

Merch Hero Terms & Conditions

1. Introduction

1.1 This page, along with any other documents referred to in it (together the “Terms”), constitutes a contract between Merch Hero Ltd (“Merch Hero”, “We” or “Us”) and You as a customer of the Fulfilment Service (“Customer”, or “You”) and sets out the legal terms and conditions under which We will provide the direct order fulfilment service to You, including, on Your behalf, printing and producing products designed and sold by You (“Products”) and deliver those Products to Your purchasers (“Purchasers”) as specified and ordered by You (each an “Order”) (together, the “Fulfilment Service”).

1.2 By using the Fulfilment Service You agree to be bound by these Terms. If You do not agree to these Terms, You may not use the Fulfilment Service.

1.3 You should print a copy of these Terms or save them to Your computer for future reference. We may amend these Terms from time to time to reflect changes to our Fulfilment Services.

1.4 These Terms were most recently updated on 1 April 2021.

2. Information about Us

2.1 We are Merch Hero Ltd, a company registered in England and Wales under company number 12131089 and with our registered office at 6th Floor One, London Wall, Barbican, London, EC2Y 5EB.

3. Other applicable terms

3.1 These Terms refer to and incorporate the following additional terms, which also apply to Your use of the Fulfilment Service to the extent applicable:

3.1.1 The Merch Hero Privacy Policy; and

3.1.2 The Merch Hero Copyright and Trade Mark Policy.

4. Fulfilment Service

4.1 To use the Fulfilment Service, You must register by completing the online registration process.

4.2 By registering as a user for the Fulfilment Service, You represent that You are at least the age of majority relevant in Your territory and that You are legally competent to enter into transactions referred to in these Terms. If You use the Fulfilment Service on behalf of a company, partnership or other legal entity, You represent and warrant to Us that You are duly authorized to act on behalf of and to bind that entity.

4.3 When You place a valid Order and provided that You comply with these Terms, and in consideration of Your payment of Merch Hero's fees for the Fulfilment Services ("Fees"), We will provide the Fulfilment Services to You. We may also provide You with certain ancillary support services as offered from time to time.

4.4 To the extent that the Fulfilment Service requires Us to deal with Purchasers or third parties (including suppliers) on Your behalf to process and fulfil Orders placed by You for Your Products, You hereby authorise Us to act on Your behalf. You acknowledge that We will operate in accordance with these Terms and will use our discretion when dealing on Your behalf with Orders placed by Purchasers. You acknowledge that Merch Hero shall have no liability to You whatsoever in relation to the reasonable exercise of its discretion under this clause 4.4.

4.5 You are responsible for ensuring that Your use of the Fulfilment Service, including Your marketing and sale of Products to Purchasers, is in compliance with all laws applicable to You. Your use of the Fulfilment Service must be in accordance with the Acceptable Use rules set out in clause 4.10 below.

4.6 The Fulfilment Service allows the Customer to submit content including but not limited to images, photographs, graphics, designs, artwork and text (the "Customer Content") to create Products.

4.7 You (or the relevant third party owning the rights in question) will retain the sole ownership of the Customer Content submitted by You to the Fulfilment Service. In submitting Customer Content to the Fulfilment Service, You expressly grant to us a worldwide, royalty-free, perpetual, transferrable, sub-licensable, non-exclusive, right and licence to use the Customer Content for the purposes contemplated under these Terms.

4.8 You are solely responsible for the creation of the Customer Content that You submit to the Fulfilment Service, and bear all liability and costs associated with its creation, editing and use within the Fulfilment Service, including (but not limited to) any royalties or other compensation otherwise payable to third parties in connection with its use. Merch Hero has no control over the design or marketing of Products to the Purchaser and is not the seller of Products. We do not control, monitor or pre-screen the use of Customer Content on the Fulfilment Service and are not responsible for it.

4.9 You acknowledge that Your use of the Fulfilment Service is subject to Merch Hero's Copyright and Trade Mark Policy, which You must read before using the Fulfilment Service and which You must comply with.

4.10 You shall ensure that Your use of the Fulfilment Service (including but not limited to any Customer Content submitted by You) does not:

4.10.1 contravene any applicable law or regulation including but not limited to money laundering legislation;

4.10.2 include anything that is false, inaccurate, misleading, offensive, abusive, threatening or defamatory, or that might cause annoyance, inconvenience or distress to any person;

4.10.3 introduce any computer virus, macro virus, Trojan horse, worm, or anything else designed to interfere with, interrupt, or disrupt the normal operating procedures of a computer or to surreptitiously intercept, access without authority, or expropriate any system, data or personal information;

4.10.4 infringe the intellectual property rights of any person;

4.10.5 misrepresent Your identity in any way or impersonate any person;

4.10.6 include any material containing personally identifying information about another person, except with the written approval of that person;

4.10.7 contain material which is pornographic, obscene, indecent or offensive, which promotes discrimination based on race, sex, religion, nationality, disability, sexual orientation or age, or that may incite hatred or violence against any person or group;

4.10.8 exploit images or the likeness of minors;

4.10.9 advocate, promote or assist any unlawful act; or

4.10.10 otherwise contravene any provision of these Terms including for the avoidance of doubt the Merch Hero Privacy Policy and the Merch Hero Copyright and Trade Mark Policy.

4.11 We reserve the right to reject or cancel any Orders that We, in our absolute discretion, believe violates any of these Terms including the Acceptable Use rules set out in clause 4.10 above.

5. Placing Orders

5.1 You will have access to Our price list via our website once You have completed the online registration process. You will select products from the price list to offer for sale to Purchasers via your store at your specified price. By offering items from our price list to Purchasers via your store, you are agreeing to pay our Fees at the rate stated in the price list at the time of making the offer to Purchasers, should Purchasers buy the Product/s on offer.

5.2 When Purchasers place an Order via your store, We will take the Fees from You via the agreed payment method specified on Our website.

5.3 When Orders are placed, You must ensure Orders are in the correct format and include all the required information We need in order to produce and deliver the Orders. You and your Purchasers are responsible for providing complete and accurate information and acknowledge that We may not be able to provide the Fulfilment Services and produce and deliver Your Order/s if incorrect or incomplete information is provided. We reserve the right to suspend or cancel new Orders and any ongoing Orders if this is not the case.

5.4 After Order/s are submitted, You will receive an e-mail from Us acknowledging that the Order has been received.

5.5 Merch Hero's employees or agents are not authorised to make any representations concerning the Fulfilment Services or Products unless confirmed by Merch Hero in writing. In entering into a contract under these Terms the Customer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed.

5.6 Sales literature, price lists and other documents issued by Merch Hero in relation to the Fulfilment Services or Products are subject to alteration without notice and do not constitute binding offers which are capable of acceptance. Any typographical, clerical or other accidental errors or omissions in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by Merch Hero shall be subject to correction without any liability on the part of Merch Hero.

5.7 You acknowledge that whether or not an Order for a Product can be fulfilled may depend on various factors. We will make reasonable endeavours in the prevailing circumstances to deliver the Orders on Your behalf in accordance with and subject to these Terms.

6. Product descriptions and availability

6.1 You are responsible for ensuring that the Product information displayed on Your website and sales pages matches the information You provide to Us to deliver the Fulfilment Services. You are also responsible for ensuring that the image files You send Us are the correct DPI and free of defects. We will not be responsible for printing image files that are low quality or with defects. If You provide incorrect and/or defective Product information to Us so that, for example, the wrong product type, design, colour or size of Product and/or a poor quality Product is delivered to the Purchaser then We accept no responsibility for this error and You will be liable for all Fees in addition to (without limitation) any other costs You may incur as a result.

6.2 The packaging of the Products may vary based on local specifications and the Customer gives Us the right to choose and change the packaging at Merch Hero's entire discretion.

6.3 The Fulfilment Service offered by Us is subject to availability. We will use all reasonable endeavours to inform the Customer if any Product categories, types, sizes or colours (or other product attributes) are out of stock prior to providing a quotation. In the event that Your selected

Products cannot be produced in accordance with Your Order then We will refund You for any sums paid.

7. Delivery

7.1 You must provide to Us all information required for delivery of the Products on Your behalf, including but not limited to the Purchaser's correct name and destination address. We shall then arrange for delivery on Your behalf by selecting the most appropriate third party courier at the applicable delivery fee set out in the quotation. We agree to pay the third party courier on Your behalf after You have paid the Fees.

7.2 Delivery of the Products shall be made by the relevant courier delivering the Products to the name and address specified in the Customer's Order and as confirmed in the quotation (or as otherwise agreed in writing subsequently). As between You and Us, We shall provide the Products to You on the basis of INCOTERM FCA at the place of production of the Product, from where the courier shall deliver to Your Purchaser.

7.3 You acknowledge and agree that risk in the Products passes to You when they are collected by the courier and that legal and beneficial title of the Products shall not pass to You until We have received in cash or cleared funds full payment of the Fees for the relevant Products.

7.4 Without prejudice to clause 7.3 above, but subject to clause 9 below in respect of defective Products, Merch Hero's responsibility ends once Products are shipped and tracking details are provided to the Customer. All Products will be shipped with tracking, and these tracking details will be provided to You so that You can manage delivery from the point of dispatch onwards. At Merch Hero's sole discretion, in the event of any alleged non-delivery, We may use reasonable endeavours to help You with any delivery issues but shall be under no obligation to resolve any such issue nor to provide or arrange any refund or re-delivery. You must provide proof of non-delivery.

7.5 If We or the courier communicates any delivery date to You, then You acknowledge and agree that these are estimates only and are likely to change due to various factors outside of Merch Hero's control.

7.6 If You do not give the correct delivery information during the Fulfilment Service process (or within a reasonable time of being asked for it), or if You give incomplete or incorrect delivery information, We may suspend or cancel the Order or make an additional charge of a reasonable sum to compensate it for any extra work that is required as a result. Merch Hero will not be responsible for supplying the Products late or not supplying any part of them or for delivery to the wrong address or other failed delivery to a Purchaser if this is caused by You not giving the required information (including accurate address and delivery details) within a reasonable time of being asking for it.

7.7 You acknowledge that Your Order may be subject to import duties and other taxes or charges which are applied when the Product reaches that destination. You agree that Merch Hero has no control over these duties, taxes or charges and that You will be responsible for payment of any that are due. If You are unsure, please contact Your local customs office for further information before placing Your Order. You acknowledge that You must comply with all applicable laws and regulations applicable in the country for which the Products are destined. Merch Hero will not be liable or responsible if You break any such law.

8. Changes

8.1 You may request changes to any Products or Orders only if they have not already entered into production.

8.2 If You need to make any changes to Products or Orders that are already in production then You agree to pay any costs already incurred by Merch Hero for the Fulfilment Service.

8.3 If a Product has not entered production at the time of receiving the change request from the Customer then Merch Hero will use its reasonable endeavours to amend the Order accordingly but reserves the right to charge an additional fee for doing so.

9. Defective Products or Order errors

9.1 You must inform us of any defective Products and/or Order errors by contacting us at support@merchhero.io and providing Your name, Product details, Order number and the details of the problem or Your complaint (including sufficient photographic evidence of such defects or errors), within 7 days of becoming aware of such defect or error.

9.2 If Merch Hero agrees in writing that any Product is defective, then Merch Hero shall at its option, discretion and cost: replace and arrange for redelivery of the defective Product(s); or refund to the Customer the price for the defective Product(s). Merch Hero shall have no further liability to the Customer in respect of such defective Products. The Customer may not reject the Products as defective in the event of any alleged non-delivery or if the Customer fails to contact Merch Hero as set out in clause 9.1 above.

9.3 Any refunds will be made within 14 days from the day on which We receive the request and approve it.

9.4 Subject as expressly provided in these Terms, and subject to clause 14 below, all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

10. Term, termination and suspension

10.1 The term of the contract between You and Us will start when You first register and/or start to use the Fulfilment Services and will continue until terminated by You or Us as follows:

10.1.1 You may terminate Your use of the Fulfilment Service at any time by contacting us at support@merchhero.io and providing Your name, details of any Fulfilment Services including Fulfilment Service number; or

10.1.2 We may terminate Your use of the Fulfilment Service at any time for convenience on at least 14 days' notice by emailing You at the email address You provided to Us.

10.2 We may suspend, cancel or terminate provision of the Fulfilment Service, entirely or partially (including any Order or Orders for any Products) immediately and without notice, if:

10.2.1 We decide that You have materially breached any of the Terms or are reasonably likely to breach any of the Terms;

10.2.2 We decide that any act or omission by You has resulted, or may result in Us having any liability to a third party (including, but not limited to, where any campaign includes infringing content and/or where the Merch Hero Copyright and Trade Mark complaints procedure has been implemented in relation to the Product);

10.2.3 We decide that any act or omission by You breaches, or is reasonably likely to breach any applicable law or regulation or applicable regulatory guidance;

10.2.4 We decide that there is a material inaccuracy in any Customer Content;

10.2.5 We decide that Your account has been, or may be used for any unlawful, deceptive or fraudulent activity and/or for any activity that is in breach of these Terms; and/or

10.2.6 You do not pay any of the Fees when they are due.

10.3 We may suspend and/or delay provision of the Fulfilment Service, entirely or partially (including any Order or Orders for any Products) immediately and on giving written notice to You, if:

10.3.1 We need to deal with technical problems or make minor technical changes to any part of the Fulfilment Service;

10.3.2 We need to update or amend any part of the Fulfilment Service to reflect changes in relevant laws and regulatory requirements; and/or

10.3.3 We need to make changes to any Order and/or Product which You have requested.

10.4 On termination of our contract, all related rights and obligations will immediately terminate, except that You must still perform all of Your obligations in connection with any order for any Product processed before termination and for any liabilities that accrued before or as a result of termination.

10.5 If You terminate under clause 10.1.1 or We terminate under clause 10.1.2 then We will refund You the price You paid for the Fulfilment Services including delivery costs, by the method You used for payment to the extent that the Products have not yet entered production. **If You cancel Your Fulfilment Service once production has begun You are 100% liable for all costs incurred and no refunds will be issued.**

11. Prices and Fees

11.1 Prices and Fees, including product and delivery charges, will be as set out in Merch Hero's price list for the Fulfilment Services from time to time.

11.2 All prices and Fees are expressed to include any and all VAT or other applicable sales taxes. You acknowledge and agree that You will be responsible for the payment of any and all VAT or other applicable sales taxes to the relevant authorities in respect of the sales of the Products to the Purchasers.

11.3 Merch Hero takes reasonable care to ensure that the prices are correct at the time when the quotation was provided to You. However it is always possible that, despite Merch Hero's best efforts, a Product may be incorrectly priced. Merch Hero will normally check prices before accepting Your Fulfilment Service so that the likelihood of these errors is reduced.

11.4 Prices for Products may change from time to time, but changes will not affect any Fulfilment Service which has been confirmed with an Order Acceptance.

11.5 Payment of Fees will be made via Our website when a Purchaser places an Order.

11.6 Payment of Fees is in advance. Payment must be received prior to any production starting.

11.7 Merch Hero may suspend supply of the Fulfilment Service if the Customer does not make payment for any reason.

11.8 If You are a VAT registered business, You can provide a VAT registration number and We will provide You with a VAT invoice for our fees. We may request further information to confirm the validity of Your tax and business status before issuing such a VAT invoice.

12. Intellectual property rights

12.1 Any unauthorized use of the Fulfilment Service may result in the immediate termination of contract with us and the cancellation of any registration with us.

12.2 The name and brand “Moteefe” and “Merch Hero” and their logos are registered and unregistered trade marks. They may not be used without our prior express written permission. Any other trade names or trade marks not owned by Moteefe or Merch Hero that appear in connection with the Fulfilment Service or, as the case may be, are the property of their respective owners, who may or may not be affiliated with, connected to or sponsored by Moteefe and Merch Hero and You should not make any use of them without the owner’s permission.

13. Your liability

13.1 The Customer is responsible to a Purchaser for foreseeable loss and damage caused by the Customer. If the Customer fails to comply with these Terms, it is responsible for loss or damage suffered that is a foreseeable result of the breach.

13.2 The Customer does not exclude or limit in any way its liability to a Purchaser where it would be unlawful to do so. This includes liability for death or personal injury caused by its negligence or the negligence of its employees, agents or subcontractors; for fraud or fraudulent misrepresentation; and for defective products under the Consumer Protection Act 1987.

13.3 The Customer acknowledges that any contract formed in connection with the purchase of a Product is between the Purchaser and the Customer and accordingly, to the extent permissible by law, Merch Hero excludes any and all liability to the Purchaser howsoever arising in relation to the purchase of Products and other uses of the Fulfilment Service except as expressly set out in clause 14 below.

14. Merch Hero’s liability

14.1 Nothing in these terms shall limit or exclude Merch Hero’s liability for:

14.1.1 death or personal injury caused by our negligence, or the negligence of our employees, agents or subcontractors (as applicable);

14.1.2 fraud or fraudulent misrepresentation;

14.1.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982;

14.1.4 defective products under the Consumer Protection Act 1987; or

14.1.5 any matter in respect of which it would be unlawful for us to exclude or restrict liability.

14.2 Subject to clause 14.1 and to the express provisions of these Terms:

14.2.1 Merch Hero shall not be liable, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, loss of business, loss of opportunity or goodwill, loss of data, or for any indirect or consequential loss arising under or in connection with any contract between us; and

14.2.2 Merch Hero's total liability for all other losses arising under or in connection with these Terms, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall be limited to the total sums paid by the Customer to Merch Hero in relation to the Orders to which the losses relate.

14.3 Merch Hero will not be liable for any delay or failure to perform any of its obligations by reason, event or other matter beyond its reasonable control (including, but not limited to: power failure; internet service provider failure; strikes, lock-outs or other industrial action by third parties; closure of production facilities; failures of postal, delivery or courier services; riots and other civil unrest; fire, explosion, flood, storms, earthquakes, subsidence; acts of terrorism (threatened or actual), acts of war (declared, undeclared, threatened, actual or preparations for war); pandemic or epidemic; and/or other natural disaster). If the supply of the Products is delayed by an event outside of Merch Hero's control then Merch Hero will contact You as soon as possible to let You know and will take steps to minimise the effect of the delay. If there is a risk of substantial delay You may contact Merch Hero to end the contract and receive a refund for any Products You have paid for but have not been produced or shipped.

15. Disclaimer

15.1 We provide access to the Fulfilment Service "as is" and without any warranty or condition, whether express, implied or statutory. We do not guarantee that the Fulfilment Service will always be available or that access to it will be uninterrupted. Access to the Fulfilment Service is permitted on a temporary basis. We may suspend, withdraw or discontinue any part of the Fulfilment Service without notice. We will not be liable to You if, for any reason, the Fulfilment Service is unavailable at any time or for any period.

15.2 We specifically disclaim any implied warranties of title, merchantability, fitness for a particular purpose and non-infringement relating to the Fulfilment Service. We assume no liability or responsibility for any errors or omissions in the Fulfilment Service or any information presented on it; any failures, delays or interruptions in the Fulfilment Service; any losses or damages arising from the use of the Fulfilment Service; or any conduct by other users of the Fulfilment Service.

15.3 We reserve the right to deliver the Fulfilment Service in our sole and absolute discretion.

16. Indemnity

16.1 You agree to defend, indemnify and hold Merch Hero and any related companies, and each of their respective shareholders, directors, officers, employees, agents and merchant

partners harmless from and against any and all claims, damages, costs and expenses, including reasonable attorneys' fees, arising from or relating to Your use of the Fulfilment Service and Your violation of these Terms.

16.2 Without limiting the generality of clause 16.1, You agree to defend, indemnify and hold Merch Hero and any related companies, and each of their respective shareholders, directors, officers, employees, agents and merchant partners harmless from and against any and all claims, damages, costs and expenses, including reasonable attorneys' fees, arising from or relating to any infringement of third party intellectual property rights by the Customer Content.

17. Other

17.1 **Writing.** When We refer, in these Terms, to "in writing", this will include e-mail.

17.2 **Assignment by Us.** We may assign our rights and obligations under these Terms to any person.

17.3 **Assignment by You.** You may only transfer Your rights or Your obligations under these Terms to another person if We agree in writing.

17.4 **Third parties.** These Terms apply between You as a user of the Fulfilment Service (or a Customer) and Us. No other person shall have any rights under or in connection with these Terms whether under the Contracts (Rights of Third Parties Act) 1999 or otherwise.

17.5 **Severance.** If any court or competent authority decides that any term of these Terms is held to be invalid, unlawful or unenforceable to any extent, such term shall, to that extent only, be severed from the remaining terms, which shall continue to be valid to the fullest extent permitted by law.

17.6 **No waiver.** If a party fails to insist that another party perform any of its obligations under these Terms, or a party does not enforce its rights against the other, or if it delays in doing so, that will not mean that it has waived its rights against the other party and will not mean that the other party does not have to comply with those obligations. If a party does waive a default by another party, it will only do so in writing, and that will not mean that the first party will automatically waive any later default by such other party.

17.7 **Governing law.** These Terms and any dispute or claim arising out of or in connection with them or their subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law. This includes a Contract between a Customer and a Purchaser for the purchase of Products through the Fulfilment Service. The parties irrevocably agree that the courts of England and Wales shall have non-exclusive jurisdiction. In addition, if You are acting as a consumer, please note that disputes may be submitted for online resolution to the [European Commission Online Dispute Resolution](#) platform.

17.8 Language. These Terms are drawn up in the English language and may be translated into any other language, but the English language text shall prevail.

17.9 Amendments. We may amend these Terms from time to time. We will try to give You reasonable notice of any major changes, but You acknowledge that We will not be required to do so and may amend the Terms with immediate effect where required by legal, regulatory or data security, to prevent harm to any Purchaser or third party, or to make improvements or introduce additional features with no material adverse effect on Your use of the Platform and/or the Merch Hero Services. Your continued use of the Platform and/or of the Merch Hero Services will be deemed as acceptance of any such amendment to the Terms.

17.10 Independent parties. Nothing in these Terms, shall constitute, or be deemed to constitute, a partnership or joint venture between any of the parties or make any party the agent of any other party for any purpose. No party has any authority or power to bind, contract in the name of, or to create a liability against, any other party in any way or for any purpose, except as may be expressly authorised in writing by such other party from time to time.

17.11 Entire agreement. These Terms constitute the entire agreement between Merch Hero and You with respect to Your purchase of the Fulfilment Services from Us. You acknowledge that You have not relied upon any statement, representation, warranty, assurance, or promise made by or on behalf of Merch Hero that is not set out in these Terms and that You shall have no claim for innocent or negligent misrepresentation or negligent misstatement based upon any statement herein.

17.12 Confidentiality. In the event that We disclose confidential information to You, You agree for the term of our contract and for at least five (5) years after termination that You will not use or disclose to any third party such information without Merch Hero's prior written consent provided that this undertaking shall not apply to information which is in the public domain other than by reason of Your default.