

## Subscription Terms and Conditions

Membership in the **Coffee Hit Espresso Club (Membership, and being a Member)** is made available by Coffee Hit System Pty Ltd ABN 92 603 044 720 (**Coffee Hit, we, us or our**).

### 1 ELIGIBILITY

- (a) Membership and its benefits are for personal use only, and must not be used in a business or for business purposes.
- (b) You agree to provide current, complete and accurate account information, and to promptly update your information so that we can maintain and manage your Membership, and contact you as needed.

### 2 MEMBERSHIP

- (a) By signing up to a Membership, you are offering to purchase a Membership in accordance with these Terms (as amended) and your selection of subscription options. Membership is at our discretion, is subject to credit checks, availability and our confirmation.
- (b) We can refuse any Membership request for any reason (in our sole discretion) including if the subscription appears not to be for personal use or if the credit check fails.
- (c) We can stop any part of the Membership at any time.

### 3 MEMBERSHIP TERM

- (a) If we haven't rejected your Membership request or you haven't withdrawn it, your Membership becomes legally binding when both of the following happens:
  - (i) we approve your first payment of the Subscription Fee and the Sign-up Fee; and
  - (ii) we, or our payment processor, debits your account and the funds have cleared.
- (b) The minimum Membership Period of the Membership is 12-months (**Minimum Membership Period**) from the date in clause (a) after which the Membership will continue on a month-to-month basis for 'coffee only' unless terminated under 14 (**Membership Period**).

### 4 INCLUSIONS

- (a) During the Minimum Membership Period, you will receive:
  - (i) use of a home espresso machine selected by you from machines offered by Coffee Hit (**Machine**); and
  - (ii) Coffee Hit coffee beans (type and quantity as applicable to the Membership category selected by you) every calendar month.
- (b) There are different Membership categories, each with a slightly different cost depending on the Machine and coffee selected by you.
- (c) Any promotional offers and discounts offered under the Membership are as stated, and cannot be combined with other promotional offers or discounts.

### 5 PRICING

- (a) The fee applicable to the Membership category selected by you (**Subscription Fee**) is shown on our website or email to you (including GST (if any)).
- (b) Your financial services provider or the payment processor may charge administration fees or other charges on the Subscription Fee, on purchases of any products from our website, and on any refunds that we provide in accordance with these Terms. We are not responsible or liable for any such fees or charges.
- (c) Your account will be charged for the Subscription Fee each month before despatch of the coffee beans.

- (d) If for any reason your card issuer declines your payment for your Subscription Fee, we can suspend or terminate your access to the Membership, and you must update your selected payment method on your account or terminate your Membership in accordance with clause 14.

## **6 DELIVERY**

- (a) We will deliver:
  - (i) the Machine to you on receipt of payment for the Sign-up Fee and the first Subscription Fee; and
  - (ii) coffee beans monthly.
- (b) If any product is not in stock at the time of delivery, we will offer you the following options:
  - (i) we can deliver the remaining products to you and deliver the unavailable product when it comes back into stock;
  - (ii) we can supply a substitute product; or
  - (iii) we can grant you a credit equal to the cost of the unavailable product.
- (c) We use third party couriers to deliver. We cannot guarantee that our products will be delivered within expected timeframes. If your delivery has not arrived by the estimated delivery time, please contact us to discuss the next steps.
- (d) You must arrange for the coffee machine to be accepted on delivery by you or an authorised person who is 18 years or older. If delivery is delayed due to your unavailability or refusal to accept our products (or if you do not accept delivery within two (2) weeks of our first delivery attempt), we may cancel your Membership (in which case we will refund you the fees paid for our products, excluding delivery and handling fees which are non-refundable).

## **7 RISK AND TITLE**

- (a) You acknowledge and agree that:
  - (i) Coffee Hit will retain ownership of the Machine during the Term, and Coffee Hit may register its security interest over the Machine on the Personal Property Securities Register in accordance with the *Personal Property Securities Act 2009* (Cth); and
  - (ii) ownership of the Machine will transfer to you at the end of the Minimum Membership Period, strictly provided that you have paid all amounts due and payable to Coffee Hit; and
  - (iii) ownership of the coffee beans will pass to you only when we receive clear payment of the Subscription Fees payable for the month immediately preceding the delivery of those coffee beans.
- (b) Risk of loss or damage to the products passes to you once they have left our warehouse.

## **8 CARE AND MAINTENANCE OF MACHINE**

- (a) You must:
  - (i) keep the Machine clean and only use it in accordance with the manufacturer's instructions;
  - (ii) ensure that the Machine is only used for personal or household use, and is not used in a business or for business purposes; and
  - (iii) keep the Machine at the address nominated in your account.
- (b) We will provide standard repairs in accordance with the Machine's manufacturer's warranty.
- (c) Coffee Hit's obligations under clause (b) will be reduced to the extent that any damage or failure of the Machine is caused or contributed to by:

- (i) your operation or use of the Machine other than in accordance with the manufacturer's instructions;
- (ii) your failure to keep the Machine clean;
- (iii) accident, abuse or misuse;
- (iv) modifications to or interference with the Machine that have not been authorised by us; or
- (v) maintenance or repairs to the Machine that have not been performed by us.

## 9 RECALLS

- (a) In the unlikely event that any of our products are subject to a product recall, we will post a notice on our Website and will contact you (or the recipient of the product) by the most appropriate means, including by email, SMS, telephone, instant messaging or post.
- (b) We will provide you with instructions regarding next steps with respect to returning the products, in accordance with our recall notice.

## 10 SECURITY & CREDIT CHECKS

- (a) To ensure that your credit, debit or charge card is not being used without your consent, we reserve the right to validate name, address and other personal information supplied by you during the sign up process against appropriate third party databases.
- (b) You authorise us to undertake a credit check about you. We may:
  - (i) request consumer credit-related personal information about you from credit reporting bodies for the purposes of assessing your application for membership.
  - (ii) exchange consumer credit-related personal information about you with other credit providers for the particular purposes of assessing your application for Membership.
- (c) You acknowledge that we are not required to consent to any, or all, of the acts or practices described above. However, your refusal to provide certain consents may prevent us from agreeing to membership. As part of the credit application process, we may collect additional personal information from you (including over the phone) and, if it does, our Privacy Statement and consent statements will apply to the collection, use and disclosure of that information.
- (d) We may refer fraudulent, abusive, or illegal activity to the relevant authorities and/or suspend or cancel your account if we reasonably suspect that use of your account is contrary to these Terms or contrary to any law.

## 11 CONSUMER LAW

- (a) The Australian Consumer Law (**ACL**) in the *Competition and Consumer Act 2010 (Cth)* and other similar consumer protection laws and regulations may imply certain rights, consumer guarantees, warranties and remedies relating to our products and the service which cannot be excluded, restricted, qualified or modified by us (**Non-Excludable Rights**). Nothing in these Terms excludes or attempts to exclude your Non-Excludable Rights as a consumer under the ACL.
- (b) To the maximum extent permitted by law or any statutory consumer guarantee contained in, any applicable law, our liability to you for a breach of these Terms or the ACL will be limited to:
  - (i) offering you a refund for a major failure of our products; or
  - (ii) replacing our products where the product is not of an acceptable quality but the failure does not amount to a major failure. Replacement products will be shipped or refunds given (as applicable) once we receive the faulty product or satisfactory evidence of the faulty product. This does not apply where a problem has arisen with the product because it has been used in breach of these Terms. We do not refund delivery and handling fees, except where we deliver the wrong products to you.

- (c) If you are not satisfied with the quality of our products on delivery, please contact us to discuss your options. Where applicable, we will comply with our obligations under the ACL.
- (d) To the extent permitted by law, we exclude all warranties and conditions in relation to our products implied by law including those contained in the *Goods Act 1958 (Vic)* and the equivalent sale of goods legislation in the other states and territories of Australia.

## 12 LIABILITY

- (a) To the maximum extent permitted by law, and any statutory consumer guarantee contained in any applicable law, we exclude liability arising from or in connection with:
  - (i) direct or indirect damages and consequential losses, whether based in contract, tort (including negligence), strict liability or otherwise, suffered as a result of fraudulent credit card use; or
  - (ii) direct or indirect damages and consequential losses, whether based in contract, tort (including negligence), strict liability or otherwise, suffered as a result of your use of the Membership or any of our products, or any content or information made available through our Website.
- (b) You agree to indemnify, defend and hold harmless Coffee Hit and our parent, subsidiaries, affiliates, partners, officers, directors, agents, contractors, licensors, service providers, subcontractors, suppliers, interns and employees, harmless from any claim or demand, including reasonable attorneys' fees, made by any third-party due to or arising out of your breach of the Terms, or your violation of any law or the rights of a third party.

## 13 WARRANTIES

To the maximum extent permitted by law, or any statutory consumer guarantee contained in any applicable law, our Membership is provided on an 'as is' and 'as available' basis, without any warranties or conditions of any kind either express or implied, including but not limited to implied warranties and conditions of merchantability, fitness for a particular purpose or non-infringement.

## 14 TERMINATION

- (a) You can cancel your Membership before the Minimum Membership Period ends provided you pay the applicable Early Termination Fee notified to you at the start of your Membership (or by us in writing). Coffee deliveries will stop. On payment of all amounts due, you will own the coffee machine.
- (b) After the Minimum Membership Period, you may cancel your Membership at any time on written notice to us, provided that notice is received at least 7 days before the next delivery is scheduled.
- (c) If you cancel your Membership before the Minimum Membership Period ends and do not pay the Early Termination Fee;  
OR
- (d) you fail (or we suspect that you have failed) to comply with these Terms, then we can cancel your Membership and  
THEN:
  - (i) you must deliver the Machine to our closest nominated location, clean and in good order and repair (or allow us to collect it, at your cost); and
  - (ii) we may recover from you, any resulting loss, cost or damage that we may suffer.
- (e) The obligations and liabilities of the parties that arose before the termination date survive the suspension, termination or cancellation of your Membership for all purposes.

## 15 GST

- (a) Terms defined in *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* (**GST Act**) have the same meaning when used in this clause unless expressly stated otherwise.
- (b) Except where these Terms specify otherwise, an amount payable by a party under these Terms in respect of a taxable supply by the other party represents the value of the supply (**Supply Amount**). The recipient of the supply must, in addition to the Supply Amount and at the same time, pay to the supplier the amount of GST imposed by the GST Act payable in respect of the supply. For the avoidance of doubt, the GST amount payable under this clause will be calculated by multiplying the Supply Amount by the prevailing GST rate.
- (c) If at any time an adjustment is made between the supplier or any other payer of GST and the relevant taxing authority on account of GST on any supply made or other matter or thing done under or in connection with these Terms by the supplier, a corresponding adjustment must be made as between the supplier and the recipient and any payment required to give effect to the adjustment must be made. The supplier must provide to the recipient an adjustment note relating to the adjustment within 7 days.

## 16 ENTIRE AGREEMENT

- (a) In the event that any provision of these Terms is found to be unlawful, void or unenforceable under any applicable law, the unenforceable portion will be deemed to be severed from these Terms, but that will not affect the validity and enforceability of any of the remaining provisions.
- (b) If we fail or delay in the exercise or enforcement of any right or provision of these Terms, that will not amount to a waiver of that or any other right or provision.
- (c) These Terms constitute the entire agreement and understanding between you and us and govern your eligibility for and access to the Espresso Club Subscription, and supersede any prior or contemporaneous agreements, communications or proposals, regardless of whether they were oral or written, between you and us (including any prior versions of the Terms).
- (d) Any ambiguities in the interpretation of these Terms shall not be construed against the drafting party.

## 17 GOVERNING LAW

These Terms shall be governed by and construed in accordance with the laws of the State of Victoria, Australia.

## 18 CHANGES TO THESE TERMS

- (a) We reserve the right, at our sole discretion, to update, change or replace any part of these Terms or the Membership by posting updates and changes to our Website.
- (b) It is your responsibility to check our Website periodically for changes. Your continued membership following the posting of any changes to these Terms constitutes acceptance of those changes.

## 19 CONTACT INFORMATION

Questions about these Terms should be sent to us at [sales@coffeehit.com.au](mailto:sales@coffeehit.com.au). These Terms were last updated on 28 July 2021.