

MASTEROAST COFFEE CO. LIMITED

SCHEDULE 2

Please study these terms and conditions as the placing of an order is held to be in acceptance of them.

The customer's attention is drawn in particular to the provisions of clause 9.

1. INTERPRETATION AND EFFECT

1.1 In these Conditions the following terms shall have the following meanings:

"Company" means Masteroast Coffee Co. Limited (C.R.N. 01746071) whose registered office is at Plantation House, Newark Road, Peterborough, PE1 5UA.

"Conditions" means the terms and conditions of trading set out in this document.

"Contract" means a contract for the supply of Goods made between the Company and a Customer to which these Conditions apply.

"Customer" means the person, firm or company whose order is accepted by the Company

"Force Majeure Event" means an event or circumstance beyond a party's reasonable control.

"Goods" means the goods (or any part or instalment of them) set out in the Customer's Order.

"Order" means an order given orally or in writing using an acceptable form of communication (such as telephone, letter, facsimile) and in both cases given by an authorised representative of the Customer. In the absence of manifest evidence to the contrary the Company shall be entitled to assume that the person giving the order is an authorised representative of the Customer.

"Specification" means any specification for the Goods, including any related plans, drawings design name and design details for bespoke packaging requested by the Customer that is agreed in writing by the Customer and the Company.

"Supplemental Stock Agreement" means an agreement signed by an authorized representative of the Company and an authorised representative of the Customer setting out some or all of the following information: product type, elements of the Specification and Expected Monthly Usage, Initial Order Quantity and Future Monthly Order Quantity ("Future MOQ").

1.2 Singular words include the plural and vice versa and masculine includes the feminine and vice versa. The headings in these Conditions are for convenience only and shall not affect their interpretation.

1.3 All previous representations are to be regarded as superseded by these Conditions and are not to be seen as forming part of the Contract unless confirmed in writing by a duly authorised representative of the Company. The Customer acknowledges that it has not relied on and (save in the case of any fraudulent misrepresentation) waives any claim for breach of such representations which have not been so confirmed in writing.

2. FORMATION OF CONTRACT

2.1 The Conditions are deemed to be incorporated into and to form part of any Contract between the Company and the Customer. All Orders accepted by the Company are subject to the Conditions. In the event of the Customer's official order forms or other documents containing special conditions, it is a term and condition of any Contract between the Company and the Customer that such Customer's conditions are binding only insofar as they are not at variance with the Contract incorporating these Conditions.

- 2.2 The Customer is responsible for ensuring that the terms of the Order and any applicable Specification submitted by the Customer are complete and accurate.
- 2.3 No Contract for the sale and purchase of Goods shall come into existence until the Order (however given) is accepted by the Company.
- 2.4 No Order which has been accepted by the Company may be cancelled by the Customer except with the agreement in writing of the Company and on terms that the Customer shall indemnify the Company in full and on demand against all loss (including loss of profit) costs (including the cost of all labour, packaging and materials used) damages charges and expenses incurred by the Company as a result of cancellation. The Customer's attention is drawn to the Supplemental Stock Agreement and to clause 3.4 of these Conditions.
- 2.5 Any samples, descriptive matter or advertising produced by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods referred to in them. They shall not form part of the Contract nor have any contractual force. Any typographical, written, clerical or other error or omission in any literature, quotation, price list, invoice or other document or information issued by the Company shall be subject to correction without liability on the part of the Company.
- 2.6 No variation or amendment of the Contract or oral promise or commitment related to it shall be valid unless in writing and signed by or on behalf of both parties

3. GOODS

- 3.1 To the extent that the Goods are to be manufactured in accordance with a Specification supplied by the Customer, the Customer shall indemnify the Company against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by the Company in connection with:
 - 3.1.1 any claim made against the Company for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Company's use of the Specification;
 - 3.1.2 any claim made against the Company by a third party arising out of or in connection with any claim, description or representation made on the packaging being misleading or incorrect in conjunction with the product as stated in the Order.

This clause 3.1 shall survive termination of the Contract.

- 3.2 The Company reserves the right to make alterations to the design, appearance and recipe and/or the packaging of the Goods. Where such alterations are, in the reasonable opinion of the Company, likely to be material, the Company shall give the Customer prior notice of such alterations.
- 3.3 The Company reserves the right to amend the Specification if required by any applicable statutory or regulatory requirements.
- 3.4 The Customer must enter into a Supplemental Stock Agreement with the Company before the Company will process orders for Goods to be sold subject to a Specification that reconstitutes the supply of bespoke packaging. The Customer acknowledges that on signing a Supplemental Stock Agreement the Customer shall become liable to the Company to pay within 28 days of the date of the Company's invoice:
 - 3.4.1 the costs incurred by the Company for purchasing and producing bespoke packaging and products for Goods at such Initial Order Quantity, Expected Monthly Usage and Future Monthly Ordering Quantity ("Future MOQ") as set out in the Supplemental Stock Agreement;

3.4.2 the costs incurred by the Company on the Customer seeking an amendment to a Specification, including for the avoidance of doubt any packaging or product purchased prior to the requested amendments which do not meet the amended Specification requested together with the costs of any product and packaging incurred by the Company to meet the Initial Monthly Order Quantity and Future Monthly Order Quantity ("Future MOQ") under any such amended Specification.

3.5 The Customer agrees to notify the Company in writing of any potential changes to the Specifications at the earliest opportunity.

3.6 Having entered into a Supplemental Stock Agreement with the Customer, the Company reserves the right to raise an invoice at cost price to the Customer for packaging and product purchased by the Company in anticipation of Orders if such packaging and product has not been subject of an Order by the Customer for a consecutive period of 2 months. The Customer shall pay such invoice within 7 days of the date of the invoice. Upon payment of the respective invoice the Customer shall collect such packaging and product from the Company's premises at a time and date agreed between the parties and in any event within 30 days of the date of the invoice. The Company reserves the right to charge the Customer for the storage of any product and packaging which has not been collected by the Customer within 30 days of the invoice.

4. DELIVERY

4.1 The Goods are delivered to the Customer when the Company makes them available to the Customer or to any agent of the Customer or to any carrier (who shall be the Company's agent whoever pays its charges) at the Company's premises or other delivery point agreed by the Company.

4.2 Risk in the Goods passes when they are delivered in accordance with clause 4.1

4.3 The Company may at its discretion deliver the Goods by instalments in any sequence.

4.4 Where the Goods are delivered by instalments no default or failure by the Company in respect of any one or more instalments shall vitiate the Contract in respect of the Goods previously delivered or in respect of undelivered Goods.

4.5 In the event of short delivery or over delivery the Customer shall not be entitled to reject the Goods or to treat the Contract as repudiated and shall notify the Company of the short delivery or over delivery at the time of delivery or as soon as possible thereafter. The Customer shall provide the Company reasonable access to the Goods to correct any mistake in delivery. The Customer must examine the Goods on receipt and sign all delivery notes at the time of delivery or at the earliest opportunity thereafter. The signing of delivery notes or the provision of the Customer's own goods received notes to the Company will constitute acceptance of the Goods delivered.

4.6 Any date quoted by the Company for the delivery of Goods is approximate only and shall not form part of the Contract. The Customer acknowledges that in the performance expected of the Company no regard has been paid to any quoted delivery dates.

4.7 If the Customer fails:

4.7.1 to take delivery of the Goods or any part of them on the due date; and

4.7.2 to provide any instructions or documents required to enable the Goods to be delivered on the due date, the Company may on giving written notice to the Customer store or arrange for the storage of the Goods, and on service of the notice:

(a) risk in the Goods shall pass to the Customer;

(b) delivery of the Goods shall be deemed to have taken place; and

(c) the Customer shall pay to the Company all costs and expenses including storage and any redelivery and insurance charges arising from its failure.

4.8 The Company shall not be liable for any penalty loss injury damage or expense arising from any delay or failure in delivery or performance from any cause at all nor shall any such delay or failure entitle the Customer to refuse to accept any delivery or performance of or repudiate the Contract.

4.9 The quantity of any consignment of Goods as recorded by the Company on despatch from the Company's premises shall be deemed to be conclusive evidence of the quantity received by the Customer on delivery unless the Customer provides conclusive evidence proving the contrary.

5. CLAIMS

5.1 Notification in writing of any non-arrival of Goods must be received by the Company within 2 days of the date of the invoice.

5.2 The Company warrants that on delivery the Goods shall conform in all material respects with their description and any applicable Specification.

5.3 Subject to clause 5.4, if:

5.3.1 the Customer gives notice in writing to the Company within 3 days of delivery that some or all of the Goods do not comply with the warranty set out in clause 5, or that the Goods are damaged;

5.3.2 the Company is given a reasonable opportunity of examining such Goods; and

5.3.3 the Customer (if asked to do so by the Company) returns such Goods to the Company's place of business by such means as the Company reasonably specifies together with details of the consignment in which the Goods were contained,

the Company shall, at its option replace the defective Goods, or refund the price of the defective Goods in full.

5.4 The Company shall not be liable for the Goods' failure to comply with the warranty set out in clause 5 in any of the following events:

5.4.1 the Customer makes any further use of such Goods after giving notice in accordance with clause 5.3;

5.4.2 the defect arises because the Customer failed to follow the Company's oral or written instructions as to the storage and use of the Goods or (if there are none) good trade practice regarding the same;

5.4.3 the defect arises as a result of the Company following any drawing, design or Specification supplied by the Customer;

5.4.4 the defect arises after delivery or as a result of, wilful damage, negligence, or abnormal storage or working conditions; or

5.4.5 the Customer fails to follow the procedure set out in clause 5.3.

5.5 Except as provided in this clause 5, the Company shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.2.

5.6 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

5.7 These Conditions shall apply to any replacement Goods supplied by the Company.

6. TITLE AND RISK

6.1 The risk in the Goods shall pass to the Customer on completion of delivery.

6.2 Title to the Goods shall not pass to the Customer until the amount due under the invoice for them (including interest and costs) has been paid in full.

- 6.3 Until title to the Goods has passed to the Customer, the Customer shall:
- 6.3.1 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Company's property;
 - 6.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - 6.3.3 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
 - 6.3.4 notify the Company immediately if it becomes subject to any of the events listed in clause 11.1.2; and
 - 6.3.5 give the Company such information relating to the Goods as the Company may require from time to time.
- 6.4 Subject to clause 6.5, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Company receives payment for the Goods. However, if the Customer resells the Goods before that time:
- 6.4.1 it does so as principal and not as the Company's agent; and
 - 6.4.2 title to the Goods shall pass from the Company to the Customer immediately before the time at which resale by the Customer occurs.
- 6.5 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 11.1.2, then, without limiting any other right or remedy the Company may have:
- 6.5.1 the Customer's right to resell the Goods or use them in the ordinary course of its business ceases immediately; and
 - 6.5.2 the Company may at any time:
 - (a) require the Customer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product; and
 - (b) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

7. PRICE AND PAYMENT

- 7.1 All prices quoted by the Company are based upon these Conditions and reflect the limitations upon the Company's liability which they contain.
- 7.2 Unless a quotation has been submitted the price of the Goods shall be the price ruling at the date of delivery notwithstanding any price specified in any order or Order acceptance.
- 7.3 Where a quotation has been submitted, unless otherwise stated in writing by a duly authorised representative of the Company, the specified price shall only remain open for acceptance by the Customer within 14 days from the date of such quotation, unless otherwise stated.
- 7.4 The Company may, by giving notice to the Customer at any time before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:
- 7.4.1 any factor beyond the Company's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
 - 7.4.2 any request by the Customer to change the delivery date(s), quantities or types of Goods ordered or the Specification; or

7.4.3 any delay caused by any instructions of the Customer or failure of the Customer to give the Company adequate or accurate information or instructions.

7.5 The price of the Goods:

7.5.1 excludes amounts in respect of value added tax (**VAT**), which the Customer shall additionally be liable to pay to the Company at the prevailing rate, subject to the receipt of a valid VAT invoice; and

7.5.2 excludes the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Customer.

7.6 Prices quoted are subject to revision for errors and omissions at any time without any liability on the part of the Company.

7.7 Time for payment of the invoice shall be of the essence of the Contract.

7.8 **The first three Orders will be dealt with on a pro-forma basis, before any credit terms may be given by the Company in writing.** Payment for the Goods is due before or on the time of delivery unless the Company has agreed credit terms.

7.9 Without prejudice to any other rights of the Company if the Customer fails to pay the invoice by the due date the Customer shall pay interest on any overdue amount from the date on which payment was due to the date of actual payment (whether before or after judgment) on a daily basis at a rate of 5% per calendar month and will reimburse to the Company all costs and expenses (including legal costs) incurred in the collection of any overdue amount. Re-represented or returned cheques will be charged at to the Customer at £25.00 each time. Any costs incurred for a third party collection service shall be paid by the Customer.

7.10 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Company may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by the Company to the Customer.

8. **PRODUCT LIABILITY**

8.1 The Customer shall, immediately on becoming aware of any complaint or claim from any customer or end user of the Goods (including in respect of death or personal injury arising from any fault or defect in the materials or workmanship of the Goods, or any other complaint which may give rise to a requirement for the Supplier to recall any batch or batches of the Goods):

8.1.1 give the Company written notice of the details of the matter; and

8.1.2 give the Company access to and allow copies to be taken of any materials, records or documents as the Company may require.

8.2 The Customer shall maintain appropriate, up-to-date and accurate records to enable the immediate recall of any Goods or batches of Goods from the retail or wholesale markets. These records shall include records of deliveries to customers (including batch numbers, delivery date, name and address of customer, telephone number, fax number and e-mail address).

8.3 Customer shall give any assistance that the Company shall reasonably require to recall, as a matter of urgency, Goods from the retail or wholesale market.

9. **LIMITATION OF LIABILITY**

9.1 Nothing in these Conditions shall limit or exclude the Company's liability for:

9.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);

9.1.2 fraud or fraudulent misrepresentation;

9.1.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979;

9.1.4 defective products under the Consumer Protection Act 1987; or

9.1.5 any matter in respect of which it would be unlawful for the Company to exclude or restrict liability.

9.2 Subject to clause 9.1:

9.2.1 the Company shall under no circumstances whatsoever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, loss of business, depletion of goodwill or similar losses, loss of anticipated savings, loss of contract, loss of use, loss of business opportunity, any special or any indirect or consequential loss arising under or in connection with the Contract; and

9.2.2 the Company's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed of the price of the Goods.

9.3 Neither the Company nor any agent of the Company shall be liable where any Goods, the Price of which does not include carriage, are lost or damaged in transit and all claims by the Customer shall be made against the carrier. Replacements for such lost or damaged Goods will if available be supplied by the Company at the prices ruling at the time of dispatch.

10. FORCE MAJEURE

Neither party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract (save and except an obligation to pay monies owed to the Company pursuant to an invoice) if such delay or failure result from a Force Majeure Event. If the period of delay or non-performance continues for 20 days, the party not affected may terminate this Contract by giving written notice to the affected party.

11. GENERAL

11.1 Assignment and termination by Company

11.1.1 The Company may assign transfer or otherwise deal with its rights under this Contract without the prior approval of the Customer.

11.1.2 The Company may at its discretion suspend or terminate the supply of Goods or cancel allowance of credit, with immediate effect by giving notice in writing to the Customer if the Customer fails to make any payment when and as due, or otherwise defaults in any of its obligations under the Contract or any other agreement with the Company, or becomes insolvent, or has an administrative receiver appointed of its business, or is compulsorily or voluntarily wound up, or the Company has reasonable cause to believe that any of these events may occur.

11.1.3 On termination of the Contract for any reason the Customer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest.

11.2 Entire agreement.

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

11.2.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

11.3 Data Protection

The data controller is the Company and the Company's data protection officer can be contacted at Masteroast Coffee Co. Limited, Plantation House, Newark Road, Peterborough UK, PE1 5UA, tel. +44(0)1733 842000 e-mail : info@masteroast.co.uk and the Customer acknowledges and accepts that details of the Customer's name, address and payment record may be submitted to a credit reference agency, banks, credit insurers and personal data will be processed by and on behalf of the Company. The Company does not store credit card details. The Company is committed to protecting the confidentiality and security of information it collects and holds about the Customer. The Company uses this information for its legitimate business interests under article 6(1)(f) of the General Data Protection Regulation (GDPR) including processing the sale of Goods, evaluating requests for and marketing of products and to comply with legal and regulatory obligations placed upon the Company. The collection and use of data about the Customer is therefore vital to protecting the Company's legitimate business interests. The collection and use of the data for these interests is without prejudice to the Customer's rights, freedoms and interests under according to the GDPR or data protection law applying under English law generally.

The Company operates procedural, physical and electronic safeguards to protect the information. The Company may disclose any information it collects about the Customer, as described above, when it is necessary to conduct its business, or as permitted or required by law.

The Company will keep personal data for a long as it is necessary as set out above e.g. as long as is considered necessary for the purpose for which it was collected (including as required by applicable law or regulation).

Under certain circumstances, individuals have rights under data protection laws in relation to their personal data held by the Company including a right to request access to their personal data, a right to request correction of their personal data, a right to request erasure of their personal data, a right to request a restriction on processing of their personal data, a right to request transfer of their personal data, a right to withdraw consent to process personal data at any time where the Company relies on the individual's consent rather than legitimate reason for processing the personal.

To find out more about these rights or to exercise them individuals should contact the Company's data protection officer.

Data Protection Complaints – The Company takes any complaints about collection and processing of personal data very seriously. Complaints may be made at any time to the data protection officer at Masteroast Coffee Co. Limited, Plantation House, Newark Road, Peterborough UK, PE1 5UA, tel. +44(0)1733 842000 e-mail : info@masteroast.co.uk.

Individuals may also make a complaint at any time to the Information Commissioners Office at Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF, e-mail <https://ico.org.uk/concerns/> or call 0303 123 1113.

11.4 Waiver

No waiver by the Company of any breach of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision.

11.5 Severance

If any provision of these Conditions or the Contract is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and remainder of the provision in question shall not be affected.

11.6 **Notices**

Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.

11.7 **Third party rights**

No one other than a party to this Contract and their permitted assignees shall have any right to enforce any of its terms.

11.8 **Governing law**

The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales.

11.9 **Jurisdiction**

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Contract or its subject matter or formation.

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