

## **Warehousing Agreement**

- (1) Nowel Sp. z o.o.
- (2) Newcold Poland Operations Sp. z o.o.

Dated 6 September 2022

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**This Agreement** is made on 6 September 2022

**Between**

- (1) **Nowel Sp. z o.o.**, a company registered under the laws of Poland (Company registration: KRS 0000623598, NIP 5223065536, share capital: PLN 2,833,150) whose registered office is at 05-120 Legionowo, Szarych Szeregów 11, Poland (the "**Customer**"); and
- (2) **Newcold Poland Operations Sp. z o.o.**, a company registered under the laws of Poland (Company registration: KRS 0000982251, NIP: 5252916066, share capital: PLN 5,000) whose registered office is at Plac Marszałka Józefa Piłsudskiego 1, 00-078 Warsaw ("**NewCold**").

**Background:**

NewCold has agreed to provide the Services to the Customer at the Warehouse in respect of goods owned by the Customer on the terms and conditions set out in this Agreement.

**It is agreed** as follows:

**1. Definitions and interpretation**

1.1 In this Agreement, unless the context otherwise requires, the following definitions shall apply:

"**Additional Services**" has the meaning given to it in clause 5.4.

"**Affected Party**" has the meaning given to it in clause 21.2.

"**Agreement**" means this agreement including its Schedules and appendices (if any).

"**Applicable Law**" means all laws, regulations, orders, rules, guidance, directions, judgments, directives in force from time to time applicable to a party and relevant to this Agreement.

"**Associate**" means any person that, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with a party to this Agreement. A person will be deemed to control another person for the purposes of this definition, if the first person possesses, directly or indirectly, the power to appoint a majority of the directors of the second person, or to otherwise direct or cause the direction of the management or policies of the second person, whether through the ownership of voting instruments, by contract or otherwise.

"**Back-Up Operator**" means each and any of the approved alternative providers of Back-Up Services as agreed between the parties pursuant to clause 3.1.

"**Back-Up Services**" has the meaning given to it in clause 3.2.

"**Bank Guarantee**" has the meaning given to it in clause 2.4.

"**Best Industry Standards**" means standards, practices, methods and procedures in accordance with the degree of skill, care, efficiency and timeliness as would reasonably be expected from a well-managed cold-store warehousing and logistics provider, performing services substantially similar to the Services in the territory of Poland in similar circumstances.

"**Buffer Percentage**" means 10% of the Forecast Pallet spaces.

"**Business Day**" means any day other than a Saturday, Sunday, or public holiday in the Territory.

"**Calendar Year**" means a 12-month period beginning on 1 January and ending on 31 December.

**"Charges"** means each of the charges for the Standard Services as set out in Schedule 1 and, where applicable, any charges for Additional Services notified to the Customer by NewCold in accordance with clause 5.4 and any Minimum Annual Revenue Shortfall.

**"Connection Corridor"** means the corridor connecting the Customer's New Bakery to the Warehouse.

**"Confidential Information"** has the meaning given to it in clause 23.1.

**"Conditions Precedent"** means the conditions precedent set out in clause 2.4.

**"Consumer Prices Index"** means the average of the monthly consumer price indices of goods and services (Wskaźniki cen towarów i usług konsumpcyjnych) as published on <https://stat.gov.pl/wskazniki-makroekonomiczne/> by the Polish Central Statistical Office (or any successor body) for the last 12 months.

**"Customer Group"** means the Customer and any company which it controls, is controlled by or is in common control with, where 'control' means directly or indirectly owning or controlling the voting rights attached to not less than 50% of the issued ordinary share capital, or controlling directly or indirectly the appointment of a majority of the board of management, and references to a member of the Customer Group shall be construed accordingly.

**"Customer's Bakery"** means the Customer's Current Bakery and/or the Customer's New Bakery (as applicable).

**"Customer's Current Bakery"** means the Customer's bakery at Legionowo, Szarych Szeregów 11, 05-120 Legionowo.

**"Customer's New Bakery"** means the Customer's new bakery to be built adjacent to the Warehouse.

**"Customer's Information"** means the information provided to NewCold by Customer as specified in Part 2 of Schedule 2 (Operating Specification).

**"Customer IPR"** means patents, trademarks, design rights, copyright (including rights in computer software and databases), know-how and moral rights and other intellectual property rights of any member of the Customer Group, in each case whether registered or unregistered and including applications for, and the right to apply for, the foregoing and all rights or forms of protection having equivalent or similar effect to any of the foregoing which may subsist anywhere in the world.

**"Delay Period"** has the meaning given to it in clause 3.2.

**"Delivered into NewCold's Custody"** has the meaning given to it in clause 14.2.

**"Delivered out of NewCold's Custody"** has the meaning given to it in clause 14.3.

**"Disaster"** means any event or circumstance which has or is likely to have a material and detrimental effect on NewCold's ability to provide all or part of the Services.

**"Disaster Recovery Plan"** has the meaning given to it in clause 20.

**"Discloser"** has the meaning given to it in clause 23.1.

**"Dispute"** means any dispute or difference between the parties arising out of or in connection with this Agreement.

**"Dispute Resolution Procedure"** means the procedure for resolving disputes set out in clause 22.

**"Electricity Index"** means the average of the two most recent electricity prices for non-household consumers with a consumption of 2,000 MWh < Consumption < 20,000 MWh with all taxes and levies included as published by Eurostat (or any successor body) from time to time and available at <https://ec.europa.eu/eurostat>.

**"Electricity Index Base Price"** means €0.1220 per kWh as listed in the 2021S2 edition of the Electricity Index.

**"Expected Storage Volume"** has the meaning given to it in clause 7.2.

**"Extension Period"** has the meaning given to it in clause 3.6.

**"External Customer"** means any customer of the Customer from time to time.

**"Force Majeure Event"** means any event or circumstance outside the reasonable control of the affected party, always provided that (i) it is not caused by the actions of the affected party or any person for whom the affected party is responsible under this Agreement or by law, including any person through whom it performs its obligations under this Agreement (such as its employees, contractors and subcontractors); and (ii) it prevents or delays the performance of any material obligation of the affected party arising under this Agreement, including:

- (a) fire, flood, earthquake, lightning strike, windstorm, other natural disaster, epidemic or pandemic including Covid-19;
- (b) war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
- (c) terrorist attack, civil war, civil commotion, riots;
- (d) IT failure as a consequence of a cyber-attack or malicious third-party software, in each case provided that the failure occurred despite NewCold having implemented and fully complied with its cybersecurity policy as may be expected in line with Best Industry Standards;
- (e) explosion or accidental damage; and
- (f) national or regional interruption or failure of a utility service, including but not limited to internet, telephone, electric power (to the extent that the effects of the interruption or failure of the electricity power supply could not reasonably be avoided by use of NewCold's back-up power solution as referred to in clause 10.1(e)), gas or water;

**"Forecast"** has the meaning given to it in clause 7.3.

**"Forecast Period"** means the period of the relevant Forecast.

**"Initial KPIs"** means each of the key performance indicators applicable to the Standard Services during the Transition Period, as set out in Part 2 of Schedule 4 (*Initial KPIs*).

**"Insolvency Event"** means, in respect of a party to this Agreement, any of the following events, which is not dismissed, revoked, withdrawn or otherwise undone within thirty (30) Business Days:

- (a) that party being in the state of insolvency in the meaning provided by the Polish Bankruptcy law or Polish Restructuring law; or
- (b) that party passing a resolution for its winding up, or a court of competent jurisdiction making an order for it to be wound up or dissolved, or that party being otherwise dissolved; or

- (c) the appointment of a compulsory administrator (Polish: *zarządca przymusowy*) of that party's enterprise, or the appointment of a liquidator (Polish: *likwidator*) of, or a court bailiff (Polish: *komornik sądowy*) taking possession of or selling, the whole or most of that party's undertaking and assets; or
- (d) that party having entered into an arrangement (*układ*) in the meaning provided by the Polish Restructuring law; or
- (e) any event similar to any of the above events occurring in respect of that party in any other jurisdiction,

Any event that takes place as part of a bona fide solvent reconstruction, amalgamation, merger, or consolidation, is excluded from this definition.

**"Intended Services Commencement Date"** means the date 15 months after the satisfaction or waiver by NewCold of the conditions precedent set out in clause 2.4.

**"I-Point"** means the system which checks Pallets for non-conformance with the relevant requirements of the Operating Specification and either rejects or accepts the Pallets.

**"Labour Index"** means the average monthly nominal gross wages and salaries (Przeciętne miesięczne realne wynagrodzenie brutto) index as published on <https://stat.gov.pl/wskazniki-makroekonomiczne/> by the Polish Central Statistical Office (or any successor body) for the last 12 months.

**"Long Stop Date"** means the date falling 12 months after the Intended Services Commencement Date.

**"Losses"** means all losses, damages, costs, expenses and other liabilities of any kind, including reasonable attorney's legal and other professional fees together with any goods and/or services tax thereon.

**"Maximum Volume"** has the meaning given to it in clause 7.2 as it may be adjusted in accordance with that clause.

**"Minimum Annual Handling Revenue Shortfall"** has the meaning given to it in Part 5 of Schedule 1 (Minimum Annual Revenue).

**"Minimum Annual Revenue"** means the aggregate of the Minimum Annual Storage Revenue and the Minimum Annual Handling Revenue each as defined in Part 5 of Schedule 1 (*Minimum Annual Revenue*).

**"Minimum Annual Revenue Shortfall"** has the meaning given to it in Part 5 of Schedule 1 (*Minimum Annual Revenue*).

**"Minimum Annual Storage Revenue Shortfall"** has the meaning given to it in Part 5 of Schedule 1 (Minimum Annual Revenue).

**"Minimum Performance Targets"** means the Initial KPIs and/or the Standard KPIs.

**"Non Affected Party"** has the meaning given to it in clause 21.2.

**"NewCold IPR"** means patents, trademarks, design rights, copyright (including rights in computer software and databases), know-how and moral rights and other intellectual property rights of NewCold or any of its Associates, in each case whether registered or unregistered and including applications for, and the right to apply for, the foregoing and all rights or forms of protection having equivalent or similar effect to any of the foregoing which may subsist anywhere in the world.

**"OLCOT Figure"** means the percentage figure for the combined Standard KPIs of (1) 'Orders loaded on time' and (2) 'Order quality' as set out in Part 1 of Schedule 4 (*Standard KPIs*).

**"Operating Specification"** means the specification set out in Part 2 of Schedule 2 (Operating Specification) and Part 3 (IT Landscape and EDI Solution) setting out the procedures and standards to be adhered to by NewCold in its performance of the Services, as may be amended from time to time in accordance with the procedure set out in clause 9 (Service Change Procedure) of this Agreement.

**"Pallet"** means a pallet with the maximum specifications set out in the Operating Specification containing the Products.

**"Personal Data"** has the meaning given in the Privacy Act.

**"Privacy Act"** means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).

**"Products"** means all of the frozen food products sent by or on behalf of the Customer to the Warehouse.

**"Reasonable Endeavours"** means taking the steps that a reasonable and prudent business would take to try to achieve the stated objective, taking into account all relevant commercial considerations.

**"Receiving Party"** has the meaning given to it in clause 23.1.

**"Representatives"** means the employees, agents and other representatives from time to time of the party concerned.

**"Service Change Procedure"** means the service change procedure as set out in Schedule 3 (*Service Change Procedure*).

**"Service Credits"** means any service credits payable in accordance with Part 3 of Schedule 4 (*Service Credits*).

**"Services"** means the Standard Services to be provided by or on behalf of NewCold (as set out in Schedule 2), and any Additional Services provided in accordance with this Agreement.

**"Services Commencement Date"** means the date on which NewCold first accepts Pallets at the Warehouse or the date falling 10 Business Days after the date on which NewCold notifies the Customer in writing that it is ready to accept Pallets and perform the Standard Services at the Warehouse, whichever is earlier.

**"Shuttling"** means the provision of primary transportation by a NewCold Associate of Products from the Customer Facility to the Warehouse using shuttle trailers and **"Shuttle Trailer"** shall be construed accordingly.

**"Signature Date"** means the date of the last signature of this Agreement.

**"Standard KPIs"** means each of the key performance indicators applicable to NewCold's supply of the Standard Services from the end of the Transition Period, as set out in Part 1 of Schedule 4 (*Standard KPIs*).

**"Standard Services"** means the warehousing services to be provided by or on behalf of NewCold as set out in Part 1 of Schedule 2 (Description of Services) and Part 2 (Operating Specification).

**"Term"** means the term of this Agreement as detailed in clause 4.

**"Term Forecast"** means the Customer's forecast of its requirements for the Services during the Term, as referred to in clause 7.1 and set out in Part 2 of Schedule 2.

**"Territory"** means Masovian Voivodeship of Poland.

**"Transition Period"** means the period of 6 months after the Services Commencement Date.

**"Warehouse"** means the warehouse to be built on a site at Nowy Modlin, Majowa Street, Poland.

**"zł"** means the lawful currency of Poland.

1.2 In this Agreement, unless the context otherwise requires:

- (a) words in the singular include the plural and vice versa;
- (b) a reference to any specific Applicable Law is a reference to it as amended, extended or re-enacted from time to time to time; and
- (c) any words following the terms **"including"**, **"include"**, **"in particular"**, **"for example"** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

## 2. **Appointment of NewCold**

- 2.1 The Customer appoints NewCold to provide the Services to the Customer with effect from the Services Commencement Date subject to the terms and conditions of this Agreement and NewCold accepts such appointment.
- 2.2 From the expiry of the Transition Period and subject to clause 2.3, the Customer appoints NewCold as its exclusive supplier of warehousing, handling, case picking and ancillary services in the Territory with respect to frozen food products to be sold to the External Customers on a wholesale basis. The exclusivity referred to in this clause 2.2 will not apply during any period in which NewCold is unable to provide the Services (other than as a result of a breach of this Agreement by the Customer) including as a result of the occurrence of a Force Majeure Event or Disaster, in respect of the Services which NewCold is unable to provide, until the date that is one month after NewCold has notified the Customer that it is able to resume provision of the Services. For the avoidance of doubt, this does not prevent the Customer from requesting, or NewCold from providing, the Services in respect of External Customers who are located outside the Territory.
- 2.3 Notwithstanding clause 2.2, the Customer shall be entitled to (i) continue to operate any warehouse (including any dispatches of products from this warehouse) which forms part of any manufacturing plant or similar facility owned or operated by the Customer as at the Signature Date and detailed in Part 4 of Schedule 2 (*Customer's Existing Warehousing Operations*) provided always that the Customer does not store more than 3,000 pallets worth of products in total at locations other than the Warehouse in the Territory and/or (ii) to deliver Products direct to a storage facility of an External Customer at the specific, unsolicited written instruction of that External Customer, and the Customer will provide evidence of such instruction to NewCold if available, and in a reasonably available form.
- 2.4 The terms and conditions of this Agreement (other than clauses 1, this clause 2.4 and clauses 10.1(a), 10.2(a), 17, 21, 22, clause 23, and clauses 28 to 42, each of which shall come into effect on the Signature Date) are conditional on the fulfilment (or written waiver by NewCold) of the following conditions precedent:



- (a) the Customer putting in place and thereafter maintaining a first demand, irrevocable and unconditional bank guarantee (the "**Bank Guarantee**") in favour of NewCold in a form reasonably acceptable to NewCold with a limit of indemnity of not less than zł 5,700,000 (such amount to be increased annually on each anniversary of the Signature Date by reference to the increase in the Consumer Prices Index over the previous 12 months) to be issued by a reputable Poland headquartered bank approved by NewCold (acting reasonably) with long term debt instruments in issue that are neither subordinated nor guaranteed and have ratings from at least two of Fitch Ratings Limited ("Fitch"), Moody's Investors Service Limited ("Moody's") and Standard & Poor's Rating Services ("S&P") which is no less than, in the case of (a) Fitch, BBB+, (b) Moody's, A3, or (c) S&P, BBB+. The Bank Guarantee shall be (a) callable in Warsaw, (b) irrevocable prior to its specified expiry date, (c) governed by Polish law with an exclusive choice of jurisdiction in Poland, (d) have an expiry date falling no earlier than the date falling six months after the expiry of this Agreement, and (e) permit NewCold to assign or charge rights thereunder to its financing providers and Associates;
  - (b) all licenses, permits and consents required for the development, construction, operation and occupation of the Warehouse and the provision of the Services having been validly obtained by NewCold, including those listed in Appendix 1;
  - (c) the land on which the Warehouse is to be built having been acquired by NewCold or one of its Associates; and
  - (d) either NewCold and financiers have entered into a loan agreement on terms reasonably satisfactory to NewCold in an amount sufficient for the development, construction and fit-out of the Warehouse, and all related expenditures, or NewCold has obtained a binding commitment(s), for debt and/or equity, in an amount sufficient for the development, construction and fit-out of the Warehouse, and all related expenditures.
- 2.5 NewCold shall use Reasonable Endeavours, at its own cost, to procure that the Conditions Precedent referred to in points (b), (c) and (d) of Clause 2.4 are satisfied as soon as practicable and, in any event, no later than 12 months after the Signature Date and shall not, and shall procure that none of its Representatives shall, take any action that would be reasonably expected to delay or adversely affect the satisfaction of any of the Conditions Precedent. NewCold (or one or more of its Associates) shall bear all the costs and fees in connection with the fulfilment of the Conditions Precedent, including all notification and filing fees.
- 2.6 NewCold shall promptly notify the Customer of the fulfilment or waiver of each Condition Precedent referred to in points (b), (c) and (d) of Clause 2.4 but in any case not later than 5 Business Days from the fulfilment or waiver of the given Condition Precedent.
- 2.7 If any of the Conditions Precedent are not met or waived in writing by NewCold by the date falling 12 months after the Signature Date, the parties shall use their Reasonable Endeavours to mitigate the effect of the delay and shall work together in good faith to find workable solutions which minimise the impact of the delay on both parties. Any proposed solution that entails an adjustment to the Charges shall be agreed between the parties in accordance with the Service Change Procedure (as set out in Schedule 3). If the parties are unable to agree workable solutions or the Conditions Precedent have not been met or waived within a further period of 6 months, this Agreement shall terminate automatically (unless the parties agree in writing to keep it in force), each party shall be responsible for any costs, expenses and lawyer fees that it has incurred, and neither party shall have any liability to the other in respect of such termination.
- 2.8 The Customer shall provide the Bank Guarantee in accordance with clause 2.4(a) within 25 (twenty-five) Business Days of NewCold notifying the Customer:
- (a) that Conditions Precedent referred to in points (b), (c) and (d) of Clause 2.4 are satisfied and/or waived; or

- (b) that NewCold's financiers have requested that the Bank Guarantee is put in place with such request attached to the notice.

### 3. Services Commencement

3.1 On or before the Intended Services Commencement Date, the parties shall (each acting reasonably and in good faith) agree in writing a list of the Back-Up Operators whom the Customer pre-approves to provide Back-Up Services pursuant to clause 3.2. NewCold and the NewCold Affiliates nominated by NewCold shall be designated as Back-Up Operators on the list, along with such other operators as the parties may agree. NewCold will act a Back-Up Operator to the extent it provides Back-Up Services from a manual warehouse on the site of or adjacent to the Warehouse. The parties shall be entitled by agreement in writing to amend such list from time to time. NewCold shall be entitled to procure Back-Up Services from any Back-Up Operator (or more than one) under clause 3.2 without the need for further approval from the Customer.

3.2 Where the Services Commencement Date has not occurred on or before the Intended Services Commencement Date, the Customer shall procure at the Customer's own cost (but subject to NewCold's liability referred to below), from that date to the earlier of (i) the Services Commencement Date and (ii) the applicable Long Stop Date ("**Delay Period**"), alternative storage and handling services ("**Back-Up Services**") for the Products from a Back-Up Operator approved in accordance with clause 3.1. Where Back-Up Services are to be provided, the Customer shall pay the charges for the Back-Up Services and, to the extent the charges for the Back-Up Services exceed the Charges, NewCold shall (save where the delay to the Services Commencement Date is due to a Force Majeure Event), reimburse to the Customer the amount by which the charges for the Back-Up Services exceed the Charges, up to the monthly maximum compensation levels set out below:

Duration of delay	Compensation (zł)
1 <sup>st</sup> month	250,000
2 <sup>nd</sup> month	250,000
3 <sup>rd</sup> month	250,000
4 <sup>th</sup> month	250,000
5 <sup>th</sup> month	250,000
6 <sup>th</sup> month and each subsequent month	500,000

provided that:

- (a) the Customer provides reasonable evidence to NewCold of the cost of the Back-Up Services each month, in each case in a way compliant with antitrust regulations, including by providing it to NewCold's relevant 'clean team';
- (b) such payments shall be the Customer's sole remedy for any delay to the Intended Services Commencement Date; and
- (c) NewCold's aggregate liability for any costs, losses or expenses incurred by the Customer as a result of such delay shall not exceed zł 3,000,000 per year.

3.3 Where clause 3.2 applies and to the extent that the Customer's Products are, at the start of the Delay Period, stored at a facility operated by a third party warehouse provider engaged by the Customer and the third party warehouse provider is willing to continue that arrangement, the

Customer may use those facilities and that third party subject to the same payment, compensation terms and limits to NewCold's liability as set out in clause 3.2.

- 3.4 In order to facilitate the application of the principles set out in clause 3.2 and clause 21.7, the Customer shall, promptly following the execution of this Agreement, provide to NewCold full details of the charges payable by the Customer to its existing third party warehouse provider, in each case in a way compliant with antitrust regulations, including by providing them to NewCold's relevant 'clean team'. The charges so provided shall be used to calculate NewCold's total liability where clause 3.2 applies.
- 3.5 Subject to clause 3.6, if the Services have not started on or before the applicable Long Stop Date, then unless the parties (acting reasonably and in good faith) agree that the Long Stop Date shall be extended, this Agreement shall terminate automatically and neither party shall have any further liability to the other.
- 3.6 If Services have not started on or before the Long Stop Date as a result of either (i) a Force Majeure Event or (ii) adverse ground conditions (including those caused by severe weather) affecting the construction of the Warehouse, or the commencement of the Services, or both, or (iii) other unforeseen events outside the control of NewCold (the "**Delaying Event**"), then provided NewCold has served notice in writing not less than 90 days prior to the Long Stop Date (or, where the Delaying Event occurs less than 100 days prior to the Long Stop Date, such notice as is reasonable in the circumstances) requesting an extension to the Long Stop Date due to such Delaying Event, the Long Stop Date shall be extended by such period as may be reasonable in all the circumstances (the "**Extension Period**") as specified in the written notice from NewCold. Such period shall not, unless approved by the Customer, exceed six (6) months after the original Long Stop Date. Where such notice is served, NewCold shall be liable during the Extension Period for the costs referred to in clause 3.2, subject to the monthly and aggregate caps in clause 3.2 and provided that NewCold shall have no liability for such costs where the extension is required due to a Force Majeure Event.
- 3.7 NewCold shall keep the Customer reasonably informed regarding the construction and completion of the Warehouse. Without limitation, NewCold shall provide the Customer with monthly progress reports within 5 Business Days of the end of each month and otherwise keep the Customer reasonably informed of material delays and the steps NewCold is taking to address those delays.

#### 4. **Term**

- 4.1 This Agreement shall come into force on the Signature Date and shall (unless terminated at an earlier date in accordance with its terms) continue in force for a term of 20 years from the expiry of the Transition Period (the "**Term**").

#### 5. **Services to be provided by NewCold**

- 5.1 NewCold shall provide the Services to the Customer with effect from the Services Commencement Date in accordance with the terms of the Agreement and the Operating Specification. NewCold shall provide the Services in accordance with the Standard KPIs save that, during the Transition Period, the Initial KPIs shall apply instead of the Standard KPIs.
- 5.2 NewCold shall carry out the Services in accordance with Best Industry Standards. NewCold shall and shall procure that its Representatives engaged in the provision of the Services observe all health, safety and security rules and procedures applicable at the Warehouse or required under Applicable Law.
- 5.3 NewCold shall not provide the Services at any site other than the Warehouse without the prior written consent of the Customer (such consent not to be unreasonably withheld, delayed or conditioned), except that no such consent is required if NewCold needs to provide temporary additional or alternative capacity and (subject always to the next sentence) NewCold bears any incremental costs and expenses directly incurred as a result. If such alternative storage of

Customer's Products is required where the Customer wishes NewCold to store or handle volumes of Products in excess of the Term Forecast or any other Forecast, then all reasonable incremental costs and expenses incurred by NewCold in accommodating the Customer's requirements shall be paid by the Customer, in each case unless otherwise provided under clause 7.6.

5.4 The Customer may from time to time request NewCold to carry out other services separate from and in addition to the Standard Services in relation to the Products provided such services are within the scope of services generally provided by NewCold and can reasonably be accommodated (the "**Additional Services**"). The charges and conditions (including, without limitation, the period for which such Additional Services are to be provided and any variation to the stock loss tolerance to take account of the Additional Services) for providing such Additional Services shall be agreed by NewCold and the Customer in advance of such Additional Services being performed. The Customer acknowledges that the charges, conditions and specification of the Additional Services are based on assumptions and information which may not be correct, or may cease to be correct over time as circumstances change. Unless otherwise agreed, Additional Services will be provided for a fixed period of 12 months, after which any continued provision of those Additional Services will be subject to the parties reviewing the applicable charges and conditions and agreeing any required changes.

5.5 NewCold shall have the right to refuse to accept delivery of Products tendered by the Customer that do not meet the requirements set out in this Agreement.

## 6. **Continuous Improvement**

6.1 Following consultation with the Customer, NewCold shall use Reasonable Endeavours to develop and implement a continuous improvement plan in relation to the Services, utilizing agreed evaluation processes to identify possible ways to improve the quality of the Services and, together with the Customer, shall review the Minimum Performance Targets and use Reasonable Endeavours to improve the performance of the Services where commercially feasible to do so. Where commercially viable opportunities for improvements are identified, they will be processed in accordance with clause 9 (*Service Change Procedure*).

6.2 To support the continuous improvement plan, teams will be formed on different operational and strategic levels with members both from NewCold and the Customer. These teams will meet on a regular basis and will report to the steering committee established under clause 6.3. The overall objective of these meetings is to achieve cost effectiveness for the handling of the Products and quality improvement for the combined operation with handling savings being shared between the parties as agreed during the relevant meeting.

6.3 The parties shall constitute a steering committee made up of representatives of each of the parties to oversee the operation of the Services and the performance of this Agreement and to consider proposals made by the teams referred to in clause 6.2. The steering committee may propose potential modifications to the Services and the Minimum Performance Targets. Such proposals shall be managed in accordance with the process set out in clause 9 (*Service Change Procedure*).

6.4 The Customer shall, in accordance with NewCold's requirements, procure (i) the installation of an automated loading system and I-Point at the Customer's Current Bakery; and (ii) the construction and commissioning of that section of the Connection Corridor which is to be built on the site at which the Customer's New Bakery is to be erected. The Customer shall be responsible for maintaining such automated loading system and I-Point in accordance with provisions of Schedule 2.

6.5 NewCold shall procure (i) the installation of an automated unloading system at the Warehouse and; (ii) the construction and commissioning of that section of the Connection Corridor which is to be built on the site at Warehouse is to be erected. NewCold shall maintain Connection Corridor with the costs of such maintenance to be split between NewCold and the Customer based on the proportion of the Connection Corridor on NewCold's site and the Customer's site

and for this purpose the Customer will allow NewCold and its contractors access to its premises upon reasonable notice (or on no notice in the event of an emergency).

## 7. Forecasts and Minimum Annual Revenue

7.1 The Customer has provided to NewCold the forecast set out in Part 2 of Schedule 2 for the period commencing on the Services Commencement Date and ending on the last day of the Term covering the storage, inbound, outbound, handling, case picking and other services required by the Customer ("**Term Forecast**"). NewCold has configured the Warehouse size, reserved pallet capacity for the Customer and made operational arrangements to service the Customer's requirements on the basis of the Term Forecast.

7.2 In each Contract Year, the Customer expects (i) to require the following average volume of Pallet spaces per week; and (ii) that it will not require storage in excess of the following maximum storage volumes:

Contract Year	1	2	3	4-20
Expected Storage Volume (Pallets)	33,600	39,200	44,800	50,400
Maximum Volume (Pallets)	40,320	47,040	53,760	60,480

and "**Contract Year**" shall mean: (i) in the case of Contract Year 1, the period from the Services Commencement Date to the first anniversary of the expiry of the Transition Period; and (ii) in all other cases, the subsequent periods of 12 months following the first anniversary of the expiry of the Transition Period. If during any 36 month period ending on or after the expiry of Contract Year 5 the average volume of Products stored at the Warehouse is below the average of the Expected Storage Volume applicable during that period, then the Maximum Volume shall be reduced for the following 36 month period by the percentage difference between such actual average storage volume during relevant 36 month period and the average Expected Storage Volume applicable during that period. By way of example: if in Contract Years 4, 5 and 6 the actual average storage volume was 45,360 Pallets, which was 10% below the average Expected Storage Volume of 50,400 Pallets, the Maximum Volume of 60,480 Pallets would thereafter be reduced by 10% to 54,432 Pallets for the following 36 month period.

7.3 The Customer shall provide to NewCold:

- (a) not less than 3 months before the Intended Services Commencement Date, a forecast of its aggregate storage volume and handling requirements (with a month by month breakdown) for the period from the Services Commencement Date up to the expiry of the Transition Period; and
- (b) at least 120 days before the expiry of the Transition Period and then at least 90 days before each anniversary of that date, a forecast of its expected aggregate storage volume handling requirements (with a month by month breakdown) from the Warehouse for the subsequent 12 months;

(each a "**Forecast**"). The aggregate Forecasts (not including the month-by-month breakdowns) described in clause 7.3(b) will be used by NewCold to enable it to make operational plans to accommodate the Customer's requirements and to calculate the Minimum Annual Revenue.

7.4 A Forecast shall not, without the prior written or e-mail consent of NewCold, exceed the Maximum Volume. Where, with NewCold's prior written or e-mail consent, a Forecast does exceed the Maximum Volume, NewCold will facilitate the excess Pallet spaces to which NewCold has consented, subject to the Customer paying any reasonable out-of-pocket costs incurred by NewCold in facilitating the excess Pallet spaces.

- 7.5 NewCold shall ensure Pallet spaces are reserved to accommodate the Forecast and the Buffer Percentage subject always to the Maximum Volume not being exceeded.
- 7.6 The Customer shall update NewCold regularly and in any event not less than once a month as to the continuing accuracy of the current Forecast(s) (each a "**Forecast Update**"). Where the Customer provides not less than 30 days' notice that it requires Pallet spaces in excess of those set out in the Forecast plus the Buffer Percentage but within the Maximum Volume, NewCold shall use Reasonable Endeavours to accommodate such excess on an ongoing basis, and for the avoidance of doubt NewCold shall not be obliged to terminate its contracts with other customers earlier for this purpose. All additional costs and expenses incurred by NewCold in accommodating such excess, which NewCold could not reasonably mitigate, shall be paid by NewCold, provided that if accommodating such excess is only possible outside the Warehouse and NewCold notifies the Customer thereof, these costs will be paid by the Customer.
- 7.7 On termination of this Agreement by NewCold in accordance with clause 24.5 and during any period of suspension pursuant to clause 24.4 during the Term, the Customer shall, for the period from the date of termination until the date falling 10 years after the date of termination or the date falling 20 years after the expiry of the Transition Period (whichever is earlier) and for any period of suspension (as applicable), pay to NewCold the 100% of the Minimum Annual Storage Revenue Shortfall and 50% of the Minimum Annual Handling Revenue Shortfall. NewCold shall use Reasonable Endeavours to mitigate its Losses in respect of any such termination, including an active search for new customers for the vacant storage space, and shall provide the Customer with evidence thereof at the Customer's request, and the Minimum Annual Revenue shall be reduced by the amount of any revenue paid by another customer using storage space at the Warehouse that was intended by NewCold to be used for the Products.

## 8. **Payment and taxation**

- 8.1 In consideration of the provision by NewCold of the Services, the Customer shall pay to NewCold the Charges set out in Schedule 1. The Charges shall be payable in accordance with the terms of this clause 8. Invoices submitted by NewCold shall contain the information set out in Part 4 of Schedule 1 (*Information on Invoice*). The Charges for any Additional Services referred to in clause 5.4 shall be invoiced separately and contain the information set out in Part 4 of Schedule 1 (*Information on Invoice*).
- 8.2 NewCold shall present to the Customer, within 1 week of the end of each month (the first month beginning on the Services Commencement Date), an invoice for the Charges incurred in the preceding month together with details (in a form as reasonably specified by the Customer from time to time) of all the Products stored at the Warehouse during the preceding month. The detailed calculation of Charges based on the activities provided in a given month and information necessary for any Service Credit calculation shall be attached to the invoice. NewCold shall produce a separate invoice for any Additional Services performed by NewCold pursuant to clause 5.4 within one month of such services being carried out by NewCold.
- 8.3 The Customer shall pay NewCold the Charges and any other payments due to NewCold within 60 days from the date of invoice.
- 8.4 If there is a disagreement regarding any invoice (with each party acting in good faith), the Customer shall notify NewCold in writing within 10 days of receipt of such invoice and the Customer shall not be liable for and shall be under no obligation to pay the amount which is disputed until the resolution of the disagreement. NewCold shall issue corrective invoice to adjust the original invoice for any undisputed amount and issue separate invoice for the disputed amount. The Customer shall make payment for the undisputed invoice on the original due date. If any such disagreement is not resolved within 5 Business Days the disagreement shall be deemed a Dispute and resolved in accordance with the Dispute Resolution Procedure.
- 8.5 The Charges shall be reviewed in accordance with Part 3 of Schedule 1 (*Charges Review Mechanism*).

9. **Service Change Procedure**

The parties shall comply with the service change procedure in Schedule 3 (*Service Change Procedure*).

10. **Warranties**

10.1 NewCold warrants to the Customer that:

- (a) this Agreement constitutes valid and binding obligations on NewCold and that NewCold has full power and authority to enter into and perform its obligations under this Agreement and has taken all necessary corporate and other actions to approve and authorise the transactions contemplated by this Agreement and neither the entering into nor the performance by it of its obligations under this Agreement will constitute or result in any breach of any contractual or legal restriction binding on itself or its assets or undertakings;
- (b) it has and shall have throughout the Term the necessary skill, experience and knowledge to perform the Services in accordance with the terms of this Agreement;
- (c) from the Services Commencement Date and throughout the Term it shall perform the Services in all material respects in accordance with all Applicable Law, and as regards the Applicable Law regarding storing the Products, in accordance with that Applicable Law, and shall maintain all licences, permits and authorisations necessary under such Applicable Law for the due performance of this Agreement (including, for the purpose of this Agreement, the IFS and BLS certificates) and shall comply with such licences, permits and licences in all material respects;
- (d) it shall store the Products away from any goods and products of third parties which may damage or contaminate the Products and shall store the Products in such a way to ensure that they are clearly identifiable as the Customer's property;
- (e) it shall keep the Warehouse clean and dry, shall have sufficient fire-retardant measures in place, shall have a power solution in place to provide back-up power to the Warehouse within 24 hours of a loss of power, and shall take reasonable measures to prevent theft of, or damage to, any Products stored at the Warehouse.

10.2 The Customer warrants to NewCold that:

- (a) this Agreement constitutes valid and binding obligations on the Customer and that the Customer has full power and authority to enter into and perform its obligations under this Agreement and has taken all necessary corporate and other actions to approve and authorise the transactions contemplated by this Agreement and neither the entering into nor the performance by it of its obligations under this Agreement will constitute or result in any breach of any contractual or legal restriction binding on itself or its assets or undertakings;
- (b) all Products shall only consist of frozen food products owned by the Customer and shall comply with all Applicable Law (including any Applicable Law relating to their manufacture, packaging, labelling and transportation);
- (c) the Products and their packaging are not hazardous or contaminated;
- (d) it shall in connection with its performance of this Agreement comply and procure that its Representatives comply with all Applicable Law;
- (e) all financial information on the past performance of the Customer supplied by or on behalf of Customer in connection with this Agreement is true, complete and accurate in

all material respects and all forecasts and opinions contained in such information were honestly made on reasonable grounds after due and careful enquiry; and

- (f) it will give NewCold written details of the manner in which the Products are to be handled and stored, and such details will be sufficient to enable NewCold to comply with all Applicable Law concerning the storage, handling and transportation of the Products and will be consistent with the operating parameters of the Warehouse and the Operating Specification, including NewCold's requirements as to measures protecting against cross-contamination.

10.3 The Customer acknowledges and agrees that NewCold has designed and developed the Warehouse and priced its Services, among other things, on the basis of the Customer's Information. The Customer represents and warrants that the Customer's Information is true, accurate and complete (and shall remain so during the Term) in all material respects.

10.4 The Customer shall at all times (and shall procure that its Representatives shall at all times) in good faith co-operate with NewCold in order to enable NewCold to perform the Services in accordance with this Agreement.

## **11. Personnel**

11.1 NewCold shall engage all personnel necessary to carry out the Services. For the avoidance of doubt, NewCold shall be responsible for the payment of wages, salaries, training costs, contributions, taxes and any other remuneration, compensation, taxes, benefits or other amounts due to or in respect of the personnel that it employs.

## **12. Data Protection**

12.1 The parties acknowledge that there is no entrustment of processing of any Personal Data in connection with this Agreement. If during the Term it becomes necessary or desirable for either party to process any Personal Data on behalf of the other party, a separate Personal Data processing agreement shall be concluded.

12.2 The Parties confirm that each Party shall be the data controller with respect to the processing of personal data mutually provided by the Parties in connection with this Agreement. Each party shall independently determine the specific purposes, scope and means of processing of personal data in the context of this Agreement. Each Party undertakes to process personal data in accordance with the provisions of Privacy Act and other generally applicable provisions of law. Each Party shall perform its obligations under Chapter III of the Privacy Act towards the data subjects whose data it processes, in particular the information obligations under Articles 13 and 14 of the Privacy Act, keep a register of processing activities in accordance with Article 30 of the Privacy Act and notify personal data breaches in accordance with Articles 33 and 34 of the Privacy Act on its own. Each Party is responsible for evaluating and appointing its processors, evaluating them and conducting processor audits.

## **13. Intellectual Property Rights**

13.1 NewCold acknowledges that the Customer IPR is owned by members of the Customer Group and that NewCold has no, and does not by virtue of this Agreement obtain any, proprietary rights in or to the Customer IPR and NewCold undertakes that it will make no claim to any such rights.

13.2 NewCold shall not (and shall procure that none of its Representatives), without the prior written consent of the Customer apply or display any Customer IPR at the Warehouse or on any plant, vehicles, premises or equipment. If such consent is given by the Customer, the Customer IPR in question shall only be used for the specific purpose set out by the Customer in its consent.

13.3 NewCold shall not (and shall procure that none of its Representatives), without the prior written consent of the Customer, in any way alter the packaging or labelling of Products or alter, remove



or tamper with any trade mark on any Products or affix any other trade mark or logo on any Products or any labels on, or on the packaging of, any Products.

- 13.4 The Customer acknowledges that the NewCold IPR is owned by NewCold and its Associates and that the Customer has no, and does not by virtue of this Agreement obtain any, proprietary rights in or to the Customer IPR and the Customer undertakes that it will make no claim to any such rights.

#### 14. **Delivery**

- 14.1 Risk of loss of Products shall transfer to NewCold when those Products are Delivered into NewCold's Custody (as such term is defined in clause 14.2) and will remain with NewCold until the Products are Delivered out of NewCold's Custody (as such term is defined in clause 14.3). NewCold shall be liable for the loss of or damage to the Products due to its negligence, breach or wilful default from the point such Products are Delivered into NewCold's Custody until those Products are Delivered out of NewCold's Custody. NewCold shall not be authorised or obligated to open sealed collective packs of Products. NewCold shall not be liable for any incorrect number of units in a collective pack not opened by NewCold, or for latent defects of Products or packaging, which cannot be identified immediately by sight upon the receipt of Products, or for loss or damage NewCold not due to its negligence, breach or wilful default. NewCold shall promptly notify the Customer of the receipt of any Products Delivered into NewCold's Custody that appear damaged in any way.

- 14.2 Products are deemed "**Delivered into NewCold's Custody**" as bailee when:

- (a) if transported via Shuttling, a Pallet has entered a Shuttling Trailer at the Customer's Bakery;
- (b) if transported via the Connection Corridor, a Pallet has been checked and approved by the I-Point at the Customer's New Bakery and subsequently passed through the point of the Connection Corridor on the border of the site where the Warehouse is erected; or
- (c) if transported by other delivery vehicle, when the Pallets have been unloaded from the delivery vehicle and the delivery driver's documentation has been signed and returned to the driver. In the event of an alleged discrepancy in the volumes delivered, the driver shall be given the opportunity to inspect the Products delivered.

- 14.3 Products are deemed "**Delivered out of NewCold's Custody**" when the Products have been loaded onto Pallets securely for transportation and loaded on to the delivery vehicle at the Warehouse in compliance with the Operating Specification and the relevant paperwork accompanying such Products has been signed by the carrier.

- 14.4 Regarding outbound deliveries, NewCold shall be responsible for making sure that prior to loading onto a delivery vehicle the Products are securely and safely bundled for distribution.

#### 15. **Management of Products**

- 15.1 All Products stored by NewCold at the Warehouse shall remain the property of the Customer and title to the Products shall not pass to NewCold at any time. The Customer shall at any time (provided that it has paid in full all sums then overdue to NewCold under clause 8) on reasonable notice be entitled to require NewCold to make available (in accordance with the Operating Specification) the Products to the Customer at the relevant Charges applicable to the Standard Services.
- 15.2 NewCold will properly designate the Products at all times as belonging to the Customer. NewCold will execute and deliver to the Customer any document reasonably requested by the Customer necessary to protect its title to the Products and the proceeds thereof.

- 15.3 All Products stored at the Warehouse shall be managed by NewCold in accordance with the Operating Specification.
- 15.4 NewCold shall ensure that proper systems and controls are maintained to ensure the secure storage of Products at the Warehouse in accordance with the Operating Specification.
- 15.5 If at any time either party finds that Products appear from its records to have been delivered to the Warehouse but are no longer at, and have not been dispatched from the Warehouse or have been damaged while at the Warehouse or otherwise in NewCold's custody, that party shall promptly notify the other party that such Products appear to have been so lost or damaged. Products which are not in a condition to be delivered to the Customer's customers because NewCold has failed to comply with some or all of the requirements set out in the Operating Specification shall be treated as if they were lost for the purposes of this clause 15.
- 15.6 Upon receipt of a notice from the Customer requesting an investigation, NewCold shall investigate (as quickly as reasonably possible) the circumstances surrounding any apparent loss or damage of Products in order to ascertain (so far as is reasonably possible) whether such apparent loss or damage may be accounted for and shall forthwith notify the Customer regarding the reason for such loss or damage. If there are any differences between NewCold's records and the Customer's records the parties shall use Reasonable Endeavours to reconcile any differences and if they fail to do so within 5 Business Days, the disagreement shall be deemed a Dispute and resolved in accordance with the Dispute Resolution Procedure.
- 15.7 Unless within two (2) months of receiving any notice from the Customer pursuant to clause 15.6 or sending any notice to the Customer pursuant to clause 15.5, NewCold has provided the Customer with reasonable evidence to show that the actual loss or damage to which the notice relates has not occurred, or if it has occurred was caused other than by the fault of NewCold or its Representatives, then, subject to clause 15.8 below, to the extent any actual loss or damage was caused by NewCold's negligence, breach or wilful default, NewCold shall be liable for the loss or damage to which the notice relates in accordance with clause 15.9.
- 15.8 If the Customer (acting reasonably) is of the opinion that the evidence provided by NewCold pursuant to clause 15.7 is not sufficient, the Customer may object to such evidence. Either party may thereafter activate the Dispute Resolution Procedure.
- 15.9 All agreed losses during the course of each 12 month period from the Services Commencement Date and each successive 12 month period shall be noted in NewCold's records and the cumulative loss (which shall be offset against any gains) for any such 12 month period shall be determined following a full physical stock take at the end of that 12 month period. NewCold shall be liable to compensate the Customer for the manufacturing cost of all Products lost over 0.01% of the total volume of Products delivered to the Warehouse in the relevant 12 month period from the Services Commencement Date and each successive 12 month period, where such loss is due to the negligence or breach of NewCold. The manufacturing cost shall, at NewCold's request, be determined by an independent auditor.
- 15.10 NewCold will visually check the quantity and condition of all Products upon the arrival of the Products at the Warehouse and will check the temperature of a sample of Products according to the process documented in the Operating Specification, and shall obtain the relevant delivery/consignment notes for all Products from the carrier. NewCold shall be responsible for preparing the delivery/consignment notes for all Products leaving the Warehouse and shall ensure that all such delivery/consignment notes are complete and accurate.
- 15.11 If NewCold disputes the completeness or content of any Products or any seals have been broken or tampered with on any Products which are Delivered into NewCold's Custody (as such term is defined in clause 14.2), NewCold shall accept delivery of the Products and (noting on the relevant delivery/consignment notes that it disputes the completeness or content or that the seals have been broken or tampered with) will be entitled physically to set aside such Products (providing such action does not affect the quality of such Products) and NewCold shall have no liability in relation to any Products which have been so set aside. NewCold shall send the

Customer as soon as reasonably practicable (and in any event within one Business Day of accepting delivery) an incident report in the form specified in the Operating Specification in relation to such disputed Products and the Customer shall arrange for such Products to be collected promptly from the Warehouse at its own cost.

- 15.12 The Customer shall indemnify, defend and hold harmless NewCold and its Associates against all Losses arising in connection with the Products (including any recall of Products) save to the extent arising from any breach of this Agreement by NewCold and in each case excluding any lost profits (*utracone korzyści*).

**16. Access to Premises and Records**

- 16.1 NewCold shall provide the Customer and its Representatives and invitees (including Representatives of External Customers) reasonable access to the Warehouse as necessary for the purpose of Product related quality assurance, inspections by regulatory authorities and certifying bodies, and for such other purposes as the Customer or the External Customer (as the case may be) may reasonably require, subject always to duties of confidentiality owed by NewCold to third parties.
- 16.2 Auditing visits ordered by the Customer shall take place during normal business hours and be notified to NewCold in writing or by e-mail not less than the day falling 2 Business Days before the visit. Auditing visits ordered by the External Customer shall be notified to NewCold in advance not less than 1 hour before the visit.
- 16.3 The Customer shall procure that its Representatives and those of its External Customers, when visiting the Warehouse, comply with NewCold's reasonable security and safety procedures and rules in place at the Warehouse, provided that such security and safety procedures are specified in the Operating Specification or have been notified in reasonable advance to the Customer in writing or by e-mail.
- 16.4 NewCold shall ensure that proper records are kept relating to the provision of the Services (including details of Products delivered to and despatched from the Warehouse) and the Charges and that all such records are kept for a minimum period of six (6) years from the end of the year of (as the case may be) such Products being Delivered out of NewCold's Custody or such Charges being invoiced. NewCold shall make such documentation available for examination and copying by the Customer and its Representatives to the extent the same relate exclusively to the Services at any time during such period on reasonable notice.
- 16.5 Nothing in this clause 16 shall give the Customer, its Representatives or invitees (including Representatives of External Customers) access to any records of NewCold to the extent that they concern third party goods or products stored at the Warehouse, or any other Confidential Information of NewCold or any third party.

**17. Liability**

- 17.1 Nothing in this Agreement shall be deemed to limit or exclude the liability of a party (the "**Defaulting Party**") for:
- (a) death or personal injury caused by the Defaulting Party's negligence or the negligence of the Defaulting Party's Representatives;
  - (b) fraud or fraudulent misrepresentation of the Defaulting Party or its Representatives;
  - (c) wilful misconduct; or
  - (d) any other type of liability which cannot be validly limited or excluded at law.
- 17.2 Subject to clause 17.1 and without prejudice to the Customer's liability to pay the Charges and the Minimum Annual Revenue and NewCold's liability to pay the Service Credits, neither party

shall be liable, whether in contract, tort (including negligence), breach of statutory duty, under any indemnity or otherwise in connection with or arising from this Agreement for any:

- (a) loss of profits, revenues or business opportunities;
- (b) depletion of goodwill or loss of reputation;
- (c) loss or damage in connection with claims against the Customer by third parties;
- (d) loss of actual or anticipated savings; or
- (e) any indirect or consequential loss, i.e. loss other than ordinary loss referred to in art. 361 § 1 of the Polish Civil Code.

If for any reason all or any part of this clause 17.2 is or becomes invalid or unenforceable, NewCold's liability for the heads of loss and damage referred to in this clause 17.2 shall not exceed zł 500,000 in any Calendar Year and zł 5,000,000 in total throughout the Term.

17.3 NewCold shall have no liability:

- (a) for any loss of or damage to Products for which it would otherwise have been liable unless it is advised in writing of such loss or damage by the Customer within 30 Business Days of the date on which the Customer was, or ought reasonably to have been, aware of that loss or damage; or
- (b) for any shortfall of Products contained within sealed containers or packaging, which NewCold collected from the Customer or which were delivered to NewCold and which have remained in such packaging without being tampered with or replaced.

17.4 Subject to clause 17.1, NewCold's total aggregate liability, whether in contract, tort (including negligence), breach of statutory duty, under any indemnity or otherwise in connection with or arising from this Agreement shall be limited:

- (a) for liability arising in connection with a failure to meet the Intended Services Commencement Date, to the costs specified in clause 3.2 subject to the caps specified in that clause;
- (b) for liability for loss or damage to Products, to the manufacturing cost calculated in accordance with clause 15.9;
- (c) for failure to comply with the Minimum Performance Targets, to the amounts specified in clause 19.2; and
- (d) in aggregate for all liabilities arising under this Agreement to the sum of zł 5,000,000 in any 12 month period and zł 37,500,000 in total throughout the Term.

17.5 The Customer acknowledges that NewCold's Charges are predicated on the exclusions and limitations of liability set out in this clause 17 and the levels of insurance cover specified in clause 18.

**18. Insurance**

18.1 NewCold shall take out and maintain throughout the Term adequate and proper insurance with reputable insurers (which complies with all applicable statutory requirements) in respect of:

- (a) employer's liability for all of its personnel who perform any obligations of NewCold under this Agreement to the extent required by law with an aggregate limit of at least zł 2,500,000; and

- (b) public liability and third party cover for all persons working at or entering the Warehouse for business purposes with an aggregate limit of at least zł 10,000,000; and
  - (c) all liability for loss or damage to Products during storage at the Warehouse for which NewCold may be liable under this Agreement with an aggregate limit of at least zł 10,000,000.
- 18.2 The Customer is responsible for insuring the Products against relevant risks. NewCold shall use its Reasonable Endeavours to comply with reasonable requests of the Customer's insurer in this respect. For the avoidance of doubt, NewCold will not be obliged to change the design of the Warehouse or the Operating Specification for this purpose.
- 18.3 Each party shall inform the other as soon as reasonably practicable (and in any event within 5 Business Days of the relevant occurrence) of the occurrence of any event connected with the Services which could give rise to an insurance claim under NewCold's insurance policy.
- 18.4 On receipt of the Customer's reasonable written request from time to time, and without such request upon receipt of any insurance policy it is required to maintain pursuant to clause 18.1, its renewal, and payment of a premium in respect of such insurance policy, NewCold shall promptly provide to the Customer:
  - (a) written details or copies of the insurance policies it is required to maintain pursuant to clause 18.1; and
  - (b) written evidence, reasonably satisfactory to the Customer, of the continuing validity of such insurance policies and that all premiums payable in respect of such insurance have been paid and are up to date.
- 19. **Service Credits**
- 19.1 Except for the Transition Period and subject to clause 21, throughout the duration of the Agreement and subject to the terms of this Agreement, the Services will be provided so as to satisfy all the Standard KPIs.
- 19.2 Failure by NewCold to meet the Standard KPIs shall give rise to the Service Credits.
- 19.3 The parties acknowledge that the Service Credits are a reasonable pre-estimate of the actual loss that may be suffered by the Customer as a result of NewCold's failure to meet the Standard KPIs and shall, save in respect of the Customer's right to terminate in accordance with clause 24.3, constitute the Customer's sole remedy on account of the related service failure.
- 20. **Disaster Recovery**
- 20.1 NewCold shall, on or before the Services Commencement Date, put in place in accordance with the provisions of Schedule 6 (*Disaster Recovery Plan*) a customary and commercially reasonable plan of the business continuity and recovery procedures to be followed by NewCold in the event of a Disaster or Force Majeure Event ("**Disaster Recovery Plan**"). The Disaster Recovery Plan shall meet any reasonable requirement set by the Customer and shall be designed to ensure that as far as reasonably practicable despite any Disaster or Force Majeure Event, the Services continue to be performed without interruption or derogation and in accordance with this Agreement.
- 21. **Force Majeure**
- 21.1 Neither the Customer nor NewCold will be liable to the other for any delay, hindrance or failure to comply with all or any of its obligations under this Agreement (save for an obligation to pay money) to the extent that such delay, hindrance or failure is attributable to a Force Majeure Event.

- 21.2 The party affected by a Force Majeure Event (the "**Affected Party**") will as soon as possible and in any event within 3 Business Days after commencement of the Force Majeure Event, notify the other party (the "**Non Affected Party**") in writing of the Force Majeure Event and such notice shall state the effects of the Force Majeure Event on the Affected Party's ability to perform its obligations under the Agreement and contain an estimate as to how long the Affected Party believes the Force Majeure Event will continue.
- 21.3 The Affected Party shall use Reasonable Endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations under this Agreement and to ensure the continuity of the performance of the Services, to the extent reasonably practicable.
- 21.4 NewCold shall, within a reasonable period of notifying the Customer of a Force Majeure Event in accordance with clause 21.2, put forward reasonable proposals to the Customer for alternative arrangements for performing its obligations under this Agreement. Following consideration of each proposal made by NewCold together with any reasonable proposals of its own (which may include allowing a third party to perform the relevant Service on NewCold's behalf), the Customer shall select the proposal which is, in its reasonable opinion, the most suitable for its requirements. NewCold shall, if reasonably required by the Customer, be obliged to implement such proposal as soon as reasonably practicable following its selection by the Customer.
- 21.5 During the continuation of the Force Majeure Event in which NewCold (but not the Customer) is an Affected Party, Charges shall remain payable for Services which NewCold continues to provide, unless the Customer notifies NewCold that in its reasonable view these Services are no longer of use to it due to NewCold's failure to provide other Services (or the provision of which it procures from a third party in accordance with the terms of this Agreement) but shall not be payable for Services to the extent that, due to the Force Majeure Event, they are not provided or procured.
- 21.6 As soon as reasonably practicable and in any event within 21 Business Days after the cessation of the Force Majeure Event, the Affected Party shall notify the Non Affected Party in writing of the cessation of the Force Majeure Event and shall resume performance of the suspended obligations under this Agreement.
- 21.7 If a Force Majeure Event causes or results in the destruction of the Warehouse or a material part of it, NewCold and its Associates will have the option to rebuild or repair the Warehouse and to procure a third party supplier (or more than one), approved by the Customer, (such approval not to be unreasonably withheld, conditioned or delayed) and/or a Back-Up Operator to provide the alternative storage and handling services for the Products provided that:
- (a) NewCold's liability for the costs of such storage and handling services and any related incremental costs shall not exceed zł 750,000 per month and zł 3,000,000 in aggregate and provided always that the Term shall be extended for a further period equal to the time from the destruction of the Warehouse until the date on which full provision of the Services from the Warehouse resumes;
  - (b) the Customer shall continue to pay the Charges to NewCold for the Services it receives;
  - (c) the repaired or rebuilt Warehouse shall be completed and the full Services restored within 20 months of the start of the Force Majeure Event; and
  - (d) NewCold has provided the Customer with evidence demonstrating the ability (including financial ability) and commitment of NewCold to complete the repair or rebuild within the time period specified.
- 21.8 Save where clause 21.7 applies, if the Force Majeure Event where NewCold is the Affected Party continues for more than 24 months, either party shall be entitled to terminate this Agreement by not less than 3 months' notice in writing to the other party to expire no earlier than the end of that 24 month period.

21.9 If a Force Majeure Event occurs where the Customer is the Affected Party (including, for the avoidance of doubt, circumstances where the Customer is unable to supply Products to the Warehouse), the Customer shall continue to make all payments due in accordance with this Agreement, including the Minimum Annual Revenue Shortfall payments, for a period of 6 years from the date on which the Force Majeure Event occurs. Where practicable, the Customer shall obtain insurance to cover such circumstances and, at its discretion, assign the right to receivables under such insurance to NewCold to cover payments due to NewCold under this Agreement.

## 22. **Dispute Resolution**

22.1 Any Dispute under this Agreement shall be treated in accordance with the provisions of this clause 22.

22.2 The Customer and NewCold undertake that upon a Dispute arising a senior Representative of each of the Customer, NewCold (and where required, the sub-contractor), who shall each have authority to settle the Dispute, meet (either in person or via teleconference) in good faith as soon as reasonably practicable and in any event no later than 10 Business Days after a written request from either party to the other, and use Reasonable Endeavours to resolve the Dispute.

22.3 If the Dispute has not been resolved as a result of the negotiations referred to in clause 22.2 then either party may pursue formal resolution of that dispute pursuant to clause 38.

22.4 Nothing in this clause 22 shall prevent any party from seeking injunctive or other emergency relief against the other at any time.

## 23. **Confidentiality**

23.1 The parties acknowledge that in the course of their performance of this Agreement (and the negotiation of it or any variation to it) each party ("**Discloser**") will disclose or make available to the other party (the "**Receiving Party**") information about or relating to its business including information relating to products, prices, work methods, organisation, business ideas, business strategies, practices, plans, forecasts, handling, costs, markets, inventory information, customers, technology, and operational and administrative systems ("**Confidential Information**").

23.2 The Receiving Party will keep the Discloser's Confidential Information strictly confidential and not disclose any of it to any person save as permitted under this clause 23. Nothing in this clause 23 shall grant the Receiving Party any right or licence over any Confidential Information of the Discloser.

23.3 The Receiving Party will make available the Discloser's Confidential Information only to its relevant Representatives (including, in the case of NewCold, its employees, its direct and indirect shareholders and their respective employees, direct and indirect investors, auditors, consultants, advisors, bankers and prospective providers of finance or insurance) and its Associates on a need to know basis and all persons to whom the Confidential Information is made available will be made aware of the strictly confidential nature of the Confidential Information and the restrictions imposed under this clause on the use of it and will be bound by similar requirements not to disclose the Confidential Information. The Receiving Party will be and remains liable for any breach of this clause by such persons.

23.4 Clauses 23.2 and 23.3 shall not apply to any Confidential Information for which the Receiving Party can prove by written records that it:

- (a) was lawfully in its possession prior to such disclosure and was not acquired under an obligation of confidence;
- (b) was already in the public domain at the time of disclosure or is or becomes public knowledge through no fault of the Receiving Party;

- (c) is information furnished to the Receiving Party without restriction by any third party having a bona fide right to do so;
- (d) was developed wholly independently by the Receiving Party without reference to Confidential Information of the Discloser;
- (e) is required (and only to the extent required) to pursue claims against the other party pursuant to clause 38; or
- (f) is required (and only to the extent required) to be disclosed by the law, court or regulatory body of any relevant jurisdiction provided (to the extent legally permissible) prompt written notice of this is given to the Discloser so the Discloser can attempt to object to such disclosure.

23.5 All Confidential Information shall be returned to the Discloser or destroyed at its direction. The obligations of confidentiality set out in this Agreement shall survive the termination of this Agreement in whole or in part for 5 years except in relation to Confidential Information which is a trade secret, for which the obligations of confidentiality shall be indefinite.

## 24. Termination

24.1 The Customer shall have the right at any time during the Term to terminate this Agreement or all or any of the Services with immediate effect or at a later specified date by giving written notice to NewCold if an Insolvency Event occurs in relation to NewCold.

24.2 The Customer shall, subject to clause 24.3, be entitled to terminate this Agreement by written notice to NewCold if NewCold commits a material breach of this Agreement (that is, a breach which substantially impacts NewCold's provision of Services and has a serious adverse effect on the benefit which the Customer would otherwise derive from this Agreement) and that breach is not remedied within 30 Business Days of receipt of a written notice from the Customer specifying the breach; provided, however, if such breach cannot reasonably be remedied within 30 Business Days and NewCold has commenced and is reasonably proceeding to remedy the breach, then such period shall be extended for as long as is reasonably necessary for NewCold to cure the breach, such additional period not to exceed a further 60 Business Days. In the event of a material breach (as described above) by NewCold, which NewCold is unable to remedy within 15 Business Days of receipt of a written notice from the Customer specifying the breach and the Customer requests that NewCold provides Back-Up Services in place of the substantially affected Services, NewCold shall as soon as reasonably practicable arrange for Back-Up Services to be provided by a Back-Up Operator or other suitably qualified and experienced third party in respect the substantially impacted Services until NewCold is able to remedy such material breach. Where such Back-Up Services are to be provided, the Customer shall pay the charges for the Back-Up Services and, to the extent the charges for the Back-Up Services exceed the Charges, NewCold shall reimburse the Customer by the amount by which the charges for the Back-Up Services exceed the Charges, up to a maximum monthly liability of zł 750,000. For the avoidance of doubt, where NewCold arranges for the provision of such Back-up Services that shall constitute remedy of the breach. The parties agree that, once NewCold has obtained the IFS and BRC certifications in respect of its operations at the Warehouse, it shall be a material breach of this Agreement if NewCold fails to maintain such certifications.

24.3 From the end of the Transition Period, if the OLCOT Figure is below 93.5% for longer than 8 consecutive weeks or 10 weeks accumulated in any 12 month period, the Customer may notify NewCold in writing and NewCold shall have 4 weeks from the date of such notice to demonstrate to the Customer's reasonable satisfaction that it is able to achieve an OLCOT Figure of at least 92%. If, solely due to fault on the part of NewCold, NewCold is unable to demonstrate to the Customer's reasonable satisfaction within such time period that it is able to achieve such OLCOT Figure, NewCold shall be deemed to be in material breach of this Agreement and the Customer shall be entitled to terminate the Agreement on not less than 90 days' prior written



notice provided that the Customer delivers such termination notice within 120 days of the date on which such right arose.

- 24.4 NewCold shall be entitled to immediately suspend all or any services to be performed under this Agreement if (i) an Insolvency Event occurs in relation to the Customer or (ii) NewCold has given the Customer written notice of a failure by the Customer to pay undisputed sums to NewCold under this Agreement and the Customer fails to cure such payment default within 30 days after written demand from NewCold; provided, however, that should the Customer default twice in its payment obligations under this Agreement in the preceding 12 months, the next grace period will be shortened to 10 days.
- 24.5 Without prejudice to any other right or remedy it may have, NewCold may terminate this Agreement with immediate effect or at a later specified date by giving written notice to the Customer if:
- (a) an Insolvency Event occurs in relation to the Customer; or
  - (b) the Customer commits a material breach of this Agreement (that is, a breach which substantially impacts the Customer's performance of its obligations under this Agreement and has a serious adverse effect on the benefit which NewCold would otherwise derive from this Agreement) which is incapable of remedy or which is capable of remedy but is not remedied within 60 Business Days of receipt of a written notice from NewCold specifying the breach. NewCold acknowledges that non-payment by the Customer shall only amount to a material breach of this Agreement where the total outstanding overdue sum exceeds zł 3,800,000.
- 24.6 Each party shall use its Reasonable Endeavours to mitigate its Losses in the event of any breach by the other party of its obligations under this Agreement, even where such breach is the subject of an indemnity under this Agreement.
- 24.7 It shall not constitute a breach by any party hereto of any of its obligations under this Agreement (including but not limited to any breach giving rise to the termination rights under this clause 24) if such party's failure to perform its obligations arises as a result of any breach by another party hereto, or such other party's suppliers or contractors (or any Representative, sub-supplier or sub-contractor of any of them), of its obligations under this Agreement.

## 25. **Consequences of termination**

### 25.1 Termination of this Agreement or any of the Services:

- (a) will not affect any accrued rights or liabilities of either party at the date of termination and shall be without prejudice to any other rights or remedies that either party may have under this Agreement or at law; and
- (b) will not affect the continuance in force of any provision of this Agreement to the extent it is expressed or by implication intended to continue in force after termination including, but not limited to, clause 1 (*Definitions and interpretation*), clause 7.6 (*Forecast and Minimum Annual Revenue*); clause 11 (*Personnel*); clause 17 (*Liability*); clause 19.3(*Service Credits*); clause 21.9 (*Force Majeure*); clause 22 (*Dispute Resolution*); clause 23 (*Confidentiality*); clause 25 (*Consequences of termination*); clause 26 (*Invalidity*); clause 27 (*Set-Off and Third Party Rights*); clause 30 (*Language*); clause 33 (*Entire Agreement and non-Reliance*); clause 34 (*Announcements*); clause 36 (*Waiver*); clause 38 (*Governing Law and Jurisdiction*) and Schedule 1.

### 25.2 On termination or expiry of this Agreement for any reason:

- (a) each party shall return to the other, as soon as reasonably practicable, all physical and electronic copies of Confidential Information of the other, except to the extent the other

party requests in writing that such physical or electronic copies be destroyed and/or deleted; and

- (b) at the reasonable request and at the cost of the Customer, NewCold shall co-operate in good faith and provide reasonable assistance and information required by a new third party supplier of services (substantially the same as the Services) to the Customer following the termination of this Agreement.

25.3 On termination of this Agreement pursuant to clause 24.5, NewCold may refuse to deliver the Products to the Customer until it has been paid in full for all Charges and other sums due to it, regardless of the payment terms otherwise applicable to such Charges or sums.

## 26. **Invalidity**

If at any time any provision (or part of a provision) of this Agreement is or becomes illegal, invalid or unenforceable in any respect then that shall not affect the legality, validity or enforceability of any other provision of this Agreement (or the remainder of that provision).

## 27. **Set-Off and Third Party Rights**

27.1 All payments due under this Agreement shall be made in full without deduction (save in respect of any Service Credits), withholding or deferment in respect of any set-off or counterclaim.

27.2 The parties to this Agreement do not intend that there be any third party beneficiaries to this Agreement.

## 28. **Future Financing**

28.1 If NewCold wishes to seek financing or arrange a refinancing that relates to the Warehouse at any time during the Term, NewCold and the Customer will work together in good faith to support that financing or refinancing, subject to the reimbursement of any reasonable related out-of-pocket expenses of the Customer by NewCold. Such assistance may include, for example, the Customer providing information about its financial accounts, and the Customer providing confirmation that the Agreement is still in force and that neither party is in default (the Customer acknowledges that such assistance would not require out of pocket expenses to be incurred). It may also include the Customer entering into an agreement with a third party lender and NewCold, on terms to be agreed by the Customer (acting reasonably and in good faith). Notwithstanding anything that may be construed to the contrary in this Agreement, NewCold may assign this Agreement (in whole or in part) and the amounts payable under it as collateral for any financing.

## 29. **Transfer of the Agreement and Management Continuity**

29.1 Save as otherwise permitted by this clause 29 neither party shall assign or otherwise dispose of any of its rights or obligations under this Agreement.

29.2 NewCold may assign, novate or sub-contract any of its rights and obligations under this Agreement (in whole or in part) to any of its Associates, provided that:

- (a) where NewCold assigns or novates any of its rights and obligations to an Associate, NewCold shall notify the Customer in writing in advance of such assignment or novation and, where NewCold assigns any obligations to an Associate, it shall remain liable for the acts and omissions of the assignee as fully as if they were the acts and omissions of NewCold, unless (i) the Associate assignee is of equal or greater financial standing to NewCold, which is documented to the reasonable satisfaction of the Customer; or (ii) the Customer consents otherwise (such consent not to be unreasonably withheld, delayed or conditioned)); and

- (b) where NewCold sub-contracts any of its rights and obligations to an Associate, NewCold shall remain liable for the acts and omissions of the sub-contractor as fully as if they were the acts and omissions of NewCold unless the Customer consents otherwise (such consent shall not be unreasonably withheld, delayed or conditioned).
- 29.3 Where any of NewCold's rights and obligations are assigned, novated or sub-contracted to an Associate, such Associate will have the same rights as NewCold to assign, novate or sub-contract the Agreement as permitted by clause 29.2.
- 29.4 NewCold may:
  - (a) assign its rights under this Agreement (in whole or in part) to any provider of debt finance to NewCold or its Associates provided that NewCold shall notify the Customer in writing in advance of such assignment; and
  - (b) novate, assign or sub-contract this Agreement (in whole or in part) to any third party, which is not an Associate, provided that NewCold obtains the prior written consent of the Customer (such consent not to be unreasonably withheld, conditioned or delayed and, in any event, such consent shall be deemed to have been given in full if no written objection is received by NewCold within 21 days of its notice to the Customer of its intention to novate or sub-contract) and provided NewCold shall remain liable for the acts and omissions of the sub-contractor as fully as if they were the acts and omissions of NewCold.
- 29.5 The Customer may assign its rights under this Agreement to a company in the Customer Group by giving written notice to NewCold provided that:
  - (a) such assignment shall not relieve the Customer of its obligations under this Agreement and the Customer shall remain liable for the acts and omissions of the Customer Group member as fully as if they were the acts and omissions of the Customer; and
  - (b) if the assignee ceases to be a company in the Customer Group the Customer shall procure that the assignee immediately assign its rights under this Agreement back to the Customer or to another company within the Customer's Group.
- 29.6 NewCold shall be entitled to sell, lease or transfer (directly or indirectly) all or a material portion of the Warehouse (in each case, a "**Transfer**"), provided that the transferee has financial standing adequate to fulfil the obligations of the NewCold and is capable of meeting the NewCold's obligations under this Agreement and providing the Services in accordance with the terms of this Agreement.
- 29.7 The Customer may transfer its rights and obligations in connection with the sale of all or substantially all of the Customer's business to a person other than its Associate, provided that the Customer receives NewCold's prior written consent, which shall not be unreasonably withheld, conditioned or delayed after taking into account the identity, reputation, creditworthiness and solvency of the Customer's assignee (which shall be no less than that of the Customer as at the Signature Date and no less than is necessary to ensure the assignee is capable of meeting the obligations of the Customer under this Agreement). In the case of the sale of all or substantially all of the Customer's business to an Associate the Customer may transfer its rights and obligations under this Agreement to such Associate without NewCold's consent provided Nowel first provides a parent company guarantee in a form reasonably acceptable to NewCold guaranteeing such Associates performance of its obligations under the transferred Agreement and the identity, reputation, creditworthiness and solvency of the Customer's assignee is no less than that of the Customer as at the Signature Date and no less than is necessary to ensure the assignee is capable of meeting the obligations of the Customer under this Agreement.

30. **Language**

All notices and other communications relating to or in respect of this Agreement shall be in the English language.

31. **Notices**

31.1 All notices expressed to be given by a party to this Agreement shall be in writing and delivered by hand or sent by email, recorded post with confirmation of receipt (*przesyłka polecona za potwierdzeniem odbioru*) or by courier service to the addresses set out in clause 31.3 and shall, subject to clause 31.2 be deemed to have been validly received:

- (a) if delivered by hand, at the time the notice is left at the proper address;
- (b) if sent by recorded post or courier service, on the third Business Day after posting; save where the carrier provides written confirmation of at the time of delivery, in which case the time of delivery, specified in such written confirmation; or
- (c) if sent by email, one hour after completion of transmission by the sender (save where the email receives an automated response that it is undelivered or undeliverable in which event this deeming provision shall not apply).

31.2 Any notice which would otherwise be deemed to be given outside the times of 9.30 a.m. and 5.30 p.m. on a Business Day shall be deemed to be given or made at 9.30 a.m. on the next Business Day.

31.3 The addresses and email addresses for service of notices are:

- (a) For NewCold:
  - (i) FAO: Legal Department, Gravinnen van Nassauboulevard 105, 4811 BN Breda, Netherlands;
  - (ii) [legal.hq@newcold.com](mailto:legal.hq@newcold.com), [info@newcold.com](mailto:info@newcold.com) and [info.poland@newcold.com](mailto:info.poland@newcold.com);
- (b) For the Customer:
  - (i) FAO: Nowel sp.z o.o. 05-120 Legionowo, ul. Szarych Szeregów 11, Poland, for the attention of: the management board;
  - (ii) [michalzajezierski@piekarnianowakowski.pl](mailto:michalzajezierski@piekarnianowakowski.pl).

Either party may change such details by giving the other notice in accordance with this clause 31.

32. **Further Assurance**

Each party shall at its own expense use Reasonable Endeavours to do or procure the doing of all things as may reasonably be required to give full effect to this Agreement including the execution of all deeds and documents.

33. **Entire Agreement and non-Reliance**

33.1 This Agreement represents the whole and only agreement between the parties in relation to the subject matter of this Agreement and supersedes any previous agreement between the parties in respect of its subject matter.

33.2 Neither party shall have any liability or remedy in respect of any representation, warranty or other statement (in each case other than as set out in this Agreement) being false, inaccurate

or incomplete unless it was made fraudulently. Each party acknowledges that in entering into this Agreement it has placed no reliance on, nor has any party given any, representation, warranty, statement or promise relating to the subject matter of this Agreement other than as set out in this Agreement. Each party irrevocably and unconditionally waives any right it may have to rescind this Agreement because of breach of any warranty or representation not contained in this Agreement unless such misrepresentation was made fraudulently.

**34. Announcements**

No press release or other public announcement or communication concerning this Agreement or any part of it or the parties' relationship shall be made by either party without prior written consent of the other.

**35. Variation**

Subject to Part 3 of Schedule 1 (*Charges Review Mechanism*) and Schedule 3 (*Service Change Procedure*), this Agreement may only be varied from time to time with the written agreement of the authorised Representatives of each party. Any variations, supplements or amendments to this Agreement shall be invalid unless made in writing.

**36. Waiver**

No delay in exercising, non-exercise or partial exercise by any party of any of its rights, powers or remedies provided by law or under or in connection with this Agreement shall operate as a waiver or release of that right, power or remedy. Any waiver or release must be specifically granted in writing signed by the party granting it. The waiver or release shall only operate as a waiver or release of the particular breach specified and not of further breaches of the same or any other type, unless expressly stated otherwise.

**37. Independence**

NewCold is an independent contractor engaged by the Customer to supply the Services. Nothing in this Agreement shall make either party the legal representative or agent of the other nor shall either party have the right or authority to assume, create or incur any liability or obligation of any kind, express or implied, against, in the name of or on behalf of, the other party.

**38. Governing Law and Jurisdiction**

38.1 This Agreement and any dispute, claim or obligation (whether contractual or non-contractual) arising out of or in connection with it, its subject matter or formation shall be governed by the laws of Poland.

38.2 The parties each submit to the exclusive jurisdiction of the Courts of Warsaw, Poland, applicable for the Śródmieście district.

**39. Counterparts**

This Agreement may be executed in any number of counterparts and by the parties on separate counterparts, but shall not be effective until each party has executed at least one counterpart. Each counterpart shall constitute an original of this Agreement, but all the counterparts shall together constitute one and the same instrument.

**40. Participation of the Parties**

The parties acknowledge that this Agreement, and all matters contemplated herein, have been negotiated by the parties and that each party has participated in the drafting and preparation of this Agreement from the commencement of negotiations at all times through the execution hereof. If any provision of this Agreement requires judicial or other interpretation, it is agreed that the court interpreting or construing it shall not apply a presumption that the terms of this

Agreement are to be more strictly construed against one party by reason of the rule of construction that a document is to be more strictly construed against a party who by itself or through its agents prepared the document, it being agreed that all parties to this Agreement participated in the preparation of this Agreement.

**41. Attorney Fees and Costs**

- 41.1 Except as otherwise provided in this Agreement, each party shall be responsible for and shall bear its own costs, charges and expenses incurred in connection with the preparation, completion and maintenance of this Agreement.

**42. Security**

- 42.1 In order to secure NewCold's claims under this Agreement, the Customer will establish a second ranking registered pledge (Polish: "*zastaw rejestrowy na zbiorze rzeczy ruchomych*") over the Products in favour of NewCold, subject to a separate asset pledge agreement in a form to be agreed by the parties (each acting reasonably and in good faith). The Customer shall use its Reasonable Endeavours to obtain the written consent of the holder of the first ranking registered pledge to the establishment of such second ranking registered pledge within 60 days of the Signature Date. In case of failure to obtain such consent by that date, the Customer shall provide to NewCold within further 30 days an insurance guarantee (*gwarancja ubezpieczeniowa*) with NewCold as the named beneficiary for an amount not lower than zł 50,000,000.00 issued by a reputable Poland headquartered insurer that has ratings from at least one of Fitch, Moody's and S&P which is no less than, in the case of (a) Fitch, BBB+, (b) Moody's, A3, or (c) S&P, BBB+.
- 42.2 In order to secure NewColds' claims under this Agreement, the Customer will provide NewCold with the statement, in the form of notarial deed, concerning the voluntary submission to enforcement based on such notarial deed, subject to article 777 of the Polish civil procedure code, in a form to be agreed by the parties (each acting reasonably and in good faith).
- 42.3 The Customer shall put in place and maintain the Bank Guarantee in accordance with clauses 2.4(a) and 2.8.
- 42.4 In order to secure Customer's claims for payment under this Agreement, NewCold will provide NewCold with the parent guarantee issued by NewCold Cooperatief U.A in the form substantially identical as set forth in Schedule 7 to this Agreement – parent guarantee of NewCold.

**This Agreement** has been signed on the date appearing at the head of page 1.

## Schedule 1

**For the purposes of this Schedule 1 "Storage Charge", "Handling Charge (Inbound)", "Handling Charge (outbound)", and "Pallet Reject Charge" shall have the meanings given in Part 2 of Schedule 1 as adjusted in accordance with Part 2 of Schedule 1.**

### Part 1

#### Charges Mechanism

The Charges shall be invoiced in accordance with the table as set in out in (Part 2 – Charges Table) of this Schedule.

The following terms and conditions apply for both (Part 2 – Charges Table) and (Part 3 – Charges Review Mechanism) of this Schedule:

- 1.1 Upon receipt of a Pallet at the Warehouse:
  - (a) for every Pallet, a Storage Charge shall be invoiced;
  - (b) for every Pallet, a Handling Charge (Inbound) shall be invoiced;
  - (c) NewCold shall be entitled to charge a Pallet Reject Charge for each Pallet Reject (a "Pallet Reject" being defined as a Pallet which does non-conform to all the Standard Product Characteristics as listed in paragraph 1 of Part 2 of Schedule 2 (*Operating Specification*), provided always that NewCold shall not be entitled to charge for any Pallet Rejects:
    - (i) during the Transition Period, if Pallet Rejects on a particular day are less than 5% of all Pallets processed on that day; and/or
    - (ii) where an automated shuttling system is installed or Pallets enter the Warehouse via the Connection Corridor, Pallets coming from the Customer Facility shall be checked as part of the Pallet loading process on site and rejects shall be handled by the Customer at its cost.
- 1.2 To calculate the storage charges to be invoiced, a stock snapshot is taken every day at 23:59. Subsequently, all the Customer's Pallets in the Warehouse are multiplied by the applicable Storage Charge as set out in the table below (Part 2 – Charges Table);
- 1.3 Upon dispatch, a Handling Charge (Outbound) shall be charged for each Pallet;
- 1.4 Charges shall be reviewed on an annual basis as described in (Part 3 – Charges Review Mechanism);
- 1.5 Charges are rounded to 3 decimal places;
- 1.6 Charges exclude goods and services sales taxes or any equivalent taxes.

## Part 2

### Charges Table

Activity	Charge (zł)	Unit
Handling Charge (Inbound - automated shuttle or via Connection Corridor)	5.00	p/Pallet
Handling Charge (Inbound – manual)	7.50	p/Pallet
Handling Charge (Outbound)	5.00	p/Pallet
Storage Charge / per day	1.00	p/Pallet*
Pallet Reject Charge	5.00	p/Pallet
All Charges assume strict accordance with the terms of the Operating Specification by the Customer.		

\*) Based on EURO pallet with footprint of 800x1.200 mm

Product delivered to Warehouse at a temperature warmer than minus 10°C is considered too warm and as such, the Customer will be required to pay a surcharge for such Product, calculated as set out below:

$$zł = \frac{W \cdot \Delta t \cdot c}{3.600} \cdot r$$

zł = surcharge per pallet

W = weight of the pallet

$\Delta t$  = temperature warmer than -10°C

c = specific heat bread below freezing (= 1.42 kJ/kg°C)

r = energy rate per kWh

example: pallet of 250 kg is delivered at -6°C and the electricity rate is zł 1.18 per kWh

$$(250 \times 4 \times 1.42) / 3,600 \times 1.18 = \text{zł } 0.33$$



## Part 3

### Charges Review Mechanism

#### Charges

1. The Charges shall be adjusted on 31 December 2022 and each anniversary of that date (each such date a "**Charges Review Date**").

2. Within 30 days following each Charges Review Date NewCold shall adjust:

2.1 the Storage Charges according to the following principles:

- (a) 15% shall be adjusted by the percentage change in the Electricity Index since the previous Charges Review Date (or, for the first Charges Review Date only, comparing with the Electricity Index Base Price).

The parties have agreed that the Electricity Index will have no maximum or minimum threshold.

- (b) 35% shall be adjusted by the percentage change in the Labour Index over the period since the previous Charges Review Date (or, for the first Charges Review Date only, since the Signature Date).

- (c) 50% shall be adjusted by the percentage change in the Consumer Prices Index over the period since the previous Charges Review Date (or, for the first Charges Review Date only, since the Signature Date).

2.2 All other Charges according to the following principles:

- (a) 15% shall be adjusted by the percentage change in the Electricity Index since the previous Charges Review Date (or, for the first Charges Review Date only, comparing with the Electricity Index Base Price).

- (b) The parties have agreed that the Electricity Index will have no maximum or minimum threshold.

- (c) 50% shall be adjusted by the percentage change in the Labour Index over the period since the previous Charges Review Date (or, for the first Charges Review Date only, since the Signature Date).

- (d) 35% shall be adjusted by the percentage change in the Consumer Prices Index over the period since the previous Charges Review Date (or, for the first Charges Review Date only, since the Signature Date).

*By way of example only:*

*Between 31 December 2021 and 31 December 2022 i.e. 12 months later:*

- (i) The Storage Charge is 1.00
- (ii) The change in the Electricity Price is +6%;
- (iii) The change in the Labour Index is +4%; and
- (iv) The change in Consumer Prices Index is +2%

The following calculation shall apply on *31 December 2022*:

$$(15\% \times 1.06) + (35\% \times 1.04) + (50\% \times 1.02) = 1.033$$

$$1.00 \times 1.033 = 1.033$$

The new Storage Charge is therefore 1.033

3. The parties shall discuss in good faith an increase in the Charges (or an alternative allocation of costs between the parties) to take account of any additional reasonable costs incurred by NewCold in connection with the development, construction and/or operation of the Warehouse or the performance of any other services for Customer, to the extent that:
- (a) the costs were not foreseen by NewCold at the date of execution of the Agreement due to Customer omitting information;
  - (b) the costs arise as a result of the Customer's Information being inaccurate or incomplete in any material respect;
  - (c) the costs arise as a result of the Customer changing any of its processes or procedures; or
  - (d) the costs arise as a result of changes in Applicable Law.

#### **Part 4**

##### **Information on Invoice**

1. Invoices submitted by NewCold shall detail the following:
- (a) Customer contact details;
  - (b) NewCold contact details;
  - (c) Period covered by the invoice;
  - (d) Due date of invoice;
  - (e) Description of services;
  - (f) Amounts charged, split by type of service;
  - (g) Payment terms;
  - (h) goods and services sales tax payable; and
  - (i) Other information reasonably requested by the Customer.

## Part 5

### Minimum Annual Revenue

1. From the expiry of the Transition Period, the Customer guarantees NewCold the Minimum Annual Storage Revenue in each Forecast Period throughout the Term. The "**Minimum Annual Storage Revenue**" is calculated in accordance with the following formula:

$$M = C \times V \times D$$

Where:

M = Minimum Annual Storage Revenue;

C = the Storage Charge applicable in the relevant Forecast Period;

V =

- for the period from the expiry of the Transition Period up to but excluding the third anniversary of such date, the higher of: (i) 28,500 pallets average storage volume during the Forecast Period and (ii) 90% of the average storage volume of pallets set out in the Forecast for the Forecast Period(s); and
- for the remainder of the Term, the higher of: (i) 35,000 pallets average storage volume during the Forecast Period and (ii) 90% of the average storage volume of pallets set out in the Forecast for the Forecast Period(s)

D = the number of days in the Forecast Period.

2. The Customer guarantees NewCold a Minimum Annual Handling Revenue in each Forecast Period throughout the Term. The "**Minimum Annual Handling Revenue**" is calculated in accordance with the following formula:

$$M = (C1 \times V1) + (C2 \times V2)$$

Where:

M = Minimum Annual Handling Revenue;

C1 = the Handling Charge (Inbound) applicable in the relevant Forecast Period;

V1 =

- for the for the period from the expiry of the Transition Period to but excluding the third anniversary of such date, the higher of: (i) the minimum annual handling volume for pallets in by truck during the applicable Forecast Period of 600,000 pallets and (ii) 90% of the annual handling volume for pallets in by truck set out in the Forecast for the applicable Forecast Period; and
- for the remainder of the Term, the higher of: (i) the minimum annual handling volume for pallets in by truck during the applicable Forecast Period of 900,000 pallets and (ii) 90% of the annual handling volume for pallets in by truck set out in the Forecast for the applicable Forecast Period;

C2 = the Handling Charge (Outbound) applicable in the relevant Forecast Period;

V2 =

- for the period from the expiry of the Transition Period to but excluding the third anniversary of such date, the higher of: (i) the minimum annual handling volume for pallets out by truck during the applicable Forecast Period of 600,000 pallets and (ii) 90% of the annual handling volume for pallets in by truck set out in the Forecast for the applicable Forecast Period; and
- for the remainder of the Term, the higher of: (i) the minimum annual handling volume for pallets out by truck during the applicable Forecast Period of 900,000 pallets and (ii) 90% of the annual handling volume for pallets in by truck set out in the Forecast for the applicable Forecast Period;
- if any of the minimum volume for the Handling Charge (Outbound) is exceeded in the relevant Forecast Period, the excess will automatically decrease the minimum volume for the Handling Charge (Inbound) by the same amount and vice versa.

3. Where the total amount invoiced to the Customer by NewCold in any Forecast Period:

- (a) as Storage Charges, is less than the Minimum Annual Storage Revenue for that Forecast Period (the "**Minimum Annual Storage Revenue Shortfall**"); and/or
- (b) as Handling Charge (inbound) and Handling Charge (outbound), is less than the Minimum Annual Handling Revenue for that Forecast Period (the "**Minimum Annual Handling Revenue Shortfall**");

NewCold shall be entitled to issue an invoice to the Customer for an amount equal to such shortfall (the "**Minimum Annual Revenue Shortfall**").

4. The Customer shall not be liable for Minimum Annual Revenue Shortfall to the extent that it has been unable to meet the Minimum Annual Revenue as a result of NewCold's breach of this Agreement.

## Schedule 2

### Part 1

#### Description of Services

Activities related to Services are described in the following table, and specified in more detail in the Operating Specification, an initial outline of which is contained in (Part 2 – Operating Specification) of this Schedule and will be developed by agreement between the parties following the Signature Date in accordance with Schedule 3 (Service Change Procedure).

It is the intention of the Customer and NewCold to implement automation in its processes in accordance with the terms of this Agreement. In the event it is not commercially feasible to implement automated processes for a certain scope of work, manual processes will be agreed upon.

The table below describes the standard processes anticipated to be implemented to provide the Standard Services. Exceptions and manual processes expected to be used for certain scope of activities are described in Part 2 (*Operating Specification*) of this Schedule.

Service	NewCold Responsibilities	Customer Responsibilities
Handling Inbound from Customer's Current Bakery with Automated Shuttle	<p>Order receipt in WMS via EDI from the Customer.</p> <p>Install an automated unloading system at the warehouse, with sufficient capacity for the Customer in accordance with the Term Forecast.</p> <p>Automatically unload palletized products from truck, documents check, receipt confirmation by EDI, deviation reporting.</p> <p>Put away Pallets to storage by automated system.</p> <p>Inform Customer directly (within the same day) about Pallet Rejects</p>	<p>Provide weekly handling inbound forecasts 30 days in advance (such forecasts prepared in good faith using reasonable skill and care)</p> <p>Send order (Advance Shipment Notification) via EDI to NewCold WMS.</p> <p>Send palletized products conforming with the Operating Specification (e.g. maximum Pallet height, Pallet weight, Pallet label).</p> <p>Installation of an automated loading system, specifications and timeline to be agreed with NewCold, that can store 32 pallets, and then automatically load 32 pallets onto an automated trailer. Customer shall install an I-point at the automated loading system which checks Pallets on non-conformities, if Pallets are rejected, customer will manage them.</p> <p>The automated loading system and I-Point shall be owned by the Customer and the Customer shall keep and maintain the system and I-Point in accordance with good industry practice and in fully functioning order. The automated loading system shall be deemed not to be in fully functioning order to the extent that its performance or non-performance</p>

		<p>adversely affects NewCold's ability to meet the Minimum Performance Targets.</p> <p>The automated loading system shall be the main source of loading of Pallets produced in the Customer's Current Bakery. In case emergency maintenance is required or it is otherwise not in good and fully functioning order, the Customer shall use its best endeavours to return the automated loading system to fully functioning order again as soon as possible.</p> <p>Scheduled and regular maintenance will be conducted at times so as not to interfere with the scheduled delivery of Products to the Warehouse or NewCold's ability to achieve the Minimum Performance Targets.</p>
Handling Inbound from Customer's New Bakery via Connection Corridor	<p>Order receipt in WMS via EDI from the Customer.</p> <p>Handle the palletized products automatically through the corridor to the warehouse, receipt confirmation by EDI.</p> <p>Put away Pallets to storage by automated system.</p>	<p>Provide weekly handling inbound forecasts 30 days in advance (such forecasts prepared in good faith using reasonable skill and care)</p> <p>Send order (Advance Shipment Notification) via EDI to NewCold WMS.</p> <p>Send palletized products conforming with the Operating Specification (e.g. maximum Pallet height, Pallet weight, Pallet label). I-point will be installed at the Facility, if Pallets are rejected, customer will manage them.</p> <p>This system is the main source of loading of Pallets produced in the Customer's New Bakery.</p>
Handling Inbound (Manual)	<p>Order receipt in WMS via EDI from the Customer.</p> <p>Manage slot booking via providing online slot booking system, to be used by carriers and NewCold.</p> <p>Manually unload palletized products from truck, documents check, receipt confirmation by EDI, deviation reporting.</p>	<p>Provide weekly handling inbound forecasts 30 days in advance (such forecasts prepared in good faith using reasonable skill and care)</p> <p>Send order (Advance Shipment Notification) via EDI to NewCold WMS.</p> <p>Send palletized products conforming with the Operating Specification (e.g. maximum Pallet height, Pallet weight, Pallet label).</p>

	Put away Pallets to storage by automated system.	
Handling Outbound to End Customer (Truck)	<p>Order receipt in WMS via EDI from the Customer.</p> <p>Manage slot booking via providing online slot booking system, to be used by carriers and NewCold.</p> <p>Retrieve Pallets from storage location and transport to loading area (by automated system).</p> <p>Load palletized products into truck.</p> <p>Generate documents, shipment confirmation by EDI, deviation reporting.</p>	<p>Provide weekly handling outbound forecasts 30 days in advance (such forecasts prepared in good faith using reasonable skill and care)</p> <p>Send correct and complete order via EDI to NewCold WMS.</p> <p>Management of transport partners conform with the Operating Specification.</p> <p>Provide instructions regarding Customer specific activities in a timely manner in order to be included in WMS pick instructions. If order is cancelled three hours prior to the planned load time, the Customer will pay the handling outbound charge.</p> <p>The Handling Charge is partly based on automatically loading the Product into a standard frigo trailers with the following minimal internal dimensions:</p> <ul style="list-style-type: none"> <li>• Width: 2.460 mm</li> <li>• Height: 2.650 mm</li> <li>• Length: 13.315 mm</li> </ul> <p>The vast majority of trailers used will be standard frigo trailers. NewCold will decide, for efficiency purposes, whether the Products will be loaded automatically, or via a forklift truck, into the standard frigo trailer.</p>
Storage	<p>Storage of Products at the Warehouse conform with the agreed conditions.</p> <p>Timely and accurate stock reporting and reconciliation.</p>	<p>Provide weekly storage forecasts 30 days in advance (such forecasts prepared in good faith using reasonable skill and care)</p> <p>Timely reaction to stock reports and participation in stock reconciliation.</p> <p>The Customer shall ensure that the Products shall not cause damage to the Warehouse or other products that may be stored at the Warehouse.</p>

## Part 2

### Operating Specification

This Schedule provides a detailed description of the key components of the operating specifications related to Standard and Additional Services. This Schedule provides a framework and key requirements of the Customer and NewCold, which the parties will develop into the Operating Specification, IT Systems and EDI Solution.

#### 1. Standard Product Characteristics

- (a) Average Number of SKUs in storage: 300
- (b) Maximum Number of SKUs for picking: 100
- (c) Maximum Number of cases for Picking per day: 5.000
- (d) Production batch size:, average 100 Pallets per batch
- (e) Best before date per batch: Month
- (f) Different BBDs within batches: No
- (g) Pallet type:
  - (i) Wooden Euro/Chep Pallet: 800 x 1.200 mm (>95% of annual volume)
  - (ii) Wooden Industrial Pallet : 1.000 x 1.200 mm (<5% of annual volume)
- (h) Pallet Height & Weight (including Wooden Pallet and Products)

Height (mm) / Weight (Kg)	<400 kg		401 – 600 KG	Total
<1.900	15%		5%	20%
1.901 – 2.100	50%		10%	60%
2.101 – 2.300	20%		0%	20%
Total	85%		15%	100%

- (i) Maximum Pallet Height: 2.300 mm
  - (ii) Maximum Pallet Weight: 550 kg
- (i) Margin around the Pallet: The Warehouse and automated loading and unloading systems have been designed to handle and store Products stacked within the pallet footprint.
- (j) Storage temperature: between minus 21°C to minus 23°C
- (k) For products that enter the Warehouse warmer than minus 5°C will be rejected and the Customer will be contacted for instructions
- (l) Pallet and Case Labels and Wooden Pallet Quality



- (i) All Products have a barcoded Pallet label conforming to the GS1 standard, containing all necessary information to receive the Products in the Warehouse.
- (ii) Pallet labels will always be positioned in accordance with GS1 specifications.
- (iii) All cases contain a label with all relevant Product information for tracking and tracing.
- (iv) All Products are palletized on a Wooden Euro/Chep or Industrial Pallet, which is conveyable on conveyors and of not less than Class B quality as stipulated in the GS1 standard: Quality Classification For The Open Pallet Exchange.

## 2. Storage, Master Data and Inventory Management

- 2.1 A standard set of master data per item, supplier, and customer will be agreed upon, and will be recorded in NewCold WMS. The Customer and NewCold use the same unit of measures for the master data.
- 2.2 Master data and changes are managed by the Customer, and recorded by NewCold in the WMS. Changes to the master data will be timely communicated by the Customer to NewCold (minimum of 48 hours before first use by NewCold).
- 2.3 All deliveries received in line with the Operating Procedures will be available in stock latest 15 minutes after receipt, and confirmed by EDI to the Customer's ERP. If Products cannot be received, they will be stored in an area at the correct temperature, waiting for corrective actions to be agreed by the Customer and NewCold.
- 2.4 Standards and procedures related to stock status (adjustments) and stock reconciliation will be agreed upon in writing.

## 3. Storage Volumes

The following forecasted annual average storage volumes and expected maximum storage utilisation have been taken into consideration

Year	1	2	3	4	5 and further
Forecasted average daily storage volume	33,600	39,200	44,800	50,400	50,400
Expected Maximum storage utilization	40,320	47,040	53,760	60,480	60,480

## 4. Inbound Volumes

- (a) The following forecasted inbound volumes per day have been taken into account:

Year	1	2	3	4	5 and further
Customer's Current Bakery (Pallets per day)	2,000	2,000	1,600	1,200	500
Customer's New Bakery	800	1,200	2,000	2,800	3,500

(Pallets per day)					
Total (Pallets Inbound per day)	2,800	3,200	3,600	4,000	4,000

- (b) The warehouse has been designed for handling volumes spread over a 24-hour operating day. The maximum inbound volumes from Legionowo is 2.000 pallets and from the new factory 3.500 pallets.

## 5. Inbound Operating Procedures

- (a) A weekly planning of estimated inbound shipments from the Customer's Facility's will be shared by Customer with NewCold the week before
- (b) The standard way of communicating Inbound order information will be via EDI.
- (c) Customer and NewCold will agree on a standard operating procedure for shuttling Products between Customer's Legionowo Facility and the Warehouse, enabling NewCold to run an efficient Warehousing operation.
- (d) An online slot booking system will be provided by NewCold to the (other) transporters to reserve their unloading slot. Procedures will be agreed upon related to cut-off times for slot bookings, standing appointments, early and late arrival, number of unloading slots per hour.
- (e) A timely arrival of the transporters is important for a reliable and efficient operation of the Warehouse. Timely or on time is defined for the purpose of this Agreement as within 30 minutes of scheduled arrival time. In case of late arrivals, NewCold may reschedule the delivery to the next available slot. NewCold will unload late vehicles without undue delay without interfering with the operation of the Warehouse
- (f) Correct order and Product information received on-time and complete is important for NewCold to have a reliable and efficient operation of the Warehouse. Where this information is not available, Product may not be able to be received until such information is available.
- (g) It is important that Products have to be in-line with agreed standard Product characteristics as described in the Operating Specifications. Non-compliance may result in not being able to receive the Products and may require corrective actions to be taken

## 6. Outbound Volumes

- (a) The following forecasted and maximum Outbound volumes per day have been taken into consideration

Year	1	2	3	4	5 and further
Total Forecasted Pallets Outbound Per day	2,800	3,200	3,600	3,400	4,000
Maximum Pallets Outbound Per day	4,000	4,800	5,200	6,000	6,000

- (b) The warehouse has been designed for handling the maximum pallets outbound per day, taking into account the activities are spread over a 24-hour operating day. NewCold shall ensure loading slots are available to accommodate the Customer's outbound orders notified to NewCold in accordance with the requirements of this Agreement up to the Maximum Loading Slots per day and Maximum Loading slots per hour set out in the table below point (c).

Year	1	2	3	4	5 and further
Maximum Loading Slots per day	120	140	160	180	180
Maximum Loading slots per hour	6	7	7	8	8

- (c) Parties acknowledge that on peak days more loading slots may be requested, and have agreed to jointly manage these peak requirements

## 7. Outbound Operating Procedures

- (a) The Customer is responsible for its outbound transport management
- (b) A weekly planning of estimated outbound orders to be shipped from the Warehouse will be shared by Customer with NewCold the week before
- (c) The standard way of communicating outbound order information will be via EDI
- (d) A minimum outbound order lead time of 8 hours is applicable for full truck load orders with no value added activities (such as case picking). For all other orders an minimum order lead time of 24 hours is required; in which both the outbound order and the outbound slot booking by the transport company is finalized. A formal order cut-off time will be agreed upon. The Customer and NewCold will implement procedures to assist NewCold to prepare orders in advance of the 8 hour order cut-off time.:
- (e) Procedures for order changes after the cut of time will be agreed upon. The parties understand that order changes after the cut of time might require Additional Services and might have impact on the service levels
- (f) An online slot booking system will be provided by NewCold to the transporters to reserve their loading slots. Procedures will be agreed upon related to cut-off times for slot bookings, standing appointments, early and late arrival.
- (g) A timely arrival of the transporters is important for a reliable and efficient operation of the Warehouse. Timely or on time is defined for the purpose of this Agreement as 30 minutes before or 30 minutes after the scheduled arrival time. In case of late arrivals, NewCold may reschedule the delivery to the next available slot. NewCold will unload late vehicles as soon as possible in case this does not interfere with the operation of the Warehouse. Before planned rescheduling, Customer will be notified and rescheduling will only be performed after approval.
- (h) Correct order and Product information received on-time and complete is important for NewCold to have a reliable and efficient operation of the Warehouse. In case such information is not available, Product may not be able to be shipped until such information is available.
- (i) Orders will be fulfilled with Products available on stock at the order cut-off time.
- (j) Standard order allocation rules will be applied by NewCold WMS based on FEFO. Exceptionally non-FEFO order allocation will be used, for which the parties will agree

on operating procedures, provided these allocation strategies can be executed by the WMS and the automated Warehouse.

## **8. Additional Services**

- (a) Additional Services may be carried out as corrective actions by NewCold to deal with non-conformity by the Customer or non-conformity of the Products, their packaging or pallets with the agreed standard operating procedures.
    - (i) Examples of these corrective Additional Services include, but are not limited to: replacing damaged Pallets, handling products damaged during transport.
    - (ii) NewCold will only use corrective Additional Services where reasonable and shall mitigate additional costs where reasonably possible.
    - (iii) NewCold will keep a clear registration of the costs associated with the corrective Additional Services.
    - (iv) Procedures will be implemented for efficient approval processes related to these Additional Services.
  - (b) Additional Services may be carried out as value added logistic services, based on an agreed scope of work and prior approval by the Customer
    - (i) Examples of the value added logistics Additional Services may be, but are not limited to: re-boxing, labelling, goods return, inspections, sample shipments.
    - (ii) the Customer and NewCold will implement clear procedures and guidelines for the execution of the additional value added logistic services.
    - (iii) NewCold will develop a Value Added Logistics area for these Additional Services. The Customer's specifications for these areas will be taken into account where commercially feasible.
    - (iv) NewCold will be contacted first by Customer for value added logistic Additional Services to be executed related to stock stored at the Warehouse.
9. The site is open 7 days per week, 24 hours per day except for national holidays, with the majority of the activity being performed during the weekdays. During the weekends a reduced crew will operate the warehouse with fewer senior management on site. The Customer will use its best endeavours to minimize non-Standard Services outside of the normal business hours and plan in collaboration with NewCold activities which are outside the normal opening hours.

## **Part 3**

### **IT Landscape and EDI Solution**

- 1. The Customer uses SAP to manage its processes.
- 2. NewCold will use Davanti's WMS to manage its warehouse processes.
- 3. Communication between the parties will be executed by standard EDI messages

4. The following EDI messages related to warehouse activities are expected to be implemented.
  - (a) Inbound order (ASN); the Customer → NewCold
  - (b) Receipt confirmation; NewCold → the Customer
  - (c) Outbound order; the Customer → NewCold
  - (d) Shipment confirmation; NewCold → the Customer
  - (e) Inventory Report / Stock Reconciliation; NewCold → the Customer
  - (f) Stock adjustment; NewCold → the Customer
  - (g) Quality / Status change; the Customer → NewCold
  - (h) Confirmation Quality / Status change; NewCold → the Customer
  - (i) Master data; the Customer → NewCold
  - (j) ASN: NewCold → Customers of the Customer
5. EDI messages related to transport shipments generated by a TMS are not expected to be in scope.
6. Other systems to be used;
  - (a) Online Dock Booking System for booking pick-up and delivery times for shipments by the Customer's transport partners
  - (b) Customer Portal for file sharing of others reports and shipment documents
7. Both parties carry their own costs of implementing the IT Landscape and EDI solution.
8. Standard Pallet labels will be used in line with GS1 standards.
9. NewCold and the Customer may further develop this Part 3 following the Signature Date with any changes to be agreed between the parties in writing (each party acting reasonably and in good faith)

## **Part 4**

### **Customer's Existing Warehousing Operations**

Customer's bakery at Legionowo, Szarych Szeregów 11, 05-120 Legionowo

### **Schedule 3**

#### **Service Change Procedure**

#### **1. Change request**

1.1 For the purposes of this Agreement a "**Change Request**" is:

- (c) a request to change or add to the Services or a request to change the manner in which the Services are performed;
- (d) a request to amend any terms of this Agreement or any document attached to or referred to in this Agreement (including any specification); or
- (e) a request to address any matter which causes or is likely to cause either party to incur costs or charges outside the scope of the Charges.

1.2 Subject to paragraph 2.2 of this Schedule no Change Request shall be binding on the parties unless it is agreed in writing and signed by the authorised representatives of both parties.

1.3 Subject to paragraph 2.2 of this Schedule the parties shall, until such time as a Change Request is formally agreed to by both parties, continue to perform their respective obligations without taking account of the Change Request.

1.4 Change Requests may be originated either by the Customer or by NewCold or may be originated by the parties jointly.

1.5 Where the Change Request is originated by NewCold, NewCold shall include in the Change Request full details of the changes which it is seeking to make to the Services, the Minimum Performance Targets, the Charges and any other effects of the proposed change, which must be reasonable and demonstrable.

1.6 In the case of any Change Request originated by the Customer, NewCold shall within 10 Business Days of receipt of that Change Request supply to the Customer either:

- (a) a Change Request report with full details of all consequential changes which will be required to the Services, the Minimum Performance Targets, the Charges and all other effects of the proposed change which must be reasonable and demonstrable; or
- (b) written confirmation that there will be no such consequential changes or effects.

#### **2. Change request report**

2.1 If NewCold gives notice to the Customer within 5 Business Days of receipt of a Change Request that it cannot provide the Change Request report within a 10 Business Day period, the parties shall agree a suitable period within which NewCold shall be required to provide the Change Request report.

2.2 The parties shall, subject to paragraph 2.5, use their Reasonable Endeavours to agree a Change Request within 10 Business Days of receipt of the Change Request report by the Customer. If they are unable to reach agreement, the parties may resolve the matter in accordance with the Dispute Resolution Procedure.

2.3 As soon as NewCold or the Customer becomes aware of any change that should be made to the Services to ensure that the Services and the performance of them conform to any change of legislation, Best Industry Standards or new legal or regulatory requirements which affect the Services, NewCold or the Customer shall notify the other party of the change and, where the

parties so agree, NewCold shall carry out the change as part of the Services. The allocation of the costs of implementing changes shall be agreed between the parties (acting reasonably).

- 2.4 On signature of a Change Request by the authorised representatives of each party, this Agreement shall be deemed amended in accordance with the provisions of that Change Request.
- 2.5 A party shall not be under any obligation to accept a Change Request where to accept it would cause that party to be in breach of any of its other obligations under this Agreement or would otherwise have a materially adverse effect on that party's business. If such a request arises the parties should work together to explore alternative potential solutions.

### **3. Content of a Change Request**

Each Change Request prepared by the party requesting the change pursuant to paragraph 1.1 of this Schedule shall be allocated a sequential number by NewCold and shall contain:

- (a) the title of the change;
- (b) the originator and date of the request for the change;
- (c) full details of the change;
- (d) costs;
- (e) a timetable for implementation together with any proposals for acceptance of the change;
- (f) a schedule of payments if appropriate;
- (g) details of likely impact, if any, of the change on other aspects of the Services to be provided including, but not limited to:
  - (i) the terms of the Agreement;
  - (ii) the Minimum Performance Targets;
  - (iii) the Charges;
  - (iv) working arrangements; and
  - (v) other contractual issues;
- (h) the date that the validity of the Change Request expires; and
- (i) provision for signature by NewCold and the Customer.



## Schedule 4

### Part 1

#### Standard KPIs

All Standard KPIs shall be measured on a monthly basis. Circumstances for which NewCold is not responsible that negatively impact the Standard KPIs, including any Force Majeure Event, late arriving trucks, the Customer Pallets being of poor quality or stock shortages, are excluded from the calculation unless NewCold meets the Standard KPI level despite these factors.

- (a) **Orders Loaded On Time:** 98.00%
- (i) Definition: *"the percentage of orders that are loaded on to vehicles on or before the agreed loading time (assuming the vehicles are on site at the agreed time)".*
  - (ii) Trucks arriving within the agreed time schedule will be loaded and the necessary administrative procedures finalized within two (2) hours after arrival of the truck. "Arrival" is defined as the moment when the driver reports at the driver's office or check-in desk. Trucks that do not arrive on time will be loaded as soon as a next loading slot is available. If 10 percent or more of outbound vehicles arrive more than 30 minutes after the scheduled arrival time the OLCOT is deemed 100 percent for the day.
  - (iii) Defect: an order not loaded within two (2) hours of arrival of a truck, given the truck has arrived on time.
  - (iv) Standard KPI =  $\frac{\text{N}^\circ \text{ of orders} - \text{N}^\circ \text{ of orders loaded too late}}{\text{N}^\circ \text{ of orders}} \times 100$
- (b) **Order Quality (Orders Complete):** 98.00% of cases
- (i) Definition: *"the percentage of cases ordered included in the order file and available in stock at the Warehouse (free stock) that have been correctly picked (meaning correct product reference, correct quantity and part of the correct order)". "Free stock" is defined as Products physically in stock in the Warehouse and available for order allocation when the orders are released.*
  - (ii) Defect: a case ordered for a product for which free stock is available not included in the correct order.
  - (iii) Standard KPI =  $\frac{\text{N}^\circ \text{ of cases ordered} - \text{N}^\circ \text{ of cases missing}}{\text{N}^\circ \text{ of cases ordered}} \times 100$
- (c) **Inventory Accuracy:** 99.90%
- (i) Definition: *"the percentage of loads that are physically located on the location indicated in the WMS. Load meaning per location the identification of the product (product reference), lot code and quantity (in line with the SSCC label). Location can be a location in the bulk storage or in the order picking zone."*
  - (ii) Defect: a Pallet location for which the product identification or quantity are not correctly registered in the WMS.

$$(iii) \quad \text{Standard KPI} = \frac{\text{N}^\circ \text{ of Pallets in stock} - \text{N}^\circ \text{ of Warehouse physical locations for which Product identification or quantity are not correct in the WMS}}{\text{N}^\circ \text{ of Pallets in stock}} \times 100$$

(d) **Stock Loss Tolerance:** 0.01%

save that a higher stock loss tolerance shall apply to any Additional Services, to be agreed between the parties on a case by case basis prior to NewCold having any liability to perform the Additional Services.

(e) **Goods receipt on time – ext. source:** 98.0%

(i) Definition: *"A delivery arrives on time if it arrives at the agreed arrival time, unless the truck has been in line due to congestion at the Warehouse site."*

(ii) Incoming deliveries are announced and planned for reception in mutual agreement between the parties (reception planning) and in line with the Operating Specification. The incoming other Products will be unloaded and all relevant administrative tasks (transport documents) need to be finalized within two (2) hours of the arrival of the delivery if the delivery has arrived on time. The delivery is confirmed via EDI with a receipt confirmation message.

(iii) Defect: a delivery takes longer than two (2) hours to be finalized after arrival on time.

$$(iv) \quad \text{Standard KPI} = \frac{\text{N}^\circ \text{ of deliveries that arrived on time} - \text{N}^\circ \text{ of deliveries that arrived on time but were not received within 2 hrs}}{\text{N}^\circ \text{ of deliveries that arrived on time}} \times 100$$

(f) **OLCOT Figure: Orders Loaded on Time % x Order Quality % = 98 % x 98% = 96.04%**

(i) This is the combination of the Standard KPIs, Orders Loaded On Time and Order Quality.

(ii) OLCOT Figure = Orders Loaded On Time x Order Quality.

## **Part 2**

### **Initial KPIs**

During the Initial Period, the following Initial KPIs will apply:

- |     |                                  |                                     |
|-----|----------------------------------|-------------------------------------|
| (a) | Orders Loaded On Time:           | 96.00%                              |
| (b) | Order Quality (Orders Complete): | 96.50%                              |
| (c) | Inventory Accuracy:              | 98.00%                              |
| (d) | Stock Loss Tolerance:            | 00.1% (on the total 6 month volume) |
| (e) | OLCOT Figure:                    | 92.12%                              |

For the avoidance of doubt, where circumstances outside NewCold's control (for example, changes by the Customer in its methods of operation, Events of Force Majeure, use of Reject Pallets, volumes in excess of Forecast, etc.) negatively impact its performance as measured by the Initial KPIs, such impact shall be excluded from the relevant Initial KPIs calculations.

## Part 3

### Service Credits

Service Credits shall be calculated solely on the basis of the OLCOT Figure performance. Service Credits will be regarded as guaranteed amounts (świadczenia gwarancyjne) subject to the exclusions set forth in paragraph 4 below.

#### 1. Monthly Service Credits

- 1.1 If the performance level for the month after the Transition Period is below the OLCOT Figure of 98.00% a Service Credit will be payable based on the indicative table below.

Service Credit level	OLCOT Figure Performance						
From:	98.00%	97.00%	96.00%	95.00%	94.00%	93.00%	90.00%
To:	97.01%	96.01%	95.51%	94.01%	93.01%	92.01%	0%
Service Credit  (zł x 1,000)	5	10	15	25	40	50	50+

- 1.2 If the performance level for any month after the Initial Period is below the minimum performance level for OLCOT Figure of 90.00%, a Service Credit will be payable of zł 50,000 per month + zł 2,000 per 0.1% that it is below such minimum performance level, up to a maximum Service Credit of zł 100,000 per month.

#### 2. Yearly Service Credits

- 2.1 In addition to the monthly service credits described in paragraph 1 above, where during the 12 month period following the expiry of the Transition Phase or any 12 month period during the Term immediately following any anniversary of the expiry of the Transition Phase, the OLCOT Figure is:

- (1) below 98% but equal to or above 95%, NewCold shall pay the Customer a **"30% Annual Service Credit"** which shall be calculated as follows:

- (a) 30% Annual Service Credit =  $30\% \times P \times T \times R$ , where:

- (i) P = the total number of Customer Pallets handled outbound from the Warehouse during the relevant 12 month period;
- (ii) T = 98% minus the actual OLCOT Figure over the relevant 12 month period
- (iii) R = a sum equal to one Handling Charge (inbound – automated shuttle or via Connection Corridor) plus one Handling Charge (Outbound) plus 14 days of Storage Charge (in each case by reference to the applicable Charges during such 12 month period).

(b) By way of example only:

(i) 1,000,000 pallets handled in the relevant 12 month period

(ii) Annual average OLCOT Figure is 97%

(iii) Charges applicable:

1. Handling (Inbound – automated shuttle or via connection corridor) = zł 5.00

2. Handling (Outbound) = zł 5.00

3. Storage per day = zł 1.00

(iv) 30% Annual Service Credit:

$$((1,000,000 \text{ pallets} * (98\% - 97\%)) * ((\text{zł } 5.00 + \text{zł } 5.00 + (15 * \text{zł } 1.00) * 30\%)) = \underline{\text{zł } 75,000.00}$$

or;

(2) below 95%, shall pay the Customer a "**50% Annual Service Credit**" which shall be calculated as follows:

(a) 50% Annual Service Credit = 50% x P x T x R, where:

(i) P = the total number of Customer Pallets handled outbound from the Warehouse during the relevant 12 month period;

(ii) T = 98% minus the actual OLCOT Figure over the relevant 12 month period;

(iii) R = a sum equal to one Handling Charge (inbound – automated shuttle or via Connection Corridor) plus one Handling Charge (Outbound) plus 14 days of Storage Charge (in each case by reference to the applicable Charges during such 12 month period).

(b) By way of example only:

(i) 1,000,000 pallets handled in the relevant 12 month period

(ii) Annual Average OLCOT is 93%

(iii) Charges applicable:

1. Handling (Inbound – automated shuttle or via connection corridor) = zł 5.00

2. Handling (Outbound) = zł 5.00

3. Storage per day = zł 1.00

(iv) 50% Annual Service Credit:

$$1. ((1,000,000 \text{ pallets} * (98\% - 93\%)) * ((\text{zł } 5.00 + \text{zł } 5.00 + (15 * \text{zł } 1.00) * 50\%)) = \underline{\text{zł } 625,000.00}$$

2.2 NewCold shall make such payment to the Customer within 60 days of the expiry of the relevant 12 month period.

3. Notwithstanding any other provision of this Agreement, the total amount payable by NewCold in any 12 month period during the Term as Service Credits shall in no event exceed zł1,200,000.
4. A Standard KPI is not achieved if the Services do not meet or exceed the standard level as in Part 1 of Schedule 4 (*Standard KPIs*), except to the extent that the failure to meet the Standard KPI was caused by:
  - 4.1 an act or omission of the Customer or its Representative;
  - 4.2 NewCold acting in accordance with the direction of the Customer;
  - 4.3 a Force Majeure Event.
5. If a Standard KPI is not achieved then NewCold shall endeavour to implement changes to ensure that the particular Standard KPI is achieved in the future.
6. Save for the Customer's right to terminate this Agreement in accordance with clause 24.3, the service credits shall be Customer's sole remedy in respect of Losses suffered by the Customer as a result of such failures.

## **Schedule 5**

### **Contract Management**

#### **7. Contract management**

- 7.1 The Customer shall appoint a Customer Representative and inform NewCold of the identity and contact details of such person and any changes made to such contact details or replacement of such person from time to time. The Customer Representative shall have authority to liaise with NewCold's Representative in connection with the Services to be performed under this Agreement and the Customer Representative shall give instructions or directions to and shall liaise exclusively with NewCold's Representative or such other persons advised to it by NewCold's Representative from time to time for that purpose under this paragraph 7.1.
- 7.2 NewCold shall appoint a senior employee as its representative to be the Customer's contact at NewCold to be responsible for the performance of the Services and who will have the authority to liaise with and receive instructions from the Customer. NewCold may rely on the oral, email, text or other written instructions or direction of the Customer Representative. NewCold shall keep the Customer notified of the contact details of NewCold's Representative.
- 7.3 NewCold shall:
- (a) on request from the Customer, during the Term, supply the Customer from time to time and in each case as soon as reasonably practicable following relevant request of the Customer, with such information and reports (including copies of such documents and other material) as the Customer reasonably requires in relation to the provision of the Services, including weekly KPI reports, monthly actual and forecast reporting and reconciliation, part Pallet reports, short shelf life reports, damages and reasons for damages, provided always that NewCold shall not be required to disclose any information which is commercially sensitive or would breach its obligations of confidentiality owed to third parties;
  - (b) monitor performance of the Services against the Minimum Performance Targets and provide the Customer with a report as soon as reasonably practicable (but in any event within two days of the end of each month) specifying the Minimum Performance Targets, NewCold's performance that month against each of the Minimum Performance Targets including full details of any failure to meet the Minimum Performance Targets together with NewCold's recommendations (if any) for any modifications to the Services and/or the Minimum Performance Targets; and
  - (c) prepare 4 weeks before the end of each Calendar Year an annual report setting out details of the Services performed in that year and, if and when reasonably requested in writing by the Customer, reports on particular topics in amplification of the annual report.

#### **8. Information & reporting**

- 8.1 The parties agree throughout the Term to coordinate the program meetings noted in this clause 8.1(a) to (e) at times, dates and locations to be agreed between the parties. The representatives nominated by both parties shall have the authority to make the decisions for which the meeting is designed. The parties will further define ways of working, content of meetings, representatives and reporting in a number of ways, including (unless otherwise agreed) :
- (a) a daily conference call / meeting to discuss immediate operational requirements at which the Customer representative and NewCold representative will be present;
  - (b) a conference call / weekly meeting (extension of the daily conference call / meeting not an additional meeting) to discuss the previous week's performance and business issues

at which the NewCold Representative and the Customer Representative shall be present;

- (c) a monthly meeting to discuss the previous month's performance, monthly trends, and key business issues at which the NewCold Representative and the Customer Representative shall be present;
- (d) a quarterly meeting to discuss the previous quarter's performance, innovation, quarterly trends, key business issues and the forthcoming quarter's business plan at which the NewCold Representative and the Customer representative shall be present; and
- (e) a strategic development meeting to review the business direction (minimum once a year).



## Schedule 6

### Part 1

#### Annual Stock Count

1. The parties agree that the stock held within a fully automated Warehouse cannot be fully counted by conventional means, without incurring significant costs and / or disruption to day-to-day operations (especially in the high-bay operation). As a result, the parties agree that annual stock audits shall be performed as follows:
2. NewCold will perform stock counts for audit purposes on an annual basis ("**Annual Stock Count**"). The exact date shall be agreed between both parties, but will take place during the weekend to minimize interruption to customer deliveries. The Annual Stock Count shall be carried out by NewCold's employees (the "**Employee**") under supervision of the Customer's representatives and / or (external) audit staff.
  - (a) The Annual Stock Count includes the Employee retrieving Products from the high-bay storage at random, or if preferred by the Customer according to a specified list, up to a maximum of 0.3% of the Customer's Products in storage in the Warehouse at that moment (the "**First Round Count**"). Prior to the First Round Count, all Products in- and out movements between both parties are completed and the WMS and the Customer's ERP shall be reconciled such that opening systems stock match. The retrieved Pallets should be checked against the data (Product, quantity, best before date, SSCC label, or the "**System Records**") as recorded in the WMS.
  - (b) Should the discrepancy during the First Round Count exceed the threshold of 99%, a further random sample of 0.1% of the Pallets in storage in the Warehouse at that moment shall be checked against the System Records (the "**Second Round Count**").
  - (c) In case of failure on the Second Round Count, the stock record shall be considered to be 'unproven', and measures and / or actions have to be taken accordingly.
  - (d) On an annual basis, a wall-to-wall count on the pick floor shall be conducted as at the request of the Customer as follows:
    - (i) The first round of counting shall be conducted by an Employee (the Customer's representatives may attend, but not necessarily) by use of RF terminals. The Employee shall scan the racking label and the Pallet label for each Pallet. The case quantity shall be entered manually on the RF terminal. After the first round, the WMS opening stock shall be compared to the data recorded on the RF terminals. A list shall be generated, including the (possible) differences found.
    - (ii) The second round of counting shall be conducted by an Employee (the Customer's representatives may attend, but not necessarily) by use of RF terminals, yet this will be limited to the locations where (possible) mismatches were found. The method of counting shall be similar to the first round. After the second round, a list from the WMS shall be generated including the opening stock, and results of the first and second round counting. This list shall serve as a basis for the third round.
    - (iii) The third round of counting shall be conducted by the Customer's employees and / or representatives. For this round, a randomly populated list shall be obtained from the WMS, including the racking positions of specific Products, and vice versa the Pallet ID for which the racking position has to be confirmed. The scope will be a minimum of 10% of all the Customer's pick facings.

- (e) Upon completion of the Annual Stock Count, a summary (hardcopy) will be printed from WMS with opening and closing data, and it shall be signed by NewCold and the Customer representatives.

## Part 2

### Daily Stock Count

1. NewCold will provide the stock levels as recorded in its WMS to the Customer on a daily basis. Any discrepancies between the WMS and the Customer's ERP system should be communicated in writing to the Customer as soon as practically possible. If there are significant discrepancies (as defined below), then the Customer shall be entitled to further inspection of certain SKUs or Pallet positions within the Warehouse, which shall be undertaken in the presence of the Customer's representatives.
2. During daily picking operations: when the Pallet on the pick facing is picked to zero, the WMS requires the Employee to confirm that there are indeed no cases left for that specific pick facing. If according to the WMS the Pallet is empty, but there are still cases on the Pallet, a surplus exists ("**Surplus**"). Conversely, if there are no cases left but the WMS displays otherwise, a shortage exists ("**Shortage**").
  - (a) In case of a Surplus or Shortage, the Employee shall inform the shift leader and specify which racking location has a Surplus or Shortage. In both cases, the shift leader shall obtain a list from the WMS showing Pallets that have Products on them which have been picked recently, and physically check these Pallets. If the error is found, a correction in the WMS shall be recorded. Otherwise, a Surplus or Shortage shall be recorded in the WMS.
  - (b) The stock record shall be assumed to be accurate where the number of mismatches is less than 10 Pallets per 10,000 Pallet movements, or 0.10% (the "**Threshold**"). If the figure exceeds the Threshold, a stock count should be carried out on the basis that a sample of 0.1% of the Pallets currently stored in the Warehouse should be requested at random. The retrieved Pallets should be checked against the System Records (Product, quantity, best before date, SSCC label).
  - (c) Any failure in that initial batch will require a further sample of 5% of stored Pallets to be requested at random.

## **Schedule 7 (Disaster Recovery Plan)**

### **1. Disaster recovery plan**

- 1.1 In the event that circumstances at the Warehouse prevent the provision of the Services then NewCold shall use Reasonable Endeavours to implement changes such that the shortfall in performance (as measured by the Minimum Performance Targets) is addressed and performance returns to acceptable levels.
- 1.2 The following sections cover the key points and principles that are to be included in the Disaster Recovery Plan that will be put in place by NewCold before the end of the Initial Period.
- 1.3 The Disaster Recovery Plan will include the following information:
  - (a) A management team will be identified that will be responsible for managing a situation where the Disaster Recovery Plan is required. These will be named people that are thought to be appropriate for managing most situations impacting on Services, or quality of the Products. One representative from the Customer, and one from NewCold will be nominated to coordinate the activities. The source of the problem will determine which of these individuals takes overall control (i.e. a problem created by the Customer or its suppliers, would determine that the Customer representative took overall control, and vice versa);
  - (b) The immediate communications that are required in the event that business continuity is at risk. This will detail who is to be contacted (likely the management team plus other senior officers of both companies), the information that needs to be available to be included in the communication, the timing of the communication, and what to do if key personnel are not contactable. Contact details will be recorded as part of the plan, and updated by NewCold (with cooperation from the Customer) as required to keep an accurate record;
  - (c) Definitions that describe when the business continuity is deemed to be at risk. This includes descriptions of the Minimum Performance Targets that independently, or together constitute a sufficient risk to trigger the immediate communications;
  - (d) The responses expected as a consequence of triggering the immediate communications i.e. what action needs to be taken by those being communicated to. This would include availability for emergency meetings, onward communications to other parties related to the Services, and clear responsibilities for actions required;
  - (e) Confidentiality expectations. It is probable that triggering of the Disaster Recovery Plan is driven by an unexpected problem with providing Services or Additional Services (as applicable). In this event it is essential that there is strict control over what is said and to whom. The Disaster Recovery Plan will include several pre prepared written communications that are pre- approved for use by the managing team. There will be communications for general release, and communications specifically for the External Customers. These are expected to be "holding statements" designed to give the managing team time to respond more specifically;
  - (f) A description of predictable situations that would put service or product quality at risk. As a minimum these will include the following:
    - (i) Loss of power
    - (ii) Flooding

- (iii) Lightning strike
  - (iv) Industrial action by NewCold employees
  - (v) Industrial action by the Customer employees
  - (vi) Industrial action by others
  - (vii) Fuel shortage
  - (viii) Major equipment failures
  - (ix) Supply of Raw Materials including Pallet supply
  - (x) Severe damage to the Warehouse
  - (xi) Loss of software systems
  - (xii) Epidemic
  - (xiii) Exceptional weather conditions
  - (xiv) Fire
  - (xv) Explosion(s)
  - (xvi) Gas leaks (i.e. ammonia)
- (g) For each predictable situation there will be a planned response, this response to include:
- (i) How to keep the product safe
  - (ii) How to keep personnel safe
  - (iii) Reciprocal agreements with other suppliers
  - (iv) Emergency administration required (including software if available)
  - (v) Specific responsibility for actions, with timings
  - (vi) Review meeting schedule for the managing team
  - (vii) External help available with lead times for mobilisation
  - (viii) Emergency manual procedures that require H&S procedures approved
  - (ix) Programme of testing and validating the responses to a predictable event
- (h) For non-predictable events there will be a similar response plan, that would move quickly to a review and planning session for the managing team. The managing team would be responsible for determining the most appropriate action, and may well call upon a combination of the activities identified in the predictable situations plans.

- 1.4 The Disaster Recovery Plan will be developed through time, however the first effective version will be agreed no later than the end of the Initial Period . This document will be approved by both parties as the procedure that will be used in the event that the Disaster Recovery Plan is required.

**Schedule 8**  
**Parent Guarantee of NewCold**

## **Guarantee Agreement**

- (1) Nowel Sp. z o.o.**
- (2) NewCold Cooperatief U.A**

Dated

2022

**Between:**

- (1) Nowel Sp. z o.o., a company registered under the laws of Poland (Company registration: KRS 0000623598, NIP 5223065536, share capital: PLN 2,833,150) whose registered office is at 05-120 Legionowo, Szarych Szeregów 11, Poland (the "Beneficiary"); and
- (2) NewCold Cooperatief U.A a company registered under the laws of the Netherlands (Company Registration: 55703623) whose registered office is at Gravinnen van Nassauboulevard 105, Breda, 4811BN, NL (the "Guarantor").

**Background:**

- (A) Pursuant to the Agreement (as defined below) the Beneficiary has agreed to purchase warehousing and related services from the Obligor.
- (B) In consideration of the Beneficiary entering into the Agreement, the Guarantor has agreed to enter into and deliver to the Beneficiary this Guarantee.
- (C) This Guarantee constitutes an independent and separate obligation and liability of the Guarantor and shall not be interpreted as a suretyship (*poręczenie*) or compensation (*odszkodowanie*) due to the Beneficiary. The Parties enter into this Agreement on the basis of art. 391 of the Polish Civil Code as modified on the basis of the principle of the freedom of contracts (*zasada swobody umów*).

**This Guarantee witnesses as follows:**

**1. Definitions and interpretation**

- 1.1 Except as defined herein, in this Guarantee, capitalised expressions defined in the Agreement and used in this Guarantee shall have the meaning set out in the Agreement:

**"Agreement"** means a warehousing agreement dated \_\_\_\_\_ made between the Beneficiary and the Obligor, as it may from time to time in any way be varied, amended, assigned, supplemented, novated or substituted.

**"Guarantee"** means this guarantee agreement (including any schedule or annexure to it and any document in agreed form) as it may from time to time in any way be varied, amended, assigned, supplemented, novated or substituted.

**"Liability Limit Amount"** means an amount equal to 5,700,000 zł save that such amount shall be automatically increased annually on each anniversary of the Signature Date of the Agreement by reference to the percentage increase in the Consumer Prices Index over the previous 12 months.

**"Obligor"** means **Newcold Poland Operations Sp. z o.o.**, a company registered under the laws of Poland (Company registration: KRS 0000982251, NIP: 5252916066, share capital: PLN 5,000) whose registered office is at Plac Marszałka Józefa Piłsudskiego 1, 00-078 Warsaw.

**"zł"** means the lawful currency of Poland.

**2. Guarantor's Covenants**

- 2.1 In consideration of the Beneficiary entering into the Agreement and subject to clauses 2.2 to 2.4 (inclusive) (i) during any period which the Obligor suffers an Insolvency Event (as defined under the Agreement) and/or (ii) if the Obligor fails to pay any sum of money properly due to the Beneficiary under or pursuant to the Agreement within 9 months of the due date for such payment (each a **"Trigger Event"**), the Guarantor irrevocably guarantees to the Beneficiary



(subject to the foregoing) due and punctual payment by the Obligor of all sums payable by the Obligor under the Agreement to the Beneficiary as they fall due and shall pay to the Beneficiary (or shall procure that the Obligor or another entity nominated by the Guarantor pays) within 10 days of demand any sum of money which the Obligor has failed to pay to the Beneficiary under or pursuant to the Agreement when due (such demand not to be made prior to the occurrence of a Trigger Event).

- 2.2 Notwithstanding any other provision of this Guarantee, the Guarantor's maximum liability under or in connection with this Guarantee shall not exceed the Liability Limit Amount.
- 2.3 The obligations of the Guarantor in this Guarantee, only arise in respect of an undisputed sum of money which the Obligor is liable to pay the Beneficiary, and the Guarantor will not be liable to pay any invoiced amounts which are the subject of a bona fide dispute and which have been notified to the Beneficiary as being in dispute under the terms of the Agreement provided that the Guarantor's obligations in this Guarantee will apply upon resolution of any dispute in respect of a disputed amount (and the Obligor failing to pay such invoice in accordance with the Agreement). The Guarantor may raise all objections and defences the Obligor may have under the Agreement and may assume all such rights of set off, defence, counterclaim, limitation and/or exclusion of liability as the Obligor may have against the Beneficiary pursuant to the Agreement.
- 2.4 The Guarantor's liability under clause 2.1 shall be conditional on the Beneficiary first having made demand in writing for due performance of any sums payable on the Obligor, unless the Obligor ceases to exist or otherwise loses its legal capacity.
- 2.5 The Beneficiary may request one or more payments under this Guarantee within the limits of the Liability Limit Amount.

### 3. **Nature of Guarantor's Obligations**

- 3.1 The obligations of the Guarantor set out herein shall expire at the earlier of (a) the date on which all the Obligor's obligations under the Agreement have been completely fulfilled or (b) the date falling twelve (12) months after the termination or expiry of the Agreement (any of these dates hereinafter referred as the "**Date of Expiry**"). Any claim by the Beneficiary under this Guarantee after the Date of Expiry shall be barred and be unenforceable.
- 3.2 Subject to clause 2, the obligations of the Guarantor under this Guarantee shall not be discharged by any of the following:
  - (i) any amendment to, or any variation, waiver or release of any payment obligation of the Obligor under the Agreement;
  - (ii) any time or indulgence being granted or agreed to be granted to the Obligor in respect of its payment obligations under the Agreement;
  - (iii) the termination of the Agreement;
  - (iv) any breach of any of the Agreement by the Beneficiary;
  - (v) any legal limitation, disability, incapacity or other circumstances relating to the Obligor; or
  - (vi) the assignment or transfer of the Agreement; or and/or
  - (vii) the winding-up, dissolution, administration or reorganisation of the Obligor or any change in its status, function, control or ownership.
- 3.3 This Guarantee shall be in addition to and not in substitution for or derogation of any other rights of, or security held by the Beneficiary in respect of the payment obligations under the Agreement

(whether against or from the Obligor, the Guarantor or any other person) and shall not merge with or otherwise prejudice or affect or be prejudiced or affected by any such other rights or security and may be enforced without first having recourse to such other rights or security now or after the date of this Guarantee held by or available to the Beneficiary.

- 3.4 The Guarantor warrants to the Beneficiary that this Guarantee constitutes valid and binding obligations on the Guarantor and that the Guarantor has full power and authority to enter into and perform its obligations under this Guarantee and has taken all necessary corporate and other actions to approve and authorise the actions contemplated by this Guarantee and neither the entering into nor the performance by it of its obligations under this Guarantee will constitute or result in any breach of any contractual or legal restriction binding on itself or its assets or undertakings.

#### 4. **Waiver**

No failure or delay by the Beneficiary in exercising any right or remedy shall operate as a waiver nor shall any single or partial exercise or waiver of any right or remedy preclude the further exercise of that right or the exercise of any other right or remedy.

#### 5. **Notices**

- 5.1 All notices expressed to be given by a party to this Guarantee shall be in writing and delivered by hand or sent by email, recorded post with confirmation of receipt (*przesyłka polecona za potwierdzeniem odbioru*) or by courier service to the addresses set out in clause 31.3 and shall, subject to clause 31.2 be deemed to have been validly received:

- (i) if delivered by hand, at the time the notice is left at the proper address;
- (ii) if sent by recorded post or other courier service, on the third Business Day after posting; save where the carrier provides written confirmation of at the time of delivery, in which case the time of delivery, specified in such written confirmation; or
- (iii) if sent by email, one hour after completion of transmission by the sender (save where the email receives an automated response that it is undelivered or undeliverable in which event this deeming provision shall not apply).

- 5.2 Any notice which would otherwise be deemed to be given outside the times of 9.30 a.m. and 5.30 p.m. on a Business Day shall be deemed to be given or made at 9.30 a.m. on the next Business Day.

- 5.3 The addresses and email addresses for service of notices are:

- (i) For the Guarantor:
  - (a) FAO: Legal Department, NewCold Cooperatief U.A, Gravinnen van Nassauboulevard 105, 4811 BN Breda, Netherlands;
  - (b) legal.hq@newcold.com, info@newcold.com and info.poland@newcold.com;
- (i) For the Beneficiary:
  - (a) FAO: Nowel sp.z o.o. 05-120 Legionowo, ul. Szarych Szeregów 11, Poland, for the attention of: the management board;
  - (b) michalzajeziwski@piekarnianowakowski.pl.

Either party may change such details by giving the other notice in accordance with this clause 5.

5.4 A party shall not attempt to prevent or delay the service on it of a notice connected with this Guarantee.

## 6. **Miscellaneous**

6.1 No variation of this Guarantee shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

6.2 This parties to this Guarantee do not intend that there be any third party beneficiaries to this Guarantee.

6.3 This Guarantee constitutes the entire agreement between the parties in respect of its subject matter and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

6.4 Each of the provisions of this Guarantee is severable and distinct from the others and if at any time one or more of such provisions is or becomes invalid, illegal or unenforceable, the legality, validity and enforceability of its remaining provisions shall not in any way be affected or impaired by it.

6.5 Neither party may assign all or any of its rights and benefits under this Guarantee without the prior written consent of the other party. However, the Beneficiary may assign its rights and benefits under this Guarantee in accordance with clause of 29.7 of the Agreement applying accordingly.

6.6 This Guarantee may be executed in any number of counterparts each of which shall be an original and all of such counterparts taken together shall be deemed to constitute one instrument.

## 7. **Applicable law and jurisdiction**

7.1 This Guarantee and any dispute, claim or obligation (whether contractual or non-contractual) arising out of or in connection with it, its subject matter or formation shall be governed by the laws of Poland. The parties each submit to the exclusive jurisdiction of the Courts of Warsaw, Poland, applicable for the Śródmieście district.

**In witness** this Guarantee has been executed and is delivered and takes effect on the date stated at the beginning of it.

**Executed** )  
by **Nowel Sp. z o.o.** )  
acting by: )

Director

**Executed**  
by **NewCold Cooperatief U.A**  
acting by:

)  
)  
)

Director

Director/Secretary

Director

## Appendix 1

1. Investment Information Card (KIP)
2. Environmental Impact Decision (EIA).
3. Fire Expert Opinion
4. Statement by Provincial Fire Department
5. Map for design purposes
6. Extract from local and valid Zoning Plan
7. Connection conditions (especially granted by PKP Energetyka due to PV solar)
8. Water permit
9. Statement by owner of road for new traffic organization (fire entrance converted to leaving gate)
10. Building Permit Decision
11. Change Building Permit
12. During construction
  - (a) Application for registration site log book (by GC)
  - (b) Works commencement notification to Building Authority (by GC)
  - (c) Application for geodesy dep for initial benchmarks and mark out the building by GC)
  - (d) Technical Inspection Decision (UDT) for elevator (by GC or NewCold)
  - (e) Other by GC related with temporary activities (wastage management, fire road and hydrant interruption, temporary traffic organization due to modification of existing fire entrance)
13. After construction completion (by GC):
  - (a) As-built map
  - (b) Fire Department Statement
  - (c) Sanitary Department Statement
  - (d) Occupancy Decision granted by local Building Authority

Duly authorised for and on behalf of **Newcold Poland Operations Sp. z o.o.**

Signature:.....

Print name:.....

Date:.....

Duly authorised for and on behalf of **Nowel Sp. z o.o**

Signature:.....

Print name:.....

Date:.....