

# Custom Order Terms

BY PLACING AN ORDER WITH SWIVEL BOTTLE, LLC (“SWIVEL BOTTLE,” “WE” OR “US”), YOU (“CUSTOMER” OR “YOU” OR “YOUR”) (A) ACKNOWLEDGE THAT YOU HAVE READ, UNDERSTAND, AND AGREE TO THESE ORDER TERMS AND CONDITIONS (THIS “AGREEMENT”), AND (B) AFFIRM THAT YOU ARE AT LEAST 18 YEARS OF AGE (OR HAVE REACHED THE AGE OF MAJORITY IN THE JURISDICTION WHERE YOU RESIDE). IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, DO NOT PLACE AN ORDER WITH SWIVEL BOTTLE.

- 1. Bottle Color Selections:** We cannot match a particular PMS color. You are limited to the 16 color choices available. You may request a physical sample for approval, although additional charges and an increase in production time may result.
- 2. Artwork Files.** You are responsible for the accuracy of all trademarks, trade names, logos, statements, graphics, artwork, names, photographs, portraits, pictures or other intellectual property (collectively, “Customer IP”) submitted to Swivel Bottle for use on Swivel Bottle products. Please proofread all files carefully before submitting to Swivel Bottle. You agree that you will NOT upload, send or transmit any material that could give rise to any civil or criminal liability under applicable law or infringe rights of privacy, publicity, copyrights or other intellectual property rights without the permission of the owner of these rights and the persons who are shown in the material, if applicable. Swivel Bottle has the right in its sole discretion to reject any order request.
- 3. Approval Process.** Once your design is completed, you will receive an email with a proof outlining the design of your custom product, as well as approximate placement and size of the white on black logo. We ask that you carefully review the Design Plan. PLEASE CHECK EVERYTHING CAREFULLY! Once you approve the Design Plan, we will not be responsible for any errors in the approved artwork or on the finished products. In

other words, your approval indicates acceptance of the design, colors, and other aspects of your unique, custom design.

4. **Shipping and Arrival Times.** Manufacturing and shipping timelines and your resulting delivery date depend on when we receive both your approval of the Design Plan and required payments, if any, not when you place your initial request for a quote. Shipping transit times vary, and Swivel Bottle assumes no responsibility for delays caused by shipping carriers, weather or any damages resulting from the failure to receive a job on time. You agree that title and risk of loss transfers to you at time of shipment or pickup.
5. **Inspection; Refunds; Cancellations.** All custom sales are final. Because Swivel Bottle Custom Products are fully custom, returns and refunds are only allowed for manufacturing defects. Upon receiving your order, it is your sole responsibility to inspect the products and report any damages or defects to your assigned Swivel Bottle representative within 10 days. Swivel Bottle will not be responsible for errors with your order if notified after 10 days of receiving the goods. We may require that you return the misprinted products back to our facility. Swivel Bottle will not be responsible for any products sold or given away prior to returning the order. Cancellations of approved orders is in Swivel Bottle's discretion and will be subject to any fees and costs incurred in processing your order.
6. **Limitations.** We strive to provide the finest materials available to construct our products and make sure that they are the highest quality. We are not responsible for damages that are caused by personal wear and/or wear and tear that is caused from use or overuse. To be clear, our warranty does not cover damage caused by (a) accident, improper care, negligence, normal wear and tear, or the natural breakdown of colors and materials over extended time and use; (b) errors in file or logo submissions, spelling, punctuation, or grammatical errors made by you, inferior quality or low-resolution of images submitted by you, errors in Customer-selected options such as product type, size, finishing options, or quantity; (c) incorrect shipping address, undeliverable packages, or other errors created by you; or (d) damage to the products arising after delivery to you.

7. **Payment.** Payment terms are as detailed on your invoice. Customers are responsible for any sales tax due.
8. **Use on Swivel Bottle Website.** You agree that Swivel Bottle may, and hereby grant permission to Swivel Bottle to, use and display finished products displaying your Customer IP on Swivel Bottle's website and social media platforms (collectively, "Swivel Bottle Websites"). If you submit photos of individuals use Swivel Bottle products to Swivel Bottle, you hereby grant to Swivel Bottle on behalf of such individuals a worldwide, royalty-free, fully paid-up, nonexclusive, sublicensable right and license to use and display such individuals' likeness on the Swivel Bottle Websites.
9. **Swivel Bottle Intellectual Property.** You hereby acknowledge and agree that, as between you and Swivel Bottle, all elements of the Design Plan, including all intellectual property embodied in the Design Plan, but excluding any Customer IP displayed or embodied in the Design Plan, is the sole and exclusive property of Swivel Bottle, and that you may not use, distribute or otherwise disclose the Design Plan to a third party for purposes of a third party using the Design Plan to create products for you. You and Swivel Bottle each agree that (a) your breach of this Section is a material default under this Agreement that would cause serious and significant damage to Swivel Bottle and its business opportunities, (b) it would be impractical and extremely difficult to determine the actual damages or lost revenues that may proximately result from such a breach, (c) in the event of such a breach, you owe and agree to pay to Swivel Bottle liquidated damages in the amount of three times the purchase price of the products under the order for which Swivel Bottle created the applicable Design Plan, (d) such liquidated damages are fixed damages (i) where it would be impractical and extremely difficult to fix the actual damages that may proximately result from the breach of this Section; (ii) that are hereby acknowledged by the parties to be direct damages and not a penalty; (iii) that constitute a reasonable remedy that is not disproportionate to the presumed damage caused by the failure to which such fixed damages relate, and (iv) that are the sole and exclusive remedy of the damaged party.

- 10. Agreement Changes.** Swivel Bottle reserves the right to change this Agreement from time to time without notice. You acknowledge and agree that it is your responsibility to review this Agreement periodically to familiarize yourself with any modifications before placing an order. Your continued placement of orders after any such modifications will constitute acknowledgment and agreement of the modified terms and conditions. Swivel Bottle reserves the right to update or modify this Agreement at any time without prior notice to you.
- 11. Customer Representations.** You hereby represent, warrant and covenant to Swivel Bottle that: (a) you have the valid and enforceable right to authorize Swivel Bottle to, and you hereby grant Swivel Bottle the right to, use, reproduce and display all Customer IP on Swivel Bottle products ordered by you and on the Swivel Bottle Websites pursuant to Section 8, (b) in obtaining any Customer IP to be printed on Swivel Bottle products and submitting the foregoing to Swivel Bottle for reproduction, you have not violated the rights of a third party, (c) you are of sufficient legal age to create binding legal obligations for any liability or payment obligations you may incur as a result of your order of Swivel Bottle products or use of the Swivel Bottle Websites, and (d) you have received all necessary authorizations to place any orders on behalf of a corporate entity or third party.
- 12. User Comments, Feedback and Other Submissions.** All comments, feedback, suggestions and ideas disclosed, submitted or offered to Swivel Bottle in connection with your use of the Swivel Bottle Websites and ordering of Swivel Bottle products (collectively, "Comments"), shall become and remain the exclusive property of Swivel Bottle. The Comments may be used by Swivel Bottle in any medium and for any purpose worldwide, without obtaining your specific consent and you relinquish all rights to such Comments. Swivel Bottle is not under any obligation to maintain your Comments in confidence, to pay you any compensation for any Comments submitted or to respond to any of your Comments. You agree you will be solely responsible for the content of any Comments you make.

- 13. WARRANTY DISCLAIMER.** ALL SWIVEL BOTTLES PRODUCTS COME WITH A LIFETIME WARRANTY. YOU UNDERSTAND THAT A REPLACEMENT BOTTLE MAY NOT HAVE THE SAME COLOR CHOICES AND WILL NOT HAVE A CUSTOM LOGO INCLUDED. YOU EXPRESSLY UNDERSTAND AND AGREE THAT ANY CLAIM AGAINST SWIVEL BOTTLE SHALL BE LIMITED TO THE AMOUNT YOU PAID, IF ANY, FOR SWIVEL BOTTLE PRODUCTS.
- 14. Limitation of Liability.** TO THE FULLEST EXTENT PERMITTED BY LAW, IN NO EVENT SWIVEL BOTTLE, INCLUDING ITS RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, REPRESENTATIVES, OR AFFILIATES (COLLECTIVELY, THE “COVERED PARTIES”), BE LIABLE FOR ANY INJURY, DEATH, LOSS, CLAIM, DAMAGE, ACT OF GOD, ACCIDENT, DELAY, OR ANY SPECIAL, EXEMPLARY, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, WHETHER BASED IN CONTRACT, TORT OR OTHERWISE, WHICH ARISE OUT OF OR ARE IN ANY WAY CONNECTED WITH SWIVEL BOTTLE’S PRODUCTS OR THE USE OF THE SWIVEL BOTTLE WEBSITES, EVEN IF SWIVEL BOTTLE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IF, NOTWITHSTANDING THE ABOVE, A COVERED PARTY IS FOUND LIABLE FOR ANY LOSS OR DAMAGE, YOU HEREBY AGREE THAT THE LIABILITY OF ANY SUCH PARTY SHALL IN NO EVENT EXCEED THE AMOUNTS PAID BY YOU FOR THE SWIVEL BOTTLE PRODUCTS THAT GAVE RISE TO THE CLAIM. IN NO EVENT SHALL SWIVEL BOTTLE BE LIABLE FOR YOUR COST OF PROCURING SUBSTITUTE GOODS.
- 15. Indemnification.** You hereby agree to indemnify, hold harmless, and, at Swivel Bottle’s election, defend Swivel Bottle and its officers, directors, employees, agents, representatives, and affiliates from and against any and all assessments, costs, damages, deficiencies, expenses (including reasonable attorneys’ fees), injuries, judgments, losses and other liabilities (including amounts paid in settlement) incurred from any third-party actions, causes of action, claims, demands, proceedings or suits arising from or connected with (a) Swivel Bottle’s use of any

Customer IP submitted by you or on your behalf for use on Swivel Bottle products, (b) your breach of this Agreement, (c) your use of the Swivel Bottle Websites, (d) your breach of the intellectual property rights or other proprietary rights of a third party, (e) your failure to fulfill any obligations relating to your account or any other person using your account, or (f) your violation of applicable law. In the event Swivel Bottle elects to assume or take over the exclusive defense of any claim for which Swivel Bottle is entitled to indemnification under this Agreement, you shall provide us with such cooperation as we reasonably request.

**16. Governing Law; Venue; Dispute Resolution.** Each party agrees that the laws, rules, regulations and case law of North Carolina shall apply to all matters relating to or arising out of this Agreement, the use of the Swivel Bottle Websites and the purchase of any products or services through such Swivel Bottle Websites, other than such laws, rules, regulations and case law that would result in the application of the laws of a jurisdiction other than the State of North Carolina. You and Swivel Bottle agree that the United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement. Each party irrevocably consents to the exclusive personal jurisdiction of the federal and state courts located in Wake County, North Carolina, as applicable, for any matter arising out of or relating to this Agreement; agrees to file all pleadings in connection with the subject matter of this Agreement in such courts; and waives any objection to the laying of the venue of any legal action brought under or in connection with the subject matter of this Agreement in such courts. THE PARTIES HEREBY WAIVE THE RIGHT TO TRIAL BY JURY IN ANY LITIGATION ARISING OUT OF OR RELATING TO THIS AGREEMENT.

**17. Miscellaneous.** This Agreement (a) constitutes the entire agreement of the parties concerning this subject matter; (b) supersedes any prior or contemporaneous written or oral agreements, understandings or representations; (c) may not be modified, except by mutual written agreement of the parties; and (d) is not made for the benefit of any third parties. Neither party

may assign this Agreement or any of its rights or delegate any of its obligations under this Agreement without the prior written consent of the other, and any such assignment or delegation will be void, except that Swivel Bottle may assign this Agreement in its entirety to its affiliate, or any successor entity in the event of such party's transfer of all or substantially all of its assets or stock, merger, spin-off, consolidation, reorganization or other business combination or other change of control. A party's failure to enforce any provision of this Agreement will not constitute a waiver. This Agreement does not create any agency, partnership or business relationship between the parties. If any provision of this Agreement shall be held or deemed to be invalid or unenforceable, the remaining provisions of this Agreement shall continue in full force and effect. All words used in this Agreement will be construed to be of such gender or number as the circumstances require. For purposes of this Agreement the words "including," "included" and "includes" mean inclusion without limitation.

**Contact Information.** If you have any questions or comments about the terms of this Agreement, please contact your sales representative or you can contact Swivel Bottle at: [sales@swivelbottle.com](mailto:sales@swivelbottle.com).

*Updated: October 19, 2023*