



FUNKIN LIMITED
TERMS AND CONDITIONS OF SALE – OFFLINE PURCHASES

1. THESE TERMS AND INFORMATION ABOUT US

- 1.1 These are the terms and conditions on which we supply goods to our **business customers (including Export Customers** (as defined below)) otherwise than through our website: www.funkincocktails.co.uk (“**you**”, “**your**”). If you are a consumer or a business customer wishing to purchase goods through our website, please refer to the terms and conditions applicable to online sales of our goods at www.funkincocktails.co.uk.
- 1.2 We are Funkin Limited a company registered in England and Wales. Our company registration number is 03765967 and our registered office is at Crossley Drive, Magna Park, Milton Keynes, England, MK17 8FL (“**we**”, “**us**”, “**our**”).
- 1.3 You can contact us by telephoning our customer service team at +44 (0) 207 328 4440 or by writing to us at info@funkin.co.uk.

2. INTERPRETATION

2.1 Definitions:

Business Day: a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

Conditions: the terms and conditions set out in this document as amended from time to time in accordance with clause 3.4.

Contract: the contract between us and you for the sale and purchase of the Goods in accordance with these Conditions.

Delivery Location: has the meaning given in clause 5.1.

Export Customers: those customers that are ordering Goods for shipment (such shipment to be arranged either by you or us, as may be agreed in writing) to: (i) a country outside of the United Kingdom; and (ii) with effect from 1 January 2021, Northern Ireland.

Goods: the goods (or any part of them) set out in the Order and supplied to you by us in accordance with these terms and conditions.

Minimum Order Value: the minimum combined value of the Goods that you must order in order to qualify for delivery of the Goods to you by us or our carrier, as set out in writing by our authorised representative in relation to any particular Order.

Order: your order for the Goods, as set out in your purchase order form or in your written offer to purchase the Goods, as the case may be.

Specification: any specification for the Goods, including any related plans and drawings, that is agreed in writing by you and us.

2.2 **Interpretation:**

- (a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a party includes its successors and permitted assigns.
- (c) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
- (d) Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- (e) A reference to **writing** or **written** includes fax and email.

3. **BASIS OF CONTRACT**

3.1 The Order constitutes an offer by you to purchase the Goods in accordance with these Conditions to the exclusion of any other terms and conditions. You are responsible for ensuring that the terms of the Order and any applicable Specification are complete and accurate.

3.2 We will accept your Order at our discretion. We may send you an email acknowledging receipt of your Order, but this does not constitute our acceptance of the Order. Our acceptance of your Order will take place as follows:

- (a) in relation to Export Customers, on your receipt of our written communication to confirm the Order which may contain details on availability and best before dates of the Goods contained in your Order; and
- (b) for all other customers, on your receipt of our written communication to confirm the Order and which may advise of the relevant collection or delivery details as applicable.

3.3 The images, descriptions and specifications of the products on our website are for illustrative purposes only. Your product may vary slightly from those, descriptions or

specifications. The packaging and colouring of the product may also vary from that shown in images on our website.

3.4 Any purported variation of these terms and conditions by you shall have no effect unless expressly agreed in writing and signed by our authorised signatory.

3.5 The Goods are not sold on a sale or return or exchange basis.

3.6 An Order shall be for the Minimum Order Value as specified by us from time to time, unless otherwise agreed between us in writing.

4. GOODS

4.1 The Goods are described in our most recent price list. All Goods are subject to availability.

4.2 We may change the Goods at any time:

- (a) to reflect changes in relevant laws and regulatory requirements; and
- (b) to implement minor specification adjustments and improvements, for example to improve taste or longevity of the product.

5. DELIVERY AND COLLECTION

5.1 Depending on the arrangements agreed between us in writing, as may be communicated in accordance with clause 3.2, we will either arrange for the Goods to be delivered to you to the location set out in the Order or such other location as we may agree (**Delivery Location**) or for you to collect them from our premises or our third party partner's premises as notified to you from time to time (**Collection Location**).

5.2 For the avoidance of doubt, we reserve the right to specify the delivery or collection options available to you, and may refuse to offer delivery of the Goods to you where your Order does not meet the Minimum Order Value.

5.3 In relation to Export Customers, any Incoterms (based on Incoterms 2020) applicable to an Order will be as agreed in writing between us from time to time. Where we agree in writing that a particular Incoterm applies to your Order, the relevant Incoterm shall apply and take precedence over the corresponding terms in these terms and conditions to the extent that they conflict.

5.4 If you are an Export Customer, you:

- (a) warrant that you have obtained all approvals and consents required for the importation, storage, resale and maintenance of the Goods in the country of export and you have notified the us of any applicable laws and regulations in the country of export relevant to the manufacture, ingredients, design, packaging, and export of the Goods (the “**Export Goods Laws**”) and any certifications, documentation or licenses required to be provided by us under the Export Goods Laws.
 - (b) agree to:
 - (i) maintain the approvals and consents required for the importation, storage, resale and maintenance of the Goods in the country of export, as they may be modified from time to time; and
 - (ii) notify us promptly upon becoming aware that any of the Export Goods Laws are likely to change or have changed.
- 5.5 We will make every effort to deliver the Goods to you or make them available for collection by you as soon as reasonably possible and in any event within 30 days after the day on which we accept your order.
- 5.6 We will have completed delivery to you once we or our carrier have unloaded the Goods at the Delivery Location, or when you or your carrier collects the Goods from the Collection Location or our carrier hands over the Goods to your shipping agent.
- 5.7 Any dates quoted for delivery or collection are approximate only. If our supply of the products is delayed by an event outside our control then we will contact you as soon as possible to let you know and we will take steps to minimise the effect of the delay. Provided we do this we will not be liable for delays caused by the event.
- 5.8 We will not be liable for any delay in delivery of the Goods that is caused by your failure to provide us with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 5.9 We will have no liability for any failure to deliver the Goods or to make them available for your collection to the extent that such failure is caused by an event outside our control or your failure to provide us with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 5.10 If you fail to collect the Goods within 3 days of the date set out in the Order, our Order acceptance or as otherwise agreed between us in writing, then we may end the Contract and clause 5.12 will apply.

- 5.11 If you fail to take delivery of the Goods we may attempt to redeliver your order up to two more times. If we are unable to complete our delivery to you (e.g. due to difficulties gaining access to the Delivery Location), we will notify you as soon as possible. If, despite our reasonable efforts, we are unable to contact you or successfully complete delivery we may end the Contract and clause 5.12 will apply.
- 5.12 If we end the Contract in the circumstances set out in clauses 5.10 and 5.11 we will refund any money you have paid in advance for Goods we have not provided but we may deduct or charge you a reasonable administration fee for the net costs we will incur as a result of your failure to collect or take delivery of the Goods.
- 5.13 If we deliver up to and including 5% more or less than the quantity of Goods ordered you may not reject them, so long as a pro rata adjustment is made to the Order invoice.
- 5.14 We may deliver the Goods by instalments, which shall be invoiced and paid for separately. Any delay in delivery or defect in an instalment shall not entitle you to cancel any other instalment.
- 5.15 You shall inspect the Goods on delivery or collection and notify us in writing in accordance with clause 6.2 below if you believe that the Goods do not conform to the warranty set out at clause 6.1. No claim for damage, shortage or non-compliance will be considered by us unless we receive such written notice from you within three days of the date of delivery or collection.

6. QUALITY

- 6.1 We warrant that on delivery or collection, the Goods will:
- (a) conform in all material respects with their description and any applicable Specification; and
 - (b) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979 as amended).
- 6.2 Subject to clause 6.3, if:
- (a) you give us notice in writing no later than three days after delivery has been completed or you have collected the Goods in accordance with clause 5.6 that the Goods do not comply with the warranty set out in clause 6.1;
 - (b) we are given a reasonable opportunity of examining the Goods; and
 - (c) you return such Goods to us at our cost,

we shall, at our option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

6.3 We will not be liable for the Goods' failure to comply with the warranty set out in clause 6.1 in any of the following events:

- (a) you inspect the Goods on delivery or collection and fail to notify us of any non-conformity in accordance with clause 6.2;
- (b) you make any further use of such Goods after giving notice in accordance with clause 6.2;
- (c) the defect arises because you failed to follow our oral or written instructions as to the storage, or use of the Goods or (if there are none) good trade practice;
- (d) the defect arises as a result of us following any drawing, design or Specification supplied by you;
- (e) you alter the Goods without our written consent;
- (f) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
- (g) the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

6.4 Except as provided in this clause 6, we will have no liability to you in respect of the Goods' failure to comply with the warranty set out in clause 6.1.

6.5 Except as otherwise provided for in this clause 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. Other than as set out in these conditions we make no other warranties and none shall be implied.

6.6 These Conditions shall apply to any repaired or replacement Goods supplied by us.

7. TITLE AND RISK

7.1 Unless otherwise agreed in accordance with clause 5.3:

- (a) the Goods will be your responsibility from completion of delivery or collection of the Goods in accordance with clause 5.6
- (b) ownership of the Goods will not pass to you until we receive payment in full (in cash or cleared funds) for the Goods.

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

- (a) store the Goods separately from all other goods held by you so that they remain readily identifiable as belonging to us;
- (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery or collection;
- (d) notify us immediately if you become subject to any of the events listed in clause 10.1(b) to clause 10.1(d); and
- (e) give us such information as we may reasonably require from time to time relating to:
 - (i) the Goods; and
 - (ii) your financial position.

8. PRICE AND PAYMENT

- 8.1 The price of the Goods shall be the price set out in the Order, or, if no price is quoted, the price set out in our price list in force as at the date of delivery or collection.
- 8.2 We may, by giving notice to you at any time before delivery or collection, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:
- (a) any factor beyond our reasonable control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
 - (b) any request by you to change the delivery or collection date(s), quantities or types of Goods ordered, or any Specification; or
 - (c) any delay caused by any instructions of you or failure of you to give us adequate or accurate information or instructions.
- 8.3 The price of the Goods:
- (a) excludes amounts in respect of value added tax (**VAT**), which you shall additionally be liable to pay to us at the prevailing rate, subject to the receipt of a valid VAT invoice; and
 - (b) excludes the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to you.
- 8.4 We may invoice you for the Goods on or at any time after the completion of delivery or collection.
- 8.5 You shall pay each invoice submitted by us:

- (a) within 30 days of the date of the invoice or in accordance with any other payment terms agreed between us in writing; and
 - (b) in full and in cleared funds to a bank account nominated in writing by us.

- 8.6 You shall pay our invoices in accordance with clause 8.5 regardless of whether you have received payment for any onward sale of the Goods to your own customers. Under no circumstances shall payment to us by you under this Contract be made contingent upon the fulfilment of any obligations owed to you by third parties under any other contracts.

- 8.7 If you do not make any payment to us by the due date we may charge interest to you on the overdue amount at the rate of 4% a year above the base lending rate of Bank of England from time to time. This interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. You must pay us interest together with any overdue amount.

- 8.8 If you think an invoice is wrong please contact us promptly to let us know. You will not have to pay any interest until the dispute is resolved. Once the dispute is resolved we will charge you interest on correctly invoiced sums from the original due date.

- 8.9 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

- 8.10 We reserve the right to amend the payment terms set out in this clause 8 or change or withdraw any previously agreed credit limit by notice to you in writing if, in our reasonable opinion, your ability to pay our invoices as they fall due is or is likely to become adversely affected.

9. LIMITATION OF LIABILITY

- 9.1 The restrictions on liability in this clause 9 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

- 9.2 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:
 - (a) death or personal injury caused by our negligence, or the negligence of our employees, agents or subcontractors (as applicable);
 - (b) fraud or fraudulent misrepresentation; or

- (c) any matter in respect of which it would be unlawful for us to exclude or restrict liability.

9.3 Subject to clause 9.2, we shall not be liable to you for any of the following types of loss:

- (a) loss of profits;
- (b) loss of sales or business;
- (c) loss of agreements or contracts;
- (d) loss of anticipated savings;
- (e) loss of use or corruption of software, data or information;
- (f) loss of or damage to goodwill; and
- (g) indirect or consequential loss.

9.4 Subject to clauses 9.2 and 9.3, our total liability to you shall not exceed the price paid by you for the Goods in the relevant Order.

9.5 This clause 9 shall continue in effect even after termination of the Contract.

10. TERMINATION

10.1 We may end this Contract with you with immediate effect by giving written notice to you if:

- (a) you materially breach any term of the Contract and (if such a breach is remediable) fail to remedy that breach within 7 days of us notifying you in writing to do so;
- (b) you take any step or action in connection with entering administration, provisional liquidation or any composition or arrangement with your creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of your assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any similar procedure in the relevant jurisdiction;
- (c) you suspend, threaten to suspend, cease or threaten to cease to carry on all or a substantial part of your business; or
- (d) your financial position deteriorates to the extent that we are reasonably justified in believing that your ability to comply with the terms of this Contract is in jeopardy.

- 10.2 We may also suspend provision of the Goods under the Contract or any other contract between us if you become subject to any of the events listed in clause 10.1(b) to clause 10.1(d), or we reasonably believe that you are about to become subject to any of them, or if you fail to pay any amount due under this Contract on the due date for payment.
- 10.3 We may terminate the Contract with immediate effect by giving written notice to you if you fail to pay any amount due under the Contract on the due date for payment.
- 10.4 On termination of the Contract for any reason you shall immediately pay to us all of our outstanding unpaid invoices and interest and, in respect of Goods supplied but for which no invoice has been issued, we will issue an invoice to you which shall be payable by you immediately on receipt.
- 10.5 The rights of the parties that have accrued prior to the end of the Contract will not be affected by either termination or expiry of the Contract.
- 10.6 Any provision of this Contract that is said or intended to come into or continue in effect after this Contract ends will do so.

11. FORCE MAJEURE

We shall not be held in breach of this Contract or liable for delay in performing our obligations under the Contract if this is caused by circumstances beyond our reasonable control. In such circumstances the time for performance of our obligations shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed.

12. GENERAL

- 12.1 You shall:
- (a) comply with all applicable laws, statutes and regulations relating to anti-corruption including but not limited to the Bribery Act 2010 (Relevant Requirements);
 - (b) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
 - (c) comply with our Anti-Bribery and Corruption Policy in force from time to time, copies of which are available on request; and
 - (d) have and shall maintain and enforce, your own policies and procedures including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements.

- 12.2 You mustn't transfer or subcontract any of your obligations under these terms and conditions, or transfer or deal with any of your rights under these terms and conditions, without getting our written approval first. We may transfer our rights and obligations under these terms to another organisation.
- 12.3 This Contract is between you and us. No other person shall have any rights to enforce any of its terms and neither of us will need to get the agreement of any other person in order to end the Contract or make changes to these terms.
- 12.4 Our rights and remedies set out in this agreement are in addition to and don't exclude or affect the rights and remedies available to us by law.
- 12.5 This agreement doesn't create a joint venture or partnership between us and it doesn't authorise us to act as agent or make or enter into any commitments on one another's behalf.
- 12.6 If either of us is slow in insisting that the other does anything it is required to do under this Contract, or in taking steps in response to the other breaking this agreement, this won't mean we'll have lost the right to do those things.
- 12.7 Each provision and part provision of this Contract is separate from the others. This means that if any provision or part provision is held to be invalid, it will be deleted but this won't affect the validity of the rest of the Contract.
- 12.8 We each confirm that this Contract sets out everything we've agreed and that neither of us is entering into this Contract in reliance on something that's not in it.
- 12.9 This Contract will be ruled by English law. The English courts will be the only courts authorised to settle any disputes arising out of or in connection with this Contract.