baskets which were (a) so collected or returned completely undamaged; (b) so collected or returned damaged or broken; and (c) lost during their Use in the Export Country; and	4.3.8	the User shall not delete, deface, amend or otherwise alter any copyright or other ownership notices or legends displayed on, incorporated in or attached to the Baskets ; and
3.5.3	The User hereby agrees to indemnify Basco and hold Basco harmless at all times, and on an after tax basis, from and against any and all liabilities, claims, demands, proceedings, judgements, damages, charges, costs losses (whether direct or indirect) and expenses which may be suffered or incurred by Basco by reason of any damage to, or non-return, loss or destruction of, any such Basket which is so Used in the Export Country in accordance with Clause 3.5 or in any way arising out of any breach by the User of Clause 3.5.1 above).	4.3.9	the User shall not apply stickers or labels to Baskets unless they are low tack or easily removable; and
		4.3.10	the User shall not Use the Baskets for unwrapped Approved Products unless appropriate sheeting is placed in the bottom of the Basket prior to such Use; and
		4.3.11	the User shall not improperly Use, or neglect, the Baskets;
		4.3.12	the User shall not intentionally deface, disassemble, modify, adjust, enhance, adapt or alter the Baskets (or any part thereof); and
		4.3.13	save as expressly provided in this Licence, the User shall not assign, transfer, sell, trade or otherwise deal in, lease, encumber, market, rent, or copy the Baskets (or any part thereof); and
4.	<b>USER RESPONSIBILITIES IN USE OF THE BASKETS</b>	4.3.14	the User shall not export or re-export, or allow the export or re-export of, any Basket outside of the Territory; and
4.1	The User is responsible both for initially deciding whether or not to Use the Baskets in its business and for the management, operation and Use of the Baskets under this Licence and the results obtained therefrom.	4.3.15	the User shall not exceed any Authorised Restriction in the use of the Baskets; and
4.2	The User shall be responsible for instructing all drivers on how to secure loads effectively and on manual handling of Baskets (whether loaded or empty) to reduce possible damage to the Baskets and possible personal injury to those drivers or members of the public.	4.3.16	the User shall not allow any Baskets to be removed from its premises unless by a collection company approved by Basco; and
4.3	The User shall at all times adhere to the following material conditions when Using any of the Baskets:-	4.3.17	the User shall not use the Baskets for purposes other than the Authorised Purposes, or permit any third party (other than the Customers) to Use the Baskets nor shall the User Use the Baskets on behalf of or for the benefit of any such third party (other than the Customers), in any way whatsoever; and
4.3.1	The User shall take adequate precautions to prevent damage to or unauthorised use or theft of any Baskets, and shall use all reasonable endeavours to keep the Baskets in good repair and condition (fair wear and tear excepted) and to procure that its Customers also complies with the provisions of this clause; and	4.3.18	the User shall comply with all reasonable instructions given to it by Basco to ensure that the Baskets are Used in accordance with the terms of this Licence and to minimising so far as is reasonably practicable the number of replacement Baskets that need to be procured by Basco pursuant to Clause 5.1.2.
4.3.2	(Unless it is specified in the Front Sheet that the User requires Basco to provide the Optional Services to that User) every time during the Licence Term that the User visits a Collection Point, the User shall, at its expense, collect from the Collection Point all empty Baskets which have accrued at that Collection Point and bring those empty Baskets back to the User's Premises, to replace those Baskets which, as a result of being Used by the User, the User has transferred possession of to a Customer, and the User shall use all reasonable endeavours to procure that its Customers makes all such empty Baskets in its possession at that Collection Point available for collection by the User; and	4.4	The User shall notify Basco as soon as reasonably practicable of (a) any material damage to or destruction or loss of any of the Baskets, or (b) any breach of any of the provisions of these terms and conditions (including without limitation clause 4.3 above).
		4.5	The User hereby agrees to indemnify Basco and hold Basco harmless at all times, and on an after tax basis, from and against any and all liabilities, claims, demands, proceedings, judgements, damages, charges, costs losses (whether direct or indirect) and expenses which may be suffered or incurred by Basco by reason of or in any way arising out of the Use by the User of any of the Baskets in breach of any of the provisions of these terms and conditions (including without limitation clause 4.3 above).

- 4.6 All instances of abuse of Baskets or breach of any of the terms of this Licence may be dealt with by Basco using the Torts (Interference of Goods) Act 1977 (without prejudice to any other rights or remedies that Basco may have).
- 4.7 Unless Basco otherwise agrees having been assured of the financial standing of the User, the User will maintain the following levels of insurance cover with a reputable insurance company which has been approved by Basco (such approval not to be unreasonably withheld or delayed) at all times throughout the Licence Term: (a) coverage of at least any amount equal to the amount of the total Licence Fee for any loss of or damage to the Baskets for any reason whilst in the User's or a Customer's possession or control and other general product damage/loss, and (b) coverage of at least £1,000,000 for any liability for possible injury caused by the Baskets to members of the public or any other public liability, and (c) coverage of at least £10,000,000 for any employer's liability. The User shall provide Basco with documentary evidence of such insurance policies at any time upon request by Basco.
5. **SERVICES**
- Mandatory Services from Basco
- 5.1 Subject to and in consideration of the payment of the relevant Usage Charge by the User, Basco shall provide to the User throughout the Licence Term the following mandatory services in relation to the Baskets (the "**Mandatory Services**"):
- 5.1.1 Basco shall be responsible in respect of the whole of the United Kingdom (including Northern Ireland) for tracking down by means of a tracking system, and subsequently collecting and regaining possession of, any Baskets which are in unauthorised possession of any third parties, and taking any appropriate further action against any third parties found in unauthorised possession of any Baskets, with a view to minimising so far as is reasonably practicable the number of replacement Baskets that need to be procured by Basco pursuant to Clause 5.1.2. If the User becomes aware of any third party who is or is likely to be in unauthorised possession of any Baskets, the User agrees to inform Basco immediately of the identity and location of that third party.
- 5.1.2 As soon as reasonably practicable after either (a) having been notified by the User that it has had to segregate a Basket pursuant to Clause 4.3.6 as a result of finding it to be broken and damaged, or (b) becoming aware that a Basket has been lost or stolen or is reasonably considered by Basco to be irretrievably in the unauthorised possession of a third party, Basco shall (at its cost) either replenish and replace that Basket by procuring that a new Basket is manufactured by its Basket supplier or, at its sole discretion, procure that any such broken or damaged Baskets are fully repaired by engaging contractors at its expense as appropriate, and then procuring that such new or repaired Basket is either delivered to the User or made available for collection by it at the Collection Point. For the avoidance of doubt, the Usage Charge shall be the only cost payable by the User in respect of any such replenishment or replacement, and no additional Licence Fee shall be payable by the User for any new Baskets provided under such replenishment or replacement, save only where the replenishment, replacement, rectification or repair of Baskets is required as a result of any improper Use, operation or neglect of the Baskets in breach of any of the provisions of Clause 3.5 or 4.3 above, in respect of which the provisions of Clause 3.5.3 or 4.5 respectively shall apply.
- Optional Services from Basco
- 5.2 To the extent it is specified in the Front Sheet that the User requires Basco to provide the Optional Services to it, and subject to and in consideration of the payment of the relevant additional portion of the Usage Charge by the User, Basco shall also provide to the User in relation to the Baskets the following services (the "**Optional Services**"):
- 5.2.1 With such frequency as is required pursuant to the current washing specifications for the Basket as provided by Basco to the User from time to time, Basco shall make all necessary arrangements, at its expense, so that all used Baskets in the User's possession are collected from the User's Premises and replaced with the same number of Baskets as have been cleaned to such standard as is required pursuant to the current washing specifications for the Basket as provided by Basco to the User from time to time.
- Services in General
- 5.3 The Services shall be provided by Basco to the User throughout the Licence Term subject to the payment by the User to Basco of the relevant Usage Charge.
- 5.4 Basco may, upon twenty eight (28) days' prior written notice to User, modify any of the Services, provided that such modification does not materially prejudice the scope and quality of the Services as previously provided.
- 5.5 All support, maintenance and other services which are outside the scope of the Services shall be provided at Basco's sole discretion and are subject to additional charges at Basco's then prevailing rates if Basco does so choose to provide such services following a request by a User.
6. **USAGE AUDITING**
- 6.1 The User shall keep accurate records (including copy invoices and delivery notes for at least 6 months) of (a) the total number of times that a Basket has been Used by the User in each week for each of the User's Premises, (b) the number of Baskets collected by it from the Collection Point pursuant to Clause 4.3.2 in each week, and (c) the total number of Baskets it has washed pursuant to Clause 4.3.3 each week at each of the User's Premises, and will provide copies of these records to Basco upon reasonable request and allow Basco full access to such records upon reasonable notice.
- 6.2 The User shall also undertake a weekly stock take at each of the User's Premises of all Baskets (including all broken and damaged Baskets which have been segregated pursuant to Clause 4.3.7) in its possession and record that stock take on Basco's standard stock-take form from time to time and include a separate total for all broken and damaged Baskets. Such stock take shall take place on Saturday in every week after all drop and drive routes have returned with all Baskets collected from Customers and at a time when, as far as is possible, production and Basket movements are at a standstill or minimal. Such stock take shall include all Baskets still on the User's vehicles, in fridges or freezers (own or third party) and any broken Baskets. If there is known to be Baskets carrying product that is in transit between sites at the time of stock takes, these Baskets will be counted in to the stock of the receiving site upon receipt (inter company only).
- 6.3 A report detailing (a) the total number of times that a Basket has been Used by the User in each week for each of the User's Premises, (b) the number of Baskets collected by it from the Collection Point pursuant to Clause 4.3.2 in each week, and (c) the total number of Baskets it has washed pursuant to Clause 4.3.3 each week at each of the User's Premises, together with the weekly stock takes undertaken by the User on the Saturday of that week and such other information as Basco may have reasonably requested in advance, will be submitted by e-mail to Basco by no later than 12 noon on the Thursday of the following week.
- 6.4 The User shall from time to time permit Basco (or its authorised agents) reasonable assistance and access to all of its locations and premises at which any Baskets are located to inspect the Baskets and audit User's compliance with the terms of this Licence, provided that such inspections and audits will:
- 6.4.1 be conducted only during User's normal business hours with at least twenty four (24) hours notice; and
- 6.4.2 not be conducted more than once during any thirteen (13) week period unless the User's use of the Baskets is in breach of this Licence, or exceeds the Authorised Restriction ; and
- 6.4.3 not unreasonably interfere with User's normal business operations; and
- 6.4.4 be conducted at Basco's expense, except in the event that User's use of the Baskets is found to be in breach of this Licence in any way in which case User will fully reimburse Basco reasonable costs and expenses relating to such audit.
- 6.5 (Without prejudice to any other rights and remedies that Basco may have for breach of this Licence) the User shall be liable to pay additional Licence Fees if any compliance certificate or audit reveals that User is in breach of this Licence or has exceeded any Authorised Restriction specified in the Front Sheet, which fees shall be charged on the basis of Basco's then current price list. Upon payment of the same, an addendum to remedy the breach or to increase the Authorised Restriction to the extent of the excess usage will be issued by Basco and promptly executed by User.
- 6.6 The User hereby agrees to indemnify Basco and hold Basco harmless at all times, and on an after tax basis, from and against any and all liabilities, claims, demands, proceedings, judgements,

- damages, charges, costs losses (whether direct or indirect) and expenses which may be suffered or incurred by Basco by reason of or in any way arising out of any breach by the User of any of the provisions of this clause 6 (including without limitation the provisions relating to the provision of information and reports). In the event of any breach by the User of any of the provisions of this clause 6 (including without limitation the provisions relating to the provision of information and reports), Basco will also charge the User and the User shall be liable to pay the Usage Charge, such Usage Charge being calculated in the absence of the required information on Basco's estimate (at its sole discretion) of (a) the total number of times that a Basket has been Used by the User in each week for each of the User's Premises, (b) the number of Baskets collected by the User from the Collection Point pursuant to Clause 4.3.2 in each week, and (c) the total number of Baskets the User has washed pursuant to Clause 4.3.3 each week at each of the User's Premises (without prejudice to any other rights and remedies that Basco may have in respect of any such breach).
7. **PAYMENT TERMS**
- 7.1 The User will be invoiced for the Licence Fee as soon as reasonably practicable and in any event within five (5) days after the Commencement Date. All invoices issued under this Clause 7.1 are payable by the User immediately.
- 7.2 The Usage Charge is payable by the User monthly in arrears and the User will be invoiced by Basco for the Usage Charge as soon as reasonably practicable after the end of each month. All Usage Charge invoices issued under under this Clause 7.2 are payable by the User at the end of the month in which the invoice is issued by Basco.
- 7.3 Basco may increase or decrease the Usage Charge at any time upon notification in writing to the User from time to time. The Usage Charge as varied shall remain fixed for a period of not less than three months.
- 7.4 The Licence Fee and the Usage Charge do not include taxes. If Basco is required to pay sales, use, property, value-added or other national, state or local taxes (other than any assessed on Basco' profits and gains) based on the licences granted or the Services provided to User under this Licence, then such taxes shall be added to any invoice payable under this Licence by the User at the rate applicable under the relevant regulations.
- 7.5 Without prejudice to any other right or remedy, Basco may charge interest on any sums due from the User to Basco under this Licence which are not paid by the due date, at the rate of 2% above the Barclays Bank plc base rate accruing daily, before and after judgement, from the due date for payment until payment in full has been made.
- 7.6 All sums shall be paid in full and free from any deductions, rights of set-off, counterclaim or liens, to the extent legally permissible.
8. **WARRANTY**
- 8.1 Basco warrants to the User that:
- 8.1.1 it has the authority to licence the Baskets and to provide the Services upon the terms and conditions of this Licence;
- 8.1.2 the Baskets will perform in line with the current handling, loading and performance specifications for the Basket as provided by Basco to the User from time to time; and
- 8.1.3 its memorandum and articles of association expressly provide that (a) Basco is not authorised to pay dividends to its shareholders, and (b) it is a fundamental principle of the operation of Basco that the terms on which Basco licences Baskets to a user shall not be influenced by whether such user is a shareholder in Basco or not, and that all users are treated equally; and
- 8.1.4 it shall use commercially reasonable care and skill in the performance of the Services.
- 8.2 Basco does not warrant (a) that the Baskets are free from minor errors or defects, or (b) that the Baskets are designed to meet any User specific requirements, or (c) that Basco will perform in any way which is not specified in the current handling, loading and performance specifications for the Basket as provided by Basco to the User from time to time.
- 8.3 The User shall give notice to Basco as soon as it is reasonably able upon becoming aware of a breach of warranty. If the User so notifies Basco that the Baskets do not conform with Clause 8.1.2, then Basco's sole obligation for any such breach will be to repair or replace, at its discretion, the non-conforming Baskets free of charge.
- 8.4 Except as expressly set forth in this Licence all warranties, terms and conditions, whether oral or written, express or implied by statute, common law, custom or otherwise are hereby excluded.
9. **INTELLECTUAL PROPERTY INDEMNITY**
- 9.1 Basco shall defend the User against any costs, losses, expenses, liabilities, claims and shall indemnify the User against any award of damages or costs or any such liabilities connected with a settlement negotiated by Basco arising from or incurred by reason of any infringement of any Intellectual Property Rights by the User's normal Use of the Baskets, within the United Kingdom, provided that the User:
- 9.1.1 notifies Basco as soon as reasonably practicable in writing of any alleged infringement and makes no admissions in respect thereof; and
- 9.1.2 gives Basco all such information and assistance as Basco shall reasonably request, and sole control of the defence and all related settlement negotiations. Reasonable out-of-pocket expenses incurred by User in providing such information and assistance will be reimbursed in full by Basco within fourteen days of receipt of evidence of same.
- 9.2 The indemnity set out in Clause 9.1 above shall not apply to the extent that the infringement or alleged infringement arises from, or is incurred by, reason of User's use of the Baskets other than for the Authorised Purposes or as permitted under this Licence.
- 9.3 In the event that the Basket is held, or is believed by Basco, to infringe the Intellectual Property Rights of any third party, Basco shall have the option, at its expense, to:
- 9.3.1 modify the Baskets (without materially detracting from its functionality) so as to avoid the infringement, provided that such modified Baskets do not entail a material reduction in functionality; or
- 9.3.2 obtain for User a licence from the relevant third party whose rights are being infringed to continue to use the Baskets; or
- 9.3.3 replace the Baskets with non-infringing substitutes provided that such substitutes do not entail a material reduction in functionality; or
- 9.3.4 terminate the licence for the infringing Baskets (or part thereof) and refund the remainder of the Licence Fee paid, when such fee is pro-rated over a five (5) year period from Delivery.
- 9.4 This Clause states Basco's entire liability and User's sole remedy with regard to infringement of any Intellectual Property Rights by the use or possession of the Baskets.
10. **LIMITATION OF LIABILITY**
- 10.1 Basco shall accept the following liability:
- 10.1.1 for death or personal injury, to the extent caused by the negligent act or omission, breach or default, of Basco or for any breach of any obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982; and
- 10.1.2 for direct physical loss or damage to the User's tangible property up to an amount in aggregate of fifteen million pounds Sterling (£15,000,000) where, and to the extent that, such loss or damage is caused by the negligent act or omission, breach or default, of that party or its agents, employees or sub-contractors; and
- 10.1.3 for direct loss or damage, other than governed by Clauses 10.1.1 or 10.1.2 above, up to an amount in aggregate of one hundred percent (100%) of the Licence Fee and Usage Charge paid or payable hereunder where, and to the extent that, such loss or damage is caused by the negligent act or omission, breach or default of Basco, and the entire liability of Basco to the User or in connection with the supply of or failure to supply Baskets or any breach of these terms and conditions is limited to and shall not exceed the sums set out in clauses 10.1.1 to 10.1.3 above.
- 10.2 Basco will maintain adequate comprehensive general liability insurance of at least £15,000,000, including coverage for any breach of any of the provisions of this Licence, with a reputable insurance company. Basco shall provide the User with documentary evidence of such insurance policies at any time upon request no more than once a year by the User.
- 10.3 Subject to Clause 10.1.1, Basco shall not be liable under or in relation to this Licence or its subject matter (whether such liability arises due to negligence, breach of contract, misrepresentation, or for any other reason excluding fraudulent misrepresentation) for any loss of profits, loss of business, loss of anticipated savings, loss of sales or turnover, loss of, or damage to reputation, loss of contract, loss of users, losses or liabilities

- under or in relation to any other contract or any indirect, consequential loss or damage (including loss or damage suffered by the User as a result of an action brought by a third party) even if such loss was reasonably foreseeable or Basco had been advised of the possibility of the User incurring the same. For the purpose of this clause, the term "loss" includes a partial loss or reduction in value as well as a complete or total loss.
- 10.4 The parties expressly agree that should any limitation of liability clause or provision contained in this Licence be held to be invalid under any applicable legislation (primary or otherwise) or rule of law by reason of some part of that Clause or provision it shall, to that extent, be deemed omitted, but if a party thereby becomes liable for loss or damage which would otherwise have been excluded or limited, as the case may be, such liability should be subject to the other applicable limitations and provisions set out herein.
- 10.5 The limitations on liability set out in this Clause shall not operate to limit or restrict the indemnity given by Basco under Clause [9] (Intellectual Property Indemnity).
11. **TERMINATION**
- 11.1 This Licence may be terminated immediately on written notice:
- 11.1.1 By either party where the other party fails to remedy a material breach within 30 working days of receipt of a written notice relating to such breach which, for the avoidance of doubt, shall include the User's obligation to pay fees due under this Licence by their due dates; and
- 11.1.2 By either party where the other party is in persistent breach of any of its obligations under this Licence and for the purpose of this Licence a persistent breach shall mean no less than three (3) breaches (whether of the same provision or different provisions) in respect of which notice is served over any twelve (12) month period; and
- 11.1.3 By Basco immediately in the event of the User's irremediable breach of this Licence or if the User has a receiver, administrator or administrative receiver appointed or becomes the subject of a resolution, petition or order for winding up (save for the purposes of amalgamation or reconstruction where the amalgamated or reconstructed company agrees to adhere to this Licence) or bankruptcy, or makes an assignment or arrangement for the benefit of its creditors or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or suffers similar circumstances in any jurisdiction in which it carries on business.
- 11.2 Any termination of this Licence shall be without prejudice to any other rights or remedies a party may be entitled to hereunder or at law and shall not affect any accrued rights or liabilities of either party.
- 11.3 If the licence granted under Clause 3.1 of this Licence is terminated for whatever reason, the User shall immediately cease using the Baskets in its possession or control, and return (at the User's expense) to Basco all such Baskets. Upon request by Basco, a duly authorised officer of the User will certify in writing that it has complied with this Clause. For the avoidance of doubt, in no circumstances with any of the Licence Fee or Usage Charge be repayable by Basco to the User on termination.
- 11.4 Clauses 2 (Ownership), 9 (Intellectual Property Indemnity) and 10 (Limitation of Liability) shall survive termination or expiry of this Licence.
12. **WHOLE LICENCE**
- 12.1 This Licence constitutes the entire understanding of the parties and supersedes all prior licences, representations (excluding fraudulent misrepresentations), writings, proposals, negotiations, understandings, communications, oral or written, express or implied between the parties regarding the licensing of the Baskets and the Services and to the extent permitted by law.
- 12.2 Any purported variation to the terms and conditions of this Licence in any User order, confirmation or other written notification from the User shall be of no effect.
- 12.3 No change of or modification to this Licence will be valid unless in writing expressly stated as amending this Licence and signed by an authorised representative of each party.
13. **NOTICES**
- 13.1 All notices required to be given under this Licence, shall be in writing and delivered by hand or sent by first class post to the address of the other party shown in this Licence or, as otherwise notified and shall be deemed received on the earlier of actual receipt or 3 days after posting.
14. **GENERAL**
- 14.1 The waiver by either party of any breach of this Licence by the other party shall not operate as a waiver of subsequent or other earlier breaches of the same or a different kind. No delay, neglect or forbearance by either party in enforcing any of its rights under this Licence shall be deemed to be a waiver of such rights.
- 14.2 No action regardless of form arising out of this Licence may be brought by either party more than two years after the party concerned becomes aware or should reasonably have become aware of the facts constituting the cause of action. In no circumstances shall this Clause be construed as extending any statutory limitation period.
- 14.3 Except for payment of the Licence Fee and the Usage Charge, neither party shall be liable for delay or failure to perform any of its obligations under this Licence if such delay or failure results from any circumstance beyond its reasonable control and each party shall be excused performance of such obligation to the extent that such circumstances beyond its reasonable control (being an "Event of Force Majeure") prevail. If an Event of Force Majeure continues for sixty days or intermittently occurs for sixty days in total over a six month period, then the party not suffering the Event of Force Majeure may terminate this Licence on 14 days' prior written notice (served within 30 days of the Event of Force Majeure).
- 14.4 A person who is not a party to this Licence shall have no rights pursuant to the Contracts (Rights of Third Parties) Act 1999 ("the Act") to enforce any term of this Licence provided that a person who is the lawful successor to or permitted assignee of the rights of a party is considered to be a party to this Licence. Any right or remedy of a third party which exists or is available apart from the Act is not affected.
- 14.5 In the event of any conflict or ambiguity between the various component parts of this Licence, these terms and conditions shall prevail to the extent of such conflict or ambiguity, unless expressly stated to the contrary in any schedule and/or addendum to this Licence.
- 14.6 The User agrees that the Baskets are licenced to it for standard commercial use and should not be used in any inherently dangerous application.
- 14.7 If any provision of this Licence is invalid or unenforceable at law, then such provision shall be severed and the remainder of this Licence shall continue in full force and effect.
- 14.8 The validity, performance and construction of this Licence shall be governed by English Law and the parties agree to submit to the exclusive jurisdiction of the English Courts.