

The Pluxee standard Terms and Conditions 2023 ("Conditions") for the purchase and supply of eVoucher 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 Pluxee and the Customer for the sale and purchase of eVoucher 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 Pluxee's reasonable control including strikes, lock-outs or other industrial disputes (whether involving the workforce of Pluxee 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 Pluxee, setting out the Customer's order for the eVoucher Cheques.

"Pluxee" Pluxee UK Ltd (Registered No. 02680629) - Enigma, The Park MK, Ortensia Drive, Wavendon, Milton Keynes, England, MK17 8LX.

"eVoucher Cheques" the eVoucher 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 eVoucher 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 Pluxee acknowledging that Pluxee 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 Pluxee sends an email confirming the Order Form has been accepted and processed, at which point the Contract shall come into existence.
- 2.4 Pluxee may decline any Order Form for the supply of eVoucher Cheques without any reason or for any reason including if the Customer is, or has ever been in breach of any contract with Pluxee or if Pluxee is unable to supply the eVoucher 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 EVOUCHER CHEQUES

- 3.1 eVoucher 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 eVoucher Cheques shall be the date set out on the Order Form. On expiry, the eVoucher Cheques will no longer be valid and cannot be used. The Customer is responsible for bringing the expiry date to recipients' attention.
- 3.3 eVoucher Cheques can be exchanged online by recipients for gift cards and/or eVouchers 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 eVouchers. 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 eVouchers must be addressed to the retailer, not Pluxee. If any retailer suffers an insolvency event (including liquidation, administration or receivership) or otherwise ceases to exist, there is no obligation on Pluxee to replace, refund or exchange any previously issued, unspent gift cards and/or eVouchers.
- 3.4 The Customer and Pluxee may agree restrictions on recipients' use of any eVoucher Cheques such as restricting the retailers available. Pluxee 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. Pluxee does not accept any responsibility for any recipients who use the eVoucher Cheques in breach of any agreed restrictions.
- 3.5 Each receipt is responsible for keeping their eVoucher Cheque(s) secure once received. Pluxee does not accept any responsibility for eVoucher Cheques used or redeemed by a person other than the intended recipient.
- 3.6 It is the Customer's responsibility to ensure that eVoucher Cheques are declared to HM Revenue & Customs where required by law. Pluxee shall comply with any information requests from HM Revenue & Customs.

4 PROCESSING OF ORDERS, DESPATCH & DELIVERY

- 4.1 It is the Customer's responsibility to ensure that all email address(s) provided are correct. If the email address(s) are incorrect, Pluxee cannot be held liable for any eVoucher Cheques that are consequently not delivered.

5 TITLE AND RISK

- 5.1 All risk in the eVoucher Cheques passes to the Customer at the time they are sent by email to the email address(s) provided by the Customer.

- 5.2 Title to the eVoucher Cheques shall not pass to the Customer until Pluxee receives payment in full (in cleared funds) for all fees payable for the eVoucher Cheques (including delivery charges), in which case title to the eVoucher Cheques shall pass at the time of payment. Until title to the eVoucher Cheques has passed to the Customer, the Customer must notify Pluxee 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 eVoucher 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 Pluxee, Pluxee shall have an immediate right to repossess the eVoucher Cheques to which Pluxee has title.
- 5.3 Pluxee shall have no liability for lost, or stolen, eVoucher Cheques once risk in the eVoucher Cheques has passed to the Customer.

6 PAYMENT

- 6.1 The fees payable by the Customer for the eVoucher Cheques are set out in the Order Form. All fees are strictly non-refundable. eVoucher Cheques cannot be refunded or exchanged for cash or credit.
- 6.2 The fees payable for the eVoucher Cheques are exclusive of value added tax (VAT), which the Customer shall additionally be liable to pay to Pluxee 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 eVoucher Cheques 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 Pluxee UK Ltd.
- 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 Pluxee under the Contract by the due date, then, without limiting Pluxee'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 Pluxee (including under clause 9), Pluxee may suspend supply or delivery of eVoucher Cheques under the Contract or any other contract between the Customer and Pluxee, cancel or suspend 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 Pluxee 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 Pluxee in respect of the Customer's account with Pluxee 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 any applicable laws and regulations in any relevant jurisdiction relating to the privacy and/or processing of personal data which relate to the collection, storage, use and/or transfer of personal data under or in connection with this Agreement, including: (i) the General Data Protection Regulation (EU) 2016/679 ("**GDPR**"); (ii) UK General Data Protection Regulation (as defined in The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019) ("**UK GDPR**"); (iii) the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2426/2003); and (iv) Data Protection Act 2018, in each case, as updated, amended, re-enacted or replaced from time to time).
- 7.2 As between Pluxee and the Customer, both parties acknowledge that they are independent controllers within the meanings set out in Data Protection Laws. Pluxee shall process personal data in accordance with its privacy policy, available here: www.smsbruk.co.uk/OnlinePrivacyPolicy.pdf
- 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 Pluxee 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, Pluxee'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 Pluxee for the eVoucher Cheques purchased under the Contract; or (b) £2000.

- 8.5 Pluxee does not give any representation, warranties or undertakings in relation to the eVoucher 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.
- 8.6 Pluxee has no legal relationship with a recipient or ultimate beneficiary of the eVoucher Cheques. Pluxee, 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 eVoucher Cheques as a result of or connected with the eVoucher Cheques or their use.
- 8.7 This clause 8 shall survive termination of the Contract.

9 TERMINATION & SUSPENSION

- 9.1 Without limiting its other rights or remedies, Pluxee may suspend supply or delivery of the eVoucher Cheques, or terminate this Contract with immediate effect by giving written notice to the Customer if:
- 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;
 - 9.1.2 the Customer fails to pay any amount due under the Contract on the due date for payment;
 - 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;
 - 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
 - 9.1.5 the Customer's financial position deteriorates to such an extent that in Pluxee's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 9.2 If Pluxee exercises any of its rights under clause 9.1, then Pluxee may in respect of eVoucher Cheques for which title has not yet passed, blacklist, deactivate and/or block those eVoucher Cheques so that they can no longer be used.
- 9.3 On termination of the Contract for any reason the Customer shall immediately pay to Pluxee all of Pluxee's outstanding unpaid invoices and interest and, in respect eVoucher Cheques supplied but for which no invoice has been submitted, Pluxee shall submit an invoice, which shall be payable by the Customer immediately on receipt.
- 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 Pluxee 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 Pluxee 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 eVoucher Cheques ordered.

11 GENERAL

- 11.1 **Assignment and other dealings.** Pluxee 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 Pluxee.
- 11.2 **Intellectual Property.**
- 11.2.1 The trademarks of eVoucher Shop, Pluxee UK Ltd and the eVoucher companies can only be used on Customer's own materials with the written permission of the respective companies.
- 11.2.2 Where Customer branded emails are being provided then the Customer grants to Pluxee a non-exclusive, royalty-free licence to use its name and logo ("**Customer Branding**") for the purposes of creating and distributing Customer branded emails. The Customer agrees to indemnify Pluxee against all liabilities, costs expenses, damages and losses suffered or incurred by Pluxee arising out of or in connection with any claim made against Pluxee for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with Pluxee's use of the Customer Branding in accordance with this clause.
- 11.3 **Confidentiality.**
- 11.3.1 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 11.3.2.
- 11.3.2 Each party may disclose the other party's confidential information:
- 11.3.2.1 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 11.3; and
- 11.3.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 11.3.3 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.
- 11.4 **Anti-Bribery & Anti-Slavery.** Both parties shall:
- 11.4.1 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;

- 11.4.2 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
- 11.4.3 comply with Pluxee's Modern Slavery and Anti-bribery and Anti-corruption Policies as Pluxee may update them from time to time.
- 11.5 **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.
- 11.6 **Variation.** Subject to clause 11.7, no variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 11.7 Pluxee reserves the right to modify these Conditions and the fees payable for the eVoucher 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.
- 11.8 **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.
- 11.9 **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.
- 11.10 **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.
- 11.11 **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 eVoucher Cheques shall have no rights under this Contract and/or against Pluxee.
- 11.12 **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.