

Lionel Hitchen Limited
Standard Terms and Conditions of Sale

1 Agreed Terms and Conditions

- 1.1 These Terms shall apply to the Contract to the exclusion of any other conditions contained or referred to in any order, letter, form of contract or other communication between the Buyer and the Seller whether oral or written (including any conditions the Buyer purports to apply) or which are implied by customs, practice or law and the provisions of these Terms shall prevail in all circumstances.
- 1.2 No variation of these Terms or the Contract, including any terms or conditions endorsed on or contained in any order, specification or other documentation provided by the Buyer, shall be effective unless expressly agreed to in writing by the Buyer and Seller.

2 Definitions & Interpretation

- 2.1 In these terms and conditions of sale ("**Terms**") the following terms shall have the meanings prescribed (unless the context otherwise requires):

Buyer means the person, firm or company to whom any quotation is addressed or with whom any Contract is made;

Contract means the contract between the Buyer and the Seller for the sale and purchase of the Goods which shall comprise the Seller's written confirmation of order, delivery documentation and these Terms and Conditions;

Best Before means the period that the Goods can reasonably be expected to retain their optimal condition and relates to quality. This is the point at which the taste and eating quality may begin to decline. The goods will still be safe to use beyond this point but will not be at their best. The best before date will only be accurate if the goods are stored according to the instructions on the label.

This is the period specified in the Seller's product literature for the Goods concerned

E-cigarettes means a cigarette-shaped device containing a nicotine-based liquid that is vaporized and inhaled, used to simulate the experience of smoking tobacco

Goods means the goods (or any instalment or part of them) to be supplied by the Seller to the Buyer pursuant to the Contract;

Incoterms means the internationally recognised rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made;

Price Increase Event means a circumstance or series of circumstances which has the impact of increasing the Seller's cost of supply of the Goods by 10% or more including without limitation as a result of the increased cost of raw materials, energy, taxation, regulation or change in law; or the adverse movement of currency exchange rates;

Seller means Lionel Hitchen Limited;

Seller's Premises means the Seller's premises indicated on the Seller's confirmation of order, sale or delivery documentation;

Specification means the specification of the Goods as provided or agreed in writing by the Seller.

Storage Instructions means any instructions whether verbal or written given by the seller or any instructions or directions contained on any label or packaging of the Goods, Specification, or other accompanying documentation specifying how the Goods should be stored, used or maintained.

- 2.2 A reference to 'Party' or 'Parties' shall mean the Party or Parties to the Contract as the context requires.
- 2.3 A reference to a statute is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment ("**Amendment**") provided that such Amendment does not increase the liability of the Seller and includes any subordinate legislation for the time being in force made under it.
- 2.4 Words in the singular include the plural and vice versa.
- 2.5 Headings shall not affect the interpretation of these terms and conditions.

3 The Contract

- 3.1 Notwithstanding that the Seller may have given a detailed quotation, no order shall be binding on the Seller unless and until it has been expressly accepted in writing by the Seller.

- 3.2 No sample, statement, description, information, warranty, condition or recommendation contained in any catalogue, price list, advertisement or communication or made orally by any of the Seller's agents or employees shall be construed to enlarge, vary or override in any way any of these Terms.

4 Price

- 4.1 The price of the Goods shall be the price valid on the date when the Goods or the instalment of the Goods (as the case may be) are despatched for delivery to the Buyer and shall be exclusive of value added tax or any other applicable sales or purchase tax or duty which shall be payable by the Buyer at the appropriate rate.
- 4.2 Unless otherwise stated by the Seller in the quotation, contract or other price agreement, the price of the goods shall be exclusive of the costs of carriage, insurance or handling charges.
- 4.3 Notwithstanding Condition 3.1 and any other agreement between the Buyer and the Seller in relation to the price of the Goods, in the event of a Price Increase Event the Seller shall be entitled to
- 4.4 increase the price of the Goods (and the Buyer agrees to pay such increase) by such amount as is necessary to reflect the additional cost to the Seller of supply of the Goods occasioned by the Price Increase Event.

5 Terms of payment

- 5.1 The Buyer shall pay for the Goods in full and cleared funds not later than thirty (30) days from the date of the invoice. Such payment shall be made to the bank account as notified by the Seller. The Seller reserves the right to impose alternative payment terms for any customer who does not satisfy the Seller's credit or financial standing requirements.
- 5.2 If the Goods are despatched in instalments, the Seller shall be entitled to invoice each instalment as and when despatch thereof has been made and payment shall be due in respect of each despatched instalment notwithstanding non-delivery of other instalments.
- 5.3 Failure by the Buyer to pay any due instalment, or failure to give delivery instructions in respect of any quantity of Goods outstanding, shall cause the whole of the balance of the price to become immediately due and payable.
- 5.4 The Buyer shall not be entitled to exercise any set-off, lien, restriction, condition or any other similar right or claim in relation to the Seller's invoice or demand for payment.
- 5.5 If the Buyer fails to make payment under the Contract on the due date for payment the Seller may, without prejudice to any other rights it may have and both before and after any judgment, charge the Buyer interest on any unpaid amount from the due date until the date of actual payment in full at an annual rate of five (5) percentage points above the Bank of England base lending rate from time to time in effect during such period, accruing on a daily basis until such time as payment is made.
- 5.6 The price of the Goods shall be payable in the currency specified in the invoice and if no currency is specified, then in Pounds Sterling. All bank charges relating to or incurred in connection with the Contract shall be for the account of and paid by the Buyer.

6 Delivery

- 6.1 The Goods will be delivered in accordance with the agreed Incoterms 2010.
- 6.2 The Seller shall endeavour to deliver the Goods within the period given or quoted but all times, dates or periods given or quoted for delivery of the Goods are approximate only and the Seller shall not be liable for any delay or for any loss or damage caused as a result of any delay or failure by the Seller.
- 6.3 No liability (howsoever arising) for loss of or damage to the Goods occurring prior to delivery or for any claim that any item delivered pursuant to the Contract is defective or is otherwise not in accordance with the Contract (being a defect or loss, damage or non-compliance which would be obvious upon a reasonable inspection of the Goods) or for non-delivery, will attach to the Seller unless claims to that effect are notified in writing by the Buyer to the Seller (and in the case of claims for loss, damage or non-delivery with a copy to the carrier if the Seller's own vehicles have not been used to deliver the Goods):
- (a) within seven days of delivery for loss, damage, defect or non-compliance with the Contract; or
 - (b) within twenty-eight days of the date of the invoice for non-delivery where delivery takes place at a location within the European Union; or
 - (c) within sixty days of the date of the invoice for non-delivery where delivery takes place at a location outside the European Union.

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- 6.4 In the event of a valid claim for defect, loss, damage, or noncompliance with the Contract or non-delivery the Seller undertakes at its option either to reprocess or replace the items concerned at its expense but shall not be under any further or other liability in connection with such non-delivery, defect, loss, damage or non-compliance.
- 6.5 If the Buyer fails to give notice in accordance with Condition 6.3 above the items delivered shall be deemed to be in all respects in accordance with the Contract and without prejudice to earlier acceptance by the Buyer it shall be bound to accept and pay for the same accordingly and all claims in respect of non-delivery, defect, loss, damage or non-compliance shall (save as set out in Condition 12 (Defective Goods) below) thereafter be wholly barred.
- 6.6 If the Buyer:
- (a) does not accept delivery of the Goods at the time when the Goods are due and ready for delivery then the Seller may at its sole discretion store and/or arrange for the Goods to be stored for such period as the Seller may determine and take all reasonable steps to safeguard and insure them at the Buyer's cost, provided that the Buyer shall be informed thereof; or
 - (b) detains, delays or causes delay through improper or lack of instructions any of the Seller's or its agents or subcontractors vehicles, including ships, road tankers and rail wagons, the Buyer shall be liable for all losses, charges, costs and expenses, including demurrage, incurred by the Seller arising from or in connection with such detention or delay.

7 Packaging

- 7.1 Subject to Conditions 7.2 and 7.3 below and unless otherwise agreed in writing, the Buyer shall dispose of all packaging of, or provided with, the Goods at its own expense.
- 7.2 All pallets and any packaging marked as returnable, or as notified by the Seller as returnable, shall at all times remain the property of the Seller and shall be returnable by the Buyer in accordance with Condition 7.3 below (Returnable Packaging).
- 7.3 The Buyer shall pay to the Seller the cost of replacing any Returnable Packaging plus any value added tax if applicable which has not been returned in accordance with this Condition 7 within sixty days of delivery.

8 Passing of title and risk

- 8.1 The risk in the Goods shall pass to the Buyer in accordance with Inco-terms 2010.
- 8.2 Title in the Goods shall not pass to the Buyer until the Seller has received all payments in full and cleared funds from the Buyer in respect of:
- (a) the Goods under the Contract; and
 - (b) any other contract between the Seller and the Buyer and on any
 - (c) other account whatsoever.
- 8.3 Until title has passed to the Buyer, the Buyer shall:
- (a) be in possession of the Goods on a fiduciary basis solely as the Seller's bailie;
 - (b) store the Goods (at no cost to the Seller) in such a way as to enable them to be identified as the property of the Seller and separately from other Goods and goods of any third party;
 - (c) notify the Seller immediately if it becomes subject to any of the events listed in Condition 13.1(b); and
 - (d) at all times keep the Goods comprehensively insured against loss or damage by accident, fire, theft and other risks usually covered by insurance in the type of business carried on by the Buyer in an amount at least equal to the balance of the price for the same from time to time remaining outstanding and such policy shall bear an endorsement recording the Seller's interest.
- 8.4 Without prejudice to the equitable rules as to tracing, in the event of failure to pay the price in accordance with the Contract the Seller shall have power to re-sell the Goods, such power being additional to (and not in substitution for) any other power of sale arising by operation of law or implication or otherwise and for such purpose the Seller and its servants and agents may forthwith enter upon any premises or land occupied or owned by the Buyer to remove the Goods.
- 8.5 If, before title to the Goods passes to the Buyer, the Buyer becomes subject to any of the events listed in Condition 13.1(b) then, provided that the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy the Seller may have, the Seller may at any time require the Buyer to deliver up the Goods and, if the Buyer fails to do so promptly, enter any premises of the Buyer or of any third party where the Goods are stored in order to recover them.

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- 8.6 The Buyer grants the Seller, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.

9 Health and Safety

- 9.1 The Buyer acknowledges that, where it is required to do so by law, the Seller has provided the Buyer with satisfactory health and safety information and product literature concerning the conditions necessary to ensure that the Goods supplied hereunder will be safe and without risks to health when properly used and labelled.
- 9.2 No material supplied by the Seller is warranted as being safe for use in e-cigarettes. In supplying material the Seller instructs and similarly by receiving material the Buyer confirms, that it will not be used in connection with the manufacture and distribution of e-cigarettes or any component thereof.

10 Compliance with Local Law

- 10.1 The Buyer shall be responsible for the payment of any taxes, duties or import charges on or in respect of the importation or transportation of the Goods, as stipulated in Incoterms 2010

11 Quality

- 11.1 The Seller warrants that the Goods shall accord with the Specification.
- 11.2 The Buyer shall satisfy itself of the suitability of the Goods for its own particular purpose.
- 11.3 These Terms shall apply to any repaired or replacement Goods supplied by the Seller under Conditions 6.4 and 12.1.
- 11.4 Except as set out in these Terms, all warranties, conditions and other terms whether express or implied by statute, common law or otherwise are excluded to the fullest extent permitted by law.

12 Defective Goods

- 12.1 The Seller undertakes that if during the Best Before period a defect in materials or workmanship appears in the Goods, being a defect which would not be obvious on reasonable inspection, it will at its own discretion either:
- (a) credit to the Buyer the full price paid by the Buyer to the Seller for such item; or
 - (b) supply a replacement free of charge at the place of delivery agreed by the parties for the original Goods, provided that in any case the original Goods have been accepted and paid for in accordance with the Contract and the Buyer notifies the Seller in accordance with Condition 12.2 below.
- 12.2 In order to exercise its rights under Condition 12.1, the Buyer must notify the Seller in writing within seven (7) days of the date when such defect appeared or ought reasonably to have been discoverable and shall at the Seller's written request return the defective Goods carriage paid to the Seller's Premises.
- 12.3 Nothing herein shall impose any liability upon the Seller in respect of any defect in the Goods arising out of the acts, omissions, negligence or default of the Buyer, its servants or agents including in particular (but without prejudice to the generality of the foregoing) any failure by the Buyer to comply with the Storage Instructions or any other recommendations of the Seller as to storage or handling of the Goods or any inaccuracies in any bill of quantities supplied by the Buyer or where the order contains errors or where the Buyer makes any further use of the Goods after giving notice in respect of any defect in the Goods.
- 12.4 Where the Goods are for delivery by instalments any defect in any instalment shall not be a ground for cancellation of the remainder of the instalments and the Buyer shall be bound to accept delivery thereof.
- 12.5 The remedy in this clause 12 is in substitution of all rights which the Buyer would or might have but for these Terms.

13 Default or insolvency of Buyer

- 13.1 The Seller may, without incurring any liability and without prejudice to any of its rights under common law, cancel or terminate the whole or any part of any contract between the Seller and the Buyer, stop any Goods in transit, suspend or cancel deliveries or further deliveries to the Buyer, suspend performance of the Contract and/or terminate the Contract by notice in writing to the Buyer if:
- (a) the Buyer fails to pay any sums due to the Seller in accordance with the Contract or any other contract with the Seller or any member of the Sellers' group or is otherwise in material breach of contract;

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- (b) the Buyer is affected, or in the reasonable opinion of the Seller is likely to be affected, by one or more of the following events:
- (i) the Buyer ceases or threatens to cease to carry on business or suspends all or substantially all of its operations or payment of its debts or becomes unable to pay its debts;
 - (ii) an administrator, administrative receiver, receiver or manager, liquidator, provisional liquidator or similar officer is appointed in respect of the whole or any part of the Buyer's assets or an administration order is presented in respect of the Buyer and/or a winding up petition is presented in respect of the Buyer;
 - (iii) an application for an interim order under is made or any distress, execution or other legal process is levied on the Buyer's property or assets;
 - (iv) the Buyer shall make or offer to make any arrangements or composition with its creditors;
 - (v) the Buyer's financial position or its credit rating deteriorates to such an extent that in the Seller's opinion the Buyer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
 - (vi) if the Buyer suffers any event similar to 13.1(b)(i) to 13.1(b)(iv) in any other jurisdiction.
- 13.2 In the event of the Seller exercising its rights under Condition 13.1 or upon termination of Contract howsoever arising all outstanding sums in respect of Goods delivered to the Buyer shall become immediately due.

14 Indemnity and Limitation of liability

- 14.1 Nothing in these Terms shall limit or exclude either party's liability for:
- (a) death or personal injury caused by the negligence of either party;
 - (b) fraud or fraudulent misrepresentation; and/or
 - (c) any matter in respect of which it would be unlawful for either party to restrict or exclude liability.
- 14.2 The aggregate liability of the Seller in connection with each Contract (however arising) to the Buyer for any loss or damage of whatever nature and howsoever caused shall be limited to and in no circumstances shall exceed:
- (a) the price of the Goods concerned; or
 - (b) if the Goods are delivered by instalments the price of the instalment of the Goods concerned.
- 14.3 The Seller shall not be liable to the Buyer, however arising, for any loss of profit, loss of use, loss of income, loss of production or accruals, loss of contracts, loss of goodwill or for any financial or economic loss or for any indirect, consequential, remote or special loss, cost, damage or liability whatsoever and howsoever arising under or in connection with the Contract that may be incurred or suffered by the Buyer.
- 14.4 The Buyer agrees to indemnify the Seller against any damages, losses, costs, claims or expenses incurred by the Seller in respect of any claims brought against the Seller by any third party for:
- (a) any loss, injury or damage wholly partly caused by the failure on the part of the Buyer to store, use or handle the Goods in accordance with the Seller's instructions or requirements (whether oral or in writing);
 - (b) any loss, injury or damage in any way connected with the performance of this Contract provided that this Clause will not require the Buyer to indemnify the Seller against any liability for the Seller's own negligence.

15 Force majeure

- 15.1 The Seller shall not be in breach of the Contract or be liable to the Buyer for any failure to perform, or delay in performing, any of its obligations whatsoever caused by any matter beyond the Seller's control.
- 15.2 Without limitation matters beyond the Seller's control shall include:
- (a) strikes, lock-outs, industrial disputes (whether involving the Seller's workforce or a third party's), reduction in or unavailability of power at manufacturing plant or transport networks, breakdown of plant or machinery, closure of a manufacturing plant or part thereof (including for reasons of economic viability), shortage, unavailability or difficulty in obtaining raw materials from normal sources of supply (including labour, fuel, parts, machinery, materials or supplies, serious illness or epidemic); or
 - (b) acts of God, epidemics or similar events, accidents, malicious damage or sabotage, war or threat of war, terrorism, riots, civil commotion, import or export regulations or embargoes, defaults of the Buyer or third parties, nuclear, chemical or biological contamination, collapse of building structures, governmental or parliamentary restriction, prohibitions or enactments of any kind; or

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(c) fire, floods, explosions, storms, earthquakes, loss at sea, natural disasters or extreme adverse weather conditions.

- 15.3 In the event of any of the matters in Clause 15.2 or of force majeure, the Seller shall be entitled to reduce the amount of Goods delivered or cancel, suspend, delay or terminate the Contract in whole or in part with no liability for loss or damage thereby occasioned and the Seller shall be entitled to a reasonable extension of time to perform its obligations under the Contract.

16 Cancellation

Save as provided in these Terms, Contracts may not be cancelled except by agreement in writing of both parties and upon the payment to the Seller of such amount as may be necessary to indemnify the Seller against all loss resulting from the said cancellation.

17 Sub-contracting

- 17.1 The Seller may assign, license or sub-contract all or any part of its rights or obligations under a Contract.
- 17.2 This Contract is personal to the Buyer who may not assign, license or sub-contract all or any of its rights or obligations under this Contract without the Seller's prior written consent (such consent not to be unreasonably withheld).

18 Confidentiality, Copyright and Intellectual property

- 18.1 Both parties shall treat confidential information obtained from the other as confidential and shall not without the prior written agreement of the other at any time hereafter (save as required by law or any regulatory organisation with authority over it) disclose such information to any third party (other than those of its officers, employees advisers and agents whose responsibilities require them to know the same) or use it for any purposes other than for the performance of its obligations pursuant to the Contract (unless such information is in the public domain or is already known to the non-disclosing party otherwise than as a result of a breach of any duty of confidentiality owed in respect of such information).
- 18.2 The Buyer acknowledges that any and all of the copyright, trade marks, trade names, patents, know-how and other intellectual property rights created, subsisting or used in or in connection with the Goods including all documentation relating thereto (the Intellectual Property Rights) which may vest in the Seller are legally and/or beneficially owned by the Seller. For the avoidance of doubt, the Buyer shall not during or at any time after the completion, expiry or termination of the Contract in any way question or dispute such ownership thereof by the Seller. If new recipes, formulations, inventions, designs or processes evolve or are generated in the performance of or as a result of the Contract the Buyer acknowledges that the same shall be the property of the Seller.
- 18.3 To the extent the Goods are manufactured in accordance with a Specification provided by the Buyer, the Buyer shall indemnify the Seller 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 Seller in connection with any claim made against the Seller for actual or alleged infringement of a third party's intellectual property and other rights arising out of or in connection with the Seller's use of the Specification. This clause 18.3 shall survive termination of the Contract.

19 General

- 19.1 Any delay or failure by the Seller to exercise any right or remedy in connection with this Contract shall not constitute a waiver or prevent the subsequent exercise of such rights or remedies.
- 19.2 Any notice to be served under the Contract shall be in writing and served upon the recipient at its registered office address (or such other address as may be notified for this purpose) by first class post. Such notice shall be deemed served forty-eight hours after posting if sent by first class post to an address within the United Kingdom, or six working days after posting if sent by first class post to an address outside of the United Kingdom. Notice can also be sent by the Supplier to the Buyer's nominated
- 19.3 If any provision of these Terms is held by any competent authority to be invalid or unenforceable in whole or in part they shall not affect the validity of the other provisions of these Terms which shall continue in full force and effect.
- 19.4 A person who is not a party to the Contract shall not have any rights under or in connection with it.

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19.5 These Terms contain the entire agreement between the parties concerning its subject matter and no oral representations of any officer, agent or employee of the Supplier, either before or after the date this Agreement comes into effect, shall affect or modify any obligation of either Party hereunder.

20 Governing Law and Jurisdiction

The Contract shall be governed and construed in accordance with English law and each of the parties hereby submit to the non-exclusive jurisdiction of the English courts to settle any dispute or claim that arises out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).

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