

## Terms and Conditions of Sale

**1. Agreement and Acceptance.** These terms and conditions of sale (“Terms”) govern the sale of the products specified in any sales order, purchase order, acknowledgment, invoice, or other order form (“Products”) by f’Real! Foods, LLC (“f’real”) to the buyer named thereon (“Buyer”). Buyer and f’real may be referred to individually as a “Party” and collectively as the “Parties.” F’REAL’S DELIVERY OF PRODUCTS TO BUYER AND BUYER’S ACCEPTANCE OF THE DELIVERY OF PRODUCTS SHALL CONSTITUTE ACCEPTANCE OF THESE TERMS BY THE PARTIES. THE PARTIES ACKNOWLEDGE AND AGREE THAT THE SALE OF PRODUCTS BY F’REAL TO BUYER SHALL NOT BE GOVERNED BY ANY TERMS OR CONDITIONS SET FORTH ON BUYER’S ORDER OR ANY OTHER AGREEMENT. THESE TERMS, INCLUDING THE SOFTWARE LICENSE AGREEMENT ATTACHED HERETO AND INCORPORATED HEREIN BY THIS REFERENCE, CONSTITUTE THE ENTIRE AGREEMENT BETWEEN THE PARTIES REGARDING THE SUBJECT MATTER CONTAINED HEREIN, AND SUPERSEDE ANY AND ALL PRIOR OR CONTEMPORANEOUS WRITTEN OR ORAL COMMUNICATIONS, UNDERSTANDINGS, AND AGREEMENTS OF THE PARTIES. NO ADDITIONS OR MODIFICATIONS OF THESE TERMS SHALL BE EFFECTIVE UNLESS MADE IN WRITING AND SIGNED BY AN AUTHORIZED REPRESENTATIVE OF EACH PARTY.

**2. Orders.** Buyer may, from time to time, submit to f’real an order for Products (each, an “Order”). Each Order shall, at a minimum, specify the quantity of each type of Product, the proposed delivery date(s), the proposed delivery site(s) (“Delivery Site”), and shipping instructions. f’real may, within seven (7) business days after receiving an Order, accept the Order by providing to Buyer a written sales order confirmation (“Sales Order Confirmation”) via email. If an Order has not been accepted by f’real after seven (7) business days, the Order shall be deemed rejected. Buyer acknowledges and agrees that upon acceptance of an Order, Buyer shall be bound to purchase the quantity of Products specified in the Order. F’REAL’S ACCEPTANCE OF AN ORDER IS EXPRESSLY CONDITIONED ON THE BUYER’S ACCEPTANCE OF THESE TERMS.

**3. Shipping; Title; Risk of Loss.** f’real shall use reasonable efforts to deliver Products to the Delivery Site(s) by the estimated delivery date set forth in the Sales Order Confirmation using f’real’s standard methods for packaging and shipping (except as otherwise agreed to in writing by the Parties). Buyer acknowledged that such estimated delivery date is only an estimate and agrees that f’real shall not be liable for any delay in the delivery of Products. f’real may, without liability or penalty, make partial shipments of Products to Buyer. Each shipment will constitute a separate sale, and Buyer shall pay for the units of Products shipped whether such shipment is in whole or partial fulfillment of Buyer's Order. Buyer acknowledges and agrees that Buyer shall be required to take delivery of all Products when such Products are delivered. Except as otherwise agreed to in writing by the Parties, Products shall be delivered CIP Delivery Site (Incoterms® 2020). Title to Products and risk of loss shall transfer to Buyer immediately upon delivery of the Products to the first carrier.

**4. Acceptance and Nonconforming Products.** Products shall be deemed accepted by Buyer unless Buyer provides f’real with written notice of its rejection of Products within two (2) days after delivery to the Delivery Site. Buyer may only reject Products that are defective, damaged, or that do not conform to the specifications (“Nonconforming Products”) and shall furnish to f’real written evidence of the same. If Buyer timely notifies f’real of Nonconforming Products, f’real shall, in its sole discretion, either (i) repair the Nonconforming Products; (ii) replace the Nonconforming Products; or (iii) in lieu of repairing or replacing the Nonconforming Products, credit or refund the price for such Nonconforming Products, less any applicable discounts or rebates. If f’real exercises its option under (ii) or (iii) above, then Buyer shall ship the Nonconforming Products to the location designated by f’real and f’real shall, after receiving the Nonconforming Products, ship the replacement Products to Buyer at the Delivery Site specified on the Order. **BUYER ACKNOWLEDGES AND AGREES THAT THE REMEDIES SET FORTH IN THIS SECTION 4 ARE BUYER’S EXCLUSIVE REMEDIES FOR THE DELIVERY OF NONCONFORMING PRODUCTS.** Except as provided in Section 4 or Section 8, Buyer has no right to return the Products.

**5. Prices and Taxes.** The price of Product shall be f’real’s price in effect for Products at the time of the submission of the Order as confirmed in the Sales Order Confirmation. f’real specifically rejects any price of Products specified by Buyer on any Order or on any other order form submitted by Buyer to f’real. Except for certain import charges applicable to certain Delivery Site(s), all prices are exclusive of all sales, use, and excise taxes, and other taxes, duties,

and charges of any kind imposed by any governmental authority on any amounts payable by Buyer. Buyer shall be responsible for all such charges, costs, and taxes.

**6. Payment Terms.** f'real shall provide an invoice to Buyer upon shipment of Products. All invoices are due and payable in accordance with the payment terms set forth on the Sales Order Confirmation. Buyer shall be liable for and shall reimburse f'real for f'real's actual costs and expenses incurred in connection with the collection of any amounts owed to f'real or enforcement of f'real's rights, including, without limitation, attorney's fees, court costs, and disbursements.

**7. No Setoff.** Buyer shall not, and waives any right to, offset any amounts owed to f'real against any other amount owed to Buyer by f'real.

**8. Warranties; Remedies.** f'real warrants to Buyer that Products shall be free from significant defects in material and workmanship for the earlier of either one (1) year from the date the Products are installed or fifteen (15) months from the date on which the Products are shipped. **BUYER ACKNOWLEDGES AND AGREES THAT, EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 8, ALL PRODUCTS ARE PURCHASED AND SOLD "AS IS" AND "WITH ALL FAULTS," AND F'REAL MAKES NO OTHER REPRESENTATION OR WARRANTY WHATSOEVER REGARDING THE PRODUCTS, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR NON-INFRINGEMENT, WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE. THE WARRANTIES IN THIS SECTION 8 ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER WARRANTIES WITH RESPECT TO THE PRODUCTS, ALL OF WHICH ARE EXPRESSLY DISCLAIMED.** Buyer shall not be liable for a warranty breach unless Buyer gives f'real written notice of such breach within five (5) days after Buyer's discovery of the breach, and allows f'real an opportunity to examine the Products to verify the alleged breach. f'real shall not be liable for a warranty breach if it arises because Buyer failed to follow any manual, label, warning, instruction, or industry standard as to the storage or use of the Products, or if Buyer alters the Products without f'real's written authorization. Subject to the foregoing, in the event of a warranty breach, f'real shall, at f'real's sole discretion, (i) repair the affected Products; (ii) replace the affected Products; or (iii) in lieu of repairing or replacing the affected Products, credit or refund the price for such affected Products, less any applicable discounts or rebates. If f'real exercises its option under (ii) or (iii) above, then Buyer shall ship the affected Products to the location designated by f'real and f'real shall, after receiving the affected Products, ship the replacement Products to Buyer at the Delivery Site specified on the Order or issue the applicable credit or refund, as applicable. **THE REMEDIES SET FORTH IN THIS SECTION 8 SHALL BE BUYER'S SOLE AND EXCLUSIVE REMEDIES AND F'REAL'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTIES SET FORTH IN THIS SECTION 8.** Except as provided in Section 4 or Section 8, Buyer has no right to return the Products.

**9. Limitation of Liability.** IN NO EVENT SHALL F'REAL BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, OR ENHANCED DAMAGES, LOST PROFITS OR REVENUES, LOSS OF OPPORTUNITY, LOSS OF GOODWILL, OR DIMINUTION OF VALUE, ARISING OUT OF, RELATING TO, RESULTING FROM, OR IN CONNECTION WITH ANY BREACH OF THESE TERMS OR AN ORDER, REGARDLESS OF: (i) WHETHER SUCH DAMAGES WERE FORESEEABLE, (ii) WHETHER OR NOT F'REAL WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, (iii) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT, OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND (iv) THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. IN NO EVENT SHALL F'REAL'S AGGREGATE LIABILITY ARISING OUT OF, RELATING TO, RESULTING FROM, OR IN CONNECTION WITH THE THESE TERMS OR AN ORDER, WHETHER FOR BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL AMOUNT PAID FOR THE PRODUCTS SOLD UNDER THE ORDER UPON WHICH THE ALLEGED CLAIM AROSE.

**10. Indemnification; Insurance.** To the fullest extent permitted by law, Buyer shall indemnify, defend, and hold f'real, its affiliates, and their respective officers, directors, employees, and agents (each, an "Indemnified Party"), harmless from and against any and all claims, damages, fines, penalties, costs, expenses, losses, demands, and liabilities of any kind whatsoever (including, without limitation, attorney's fees, court costs, and disbursements) directly or indirectly arising out of, related to, resulting from, or in connection with, in whole or in part, Buyer's use,

storage, or other handling of the Products and all injury, illness, or death to a person, or damage to property, actual or alleged, directly or indirectly arising out of or related thereto. Buyer shall purchase and maintain, at Buyer's sole cost, such insurance written in the kinds and minimum limits of liability as will protect f'real from any losses or claims which may arise out of or relate to these Terms or the transactions contemplated hereby.

**11. Compliance with Laws.** Buyer shall comply with all laws, rules and regulations, and government orders and ordinances that are in any way related to Products.

**12. Force Majeure.** Any delay or failure of f'real to perform any of its obligations under these Terms or an Order will be excused if such failure or delay is the result of a cause beyond f'real's reasonable control including, without limitation, the following events (the "Force Majeure Events"): (i) acts of God, flood, fire, earthquake, blizzard; (ii) explosion, war, invasion, hostilities (whether or not war is declared), terrorist threats (including, without limitation, general threats) or acts, riot, other civil unrest; (iii) government order or action, eminent domain, condemnation of property, changes in laws or regulations; (iv) organized labor activities or disturbances such as strikes; (v) shortages of power, supplies, infrastructure, or transportation; (vi) emergencies (whether global, national, regional, or local); and (vii) pandemic, epidemic, quarantines, and their related consequences. f'real shall, as soon as reasonably practicable, give notice of the Force Majeure Event to Buyer stating the period of time the Force Majeure Event is expected to last.

**13. Confidentiality.** All pricing, sourcing, information, manufacturing processes, designs, formulas, data, or other technical information of f'real or any of its affiliates relating to Products or f'real's services related to Products shall remain f'real's or its affiliates' confidential information and property, and Buyer shall not have any rights thereto, nor any rights to disclose such items or information to any third party. Nothing in these Terms or an Order shall be construed (by implication, estoppel or otherwise) as granting, or as an undertaking by f'real to subsequently grant, to Buyer any license, right, title or interest in or to any present or future patent, patent application, know-how, copyright, trademark, trade secret or other proprietary right.

**14. Software and Cellular Modem.** **This Section 14 applies only to Products that contain the Software (as defined below) and/or the Cellular Modem (as defined below).** Buyer acknowledges that certain software, firmware, data files, and documentation are embedded or installed in the Products (the "Software") and that Buyer use of the Software is governed by the Software License Agreement attached to these Terms as Exhibit A. Buyer further acknowledges that a cellular modem is embedded or installed in the Products (the "Cellular Modem"). F'REAL IS, AND SHALL AT ALL TIMES REMAIN, THE SOLE AND EXCLUSIVE OWNER OF THE CELLULAR MODEM. The Cellular Modem enables f'real to remotely connect to the Products to deliver Updates to the Software and to provide the maintenance and support services in accordance with the Software License Agreement. F'REAL may make modifications to or replace the Cellular Modem at any time upon notice to Buyer. Buyer shall not modify, disable, or remove the Cellular Modem from the Product as doing so would prevent f'real from delivering Updates to the Software and from providing the maintenance and support services. If Buyer ceases use of the Product, Buyer shall provide written notice to f'real thereof and, if requested by f'real, shall return the Cellular Modem to f'real in accordance with f'real's instructions.

**15. Miscellaneous.** f'real and Buyer are acting hereunder as independent contractors. These Terms and Orders are not assignable by Buyer. Any assignment made in contravention of this Section 15 shall be null and void. The waiver by either Party of any of its rights or remedies or of any breach by the other Party under these Terms in a particular instance shall not be considered as a waiver of the same or different rights, remedies, or breaches in subsequent instances. No amendment or waiver of any provision of these Terms shall be effective unless made in writing and signed by both Parties. These Terms shall be interpreted and enforced exclusively under the laws of the State of New York, exclusive of any conflict of laws principles, and the Parties shall exercise any right or remedy thereunder exclusively in, and hereby consent to the exclusive jurisdiction of, the courts in Erie County, New York. All of f'real's rights and remedies provided in the Terms are cumulative and not exclusive, and the exercise by f'real of any right or remedy does not preclude the exercise of any other rights or remedies. The Parties expressly exclude the application of the United Nations Convention on Contracts for the International Sale of Goods, if and to the extent applicable. If any provision in these Terms is found to be invalid, illegal, or unenforceable, then the remainder of these Terms shall not be affected, and shall remain in full force and effect. The provisions in these Terms which by their nature should survive termination or expiration of these Terms shall survive and remain in full force and effect.

## Exhibit A

### Software License Agreement

**1. Agreement and Acceptance.** This software license agreement (“Agreement”) is part of the Terms and Conditions of Sale (the “Terms”) to which it is attached and governs the license of the Software by f’real to Buyer. Capitalized terms used in this Agreement, but not defined in this Agreement, shall have the meaning provided in the Terms. F’REAL PROVIDES THE SOFTWARE SOLELY ON THE TERMS AND CONDITIONS SET FORTH IN THIS AGREEMENT AND ON THE CONDITION THAT BUYER ACCEPTS AND COMPLIES WITH THEM. BY ACTIVATING OR USING THE SOFTWARE, BUYER ACCEPTS THIS AGREEMENT AND AGREES THAT BUYER IS LEGALLY BOUND BY ITS TERMS. IF BUYER DOES NOT AGREE TO THE TERMS OF THIS AGREEMENT, BUYER ACKNOWLEDGES AND AGREES THAT BUYER DOES NOT, AND WILL NOT, HAVE A LICENSE TO THE SOFTWARE.

**2. License Grant and Scope.** Subject to and conditioned upon Buyer’s compliance with the Terms and this Agreement, f’real hereby grants to Buyer a non-exclusive, non-transferable, non-sublicensable, license to use the software, firmware, data files that are embedded or installed in the Products, in machine readable, object code form, and to access and use the f’real remote gateway (collectively, the “Software”), solely in connection with the operation of the Products and in strict compliance with the relevant operator manuals, which Buyer agrees to carefully review, and this Agreement. Buyer shall not assign, sublicense, transfer, pledge, lease, rent, or share Buyer’s rights under this Agreement. If Buyer desires to sell or otherwise transfer ownership of the Products, Buyer must provide written notice of the proposed sale or transfer to f’real and any purchaser or transferee must agree to be bound by the terms and conditions of this Agreement.

**3. Use Restrictions.** Buyer shall not, directly or indirectly, (i) use the Software beyond scope of the license granted under Section 2; (ii) provide any third party with access to or use of the Software; (iii) modify, translate, adapt, or otherwise create derivative works or improvements, whether or not patentable, of the Software or any part thereof; (iv) combine the Software of any party thereof with, or incorporate the Software or any part thereof in, any other program; (v) reverse engineer, disassemble, decompile, decode, or otherwise attempt to derive or gain access to the source code of the Software or any part thereof; (vi) remove, delete, alter, or obscure any trademarks or any copyright, trademark, patent, or other intellectual property or proprietary rights notice provided on or with the Software; (vii) copy the Software, in whole or in part; (viii) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available the Software, or any features or functionality of the Software, to any third party for any reason, whether or not over a network or on a hosted basis, including in connection with the internet or any web hosting, wide area network (WAN), virtual private network (VPN), virtualization, time-sharing, service bureau, software as a service, cloud, or other technology or service; (ix) use the Software in violation of any law, rule, regulation, or order; (x) use the Software for purposes of competitive analysis of the Software, the development of a competing product or service, or for any other purpose that is to f’real’s commercial disadvantage; or (xi) remove, disable, circumvent, or workaround (or attempt to) any security measure that protects the Software.

**4. Maintenance and Support.** Buyer shall be entitled to maintenance and support services for the Software which may include updates, upgrades, bug fixes, patches, and other error corrections (collectively, “Updates”) as f’real makes generally available free of charge to all licensees of the Software then-entitled to maintenance and support services. Updates shall be provided at f’real’s sole discretion. Buyer acknowledges and agrees that f’real has no obligation to develop any Updates. Updates will be deemed Software and shall be subject to the terms and conditions of this Agreement. If any Update requires an internet connection, then such internet connection shall be Buyer’s sole responsibility. Maintenance and support services do not include any new version or new release of the Software that f’real may issue as a separate or new product, and f’real may determine whether any issuance qualifies as a new version, new release, or Update in its sole discretion.

**5. Collection and Use of Information.** Buyer acknowledges that f’real may, directly or indirectly through the services of third parties, collect and store information regarding the use of the Software and about the Products on which the Software is installed or through which it otherwise is accessed and used. f’real may use such information for any purpose related to any use of the Software or the Products including, without limitation, improving performance of the Software, developing Updates, and improving the Products.

**6. Intellectual Property.** Buyer acknowledges and agrees that the Software is provided under license, and not sold, to Buyer. Buyer does not acquire any ownership interest in the Software under this Agreement, or any other rights thereto, other than to use the same in accordance with the license granted and subject to all terms, conditions, and restrictions under this Agreement. f'real reserves and shall retain its entire right, title, and interest in and to the Software and all intellectual property rights arising out of or relating to the Software, except as expressly granted to the Buyer in this Agreement. Buyer shall safeguard all Software from infringement, misappropriation, theft, misuse, or unauthorized access. Buyer shall promptly notify f'real if Buyer becomes aware of any infringement of f'real's intellectual property rights in the Software and fully cooperate with f'real in any legal action taken by f'real to enforce its intellectual property rights.

**7. Term and Termination.** This Agreement and the license granted hereunder shall remain in effect until terminated as set forth herein. f'real may terminate this Agreement and the license granted hereunder, effective upon notice to Buyer, if Buyer breaches this Agreement or if Buyer ceases using the Product on which it is embedded or installed. Upon termination, Buyer shall no longer be permitted to use the Software and f'real shall have the right to remove or destroy all copies of the Software on the Products.

**8. Warranty Disclaimer.** THE SOFTWARE AND DOCUMENTATION ARE PROVIDED TO BUYER "AS IS" AND WITH ALL FAULTS AND DEFECTS WITHOUT WARRANTY OF ANY KIND. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, F'REAL EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, WITH RESPECT TO THE SOFTWARE, INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND WARRANTIES THAT MAY ARISE OUT OF COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE, OR TRADE PRACTICE. WITHOUT LIMITATION TO THE FOREGOING, THE LICENSOR PROVIDES NO WARRANTY OR UNDERTAKING, AND MAKES NO REPRESENTATION OF ANY KIND THAT THE SOFTWARE WILL MEET BUYER'S REQUIREMENTS, ACHIEVE ANY INTENDED RESULTS, BE COMPATIBLE, OR WORK WITH ANY OTHER SOFTWARE, APPLICATIONS, SYSTEMS, OR SERVICES, OPERATE WITHOUT INTERRUPTION, MEET ANY PERFORMANCE OR RELIABILITY STANDARDS OR BE ERROR FREE, OR THAT ANY ERRORS OR DEFECTS CAN OR WILL BE CORRECTED.

**9. Limitation of Liability.** TO THE FULLEST EXTENT PERMITTED BY LAW, IN NO EVENT WILL F'REAL BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY USE, INTERRUPTION, DELAY, OR INABILITY TO USE THE SOFTWARE; LOST REVENUES OR PROFITS; DELAYS, INTERRUPTION, OR LOSS OF SERVICES, BUSINESS, OR GOODWILL; LOSS OR CORRUPTION OF DATA; LOSS RESULTING FROM SYSTEM OR SYSTEM SERVICE FAILURE, MALFUNCTION, OR SHUTDOWN; FAILURE TO ACCURATELY TRANSFER, READ, OR TRANSMIT INFORMATION; FAILURE TO UPDATE OR PROVIDE CORRECT INFORMATION; SYSTEM INCOMPATIBILITY OR PROVISION OF INCORRECT COMPATIBILITY INFORMATION; OR BREACHES IN SYSTEM SECURITY; OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES, WHETHER ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT THE LICENSOR WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL F'REAL'S AGGREGATE LIABILITY UNDER OR IN CONNECTION WITH THIS AGREEMENT, UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, EXCEED THE TOTAL AMOUNT PAID F'REAL FOR THE PRODUCT ON WHICH THE SOFTWARE THAT IS THE SUBJECT OF THE CLAIM IS INSTALLED. THE LIMITATIONS SET FORTH IN THIS SECTION 9 SHALL APPLY EVEN IF BUYER'S REMEDIES UNDER THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE.

**10. Compliance with Laws.** Buyer shall use the Software in accordance with all applicable laws of the United States and any other applicable laws including, without limitation, those related to export control and trade control. Buyer acknowledges and agrees that the Software may be subject to export or other foreign trade laws restricting resale or transfer to other parties.

**11. Force Majeure.** Any delay or failure of f'real to perform any of its obligations under this Agreement will be excused if such failure or delay is the result of a cause beyond f'real's reasonable control including, without limitation, the following events (the "Force Majeure Events"): (a) acts of God, flood, fire, earthquake, blizzard; (b) explosion, war, invasion, hostilities (whether or not war is declared), terrorist threats (including, without limitation, general threats) or acts, riot, other civil unrest; (c) government order or action, eminent domain, condemnation of property, changes in laws or regulations; (d) organized labor activities or disturbances such as strikes; (e) shortages of power, supplies, infrastructure, or transportation; (f) emergencies (whether global, national, regional, or local); and (g) pandemic, epidemic, quarantines, and their related consequences. f'real shall, as soon as reasonably practicable, give notice of the Force Majeure Event to Buyer stating the period of time the Force Majeure Event is expected to last.

**12. Confidentiality.** All pricing, sourcing, information, manufacturing processes, designs, formulas, data, or other technical information of f'real or any of its affiliates relating to the Software shall remain f'real's or its affiliates' confidential information and property, and Buyer shall not have any rights thereto, nor any rights to disclose such items or information to any third party. Except as expressly set forth in this Agreement, nothing in this Agreement shall be construed (by implication, estoppel or otherwise) as granting, or as an undertaking by f'real to subsequently grant, to Buyer any license, right, title or interest in or to any present or future patent, patent application, know-how, copyright, trademark, trade secret or other proprietary right.

**13. Miscellaneous.** f'real and Buyer are acting hereunder as independent contractors. This Agreement is not assignable by Buyer. Any assignment made in contravention of this Section 13 shall be null and void. The waiver by either Party of any of its rights or remedies or of any breach by the other Party under this Agreement in a particular instance shall not be considered as a waiver of the same or different rights, remedies, or breaches in subsequent instances. No amendment or waiver of any provision of these Terms shall be effective unless made in writing and signed by both Parties. This Agreement shall be interpreted and enforced exclusively under the laws of the State of New York, exclusive of any conflict of laws principles, and the Parties shall exercise any right or remedy thereunder exclusively in, and hereby consent to the exclusive jurisdiction of, the courts in Erie County, New York. All of f'real's rights and remedies provided in this Agreement are cumulative and not exclusive, and the exercise by f'real of any right or remedy does not preclude the exercise of any other rights or remedies. The Parties expressly exclude the application of the United Nations Convention on Contracts for the International Sale of Goods, if and to the extent applicable. If any provision in this Agreement is found to be invalid, illegal, or unenforceable, then the remainder of this Agreement shall not be affected, and shall remain in full force and effect. The provisions in this Agreement which by their nature should survive termination or expiration of this Agreement shall survive and remain in full force and effect. This Agreement (and the Terms) constitutes the entire agreement between the Parties regarding the subject matter contained herein, and supersedes any and all prior or contemporaneous written or oral communications, understandings, and agreements of the Parties related to the subject matter contained herein.