

**Sodexo's Standard Terms and Conditions 2021 ("Conditions") for the purchase and supply of Voucher Cheques to business Customers.**

**The Customer's attention is drawn in particular to the provisions of clause 8 (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 Voucher Cheques 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.

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

**"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.

**"Voucher Cheques" the voucher cheques (which shall be either in a physical or electronic form (e-cheques)) set out in the Order Form.**

**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 Voucher Cheques 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 Voucher Cheques 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 Voucher Cheques for any reason.

2.5 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.

2.6 In the event of any conflict or inconsistency between the Order Form and these Conditions, these Conditions shall prevail.

### **3 VOUCHER CHEQUES**

3.1 Voucher Cheques may be gifted by the Customer to its employees and/or customers but must not be resold.

3.2 The expiry date of the Voucher Cheques shall be the date set out on the Order Form. On expiry, the Voucher Cheques will no longer be valid and cannot be used. The Customer is responsible for bringing the expiry date to recipients' attention.

3.3 Voucher Cheques can be exchanged online by recipients for gift cards and/or e-vouchers of certain retailers only. The retailers available may vary from time to time. The retailers' terms and conditions shall apply to any gift cards and/or e-vouchers. In respect of Amazon, the Customer will be required to sign the Amazon terms and conditions before purchase. All disputes and issues regarding the gift cards or e-vouchers must be addressed to the retailer, not Sodexo. 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 previously issued, unspent gift cards and/or e-vouchers.

3.4 The Customer and Sodexo may agree restrictions on recipients' use of any Voucher Cheques such as restricting the retailers available. Sodexo shall use its reasonable endeavours to limit the recipients' access in accordance with agreed restrictions but it is the Customer's responsibility to notify the recipient of such restrictions. Sodexo does not accept any responsibility for any recipients who use the Voucher Cheques in breach of any agreed restrictions.

3.5 Each recipient is responsible for keeping their Voucher Cheque(s) secure once received. Sodexo does not accept any responsibility for Voucher Cheques used or redeemed by a person other than the intended recipient.

3.6 It is the Customer's responsibility to ensure that Voucher Cheques are declared to HM Revenue & Customs where required by law. Sodexo shall comply with any information requests from HM Revenue & Customs.

### **4 PROCESSING OF ORDERS, DESPATCH & DELIVERY**

4.1 Sodexo shall deliver the Voucher Cheques using a third party courier service to the address(es) provided by the Customer or, where the Voucher Cheques are electronic/e-cheques, by a secure delivery method to the email address(es) provided by the Customer. Note, unless otherwise agreed in the Order Form, Sodexo will deliver Voucher Cheques to a single business address or single email address only (being the Customer's delivery address or email address) and not multiple addresses or email addresses.

4.2 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 Voucher Cheques which are consequently not delivered.

4.3 Except in respect of Customer branded Voucher Cheques, Voucher Cheques 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 Voucher Cheques or exceptional circumstances. Customer branded Voucher Cheques will be created and despatched within the time period agreed between Sodexo and the Customer, which will usually be around 21 days from acceptance of Order Form.

4.4 Deliveries by First Class post will usually arrive the next Business Day but this may vary. Other courier companies may vary.

4.5 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 Voucher Cheques 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 Voucher Cheques.

4.6 Any discrepancy between the quantity of Voucher Cheques 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 Voucher Cheques 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.

4.7 If Sodexo fails to deliver the Voucher Cheques, 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 Voucher Cheques. Sodexo shall have no liability for any failure to deliver the Voucher Cheques 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 Voucher Cheques.

## 5 TITLE AND RISK

5.1 All risk in the Voucher Cheques passes to the Customer at the time they are delivered to the delivery address(es) provided by the Customer or, where the Voucher Cheques are electronic/e-cheques, as soon as they are sent by email to the email address(es) provided by the Customer.

5.2 Title to the Voucher Cheques shall not pass to the Customer until Sodexo receives payment in full (in cleared funds) for all fees payable for the Voucher Cheques (including delivery charges), in which case title to the Voucher Cheques shall pass at the time of payment. Until title to the Voucher Cheques has passed to the Customer, the Customer must notify Sodexo immediately if it becomes subject to any of the events listed in clauses 9.1.3 to 9.1.5. If before title to the Voucher Cheques has passed to the Customer, the

Customer becomes subject to any of the events set out in clauses 9.1.3 to 9.1.5 then, without limiting any other right or remedy available to Sodexo, Sodexo shall have an immediate right to repossess the Voucher Cheques to which Sodexo has title.

5.3 Sodexo shall have no liability for lost, stolen or damaged Voucher Cheques once risk in the Voucher Cheques has passed to the Customer.

## 6 PAYMENT

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

6.2 The fees payable for the Voucher Cheques 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.

6.3 The Customer must pay in advance and in full for its order of Voucher Cheques (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.

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

6.5 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.

6.6 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 9 (**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 6.6 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%.

6.7 Without prejudice to any other rights or remedies available to Sodexo (including under clause 9), Sodexo may suspend supply or delivery of Voucher Cheques 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 9.1.3 to 9.1.5 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 this 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.

6.8 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).

## 7 DATA PROTECTION

7.1 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.

7.2 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](http://www.smsbruk.co.uk)

7.3 Each party shall observe and perform all duties and obligations set out in the Data Protection Laws as they apply to that party.

7.4 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.

## 8 LIMITATION OF LIABILITY

8.1 The restrictions on liability in this clause 8 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), statute, misrepresentation, restitution or otherwise.

8.2 Nothing in the Contract limits or excludes any liability which cannot legally be limited or excluded, including liability for:

8.2.1 death or personal injury caused by negligence; or

8.2.2 fraud or fraudulent misrepresentation.

8.3 Subject to clause 8.2, the following types of loss are wholly excluded:

8.3.1 loss of profits;

8.3.2 loss of sales or business;

8.3.3 loss of agreements or contracts;

8.3.4 loss of anticipated savings;

8.3.5 loss of use or corruption of software, data or information;

8.3.6 loss of or damage to goodwill; and

8.3.7 indirect or consequential loss.

8.4 Subject to clauses 8.2 and 8.3, 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 Voucher Cheques purchased under the Contract; or (b) £2000.		
8.5	Sodexo does not give any representation, warranties or undertakings in relation to the Voucher Cheques. 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.		9.1.3 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;
8.6	Sodexo has no legal relationship with a recipient or ultimate beneficiary of the Voucher Cheques. 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 Voucher Cheques as a result of or connected with the Voucher Cheques or their use.		9.1.4 the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
8.7	This clause 8 shall survive termination of the Contract.		9.1.5 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.
<b>9</b>	<b>TERMINATION &amp; SUSPENSION</b>		
9.1	Without limiting its other rights or remedies, Sodexo may suspend supply or delivery of the Voucher Cheques, or terminate this Contract with immediate effect by giving written notice to the Customer if:		9.2 If Sodexo exercises any of its rights under clause 9.1, then Sodexo may in respect of Voucher Cheques for which title has not yet passed, blacklist, deactivate and/or block those Voucher Cheques so that they can no longer be used.
9.1.1	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;		9.3 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 Voucher Cheques supplied but for which no invoice has been submitted, Sodexo shall submit an invoice, which shall be payable by the Customer immediately on receipt.
9.1.2	the Customer fails to pay any amount due under the Contract on the due date for payment;		9.4 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.
			9.5 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.

## **10 FORCE MAJEURE**

- 10.1 Sodexo shall not be in breach of the Contract nor liable for delay in performing, or failure to perform, any 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 the Voucher Cheques ordered.

## **11 GENERAL**

- 11.1 **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.

## **12 INTELLECTUAL PROPERTY**

- 12.1 The trademarks of Voucher Shop, Sodexo Motivation Solutions U.K. Ltd and the voucher companies can only be used on Customer's own materials with the written permission of the respective companies.
- 12.2 Where Customer branded Voucher Cheques and emails or letters (as applicable) are being provided then the Customer grants to Sodexo a non-exclusive, royalty-free licence to use its name and logo ("**Customer Branding**") for the purposes of creating and distributing Customer branded Voucher Cheques and emails or letters (as applicable). The Customer agrees to indemnify Sodexo against all liabilities, costs expenses, damages and losses suffered or incurred by Sodexo arising out of or in connection with any claim made against

Sodexo for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with Sodexo's use of the Customer Branding in accordance with this clause.

## **13 CONFIDENTIALITY**

- 13.1 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 13.2.
- 13.2 Each party may disclose the other party's confidential information:
- 13.2.1 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 13; and
- 13.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 13.2.3 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.

## **14 ANTI-BRIBERY & ANTI-SLAVERY. BOTH PARTIES SHALL:**

- 14.1 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;
- 14.2 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

14.3 comply with Sodexo's Modern Slavery and Anti-bribery and Anti-corruption Policies as Sodexo may update them from time to time.

**15 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.

**16 Variation.** Subject to clause 0, no variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

16.1 Sodexo reserves the right to modify these Conditions and the fees payable for the Voucher Cheques 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.

**17 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.

**18 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.

**19 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.

**20 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 Voucher Cheques shall have no rights under this Contract and/or against Sodexo.

**21 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.