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## Hemingways Marketing Services Limited

### 1. Definitions and Interpretation

1.1 In these Conditions the following words and expressions shall have the following meanings, unless otherwise stated:

**API:** means the Application Programming Interface developed by or on behalf of Voucher Express for the purpose of supplying vouchers to the Customer upon request;

**Business Day:** means a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business;

**Conditions:** means the terms and conditions set out in this document as amended from time to time in accordance with clause 12.10;

**Confidential Information:** information in whatever form (including, without limitation, in written, oral, visual or electronic form or on any magnetic or optical disk or memory and wherever located) relating to the business, clients, customers, products, affairs and finances of Voucher Express for the time being confidential to Voucher Express and trade secrets including, without limitation, technical data and know-how relating to the business of Voucher Express or any of its suppliers, clients or management, whether or not such information (if in anything other than oral form) is marked confidential or information which would be regarded as confidential by a reasonable business person;

**Contract:** means the contract between Voucher Express and the Customer for the sale and purchase of Vouchers in accordance with these Conditions;

**Customer:** means the person or firm who purchases Vouchers from Voucher Express;

**Data Protection Legislation:** (i) the General Data Protection Regulation ((EU) 2016/679) ("GDPR") unless and until the GDPR is no longer directly applicable in the UK, together with any national implementing laws, regulations and secondary legislation as amended or updated from time to time in the UK, including the Data Protection Act 2018 ("DPA"); (ii) any successor legislation to the GDPR and the DPA; and (iii) any other directly applicable EU regulation relating to data protection and privacy;

**Force Majeure Event:** means an event or circumstance beyond a party's reasonable control;

**Insolvency Event:** means a party: (i) enters liquidation or a winding up petition is presented against a party; (ii) has a receiver, liquidator, administrator, trustee or an individual with a similar role appointed over any of its assets; or (iii) proposes to make

any arrangement with its creditors or passes a resolution to place such party into liquidation;

**Order:** means the Customer's order for Vouchers, as set out in the Customer's purchase order form, the Customer's written acceptance of Voucher Express's quotation, telephone order, via an API link or overleaf, as the case may be;

**Retailer:** means (i) any retailer who is the ultimate issuer of a Voucher (including online retailers); (ii) any shop where a Voucher can be spent; and/or (iii) any company who issues 'multi-option' Vouchers;

**Voucher:** means any gift voucher, gift card and/or e-voucher (or any combination of them), whether sent by post or electronically, as set out in the Order; and

**Voucher Express:** Hemingways Marketing Services Limited t/a Voucher Express, a company incorporated in England and Wales with company number 00453174 and having its registered office at Metcalfe House, 23 H Kirkgate Ripon, HG4 1PB.

## Construction

- 1.2 In these Conditions, the following rules apply:
- 1.2.1 a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
  - 1.2.2 a reference to a party includes its personal representatives, successors or permitted assigns;
  - 1.2.3 a reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
  - 1.2.4 any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
  - 1.2.5 a reference to writing or written includes faxes but not e-mails.

## 2. Basis of Contract

- 2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

- 2.2 The Order constitutes an offer by the Customer to purchase the Vouchers in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order are complete and accurate.
- 2.3 Orders of postal and e-mail Vouchers shall only be deemed to be accepted when Voucher Express issues a written acceptance of the Order, at which point the Contract shall come into existence. Voucher Express is free to accept or reject Orders as it sees fit in its sole discretion and without reason.
- 2.4 Any descriptive matter or advertising produced by Voucher Express and any descriptions contained in Voucher Express' brochures or website are produced for the sole purpose of giving an approximate idea of the Vouchers referred to in them. They shall not form part of the Contract nor have any contractual force.
- 2.5 Any quotation given by Voucher Express shall not constitute an offer. A quotation shall only be valid for a period of 20 Business Days from its date of issue.

### **3. Vouchers**

- 3.1 The available Vouchers are described on Voucher Express' website as updated from time to time. Voucher Express may change the range of available Vouchers at any time, without prior notification.
- 3.2 Vouchers are non-returnable and non-transferrable. Voucher Express does not operate a sale or return policy. Vouchers cannot be exchanged for cash.
- 3.3 Voucher Express is not directly linked to any of the Retailers. If any Retailer suffers an Insolvency Event, the Voucher may or may not become invalid (depending on the terms and conditions of the relevant Retailer) and Voucher Express has no liability in this respect and shall be under no obligation to replace or exchange any affected previously issued, unspent Vouchers.
- 3.4 Vouchers which are defaced, altered or cancelled will not be accepted for use.
- 3.5 Vouchers are for business use only and are not intended for resale. On rare occasions Vouchers may be made available for resale but only with Voucher Express' prior written consent and subject to permission being granted by the relevant Retailer.
- 3.6 Each Retailer operates its own policies in respect of issuing change after using a Voucher. Change may be given in the form of a lower denomination voucher/gift card or equivalent. In some circumstances change, typically if under £1, will be given in cash. In some instances no change will be given.

- 3.7 Some Vouchers are 'multi-option' Vouchers which are redeemable for goods in a variety of stores. Voucher Express shall have no responsibility for any changes to the stores accepting such Vouchers, and for any changes to the terms and conditions applicable to each Voucher.
- 3.8 Some Vouchers are 'open ended' and do not have an expiry date. Some Vouchers do have an expiry date and the Customer is responsible for checking any such dates. The Customer should confirm the status of expiry on each Voucher prior to placing the Order.
- 3.9 The terms and conditions applicable to each Voucher may be changed by the relevant Retailer from time to time and Voucher Express take no responsibility for any such changes.
- 3.10 The Customer shall not use any intellectual property rights of any Retailer without first obtaining the consent of the Retailer via Voucher Express. Voucher Express will liaise with the Retailer as required in this regard, but the Customer acknowledges that the approval of the use of any intellectual property rights is at the sole discretion of the Retailer. The Customer shall provide Voucher Express with such information as Voucher Express reasonably requests in relation to any request to use the any intellectual property rights of a Retailer.

#### **4. Delivery**

- 4.1 Voucher Express will aim to meet all delivery requirements but shall not be liable for any loss, costs or damages incurred by the Customer arising out of or in connection with any failure to achieve the delivery date specified in the Order.
- 4.2 If Voucher Express fails to deliver the Vouchers, its liability shall be limited to replacing the relevant Vouchers. Voucher Express shall not be liable for any failure or delay in delivery of the Vouchers that is caused by a Force Majeure Event or the Customer's failure to provide Voucher Express with adequate delivery instructions or any other instructions that are relevant to the supply of the Voucher.
- 4.3 Voucher Express may deliver the Vouchers by instalments, which may be invoiced and paid for separately. Any delay in delivery of an instalment shall not entitle the Customer to cancel any other instalment.
- 4.4 All Vouchers must be checked by the Customer promptly on receipt to ensure the quantities are correct and the Vouchers are not damaged. Any issues must be notified to Voucher Express in writing within 3 Business Days of delivery. Voucher Express will not be responsible for shortages or losses after this time.

4.5 Voucher Express shall, at its option either (i) replace the defective Vouchers or issue new Vouchers to make up any shortfalls; or (ii) refund the price of the defective Vouchers or refund the amount of any shortfall in Vouchers. Replacement Vouchers or a refund of the relevant amount shall be the Customer's sole remedy for any defective Vouchers or shortfalls.

4.6 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.

4.7 These Conditions shall apply to any replacement Vouchers supplied by Voucher Express.

#### **4.8 Postal Vouchers**

4.8.1 Postal vouchers will be sent to the delivery address stated in each Order. Delivery of Vouchers will be made using either Royal Mail or a variety of carriers depending on the size and value of the Order. Most deliveries of Vouchers sent by post are sent using a registered service and will require signature on arrival. In certain circumstances, First Class post may be used.

4.8.2 Subject to clause 6.6, if available in stock, Vouchers sent by post will normally be despatched for next working day delivery. Large orders should be notified in advance of ordering so that Voucher Express can take steps to obtain necessary stock.

4.8.3 Voucher Express shall ensure that each delivery sent by post is accompanied by a delivery note that shows the date of the Order, the type and quantity of the Vouchers and, if the Vouchers are being delivered by instalments, the outstanding balance of Vouchers remaining to be delivered.

4.8.4 If no-one is present to sign for delivery of Vouchers if required, the Vouchers shall be deemed to have been delivered and the Customer must follow the instructions of the relevant delivery company in order to organise collection or re-delivery of the Vouchers. The Customer acknowledges that any uncollected Vouchers will be returned to Voucher Express in due course. If Voucher Express has to resend Vouchers to the Customer by post for any reason, the Customer shall be charged any associated delivery costs which must be paid in full prior to Voucher Express resending the Vouchers.

4.8.5 If requested by Voucher Express, the Customer shall return any damaged Vouchers delivered by post to Voucher Express at the Customer's cost.

#### **4.9 Digital Vouchers**

4.9.1 Digital Vouchers will be delivered by email, API and/or SMS text, as stated in the Order.

4.9.2 Vouchers sent (whether requested to be sent by e-mail, API or SMS) will be deemed to have been delivered to the recipient immediately following the sending of the e-mail or SMS that contains the Voucher (whether as a PDF attachment, a URL, barcode, QR code or otherwise). If you have not received the Voucher within 4 working hours of your request, please contact Voucher Express by phone on 0371 664 2300 or by email at [corporate@voucherexpress.co.uk](mailto:corporate@voucherexpress.co.uk).

## **5. Title and Risk**

5.1 Risk in the Vouchers shall pass to the Customer on completion of delivery in accordance with clause 4.8.1 (for postal Vouchers) or clause 4.9.2 (for electronic Vouchers).

5.2 Title to the Vouchers shall pass to the Customer when Voucher Express receives payment in full (in cash or cleared funds) for the Voucher.

## **6. Price and Payment**

6.1 The price of the Vouchers shall be the price set out in the Order, or, if no price is quoted, the price set out in Voucher Express' published price list in force as at the date of delivery.

6.2 The price of the Voucher:

6.2.1 excludes VAT, which the Customer pays, if applicable, in addition at the prevailing rate; and

6.2.2 excludes the costs of packaging, insurance and delivery of Vouchers sent by post, which may be invoiced to the Customer.

6.3 Voucher Express shall invoice the Customer for the Vouchers sent by post or e-mail on or at any time after acceptance of the Order.

6.4 Subject to clause 6.6, the customer shall pay the invoice in full and in cleared funds prior to delivery of the Order. The Customer acknowledges and accepts that no Vouchers will be dispatched until payment has been received in full and in clear funds.

6.5 Payment shall be made by BACS or CHAPS to the bank account nominated in writing by Voucher Express, or by credit card. Any payment made by AMEX shall be discounted by 1% to allow for banking charges.

- 6.6 Notwithstanding the terms of clause 6.4, Voucher Express may, at its sole discretion on a case by case basis in exceptional circumstances agree alternative payment terms with a Customer. Any such terms shall be agreed in writing (including e-mail) between Voucher Express and the Customer.
- 6.7 If the Customer wishes to purchase Vouchers via the API, the Customer and Voucher Express shall agree an initial sum to be paid by the Customer (the “**API Fund**”) and the Customer shall only be able to purchase Vouchers for a sum equal to or less than the API Fund. The Customer shall be notified of the balance of the API Fund each time it wishes to use the API and shall have the option to increase the API Fund to enable it to purchase more Vouchers via the API. Voucher Express shall issue a refund for a sum equal to the remaining API Fund (if any) if the Contract expires or is terminated.
- 6.8 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). Voucher Express may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by Voucher Express to the Customer.

## **7. Termination**

- 7.1 Voucher Express may terminate the Contract in whole or in part at any time before delivery with immediate effect by giving the Customer written notice, whereupon Voucher Express shall refund the Customer any monies already paid.
- 7.2 Voucher Express may terminate this Contract or cancel or suspend all further delivery of Vouchers under the Contract or under any other contract between Voucher Express and the Customer without incurring any liability to the Customer if:
- 7.2.1 the Customer commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within a period of 10 Business Days after receipt of notice in writing requiring it to do so;
  - 7.2.2 the Customer stops trading or is in a position whereby it cannot pay its debts and/or an Insolvency Event arises or the equivalent of any of the foregoing occurs under the jurisdiction to which the Customer is subject;
  - 7.2.3 Voucher Express reasonably believes that one of the above circumstances is about to occur;
  - 7.2.4 the Customer fails to pay any amount due under the Contract on the due date for payment; or

7.2.5 the Customer's financial position deteriorates to such an extent that in Voucher Express's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

7.3 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

## **8. Limitation of Liability**

8.1 Nothing in these Conditions shall limit or exclude Voucher Express' liability for:

8.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);

8.1.2 fraud or fraudulent misrepresentation; or

8.1.3 any matter in respect of which it would be unlawful for Voucher Express to exclude or restrict liability.

8.2 Subject to clause 8.1:

8.2.1 Voucher Express shall under no circumstances whatsoever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and

8.2.2 Voucher Express's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the sum paid by the Customer for the Vouchers in respect of which the claim relates.

8.3 The Customer shall keep Voucher Express indemnified against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by Voucher Express as a result of or in connection with any claim made against Voucher Express by a third party arising out of or in connection with the use of the Vouchers by any third party.



**9. Confidentiality**

- 9.1 Each party shall treat as confidential all Confidential Information of the other party and shall not disclose such Confidential Information to any person other than in accordance with these Conditions.
- 9.2 Neither party shall use any Confidential Information of the other party other than to exercise its rights and perform its obligations under these Conditions.
- 9.3 A party's Confidential Information shall not be deemed to include information that:
- 9.3.1 is or becomes publicly known other than through any act or omission of the receiving party;
  - 9.3.2 was in the other party's lawful possession before the disclosure;
  - 9.3.3 is lawfully disclosed to the receiving party by a third party without restriction on disclosure;
  - 9.3.4 is independently developed by the receiving party, which independent development can be shown by written evidence; or
  - 9.3.5 is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.
- 9.4 This clause 9 shall survive termination.

**10. Data Protection**

- 10.1 Voucher Express shall comply with the Data Protection Legislation when processing any personal data received from the Customer.

**11. Force Majeure**

Neither party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure result from a Force Majeure Event. If the period of delay or non-performance continues for 12 weeks, either party may terminate this Contract by giving **7** days written notice to the affected party.

## 12. General

12.1 **Notices.** Notices required to be given under these Conditions shall not be sent by e-mail, unless stated otherwise in these Conditions. Notices shall be deemed to have been duly received:

12.1.1 if delivered personally, when left at the registered address of the relevant party or otherwise the address notified by the recipient to the other party in writing; or

12.1.2 if sent by pre-paid first-class post or recorded delivery, at 9.00am on the second day (excluding weekends and public holidays) after posting; or

12.1.3 if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

12.2 **Cumulative Remedies.** Except as otherwise expressly provided by these Conditions, all remedies available to either party for breach of these Conditions are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

12.3 **Anti-Bribery and Modern Slavery.** The Customer shall comply with the Bribery Act 2010 and the Modern Slavery Act 2015 and not do, or omit to do, any act that will cause the other to be in breach of the Bribery Act 2010 or the Modern Slavery Act 2015.

12.4 **Assignment.** Voucher Express may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with any or all of its rights or obligations under the Contract. The Customer may not assign, transfer, mortgage, charge, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of Voucher Express.

12.5 **Subcontracting.** The Customer may not subcontract any or all of its rights or obligations under the Contract without the prior written consent of Voucher Express. If Voucher Express consents to any subcontracting by the Customer, the Customer shall remain responsible for all the acts and omissions of its subcontractors as if they were its own.

12.6 **Publicity and Announcements.** No announcement or other public disclosure concerning these Conditions or any of the matters contained in it shall be made by, or on behalf of, the Customer without the prior written consent of Voucher Express.

12.7 **Further Assurance.** At any time, each party shall sign all documents and do or cause to be done all further acts and things as that party so requiring may reasonably require to give full effect to the terms of these Conditions.

- 12.8 **Entire Agreement.** These Conditions contains all the terms which the parties have agreed with respect to its subject matter and supersedes all previous agreements and understandings between the parties (whether oral or in writing) relating to such subject matter. Each party acknowledges and agrees that it has not been induced to enter into these Conditions by a statement or promise which it does not contain. All warranties, conditions and other terms (whether express or implied) which are not set out in these Conditions are (to the fullest extent permitted by law) excluded from these Conditions.
- 12.9 **Third Party Rights.** For the purposes of the Contracts (Rights of Third Parties) Act 1999 no person who is not a party to these Conditions shall have any right to enjoy the benefit or enforce any of the terms of these Conditions.
- 12.10 **Variation.** This Contract may be varied by Voucher Express at its sole discretion.
- 12.11 **Waiver.** Failure to exercise (or to fully exercise), or any delay in exercising, any right or remedy provided under these Conditions or by law shall not constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict any further exercise of that or any other right or remedy under these Conditions or by law.
- 12.12 **Severability.** If any provision of these Conditions is found by any court or administrative body of competent jurisdiction to be invalid, illegal or unenforceable in any jurisdiction then it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible that provision shall be deemed to be omitted from these Conditions in so far as these Conditions relates to that jurisdiction and the validity and enforceability of that provision in other jurisdictions and the other provisions of these Conditions shall not be affected or impaired.
- 12.13 **Governing Law and Jurisdiction.** These Conditions, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.