

## AMABRUSH PRE-ORDER POLICY

Version from July 24th, 2018

THE INFORMATION CONTAINED HEREIN SETS FORTH YOUR RIGHTS AND OBLIGATIONS WITH RESPECT TO THE TRANSACTION(S) CONTEMPLATED FOR HEREBY. THESE TERMS REQUIRE THE USE OF ARBITRATION (ON AN INDIVIDUAL BASIS ONLY; I.E., CASE CONSOLIDATIONS AND CLASS-ACTIONS ARE NOT PERMITTED) IN ORDER TO RESOLVE DISPUTES. PLEASE REVIEW THIS DOCUMENT IN ITS ENTIRETY BEFORE ENTERING INTO ANY TRANSACTION HEREUNDER IN ORDER TO CONFIRM YOUR ACCEPTANCE HEREOF. YOU MAY NOT ORDER OR OBTAIN PRODUCTS OR SERVICES FROM THIS WEBSITE UNLESS AND UNTIL YOU:

(A) AGREE TO THESE TERMS AND CONDITIONS IN THEIR ENTIRETY;

(B) ARE AT LEAST 18 YEARS OLD; AND

(C) ARE NOT PROHIBITED FROM ACCESSING OR USING THIS WEBSITE OR ANY OF THIS WEBSITE'S CONTENTS, GOODS, OR SERVICES BY ANY APPLICABLE LAW, RULE, OR REGULATION.

FOR THE TIME BEING, ALL AMABRUSH PRODUCTS ARE SOLD UNDER A PRE-ORDER POLICY ONLY. PLEASE SEE SECTION 2 FOR FURTHER INFORMATION.

Applicability of Terms and Conditions: These terms and conditions (these "Terms") shall apply to your purchase of products and related services in the territory of the United States through [www.amabrush.com](http://www.amabrush.com) (the "Site"). These Terms are subject to change at any time without prior written notice by Amabrush, Inc. (referred to herein as either "Amabrush," "Company," "we," "us," or "our"). The most recent version of these Terms shall be posted for your review at any time on the Site. Please review these Terms in their entirety prior to engaging in any transaction on the Site. A different version of these Terms may apply based on your territory and/or the delivery territory for the products or related services purchased through the Site. Your continued use of the Site after any posting of updated Terms (which shall be dated as of their most recent update) shall constitute your acceptance of and agreement to any changes therein made.

## 1. ONLINE ORDERS

All Amabrush products and related services offered for purchase on the Site (taken together “the Product”) are subject to availability. When placing an order on our Site, you are effectively offering to purchase whatever Product you select. We reserve the right to accept or reject any order in our own discretion. We will only accept or reject an order in its entirety. Should we elect to accept your offer, you will receive a confirming email at the email address that you provide at such time. Notwithstanding, we reserve the right to cancel any order once accepted by us (as evidenced by a confirming email) at any time in our sole discretion. Additionally, you have the option of cancelling your order (in its entirety only) at any time prior to our having sent to you the confirming email referenced herein.

## 2. PRE-ORDER POLICY

Under the Pre-Order Policy, we offer our Products for an exclusive price. Furthermore, you have the option of cancelling your order at any time until you receive the purchased Product. We inform you about an estimated shipping time on our Site. However, we cannot guarantee your Product being shipped to you by this time – delays are possible.

## 3. PAYMENT TERMS

All applicable prices are set forth alongside the goods and services offered on the Site. They may differ from the prices offered elsewhere (online or offline) by us for the same goods and/or services. Such prices are subject to change without notice at any time by us in our sole discretion. The Site and/or any Company publication may include technical inaccuracies or typographical errors. Amabrush shall not be held responsible for any pricing, typographical, or other errors on the Site and/or other Company publications. Additionally, to the extent that we offer a promotion in connection with any particular item, the terms of such offer shall be set forth in a separate document that shall govern its applicability (and, in the event of a conflict herewith, be considered the governing document). You will be responsible for the prices stated at the time of your transaction, as well as any: (i) sales, use, excise, and related taxes; and (ii) shipping and handling charges. Payment may only be made with a valid credit or use of a bona-fide electronic payment provider (i.e., PayPal). By using any such card or payment provider, you are hereby representing and warranting your full right and authority to make such purchase in the manner elected without violating any applicable law, rule, or regulation.

## 4. SHIPPING INFORMATION

It is our responsibility to ship your accepted order to you at the address you provide when making the order. You will be responsible for all associated shipping & handling charges. While we agree to use reasonable efforts to meet the shipping and delivery dates provided online, we shall not be responsible for any delays in shipments.

## 5. RETURNS

If you, for any reason, are not satisfied with your order, you may return it for a full refund; provided:

- (i) the items(s) were not designated as non-returnable;
- (ii) and, within fourteen (14) days of delivery, you notify Amabrush in accordance with our return procedure specifically set forth at the customer support section on the Site.

Once the goods are received by us, we will refund your purchase price, including the original shipping & handling charges. Mouthpieces and toothpaste pods, which are delivered in factory sealed packaging, may be returned under this section only if they are in the same condition as originally received, with intact packaging and seal. Should you seek to return a set of Amabrush Products (e.g. “Amabrush Starter Set – Basic”), of which some items are non-returnable, Amabrush will only refund the individual retail price for returnable items. All returns must be made pursuant to the specific return procedure specifically set forth at the customer support section on the Site. You bear the risk of loss or damage during shipment (other than when returning a non-conforming Product) and as such, you are advised to obtain appropriate insurance. Your refund will be credited back to the same payment method used to make the applicable purchase.

## 6. PRIVACY POLICY AND WEBSITE TERMS OF USE

Please review our Privacy Policy and Website Terms of Use which can both be found at our download section. The Privacy Policy governs our processing of all personal information that we may collect from any person through the use of our Site. The Website Terms of Use governs your use of our Site in general.

## 7. BUYER'S REPRESENTATION AND WARRANTIES

You represent and warrant to us as follows:

- (i) that you have the right to enter any transaction contemplated for hereby without violating these Terms, any applicable law, rule, or regulation, and/or any agreement with, or rights of, any third party;
- (ii) that you will use the goods and services provided hereunder exactly as authorized and never in any way that would violate any applicable law or third party right of any kind; and
- (iii) that you are buying goods or services from the Site for solely your own use, and not for resale or export.

## 8. COMPANY'S LIMITED WARRANTY

- ( 1) Amabrush expressly warrants to the original purchaser that, for a period of one (1) year from the date of delivery of the Amabrush handpiece and charging station (the "Covered Items") will be reasonably free of defects in materials and workmanship and that when properly handled and fabricated, will conform, within accepted tolerance, to applicable manufacturing specifications (the "Limited Warranty"). This Limited Warranty only applies to Covered Items which are used, stored and handled in the manner recommended by Company. Amabrush mouthpieces and toothpaste pods are not considered Covered Items and expressly excluded from this Limited Warranty.
- ( 2) Subject to the Disclaimer of Warranties in subsection (4) below, Company will, at its option repair or replace Covered Items without charge, or refund the cost of the Covered Items, if the Covered Items fail or do not perform as warranted solely due to a manufacturing defect within the warranty period, subject to the exclusions set forth in this Limited Warranty. Repair or replacement during this one (1) year warranty shall include reasonable labor charges necessary to repair or replace the defective Covered Items. During the entire one (1) year warranty, Company's obligation as to repair or replacement shall further be limited to repair or replacement with the models of the Covered Items that are available at the time of the repair or replacement and shall be limited to the repair or replacement of only the specific Covered Items that fail due to a manufacturing defect. Any repaired or replaced Covered Items shall also remain subject to the original one (1) year warranty from the date of the original delivery, and any repair or replacement shall not extend the original warranty period in any manner or start a new warranty period.

- ( 3 ) You may obtain coverage under this Limited Warranty by providing Company with the original invoice and order confirmation for Covered Items purchased via this Site. For service under this Limited Warranty, you must notify Amabrush via this Site either using your personal Amabrush Account or the limited warranty interface, provided at the customer support section on the Site. It requires you to provide your name, billing and shipping address, invoice and electronic order confirmation, a description of the product involved and reason for claiming limited warranty (nature of the defect).
- ( 4 ) **DISCLAIMER OF WARRANTIES.** Covered Items must be stored, handled, installed, used and maintained in accordance with instructions provided by Company, and this Limited Warranty is conditioned upon compliance with all such instructions. Copies of the Company's user manual are provided with the Product and may be obtained by contacting Amabrush in accordance with Section 16 below. This Limited Warranty does not cover defects caused by:
- a. non-compliance with Company's user manual. Such non-compliance includes, but is not limited to, using the Covered Items in any other way than the intended use, putting the Covered Items under water, dropping the Covered Items, interconnecting, combining or in any other way using the Covered Items with non-original Amabrush items;
  - b. improper storage, installation, handling, use and/or fabrication of the Product;
  - c. damage not resulting from manufacturing defects that occur while the Product is in the customer's possession;
  - d. unreasonable or unintended use of Product;
  - e. Products installed with known or visible manufacturing defects at the time of installation, including, but not limited to color variances, surface and/or texture differences;
  - f. minor conditions such as stains, scratches, and other wear and tear.
- ( 5 ) **THE WARRANTIES SET FORTH HEREIN ARE THE ONLY WARRANTIES MADE BY COMPANY IN CONNECTION WITH THESE PRODUCTS. COMPANY CAN NOT AND DOES NOT MAKE ANY IMPLIED OR EXPRESS WARRANTIES WITH RESPECT TO THE PRODUCT, AND DISCLAIMS ALL OTHER WARRANTIES, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. PRODUCTS SOLD BY COMPANY ARE SOLD ONLY TO THE SPECIFICATIONS**

SPECIFICALLY SET FORTH BY COMPANY IN WRITING. OTHER THAN THE LIMITED WARRANTY SET FORTH HEREIN, COMPANY MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED. COMPANY'S SOLE OBLIGATION UNDER THIS WARRANTY SHALL BE REPAIR OR REPLACEMENT OF NON-CONFORMING PRODUCTS, OR AT THE OPTION OF COMPANY, RETURN OF THE PRODUCT AND A REFUND OF THE PURCHASE PRICE. BUYER ASSUMES ALL RISK WHATSOEVER AS TO THE RESULT OF THE USE OF THE PRODUCTS PURCHASED, WHETHER USED SINGULARLY OR IN COMBINATION WITH ANY OTHER PRODUCTS OR SUBSTANCES.

## 9. LIMITATION OF LIABILITY

UNDER NO CIRCUMSTANCES WILL COMPANY'S OBLIGATION OR LIABILITY UNDER THIS AGREEMENT EXCEED THE PURCHASE PRICE YOU PAID ON THE SITE FOR ANY GOODS OR SERVICES. ADDITIONALLY, UNDER NO CIRCUMSTANCES WILL WE BE LIABLE FOR ANY LOSS OF USE, DATA, BUSINESS, GOODWILL, REPUTATION, OR REVENUE, AND/OR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL, OR PUNITIVE DAMAGES OR OTHER DIRECT OR INDIRECT LOSSES OF ANY KIND, WHETHER OR NOT THE COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

- (1) Amabrush does not warrant, endorse, guarantee or assume responsibility for any product advertised or offered by a third party through the Site or any website featured or linked to through the Site. Amabrush will not be a party to or in any way be responsible for monitoring any transaction between you and third-party providers of products or services and will not be liable for offensive or illegal conduct of such third party.
- (2) If you are a California resident, you hereby waive California Civil Code §1542, which provides: "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor." This release includes the criminal acts of others.
- (3) You may have additional rights under certain laws (including consumer laws) which do not allow the exclusion of implied warranties, or the exclusion or limitation of certain damages. If these laws apply to you, the exclusions or limitations in this Agreement that directly conflict with such laws may not apply to you.

## 10. THIRD-PARTY BENEFICIARIES

These Terms are for your sole benefit 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.

## 11. FORCE MAJEURE

Company shall not be held responsible for delays or non-performance caused by activities or factors beyond its reasonable control, including without limitation, war, weather, strikes, floods, lockouts, fires, acts of God, terrorism, and/or delivery, vendor, supplier, or other third party delays, non-performance, or failures of any kind.

## 12. ASSIGNMENT

Company may assign or otherwise transfer any or all of its rights or obligations hereunder, in whole or in part, to any third party in its sole discretion. You may not assign any of your rights or delegate any of your duties hereunder at any time without our prior written consent in each instance, and any attempt to do so shall be null and void.

## 13. PARTIAL INVALIDITY

In the event that any part or portion of these Terms is deemed to be invalid, illegal, or unenforceable, the remaining provisions shall continue in full force and effect.

## 14. GOVERNING LAW/BINDING ARBITRATION

- ( 1) Governing Law: These Terms shall be governed by the laws of the State of New York without regard to its conflict of laws principles.
- ( 2) Initial Dispute Resolution: In case of dispute, you agree that before taking any formal action, you will contact us in accordance with Section 16 below, and provide a brief, written description of the dispute and your contact information. The parties agree to use their best efforts to settle any dispute, claim, question, or disagreement directly through consultation with Amabrush, and good faith negotiations shall be a condition to either party initiating a lawsuit or arbitration. The parties further agree that formal

action may only be taken if no settlement could be negotiated under this subsection within 30 days from receipt of notice hereunder.

- (3) **Binding Arbitration:** Subject to subsection (4) below and all applicable laws, you are agreeing to give up: (i) your right to litigate any claims that may arise hereunder in court or before a jury; and (ii) your right to consolidate any claim and/or participate in any class-action claim that may arise hereunder in any manner or forum. Instead, any claim, dispute, or controversy of any kind or nature arising hereunder which cannot be amicably resolved by us shall be solely and finally settled by arbitration administered by the American Arbitration Association in accordance with its commercial arbitration rules. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The arbitration shall take place before a panel of one arbitrator sitting in New York. The language of the arbitration shall be English. The arbitrator will be bound to adjudicate all disputes in accordance with the laws of the State of New York. The decision of the arbitrator shall be in writing with written findings of fact and shall be final and binding on the parties. Company shall bear all of its own costs, actually incurred in connection with any such arbitration proceedings; provided, however, that if we are the prevailing party, we shall be entitled to reimbursement for those amounts that were expended on your behalf. With respect to any arbitration hereunder, as stated above, you hereby expressly waive any right to consolidate any claim and/or participate in any class-action claim of any kind or nature. This Section (14) provides your sole recourse for the settlement of any disputes arising out of, in connection with, or related to these Terms. If any provision of this clause is found unenforceable, such unenforceable provision will be removed and the remaining terms will be enforced.
- (4) **Small-Claims Option:** Notwithstanding the foregoing, you may elect to pursue a breach of warranty claim in small-claims court rather than submit to binding arbitration, but only if you provide us with written notice of your desire to do so within 90 days of your purchase transaction. Any small-claims court proceeding initiated hereunder will be limited solely to your individual dispute; i.e., you are not permitted to file, or participate in, a class action suit in small-claims court with respect to these Terms.
- (5) **Survival:** This binding arbitration and class action waiver section shall survive any termination of your use of the products and services offered by the Site.



## 15. NO WAIVERS

Our failure to enforce any of our rights hereunder will not constitute a -waiver of our right to make such enforcement in the future, subject to applicable law.

## 16. NOTICES

We may provide notices hereunder to you by: (i) email; (ii) regular mail; or (iii) posting them on the Site. You shall be responsible for ensuring that you have provided us with your current email and mailing addresses. You can contact us at any time by any of the following means: (i) email, at: [info@amabrush.com](mailto:info@amabrush.com); or (ii) personal delivery, overnight courier, or registered or certified mail to: Amabrush Customer Support, 1411 4th Ave, Seattle, WA 98101, USA. Demands for Returns (see Section 5 above) shall be made only in accordance with our return procedure specifically set forth at the customer support section on the Site. According to the return procedure, we accept return notifications via email and personal delivery, overnight courier, or registered or certified mail only in exceptional cases.

## 17. ENTIRE AGREEMENT

These Terms, along with the confirmation email referenced in Section 2 above, any instructions that we provide you with relating to any product or service you obtain from us through the Site, any terms and conditions that may be provided in connection with any promotion or other sale, and our Site's 'Terms of Use' and 'Privacy Policy,' shall, collectively, be deemed a final and integrated agreement between you and us with respect to the subject matter hereof.