

Terms & Conditions- Advance Coffee Solutions.



DEFINITIONS

1 In these Terms the following words will have the following meanings:

- (a) "The Terms" means the terms set out below and overleaf (and where any terms below conflict with any terms overleaf the terms overleaf will take precedence);
- (b) "The Company" means Martin Cahill t/a Advance Coffee Solutions (and its successors in title);
- (c) "The Contract" means any contract between the Company and the Customer for the sale of any Goods and/or provision of any Services and to which these Terms will apply;
- (d) "The Customer" means the person, persons or company, at whose request, or on whose behalf, the Company undertakes to supply any Goods and/or provide any Services;
- (e) "The Goods" means any goods which the Company agrees to provide to the Customer; and
- (f) "The Services" means any services (including, but not limited to servicing, repairs and training) which the Company agrees to provide to the Customer.

APPLICATION OF TERMS

2 These Terms will apply to the exclusion of any other terms and conditions and may only be varied by agreement in writing signed by the Company and Customer. The headings are for reference only and will not affect the interpretation of these Terms.

3 Any reference to any statute or statutory provision will (unless the context otherwise requires) be construed as a reference to that statute or statutory provision as may be amended, consolidated, modified, extended, re-enacted or replaced from time to time.

ORDERS

4 All orders placed with the Company require the Company's acceptance before a Contract arises. No order submitted by the Customer will be accepted by the Company unless and until the Company's acceptance is confirmed in writing by the Company. Each accepted order will constitute a separate Contract.

5 Any order which has been accepted by the Company may only be cancelled, postponed or varied by the Customer with the prior written consent of the Company and on terms that the Customer will indemnify the Company in full against all losses (including but not limited to loss of profit), costs, damages, charges and expenses incurred (directly or indirectly) by the Company as a result of such cancellation, postponement or variation.

PRICE AND PAYMENT

6 Prices quoted by the Company exclude the costs of delivery of the Goods and will be fixed for a period of 30 days from the date of the quotation (provided that the Company has not previously withdrawn the quotation by oral or written notice to the Customer).

7 The Customer will make payment for the Goods and/or Services including VAT and any other taxes due thereon and delivery charges (which will be payable by the Customer in addition) on the terms and within the period agreed in writing between the parties (or in the absence of agreement full payment will be made in pounds sterling within 30 days of the date of issue of the Company's invoice) without any deduction, set-off or withholding (except as required or permitted by law).

8 No payment will be deemed to have been received until the Company has received cleared funds.

9 Time for payment will be of the essence of the Contract and the Customer will indemnify the Company against all expenses and legal costs incurred by the Company in recovering overdue amounts.

10 All payments payable to the Company under the Contract will become due immediately on termination of the Contract despite

11 If the Customer fails to pay the Company any sum due pursuant to the Contract the Customer will be liable to pay interest to the Company on such sum from the due date for payment at an annual rate of 3% above the base lending rate of the Bank of England from time to time accruing on a daily basis until payment is made in full (whether before or after any judgement). The Company reserves the right to instead claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

12 Without prejudice to the provisions of clause 11 if the Customer fails or the Company reasonably believes that the Customer will fail to pay for the Goods and/or Services when due, the Company may demand full payment of all outstanding balances whether due or not, treat the Contract as repudiated by the Customer, suspend any future performance of the Contract until all overdue sums have been paid or appropriate any payments made by the Customer to such of the Goods and/or Services (or such goods and/or services supplied under any other contract between the Customer and the Company) as the Company thinks fit.

DELIVERY AND INSPECTION

13 Any times or dates given for delivery of the Goods and/or provision of the Services, whilst given in good faith, are approximate only and time for delivery of Goods and/or provision of Services is not of the essence. If no time is specified or agreed by the Company delivery of Goods and/or provision of Services will take place within a reasonable time.

14 The Company will use its reasonable endeavours to deliver the Goods and/or provide the Services within the times set out in clause 13 however except as provided in clause 19 the Company will not be liable for any loss (including but not limited to any loss of profit), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods and/or provision of Services (even if caused by the Company's negligence) and such delay will not entitle the Customer to terminate or rescind the Contract unless such delay exceeds 60 days.

15 (Subject to the provisions of clause 16) delivery will be deemed to take place when the Goods and/or Services are delivered or provided to the Customer at the place stated in the Company's acknowledgement of order or such other place as the parties may agree except that delivery to a carrier for the purposes of transmission to the Customer will be deemed to be delivery to the Customer and sections 32(2) and (3) of the Sale of Goods Act 1979 will not apply.

16 If the Company agrees to allow the Customer to collect the Goods from the Company's place of business then delivery will be deemed to take place when the Company notifies the Customer that the Goods are ready for collection and unless otherwise agreed in writing the Customer will collect the Goods within 3 working days of the issue of such notice.

17 In the event of any delay in the delivery of any Goods and/or the performance of any Services which are attributable to the Customer's actions or failure to act then:

(a) delivery of the Goods and/or performance of the Services will be deemed to have taken place at the time at which but for such delay or delays such delivery or performance would have taken place and any extra costs (including but not limited to storage and insurance costs) incurred as a result of such delay or delays will be added to the Contract price and will be payable by the Customer; and

(b) The Company may sell or otherwise dispose of such Goods 28 days after such delay and deduct any monies payable to the Company by the Customer from the sale proceeds and account to the Customer for any excess or charge the Customer for any shortfall.

18 Should the Company be unable to supply the specific Goods and/or perform the specific Services quoted, for reasons beyond its control, the Company reserves the right to either cancel the Contract (and where the Contract price has been invoiced give credit (at the pro rata Contract price) to the Customer for such Goods and/or Services) or, with the Customer's consent, supply an alternative product of equal or better quality or specification, without incurring any further liability or responsibility to the Customer.

19 The Company will not be liable for any delay or non-delivery of the Goods and/or non-provision of the Services (even if caused by the Company's negligence) unless the same is notified in writing by the Customer to the Company (together with all relevant details) within [14] days of the actual or anticipated date of delivery of the Goods and/or provision of the Services (as appropriate). Subject to such notice being provided the Company will, if it is reasonably satisfied that any Goods and/or Services have not been delivered or provided as a result of the Company's fault (in its sole discretion) either arrange for delivery or performance as soon as reasonably possible or give credit (at the pro rata Contract price) to the Customer for such Goods and/or Services.

20 If the Company complies with clauses 18 and 19 it will (subject to clause 37) have no further liability (in contract, tort (including but not limited to negligence) or otherwise) for such delay, non-delivery or non-performance.

21 On delivery to the Customer all Goods should be examined. Any damage in transit must be reported to the Company in writing within 3 working days of receipt of the Goods, and any shortages or damages clearly marked on the carrier's or driver's delivery note.

INSTALLATION AND TRAINING

22 Unless specifically quoted for by the Company, installation of any Goods is the responsibility of the Customer, even where the Company has introduced a known installer. All Goods supplied by the Company should be installed, in accordance with the installation instructions provided with the Goods. Failure to carry out these instructions will invalidate the Warranty set out in clause 29.

23 Training on use and daily maintenance is given at the time of installation. Any calls for further training or for further training on a day other than that of installation will be paid for by the Customer on the Company's standard rates from time to time in force and will be carried out on the basis of these Terms.

RISK AND OWNERSHIP

24 Unless otherwise agreed in writing, the Goods are at the risk of the Customer from the time of delivery or deemed delivery to the Customer (as appropriate) in accordance with these Terms and loading and unloading (as appropriate) will be at the Customer's risk. Section 20(2) of the Sale of Goods Act 1979 will not apply.

25 Notwithstanding the passing of risk, the Goods remain the property of the Company (and the Customer will hold the Goods strictly as the bailee of the Company and will maintain the Goods in a satisfactory condition) until the Company has received in cash or cleared funds, the full purchase price of:

(a) The Goods supplied; and

(b) Of any other Goods or Services supplied under any other order or contract between the Company and the Customer.

26 Until property has passed in accordance with clause 25 the Company may recover such Goods and the Customer grants to the Company, its employees and agents, an irrevocable licence to enter the Customer's premises to reclaim such Goods.

27 The Customer may resell, use or otherwise dispose of the Goods before ownership has passed solely on the basis that any such sale, use or disposition will be in the ordinary course of the Customer's business at full market value and it will be a sale, use or disposition on the Customer's own behalf and the Customer will deal as principal.

GOODS WARRANTY- New Machines Only

28 The Customer must satisfy himself that the Goods supplied by the Company are fit and suitable for the purpose for which they are required and that they satisfy any statutory requirements relevant to that use. The Company does not warrant their suitability or condition in any way and, except as expressly provided for in these Terms, all warranties, guarantees, terms and conditions whether express or implied by common law, statute, or otherwise are excluded to the fullest extent permitted by law.

29 The Goods will (subject to the provisions of clauses 30 to 35) be free from defects in materials and workmanship for a period of **12 months PARTS ONLY from delivery** or deemed delivery (as appropriate) (or during any extended warranty period agreed with the Company and set out on the front of these Terms) ("the Warranty").

30 The Company will (at the Company's option and expense) replace or repair Goods or such parts of the Goods as are acknowledged by the Company acting reasonably to be defective in material or workmanship, provided that:

(a) The Customer gives written notice of the defect to the Company within 28 days of the date when the Customer discovers or ought reasonably to have discovered the defect;

(b) (If the defect is as a result of damage in transit) the Customer gives written notice in accordance with clause 21; and

(c) the Company is given a reasonable opportunity after receiving such notice to (at its option) either inspect the Goods at the Customer's premises or require that they are sent to the Company by the Customer (at the Customer's cost unless Goods are found to be defective in which case any reasonable cost will be reimbursed to the Customer)

31 Any Goods or parts replaced by the Company in accordance with the provisions of clause 30 will belong to the Company and any repaired or replacement Goods or parts will be guaranteed on these terms for the unexpired portion of the Warranty.

32 If the Company complies with clause 30 it will (subject to clause 37) have no further liability (in contract, tort (including but not limited to negligence) or otherwise) for breach of the Warranty.

33 The Warranty will cease immediately if:

- (a) The Goods are modified or added to in any way not agreed in advance in writing with the Company;
- (b) The instructions contained in the operator's manual are not complied with; or
- (c) The Goods are serviced, relocated and/or maintained or repaired by anybody other than the Company or the Company's authorised service agent.

34 The following are not covered by the Warranty:

- (a) Items that require replacement in the course of maintenance or repair or as a result of fair wear and tear or limescale;
- (b) Defects due to or claims or calls made as a result of or in relation to:
 - (i) limescale or limescale related faults;
 - (ii) Accident, operator malpractice or neglect. Please note that this also applies to overtightened steam and water valve handles;
 - (iii) Relocation of the Goods;
 - (iv) The waste pipe being blocked;
 - (v) blocked steamer - "no steam" caused by the outlet holes on the steamer not being cleaned;
 - (vi) Blocked groups - "no coffee coming through group" caused by the groups not being cleaned;
 - (vii) Blocked rapido - rapido frother "not frothing" caused by rapido frother not being cleaned; or
 - (viii) "Milk not frothing" caused by stale milk or milk with high protein content;
- (c) Any requests to:
 - (i) replace a water treatment unit (DSU);
 - (ii) Repair jammed or broken drawer runners as a result of negligence, malpractice or misuse by the operator;
 - (iii) Alter the programming of coffee volumes after the initial installation;
 - (iv) Relocate Goods; or
 - (v) Replace the grinding blades, to reset portioning or coffee grind or to jammed/obstructed blades.

35 The Company will not be liable for a breach of the Warranty where and to the extent that:

- (a) The defect arises as a result of:
 - (i) the Customer's (or its employees, servants or agents) negligence;
 - (ii) Fair wear and tear, accident, misuse, wilful damage, or abnormal working conditions;
 - (iii) Any parts, materials or equipment not manufactured or workmanship not performed by the Company;
 - (iv) The Customer failing to follow the Company's instructions (whether oral or in writing) as to the storage, assembly, installation, commissioning, use, processing, handling or maintenance of the Goods or (if there are none) good trade practice;

- (v) Any installation, testing or commissioning of the Goods performed by the Customer or any third party;
- (vi) Any alteration, servicing or repair of the Goods not made by the Company and without the written consent of the Company; or
- (vii) An event or item listed in clauses 33 or 34.
- (b) The Customer makes any further use of such Goods after giving written notice of the defect;
- (c) The total price for the Goods has not been paid by the due date; or
- (d) The Contract states that the Goods are sold in their actual state without Warranty.

GOODS WARRANTY- Second Hand Machines –additional notes.

1. Standard Warranty for second hand machines **are 6 months PARTS ONLY.**
2. The company will replace any parts it has deemed necessary during that period.
3. Parts will be posted /couriered to the customer.
4. Labour and call outs are additional costs that are borne by the customer.

Clause 34 warranty exclusions apply to all second hand machines /goods sold.

LIMITATION OF LIABILITY

THE PRICES CHARGED FOR THE GOODS AND/OR SERVICES ARE BASED STRICTLY ON THE UNDERSTANDING OF ACCEPTANCE BY THE CUSTOMER OF THE PROVISIONS IN THE CONTRACT FOR THE LIMITATION OF THE COMPANY'S LIABILITY. SHOULD THE CUSTOMER REQUIRE THE COMPANY TO ACCEPT ADDITIONAL LIABILITY THIS MAY BE DISCUSSED BETWEEN THE PARTIES AND THE PRICE INCREASED ACCORDINGLY.

36 All warranties, conditions and other terms implied by statute or common law (except for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.

37 Nothing in these Terms excludes or limits the liability of the Company for fraudulent misrepresentation or for any death or personal injury caused by the Company's negligence. THE CUSTOMER'S ATTENTION IS IN PARTICULAR DRAWN TO THE PROVISIONS OF CLAUSES 38 AND 39

38 (Subject to clauses 36 and 37) the Company will not be liable to the Customer in contract, tort (including but not limited to negligence), misrepresentation or otherwise for any economic loss of any kind (including but not limited to loss of use, profit, anticipated profit, business, contracts, overhead recovery, machining costs, revenue or anticipated savings), any damage to the Customer's reputation or goodwill, any product recall or business interruption costs or any other special, indirect or consequential loss or damage (even if the Company has been advised of such loss or damage) arising out of or in connection with the Contract.

39 (Subject to the provisions of clauses 29 and 36 to 38) the Company's total liability in contract, tort (including but not limited to negligence), misrepresentation or otherwise arising out of or in connection with this Contract will be limited to the price paid for the Goods and/or Services out of which the liability has arisen.

40 The provisions of clauses 36 to 39 shall survive the termination or expiry (for whatever reason) of this Contract.

SERVICING AND MAINTENANCE

41 The Warranty set out in clause 29 will not apply unless:

- (a) Goods are serviced at least once during the Warranty period; and
- (b) Servicing and repairs are carried out by the Company and/or the Company's authorised agents

42 The Company recommends that the following are also observed in the Customer's best interests to help ensure the correct operation of the Goods:

- (a) Use only original parts explicitly approved by the Company. These parts have been selected for their reliability and suitability for the machines;
- (b) The Company is unable to make assessments for other product parts and therefore cannot be held responsible for them, even if in individual cases an official approval or authorisation by governmental or approval agencies exists;
- (c) Original parts (as approved) can be obtained from the Company. Comprehensive assistance and advice on maintaining Goods at their optimum level can be obtained from the Company; and
- (d) The company recommends that Goods are serviced regularly (and at least once every twelve months) and that servicing and repairs are only carried out by the Company and/or the Company's authorised agents.

43 Any servicing or repairs will be paid for by the Customer at the Company's standard rates from time to time in force and will be carried out on the on the basis of these Terms.

44 Where Services are provided by the Company, they will be performed with reasonable skill and care.

TERMINATION

45 The Company may terminate the Contract immediately and/or cancel and deliveries of Goods and/or provision of Services if:

- (a) The Customer fails to pay the price on the due date;
- (b) The Customer is in breach of any term of the Contract and has failed to remedy such breach within 28 days of receipt of written notice specifying the breach and requiring it to be remedied;
- (c) There is a material change in the ownership or control of the Customer; or
- (d) The Customer is wound up or becomes insolvent or has a receiver or administrative receiver appointed or suffers the appointment or the presentation of a petition for the appointment of an administrator or any equivalent or analogous event occurs in any other jurisdiction.

46 The termination of the Contract (howsoever arising) will be without prejudice to any rights and remedies which may have accrued to either party.

47 Any clauses which impliedly have effect after termination or expiry will continue to be enforceable notwithstanding termination or expiry.

EXPORT

48 Where the Goods are supplied for export from the United Kingdom the provisions of this clause will (subject to any special terms agreed in writing between the parties) apply despite any other provision of these Terms.

49 The Uniform Laws on International Sales Act 1967 will not apply.

50 Unless otherwise agreed in writing the currency will be pounds sterling and Goods will be sold Ex Works (as defined in INCOTERMS 2000 Edition).

51 The Customer will be responsible for complying with any legislation or regulation governing the export of the Goods from the United Kingdom and the importation of the Goods into the country of destination and for payment of any relevant duties or taxes.

INTELLECTUAL PROPERTY

52 All intellectual property rights arising from the design, manufacture or supply of Goods by the Company (including but not limited to rights in drawings, designs, equipment, patents, trademarks, copyright, and databases) will remain the property of the Company. The Customer undertakes not to cause or permit anything which may damage or endanger the intellectual property rights of the Company or to allow others to do so, to notify the Company of any suspected infringement of the intellectual property rights of the Company, and not to tamper with markings or name plates or any other indication of the source of origin of the Goods.

53 Nothing in these Terms will be construed as any representation or warranty by the Company that the design, manufacture, use or sale of the Goods is not an infringement of any third party intellectual property rights.

GENERAL

54 If any of the provisions of these Terms is declared illegal, invalid or unenforceable by any competent court, tribunal or administrative body, then all other provisions or any parts thereof will remain in full force and effect.

55 The Customer will not assign or transfer the Contract or any part of it without the Company's prior written consent.

56 Any notice required or permitted to be given by either party to the other under these Terms will be in writing addressed to that other party at its registered office or principal place of business or such other address as may be notified to the other party from time to time.

57 The Company will not be liable to the Customer or deemed to be in breach of these Terms by reason of any delay in performing or failure to perform any of its obligations under these Terms if such delay or failure was due to any circumstances beyond the Company's reasonable control (including, but not limited to, any Act of God, riots and commotion, fire, industrial dispute or circumstances of an unexpected or exceptional nature). If the Company is unable to perform its obligations under these Terms in accordance with this clause it will promptly notify the Customer of the nature and extent of the circumstance in question.

58 No failure or delay by the Company in exercising any of its rights under these Terms will be deemed to be a waiver of that right, and no waiver by the Company of any breach of these Terms by the Customer will be considered as a waiver of any subsequent breach of the same or any other provision.

59 The Company reserves the right to correct any clerical or typographical errors or omissions in any sales or promotional literature, price list, order, invoice or other document issued by the Company without any liability. Any general description

contained in any sales literature or advertising material relating to the Goods and/or Services will not form a representation or part of these Terms or any Contract.

60 No term of any contract will be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to a contract formed incorporating these Terms but this will not affect any rights or remedies that are available to a third party apart from that Act.

61 The Customer acknowledges and agrees that in entering into the Contract it does not rely on, and will have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to the Contract or not) which is not set out within the Contract. Nothing in this clause will, however, operate to limit or exclude any liability for fraud.

62 The provisions of these Terms and any dispute or litigation arising therefrom will be construed in accordance with or governed by English Law, and the parties agree to submit to the exclusive jurisdiction of the English Courts.