

TERMS AND CONDITIONS OF SALE OF ROKIT DRINKS LIMITED

1 DEFINITIONS

In these Terms and Conditions

- 1.1. "Buyer" means the organisation or person who buys or agrees to buy the Goods from the Seller as set out in the ROKIT Drinks Limited Customer Agreement signed by or on behalf of the Buyer.
- 1.2. "Contract" means the contract between the Seller and the Buyer for the sale and purchase of Goods incorporating these Terms and Conditions, and the ROKIT Drinks Limited Customer Agreement signed by or on behalf of the Buyer. If there is any inconsistency between these Terms and Conditions and the ROKIT Drinks Limited Customer Agreement then the ROKIT Drinks Limited Customer Agreement will take precedence.
- 1.3. "Delivery Date" means the date specified in the Order by the Seller when the Goods are expected to be delivered to the Buyer.
- 1.4. "Goods" means the beverages and any other products (including any instalment) that the Buyer agrees to buy from the Seller in accordance with the Contract.
- 1.5. "List Price" means the Price as set out in the list of prices of the Goods maintained by the Seller as amended from time to time.
- 1.6. "Order" means the order placed by the Buyer either verbally or in writing (as the case may be) for the Goods.
- 1.7. "Price" means the price for the Goods excluding VAT (if applicable) and/or any analogous sales tax, carriage, freight, postage, insurance costs and any other applicable costs.
- 1.8. "Seller" means ROKIT Drinks Limited (registered number 07898759) whose registered office is at ROK House, Kingswood Business Park, Holyhead Road, Albrighton, Staffordshire, WV7 3AU.
- 1.9. "Terms and Conditions" means the terms and conditions of sale set out in this document and any special terms and conditions agreed in writing by the Seller and Buyer.
- 1.10. It is expressly understood that the Buyer is not a consumer, as defined by the Unfair Contract Terms Act 1977.
- 1.11. Any reference to a statutory provision shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.
- 1.12. The headings in these Terms and Conditions are for convenience only and shall not affect their interpretation.

2. BASIS OF SALE

- 2.1. These Terms and Conditions shall apply to all Contracts to the exclusion of all other terms and conditions including any terms or conditions that the Buyer may purport to apply under the Order, any confirmation of order or similar document.
- 2.2. Any variation or addition to these Terms and Conditions (including any special terms and conditions agreed between the parties) shall be inapplicable unless agreed in writing by the Seller and the Buyer. Unless otherwise agreed in writing such variations or additions shall only apply to the particular Contract concerned.
- 2.3. The Seller's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Seller in writing. In entering into the Contract the Buyer acknowledges that it does not rely on any such representations which are not so confirmed, but nothing in these Terms and Conditions affects the liability of either party for fraudulent misrepresentation.
- 2.4. Any advice or recommendation given by the Seller or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in writing by the Seller is followed or acted upon entirely at the Buyer's own risk, and accordingly the Seller shall not be liable for any such advice or recommendation which is not so confirmed.
- 2.5. Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

3. ORDERS AND SPECIFICATIONS

- 3.1. All Orders (whether verbal or in writing) shall be deemed to be an offer by the Buyer to purchase Goods pursuant to these Terms and Conditions and the ROKIT Drinks Limited Customer Agreement. Orders shall only become binding on the Seller upon acceptance in writing by the Seller.
- 3.2. The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any Order (including any applicable specification) submitted by the Buyer, and for giving the Seller any necessary information relating to the Goods within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.
- 3.3. The quantity and description of the Goods shall be as set out in the Order.
- 3.4. The Goods shall be required only to conform to the specification in the Order. Photographs are for illustrative purposes only and may not exactly match the product itself.
- 3.5. The Seller reserves the right in its sole and absolute discretion to make changes to the Goods or packaging or both.
- 3.6. No Order which has been notified to the Seller may be cancelled by the Buyer except with the agreement in writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of cancellation.

4. PRICE AND PAYMENT

- 4.1. The Price shall be that in the Seller's current List Price, or such other price as the parties may agree in the Order or otherwise in writing. The Price is exclusive of VAT and/or any analogous sales tax, carriage, freight, postage, insurance costs and any other applicable costs unless otherwise stated.
- 4.2. New credit accounts for any Buyer or potential customers are subject to approval by the Seller and/or credit agencies the Seller may use. Where such a credit account is granted by the Seller to the Buyer it will be subject to a credit limit that may be confirmed in writing by the Seller. The credit limit may be cancelled or varied at any time at the sole and absolute discretion of the Seller.
- 4.3. Subject always to the provisions of clause 4.2 and 4.5 where the Buyer has a confirmed credit account with the Seller, payment of the Price and VAT and/or any analogous sales tax, carriage, freight, postage, insurance costs and any other applicable costs shall be due within 14 days of the date of the invoice supplied by the Seller, unless otherwise agreed in writing between the parties. The time for payment of the Seller's invoices shall be of the essence of the Contract.
- 4.4. Where the Buyer has no credit account with the Seller, the Price and VAT and/or any analogous sales tax, carriage, freight, postage, insurance costs and any other applicable costs shall be due immediately on the date of the Order.
- 4.5. If at any time the Seller should have any reasonable cause to doubt the Buyer's credit worthiness, the Seller may, either before or during performance of the Contract, require the Buyer to make payment in advance of the whole or part of the Price and any applicable VAT and/or any analogous sales tax, carriage, freight, postage, insurance costs and any other applicable costs.
- 4.6. If the Buyer fails to make any payment on the due date then, without limiting any other right or remedy available to the Seller, the Seller may:
 - 4.6.1. cancel the Contract or suspend any further deliveries of Goods to the Buyer; and/or
 - 4.6.2. appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation of the Buyer); and/or
 - 4.6.3. charge the Buyer interest (both before and after any judgment) on the amount unpaid, at the rate of 4 (four) per cent per annum above Barclays Bank base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest); and/or
 - 4.6.4. charge the Buyer for the reimbursement of all legal and debt collection costs incurred by the Seller in and out of court such reimbursement to be on a full indemnity basis.

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5. DELIVERY OF THE GOODS

- 5.1. Unless otherwise agreed, delivery of the Goods shall take place at the address specified in the Order on the Delivery Date and the Buyer shall be deemed to have accepted the Goods upon their delivery. The Buyer shall make all arrangements necessary to take delivery of the Goods when they are tendered for delivery.
- 5.2. The Delivery Date specified by the Seller in the Order is an estimate only and the Seller shall not be liable for any delay in delivery of the Goods howsoever caused. Time for delivery shall not be of the essence of the Contract. The Goods may be delivered by the Seller in advance of the Delivery Date subject to Seller having given reasonable notice to the Buyer.
- 5.3. If the Seller is unable to deliver the Goods for reasons beyond its control, then the Seller shall be entitled to place the Goods in storage until such times as delivery may be effected and the Buyer shall be liable for any expense associated with such storage.
- 5.4. If the Seller fails to deliver the Goods (or any instalment) for any reason other than any cause beyond the Seller's reasonable control or the Buyer's fault, and the Seller is accordingly liable to the Buyer, the Seller's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods.
- 5.5. If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then, without limiting any other right or remedy available to the Seller, the Seller may:
 - 5.5.1. store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or
 - 5.5.2. sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.
- 5.6. The Buyer shall be entitled to replacement Goods where the Goods have been damaged during transportation unless the goods are collected by the Buyer from the Seller or its representative. The Buyer must notify the Seller of the damage within 24 hours of delivery of the Goods.
- 5.7. Risk of damage to or loss of the Goods shall pass to the Buyer on delivery of the Goods to the Buyer.

6. TITLE

- 6.1. The Seller warrants that it has good title to the Goods.
- 6.2. Notwithstanding delivery and the passing of risk in the Goods or any other provision of these Terms and Conditions, title to the Goods shall not pass to the Buyer until the Seller has been paid in full for the Goods and all other Goods agreed to be sold by the Seller to the Buyer for which payment is then due.
- 6.3. Until title to the Goods passes to the Buyer under Clause 6.2, the Buyer shall hold the Goods as the Seller's fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and third parties, labelled as property of the Seller and the Buyer must adequately insure or otherwise safeguard the Seller's Goods against theft or damage, however so caused.
- 6.4. Until such time as title to the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold), the Seller may at any time require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith, enter on any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.
- 6.5. The Buyer shall not pledge or in any way charge by way of security for any indebtedness any of the Goods in which title remains in the Seller, but if the Buyer does so all moneys owing by the Buyer to the Seller shall (without limiting any other right or remedy of the Seller) forthwith become due and payable.
- 6.6. Subject to clause 6.1 all other warranties, conditions or terms whether express or implied by common law or by statute relating to use, quality, and/or fitness for purpose are excluded.

7. REMEDY

- 7.1. Where the Goods are defective, the Seller shall repair, or in its sole discretion, replace defective Goods free of charge provided that the Buyer serves on the Seller written notice specifying the defect within 7 (seven) days of the date of delivery of the Goods.
- 7.2. Any Goods to be repaired or replaced shall be returned to the Seller at the Buyer's expense.

8. LIMITATION OF LIABILITY

- 8.1. Subject to clause 8.4 the Seller's entire liability in contract, negligence, tort or otherwise arising under or in connection with the Contract shall be limited to the Price paid by the Buyer in aggregate for the Goods in respect of which a claim is brought by the Buyer.
- 8.2. Subject to clause 8.4 the Seller shall not be liable to the Buyer for loss of profit or future loss of profit, loss of income, loss of revenue or contracts or for any special, consequential or indirect loss whether arising in contract, negligence, tort or otherwise or any or all of them.
- 8.3. The Seller shall be under no liability in respect of any defect in the Goods:
 - 8.3.1. arising from any design or specification supplied by the Buyer; or
 - 8.3.2. caused or contributed to by the Buyer, its agents or employees, or by the Buyer's failure to follow the Seller's instructions (whether oral or in writing); or
 - 8.3.3. if the total Price payable by the Buyer for the Goods has not been paid by the due date for payment.
- 8.4. Nothing contained in these Terms and Conditions shall be construed so as to limit or exclude the liability of the Seller for death or personal injury as a result of the Seller's negligence or that of its employees or agents.

9. FORCE MAJEURE

- 9.1. Save for the Buyer's obligation to make payment for Goods as provided in these Terms and Conditions neither party shall be liable for any delay or failure to perform any of its obligations if the delay or failure results from events or circumstances outside its reasonable control, including but not limited to acts of God, strikes, lock outs, accidents, war, fire, breakdown of plant or machinery or shortage or unavailability of raw materials from a natural source of supply, and the party shall be entitled to a reasonable extension of its obligations.

10. SEVERANCE

- 10.1. If any term or provision of these Terms and Conditions is held invalid, illegal or unenforceable for any reason by any Court of competent jurisdiction such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if these Terms and Conditions had been agreed with the invalid illegal or unenforceable provision eliminated.

11. GENERAL

- 11.1. The Contract shall be governed by and construed in accordance with the laws of England and Wales and the parties hereby submit to the exclusive jurisdiction of the Courts of England.
- 11.2. A notice required or permitted to be given by either party to the other under the Contract 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.
- 11.3. No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as waiver of any subsequent breach of the same or any other provision.