



**AGREEMENT**  
**ON FACTORING SERVICES № -----**

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**Fresco Modo Limited**, hereinafter referred to as "**Factor**", "**Factoring Company**", represented by CEO Konstantin Balan, acting on the basis of the Charter, on the one hand, and

\_\_\_\_\_, hereinafter referred to as **the "Client"**, represented by Director \_\_\_\_\_, acting on the basis of the Charter, on the other hand,

collectively referred to as the "**Parties**", and separately as the "**Party**", have concluded this agreement (hereinafter referred to as the "Agreement") on the following:

### **1. DEFINITIONS**

**Acceptance of the Register** - is the signing by an authorized person of the Factoring Company of the Register transferred by the Client in accordance with the terms of the Agreement, confirming the fact that the Factoring Company has made a positive decision on Financing Monetary Claims specified in the Register.

**The date of payment under the Agreement** - is the date on which the Monetary Claim must be paid under the terms of the Agreement.

**The date of payment of the Monetary Claim** - is the date when the Client fulfills in full the obligation to pay the Factoring Company for the Monetary Claim transferred to the Factoring Company as a result of the Financing carried out.

**Financing Date** – the date on which the Factoring Company executed the Client's order to pay the corresponding Monetary Claim to the Supplier.

**Monetary claim** - is an obligation of the Client to the Supplier, expressed in the currency of the Agreement and arising from the Agreement, to pay for the goods supplied by the Supplier/work performed/services provided.

**Limit loading** - is the amount of Monetary Claims executed by the Factoring Company on behalf of the Client. When determining the Loading Limit, Monetary claims fulfilled by the Client in favor of the Factoring Company in accordance with the terms of the Agreement are not taken into account.

**Contract** – a contract specified in the Financing Parameters (Appendix No. 1 to the Agreement) concluded between the Client and the Supplier, providing the supply of goods by the Supplier in favor of the Client, the performance of works by the Supplier or the provision of services by the Supplier.

**Supplier** - is a legal entity that has concluded a Contract with the Client and, within the framework of this Agreement, delivers goods to the Client/provision of services/performance of works. The execution of the Agreement is carried out on behalf of the Client. At the same time, payment obligations are carried out by the Factoring Company on behalf of the Client on the basis of the Agreement.

**Financing limit** - is the maximum possible Limit loading.

**Primary documents** – documents determining the validity and amount of the Monetary Claim, attached to the Contract on the supply of goods/provision of services/performance of works.

**The Register** - is a list of Monetary Claims, that contains their identifying characteristics, which the Client instructs the Factoring Company to fulfill in favor of the relevant Client. The Register is presented in the form of Appendix No. 2 or Appendix No. 2a to the Agreement.

**Factoring services** – accounting of Suppliers' Monetary claims to the Client, execution of Client's orders to pay Suppliers' Monetary Claims, financing with subsequent presentation of Monetary Claims to the Client, as well as other services related to Monetary Claims.

**Financing** - is the transfer of funds by the Factoring Company to the Client under the terms of the Agreement to fulfill the Suppliers' Monetary Requirements to the Client specified in the relevant Register.

## **2. SUBJECT OF THE AGREEMENT**

- 2.1. In accordance with the Agreement, the Factoring Company undertakes, for remuneration, on behalf of the Client on its own behalf, but at the expense of the Client, to fulfill (Finance) Monetary Claims to Suppliers, and the Client undertakes to reimburse the Factoring Company for all expenses incurred (to fulfill to the Factoring Company all Monetary Claims financed by the Factoring Company) and pay remuneration to the Factoring Company.
- 2.2. The Factoring company also undertakes to keep records of funded Monetary Claims.

## **3. LIMITS SETTING**

- 3.1. The Factor sets the Financing Limit based on its own calculations.
- 3.2. In order to establish/change the Financing Limit, the Client provides the Factoring company with the following documents, drawn up in accordance with the requirements of current legislation or business practices:
  - 3.2.1. a copy of the Contract with each Supplier, certified by the Client with all appendices and additions (The Contract must be drawn up in English, if the Contract is drawn up in another language, at the request of government agencies or banks, the Contract must be provided in \_\_\_\_\_, indicating a certified translator);
  - 3.2.2. a copy of the Client's financial statements certified by the Client (balance sheet and financial results report), which must have a mark on their receipt by the tax authority at the place of state registration of the Client, or a document must be submitted, confirming receipt by the tax authority of the statements via electronic communication channels or by mail;
  - 3.2.3. the Client's certified transcript of the Client's debt to the Supplier;
  - 3.2.4. other documents that may be requested by the Factoring Company to determine the terms of performance of obligations.
- 3.3. The Factoring company sets the Financing Limit based on the analysis of the above-mentioned documents provided by the Client and other information at the disposal of the Factoring company. The financing limit is set in the currency of the Agreement.

## **4. FINANCING**

- 4.1. Financing of Monetary Claims is carried out on the basis of the Register of Monetary Claims (Appendix No. 2/Appendix No. 2a to the Agreement) – hereinafter referred to as the "Register".
  - 4.1.1. Depending on the originals of the primary documents specified in the Register of Monetary Claims provided by the Client to the Factoring company, it is issued in the form of Appendix No. 2 or No. 2a.

- 4.1.2. If the originals of the primary documents specified in the Register of Monetary Claims are provided, it is issued in the form of Appendix No. 2 and signed by the Client and the Factoring company.
  - 4.1.3. If the originals of the primary documents specified in the Register of Monetary Claims are provided at the request of the Factoring company, it is issued in the form of Appendix No. 2a and signed by the Client, the Factoring company, and the Supplier. In this case, the Supplier confirms the existence of the specified monetary claims and their validity in accordance with the parameters of Monetary Claims specified in the Register.
- 4.2. The Register signed by the Parties is the Client's order to fulfill the Monetary Requirements specified in it.
- 4.3. When fulfilling Monetary Claims, the Factoring company relies on the data contained in the relevant Register.
- 4.4. The formation of the Registry is carried out by the Client.
- 4.5. The Register generated in the form of Appendix No. 2 in 2 (two) copies, and in the form of Appendix No. 2a in 3 (three) copies is sent by the Client to the Factoring company for its subsequent Acceptance.
- 4.6. Upon receipt of the Register from the Client, the Factoring company decides on its Acceptance. The decision must be made within 3 (three) business days from the date of receipt of the Register.
- 4.7. When the Factoring company decides to Accept the Register, its original in 2 (two) copies (or in 3 (three) copies according to clause 4.5 of the Agreement) is signed by the Factoring company, one of which is subsequently transferred to the Client and the second, if necessary, to the Supplier.
- 4.8. The signatures of the Parties on the Register are certified by the seals of the Parties.
- 4.9. The Factoring company has the right to refuse to accept the Register by notifying the Client within 2 (two) business days from the date of receipt of the Register. The silence of the Factor, as well as the delay by the Factoring company of the notification period specified in this paragraph for any reason, does not constitute Acceptance.
- 4.10. In case of Acceptance of the Registry by Factoring company, the Financing of the Monetary Claims specified in it is carried out on the date specified in the Registry by transferring funds to the Supplier's current account specified in the Financing Parameters (Appendix No. 1 to the Agreement).
- 4.11. The Factoring company Financing obligations are considered fulfilled from the moment funds are credited to the Suppliers' account. The date of crediting funds to the Suppliers' account is considered the Date of Financing.
- 4.12. If the Factoring company fulfills the Monetary Claims specified in the Register to the Supplier, the Monetary Claims shall be transferred to the Factoring company. Upon transfer (assignment) of obligations to fulfill the Client's order under the Agreement by Factoring company to another person, the right to demand payment of the Monetary Claim remains with the Factoring company.
- 4.13. The Client undertakes to pay for the assigned (financed) monetary claims based on the invoice correspondingly issued by A Factor. The invoice amount is formed according to the Registry. In case of a change in the exchange rate indicated in the Register on the date of execution of the Client's order by the Factor, the amount of financing may be changed. In this case, the Client confirms and agrees to change the amount of financing by the Factoring Company and undertakes to pay the Monetary Claims financed by the Factor, taking into account the changed currency exchange rate.
- 4.14. The Client's obligations to the Factoring Company for the payment of financed Monetary Claims are considered fulfilled from the moment the amount of such Monetary Claims is credited in full to the account of the bank of the Factoring Company specified in the Agreement.
- 4.15. The Factoring Company has the right not to carry out/suspend financing by sending a corresponding written notification to the Client by e-mail, followed by sending a corresponding notification in writing to the Client within 2 (two) business days, in case the

Factoring Company identifies negative information about the Client or Supplier that, in the opinion of the Factoring Company, can provide negative impact on the Client's fulfillment of obligations under this Agreement or under the Contract.

## **5. RIGHTS, OBLIGATIONS, GUARANTEES AND ASSURANCES OF THE CLIENT.**

- 5.1. The Client undertakes to give the Factoring Company an order to pay only those Monetary Claims in respect of which there are no disputes and disagreements with the Supplier in connection with claims regarding non-fulfillment or improper fulfillment of obligations under the Contract.
- 5.2. The Client undertakes to pay to the Factoring Company the financed Monetary Claims in the manner and within the time limits established by the Agreement.
- 5.3. The Client is obliged to pay Remuneration to the Factoring Company in the manner and within the time limits established by the Agreement.
- 5.4. No later than the date of sending the first Register for a specific Supplier to the Factoring Company for Acceptance, the Client is obliged to notify such Client in writing of the need to accept the fulfillment of Monetary Claims under the Contract by the Factoring Company, or another person specified by the Factoring Company, in the form of notification according to Appendix No. 3 to the Agreement and provide the Factoring Company with a copy of such notification signed by the Supplier.
- 5.5. No later than the date of sending the first Register for a specific Client to the Factoring Company for Acceptance, the Client is obliged to send the Client's Questionnaire and the Client's Questionnaire to the Factoring Company in the form established by the Factoring Company (with annual confirmation of the data specified in them), as well as documents confirming the information contained in the Questionnaires.
- 5.6. Within 5 (Five) business days from the date of sending the Act on the Provision of Services to the Factoring Company (hereinafter referred to as the "Act"), the Client undertakes to sign it and return 1 (one) copy to the Factoring Company or within the same period send in written his reasoned objections. If within the above-mentioned period the objection from the Client or a signed copy of the Act is not received by the Factoring Company, the Act is considered signed by the Client, and the services of the Factoring Company are accepted by the Client without objections.
- 5.7. The Client undertakes to sign the acts of reconciliation of mutual settlements provided by the Factoring Company within 5 (Five) working days from the moment of their receipt or to provide a written reasoned refusal to sign them within the same period.
- 5.8. The Client undertakes to reimburse the Factoring Company for all reasonable and documented expenses incurred by the Factoring Company for the execution of the Client's order.
- 5.9. The Client has the right at any time during the term of the Agreement to contact the Factoring Company with a request to change the Financing Limit.
- 5.10. The Client hereby assures the Factoring Company and guarantees that on the date of conclusion of the Agreement, the date of any Financing under the Agreement:
  - 5.10.1. The Client is a duly established legal entity acting in accordance with the law;
  - 5.10.2. The Client has followed the corporate procedures necessary for concluding the Agreement;
  - 5.10.3. The Agreement on behalf of the Client is signed by a person who is duly authorized to perform such actions;
  - 5.10.4. the conclusion of the Agreement and the fulfillment of its terms will not violate and will not lead to a violation of the constituent documents, any provision of the legislation of the \_\_\_\_\_ or any agreement or document to which the Client and/or its participants are a party;
  - 5.10.5. there are no circumstances that may limit, prohibit or otherwise have a significant adverse effect on the Client's performance of obligations under the Agreement.
- 5.11. If, when executing the Client's order to pay a Monetary Claim, the Factoring Company incur costs in the form of exchange rate differences, the Client undertakes to pay them at the request of the Factoring Company within 5 (five) business days from the date of receipt of such claim.

## **6. RIGHTS AND OBLIGATIONS OF THE FACTORING COMPANY**

- 6.1. The Factoring Company provides Financing for each Monetary Claim included in the Register within the Financing Limit on the date specified in the Register and accepted by the Factoring Company, using the Supplier's details specified in Appendix No. 1 to the Agreement.
- 6.2. When Financing, the Factoring Company indicates the purpose of the payment: "Payment under the contract \_\_\_\_\_ according to the Registry \_\_\_\_\_" (name, number and date of the Contract and Registry). It is allowed to use a different wording that allows to determine the Monetary Requirements that the Client has instructed the Factoring Company to fulfill.
- 6.3. If the Financing Limit is insufficient, the Factoring Company will not partially finance the Monetary Claim. Within the Funding Limit, a Monetary claim may be partially funded.
- 6.4. If it is necessary to change the details of the Supplier specified in Appendix No. 1 to the Agreement, the Parties conclude an appropriate supplementary agreement to the Agreement. Payments made by the Factoring Company using the previous details before the date of conclusion of such additional agreement are considered to have been fulfilled properly.
- 6.5. The Factoring Company, monthly, no later than the 5th business day of the month following the month in which the Client paid the Factoring Company for the funded Monetary Claims in full, provides the Client with a signed Act in 2 (two) copies, drawn up in the form of Appendix No. 4 to the Agreement.
- 6.6. The Factoring Company undertakes to sign the acts of reconciliation of mutual settlements provided by the Client within 5 (Five) business days from the date of their receipt or to provide a written reasoned refusal to sign them within the same period.
- 6.7. At the request of the Client, the Factoring Company sends him all the information available to him regarding Financing.
- 6.8. If any amount paid or collected to repay the debt owed to the Factoring Company under the Agreement turns out to be less than the amount owed to the Factoring Company to repay the Client's debt in full, then such amount is used in the following order:
  - 6.8.1. first, to repay the debt on payment of Monetary Claims financed by Factoring company;
  - 6.8.2. secondly, for the payment of Remuneration to the Factoring Company;
  - 6.8.3. thirdly, to repay the costs of the Factoring Company for obtaining execution;
  - 6.8.4. thirdly, to repay the costs of the Factoring Company for obtaining execution of obligations;
  - 6.8.5. fourth, to pay the amounts of the penalty (fine, penalty fee);
  - 6.8.6. fifth, for the payment of other amounts owed to the Factoring Company under the Agreement.
- 6.9. The Factoring Company reserves the right to change the order of repayment of the Client's debt unilaterally.
- 6.10. The Factoring Company has the right to refuse to execute the Client's orders and not to finance Monetary Claims in the event of:
  - 6.10.1. non-fulfillment or improper fulfillment by the Client of his obligations under the Agreement;
  - 6.10.2. lack of a free Financing Limit;
  - 6.10.3. in other cases, stipulated by the Agreement or the current legislation.
- 6.11. The Factoring Company has the right, before the expiration of the date of payment by the Client of the monetary claim, to require the Client to repay the debt on payment of the financed Monetary Claims and payment of Remuneration due to the Factoring Company and/or terminate the Agreement unilaterally if the Client violates any obligations provided for in the Agreement.
- 6.12. In case of non-fulfillment or improper fulfillment by the Client of obligations under the Agreement, the Factoring Company has the right to terminate this Agreement unilaterally by unilaterally refusing to fulfill it by sending the Client a corresponding written notification.

Upon termination of the Agreement, the Client's obligations do not terminate and remain in effect until they are properly fulfilled by the Client within the time limits provided for in the Agreement.

- 6.13. The Factoring Company has the right to refuse to execute the Client's orders to finance Monetary Claims to all or certain Suppliers.

## **7. FACTORING COMPANY REWARD**

- 7.1. For the provision of the services specified in clause 2.1 of the Agreement, the Client pays remuneration to the Factoring Company (hereinafter referred to as "Remuneration").
- 7.2. The Remuneration consists of the amount of the following Commissions:
- 7.2.1. **Commission** – the commission charged for processing documents (Registry) in the form of a fixed fee in the amount of 150 (one hundred fifty) euro per Register.
- 7.3. The remuneration provided for in clause 7.2 of the General Agreement is indicated without VAT. VAT at current rates is charged additionally for the amount of Remuneration calculated in accordance with the terms of the General Agreement.
- 7.4. The date of fulfillment of the Client's obligations to pay Remuneration is the date of crediting funds to the bank account of the Factoring Company.
- 7.5. The Factoring Company has the right to unilaterally change the amount of Remuneration. The Factoring Company notifies the Client in writing of the change in the amount of Remuneration no later than 10 (Ten) calendar days before the date of such change. If the Client does not agree with the new amount of Remuneration, he is obliged to pay the Monetary Claims financed by the Factoring Company and unpaid by the Client within 3 (Three) business days from the date of receipt of the above notification by the Factoring Company.
- 7.6. The new Remuneration Rate applies to the services that will be provided by the Factoring Company to the Client according to the Registers funded after the introduction of such a new rate.
- 7.7. Within the time limits provided for by the current legislation of the \_\_\_\_\_, the Factoring Company is obliged to provide the Client with an invoice with the allocation of VAT accrued on the amount of Remuneration.

## **8. RESPONSIBILITY OF THE PARTIES**

- 8.1. For non-fulfillment or improper fulfillment of obligations under the Agreement, the Parties are responsible in accordance with the current legislation of the \_\_\_\_\_.
- 8.2. In case of late payment by the Client of any amounts owed to the Factoring Company under the Agreement, the Factoring Company has the right to demand, and the Client is obliged to pay a penalty in the amount of 0.1% of the amount of the overdue obligation of the Client for each day of delay in fulfilling the obligation, but not more than 20% of the amount of the overdue obligation.
- 8.3. If the Supplier or contractor, on behalf of the Client, did not accept the fulfillment of a Monetary Claim from the Factoring Company or the funds transferred by the Factoring Company were returned by the Supplier for other reasons, the Client undertakes to pay the Factoring Company interest for the use of funds at the rate of 0.1% of the amount of funds returned to the Factoring Company for each day starting from the date following the date of transfer of funds by the Factoring Company and till the date of crediting the funds returned to the Factoring Company to the account, inclusive, but not more than 20% of the amount of funds returned to the Factoring Company.

## **9. REASSIGNMENT OF CONTRACTUAL CLAIMS**

- 9.1. The Client's rights of claim to the Factoring Company under the Agreement may be assigned by the Client in favor of a third party only with the prior written consent of the Factoring Company.

- 9.2. The Factor shall be entitled to engage third parties and transfer to them its powers under the Agreement in terms of execution of the Client's order (financing). In this case the Factoring Company shall be liable for fulfillment of obligations by third parties.

## **10. FORCE MAJEURE**

- 10.1. The Parties are released from liability for partial or complete non-fulfillment of their obligations under the Agreement, if such non-fulfillment is caused by the action of extraordinary and unavoidable circumstances under these conditions (force majeure). Such circumstances, in particular, include: flood, fire, earthquake, military operations, as well as the establishment of a postponement of obligations (moratorium) on the basis of the law of the \_\_\_\_\_.
- 10.2. Upon the occurrence of the circumstances specified in this Section, the Party undertakes to notify the other Party in writing about them no later than 3 (three) business days. The notification must contain information about the nature of the circumstances, an assessment of their impact on the fulfillment of obligations under this Agreement and be confirmed by the competent public authority.

## **11. DISPUTE RESOLUTION**

- 11.1. The Agreement is governed and interpreted in accordance with the laws of the \_\_\_\_\_.
- 11.2. All disputes, disagreements or claims arising out of or in connection with the Agreement shall be settled by the Parties through negotiations. In the absence of agreement, the dispute between the Parties is subject to consideration at The \_\_\_\_\_.
- 11.3. The dispute may be referred to the specified court only after compliance with the claim procedure. The claim procedure is considered to be complied with after 10 (ten) calendar days from the date of sending the claim (claim) By the sending Party, regardless of whether the claim (claim) has been received by the other Party.

## **12. FINAL PROVISIONS**

- 12.1. The Agreement comes into force from the date of its signing by the Parties and is valid until its termination.
- 12.2. The Agreement may be terminated by agreement of the Parties or unilaterally on the grounds provided for in the Agreement or the legislation of the \_\_\_\_\_.
- 12.3. The Agreement may be terminated by one of the Parties with a written warning from the other Party no later than 15 (fifteen) calendar days before the date of termination.
- 12.4. Upon termination of the Agreement, the Parties are obliged to make all calculations in full for previously financed Monetary Claims, as well as other calculations under the Agreement until its termination.
- 12.5. All additions and amendments to the Agreement are considered valid if they are made in writing and signed by authorized representatives of the Parties, unless otherwise provided by the Agreement.
- 12.6. All notifications, requests and demands of the Parties are valid if they are made in writing signed by an authorized person, and sent (transmitted) according to the details specified in the Agreement in one of the following ways:
- 12.6.1 by handing them over (including by courier) against receipt:
- 12.6.2. by sending a postal item with a declared value;
- 12.6.3. through the use of courier/express mail services;
- 12.6.4. by e-mail
- 12.7. The moment of receipt of the Notification or any other message and documents sent by the Parties to each other will be considered:
- 12.7.1. upon delivery (including by courier) against written receipt, the date of marking by the receiving Party of receipt of the Notification (message, documents) or the date of drawing up by the sending party of the act of refusal to affix such a mark;
- 12.7.2. when using postal communication or using courier mail/express mail services, the date of delivery of the postal item to the receiving Party. In case of refusal

of the receiving Party to receive the postal item, or in case of absence of the addressee at the address specified in Section 13 of the Agreement, or in case of absence and/or incorrect indication of the address in Section 13 of the Agreement, as well as in other circumstances precluding the possibility of the postal operator fulfilling the obligations to deliver and deliver the postal item to the receiving Party, the date of receipt of the Notification (message, documents) is considered to be the date of its sending by the Party sending the Notification (message, documents);

- 12.7.3. when sending by e-mail, a message is considered delivered even if it was received by the Party to whom it was sent, but due to circumstances depending on it, it was not read or the Party did not familiarize itself with it.
- 12.8. Unless otherwise provided by the Agreement or an additional agreement thereto, in order to fulfill the Agreement, the Parties have the right to provide each other with the necessary information and documents (except for Notification in the form of Appendix No. 3 to the Agreement) by fax and/or e-mail specified in the Agreement. If the document was provided by fax and/or e-mail, the Party providing it is obliged to provide the original or a duly certified copy of the document no later than 3 (three) working days from the date of transmission of the document by fax or e-mail, in case of a discrepancy in the wording of the document transmitted by fax or by e-mail and the submitted original copy of the relevant document, the content of the original takes precedence.  
The documents submitted to the Factoring Company must be in English. If a document is submitted to the Factoring Company in a different language, it must be issued with a notarized translation into English. If necessary, at the request of government agencies or banks, documents must be provided with an \_\_\_\_\_, with the indication of a certified translator and notarized.
- 12.9. All copies of documents to be transferred from the Client to the Factoring Company, with the exception of notarized ones, must be certified in the following order: the correctness of the copy of the document is evidenced by the signature of the head or an authorized official and a seal. Copies of documents certified by an authorized official are accompanied by a power of attorney or other relevant document (charter, regulations), if it was not provided earlier, confirming the authority of the person to certify documents held by this organization. A copy of a document drawn up on more than one sheet must be stitched and numbered.
- 12.10. The invalidity of any of the provisions of the Agreement does not entail the invalidity of the remaining provisions of the Agreement.
- 12.11. All terms of the Agreement are confidential and are not subject to disclosure. Each of the Parties undertakes obligations to preserve the confidentiality of information received from the other Party in connection with the performance of the Agreement.
- 12.12. In cases and in accordance with the procedure determined by the legislation of the \_\_\_\_\_, the information to be disclosed does not belong to the category of confidential within the meaning of this Agreement.
- 12.13. All annexes and additional agreements to the Agreement are integral parts of the Agreement.
- 12.14. The Agreement is drawn up in two copies, each of which is in Russian and English, having the same legal force - one copy for the Factoring Company, one for the Client. The Parties have the right to use any language version of the Agreement that is convenient for doing business.

FACTOR:	CLIENT:
<b>Fresco Modo Limited</b>  71 Kensington Drive, Taradale, Napier, 4112 ,New Zealand	<div>_____</div> <div>Account name</div>



Beneficiary Name	Fresco Modo Limited		
Beneficiary Bank		Bank name:	
SWIFT		IBAN	
Bank address		SWIFT	
USD		Account location	
EUR		Bank address	
CNY/USD/EUR		Postal Code	
On behalf of the Factoring Company:		On behalf of the Client:	
CEO		Director	
		_____ //	
_____ / Mark Allardice /		SEAL	
SEAL			