

Sodexo's Standard Terms and Conditions ("Conditions") for bulk purchase of Gift Cards 2020 by business customers

The customer's attention is drawn in particular to the provisions of clause 7 (Limitation of Liability).

1 INTERPRETATION

1.1 Definitions:

"Business Day" a day other than a Saturday, Sunday or public holiday in England.

"Contract" the contract between Sodexo and the Customer for the sale and purchase of Gift Cards in accordance with these Conditions and the Order Form.

"Customer" the person or firm identified as the Customer in the Order Form.

"Force Majeure Event" an event, circumstance or cause beyond Sodexo's reasonable control including strikes, lock-outs or other industrial disputes (whether involving the workforce of Sodexo or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, epidemic or pandemic, fire, flood, storm or default (including non-performance) of suppliers, retailers or subcontractors.

"Gift Cards" the gift cards (which shall be either in a physical or electronic (e-code) form) set out in the Order Form.

"Order Form" the document identified as an order form provided or made available by Sodexo, setting out the Customer's order for the Gift Cards.

"Sodexo" Sodexo Motivation Solutions U.K. Limited (registered in England and Wales with company number 02680629) and registered address at Avalon House, Breckland, Linford Wood, Milton Keynes, England, MK14 6LD.

1.2 Interpretation:

1.2.1 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.

1.2.2 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.

1.2.3 A reference to **writing or written** includes email.

2 HOW OUR CONTRACT IS FORMED

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 law, trade custom, practice or course of dealing.

2.2 The Order Form constitutes an offer by the Customer to purchase the Gift Cards in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order Form are complete and accurate. The Customer may receive an email from Sodexo acknowledging that Sodexo has received the Customer's Order Form. However, please note that this does not mean that the Customer's order has been accepted. Acceptance will take place as described in clause 2.3.

2.3 The Order Form shall only be deemed to be accepted when Sodexo sends an email confirming the Order Form has been accepted and processed, at which point the Contract shall come into existence.

2.4 Sodexo may decline any Order Form for the supply of Gift Cards without any reason or for any reason including if the Customer is, or has ever been in breach of any contract with Sodexo or if Sodexo is unable to supply the Gift Cards for any reason.

2.5 **Minimum Order.** The Customer's Order Form must be for the minimum order amount specified in the Order Form or otherwise notified by Sodexo to the Customer ("**Minimum Order Amount**"). If the Order Form is for less than the Minimum Order

- Amount then Sodexo reserves the right to refuse the Order Form.
- 2.6 The Customer waives any right it might otherwise have to rely on any term endorsed on, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.
- 2.7 **Retailer Terms.** The Customer acknowledges that the terms and conditions of the relevant retailer will apply to the use and receipt of the Gift Cards by the Customer and/or any recipient of Gift Cards. It is the Customer's responsibility to read and understand the retailer's terms and conditions before purchasing the Gift Cards. In respect of Amazon, the Customer will be required to sign the Amazon terms and conditions before purchase. The Customer should check the expiry date of the Gift Cards before purchasing. The Customer should notify the recipient of the applicable retailer terms and conditions and expiry date. The Customer is responsible for making recipients aware that cancellation rights and/or any applicable cool off periods do not apply to Gift Cards purchased by the Customer. Sodexo is not liable to the Customer if the Customer or recipient fails to activate the Gift Cards before the Gift Card expires. If any retailer suffers an insolvency event (including liquidation, administration or receivership) or otherwise ceases to exist, there is no obligation on Sodexo to replace, refund or exchange any Gift Cards. The Gift Cards may be gifted to the Customer's employees and/or customers but must not be resold. All disputes and issues regarding the Gift Cards should be addressed to the retailer, not Sodexo.
- 2.8 In the event of any conflict or inconsistency between the Order Form and these Conditions, these Conditions shall prevail.
- 3 PROCESSING OF ORDERS, DESPATCH & DELIVERY**
- 3.1 Sodexo shall deliver the Gift Cards using a third party courier service to the address(es) provided by the Customer or, where the Gift Cards are electronic or are e-codes, by a secure delivery method to the email address(es) provided by the Customer. [Gift Card(s) may be sent directly from the retailer of the Gift Card(s)]. Note, unless otherwise agreed in the Order Form, Sodexo will deliver the Gift Cards to a single business address or single email address only (being the Customer's delivery address or email address) and not to multiple addresses or email addresses.
- 3.2 It is the Customer's responsibility to ensure that the delivery and/or email address(es) provided are correct. If the delivery and/or email address(es) are incorrect, Sodexo cannot be held liable for any Gift Card(s) which are consequently not delivered.
- 3.3 Gift Cards will usually be despatched: (a) within 1 – 4 Business Days, if the Order Form is received by 12:00pm on a Business Day; or (b) within 1 – 4 Business Days from the next Business Day, if the Order Form is received after 12.00pm on a Business Day. Please note, that there may be delays in despatch and delivery during periods of increased demand for Gift Cards or exceptional circumstances.
- 3.4 Orders for Gift Cards are accepted subject to availability. On the rare occasion that a selected Gift Card(s) is not in stock, Sodexo will contact the Customer and give the Customer an estimated date of delivery (unless the selected Gift Card(s) is unavailable, in which case clause 8.2 will apply).
- 3.5 Deliveries by Royal Mail Special Delivery will usually arrive by 1pm the following Business Day after despatch but this may vary. Other courier companies may vary.
- 3.6 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. Sodexo shall not be liable for any delay in delivery of the Gift Cards that is caused by a Force Majeure Event or the Customer's failure to provide Sodexo with adequate delivery instructions or any other instructions that are relevant to the supply of the Gift Cards.
- 3.7 Any discrepancy between the quantity of Gift Cards ordered and delivered must be notified to Sodexo via The Voucher Shop (fulfilment.engage.uk@Sodexo.com) within 3 Business Days of delivery. Non-delivery of Gift Cards must be notified to Sodexo as soon as is reasonably practicable and, in any event, no later than 3 Business Days after delivery was due to take place.
- 3.8 If Sodexo fails to deliver the Gift Cards, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the cost of the Gift Cards. Sodexo shall have no

liability for any failure to deliver the Gift Cards to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide Sodexo with adequate delivery instructions or any other instructions that are relevant to the supply of the Gift Cards.

4 TITLE AND RISK

4.1 All risk in the Gift Cards passes to the Customer at the time they are delivered to the delivery address(es) provided by the Customer or, where the Gift Cards are electronic/e-codes, as soon as they are sent by email to the email address(es) provided by the Customer.

4.2 Title to the Gift Cards shall not pass to the Customer until Sodexo receives payment in full (in cleared funds) for all fees payable for the Gift Cards (including delivery charges), in which case title to the Gift Cards shall pass at the time of payment. Until title to the Gift Cards has passed to the Customer, the Customer must notify Sodexo immediately if it becomes subject to any of the events listed in clauses 8.1.3 to 8.1.5. If before title to the Gift Cards has passed to the Customer, the Customer becomes subject to any of the events set out in clauses 8.1.3 to 8.1.5 then, without limiting any other right or remedy available to Sodexo, Sodexo shall have an immediate right to repossess the Gift Cards to which Sodexo has title.

4.3 Sodexo shall have no liability for lost, stolen or damaged Gift Cards once risk in the Gift Cards has passed to the Customer.

5 PAYMENT

5.1 The fees payable by the Customer for the Gift Cards are set out in the Order Form. All fees are strictly non-refundable. Gift Cards cannot be refunded or exchanged for cash or credit.

5.2 The fees payable for the Gift Cards are exclusive of value added tax (VAT), which the Customer shall additionally be liable to pay to Sodexo at the prevailing rate, subject to the receipt of a valid VAT invoice.

5.3 The Customer must pay in advance and in full for its order of Gift Cards (including all delivery charges) prior to the order being despatched unless the Customer is approved for a credit account. If the Customer applies for a credit account after its first order and this is

approved, all invoices must be paid within 28 days of the date of invoice.

5.4 Payment options are BACs, debit or credit card. All fees are payable to Sodexo Motivation Solutions U.K. Limited.

5.5 If the Customer applies for a credit account then it will be subject to credit and anti-money laundering checks. The Customer agrees to its information being passed to a third party for the purpose of conducting such credit and anti-money laundering checks.

5.6 If the Customer fails to make a payment due to Sodexo under the Contract by the due date, then, without limiting Sodexo's remedies under clause 8 (**Termination**), the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 5.6 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.

5.7 Without prejudice to any other rights or remedies available to Sodexo (including under clause 8), Sodexo may suspend supply or delivery of Gift Cards under the Contract or any other contract between the Customer and Sodexo, cancel or suspend any agreed discount rates or the facility of a credit account or change the payment terms or terms of any credit account: (a) immediately if the Customer becomes subject to any of the events listed in clauses 8.1.3 to 8.1.5 or if Sodexo reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under the Contract on the due date for payment; (b) on giving 7 days' notice to the Customer if there is an adverse change in the Customer's credit rating; or (c) if credit insurance held by Sodexo in respect of the Customer's account with Sodexo is reduced, withdrawn or ceases to be available at reasonable commercial rates.

5.8 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).

6 DATA PROTECTION

6.1 For the purpose of this clause, "**Data Protection Laws**" shall mean all applicable

- data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679) as incorporated into UK law by virtue of section 3 of the European Union (Withdrawal) Act 2018 and subsequently varied by UK regulations (the "UK GDPR"); the Data Protection Act 2018 (and regulations made thereunder); and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.
- 6.2 As between Sodexo and the Customer, both parties acknowledge that they are independent controllers within the meaning set out in Article 4 of the GDPR. Sodexo shall process personal data in accordance with its privacy policy, available here: www.smsbruk.co.uk and may share personal data with a retailer, where that retailer is providing the Gift Card(s) directly.
- 6.3 Each party shall observe and perform all duties and obligations set out in the Data Protection Laws as they apply to that party.
- 6.4 If Sodexo determines in its absolute discretion that it is acting as a processor then the parties shall enter into processing terms required under Article 28 of the GDPR.
- 7 LIMITATION OF LIABILITY**
- 7.1 The restrictions on liability in this clause 7 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), statute, misrepresentation, restitution or otherwise.
- 7.2 Nothing in the Contract limits or excludes any liability which cannot legally be limited or excluded, including liability for:
- 7.2.1 death or personal injury caused by negligence; or
- 7.2.2 fraud or fraudulent misrepresentation.
- 7.3 Subject to clause 7.2, the following types of loss are wholly excluded:
- 7.3.1 loss of profits;
- 7.3.2 loss of sales or business;
- 7.3.3 loss of agreements or contracts;
- 7.3.4 loss of anticipated savings;
- 7.3.5 loss of use or corruption of software, data or information;
- 7.3.6 loss of or damage to goodwill; and
- 7.3.7 indirect or consequential loss.
- 7.4 Subject to clauses 7.2 and 7.3, Sodexo's total liability to the Customer in respect of all 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 greater of: (a) 100% of the total fees paid by the Customer to Sodexo for the Gift Cards purchased under the Contract; or (b) £2000.
- 7.5 The Customer acknowledges that Gift Cards are products of third parties. Sodexo does not give any representation, warranties or undertakings in relation to the Gift Cards. Any representation, condition or warranty which might be implied or incorporated into these Conditions by statute, common law or otherwise is excluded to the fullest extent permitted by law. For the avoidance of doubt, 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.
- 7.6 Sodexo has no legal relationship with a recipient or ultimate beneficiary of the Gift Cards. Sodexo, to the fullest extent permitted by law, shall have no liability in respect of claims, damages, losses, expenses, costs or charges incurred by a recipient or ultimate beneficiary of the Gift Cards as a result of or connected with the Gift Cards or their use.
- 7.7 This clause 7 shall survive termination of the Contract.
- 8 TERMINATION & SUSPENSION**
- 8.1 Without limiting its other rights or remedies, Sodexo may suspend supply or delivery of the Gift Cards, or terminate this Contract with immediate effect by giving written notice to the Customer if:
- 8.1.1 the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 7 days of the Customer being notified in writing to do so;

- 8.1.2 the Customer fails to pay any amount due under the Contract on the due date for payment;
- 8.1.3 the Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), 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 its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- 8.1.4 the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
- 8.1.5 the Customer's financial position deteriorates to such an extent that in Sodexo's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 8.2 If a selected Gift Card(s) is unavailable then Sodexo will notify the Customer that it is unable to provide the selected Gift Card(s) and will terminate the Contract in respect of the selected Gift Card(s) and refund any sums the Customer has paid in advance for the Gift Card(s) which will not be provided.
- 8.3 If Sodexo exercises any of its rights under clause 8.1, then Sodexo may in respect of Gift Cards for which title has not yet passed, blacklist, deactivate and/or block the Gift Cards so that they can no longer be used.
- 8.4 On termination of the Contract for any reason the Customer shall immediately pay to Sodexo all of Sodexo's outstanding unpaid invoices and interest and, in respect of Gift Cards supplied but for which no invoice has been submitted, Sodexo shall submit an invoice, which shall be payable by the Customer immediately on receipt.
- 8.5 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.
- 8.6 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect.
- 9 FORCE MAJEURE**
- 9.1 Sodexo shall not be in breach of Contract or liable for any delay or failure to perform any or all of its obligations under the Contract if such delay or failure result from a Force Majeure Event. In such circumstances Sodexo shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for more than 4 weeks, either party may terminate this Contract by giving 7 days' written notice to the other party. For the avoidance of doubt, a Force Majeure Event shall not release the Customer from its obligation to pay the fees for Gift Cards ordered.
- 10 GENERAL**
- 10.1 **Assignment and other dealings.** Sodexo may at any time assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract. The Customer may not assign, transfer, mortgage, charge, subcontract, delegate, 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 Sodexo.
- 10.2 **Confidentiality.**
- 10.2.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 10.2.2.
- 10.2.2 Each party may disclose the other party's confidential information:

- 10.2.2.1 to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under the Contract. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 10.2; and
- 10.2.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 10.2.3 Neither party shall use the other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.
- 10.3 **Anti-Bribery & Anti-Slavery.** Both parties shall:
- 10.3.1 comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery, anti-corruption, anti-slavery and human trafficking including the Bribery Act 2010 and the Modern Slavery Act 2015;
- 10.3.2 not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 or sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct had been carried out in the UK; and
- 10.3.3 comply with Sodexo's Modern Slavery and Anti-bribery and Anti-corruption Policies as Sodexo may update them from time to time.
- 10.4 **Entire agreement.** This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Contract.
- 10.5 **Variation.** Subject to clause 10.6, no variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 10.6 Sodexo reserves the right to modify these Conditions and the fees payable for the Gift Cards including delivery charges from time to time. Orders already placed before any changes are made to these Conditions or the fees will not be affected. Sodexo also reserves the right to vary the retailers for which Gift Cards are available from time to time without notice.
- 10.7 **Waiver.** A waiver by a party of a breach of any provision shall not be deemed a continuing waiver or a waiver of any subsequent breach of the same or any other provisions. Failure or delay in exercising any right under this Contract shall not prevent the exercise of that or any other right.
- 10.8 **Severance.** If a court decides that any part of this Contract cannot be enforced, that particular part of this Contract will not apply, but the rest of this Contract will.
- 10.9 **Notices.** Any notice or other communication under this Contract shall be in writing and shall be delivered personally, or sent by email or prepaid first-class post or recorded delivery to the address stated in the Order Form, and shall be deemed to have been received on the Business Day after posting or sending.
- 10.10 **Third party rights.** The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract. For the avoidance of doubt, recipients of Gift Cards shall have no rights under this Contract and/or against Sodexo.
- 10.11 **Governing law & Jurisdiction.** The Contract 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 the law of England and

Wales and the parties submit to the exclusive jurisdiction of the courts of England and Wales to settle any such dispute or claim.