



GENERAL TERMS AND CONDITIONS
LAST UPDATED AUGUST 20, 2021

1. APPLICABILITY

- 1.1 These terms and conditions (the “**Terms**”) govern the sale of the Services, which may include the supply of coffee, snacks and related products, and/or the sale or loan of the Equipment, as applicable and described, by 2464889 Ontario Ltd. o/a GoJava (“**GoJava**”) to the Customer named on the Service Agreement.
- 1.2 The accompanying Service Agreement, whether in electronic or hardcopy form, these Terms, any credit card authorization form signed by an authorized representative of Customer, and any amendments made under Section 18.13 of these Terms (collectively, this “**Agreement**”) comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. These Terms prevail over any of Customer’s general terms and conditions of purchase regardless of whether or when Customer has submitted its purchase order or such terms. Fulfilment of Customer’s order does not constitute acceptance of any of Customer’s terms and conditions and does not serve to modify or amend these Terms.
- 1.3 Notwithstanding anything to the contrary contained in this Agreement, GoJava may, from time to time, make changes to these Terms, without the consent of Customer, provided that such changes do not materially affect the nature or scope of the Services and/or Equipment, the fees or any performance dates set forth in the Service Agreement. Customer agrees to periodically review these Terms in order to be aware of any such modifications and Customer’s continued use of any Services and/or Equipment shall be deemed Customers’ acceptance of these.

2. EQUIPMENT SPECIFIC TERMS

- 2.1 Customer may loan or purchase Equipment from GoJava for the Prices, as defined below, and performance of the Services as set forth in an applicable Service Agreement.
- 2.2 If Customer purchases Equipment from GoJava, GoJava shall charge Customer a fee for any replacement parts that may be required for the Equipment. GoJava shall only replace and charge a fee for parts necessary to bring the Equipment in working order to enable GoJava to provide the Services to Customer.
- 2.3 Where Customer does not loan Equipment from GoJava as a part of this Agreement, Customer and GoJava acknowledge, understand and agree that Sections 6.1, 11.2, 12(c) and 12(d) of these Terms shall not apply to the parties and shall be of no force and effect. For clarity, all other Sections of these Terms not explicitly excluded under this Section shall apply, be of force and effect and bind the parties.

3. EXCLUSIVITY APPOINTMENT

During the Term, Customer appoints GoJava as Customer’s exclusive supplier of Services to the degree indicated (if any) on the Service Agreement (the “**Exclusivity Commitment**”) and GoJava

accepts such appointment. Customer shall not purchase Services from any other supplier that would in any way infringe upon the Exclusivity Commitment.

4. **DELIVERY OF EQUIPMENT; PERFORMANCE OF SERVICES**

Customer shall (a) cooperate with GoJava in all matters relating to the Services and Equipment, as applicable, and provide such access to Customer's premises as may be requested by GoJava for the purposes of GoJava performing its obligations under this Agreement; (b) respond promptly to any GoJava request to provide direction, information, approvals, authorizations or decisions that are necessary for GoJava to perform its obligations under this Agreement; (c) provide such Customer materials or information as GoJava may request Customer to carry out the Services and to deliver the Equipment, as applicable, in a timely manner and ensure that such Customer materials or information are complete and accurate in all material respects; and (d) obtain and maintain all necessary licenses and consents and comply with all applicable laws and policies in relation to the Services and Equipment, as applicable, before the date on which the Services are to start and/or the Equipment is delivered.

5. **NON-DELIVERY; NON-PERFORMANCE**

5.1 Any liability of GoJava for non-delivery of Equipment purchased or loaned from GoJava and/or non-performance of Services shall be limited to (a) replacing Equipment and/or performing Services within a reasonable time or (b) adjusting the invoice respecting such Equipment and/or Services to reflect the actual Equipment delivered and/or Services performed.

5.2 CUSTOMER ACKNOWLEDGES AND HEREBY AGREES THAT THE REMEDIES SET FORTH IN SECTION 5 ARE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND GOJAVA'S ENTIRE LIABILITY FOR THE NON-DELIVERY OF EQUIPMENT OR NON-PERFORMANCE OF SERVICES.

6. **OWNERSHIP OF EQUIPMENT; RISK OF LOSS OF EQUIPMENT**

6.1 Loaned Equipment: Customer acknowledges and hereby agrees that all loaned Equipment shall remain the property of GoJava. Risk of loss of the Equipment passes to Customer upon delivery of the Equipment at the Customer's address.

6.2 Purchased Equipment: If applicable, GoJava shall sell to Customer and Customer shall purchase from GoJava the Equipment. Title and risk of loss to the Equipment passes to Customer upon payment for and delivery of the Equipment at the Customer's address as indicated in the Service Agreement.

7. **CUSTOMER'S ACTS OR OMISSIONS**

If GoJava's performance of its obligations under this Agreement is prevented or delayed by any act or omission of Customer or its agents, subcontractors, consultants or employees, GoJava shall not be deemed in breach of its obligations under this Agreement or otherwise liable for any costs, charges or losses sustained or incurred by Customer, in each case, to the extent arising directly or indirectly from such prevention or delay.

8. **PRICE**

- 8.1 Customer shall purchase the Services and/or purchase or loan the Equipment, as applicable, from GoJava at the prices set forth in the Service Agreement (the “Prices”).
- 8.2 During the Term of this Agreement and if loaning any Equipment from GoJava, Customer shall pay GoJava, at a minimum, the Estimated Annual Spend as specified on the Service Agreement. The Estimated Annual Spend shall be measured from the Effective Date, as specified in the Service Agreement, until the following annual anniversary of the Effective Date and shall continue to apply to every subsequent twelve (12) month period for the rest of the Term. Where the Term is for a period of time shorter than the duration of the Estimated Annual Spend, the Estimated Annual Spend will be adjusted on a pro-rated basis to reflect the proportional Estimated Annual Spend for the length of the Term. If Customer's actual spending is less than fifty percent (50%) of the Estimated Annual Spend during the relevant period, then the Price for the leased Equipment will be subject to review or adjustment at the sole discretion of GoJava. Notwithstanding the foregoing, the Estimated Annual Spend and all related terms and penalties under this Agreement shall not apply to Customer if Customer has: a) purchased Equipment from GoJava; or b) agreed to pay the full rental rate of the Equipment for the duration of the Term.
- 8.3 All Prices are exclusive of all harmonized sales tax, goods and services tax, , value added tax, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any governmental authority on any amounts payable by Customer. Customer shall be responsible for all such charges, costs and taxes; provided that, Customer shall not be responsible for any taxes imposed on, or with respect to, GoJava's income, revenues, gross receipts, personnel or real or personal property or other assets.

9. **PAYMENT TERMS**

- 9.1 Customer shall pay all invoiced amounts due to GoJava within thirty (30) days of receipt of GoJava's invoice. Customer shall make all payments hereunder in Canadian dollars by credit card, wire transfer, cheque or any other mutually agreed upon payment method.
- 9.2 Except as specifically set forth in this Agreement and unless not permitted in law, all payment obligations are non-cancellable.
- 9.3 Customer shall pay interest on all late payments at the lesser of the rate of 18% per annum or the highest rate permissible under applicable law, calculated daily and compounded monthly. Customer shall reimburse GoJava for all costs incurred in collecting any late payments. In addition to all other remedies available under these Terms or at law, GoJava shall be entitled to suspend the delivery of any Equipment or performance of any Services, as applicable, if Customer fails to pay any amounts when due hereunder and such failure continues for seven (7) days following written notice thereof.
- 9.4 Customer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with GoJava.

10. **NO WARRANTY**

- 10.1 GOJAVA MAKES NO CONDITION OR WARRANTY WHATSOEVER WITH RESPECT TO THE SERVICES OR EQUIPMENT, AS APPLICABLE, INCLUDING ANY (a) CONDITION OR

WARRANTY OF MERCHANTABILITY; (b) CONDITION OR WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (c) CONDITION OR WARRANTY OF TITLE; OR (d) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.

- 10.2 GOJAVA MAKES NO REPRESENTATIONS, CONDITIONS OR WARRANTIES WITH RESPECT TO ANY THIRD PARTY PRODUCT CONTAINED IN, INCORPORATED INTO, ATTACHED TO OR PACKAGED TOGETHER WITH, THE EQUIPMENT OR SERVICES, INCLUDING ANY (a) CONDITION OR WARRANTY OF MERCHANTABILITY; (b) CONDITION OR WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (c) CONDITION OR WARRANTY OF TITLE; OR (d) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.

11. **LIMITATION OF LIABILITY**

- 11.1 IN NO EVENT SHALL GOJAVA BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, ARISING OUT OF OR RELATING TO ANY BREACH OF THIS AGREEMENT, WHETHER OR NOT THE POSSIBILITY OF SUCH DAMAGES HAS BEEN DISCLOSED IN ADVANCE BY CUSTOMER OR COULD HAVE BEEN REASONABLY FORESEEN BY CUSTOMER, REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.
- 11.2 IF LEASING THE EQUIPMENT, CUSTOMER ACKNOWLEDGES AND HEREBY AGREES THAT IT HAS THE CARE, CUSTODY AND CONTROL OF EQUIPMENT OWNED BY GOJAVA AND ACCEPTS ALL RESPONSIBILITY AND LIABILITY FOR THE EQUIPMENT AND ITS CONTENTS, EXCEPT WHEN IT IS BEING PHYSICALLY HANDLED BY GOJAVA. IF LOANED EQUIPMENT SUFFERS DAMAGE BEYOND NORMAL WEAR AND TEAR CAUSED BY USE IN ACCORDANCE WITH THE OPERATOR'S MANUAL AND SPECIFICATIONS AND/OR ANY ORAL OR WRITTEN INSTRUCTIONS FROM GOJAVA, THEN CUSTOMER IS RESPONSIBLE FOR THE REIMBURSEMENT OF THE VALUE OF THE LOANED EQUIPMENT TO GOJAVA.
- 11.3 CUSTOMER AGREES TO HOLD GOJAVA HARMLESS WITH RESPECT TO ANY LOSS, DAMAGE, OR INJURY TO ANY PERSON OR PROPERTY DIRECTLY OR INDIRECTLY FROM, OR RELATING TO, ANY EQUIPMENT, GOODS, PRODUCTS, SUPPLIES, OR SERVICES SOLD, LOANED, DELIVERED, OR SERVICED BY GOJAVA IN RELATION TO THIS AGREEMENT. FOR CLARITY, GOJAVA IS NOT LIABLE FOR THE COST OF REPAIRING OR REPLACING ANY PROPERTY WHICH IS DAMAGED IF ANY EQUIPMENT, GOODS, PRODUCTS, SUPPLIES, OR SERVICES SOLD, LOANED, DELIVERED, OR SERVICED BY GOJAVA IS FAULTY AND/OR DOES NOT WORK PROPERLY, INCLUDING, BUT NOT LIMITED TO, WATER DAMAGE AND A PEST INFESTATION ON OR TO THE CUSTOMER'S PREMISES OR POSSESSIONS.
- 11.4 IN NO EVENT SHALL GOJAVA'S AGGREGATE LIABILITY ARISING OUT OF, OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF

CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS ACTUALLY PAID TO GOJAVA FOR THE SERVICES SOLD AND EQUIPMENT LOANED, AS APPLICABLE, HEREUNDER WITHIN THE SIX (6) MONTHS PRECEDING THE DATE OF THE FIRST EVENT GIVING RISE TO THE LIABILITY.

12. **CUSTOMER'S REPRESENTATIONS AND WARRANTIES**

Customer represents and warrants to GoJava that Customer shall: (a) use the Equipment in accordance with the operator's manual and specifications and/or any oral or written instructions from GoJava; (b) use the Equipment only with goods purchased from GoJava; (c) not misuse the loaned Equipment in any way; and (d) not, whether through itself or a third party, service, alter, move, or uninstall the loaned Equipment in any way without GoJava's written authorization.

13. **CUSTOMER INDEMNIFICATION**

CUSTOMER SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS GOJAVA, SUCCESSORS AND PERMITTED ASSIGNS AGAINST ANY AND ALL LOSSES, DAMAGES, LIABILITIES, DEFICIENCIES, CLAIMS, ACTIONS, JUDGMENTS, SETTLEMENTS, INTEREST, AWARDS, PENALTIES, FINES, COSTS, OR EXPENSES OF WHATEVER KIND, INCLUDING LEGAL FEES, FEES AND THE COSTS OF ENFORCING ANY RIGHT TO INDEMNIFICATION UNDER THIS AGREEMENT AND THE COST OF PURSUING ANY INSURANCE PROVIDERS, RELATING TO ANY CLAIM OF A THIRD PARTY ALLEGING: (a) BREACH OR NON-FULFILLMENT OF ANY REPRESENTATION OR WARRANTY SET FORTH IN SECTION 12 OF THIS AGREEMENT BY CUSTOMER OR ITS PERSONNEL, AS APPLICABLE; (b) ANY NEGLIGENT OR MORE CULPABLE ACT OR OMISSION OF CUSTOMER OR ITS PERSONNEL (INCLUDING ANY RECKLESSNESS OR WILFUL MISCONDUCT) IN CONNECTION WITH THE PERFORMANCE OF ITS OBLIGATIONS UNDER THIS AGREEMENT; (c) ANY BODILY INJURY, DEATH OF ANY PERSON OR DAMAGE TO REAL OR TANGIBLE PERSONAL PROPERTY CAUSED BY THE ACTS OR OMISSIONS OF CUSTOMER OR ITS PERSONNEL OR THE PLACEMENT OR USE OF THE EQUIPMENT, AS APPLICABLE; OR (d) ANY FAILURE BY CUSTOMER OR ITS PERSONNEL TO COMPLY WITH ANY APPLICABLE LAWS.

14. **TERM OF AGREEMENT**

14.1 The term of this Agreement commences on the Effective Date and continues for the term, as specified in the Service Agreement, unless and until earlier terminated as provided under this Agreement (the "**Initial Term**").

14.2 Upon expiration of the Initial Term, this Agreement automatically renews for additional successive terms equal in length to the Initial Term, unless and until either party provides written notice of non-renewal at least thirty (30) days prior to the end of the then-current Term, or unless and until earlier terminated as provided under this Agreement (each, a "**Renewal Term**"). If the Term is renewed for any Renewal Term(s) under this Section, the Terms of this Agreement during each such Renewal Term are the same as the Terms in effect immediately before such renewal, subject to any change in Prices payable for the Services and loaned Equipment, as applicable, during the Renewal Term. If either party provides timely notice of their intent not to renew this Agreement, then, unless earlier terminated in accordance with its Terms, this Agreement

terminates on the expiration of the then-current Term. For clarity, the then-current Initial Term or Renewal Term shall be the “Term”.

15. **GOJAVA’S RIGHT TO TERMINATE FOR CAUSE**

15.1 In addition to any remedies that may be provided under these Terms or at law, GoJava may terminate this Agreement with immediate effect, and without liability or penalty, upon written notice to Customer, if Customer: (a) fails to pay any amount when due under this Agreement; (b) has not otherwise performed or complied with any of these Terms, in whole or in part; or (c) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors.

15.2 Where GoJava terminates this Agreement under this Section 15, all of Customer’s future scheduled payments for the unused portion of the Term become immediately due and Customer shall immediately pay GoJava for such outstanding amounts (“**Liquidated Damages**”). The parties intend that Liquidated Damages constitute compensation and not a penalty and that Liquidated Damages are a reasonable estimate of the anticipated or actual harm or actual damages that might arise from the termination of the Agreement under this Section.

16. **CUSTOMER’S RIGHT TO TERMINATE FOR CAUSE AND CONVENIENCE**

16.1 Termination for Cause: Customer may terminate this Agreement with ninety (90) days written notice to GoJava if: (i) GoJava fails to cure a material breach of this Agreement, to the extent that such a breach is curable, within thirty (30) days after written notice is given to GoJava of such a material breach; or (ii) Customer is able to reasonably prove unsatisfactory performance of the Services by GoJava. GoJava, in its sole discretion, shall determine if termination under subsection (ii) of this Section 16 is valid. If Customer terminates this Agreement for cause then no penalty shall apply.

16.2 Termination for Convenience: Customer may terminate this Agreement at any time and for any reason, except for as set forth in Section 16.1, with ninety (90) days written notice to GoJava. In the event Customer terminates this Agreement for convenience, Customer shall immediately pay to GoJava any outstanding amounts for Services performed and the remainder of the rental amount owing for the loaned Equipment, which shall be calculated as the full rental rate multiplied by the number of months remaining for the Term. If Equipment was purchased by Customer from GoJava for the duration of the Term then no Equipment penalty under this Section 16.2 shall apply.

17. **POST-TERMINATION**

Upon termination of this Agreement, Customer shall promptly: (a) pay any outstanding amounts owing to GoJava; (b) permit GoJava to remove any loaned Equipment from Customer’s premises, as applicable; (c) return to GoJava all documents and tangible materials (and any copies) containing, reflecting, incorporating or based on GoJava’s Confidential Information; and (d) permanently erase all of GoJava’s Confidential Information from its computer systems.

18. **MISCELLANEOUS**

- 18.1 Customer shall comply with all applicable laws, regulations and ordinances. Customer shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under this Agreement.
- 18.2 No waiver by GoJava of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by GoJava. No single or partial exercise, nor any failure to exercise or delay in exercising, any right, remedy, power or privilege arising from this Agreement operates, or may be construed, as a waiver thereof.
- 18.3 All non-public, confidential or proprietary information of GoJava disclosed to Customer in connection with this Agreement, is confidential ("**Confidential Information**"), solely for the use of performing this Agreement and may not be disclosed or copied by Customer unless authorized in advance by GoJava in writing. Upon GoJava's request, Customer shall promptly return all documents and other materials received from GoJava. GoJava shall be entitled to equitable relief for any violation of this Section.
- 18.4 GoJava shall not be liable or responsible to Customer, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of GoJava.
- 18.5 Customer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of GoJava. GoJava may assign or delegate any of its obligations under this Agreement without obtaining Customer's consent to an affiliate or in connection with a merger, reorganization, acquisition, or other transfer of all or substantially all of GoJava's assets or voting securities.
- 18.6 The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.
- 18.7 This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.
- 18.8 All matters arising out of or relating to this Agreement are governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein without giving effect to any choice or conflict of law provision or rule that would cause the application of the laws of any jurisdiction other than those of the Province of Ontario.
- 18.9 Any legal suit, action, litigation or proceeding of any kind whatsoever in any way arising out of, from or relating to this Agreement, shall be instituted in the courts of the Province of Ontario, and each party irrevocably submits to the exclusive jurisdiction of such courts. The parties irrevocably and unconditionally waive any objection to the venue of any action or proceeding in such courts.

- 18.10 All notices, request, consents, claims, demands, waivers and other communications hereunder (each, a “**Notice**”) shall be in writing and addressed to the parties’ respective address set forth in the Service Agreement or to such other address that may be designated by the receiving party in writing. Notices sent in accordance with this Section will be deemed effectively given: (a) when received, if delivered by hand, with signed confirmation of receipt; (b) when received, if sent by a nationally recognized overnight courier, signature required; (c) when sent, if by email (with confirmation of transmission) if sent during the addressee’s normal business hours, and on the next business day if sent after the addressee’s normal business hours; and (d) on the seventh (7th) day after the date mailed by certified or registered mail by the Canada Post Corporation, return receipt requested, postage prepaid.
- 18.11 If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.
- 18.12 Provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Agreement including, but not limited to, Sections 6, 8, 9, 10, 11, 13, 16.2 and 18.
- 18.13 Except where prohibited by applicable law and as limited by Section 1.3, GoJava may unilaterally amend these Terms, in whole or in part, at any time and in its sole discretion without notice to Customer.
- 18.14 GoJava may advertise that Customer is a customer of GoJava subject to any trademarks and service marks guidelines that Customer provides GoJava (if any). Nothing herein shall grant either party any right, title or interest in the other party’s trademarks or service marks. With Customer’s consent, which may not be unreasonably withheld or delayed, GoJava may issue a press release describing the parties’ relationship under this Agreement. Customer shall not issue any press releases regarding Customer’s relationship with GoJava unless Customer first informs GoJava of such proposed publicity, submits all proposed publicity materials to GoJava for review, and obtains GoJava’s prior consent in writing, in each particular instance.