

Terms of Business: Version 2.0

Effective 8 Feb 2011

1. Interpretation

(1) Unless it is clear from the context that some other meaning is intended:

(a) **“the Balance”** means the balance of the Consideration after the deduction of the Deposit;

“the Customer” means a person who contracts or negotiates with the Supplier for the supply of goods and/or services;

“Condition” refers to one of the Terms;

“the Consideration” means the moneys due to the Supplier from the Customer for the supply of Specified Goods and/or Specified Services;

“Contract” means an agreement between the Customer and the Supplier whereby the Customer agrees to buy or otherwise acquire Specified Goods and/or Specified Services from the Supplier, and the Supplier agrees to supply Specified Goods and/or Specified Services to the Customer, in return for the Consideration;

“Deposit” means such portion of the Consideration as may be specified in a Contract;

“Procurement Date” means the date upon which the Customer agrees to procure the Specified Items;

“Specification” means a description of the goods and/or services that the Customer agrees to acquire and the Supplier promises to supply to the Customer;

“Specified Date” means the date upon which the Supplier agrees to deliver the Specified Goods or perform the Specified Services;

“Specified Goods” means the goods that the Supplier agrees to sell or otherwise supply to the Customer;

“Specified Items” means the goods, services or facilities that the Customer agrees to procure and make available to the Supplier at the Specified Place on or before the Procurement Date;

“Specified Place” means the place to which the Supplier agrees to supply the Specified Goods or perform the Specified Services;

“Specified Services” means the services that the Supplier agrees to supply to the Customer;

the Supplier means Gita Mistry of 38 Sunbridge Road, Bradford, West Yorkshire, BD1 2DZ United Kingdom;

“the Terms” means these terms of business;

(b) masculine pronouns and possessive adjectives connote the feminine and neuter and *vice versa*; and

(c) the singular includes the plural and *vice versa*.

(2) The headings to the Terms are intended to make the Terms easier to read and neither form part of the Terms nor affect their construction.

2. Status of these Terms

(1) These are the only terms upon which the Supplier supplies goods or services.

(2) Any other terms, whether oral, written, contained or referred to in instructions, orders, offers to procure services or otherwise, shall be disregarded.

3. Formation of Contracts

(1) A Contract comes into being when, and only when

(a) the Customer and the Supplier sign a contract in the form of Appendix A; and

(b) the Customer pays the Deposit to the Supplier.

(2) No representation, warranty, statement of opinion or assurance will be relied upon by either party unless they are set out or referred to in the Contract.

(3) It is the Customer's responsibility to satisfy him or herself that the Specifications will meet his or her requirements.

4. Pre-Contract Disclosure

(1) Any copyright subsisting in any proposal, quotation, drawing, draft specification, correspondence or other document that may be prepared by the Supplier with a view to supplying goods and/or services to the Customer (**“Pre-Contract Documents”**) shall belong to the Supplier.

(2) The information contained in any Pre-Contract Document shall be treated as confidential.

(3) The contents of Pre-Contract Documents or other unpublished information in or relating to a bid, invitation to tender, proposal, request for proposals, specification, tender or other correspondence or discussion relating to the supply of goods or services to the Customer (**“Pre-Contract Information”**) shall be disclosed to third parties only in the following circumstances and/or upon the following conditions:

(a) the third party (**“the Confidante”**) acknowledges in writing that such information is confidential and that its disclosure gives rise to an obligation of confidence to the Supplier;

- (b) the Confidante promises in writing to keep Pre-Contract Documents under lock and key when not in use, not to copy them without the Supplier's prior, written permission and promptly to return them together with any and all copies that he or she may make upon the Supplier's request;
 - (c) Pre-Contract Information may be used only for the express purpose for which it is disclosed; and
 - (d) Pre-Contract Information may not be used by, or disclosed to, any other person without the Supplier's prior written permission.
- (4) Without prejudice to her other rights and remedies, should copyright in a Pre-Contract Document be infringed, or an obligation of confidence in relation to Pre-Contract Information be breached, the damages that the Supplier can recover shall include any consideration for goods and/or services that the Supplier may have proposed.

5. Condition Precedent

- (1) It is a condition precedent of a Contract that the Customer will procure and make available to the Supplier the Specified Items by the Procurement Date,
- (2) Should the Customer fail to deliver the Specified Items to the Supplier at the Specified Place by the Procurement Date the Supplier may at her discretion:
- (a) procure the missing items from some other source (for which she will be entitled to reimbursement of her expenses and an additional fee); or
 - (b) terminate the Contract pursuant to Condition 13 (a).
- (3) For the avoidance of doubt, should the Supplier terminate this agreement pursuant to Condition 13 (a), she shall nevertheless be entitled to the Consideration.

6. Performance

- (1) A Contract will be performed upon the delivery of all the Specified Goods and/or Specified Services to the Specified Place.
- (2) Specified Goods and/or Services will be deemed to have been delivered if they conform substantially to the Specification.
- (3) Time shall not be of a Contract,
- (4) The Customer must test and inspect all goods or services for conformity with the Specification as soon as they are delivered.
- (5) A Contract will be deemed to have been performed if the Supplier is ready and willing to deliver the Specified Goods and/or Specified Services to the Customer at the Specified Place by the Specified Date regardless of whether or not the Customer accepts the Specified Goods or Services.

7. Consideration

- (1) The Consideration shall be:
- (a) the price of any goods that the Supplier may sell and deliver ("**the Price**"), and/or
 - (b) the fee for any services that the Supplier may render, to the Customer ("**the Fee**");
 - (c) reimbursement of any expenses that the Supplier may incur in supplying such goods and/or services; and
 - (d) United Kingdom value added tax and/or any other applicable charge, impost tax or duty on such supply.
- (2) Unless the parties agree otherwise the Price and/or Fee shall be computed from the unit prices and hourly rates set out in the Supplier's price list for the time being.
- (3) Without prejudice to the generality of the foregoing, the expenses for which the Supplier may be reimbursed may include the services of an assistant chef or other helper.

8. Payment

- (1) The Customer shall pay to the Supplier:
- (a) the Deposit when entering a Contract; and
 - (b) the Balance and any additional fee or reimbursement pursuant to Condition 5 (2) (a) or Condition 9 (2) (a) after a Contract is performed.
- (2) Property in any goods delivered to the Customer shall not pass to the Customer but shall remain with the Supplier notwithstanding their resale or incorporation into other goods until all sums due to the Supplier from the Customer are paid in full.
- (3) For the avoidance of doubt, Condition 8 (1) shall not create a charge over the assets of the Customer.
- (4) Without prejudice to her other rights and remedies, the Supplier shall be entitled to:
- (a) interest computed on a day to day basis at the annual rate of 4% above the base rate of the Bank of England for the time being upon any sum that may be due to her from the date such sum may fall due until judgment or sooner payment; and
 - (b) an indemnity against any costs that it may incur (including lawyers' fees in jurisdictions where such costs are not usually recoverable from the unsuccessful party) in recovering such sum by civil proceedings, arbitration or otherwise.
- (4) Until it is agreed or adjudged that all sums due to the Supplier have been paid in full, the Customer shall:
- (a) not sell, lend, charge or otherwise part with possession of any goods that the Supplier may have delivered to the Customer;
 - (b) store such goods separately from his or her own goods and identify them as the Supplier's goods to any of his creditors who levies execution upon the Customer's goods;

- (c) report immediately to the Supplier any loss, destruction or damage of those goods by a third party and use his or her best endeavours to recover them; and
- (d) permit the Supplier to enter his or her premises upon request with workmen to recover those goods during normal business hours.

9. Change Control

- (1) A Specification may be modified or additional Services requested only with the written agreement of the Supplier and the Customer, or one of the Customer's partner's, directors or other officers should the Customer be a firm, company or other corporation.
- (2) Should such modification require additional work, components or materials:
 - (a) the Supplier shall be entitled to an additional payment for such work; and
 - (b) she may complete the delivery of his goods and/or services later than the date that he had previously promised to take account of such additional work.

10. Risk

- (1) Risk in goods to be delivered to the Customer shall pass to the Customer as soon as they are dispatched to him or her.
- (2) The Customer shall insure the goods for the full value of the Consideration with a first class insurer and shall furnish a copy of such policy or other evidence of such insurance upon The Supplier's request.

11. Intellectual Property

- (1) Unless the parties agree expressly to the contrary, the Supplier shall retain:
 - (a) copyright and all other intellectual property rights in any recipes, photographs, films, or other copyright works that she may make pursuant to a Contract;
 - (b) the rights conferred upon performers by Part II of the Copyright, Designs and Patents Act 1988 in any live performance that may subsist in her performances.
- (2) For the avoidance of doubt, the supply of goods and/or services to a Customer does not confer upon the Customer any licence or other right to use the Supplier's name or trade mark.
- (3) Should the Customer film, photograph, make a sound or other recording of the Supplier while performing Specified Services or otherwise, the Customer shall upon the Supplier's request supply to the Supplier at the Customer's expense a copy of such film, photograph, sound or other recording and grant her a gratuitous and perpetual licence to reproduce such film, photograph, sound or other recording upon her website and/or in her marketing or other promotional literature.

12. Indemnities

- (1) The Customer shall indemnify and hold the Supplier harmless against any action, claim or demand by a third party or any criminal or administrative penalty that the Supplier may incur as a result of any act or default by the Customer including but not limited to claims for infringement of copyright and other intellectual property.
- (2) Should the Supplier so request, the Customer shall insure against such liability with the Corporation of Lloyds or some other first class insurer.

13. Termination

- (1) The Supplier may terminate a Contract with immediate effect by notice to the Customer in any of the following circumstances:
 - (a) the Customer states or makes clear by his or her conduct that he or she will no longer perform his obligations thereunder;
 - (b) the Supplier has reason to believe that the Customer or will be unable to pay his or her debts in full as and when they fall due;
 - (c) if the Customer is an individual, a bankruptcy petition is presented to any court with jurisdiction over the Customer; or
 - (d) if the Customer is a company or other corporation, a petition is presented for the administration or winding up of the Customer to any court with jurisdiction over the Customer or a winding up resolution is passed by its members.
- (2) The Customer may terminate a Contract upon not less than 60 days notice to the Supplier.
- (3) If the Customer terminates this agreement under Condition 10 (2):
 - (a) the Supplier may recoup from the Deposit such expenses as she may incur before termination; and
 - (b) The Customer shall be entitled to any balance after the Supplier has recouped her expenses from the Deposit.
- (4) Termination will not affect any rights or remedies that may have accrued to either party as at the date of such termination.

14. Force Majeure

Should the Supplier be prevented or hindered from performing any Contract by circumstances beyond her reasonable control (including but not limited to terrorism, strikes or other labour dispute) she shall not be liable to the Customer for any loss or damage that the Customer may sustain from such non-performance and the Supplier shall be excused from such performance while those circumstances persist.

15. Severance

Should any of these provisions be void, voidable or unenforceable on grounds of illegality or as contrary to statute, public policy or *ordre public* in any part of the United Kingdom or elsewhere, such provision shall be deemed never to have formed part of these Terms but all other provisions shall remain in force.

16. Exclusion of Equitable Remedies

The failure of either party at any time to require performance by the other of any of these provisions shall not: affect the right of that party to require performance at a later time, or be regarded as a waiver of the provision itself.

17. Notices

(1) All notices or notifications shall be in writing and signed by the party on whose behalf they are served or given.

(2) Subject to paragraph (3) below, such notice or notification may be delivered by post, fax or email to the address, fax number or mailbox in this agreement.

(3) Either party may change the address, fax number or email where he or she will receive notices or notifications by notifying the other in accordance with this Condition.

(4) Postal delivery will be deemed to have taken place on the 7th day after the date of posting.

(5) Delivery by fax or email will be deemed to take place upon transmission of an automatic acknowledgement by the remote fax machine or mail server.

18. Exclusion of Contracts (Rights of Third Parties) Act 1999

These Terms are not intended to create any right under the Contracts (Rights of Third Parties) Act 1999 which is enforceable by any person who is not a party to a Contract and the rights of any third party under that Act are hereby expressly excluded.

19. Choice of Law

These Terms and any Contract incorporating them shall be construed and enforced in accordance with the laws of England and Wales.

20. Jurisdiction

The Customer submits irrevocably to the jurisdiction of the courts of England and Wales.

21. Dispute Resolution

(1) Any dispute or difference arising under, out of or relating to a Contract and any subsequent amendments, including, without limitation, its formation, validity, binding effect, interpretation, performance, breach or termination, as well as non-contractual claims, shall be referred to mediation before a mediator agreed by the parties or, in default of agreement within 14 days of the reference, appointed by the Managing Director of NIPC Ltd. in accordance with the NIPC Mediation Rules.

(2) If, and to the extent that, any such dispute or difference shall not be settled pursuant to the mediation within 60 days of the reference to mediation, either party may refer the dispute to final arbitration before a single arbitrator agreed by the parties or, in default of agreement within 14 days of the reference, appointed in accordance with the NIPC Arbitration Rules.

Appendix A



gitamistry

An Agreement

made on the date appearing in Section 1 (“**the Date**”) between Gita Mistry trading as **Gita Mistry Food** of 38 Sunbridge Road, Bradford, West Yorkshire, BD1 2DZ United Kingdom (“**the Supplier**”) and the person whose particulars appear in Section 2 (“**the Customer**”) whereby the Supplier agrees to supply to the Customer, and the Customer agrees to buy or otherwise procure from the Supplier, the goods and services specified in Section 3 (“**the Specified Foods or Services**”) at the address (“**Specified Place**”) and on the date specified in that Section (“**Specified Date**”) in return for the consideration set out in Section 5 (“**the Consideration**”) upon the terms set out overleaf..

Signed by or on behalf of the Customer

Name	
Position	
Signature	

Signed by or on behalf of the Supplier

Name	
Position	
Signature	

1 Date

2 The Customer

Name	<input type="text"/>	Description:	
		Limited company/partnership/central government department/local authority*	
		other	
Address	<input type="text"/>	Tel	<input type="text"/>
		Fax	<input type="text"/>
Post Town	<input type="text"/>	Postcode	<input type="text"/>
Contact	<input type="text"/>	Email	<input type="text"/>
		Position	<input type="text"/>

3 Specified Goods and Services

Goods	<input type="text"/>	Services	<input type="text"/>
Date	<input type="text"/>	Place	<input type="text"/>

4 Items, Services or Facilities to be supplied by the Customer

<input type="text"/>

5 The Consideration (£)

Rate	<input type="text"/>	Unit	<input type="text"/>	Expenses	<input type="text"/>	Total	<input type="text"/>
						VAT	<input type="text"/>
						Deposit	<input type="text"/>
						Balance	<input type="text"/>

1. Interpretation

(1) In this agreement: -

(a) masculine pronouns and possessive adjectives connote the feminine or neuter and *vice versa*; and
(b) the singular includes the plural and *vice versa*.

(2) The headings to these clauses:-

(a) are intended to make this agreement easier to read; and
(b) neither form part of the agreement nor affect its construction.

2. Condition Precedent

(1) It is a condition precedent of this agreement that the Customer will procure and make available to the Supplier the goods, services or facilities specified in Section 4 overleaf ("**Specified Items**") at the Specified Place by the Specified Date unless an earlier date is specified in Section 4 ("**Procurement Date**").

(2) Should the Customer fail to deliver the Specified Items to the Supplier at the Specified Place by the Procurement Date the Supplier may at her discretion:

(a) procure the missing items from some other source (for which she will be entitled to reimbursement of her expenses and an additional fee); or
(b) terminate this agreement pursuant to clause 10 (a).

(3) For the avoidance of doubt, should the Supplier terminate this agreement pursuant to clause 2 (b), she shall nevertheless be entitled to the Consideration.

3. Performance

(1) This agreement will be performed upon the delivery of all the Specified Goods and/or Specified Services to the Specified Place.

(2) Specified Goods and/or Services will be deemed to have been delivered if they conform substantially to the description in Section 3 ("**the Specification**").

(3) Time shall not be of the essence of this agreement.

(4) The Customer must test and inspect all goods or services for conformity with the Specification as soon as they are delivered.

(5) This agreement will be deemed to have been performed if the Supplier is ready and willing to deliver the Specified Goods and/or Specified Services to the Customer at the Specified Place by the Specified Date regardless of whether or not the Customer accepts the Specified Goods or Services.

4. Consideration

(1) The Consideration shall include:

(a) the price of any goods that the Supplier may sell and deliver ("**the Price**"), and/or
(b) the fee for any services that the Supplier may render, to the Customer ("**the Fee**");

(c) reimbursement of any expenses that the Supplier may incur in supplying such goods and/or services; and

(d) United Kingdom value added tax and/or any other applicable charge, impost tax or duty on such supply.

(2) Unless the parties agree otherwise, the Price and/or Fee shall be computed from the unit prices and hourly rates set out in the Supplier's price list for the time being.

(3) Without prejudice to the generality of the foregoing, the expenses for which the Supplier may be reimbursed may include the services of an assistant chef or other helper.

5. Payment

(1) The Customer shall pay to the Supplier:

(a) the Deposit when entering this agreement; and

(b) the Balance and any additional reimbursement or fee pursuant to clause 2 (2) (a) or clause 6 (2) (a) upon performance of the Contract.

(2) Property in any goods delivered to the Customer shall not pass to the Customer but shall remain with the Supplier notwithstanding their resale or incorporation into other goods until all sums due to the Supplier from the Customer are paid in full.

(3) For the avoidance of doubt, clause 5 (1) shall not create a charge over the assets of the Customer.

(4) Without prejudice to her other rights and remedies, the Supplier shall be entitled to:

(a) interest computed on a day to day basis at the annual rate of 4% above the base rate of the Bank of England for the time being upon any sum that may be due to her from the date such sum may fall due until judgment or sooner payment; and

(b) an indemnity against any costs that it may incur (including lawyers' fees in jurisdictions where such costs are not usually recoverable from the unsuccessful party) in recovering such sum by civil proceedings, arbitration or otherwise.

(4) Until it is agreed or adjudged that all sums due to the Supplier have been paid in full, the Customer shall:

(a) not sell, lend, charge or otherwise part with possession of any goods that the Supplier may have delivered to the Customer;

(b) store such goods separately from his or her own goods and identify them as the Supplier's goods to any of his or her creditors who levy execution upon the Customer's goods;

(c) report immediately to the Supplier any loss, destruction or damage of those goods by a third party and use his or her best endeavors to recover them; and

(d) permit the Supplier to enter his or her premises upon request with workmen to recover those goods during normal business hours.

6. Change Control

(1) The Specification may be modified or additional services requested only with the

written agreement of the Supplier and the Customer, or one of the Customer's partner's, directors or other officers should the Customer be a firm, company or other corporation.

(2) Should such modification require additional work, components or materials?

(a) the Supplier shall be entitled to an additional payment for such work; and

(b) she may complete the delivery of his goods and/or services later than the date that he had previously promised to take account of such additional work.

7. Risk

(1) Risk in goods to be delivered to the Customer shall pass to the Customer as soon as they are despatched to him or her.

(2) The Customer shall insure the goods for the full value of the Consideration with a first class insurer and shall furnish a copy of such policy or other evidence of such insurance upon The Supplier's request.

8. Intellectual Property

(1) Unless the parties agree expressly to the contrary, the Supplier shall retain:

(a) copyright and all other intellectual property rights in any recipes, photographs, films, or other copyright works that she may make pursuant to this agreement;

(b) the rights conferred upon performers by Part II of the Copyright, Designs and Patents Act 1988 in any live performance that may subsist in her performances.

(2) For the avoidance of doubt, the supply of goods and/or services to a Customer does not confer upon the Customer any licence or other right to use the Supplier's name or trade mark.

(3) Should the Customer film, photograph, make a sound or other recording of the Supplier while performing Specified Services or otherwise, the Customer shall upon the Supplier's request supply to the Supplier at the Customer's expense a copy of such film, photograph, sound or other recording and grant her a gratuitous and perpetual licence to reproduce such film, photograph, sound or other recording upon her website and/or in her marketing or other promotional literature.

9. Indemnities

(1) The Customer shall indemnify and hold the Supplier harmless against any action, claim or demand by a third party or any criminal or administrative penalty that the Supplier may incur as a result of any act or default by the Customer including but not limited to claims for infringement of copyright and other intellectual property.

(2) Should the Supplier so request, the Customer shall insure against such liability with the Corporation of Lloyds or some other first class insurer.

10. Termination

(1) The Supplier may terminate this agreement with immediate effect by notice to the Customer in any of the following circumstances:

(a) the Customer states or makes clear by his or her conduct that he or she will not, or alternatively, no longer perform his or her obligations thereunder;

(b) the Supplier has reason to believe that the Customer will be unable to pay his or her debts in full as and when they fall due;

(c) if the Customer is an individual, a bankruptcy petition is presented to any court with jurisdiction over the Customer; or

(d) if the Customer is a company or other corporation, a petition is presented for the administration or winding up of the Customer to any court with jurisdiction over the Customer or a winding up resolution is passed by its members.

(2) The Customer may terminate this agreement upon not less than 60 days notice to the Supplier.

(3) If the Customer terminates this agreement under clause 10 (2):

(a) the Supplier may recoup from the Deposit such expenses as she may incur before termination; and

(b) The Customer shall be entitled to any balance after the Supplier has recouped her expenses from the Deposit.

(4) Termination will not affect any rights or remedies that may have accrued to either party as at the date of such termination.

11. Force Majeure

Should the Supplier be prevented or hindered from performing this agreement by circumstances beyond her reasonable control (including but not limited to terrorism, strikes or other labour dispute) she shall not be liable to the Customer for any loss or damage that the Customer may sustain from such non-performance and the Supplier shall be excused from such performance while those circumstances persist.

12. Severance

Should any of these provisions be void, voidable or unenforceable on grounds of illegality or as contrary to statute, public policy or *ordre public* in any part of the United Kingdom or elsewhere, such provision shall be deemed never to have formed part of this agreement but all other provisions shall remain in force.

13. Exclusion of Equitable Remedies

The failure of either party at any time to require performance by the other of any of these provisions shall not: affect the right of that party to require performance at a later time, or be regarded as a waiver of the provision itself.

14. Notices

(1) All notices or notifications shall be in writing and signed by the party on whose behalf they are served or given.

(2) Subject to paragraph (3) below, such notice or notification may be delivered by post, fax or email to the address, fax number or mailbox in this agreement.

(3) Either party may change the address, fax number or email where he or she will receive notices or notifications by notifying the other in accordance with this clause.

(4) Postal delivery will be deemed to have taken place on the 7th day after the date of posting.

(5) Delivery by fax or email will be deemed to take place upon transmission of an automatic acknowledgement by the remote fax machine or mail server.

15. Exclusion of Contracts (Rights of Third Parties) Act 1999

These provisions are not intended to create any right under the Contracts (Rights of Third Parties) Act 1999 which is enforceable by any person who is not a party to a Contract and the rights of any third party under that Act are hereby expressly excluded.

16. Choice of Law

This agreement shall be construed and enforced in accordance with the laws of England and Wales.

17. Jurisdiction

The Customer submits irrevocably to the jurisdiction of the courts of England and Wales.

18. Dispute Resolution

(1) Any dispute or difference arising under, out of or relating to this agreement, including, without limitation, its formation, validity, binding effect, interpretation, performance, breach or termination, as well as non-contractual claims, shall be referred to mediation before a mediator agreed by the parties or, in default of agreement within 14 days of the reference, appointed by the Managing Director of NIPC Ltd. in accordance with the NIPC Mediation Rules.

(2) If, and to the extent that, any such dispute or difference shall not be settled pursuant to the mediation within 60 days of the reference to mediation, either party may refer the dispute to final arbitration before a single arbitrator agreed by the parties or, in default of agreement within 14 days of the reference, appointed in accordance with the NIPC Arbitration Rules.