

F.O.B COFFEE

WEBSITE TERMS AND CONDITIONS OF USE

1. About the Website

- 1.1. Welcome to www.fobcoffee.com.au (**Website**). The Website provides you with an opportunity to browse and purchase various products that have been listed for sale through the Website (**Products/Product**). The Website provides this service by way of granting you access to the content on the Website (**Purchase Services**).
- 1.2. The Website is operated DM & LB Kelly t/as F.O.B Coffee (abn: 61919759301) of 16 Hamilton Road, Hamilton Hill, Western Australia (**F.O.B COFFEE**). Access to and use of the Website, or any of its associated Products is provided by F.O.B COFFEE. Please read these terms and conditions (**Terms**) carefully. By using, browsing and/or reading the Website, this signifies that you have read, understood and agree to be bound by the Terms. If you do not agree with the Terms, you must cease usage of the Website, or any of Services, immediately.
- 1.3. F.O.B COFFEE reserves the right to review and change any of the Terms by updating this page at its sole discretion. When F.O.B COFFEE updates the Terms, it will use reasonable endeavours to provide you with notice of updates to the Terms. Any changes to the Terms take immediate effect from the date of their publication.

2. Acceptance of the Terms

By proceeding to use or browse the Website, you warrant and acknowledge that you are over 18 years. You accept the Terms by remaining on the Website.

3. Registration to use the Purchase Services

- 3.1. In order to access the Purchase Services, you may be required to provide personal details, and you may be required to register as a user of the Website. As part of the registration process, or as part of your continued use of the Purchase Services, you may be required to provide personal information about yourself (such as identification or contact details), including (but not limited to):
 - (a) Name
 - (b) E-mail address
 - (c) Payment information
 - (d) Mailing address
 - (e) Telephone number
 - (f) Password (where applicable).
- 3.2. You warrant that any information you give to F.O.B COFFEE in the course of completing the purchase and/or registration process will always be accurate, correct and up to date

4. Purchase of Products

- 4.1. In using the Purchase Services to purchase the Product through the Website you will agree to the payment of the purchase price listed on the Website for the Product (**Purchase Price**).
- 4.2. Payment of the Purchase Price may be made through the payment options provided through the available payment provider or providers (**Payment Gateway Providers**).
- 4.3. In using the Purchase Services, you warrant that you have familiarised yourself with, and agree to be bound by, the applicable Terms and Conditions of Use, Privacy Policy and other relevant legal documentation provided by the Payment Gateway Providers.
- 4.4. Following payment of the Purchase Price being confirmed by F.O.B COFFEE, you will be issued with a receipt to confirm that the payment has been received and F.O.B COFFEE may record your purchase details for future use.
- 4.5. Unless otherwise stated, all amounts are listed in Australian Dollars (AUD) and are GST exclusive, being goods and services tax as defined in *A New Tax System (Goods and Services Tax) Act 1999*, exclusive amounts.
- 4.6. F.O.B COFFEE reserves the right to accept or reject your order for any reason, including if the requested Product is not available.

5. Use of Products

- 5.1. By purchasing a Product from F.O.B COFFEE, where applicable, you agree to carefully read and follow the instructions of use included with each product.
- 5.2. If you gift a Product, you will ensure that the recipient of the gift receives the instructions for use included with each Product.

6. Shipping and Product Delivery

- 6.1. All shipping and delivery dates are estimates, and any delivery date provided to you by F.O.B COFFEE is not guaranteed. In addition, weather delays and other unforeseen circumstances may impact delivery time. F.O.B COFFEE will strive to meet the requirements of your anticipated delivery date. However, F.O.B COFFEE will not be liable for any losses you suffer due to a delay.
- 6.2. You acknowledge that the Purchase Services offered by F.O.B COFFEE integrate delivery (**Delivery Services**) through the use of third-party delivery companies (**Delivery Service Providers**), including Australia Post and Sendle.
- 6.3. In providing the Purchase Services, F.O.B COFFEE may provide you with a variety of delivery options offered as part of the Delivery Services by the Delivery Service Providers. You acknowledge and agree that F.O.B COFFEE is not the provider of these delivery options and merely facilitates your interaction with the Delivery Service Providers in respect to providing the Delivery Services.
- 6.4. F.O.B COFFEE currently ships domestically across Australia and to New Zealand, by the relevant Delivery Service Providers. If permitted by the Delivery Service Providers, F.O.B COFFEE can ship to both commercial and domestic addresses and you can have your order shipped to a P.O box.

- 6.5. If an item is lost or damaged in the course of the Delivery Services, F.O.B COFFEE asks that you:
- (a) Contact the Delivery Service Provider directly to request a refund; and
 - (b) Contact F.O.B COFFEE by sending an email to fobcoffeetraders@gmail.com outlining in what way the Products were damaged in transit so it is able to determine if the Delivery Service Provider should be removed from the Purchase Services.

7. Returns and Refund Policy

- 7.1. F.O.B COFFEE wants you to be satisfied with your Product. If you have any issues with F.O.B COFFEE Products, please e-mail fobcoffeetraders@gmail.com.
- 7.2. F.O.B COFFEE does not offer refunds or returns for change of mind. Please keep this in mind when placing your order. However, if you receive the incorrect product or a product that is not in its proper condition, F.O.B COFFEE's returns policy will apply.
- 7.3. **If you wish to return a Product/s in accordance with the above, you must contact F.O.B COFFEE's support team by email at fobcoffeetraders@gmail.com within 48 hours of receiving the Product/s, and prior to returning your Product.** The Product being returned must be in the original packaging and in a saleable condition.
- 7.4. If your Product is returned to F.O.B COFFEE without the original packaging or is deemed unfit by F.O.B COFFEE's inspection team for any reason, F.O.B COFFEE reserves the right to deny your refund request, and this decision will be made at the discretion of F.O.B COFFEE.
- 7.5. Please include your order name and order number in all correspondence to F.O.B COFFEE.
- 7.6. Upon receipt of the Product from you, F.O.B COFFEE will notify you once the Product has been inspected and will advise you if the refund request has been approved. If the refund request is approved, you will be refunded for the Purchase Price via the original payment method. Please be mindful that it can take some time for your bank or credit card company to process the refund.
- 7.7. If you make a refund request and arrange to return the Product to F.O.B COFFEE, you will be responsible for all return shipping and delivery fees.
- 7.8. F.O.B COFFEE does not accept returns outside of the period outlined above as set out in clause 7.3.
- 7.9. F.O.B COFFEE will not accept returns or refund requests for Products that are damaged from misuse.
- 7.10. Refunds will not be given for late delivery outside the stipulated delivery time frames provided on the Website or by the Delivery Service Providers.
- 7.11. In the following situations, no refund or return will be available:
- (a) Denied acceptance of delivery by receiver;
 - (b) Inaccurate delivery address;

- (c) Absent receiver - If a receiver is not home and a calling card is left at the address by the Delivery Service Provider, it is the receiver's responsibility to contact the Delivery Service Provider to arrange appropriate delivery. If the parcel remains undeliverable due to no contact from the receiver, it will be returned to F.O.B COFFEE and a re-delivery fee will be payable by You to arrange for the Product to be re-sent to you.

8. Cancellation of Orders

- 8.1. Once payment for an order has been accepted, no cancellations are permitted.
- 8.2. Where a Product has been listed at an incorrect price or has incorrect written information or images, F.O.B COFFEE reserves the right to cancel a transaction. The purchase amount will be refunded via the payment method used for the initial purchase.

9. Warranty

- 9.1. F.O.B COFFEE's Products come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure of the Product and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the Products repaired or replaced if the Products fail to be of acceptable quality and the failure does not amount to a major failure (**Warranty**). A major failure with a product under Australian Consumer Law includes but is not limited to, where the product is significantly different from the description shown to you, or the goods are unsafe or unfit for their normal purpose.
- 9.2. If you have received a Product that you believe is faulty or defective, please contact fobcoffeetraders@gmail.com with photographic proof.

10. Information and Product Disclaimer

- 10.1. Any information provided to you by F.O.B COFFEE regarding the use of any Product is general in nature only. It is your sole responsibility to determine the appropriateness of the Products for any particular use or purpose.
- 10.2. F.O.B COFFEE makes no representation, warranty, expressed or implied as to the product's effect, benefit, or use and takes no responsibility for any results obtained when using the Products.
- 10.3. F.O.B COFFEE will not be liable for any damage, loss or any result based on your use of F.O.B COFFEE Products.

11. Copyright and Intellectual Property

- 11.1. The Website, the Purchase Services and all of the related products of F.O.B COFFEE are subject to copyright. The material on the Website is protected by copyright under the laws of Australia and through international treaties. Unless otherwise indicated, all rights (including copyright) in the site content and compilation of the website (including text, graphics, logos, button icons, video images, audio clips and software) (**Content**) are owned or controlled for these purposes, and are reserved by F.O.B COFFEE or its contributors.
- 11.2. F.O.B COFFEE retains all rights, title and interest in and to the Website and all related content. Nothing you do on or in relation to the Website will transfer to you:

- (a) the business name, trading name, domain name, trade mark, industrial design, patent, registered design or copyright of F.O.B COFFEE; or
- (b) the right to use or exploit a business name, trading name, domain name, trade mark or industrial design; or
- (c) a system or process that is the subject of a patent, registered design or copyright (or an adaptation or modification of such a system or process).

11.3. You may not, without the prior written permission of F.O.B COFFEE and the permission of any other relevant rights owners: broadcast, republish, up-load to a third party, transmit, post, distribute, show or play in public, adapt or change in any way the Content or third party content for any purpose. This prohibition does not extend to materials on the Website, which are freely available for re-use or are in the public domain.

12. Privacy

F.O.B COFFEE takes your privacy seriously and any information provided through your use of the Application and/or the Purchase Services are subject to F.O.B COFFEE's Privacy Policy found on the Website.

13. User Generated Content

- 13.1. If you choose to contribute any content to the Website or any other platform operated by F.O.B COFFEE, you are solely responsible for it. This includes comments, reviews, tweets, posts, photos, pictures, images, videos, materials or other user-generated content or information (**Your Content**).
- 13.2. By contributing content to the Website, you grant F.O.B COFFEE a royalty-free, non-exclusive license to use Your Content in any way that it chooses. This may include the use of your photos or video on other parts of the Website, advertising, promotions or social media accounts held by F.O.B COFFEE.
- 13.3. Additionally, if you post your User Content with any personal information including identifying information such as location or name, you agree F.O.B COFFEE can use that information with Your Content for advertising and promotional purposes, or any other business purpose.
- 13.4. You confirm you own or have the right to use any copyright material included in Your Content (including replies to F.O.B COFFEE social media posts, reviews, music, photos, quotes and excerpts of audio or video), that you have permission of anyone appearing or performing in Your Content and that you are not infringing any third-party rights by submitting the content to F.O.B COFFEE. You also confirm you have, where appropriate, sought the consent of the parent or guardian of any person under the age of 18 who is featured in Your Content.
- 13.5. Please ensure you keep your own copies of Your Content as F.O.B COFFEE may not archive, store or back-up Your Content nor continue to make Your Content accessible online.
- 13.6. F.O.B COFFEE will endeavour to provide you with an appropriate credit when using Your Content on F.O.B COFFEE platforms, though you understand and agree this may not always be possible.

- 13.7. F.O.B COFFEE reserves the right to remove Your Content at any time. Your Content must not be malicious, libellous, false, inaccurate, threatening, abusive, obscene, defamatory or racially, sexually, religiously or otherwise objectionable and offensive.

14. Mailing List

- 14.1. You will either be registered for or given the option to register for the F.O.B COFFEE Mailing List (**Mailing List**).
- 14.2. As part of the registration process, you may be required to provide personal information about yourself (such as identification or contact details), including:
- (a) Email address
 - (b) Name
- 14.3. By subscribing to or purchasing a Product from F.O.B COFFEE, you agree to receive promotional material, updates and other content from F.O.B COFFEE. You may unsubscribe from the Mailing List at any time.

15. Force Majeure

- 15.1. If circumstances beyond F.O.B COFFEE's control prevent or hinder its provision of the Products, F.O.B COFFEE is free from any obligation to provide the Products or fulfil your order while those circumstances continue. F.O.B COFFEE may elect to terminate this agreement or keep the agreement on foot until such circumstances have ceased.
- 15.2. Circumstances beyond F.O.B COFFEE's control include, but are not limited to, unavailability of materials or components, pandemics, strikes, lockouts, riots, natural disasters, fire, war, acts of God, a pandemic, Government decrees, proclamations or orders, transport difficulties and failures or malfunctions of computers or other information technology systems.

16. General Disclaimer

- 16.1. You acknowledge that F.O.B COFFEE does not make any terms, guarantees, warranties, representations or conditions whatsoever regarding the Products other than those provided for pursuant to these Terms.
- 16.2. F.O.B COFFEE will make every effort to ensure a Product is accurately depicted on the Website, however, you acknowledge that sizes, colours and design may differ from what is displayed on the Website.
- 16.3. Nothing in these Terms limits or excludes any guarantees, warranties, representations or conditions implied or imposed by law, including the Australian Consumer Law (or any liability under them) which by law may not be limited or excluded.
- 16.4. Subject to this clause, and to the extent permitted by law:
- (a) all terms, guarantees, warranties, representations or conditions which are not expressly stated in these Terms are excluded; and
 - (b) F.O.B COFFEE will not be liable for any special, indirect or consequential loss or damage (unless such loss or damage is reasonably foreseeable resulting from our failure to meet an applicable Consumer Guarantee), injury, loss of profit or opportunity, or damage to goodwill arising out of or in connection with the Purchase Services,

Products or these Terms (including as a result of not being able to use the Purchase Services or the late supply of the Purchase Services), whether at common law, under contract, tort (including negligence), in equity, pursuant to statute or otherwise.

- 16.5. Use of the Website, the Purchase Services, and any of the Products is at your own risk. Everything on the Website, the Purchase Services, and the Products are provided to you on an "as is" and "as available" basis, without warranty or condition of any kind. None of the affiliates, directors, officers, employees, agents, contributors, third party content providers or licensors of F.O.B COFFEE make any express or implied representation or warranty about its Content or any products or Purchase Services (including the products or Purchase Services of F.O.B COFFEE) referred to on the Website. This includes (but is not restricted to) loss or damage you might suffer as a result of any of the following:
- (a) failure of performance, error, omission, interruption, deletion, defect, failure to correct defects, delay in operation or transmission, computer virus or other harmful component, loss of data, communication line failure, unlawful third party conduct, or theft, destruction, alteration or unauthorised access to records;
 - (b) the accuracy, suitability or currency of any information on the Website, the Purchase Service, or any of its Content related products (including third party material and advertisements on the Website);
 - (c) costs incurred as a result of you using the Website, the Purchase Services or any of the Products;
 - (d) the Content or operation in respect to links which are provided for the User's convenience;
 - (e) any failure to complete a transaction, or any loss arising from e-commerce transacted on the Website; or
 - (f) any defamatory, threatening, offensive or unlawful conduct of third parties or publication of any materials relating to or constituting such conduct.

17. Limitation of Liability

- 17.1. F.O.B COFFEE's total liability arising out of or in connection with the Purchase Services, Products or these Terms, however arising, including under contract, tort (including negligence), in equity, under statute or otherwise, will not exceed the most recent Purchase Price paid by you under these Terms or where you have not paid the Purchase Price, then the total liability of F.O.B COFFEE is the resupply of the information or Purchase Services to you.
- 17.2. You expressly understand and agree that F.O.B COFFEE, its affiliates, employees, agents, contributors, third-party content providers and licensors shall not be liable to you for any direct, indirect, incidental, special consequential or exemplary damages which you may incur, however caused and under any theory of liability. This shall include, but is not limited to, any injury, loss of profit (whether incurred directly or indirectly), any loss of goodwill or business reputation and any other intangible loss.
- 17.3. F.O.B COFFEE is not responsible or liable in any manner for any site content (including the Content and Third Party Content) posted on the Website or in connection with the Purchase Services, whether posted or caused by users of the website of F.O.B COFFEE, by third parties or by any of the Purchase Services offered by F.O.B COFFEE.

18. Termination of Contract

- 18.1. The Terms will continue to apply until terminated by either you or by F.O.B COFFEE as set out below.
- 18.2. If you want to terminate the Terms, you may do so by:
 - (a) notifying F.O.B COFFEE at any time; and
 - (b) closing any membership which you use, where F.O.B COFFEE has made this option available to you.
- 18.3. Your notice should be sent in writing to F.O.B COFFEE via e-mail to fobcoffeetraders@gmail.com.
- 18.4. F.O.B COFFEE may at any time, terminate the Terms with you if:
 - (a) you have breached any provision of the Terms or intend to breach any provision;
 - (b) F.O.B COFFEE is required to do so by law;
 - (c) a partner with whom F.O.B COFFEE offered the Purchase Services to you has terminated its relationship with F.O.B COFFEE or ceased to offer the Purchase Services to you;
 - (d) F.O.B COFFEE is transitioning to no longer providing the Purchase Services to Users in the country in which you are resident or from which you use the service; or
 - (e) the provision of the Purchase Services to you by F.O.B COFFEE is, in the opinion of F.O.B COFFEE, no longer commercially viable.
- 18.5. Subject to local applicable laws, F.O.B COFFEE reserves the right to discontinue or cancel your membership to the Website at any time and may suspend or deny, in its sole discretion, your access to all or any portion of the Website or the Purchase Services without notice if you breach any provision of the Terms or any applicable law or if your conduct impacts F.O.B COFFEE' name or reputation or violates the rights of those of another party.
- 18.6. When the Terms come to an end, all of the legal rights, obligations and liabilities that you and F.O.B COFFEE have benefited from, been subject to (or which have accrued over time whilst the Terms have been in force) or which are expressed to continue indefinitely, shall be unaffected by this cessation, and the provisions of this clause shall continue to apply to such rights, obligations and liabilities indefinitely.

19. Indemnity

- 19.1. You agree to indemnify F.O.B COFFEE, its affiliates, employees, agents, contributors, third party content providers and licensors from and against:
 - (a) all actions, suits, claims, demands, liabilities, costs, expenses, loss and damage (including legal fees on a full indemnity basis) incurred, suffered or arising out of or in connection with any Content you post through the Website;
 - (b) any direct or indirect consequences of you accessing, using or transacting on the Website or attempts to do so and any breach by you or your agents of these Terms; and/or

- (c) any breach of the Terms.

20. Dispute Resolution

20.1. Compulsory:

If a dispute arises out of or relates to the Terms, either party may not commence any Tribunal or Court proceedings in relation to the dispute, unless the following clauses have been complied with (except where urgent interlocutory relief is sought).

20.2. Notice:

A party to the Terms claiming a dispute (**Dispute**) has arisen under the Terms, must give written notice to the other party detailing the nature of the dispute, the desired outcome and the action required to settle the Dispute.

20.3. Resolution:

On receipt of that notice (**Notice**) by that other party, the parties to the Terms (**Parties**) must:

- (d) Within 7 days of the Notice endeavour in good faith to resolve the Dispute expeditiously by negotiation or such other means upon which they may mutually agree;
- (e) If for any reason whatsoever, 7 days after the date of the Notice, the Dispute has not been resolved, the Parties must either agree upon selection of a mediator or request that an appropriate mediator be appointed by the President of the Western Australian Law Society or his or her nominee;
- (f) The Parties are equally liable for the fees and reasonable expenses of a mediator and the cost of the venue of the mediation and without limiting the foregoing undertake to pay any amounts requested by the mediator as a pre-condition to the mediation commencing. The Parties must each pay their own costs associated with the mediation;
- (g) The mediation will be held at a location to be agreed between the parties.

20.4. Confidential

All communications concerning negotiations made by the Parties arising out of and in connection with this dispute resolution clause are confidential and to the extent possible, must be treated as "without prejudice" negotiations for the purpose of applicable laws of evidence.

21. Venue and Jurisdiction

In the event of any dispute arising out of or in relation to the Website, you agree that the exclusive venue for resolving any dispute shall be in the courts of Western Australia.

22. Governing Law

The Terms are governed by the laws of Western Australia. Any dispute, controversy, proceeding or claim of whatever nature arising out of or in any way relating to the Terms and the rights created hereby shall be governed, interpreted and construed by, under and pursuant to the laws of Western Australia, without reference to conflict of law principles, notwithstanding mandatory rules. The validity of this governing law clause is not contested. The Terms shall be binding to the benefit of the parties hereto and their successors and assigns.

23. Independent Legal Advice

Both parties confirm and declare that the provisions of the Terms are fair and reasonable and both parties having taken the opportunity to obtain independent legal advice and declare the Terms are not

against public policy on the grounds of inequality or bargaining power or general grounds of restraint of trade.

24. Severance

If any part of these Terms is found to be void or unenforceable by a Court of competent jurisdiction, that part shall be severed and the rest of the Terms shall remain in force.