

## Arkadia Beverages and Urban Barista Website Terms and Conditions of Sale

### 1. Introduction

- 1.1. These websites ([www.arkadiabeverages.com.au](http://www.arkadiabeverages.com.au) and [www.urbanbarista.com.au](http://www.urbanbarista.com.au)) (collectively, **Websites**) are owned and operated by Ramela Pty Ltd (ACN 006 111 593) (**we, us or our**).
- 1.2. These terms and conditions of sale (together with our Website Terms and Conditions, Privacy Policy) comprise the terms of a legal agreement between you and us for the purchase, fulfilment and delivery of products as displayed or listed on the Websites (**Products**) to you (**agreement**).
- 1.3. You acknowledge that you have read, understood and agreed to be bound by the terms of this agreement. The placement of an order for Products on, or via, the Websites [, by email or over the telephone] constitutes your acceptance of this agreement.
- 1.4. In this agreement, **you** and **your** means the individual who purchases Products on, or via, the Websites, and whose details are listed in the Product order (and includes anyone acting on your behalf or with your express or implied authority).

### 2. Legal capacity

- 2.1. To order or purchase Products on, via the Websites, you must be over 18 years of age, and legally able to enter into contractual relations. If you are under the age of 18 years (**Minor**) you must immediately cease and refrain from accessing or using the Websites and/or ordering or purchasing Products from the Websites, unless and until your parents or guardians have agreed to abide by this agreement. Your continued use of the Websites constitutes an acknowledgement by you that you are over 18 years of age, or your parents or guardians have agreed to abide by this agreement.
- 2.2. We may, at our absolute discretion:
  - (a) refuse to supply the Products and/or terminate your Product order without prior notice if this agreement is violated or if we decide that it would be in our best interests to do so; and/ or
  - (b) take legal action and seek compensation from the parent or guardian of a Minor who causes an order to be placed, for any loss or damage we may suffer as a result of a transaction entered into by a Minor.

### 3. Placement of orders

- 3.1. You may purchase Products on, or via, any of the Websites by selecting and placing your order in accordance with this agreement and as directed on the relevant Website. Any order placed by you in the manner displayed on the Websites is an offer by you to purchase a particular Products for the price (including Additional Charges) specified on the relevant Website at the time you place your order.
- 3.2. You should take care when submitting an order to purchase Products on, or via, any of the Websites. To the maximum extent permitted by law and unless otherwise permitted by this agreement, once you have placed an order for Products, your order cannot be altered or cancelled.
- 3.3. You warrant that:
  - (a) all details you provide to us when placing an order are current, correct and complete;
  - (b) you are an authorised user of the PayPal account, ShopPay account, Gpay account, credit card or debit card used to place your order; and
  - (c) that your nominated PayPal account, ShopPay account, Gpay account, credit card or

debit card will cover the full cost of the purchase.

- 3.4. Placing an order for Product does not constitute a legally binding agreement until we confirm that payment has been made on the order and you receive a written order confirmation from us to your nominated e-mail address that payment has been received and the order has been accepted.
- 3.5. If we are unable to successfully process your PayPal account, ShopPay account, Gpay account, credit card or debit card payment for your order, we may notify you and cancel your order.
- 3.6. Each order to purchase Products constitutes a separate agreement for the supply of Products, on the terms and conditions of agreement and is subject to your compliance with any specific limitations or terms displayed on the Websites.
- 3.7. We may, at our absolute discretion, accept or decline any order for Products (or part thereof) for any reason (or no reason), including an error in the advertised price for, or description of, the Products on the Websites, or an error in your order or due to the unavailability of the Products. Any order for Products (or part thereof) not accepted is automatically deemed cancelled. If we reject your order or there are any problems with your order, we will notify you by email of our rejection or problem within a reasonable time and give you the option of either:
  - (a) reconfirming your order;
  - (b) changing your order; or
  - (c) cancelling your order.

If we are unable to contact you, we will treat the order as cancelled. If your order is cancelled and you have already paid for the Products, you will receive a full refund.

- 3.8. If your order details or billing information is incorrect, incomplete or suspicious, we may, at our absolute discretion, require you to provide additional billing verification or order information before accepting any order.
- 3.9. If you place an order for Products on, or via, any of the Websites for someone else to receive the Products, you warrant that you have the authority to:
  - (a) provide us, or otherwise make available to us, the other person's Personal Information (as defined in our Privacy Policy) and you have obtained their consent for us to collect, use, store or disclose their Personal Information in accordance with our Privacy Policy; and
  - (b) bind that person as the principal to this agreement, and to the extent you do not have such authority you agree to be bound to this agreement.

#### **4. Price**

- 4.1. Prices shown on the Websites are in Australian Dollars (AUD) and are inclusive of GST.
- 4.2. Prices displayed on the Websites are current at the time of issue. Prices and availability of Products are subject to change effective immediately upon posting to the Websites. You agree to pay the price current at the time of payment.
- 4.3. Prices for our Products displayed on third party websites may not be correct and we are not bound by them.
- 4.4. In addition to the price for Products as displayed on the Websites, you agree to pay:
  - (a) GST and any other taxes and government charges, levies or fines in relation to the purchase of the Products;
  - (b) delivery and handling fees in relation to the delivery (or re-delivery) of the Products,

- packaging costs, transport insurance and all other costs, charges or expenses incurred in relation to delivery (or re-delivery) of the Products;
- (c) surcharges for payments made by credit card; and
  - (d) charges incurred in connection with the cancellation or variation of an order (**Cancellation Fee**),
- (collectively, **Additional Charges**).

4.5. If you have a promotional/discount/coupon code, you will be prompted to enter the code at the checkout and this will generate a discount from your cart value or add an incentive. To activate, simply enter a valid code then click the 'Apply' button. Promotional codes cannot be used in conjunction with any other offer or discount.

## 5. Payment

- 5.1. Once payment is made your tax invoice will be sent to you. Your tax invoice is your proof of purchase and may be required for any warranty claim.
- 5.2. You must pay for Products by credit card, debit card or PayPal account, ShopPay account or Gpay account. By providing your PayPal account, ShopPay account, Gpay account, credit card or debit card details to us or our third party payment processors you authorise us or our third party payment processors to deduct the price and the Additional Charges (as applicable) from your card.
- 5.3. We may, at our absolute discretion and without notice, change the payment methods that can be used to purchase Products on, or via, the Websites, at any time.
- 5.4. We may, at our absolute discretion, decline your payment at any time for any reason, including, but not limited to:
- (a) where our or our third party payment processor's fraud detection systems detect possible irregularities; or
  - (b) because your financial institution has declined payment or there are insufficient funds in your nominated PayPal account, ShopPay account, Gpay account, credit card or debit card to cover the full cost of the purchase.
- 5.5. If we are unable to successfully process your payment, we will notify you by email and we may, at our absolute discretion:
- (a) cancel, or suspend, all (or any part of) your order;
  - (b) request additional information (for example, proof of identity documents); or
  - (c) request you made payment by another method.
- 5.6. If you do not comply with our request for additional information or you fail to make payment by another method within 48 hours, we will cancel your order without further notice.

## 6. Delivery

- 6.1. Purchases will not be dispatched to you until we confirm payment has been made.
- 6.2. We (or our third party providers) shall use reasonable endeavours to effect delivery at the delivery address nominated by you in the order and by the scheduled delivery date displayed on the relevant Website or on your order confirmation (as the case may be). Delivery dates are estimates only and are not binding on us.
- 6.3. If you need to change a delivery date or the delivery address, please contact us within 24 hours of placing your order with us.
- 6.4. If we and our third party providers have been unable to deliver your Products due to your error or fault after five days, we reserve the right to cancel your order. In these

circumstances we will refund you the price of your order, less a Cancellation Fee and the delivery and handling fees incurred by us.

- 6.5. If the delivery of Products is delayed for any reason, we will not be liable to you or anyone else for any losses, damages, costs or expenses arising out of, or in connection with, any delay in delivery of the Products. We shall use reasonable endeavours to promptly notify you of any delays in delivery of the Products.
- 6.6. We will not deliver Products to a post box, post restante address or address outside of Australia.
- 6.7. We may, at our absolute discretion, refuse to deliver Products to specific areas or delivery addresses for any reason, including, but not limited to, where we consider the Products to be at high risk of being lost, damaged or destroyed if delivered to that area or delivery address, or where a specific area is inaccessible to us (or our third party providers). In this case, you may choose to have the Products delivered using your own couriers (at your own cost), in which case all liability for loss or damage to the Products caused by the delivery will be your sole responsibility.
- 6.8. You will ensure that any person who collects or takes delivery of the Products on your behalf is authorised by you to do so. Acceptance of delivery by such representative will constitute conclusive evidence that you have examined the Products and found them to be in good condition, complete in every way for the purpose for which it is intended. If required, the duly authorised representative shall sign a receipt confirming acceptance.
- 6.9. The risk of the Products, including from loss, theft, damage or destruction of the Products, shall pass to you on and from delivery to your nominated delivery address.
- 6.10. Title to the Products passes to you when the Products are paid for in full.
- 6.11. If you sell the Products before title in, and to, the Products has passed to you, you acknowledge that you sell the Products as our fiduciary agent provided that such sales shall not give rise to any obligations on our part. You shall hold the proceeds of sale on trust for us in a separate account.
- 6.12. To the maximum extent permitted by law, if any dispute arises concerning any order (including any measurements, quality, quantity, the type of Products ordered by you or identity of the purchaser or the delivery address) our records will be conclusive evidence of what was ordered.

## **7. Cancelled or varied orders**

- 7.1. At any time before delivery, we may, at our absolute discretion, cancel any order that has been previously accepted. Where we cancel your order before delivery, we will send you an email notifying you of the cancellation.
- 7.2. We, may, at our absolute discretion, consider a request by you to cancel or vary any previously accepted order. All requests to cancel or vary an order must be in writing before the Products have been dispatched to your nominated delivery address. To the maximum extent permitted by law, we may, at our absolute discretion, charge you, by way of liquidated damages, any loss, cost or expenditure incurred by us in relation to any cancellation or alteration of your previously accepted order (including, but not limited to, Cancellation Fees).
- 7.3. In the event either party cancels an order after payment has been accepted, we will refund any amount paid in respect of that order (less a Cancellation Fee in the event you cancel the order), using your original payment method.

- 7.4. To the maximum extent permitted by law, we will not be liable to you or anyone else for loss, damage, cost or expense arising out of, or in connection with, the cancellation of your order (whether by you or us and regardless of whether payment had previously been accepted by us).
- 7.5. You will not be entitled to a refund if the Products you purchased are delayed or lost as a result of you providing us with incorrect or insufficient delivery details.

## **8. Refunds and returns**

- 8.1. Please choose carefully as exchanges or refunds are not provided where you have simply changed your mind. To the maximum extent permitted by law, we will not provide a refund, exchange or repair in the following circumstances:
- (a) insignificant minor imperfections or superficial blemishes to the Product or its packaging;
  - (b) insignificant minor variations in taste, dimension, colour, size or finish;
  - (c) damage to external or product packaging only (except where the Product contents is exposed to the elements or where there is a risk of Product content contamination); or
  - (d) where the Australian Consumer Law or any manufacturer's warranty does not apply.
- 8.2. If the wrong Product is delivered, contact us as soon as possible, but not later than 48 hours days of receiving your delivery. We will offer to send you the correct Product and arrange for the collection and return of the incorrectly delivered Product at no cost to you.
- 8.3. If Products arrive that are missing parts, is faulty, is defective or has been damaged during manufacturing or delivery or the Product contents is exposed to the elements or has been contaminated due to damage to the external packaging, please take photos or video [clearly illustrating the problem] and contact us as soon as possible, but not later than 48 days of receiving your delivery.
- 8.4. To the extent that you acquire Products from us as a consumer within the meaning of the Australian Consumer Law, your purchase of Products will come with certain consumer guarantees that cannot be excluded and are in addition to any manufacturer's warranties or extended warranties purchased or given to you. In accordance with Australian Consumer Law, if the Products you purchased has a major failure, you may reject the Products and seek a refund or exchange, or you may keep the Products and seek compensation for any drop in the value of the Products. You are also entitled to have the Products repaired or replaced if the Products fail to be of acceptable quality and the failure does not amount to a major failure.
- 8.5. When returning damaged, faulty or defective Products to us, you must:
- (a) provide us with your proof of purchase;
  - (b) return them in the condition received by you with all original packaging or destroy the Product (as directed by us); and
  - (c) comply with any other direction given by us in relation to returning the damaged, faulty or defective Products.
- 8.6. It is your responsibility to ensure that returned Products are returned safely and within a reasonable period of time. We accept no responsibility for Products lost in transit.
- 8.7. Where you are returning Products to us because of our failure to comply with a consumer guarantee, you must return the Products to us at our cost. If you are entitled to a refund, we will provide you with a full refund within 14 days. If a consumer guarantee does not apply but we agree to provide you with a refund or replacement Products, you will destroy

the Products or return the Products to us at your own cost.

## 9. Warranty disclaimers and liability

- 9.1. The description of taste and any images, weights, colours, heights and other measurements of the Products displayed on, or via, the Websites are approximate only and the Products received by you may vary slightly from those images, descriptions or specifications displayed on the Websites. We cannot warrant or guarantee that the weight, taste, colour, height or other measurements of the Products are accurate.
- 9.2. It is your responsibility to satisfy yourself as to the suitability, condition and fitness for purpose of the Products without relying upon our skills or judgment. To the maximum extent permitted by law, we make no warranty or representation that the Products requested by you meet your personal or business needs, are suitable for any particular purpose or used under any specific conditions. You purchase the Products at your own risk on an 'as is' and 'where is' basis.
- 9.3. To the maximum extent permitted by law, we are not liable to you or anyone else if your order is declined or not accepted, your payment is not processed or the Products are not delivered as a result of, or in connection with:
- (a) your failure to provide us with complete or accurate order information or delivery details;
  - (b) the disruption to, or unavailability of the Websites or any computer or telecommunication systems used in connection with the Websites; or
  - (c) an Unavoidable Event.
- 9.4. To the maximum extent permitted by law, we, our directors, employees, contractors and agents exclude:
- (a) all representations, conditions, warranties, guarantees, rights, remedies, liabilities or other terms that may be implied or imposed by statute, common law or equity;
  - (b) all liability to you or anyone else for any:
    - (i) direct, indirect, consequential, incidental, special or exemplary damages, expenses, losses or liabilities; or
    - (ii) loss of profits, business interruption, loss of revenue, economic loss, loss of goodwill, loss of or damage to reputation, downtime costs, loss of use, failure to realise anticipated savings, loss under or in relation to any other contract, loss of opportunity or expectation loss or loss of production; or
    - (iii) loss of, or damage to, any property or any personal injury or death to you or anyone else,arising out of, relating to or connected to, your access and use of our Websites, the provision, delivery or use of the Products by you or anyone else and this agreement, regardless of the cause of action on which they are based, even if advised of the possibility of such damage occurring.
- 9.5. Nothing contained in this agreement excludes, restricts or modifies the application of any condition, warranty or other obligation, the exercise of any right or remedy, or the imposition of any liability under the *Competition and Consumer Act 2010 (Cth)* or any other national, state or territory legislation where to do so is unlawful.
- 9.6. Under no circumstances will our aggregate liability, whether based upon warranty, contract, statute, tort (including negligence) or otherwise, exceed the price paid by you for the Products under this agreement in the preceding one month of the claim.

## 10. Privacy

- 10.1. We and our authorised external service providers may collect Personal Information

directly from you when you access or use our Websites, , when you place an order or purchase Products on, or via, the Websites, or when you contact us for any reason. Personal information we collect and use may include your name, billing address, delivery address, telephone number, email address and payment details.

10.2. Online payments are handled by Shopify. We do not store your credit card or banking details. We refer you to the [Shopify Privacy Policy](#) for more information regarding Shopify's privacy practices and security measures.

10.3. Further details of our policy on the collection, storage, use and disclosure of your Personal Information is set out in our Privacy Policy, which forms part of this agreement.

## 11. Unavoidable Events

We will not be liable to you or anyone else under this agreement or otherwise if we are prevented from or delayed in performing our obligations under this agreement, or from carrying on our business, by acts, events, omissions or accidents beyond our control including, but not limited to, acts of God, failure of a utility service, transport, banking or telecommunications networks, riots, civil commotion, computer hacking, war, acts of terrorism, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or earthquake, any disaster or adverse weather, governmental actions, pandemics, epidemic, mandatory government shut-down or lock-down, default or non-performance of hosting or data centre providers, interruption of the internet or our Websites, or other suppliers or sub-contractors, labour disputes, or any other failure, act or omission in our supply chain, including our third party delivery contractors and manufacturers (**Unavoidable Events**).

## 12. Suspension and termination

We may, in our absolute discretion and without notice, terminate, suspend or block your access to our Websites, or any Products offered, on or via, the Websites for any reason (or no reason), including as result of, or in connection with:

- (a) any breach of this agreement by you;
- (b) request by law enforcement or other government agencies;
- (c) discontinuance of the Websites or any websites linked to the Websites (or any part thereof); or
- (d) planned or unplanned service outages, technical or security failures, maintenance works or excessive server load on the technical equipment used by us or our third party providers,

and we will not be liable to you or anyone else arising out of, or in connection with, any such suspension or termination.

## 13. General

13.1. A waiver of any right under this agreement is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and to the circumstances for which it is given.

13.2. If any provision (or part of a provision) of this agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, then the other provisions shall remain in force.

13.3. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, then the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

- 13.4. This agreement, and any documents referred to in it, constitute the whole agreement between the parties and supersede any previous arrangements, understandings or agreements between them relating to the subject matter which they cover.
- 13.5. You will not, without our prior written consent, assign, transfer, charge, sub-contract or deal in any other manner with all or any of your rights or obligations under this agreement.
- 13.6. Nothing in this agreement is to be construed as constituting a partnership, employment relationship, joint venture, or any other form of association between the parties in which one party may be liable for the acts or omissions of any other party.
- 13.7. If there is any inconsistency between this agreement and the term of any other document referred to in this agreement, this agreement shall prevail to the extent of any inconsistency.
- 13.8. The laws of the state of Victoria, Australia govern this this agreement. The parties agree to submit to the exclusive jurisdiction of the courts of Victoria, Australia.