

USMOOTHIE LIMITED – TERMS OF BUSINESS - PURCHASE OF PRODUCTS

Please read this Terms of Business ("Agreement") carefully as any purchase of products will be subject to this Agreement which is between Usmoothie Ltd (referred to in this agreement as "we", "us", or "our") and you ("You" means the person, persons or company placing the order). Separate Terms of Business apply if you are renting Equipment from us, including the purchase of product under "Free-On-Loan" arrangements.

1. ORDERS

1.1 By requesting and accepting a quotation or placing an order with us, you agree to be bound by our terms of business for our sale to you of those Goods. We act as suppliers of the Goods and are not manufacturers, and our liability is limited as such.

1.2 You acknowledge that you are over 18 years old, have the authority and capacity to enter into a contract with us. Employers must advise us if their staff do not have such authority.

1.3 These are the only terms that apply unless we have expressly agreed in writing. No statements or representation made on our behalf (whether written or oral and whether or not you have relied on them) are valid unless authorised by one of our appointed employees or agents and is repeated in writing and attached to these terms.

1.4 Each order or acceptance of a quotation for Goods by you from us is an offer to buy Goods subject to this agreement.

1.5 It is your responsibility to ensure that the terms of your order and any applicable specification are complete and accurate, and we will not accept liability for any errors or omissions of inaccurate specifications.

1.6 Quotations are valid for a maximum period of one week from the date made and may be withdrawn or altered by us during that period at any time without notice.

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2. DESCRIPTION

2.1 The Goods are as set out in our Consumables Order Form, Machine Sales Order form and/or Delivery Note or as applicable.

2.2 All samples, drawings, descriptive matter, specifications and advertising issued by us and any descriptions or illustrations contained in our catalogue or brochures or on our website are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract and this is not a sale by sample.

2.3 You will rely on your own assessment prior to order as to fitness for the purpose of the Goods whether or not you took advantage of any inspection and testing offered to you by us.

2.4 Illustrations, weights, measures, performance capabilities, application suitability information and other data set out in our literature are statements of opinion and are provided for information only and form no part of the Contract.

3. PRICES

3.1 The price quoted is our current price at that date. The price for the Goods is the price set out in our price list (exclusive of VAT) published on the date of delivery or deemed delivery.

3.2 Unless otherwise indicated, packaging for Goods is included in the price.

4. DELIVERY

4.1 We will endeavour to deliver the Goods to you within the timescales indicated when you placed the order. However, the time and date of delivery and the quantity of Goods ordered are not guaranteed. You shall have no right to damages or to cancel the order for failure, for any cause, to meet any delivery time stated.

4.2 Unless otherwise indicated, delivery charges are included in the price of the Goods. However, in the event we incur any additional cost or expenses on your behalf, you will fully reimburse us for all properly incurred costs and expenses. This will be invoiced at the same time as for the Goods and subject to the same payment terms.

4.3 You will provide at the Delivery Point and at your expense, adequate and appropriate equipment and manual labour for unloading the Goods.

4.4 In some circumstances delivery may be by instalments. This will be subject to prior agreement between us.

5. DEFECTIVE DELIVERY AND DAMAGE

5.1 If you fail to accept delivery (for whatever reason) or if we have agreed to a postponement in writing, or if we are unable to deliver the Goods on time because you have not provided appropriate instructions, documents, license or authorisation:

i) risk in the Goods shall pass to you (including for loss or damaged caused by our negligence)

ii) the Goods shall be deemed to have been delivered, and

iii) we may store the Goods until delivery, whereupon you shall be liable for all related costs

and expenses (including without limitation, storage and insurance).

5.2 Perishable Goods are not refundable or returnable once we have delivered (or attempted to deliver in accordance with 5.1 above).

5.3 Our liability is limited in accordance with clause 9 below.

5.4 We may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract.

5.5 Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle you to repudiate or cancel any other Contract or instalment.

5.6 You shall have no right or claim for shortage or defects or mis-delivery unless:

i) you have inspected the Goods immediately on delivery and notified us immediately of the shortage or defect and

ii) we are given an opportunity to inspect the Goods before you have used, resold, altered, incorporated or modified the Goods.

5.7 If you do not make an immediate complaint to us or the Carrier, the Goods shall be deemed to have been delivered in the correct quantity and free of defects apparent on inspection.

6. CANCELLATION AND RETURNS

6.1 If you are a Consumer, as defined under the Distance Selling Regulations, you have a "cooling-off" period of 7 working days in which you may cancel your order without giving a reason. The cooling-off period starts on the day after the day that the goods are received. You will be responsible for the cost of the goods being returned to us.

6.2 Cancellation will only be accepted by us in writing and on condition that all costs and expenses incurred by us up to the time of cancellation, and all loss of profits and other loss or damage resulting to us because of the cancellation will be reimbursed to us by you forthwith.

6.3 All returns should be via a reputable delivery service that can provide evidence they have delivered goods back to us. Items must be packed with sufficient care to ensure damage does not incur in transit as we will not accept responsibility for damage to returned items caused by insufficient packaging.

7. RISK AND TITLE

7.1 The Goods (in part or in full) are at your risk from the time of delivery, even if we have arranged delivery to another venue for you.

7.2 Ownership of the Goods shall not pass to you until we have received in full in cash or cleared funds), all sums due to it in respect of:

i) the Goods; and
ii) all other sums which are or which become due to us from you on any account.

7.3 Until ownership of the Goods has passed to you, you shall:

i) hold the goods on a fiduciary basis as our bailee;

ii) store the Goods (at no cost to us) separately from all your other goods or any third party in such a way that they remain readily identifiable as our property;

iii) maintain the Goods in satisfactory condition and keep them insured on our behalf for their full price against all risks to our reasonable satisfaction.

7.4 You consent to granting an irrevocable license to permit our servants or agents to enter your premises or where the Goods are stored and to inspect or repossess the goods at any time up to when we have received final payment or if your right to procession has terminated.

7.5 You can only resell the Goods before you have good title on the understanding that if you resell the goods then you hold on trust for us the amount due to us in full and final settlement owed to us.

7.6 You may only mix the Goods with others or use them in the process of manufacture prior to the passing of title with our written consent (not to be unreasonably withheld) providing that you have given us suitable guarantees regarding discharge payment in full to us.

7.7 Your right to possession of the Goods terminates immediately if:

i) you breach this contract
ii) you are unable to pay your debts
iii) you cease to trade, or
iv) you encumber or in any way charge any of the Goods.

8. TERMS OF PAYMENT

8.1 Payment in full is due on placement of an order unless we have agreed to provide you with credit.

8.2 In the event that we have agreed to provide you with credit, payment in respect of each invoice shall be made by the 28th day after the date of Usmoothie's invoice without deduction or set off.

8.3 The time for payment is of the essence. Payment is not deemed to have taken place until we have cleared funds.

8.4 In the event that you default on payment, we are entitled (without prejudice to any other right or remedy) to suspend all further deliveries without notice. You shall settle all outstanding balances to us on demand.

8.5 If you fail to pay us in full any amount due, you will be liable to pay interest on such sum from the due date for payment at the annual rate of 8% above the base lending rate from time to time of the Bank of England accruing on a daily basis until payment is made, whether before or after any judgement. We reserve the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

9. LIABILITY

9.1 All warranties, conditions and other terms implied by statute or common law (save for Section 12 of the Sale of Goods Act 1979) are to the fullest extent permitted by law excluded from the Contract.

9.2 Our total liability in contract, tort (including breach of statutory duty and negligence), misrepresentation, restitution or otherwise is limited to the Price for the Goods.

9.3 In the event that we are liable for Goods which are proved to our satisfaction to be faulty (fair wear and tear or damaged due to misuse excepted), our liability is limited (at our option) to replacement of Goods or repayment to you all sums paid in respect of Goods supplied PROVIDED that such fault be notified immediately upon delivery to you. Any such replacements shall include free delivery to your premises.

9.4 We are not liable to you or any third party for pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise in each case whether direct, indirect or consequential loss, costs, damaged or expenses with respect to the supply (in part or whole) of Goods or failure to supply the Goods, or how so ever arising in connection with or arising out of this contract.

9.5 Nothing in these conditions excludes or limits our liability for death or personal injury caused by our negligence.

10. QUALITY AND WARRANTY

10.1 In the event that non perishable Goods are faulty, we will pass on to you the benefit of any applicable manufacturer's warranty.

11. EXTERNAL EVENTS

11.1 We reserve the right to delay or reduce delivery or cancel this Contract and will not be liable for any delays, loss or damage cause wholly or in part by circumstances outside our control including, but limited to, Acts of God, war, terrorism, protests, riot, civil commotion, fire, flood, epidemic, lock outs or strikes, or by any act done or not done pursuant to a trade dispute, whether such dispute involved our servants or not.

11.2 We shall be granted all necessary time on other indulgences necessary in the event of fire, breakdown of machinery or other circumstances beyond our reasonable control and shall not be liable for any delays, loss or damage so caused.

12. INTELLECTUAL PROPERTY

12.1 If you use our Intellectual Property (such as trademarks or copyright) we reserve the right to withdraw such material forthwith. You warrant that you will comply with all our reasonable instruction.

13. GENERAL

13.1 Failure or delay on our behalf to enforce any remedy available to us is not to be construed as a waiver or any of our rights under this Contract.

13.2 Each right or remedy available to us with this Contract is without prejudice to any other right or remedy available.

13.3 If any provision of this Contract is found by a competent Court, tribunal or administrative body to be wholly or partially illegal, void, invalid, voidable, unreasonable or unenforceable, that provision shall be severed from the remaining provisions of the Contract.

13.4 In the event that we bring legal proceedings against you for breach of these terms, you will be liable for our reasonable and legitimately incurred costs.

13.5 This Contract is governed by English law and is subject to the exclusive jurisdiction of the Courts of England and Wales.