

# Botrista Beverage Subscription Program Terms and Conditions

These Terms and Conditions (the “Terms and Conditions”) apply to the Botrista Beverage Subscription Program Purchase Order entered into by the customer identified on the Purchase Order (“Customer”) and Botrista Technology, Inc. (“Botrista”), which references these Terms and Conditions. Any capitalized term used but not defined herein shall have the meaning given to such term in the Purchase Order.

## 1. Definitions.

- a. “Accessories” means any products offered for sale by Botrista to Customer pursuant to the Purchase Order for use in connection with the Equipment other than Consumables. Accessories may include drink cups and straws.
- b. “Consumables” means any ingredients for making Craft Beverages. Powders, syrups, grounds (e.g., coffee), herbs (e.g., tea), concentrates, cups, pods, and all other beverage bases from which beverages can be made are deemed to be included in this definition.
- c. “Craft Beverages” means all craft beverages (e.g., any beverage that requires mixing), whether or not such beverages (i) contain nutritive food, or dairy ingredients, or (ii) are in a frozen form. This definition applies without regard to the beverage’s labeling or marketing. For the avoidance of doubt, “flavor enhancers”, “liquid water enhancers”, and non-alcoholic beverages sold as “shots” or “supplements” are considered Craft Beverages. “Craft Beverage” or “Craft Beverages” shall not include fresh-brewed unbranded coffee, fresh-brewed unbranded tea products, branded soda drinks (e.g., Coca-Cola and Pepsi), unflavored dairy products, water drawn from the public water supply, or unbranded juice squeezed fresh at the Restaurant.
- d. “Equipment” has the meaning set forth in Section 2(a).
- e. “Products” means Craft Beverages crafted through equipment and/or automated machines provided by Botrista and through the use of Consumables purchased directly from Botrista or its designated suppliers.
- f. “Purchase Order” means the Beverage Subscription Program Purchase Order entered into between Customer and Botrista.
- g. “Restaurant” means each restaurant owned by Customer and identified on the Purchase Order.

## 2. Equipment.

- a. Botrista will loan Customer Botrista’s proprietary dispensing equipment for purposes of dispensing Products at the Restaurant locations, in the amounts and at the cost all as set forth on the Purchase Order (“Equipment”).
- b. Customer will provide the necessary utilities (water, wifi, electricity, drain, etc.) at the Restaurant(s) at Customer’s own expense.
- c. Title to the Equipment shall at all times remain with Botrista, and Customer shall hold the Equipment as a bailee thereof. In the event of any theft or loss of, or damage to, any Equipment placed at a Restaurant, Customer shall be responsible for paying Botrista the full retail value of such Equipment which is lost or stolen or which cannot be reasonably repaired (in Botrista’s discretion) and for paying for all cost of repair for Equipment which can be reasonably repaired.

## 3. Pricing and Payment.

- a. Pricing. Botrista shall make Consumables and Accessories available to Customer for Purchase in accordance with the price schedule attached to the Purchase Order. Botrista may modify pricing from time to time in its sole discretion upon prior notice to Customer. All prices are exclusive of shipping costs and applicable taxes, which will be added to each order and be payable by Customer.
- b. Ordering. Orders may be placed electronically through the Equipment user interface or through such other written means as the parties may agree to. Customer will not contest the authority of any Restaurant staff member to place orders through the Equipment. No order for Consumables or Accessories is binding upon Botrista unless it is accepted by Botrista. Botrista’s acceptance of an order will be deemed to have occurred when Botrista issues an invoice corresponding to such order. No terms or conditions that conflict with or are in addition to the terms and

conditions of these Terms and Conditions that are contained or referenced in any order placed by Customer shall be of any force or effect. Botrista's acceptance of an order does not constitute a guarantee by Botrista that the applicable Consumables or Accessories will be delivered in full by the stated delivery dates, which dates constitute estimates. Customer may cancel or request to reschedule any order prior to shipment thereof. All shipped orders are final and no Consumables or Accessories can be returned. Title and risk of loss of all Consumables and Accessories passes upon delivery to Customer.

- c. Other Fees. Customer shall pay Botrista such other fees as are set forth in the Purchase Order.
  - d. Invoicing and Payment. Botrista shall invoice Customer for orders of Consumables and Accessories upon Botrista's acceptance of the order, and shall invoice Customer for all other amounts as is set forth in the Purchase Order. Customer shall pay each invoice within thirty (30) days from the date of the invoice. Botrista reserves the right to charge interest on overdue payments, which shall accrue solely at Botrista's discretion on any late payments at the rate of 1.5% per month.
4. Covenants. Botrista and Customer further agree as follows:
- a. Machine Usage Data. Customer acknowledges that the Equipment will automatically collect and send to Botrista machine usage information, including, but not limited to, drink making history/timestamps, operator interactions with UI, cleaning history and machine telemetry (all such information, "**Machine Usage Data**"). Customer acknowledges and agrees that Botrista may use the Machine Usage Data to analyze the usage of the Equipment, improve the Equipment and user experience, develop new products and services, and provide training. The Machine Usage Data may be transmitted for the foregoing purposes to Botrista's affiliates and other third parties, including but not limited to Botrista's manufacturers and distributors. Botrista may publish or otherwise disclose Machine Usage Data in any manner that does not identify Customer.
  - b. Operational Support. Customer shall follow all operational procedures specified by Botrista with respect to the Equipment, including, without limitation, operating, cleaning and refilling the Equipment and staff training. The user manual and training guidelines shall be provided by Botrista.
  - c. Maintenance and Repair.
    - i. Subject to Section 4(c)(iv) Botrista shall repair or replace (in Botrista's discretion) any defective Equipment free of charge during the Term.
    - ii. Botrista will provide support via phone and email during regular business hours in the United States of America. Customer agrees that all repairs shall be performed only by Botrista or by service providers authorized by Botrista.
    - iii. Customer will follow the operational guidelines provided by Botrista, which include drink production, regular maintenance, cleaning and sanitation of equipment, and all other operational training.
    - iv. Notwithstanding anything to the contrary, Botrista has no obligation with respect to any defect, loss or damage to the Equipment arising from or in connection with (i) human error or willful misconduct (including, without limitation, damages arising from disassembly of the Equipment by any persons other than those authorized by Botrista; failure to operate the Equipment pursuant to the provided instructions; subjecting the Equipment to falls, bumps or water damage; operating the Equipment under inappropriate conditions, such as high humidity or temperature) or (ii) unauthorized disassembly, repair, augmentation, modification to the Equipment (including to any software thereof).
  - d. Authorization Limitations and Restrictions. Whether directly or indirectly, Customer shall not, and shall not permit any other person or entity to, access or use the Equipment except as expressly permitted by these Terms and Conditions. Customer covenants to use the Equipment strictly for the purpose of preparing beverages pursuant to Botrista's Equipment Usage Guidelines. For purposes of clarity and without limiting the generality of the foregoing, Customer shall not, except as these Terms and Conditions expressly permit: (i) use the Equipment other than at the location within the applicable Restaurant designated for such Equipment; (ii) copy, modify or create derivative works or improvements of the Equipment; (iii) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer or otherwise make available any Equipment to any third party or allow the Equipment to become subject to any lien, security interest or encumbrance of any kind; (iv) reverse engineer, disassemble, decompile, decode, adapt or otherwise attempt to derive or gain access to the software loaded on the Equipment or remove or replace such

software, in each case in whole or in part; (v) replace any parts (expendable or otherwise) of the Equipment with those other than expressly approved by Botrista; (vi) tamper, modify, manipulate, or enable the tampering, modification or manipulation of the Machine Usage Data; (vii) bypass or breach any security device or protection used by the Equipment; (viii) input, upload, transmit or otherwise provide to or through the services or Equipment, any information or materials that are unlawful or injurious, or contain, transmit or activate any harmful code; (ix) damage, destroy, disrupt, disable, impair, interfere with or otherwise impede or harm in any manner the Equipment or Botrista's provision of services to any third-party, in whole or in part; (x) remove, delete, alter or obscure any serial numbers, tags, markings, trademarks, warranties or disclaimers, or any copyright, trademark, patent or other intellectual property or proprietary rights notices from any software or Equipment, including any copy thereof; (xi) access or use the Equipment in any manner or for any purpose that infringes, misappropriates or otherwise violates any Intellectual Property Right or other right of any third-party, or that violates any applicable law; (xii) otherwise access or use the Equipment beyond the scope of the authorization granted under these Terms and Conditions; (xiii) purchase any Consumables from any person other than Botrista or its designated suppliers without Botrista's prior written consent;; and (xiv) relocate the Equipment without the prior written authorization of Botrista.

- e. Reservation of Rights. Other than the right to use the Equipment for the production of Products during the Term as contemplated hereunder, nothing in these Terms and Conditions grants any right, title or interest in or to (including any license under) any Intellectual Property Rights in or relating to, the Equipment (including any incorporated software), whether expressly, by implication, estoppel or otherwise and all right, title and interest in and to the Equipment (including such software) are and will remain with Botrista and the respective rights holders in the software. "Intellectual Property Rights" as used herein means registered and unregistered rights granted, applied for or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.

## 5. Term and Termination.

- a. Term. These Terms and Conditions shall apply commencing on the Effective Date and shall continue for a period of one (1) month (the "Initial Term"). Thereafter, these Terms and Conditions shall automatically renew for additional one (1) month periods (each, a "Renewal Term", and together with the Initial Term, the "Term"), unless either party provides a written notice of termination to the other party at least five (5) days prior to the expiration of the Initial Term or then-current Renewal Term (as applicable).
- b. Limited Termination Rights. Notwithstanding anything to the contrary in these Terms and Conditions, Botrista (i) may terminate the Purchase Order and these Terms and Conditions immediately upon notice to Customer if Customer materially breaches any of the terms or conditions of the Purchase Order or these Terms and Conditions, and (ii) if Customer becomes the subject of any voluntary proceedings under any bankruptcy or insolvency laws, or becomes the subject of any involuntary proceedings under any bankruptcy or insolvency laws which are not dismissed or withdrawn within 60 days after filing. Such termination rights shall be in addition to any other remedies Botrista may have available to Botrista at law or in equity. No termination or expiration of the Purchase Order and these Terms and Conditions shall derogate from any liabilities accrued hereunder prior to such termination or expiration.
- c. Effect of Termination. Upon termination of the Purchase Order and these Terms and Conditions:
  - i. Customer shall immediately surrender the Equipment to Botrista in good condition and working order, ordinary wear and tear excepted, as it was at the time of installation of the Equipment. Customer shall be responsible for any damages to the Equipment and Botrista shall be responsible for return shipping charges; and
  - ii. Any outstanding orders for Accessories or Consumables which have not shipped shall be deemed canceled, and Botrista shall refund any amounts already paid with respect to such canceled orders.
- d. Survival. Sections 1, 2(c), 3(c), 3(d), 4(a), 4(d), 4(e), 5(c), 5(d), 6(b), 6(c), 6(d), 6(e) 7, 8 and 9, as well as all accrued payment obligations, will remain in force after any termination or expiration of these Terms and Conditions.

## 6. Warranties; Limitation of Liability.

- a. Each party represents, warrants and covenants to the other party that: (i) it has the full power and authority to enter into the Purchase Order and these Terms and Conditions; (ii) the execution of the Purchase Order and performance of its obligations under the Purchase Order and these Terms and Conditions does not violate any other agreement to which it is a party; (iii) the Purchase Order and these Terms and Conditions constitute a legal, valid and binding obligation when executed and delivered; and (iv) it will, in its performance of its obligations hereunder, fully comply with all applicable laws, regulations and ordinances of all relevant authorities and shall obtain all licenses, registrations or other approvals required in order to full perform its obligations hereunder.
- b. Customer shall indemnify and hold harmless Botrista and its subcontractors, affiliates, and each of its and their respective officers, directors, employees, agents, successors and assigns (each, a "Botrista Indemnatee") and defend the Botrista Indemnitees from and against any and all losses, damages, liabilities, deficiencies, actions, judgments, settlements, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys' fees ("Losses"), incurred by any Botrista Indemnatee in connection with any claim, suit, action or proceeding brought by a third party against a Botrista Indemnatee that arises out of or relates to any damage, personal injury or death (including as a result of Customer's failure to comply with standard food safety practices or regulations) resulting from Customer's or its personnel's negligence or willful misconduct.
- c. EXCEPT AS EXPRESSLY SET FORTH IN THESE TERMS AND CONDITIONS, NEITHER PARTY MAKES ANY WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE SUBJECT MATTER OF THE PURCHASE ORDER AND THESE TERMS AND CONDITIONS, AND EACH PARTY EXPRESSLY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE, AND ANY IMPLIED WARRANTIES ARISING FROM COURSE OF DEALING OR PERFORMANCE. THE EQUIPMENT, CONSUMABLES AND ACCESSORIES ARE PROVIDED "AS-IS", AND BOTRISTA DOES NOT WARRANT THAT THE FUNCTIONALITY PROVIDED BY THE EQUIPMENT WILL BE CORRECT, UNINTERRUPTED OR ERROR-FREE.
- d. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR ANY THIRD-PARTY FOR ANY LOSS OF DATA, USE, REVENUE OR PROFIT, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.
- e. IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THE PURCHASE ORDER OR THESE TERMS AND CONDITIONS, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS CUSTOMER PAID TO BOTRISTA PURSUANT TO THE PURCHASE ORDER AND THESE TERMS AND CONDITIONS WITHIN THE SIX (6) MONTH PERIOD PRIOR TO THE DATE ON WHICH THE CLAIM AROSE.
- f. SECTIONS 6(d) AND 6(e) SHALL NOT APPLY WITH RESPECT TO ANY INDEMNIFICATION OBLIGATIONS UNDER SECTION 6(B), ANY BREACH OF SECTION 4(d) OR TO ANY FAILURE BY A PARTY TO PAY ANY AMOUNTS DUE TO THE OTHER PARTY HEREUNDER.
- 7. Confidentiality. During the Term and for an additional one year period thereafter, the parties shall keep the terms of the Purchase Order and these Terms and Conditions confidential.
- 8. Governing Law; Jurisdiction. The Purchase Order and these Terms and Conditions and any dispute arising out of or relating to the Purchase Order or these Terms and Conditions shall be governed by the laws of the state of California, without reference to its conflict of law provisions. Any controversy or claim arising out of or relating to the Purchase Order or these Terms and Conditions, or the breach thereof, shall be adjudicated exclusively in the state and federal courts located in the Northern District of California.
- 9. Miscellaneous.
  - a. Relationship of the Parties. The parties are independent contractors with respect to each other. These Terms and Conditions do not constitute and shall not be construed as constituting a partnership or joint venture among the parties

hereto, or an employee-employer relationship. No party shall have any right to obligate or bind any other party in any manner whatsoever, and nothing herein contained shall give, or is intended to give, any rights of any kind to any third parties.

- b. Assignment. Neither party may assign any of its rights or obligations under the Purchase Order or these Terms and Conditions without the prior written consent of the other party, except that either party may assign its rights and obligations under the Purchase Order or these Terms and Conditions without the consent of the other party in connection with any merger (by operation of law or otherwise), consolidation, reorganization, change in control or sale of all or substantially all of its assets related to the Purchase Order and these Terms and Conditions or similar transaction. The Purchase Order or these Terms and Conditions inure to the benefit of and shall be binding on the parties' permitted assignees, transferees and successors.
- c. Force Majeure. Neither party will be responsible for any failure or delay in its performance under the Purchase Order or these Terms and Conditions due to causes beyond its reasonable control, including, but not limited to, labor disputes, strikes, lockouts, internet or telecommunications failures, shortages of or inability to obtain labor, pandemic, epidemic, energy, or supplies, war, terrorism, riot, acts of God or governmental action (including any governmental action taken in response to any of the foregoing) or acts by hackers or other malicious third parties, and such performance shall be excused to the extent that it is prevented or delayed by reason of any of the foregoing.
- d. Headings and Wording. Unless otherwise expressly stated in these Terms and Conditions, the words "herein," "hereof," "hereto," and "hereunder" and other words of similar import refer to these Terms and Conditions as a whole and not to any particular Section, subsection, or other subdivision. The words "include" and "including" are not and should not be construed or interpreted as terms of limitation. The words "day," "month," and "year" mean, respectively, calendar day, calendar month, and calendar year. Section headings are for reference purposes only, and should not be used in the interpretation hereof. No provision of these Terms and Conditions will be construed against either party as the drafter thereof.
- e. Notices. All notices under these Terms and Conditions shall be given in writing and sent by internationally recognized overnight carrier, electronic mail, or facsimile transmission with machine confirmation or shall be delivered by hand to the addresses set forth in the Purchase Order. All notices shall be presumed to have been received when they are hand delivered, or one business day after delivery by courier, or on the business day following the day of a successful facsimile or electronic mail transmission.
- f. Waiver. A waiver of any provision of these Terms and Conditions will only be valid if provided in writing and will only be applicable to the specific incident and occurrence so waived. The failure by either party to insist upon the strict performance of the Purchase Order or these Terms and Conditions, or to exercise any term hereof, will not act as a waiver of any right, promise or term, which will continue in full force and effect.
- g. Construction. These Terms and Conditions shall be fairly interpreted and construed in accordance with their terms and without strict interpretation or construction in favor of or against either party. Each party has had the opportunity to consult with counsel in the negotiation of these Terms and Conditions.
- h. Severability; Counterparts. If any provision, or portion thereof, of these Terms and Conditions is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable, such determination will not impair or affect the validity, legality, or enforceability of the remaining provisions of these Terms and Conditions, and each provision, or portion thereof, is hereby declared to be separate, severable, and distinct. Execution of the Purchase Order shall be deemed acceptance by each party of these Terms and Conditions.
- i. Entire Agreement; Amendments. These Terms and Conditions, together with the Purchase Order and exhibits attached thereto, constitutes the complete, final and exclusive agreement between the parties with respect to the subject matter hereof, and supersedes any and all prior or contemporaneous oral or written representations, understandings, agreements or communications between them concerning the subject matter hereof. Neither party is relying upon any warranties, representations, assurances or inducements not expressly set forth herein. To the extent any terms or conditions set forth in the Purchase Order conflict with the terms and conditions of these Terms and Conditions, the terms and conditions of the Purchase Order shall control. An amendment of the Purchase Order or these Terms and Conditions shall be binding upon the parties only so long as it is in writing and executed by both parties.