

Divine Water – Coffee Terms and Conditions

1. In these conditions "Divine Water" means The Divine Water Company Limited (registered number 2979888). "Equipment" means the machine(s) supplied to you ("the Customer") by Divine Water. "Month" means calendar month. "Consumables" are products supplied by Divine Water other than the Equipment. "Minimum Term" is as stated in the Sales Agreement and begins on the Commencement Date. "Commencement Date" means the date that the agreement is signed. "Special Order Equipment" means Equipment which is indicated in the Sales Agreement as being special order from the manufacturer. "Sales Agreement" means the sales or rental agreement. "Lease Agreement" means the lease agreement (if any) to be issued to the Customer under condition 6. "Delivery Address" means the delivery address stated in the Sales Agreement.

2. The Customer warrants that this agreement is entered into by it wholly or predominantly for the purposes of the business carried on, or intended to be carried on, by the Customer.

3. These conditions apply to the Sales Agreement to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. The Sales Agreement shall only come into force upon signature and acceptance of these conditions by both parties.

4. The Sales Agreement and these conditions constitute the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of Divine Water which is not set out in the Sales Agreement or these conditions.

5. Divine Water shall provide servicing, maintenance and repair of the Equipment if covered by the agreement during the Minimum Term and any Extended Term, but this obligation is strictly subject to the terms of conditions 15 to 18 and the Customer's compliance with its obligations under the contract including, without limitation, conditions 6 to 11 and 12.

Payment

6. Where the contract type is indicated in the Sales Agreement as Lease, the obligations of Divine Water under this agreement are subject to a lease approval by the appropriate leasing provider and the Customer is required as a term of this agreement to enter into the Lease Agreement issued by the leasing provider.

7. Where the contract type is indicated in the Sales Agreement as Free on Loan, the Customer agrees and undertakes to order from Divine Water the minimum quarterly amounts of Consumables set out in the Sales Agreement and agrees that if it fails to order such minimum amounts during any quarter it shall, for the subsequent quarter, pay to Divine Water on demand a sum equal to Divine Water's then current rental for the Equipment for that quarter.

8. Divine Water reserves the right to revise the rates quoted in the event of a materially adverse credit report being obtained in respect of the Customer but the Customer shall not be obliged to proceed with the Contract if it does not accept the revised rental rates.

9. Where the contract type is indicated in the Sales Agreement as Rental: (i) the Equipment rentals will be payable in advance in the frequency and amount set out in

the Sales Agreement during the Minimum Term and any Extended Term; (ii) Divine Water may vary the rental charges during the Extended Term subject to notifying the Customer; (iii) without limiting the generality of clause 21, ownership and title to the Equipment shall remain with Divine Water at all times; (iv) the Customer shall ensure that any markings indicating that the Equipment is the property of Divine Water shall be maintained in place at all times; and (v) the risk of loss, theft, damage or destruction of the Equipment shall pass to the Customer on delivery and the Equipment shall remain at the sole risk of the Customer until such time as the Equipment is redelivered to Divine Water.

10. Except where otherwise set out in this agreement, invoicing for all Consumables shall be monthly.

11. Each invoice shall be due for payment net monthly of the invoice date and if it is not so paid the Customer shall pay interest on the outstanding amount at the rate of 5% a year above the base rate of the Bank of England, accruing daily.

Customer's other obligations

12. The Customer shall:

12.1 Ensure that the Equipment is not moved away from the Delivery Address without written consent from Divine Water (except where the customer has purchased the equipment)

12.2 Allow Divine Water access to the Equipment at all reasonable times.

12.3 Insure the Equipment to its full replacement value against all risks (except where the customer has purchased the equipment)

12.4 Pay full replacement value for any Equipment damaged, destroyed, lost or stolen.

12.5 Ensure there is an adequate supply of wholesome drinking water and a safe correctly rated supply of electricity for the operation of the Equipment.

12.6 Purchase all Consumables and cleaning products for use in or with the Equipment from Divine Water and ensure the Equipment is only used for dispensing drinks supplied by Divine Water

12.7 Ensure that the water supply is fitted with an operational scale reducing filter from Divine Water which is changed according to the contract schedule or (in the case of manual fill machines) use only filtered water, or Divine Water's spring water.

12.8 Pay for broken Jugs

12.9 Clean the equipment in accordance with instructions given by Divine Water

12.10 If applicable, arrange and pay for routine statutory inspection and certification of the equipment (for example, under the pressure system regulations if it incorporates a steam boiler).

Divine Water's rights and obligations

13. Divine Water may at any time or times remove the Equipment and substitute other Equipment after which the expression "the Equipment" in this Contract shall refer to such substituted Equipment.

14. Ownership and title to the Consumables remains with Divine Water, until invoices are paid in full and unused stock is presumed covered by the last invoice.

Equipment maintenance

15. Subject to compliance by the Customer with condition 12.6, Divine Water shall service or repair the Equipment within a reasonable time during normal business hours after notification from the Customer of any defect or malfunction, however failure to

do so does not affect the customers contractual obligations in any way, nor give the customer any right to cancel the contract.

16. Divine Water shall be entitled to charge for site visits and/or maintenance and repair work at its then current service rates (details of which are available on request) in the event that an unscheduled visit or replacement of parts or a repair is required as a result of any of the following:-

- 16.1 failure by the Customer to perform regular cleaning of the Equipment;
- 16.2 if the apparent fault is due to the water supply or power supply to the Equipment being turned off and the Equipment is not otherwise faulty;
- 16.3 misuse by the Customer or its users of the Equipment;
- 16.4 no fault actually exists or cannot be reproduced;
- 16.5 breakages to Equipment including accidental, negligent and wilful damage;
- 16.6 interference with the programme or any software settings in the Equipment or on its controls;
- 16.7 electrical power surges, fire, flood or other catastrophic event.

17. Divine Water also reserves the right to charge for all site visits and/or maintenance and repair work in the following circumstances:-

- 17.1 if the Customer uses consumable items or cleaning products in the Equipment other than those supplied by Divine Water (unless agreed otherwise in writing between Divine Water & the customer)
- 17.2 if the Customer uses the Equipment other than as set out in condition 12.6 or 12.7
- 17.3 where the customer has no separate maintenance contract in place
- 17.4 where work is required outside normal working hours or during a public holiday or a weekend
- 17.5 Such maintenance and repair charges shall be applied at the rates applicable at the relevant time and details of such rates are available on request.

18. Replacement parts for machines purchased by the customer and outside the manufacturer's warranty period will be chargeable in all cases.

Duration and termination

19. This agreement shall come into force on the date that the Sales Agreement is signed and shall continue for the Minimum Term and thereafter, for successive periods of 12 months until terminated in accordance with this clause ("Extended Term") provided that the Customer's obligation to purchase Consumables shall begin only on the Commencement Date. Should the Customer wish to terminate the agreement they must give Divine Water not less than three months written notice to expire on the final day of the Minimum Term or an anniversary thereof. For the avoidance of doubt, charges are payable for the whole of the initial minimum period regardless of when notice is given and no refund of any charges shall be payable by Divine Water to the customer. In addition in the event that a customer terminates this agreement but with less than three months notice in writing, then the agreement shall be terminated forthwith but the customer shall remain liable to Divine Water for the whole of the subsequent years charges.

20. Divine Water may terminate this Contract immediately by written notice to the Customer in any of the following cases:

- 20.1 If any sum due to Divine Water remains unpaid for 30 days after falling due.
- 20.2 If the Customer is in breach of any other obligation under this Contract.
- 20.3 If the Customer fails to make payment in full for any Equipment, fails to accept delivery of the Equipment or fails to enter into the Leasing Agreement.
- 20.4 If the relevant leasing provider refuses to issue a Leasing Agreement in respect of the Customer.

20.5 If the Customer ceases to trade or appears to have abandoned the Equipment.
20.6 If the Customer or (if the Customer is more than one person) either or any of them makes any voluntary arrangement with creditors or becomes subject to an administration order or (being an individual) becomes bankrupt or insolvent or (being a company) goes into liquidation or a receiver is appointed of its property or if any distress or execution is levied on the Customer's goods.

20.7 Divine Water reasonably apprehends that any of the events mentioned in 20.5 or 20.6 is about to occur or may have occurred already.

20.8 If the performance of its obligations is rendered impossible by an act of a third party.

21. Unless and until the Equipment has been sold to the Customer and paid for in full it remains the property of Divine Water or the leasing company (as the case may be). If the Agreement is terminated for any reason Divine Water is entitled to enter the Customer's premises to remove any Equipment which remains its property and any unpaid for Consumables.

22. In the event of early termination for any reason prior to the end of the Minimum Term or the Extended Term (as the case may be), Divine Water may charge for loss of future Consumables sales for the outstanding portion of the Minimum Term or the Extended Term (as the case may be) based on the average contract usage at the date of termination.

23. In the event that this agreement is terminated under clause 20.3 the Customer agrees to pay on demand to Divine Water a sum equal to 10% of the value of the Equipment to compensate Divine Water for its costs incurring in acquiring the Equipment and retaining it in stock and the parties acknowledge and agree that such amount represents a genuine pre-estimate of the loss which would be suffered by Divine Water as a result of such breach.

24. Upon termination of this agreement for any reason, Divine Water's consent to the Customer's possession of any Equipment in respect of which the contract type indicated in the Sales Agreement is "rental" or "free on loan" shall terminate and Divine Water may, by its authorised representatives, without notice and at the Customer's expense, retake possession of the Equipment and for this purpose may enter the Delivery Address or any premises at which the Equipment is located

Liability

25. Except in respect of death or personal injury caused by their negligence, Divine Water shall not be liable for any damage or loss caused by the Equipment, or the performance of Divine Water's obligations or the exercise of their rights under this Contract and the only remedy for any breach of condition or warranty express or implied statutory or otherwise including liability for negligence shall be limited to the repair or replacement of the Equipment or other goods supplied and shall not include any liability for incidental or consequential loss or damage.

26. The Customer enters into this Agreement of its own accord and does not rely on any advice or representations given by Divine Water's staff or operatives as to the suitability or fitness of the Equipment for the purpose specified.

General

27. The Customer shall indemnify and hold harmless Divine Water for and against any loss, liability, damage or claim (including legal and other professional costs on an

indemnity basis) which it may suffer or be put to as a result of a breach by the Customer of their obligations under the Sales Agreement or these terms.

28. This Contract is assignable by Divine Water but not by the Customer.

29. Notices are to be given by recorded delivery post to the address of the other party as shown overleaf unless that party has noticed a change of address in writing in which case it shall be sent to the new address.

30. If any condition or part of a condition shall be held by any competent court or tribunal to be void or unenforceable the remainder of the Contract (and if applicable the remainder of the condition in question) shall continue in full force and effect.

31. If this Contract constitutes a consumer transaction (as defined by the Sale of Goods Act 1979) the Customer's statutory rights are unaffected by these Conditions.

32. Divine Water, and respective logos are all Trademarks of Divine Water and may not be copied or reproduced without prior consent.

33. In line with the GDPR regulation Divine Water hold the right to email the Customer updates about the services provided

34. In the event of Divine Water updating or amending these terms and conditions the most recent version shall apply.

35. In the event of any conflict with any other document or agreement between the Parties, these terms will prevail.

36. Neither party shall be liable for any default due to any act of God, war, strike, lockout, industrial action, fire, flood, drought, tempest or other event beyond the reasonable control of either party.

37. No failure or delay by any party to exercise any right, power or remedy shall operate as a waiver of it, nor shall any partial exercise preclude further exercise of the same or some other right, power or remedy.

38. In the event of any dispute between Divine Water and the customer either party may request arbitration by a solicitor to be nominated by Divine Water

39. These terms are subject to English Law and the exclusive jurisdiction of the English Courts.

Contact Details

The Divine Water Company Limited
Rauter House
1 Sybron Way
Millbrook Business Park
Crowborough
East Sussex
TN6 3DZ

Tel. 01892 669609
Email: sales@divinewater.co.uk