



## TERMS AND CONDITIONS OF SALE

Middleby Coffee Solutions Group LLC ("MCSG") and Distributor and/or Buyer (referred to herein collectively as "Customer") agree that the following Terms and Conditions shall govern this Transaction:

### 1. Sale

MCSG agrees to sell to Customer, and Customer agrees to purchase, the tangible personal property (the "Goods") stated on the receipt for this Transaction.

### 2. Acceptance and Cancellation of Order

All Transactions for Goods are subject to acceptance in writing by a duly authorized agent of Middleby Coffee Solutions Group LLC (MCSG). In the event of cancellation of a Transaction prior to shipment for any reason, Customer shall pay to MCSG all expenses then incurred and commitments made by MCSG, including reasonable cancellation or restocking charges. Sales Orders accepted by MCSG may be cancelled by Customer only upon written consent of MCSG. All sales are final once the goods have been shipped.

### 3. Price

Customer shall pay MCSG for the Goods as stated **on the receipt for this Transaction**. Customer shall make payment of the purchase price in full according to the Terms of Payment set forth in Section 8 below, following delivery of the Goods by MCSG as provided herein, subject to Customer's Right of Inspection set forth in Section 5 below.

### 4. Shipping

MCSG shall deliver the Goods to a shipper (as mutually agreed between MCSG and Customer) F.O.B. Renton, Washington. Distributor or Buyer shall be solely responsible for the expenses associated with shipping. The risk of loss from any casualty to the Goods, regardless of the cause, shall be upon Customer upon the delivery of the Goods to shipper as set forth herein. When practicable, MCSG will follow Customer's requested shipping instructions. If none are requested, MCSG will without liability use its discretion in selecting an appropriate shipping method.

## **5. Right of Inspection**

Customer shall have the right to inspect the Goods on arrival at Customer's facility. Within 24 hours after arrival, Customer must give written notice to MCSG of any claim with respect to the condition, quality, or grade of the Goods or nonconformance to this Transaction, specifying the basis of the claim in detail. At its option, MCSG may inspect the Goods at Customer's facilities to confirm that the Goods do not conform. Failure of Customer to comply with these conditions within the time set forth herein shall constitute irrevocable acceptance of the Goods by Customer. In the event the Goods do not conform to this Transaction, Customer's sole remedy and MCSG's sole obligation shall be at MCSG's option to replace the Goods at MCSG's expense or credit Customer the amount of the purchase price for the non-conforming Goods. **Return shipping shall be the responsibility of MCSG.**

## **6. Identification of Goods**

Identification of the Goods shall not be deemed to have been made until both Customer and MCSG have specified that the Goods are to be appropriated to the performance of this Transaction.

## **7. Transfer of Title**

MCSG hereby retains a purchase money security interest in the Goods to secure payment of the purchase price. Customer agrees that a copy of the Transaction receipt or invoice or similar document for the Goods may be filed by MCSG as a Financing Statement at any time.

## **8. Terms of Payment**

Customer agrees to make payment to MCSG in accordance with net 30-day payment terms or prepayment at shipment, whichever terms are set for the Customer by MCSG. Customer agrees to pay an annual rate of 18% or the maximum rate permitted by law on all overdue payments and reasonable collection costs, including attorneys' fees, necessary to collect payment for items invoiced; provided, that if MCSG and Customer have entered into a separate written credit agreement setting forth the payment obligations of Customer with respect to the Goods, then the provisions of such credit agreement shall control.

## **9. Limitation of Liability**

In no event shall MCSG be liable for any special, indirect, incidental or consequential damages arising out of or connected with this Transaction or the Goods, regardless of whether a claim is based on contract, tort, strict liability or otherwise, nor shall Customer's damages exceed the amount of the purchase price of the Goods.

## **10. Taxes**

Customer shall pay or reimburse MCSG as appropriate for any sales, use, excise or other tax imposed or levied with respect to the payment of the purchase price for the Goods or the conveyance of title in the Goods to Customer. In no event shall Customer be responsible for any tax imposed upon MCSG based upon MCSG's income or for the privilege of doing business.

## **11. Notices**

Any notice required by these Terms and Conditions, or given in connection with it or Transaction, shall be in writing and shall be given to the appropriate party by personal delivery, email, or by mail, postage prepaid, or recognized overnight delivery services as follows:

**If to MCSG:**

Middleby Coffee Solutions Group LLC  
851B SW 34th St, Renton, Washington 98057  
Attention: Customer Service [customercare@middlebycoffee.com](mailto:customercare@middlebycoffee.com)

**If to Customer:** At Customer's billing address.

## **12. Warranty Provisions**

Where applicable, MCSG and Distributor acknowledge that Distributor is buying the Goods with the intent to resell the Goods to one or more consumers ("End Users"). Prior to consummation of all transactions between Distributor and End Users, Distributor shall provide to End Users the language set forth at the end of this Transaction regarding limited warranty coverage and disclaimers ("Limited Warranty Statement and Disclaimers"), which language must be conspicuous and in writing (whether in the sales contract or as a stand-alone document). Distributor further agrees that in connection with its marketing, advertising and sales of the Goods, it shall make no oral or written statement or claim which is inconsistent with the Limited Warranty statement and disclaimers language set forth below. Buyer and MCSG agree that the Limited Warranty statement and disclaimers language set forth at the end of this Transaction shall exclusively govern this Transaction.

## **13. Governing Law**

This Transaction and Terms and Conditions shall be construed and enforced in accordance with the laws of the State of Washington, and Customer irrevocably consents that the

exclusive jurisdiction and venue for any action shall be in the state and federal courts located in King County, Washington.

#### **14. Modifications to the Terms and Conditions of Sale**

These Terms and Conditions terminate and supersede all prior understandings or agreements with the Customer on the subject matter hereof; provided, nothing in any Transaction receipt or these Terms and Conditions shall contradict any provision in any Distributor Agreement between MCSG and Distributor, in which case, the Distributor Agreement shall control. No other terms and conditions, modifications, or amendments proposed by Customer shall be binding upon the parties unless consented to in writing by MCSG. Customer may use its purchase order or similar document to place orders for Goods or services but any terms and conditions on such document which are in addition to or inconsistent with the Terms and Conditions herein shall be deemed stricken from such document. MCSG may modify these Terms and Conditions at any time via written notice to Customer. Customer shall be deemed to accept such modifications in the absence of written response within 30 days of the effective date of any modifications.

#### **15. Relationship of Distributors and Buyers**

Where applicable, Buyer acknowledges and agrees that (a) this Agreement is entered into by Distributor for the express, intended benefit of Buyer, (b) Buyer shall be and constitutes an intended third-party beneficiary of the representations, warranties, covenants and agreements of MCSG contained herein, and (c) upon electing to purchase any of the Goods as set forth in a Transaction receipt, Customer shall be entitled to enforce, and shall be bound by, the terms and provisions of this Agreement to the same extent as MCSG.

#### **16. Severability**

If any provision of these Terms and Conditions is held by a court of competent jurisdiction to be invalid or unenforceable, then such provision shall be adjusted to the minimum extent necessary to cure such invalidity. The invalidity or unenforceability of one provision shall not affect any other. The remaining Terms and Conditions will remain in full force and effect as if such invalid or unenforceable provision had never been included.

#### **16. Force Majeure**

Except as to the timely payment by Customer to MCSG for Goods, products or services hereunder, no failure to perform any of the Terms and Conditions of this Transaction will give rise to a claim by one party against the other if the failure to perform is caused by or arises out of: acts of God; acts, regulations or laws of any government; war; civil commotion; destruction of production facilities or materials by fire, earthquake or storm; labor

disturbances; epidemic; failure of public utilities or of suppliers; or any other event, matter or thing wherever occurring and whether or not of the same class or kind as those set forth above, which is not reasonably within the control of the party affected thereby. The parties agree to make their best efforts to avoid, remove or cure any condition giving rise to a failure of performance under this paragraph.

## **17. Headings**

Headings used in these Terms and Conditions are provided for convenience only and shall not be used to construe meaning or intent.

LIMITED WARRANTY STATEMENT AND DISCLAIMERS. MCSG warrants the Goods to be free from defects in materials and workmanship under normal conditions as follows (Limited Warranty period subject to the terms set forth herein):

### **Concordia Brands**

- Twelve (12) months from original date of shipment from MCSG facility, or eighteen (18) months from date of manufacture, whichever comes first.

### **Synesso Brands**

- Twenty-four (24) months from original date of shipment from MCSG facility

In the event of a failure of the Goods during the Limited Warranty due to a defect in materials or workmanship, subject to the warranty exclusions set forth below, MCSG will arrange for the Goods to be repaired on-site, without charge for labor or parts, if the limited warranty service occurs during normal business hours (8:00 a.m. to 5:00 p.m., local time, Monday through Friday, except holidays). If limited warranty service is required outside normal business hours, you will not be charged for parts but you will be charged for labor at MCSG's scheduled rates.

**THE FOREGOING LIMITED WARRANTY REPRESENTS THE FULL EXTENT OF MCSG'S LIABILITY WITH RESPECT TO THE GOODS. YOUR RIGHT TO REPAIR AS SPECIFIED ABOVE IS YOUR SOLE AND EXCLUSIVE REMEDY AGAINST MCSG. IN NO EVENT SHALL MCSG BE LIABLE FOR DAMAGES OF ANY KIND, INCLUDING BUT NOT LIMITED TO SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, ARISING FROM OR RELATING TO THE SALE OR USE OF THE GOODS, EITHER DURING OR AFTER THE TERM OF LIMITED WARRANTY.**

## **ADDITIONAL LIMITED WARRANTY EXCLUSIONS.**

This limited warranty does not cover cost of repairs made or attempted by anyone other than MCSG-authorized personnel. All warrantable repairs must be pre-approved by MCSG. In the event of such unauthorized repairs, MCSG may void the limited warranty. In addition, this limited warranty does not apply if MCSG determines that a problem resulted from inadequate or improper maintenance, improper operations, unauthorized alterations or adjustments, or use of unapproved supplies. MCSG Brands include Synesso and Concordia. The above exclusions include, but are not limited to the following:

- Evidence of abnormal wear and tear due to abuse, misuse, or improper maintenance;
- Failure to have Preventive Maintenance performed in a timely manner by authorized personnel when the machine is requesting one (Concordia) or when machine time in use dictates (Synesso);
- Water used with the Goods that exceeds three grains of hardness per gallon or substantially similar standard;
- Inoperative or dirty milk delivery system from improper maintenance, improper shut-down and storage, or use of unapproved non-dairy based milks. – Concordia Brands only;
- Jammed or impacted coffee grinder caused by foreign objects in grinder or excessive moisture due to oily or highly flavored beans– Concordia models only;
- Plugged or improperly routed drain;
- Inoperative brew group due to improper, inadequate, or deferred maintenance;
- Water or AC power supplies that are outside of MCSG published minimum/maximum specifications.
- Improper recalibration due to the use of different coffee beans, type of milk or size of cups –Concordia Brands only; or
- Unauthorized installation or relocation of the Goods by anyone other than MCSG-authorized personnel, or
- Newly or previously installed equipment which interferes with the operation of the MCSG unit;
- In addition, the Goods must be cleaned properly each day and operated only in accordance with instructions.
- High refrigeration temperatures due to inadequate or improper installation and location of the Goods leading to ambient air temperatures in excess of 84°F. – Concordia models only;
- High refrigeration temperatures due to inadequate or improper maintenance including but not limited to dirty or clogged air filters – Concordia models only

**EXCEPT FOR THE ABOVE LIMITED WARRANTY, MCSG DISCLAIMS AND MAKES NO PERFORMANCE REPRESENTATIONS, WARRANTIES, GUARANTEES OR CONDITIONS, EITHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THE GOODS OR ANY SERVICES PROVIDED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY, GUARANTEE OR CONDITION (A) OF MERCHANTABILITY, (B) OF FITNESS FOR A PARTICULAR PURPOSE, OR (C) ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR USAGE OF TRADE. IN NO EVENT SHALL MCSG'S LIABILITY EXCEED THE AMOUNT OF THE PURCHASE PRICE FOR THE GOODS**

#### **18. Cancellation**

Customer reserves the right to terminate any order for convenience, in whole or in part, at any time. Upon notification by Customer, MCSG shall immediately stop all work and shall immediately cause any of its suppliers and/or subcontractors to cease work.

MCSG shall be paid a termination charge consisting of a percentage of the applicable Order price based on the project status prior to the notice of termination. MCSG shall not be paid for any work done after receipt of the notice of termination, or for any costs incurred by its suppliers and/or subcontractors, which MCSG reasonably could have avoided. In no event shall MCSG be entitled to an amount greater than what Customer would have paid absent of the termination.