

Liberty Flights Limited Terms and Conditions of Sale

1 Interpretation

1.1 In these Conditions the following definitions apply:

Business Day	means a day other than Saturday, Sunday and public holidays;
Buyer	means the persons or firm who purchases Goods from the Seller;
Conditions	means the terms and conditions set out in this document;
Confidential Information	means any commercial, financial or technical information, information relating to products, knowhow or trade secrets which is obviously confidential or has been identified as such, or which is developed by a party in performing its obligations under, or otherwise pursuant to this Contract;
Contract	means the agreement between the Seller and the Buyer for the sale and purchase of Goods incorporating these Conditions;
Delivery Location	means the address for delivery of the Goods as set out in the Order;
Force Majeure	means an event or sequence of events beyond a party's reasonable control preventing or delaying it from performing its obligations under the Contract, except any party's failure to pay shall not be an event of force majeure in any event;
Goods	means the "e-cigarettes" and related goods set out in the Order and to be supplied by the Seller to the Buyer;
Insolvency Event	means the Buyer <ul style="list-style-type: none">(a) stops carrying on all or a significant part of its business, or indicates in any way that it intends to do so;(b) is unable to pay its debts either within the meaning of section 123 of the Insolvency Act 1986 or if the Seller reasonably believes that to be the case;(c) becomes the subject of a company voluntary arrangement under the Insolvency Act 1986;(d) has a receiver, manager, administrator or administrative receiver appointed over all or any part of its undertaking, assets or income;

- (e) has a resolution passed for its winding up;
- (f) has a petition presented to any court for its winding up or an application is made for an administration order, or any winding-up or administration order is made against it;
- (g) is subject to any procedure for the taking control of its goods that is not withdrawn or discharged within 7 days of that procedure being commenced;
- (h) has a freezing order made against it;
- (i) is subject to any recovery or attempted recovery of items supplied to it by a supplier retaining title in those items; or
- (j) as an individual is subject to any events or circumstances analogous to those set out above;

Intellectual Property Rights

means copyright, patents, know-how, trade secrets, trade marks, trade names, design rights, rights in get-up, rights in goodwill, rights in confidential information, rights to sue for passing off, chip topography rights, mask works, utility models, domain names and all similar rights and, in each case: (i) whether registered or not, (ii) including any applications to protect or register such rights; (iii) including all renewals and extensions of such rights or applications; (iv) whether vested, contingent or future; (v) to which the Seller is or may be entitled; and (vi) in whichever part of the world existing;

Order

means the Buyer 's order for the Goods from the Seller;

Responsible Selling Guidelines

means the Seller's responsible selling guidelines as amended from time to time;

Return Merchandise Authorisation Procedure

means the Seller's returns procedure (see www.liberty-flights.co.uk/wholesale-returns or ask your sales manager for hard copy) as amended from time to time at the discretion of the Seller;

Seller

means Liberty Flights Limited (crn 07089691);

Value Added Tax or VAT

means value added tax under the Value Added Taxes Act 1994 or any other similar sale or fiscal tax applying to the sale of the Goods.

1.2 Unless the context otherwise requires:

- 1.2.1 each gender includes the others;
- 1.2.2 the singular includes the plural and vice versa;
- 1.2.3 references to the Contract include the Conditions and the Order;
- 1.2.4 references to persons include individuals, unincorporated bodies, government entities, companies and corporations;

- 1.2.5 clause headings do not affect their interpretation;
- 1.2.6 general words are not limited by example; and
- 1.2.7 references to any legislation will be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

2 Application of these terms and conditions

- 2.1 These terms and conditions apply and form part of the Contract between the Seller and the Buyer. They supersede any previously issued terms and conditions of supply.
- 2.2 No terms or conditions endorsed on, delivered with, or contained in the Buyer's purchase order, confirmation of order, specification or other document will form part of the Contract.
- 2.3 No variation of these Conditions or to an Order, or to a quotation from the Seller will be binding unless expressly agreed in writing and executed by a duly authorised signatory on behalf of the Seller.
- 2.4 Each Order by the Buyer to the Seller will be deemed to be an offer to purchase Goods and subject to the Conditions.
- 2.5 The Seller reserves the right at all times to reject any Order, in whole or in part, at its sole discretion.
- 2.6 Any quotation by the Seller for the provision of Goods will be deemed to be an invitation to treat (and shall not be an offer) by the Seller to supply Goods on and subject to the Conditions and will only be valid for 28 days only from the date of issue.
- 2.7 A Contract will be formed upon the earlier to occur of written acceptance by email by the Seller of the Buyer's Order or the shipment of Goods.

3 Price

- 3.1 The price for the Goods (including the packaging) will be as set out in the Order.
- 3.2 The cost for delivery will be as set out in the Order but delivery will be charged if the net value of the Goods is less than £75. The Seller may change this Threshold from time to time and may charge for delivery if the value of the Goods is over the Threshold depending on individual circumstances from time to time. Value Added Tax is charged in addition to the prices stated where applicable and at the applicable rate from time to time.
- 3.3 The price is payable in full as set out in the Order.

4 Payment

- 4.1 The Seller will invoice for the Goods at the point of shipment.
- 4.2 The Buyer will pay all invoices without deduction or set-off other than as required by law in cleared funds in accordance with invoice terms but if none are stated in the invoice then within 7 days of the invoice date notwithstanding whether there was a visit from the Seller's representative during that period.
- 4.3 Time of payment is of the essence. Where sums due hereunder are not paid in full by the due date:
 - 4.3.1 the Seller may, without limiting its other rights, charge interest on such sums at 4 % p.a. above the base rate of Barclays Bank plc from time to time accruing pro rata daily in arrears

on the basis of a 365 day year, and apply from the due date for payment until actual payment in full, whether before or after judgment.

4.3.2 the Buyer may not purchase any further Goods without the approval of the Buyer.

4.4 VAT will be charged by the Seller and paid by the Buyer at the then-applicable rate.

4.5 The Seller and the Buyer may agree credit terms from time to time but are only valid to the limit of the amount and time expressly confirmed by the Seller in advance and if either are exceeded then all amounts become immediately due and payable in full and the provisions of 4.3 shall apply.

5 Delivery and returns at will within 5 days

5.1 The Seller shall endeavour to deliver the Goods to the Delivery Location on the second Business Day following the date of Order.

5.2 The Goods will be deemed delivered if delivered by or for the Seller under clause 5.1, on arrival of the Goods at the Delivery Location.

5.3 The Seller will use its reasonable endeavours to meet delivery dates but such dates are approximate only, and time of delivery is not of the essence.

5.4 The Seller will not be liable for any delay in or failure of delivery caused by:

5.4.1 The Buyer 's failure to take delivery of the Good; or

5.4.2 an event of Force Majeure.

5.5 If the Buyer fails to accept delivery of the Goods on the date or within the period set out in the Order:

5.5.1 delivery of the Goods will be deemed to have occurred at 12:00 pm on the second Business Day following the date of confirmation of acceptance of the Order;

5.5.2 the Seller will store and insure the Goods pending delivery, and the Buyer will pay reasonable storage and insurance charges all costs and expenses incurred by the Seller in doing so.

5.6 If, on the due date for delivery, the Buyer has not taken delivery of or collected them, the Seller may resell or otherwise dispose of the Goods. The Seller will:

5.6.1 deduct reasonable storage charges and costs of resale; and

5.6.2 account to the Buyer for any excess of the resale price over, or invoice the for any shortfall of the resale price below, the price paid by the for the Goods.

5.7 The Buyer shall accept or be deemed to have accepted the Goods upon delivery.

5.8 Notwithstanding acceptance, the Buyer shall be entitled to return the Goods to the Seller within 5 Business Days of the date of delivery following and subject to the Merchandise Returns Authorisation Procedure which includes without limitation a condition that the Goods must be capable of re-sale by the Seller.

6 Title and risk

6.1 Risk in the Goods will pass to the Buyer on completion of delivery.

- 6.2 Title to the Goods will pass to the Buyer once the Seller has received payment in full for the Goods.
- 6.3 Until title to the Goods has passed to the Buyer, the Buyer will:
- 6.3.1 hold the Goods as bailee for the Seller;
 - 6.3.2 store the Goods separately from all other material in the Buyer's possession;
 - 6.3.3 take all reasonable care of the Goods and keep them in reasonable condition;
 - 6.3.4 insure the Goods:(i) with a reputable insurer (ii) from the date of delivery (iii) against all risks (iv) for an amount at least equal to the Price (v) noting the Seller's interest on the policy;
 - 6.3.5 ensure that the Goods are clearly identifiable as belonging to the Seller;
 - 6.3.6 not remove or alter any mark on or packaging of the Goods;
 - 6.3.7 inform the Seller as soon as possible if it becomes subject to any Insolvency Event;
 - 6.3.8 provide the Seller such information concerning the Goods as the Seller may request from time to time.
- 6.4 If, at any time before title to the Goods has passed to the Buyer, the Buyer informs the Seller, or the Seller reasonably believes, that the has or is likely to become subject to any Insolvency Event the Seller may:
- 6.4.1 require the Buyer at the Buyer's expense to redeliver the Goods to the Seller; and
 - 6.4.2 if the Buyer fails to do so promptly, enter any premises where the Goods are stored and repossess them.

7 Warranty

- 7.1 The Seller warrants that the Goods shall materially comply with their description in the Order, be free from material defects in design, material and workmanship and be of satisfactory quality within the meaning of the Sale of Goods Act 1979 for the following periods:
- 7.1.1 in the case of liquids (and the containers), 5 Business Days;
 - 7.1.2 In the case of hardware (not liquids or containers), subject to any end of life date directed by the Seller or sell before date on the packaging), 30 days from purchase by a consumer;
- 7.2 The Seller will at its option, repair, replace or refund the price of Goods that are found to be defective in accordance with clause 7.1 provided always that:
- 7.2.1 the Buyer serves a written notice on the Seller no later than 5 Business Days of notification or discovery of any defects detailing the nature and extent of the defects;
 - 7.2.2 the Seller shall in the case of hardware returned pursuant to clause 7.1.2 (and 7.6), be entitled to see proof of purchase;
 - 7.2.3 the Seller shall have adequate opportunity to examine the hardware and establish whether or not it is defective.
- 7.3 The Conditions will apply to any Goods repaired or replaced.

- 7.4 The Seller will not be liable for any failure of the Goods:
- 7.4.1 where such failure arises by reason of wilful damage or negligence;
 - 7.4.2 to the extent caused by the Buyer 's failure to comply with the Seller's instructions and/or good practice in relation to storage of the Goods;
 - 7.4.3 to the extent caused by the Seller following any design or specification or requirement of the in relation to the Goods;
 - 7.4.4 where the Buyer repairs or alters any Goods without the Seller's prior written agreement; or
 - 7.4.5 where the Buyer uses any of the Goods after notifying the Seller that it does not comply with clause 7.1
- 7.5 Except as set out in this clause 7:
- 7.5.1 the Seller gives no warranty and makes no representations in relation to the Goods; and
 - 7.5.2 shall have no liability for their failure to comply with the warranty in clause 7.1,
- and all warranties and conditions (including the conditions implied by ss 12–16 of the Supply of Goods and Services Act 1982 and ss 13–15 of the Sale of Goods Act 1979), whether express or implied by statute, common law or otherwise are excluded to the extent permitted.
- 7.6 The Buyer shall at all times comply with the Return Merchandise Authorisation Procedures.

8 Liability

- 8.1 The extent of the parties' liability under or in connection with the Contract (regardless of whether such liability arises in tort, contract or in any other way and whether or not caused by negligence or misrepresentation) shall be as set out in this clause 8.
- 8.2 Nothing in this Contract excludes or limits the liability of the Seller for death or personal injury caused by the Seller' negligence, fraudulent misrepresentation or any other matter that cannot be excluded or limited by law.
- 8.3 Subject to Clauses 8.2:
- 8.3.1 The Seller shall not be liable to the Buyer for any indirect or consequential loss or damage (whether for loss of profit, loss of business, depletion of goodwill or otherwise), costs, expenses or other claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with this Contract; and
 - 8.3.2 The Seller's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with this Contract shall be limited to the amount actually received by the Seller pursuant to the terms of this standalone Order and Contract.
- 8.4 The Buyer shall be liable for and will indemnify and keep indemnified the Seller in full against any and all liability loss damages costs legal costs professional and other expenses of any nature whatsoever incurred or suffered by the Seller arising out of any dispute or contractual tortuous or other claims or proceedings brought against the Seller arising out of this Contract.

9 Buyer's Obligations

- 9.1 Save for where expressly agreed in writing by the Seller, the Buyer shall only sell to consumers and not to other retailers or wholesalers.
- 9.2 The Buyer shall not tamper with or alter the Goods, packaging or labelling but may for the avoidance of doubt sell the Goods at any price that the Buyer determines and may amend or alter the "RRP" figure stated on the Goods.
- 9.3 The Buyer warrants and represents that it has all necessary authorisation to sell the Goods.
- 9.4 The Buyer shall adhere to the Responsible Selling Guidelines
- 9.5 The Buyer shall implement staff training so that the Buyer's staff are trained to advise consumers in relation to battery safety in the Goods on purchase.

10 Third Party Intellectual Property Rights infringement

- 10.1 The Seller will defend or, at its option, settle any action brought against the arising from any claim that the use of the Goods by the in accordance with the Contract infringes any third party Intellectual Property Right, and indemnify the against all reasonable costs and expenses incurred by the in connection with such claim.
- 10.2 The Seller's obligations under clause 10 will not apply to Goods modified or used by the Buyer other than in accordance with the Conditions. The Seller's obligations under clause 10 are conditional on the Buyer:
 - 10.2.1 promptly advising the Seller in writing of any claim or action;
 - 10.2.2 making no admission as to, or settlement or compromise of any claim or action without the Seller's prior written consent;
 - 10.2.3 giving the Seller sole conduct of any defence and any settlement negotiations, and
 - 10.2.4 co-operating fully with the Seller and providing the Seller with all reasonable assistance in the defence or settlement of such claim or action.
- 10.3 The Buyer's reasonable costs of compliance with clauses 10.2.3 and 10.2.4 will be paid by the Seller.
- 10.4 The provisions of this clause 10 set out the Seller's entire liability and the Buyer's sole right in respect of third party Intellectual Property Rights infringement claims.

11 Confidentiality

- 11.1 For a period of 5 years from the date of the Contract, each party shall keep confidential all Confidential Information of the other party and will only use the other's Confidential Information as required to perform the Contract. The provisions of this clause will not apply to:
 - 11.1.1 any information which was in the public domain at the date of this Contract;
 - 11.1.2 any information which comes into the public domain subsequently other than as a consequence of any breach of this Contract or any related agreement;
 - 11.1.3 is independently developed by the other party without using information supplied by the first party; or
 - 11.1.4 any disclosure required by law or a regulatory authority or otherwise by the provisions of this Contract.

12 Force Majeure

12.1 A party will not be liable if delayed in or prevented from performing its obligations due to Force Majeure, provided that it:

12.1.1 promptly notifies the other of the Force Majeure event and its expected duration; and

12.1.2 uses reasonable endeavours to minimise the effects of that event.

13 General

13.1 Time

Unless stated otherwise, time is not of the essence of any date or period specified in these Conditions.

13.2 Relationship

The parties are independent businesses and not principal and agent, partners, or employer and employee.

13.3 Severability

If any part of these Conditions is found by a court, tribunal or other administrative body of competent jurisdiction to be unenforceable or invalid for any reason, that provision is to be severed from the Conditions and the remaining provisions of the Conditions will otherwise remain in full force.

13.4 Notices

Notices under this Agreement will be in writing and sent to the persons and addresses set out in the Order. They may be given, and will be deemed received:

13.4.1 by first-class post: two Business Days after posting; and

13.4.2 by hand: on delivery;

13.5 Waiver

No delay, act or omission by either party in exercising any right or remedy will be deemed a waiver of that, or any other, right or remedy.

13.6 Rights of Third Parties

This Contract is not enforceable by any third party under the Contracts (Rights of Third Parties) Act 1999 or otherwise.

13.7 Priority

The terms of the Conditions prevail over those of the Order.

13.8 Entire Agreement

The Contract constitutes the entire agreement between the parties in relation to its subject matter. No other terms apply and for the avoidance of doubt this Contract applies solely in relation to the Order for the Goods and for each separate order a separate contract shall be entered into and there is no long term supply arrangement intended between the Parties. These terms and conditions may be amended at any time by the Seller.

13.9 **Succession**

This Contract will bind and benefit each party's successors and personal representatives.

13.10 **Governing Law & Jurisdiction**

13.10.1 This Contract will be governed by the law of England and Wales.

13.10.2 Disputes will be submitted to the exclusive jurisdiction of the courts of England and Wales.