

## TERMS AND CONDITIONS

Revised: May 15, 2020

Sun Noodle (“**we**,” “**our**,” or “**us**”) is a family-run business that custom-creates more than 600 types of fresh noodles (“**Products**”) for premier ramen shops, restaurants and home cooks (“**you**”). These Terms and Conditions (“**Terms**”) describe the terms of sale when you purchase our Products (an “**Order**”), including how to resolve disagreements in the unlikely event you are unhappy with your Order. In addition to our Privacy Policy, these Terms also describe your use of the Sun Noodle website (“**Site**”).

**IMPORTANT:** Before purchasing our Products or using the Site, please read these Terms carefully. **By purchasing our Products or Using the Site you are agreeing to these Terms and our Privacy Policy.**

THESE TERMS CONTAIN IMPORTANT INFORMATION ABOUT YOUR RIGHTS AND LIMITATIONS ON OUR LIABILITY, INCLUDING THAT YOU ARE AGREEING TO RESOLVE ANY DISPUTES IN ARBITRATION AND WAIVING THE ABILITY TO BRING A CLASS ACTION LAWSUIT.

### 1. Eligibility

You must be at least 18 years old to purchase our Products or use the Site. If you are the parent of a minor or child under 13 and you believe your child has accessed or used our Site or Services without your permission, please contact us.

### 2. Terms of Sale

- a. Deliveries: You are responsible for inspecting all Products for any damage or other issues on delivery. In addition, you are responsible for determining the freshness and quality of Products you receive.

To maintain quality and freshness, we recommend you immediately refrigerate all perishable Products upon delivery and follow the U.S. Department of Agriculture’s (“USDA”) instructions on refrigeration and food safety, safe food handling, and preparation. Failure to follow these USDA instructions may increase the risk of

foodborne illness. Pregnant women, young children, the elderly, and individuals with compromised immune systems should follow the USDA's recommendations on food consumption for at-risk groups.

If you are not home when your Order arrives, your package will be left at your door unless you give us other delivery instructions. We package our fresh Products with insulated liners, gel packs, or other items to help food stay cold for several hours but you must plan to immediately receive and store Products to ensure they are safe for consumption. If someone else is receiving your Order for you, that person shall accept the delivery under the same terms and conditions that would apply had you accepted the delivery yourself.

b. Shipping: When you place an Order, you will have to pay shipping, processing charges, taxes, and other applicable fees ("**Fees**"). Fees are intended to compensate us for any costs of processing, packing, shipping, and handling your Order. We rely on third-party shipping partners to ship all Orders. This means our third-party shipping partners are responsible for shipping and handling, including the risk of loss, until they deliver your Order. Once delivered, the risk of loss passes to you and you are responsible for safely and securely collecting your Order.

c. Order Returns and Refunds: Each Order is subject to our Refund Policy. Please note, **perishable Products and Gift Cards cannot be returned**. Depending on the circumstances, we may at our sole discretion offer to replace your Order or provide store credit. This means you may not always get a replacement or store credit.

d. Special Offers: Occasionally, we may offer special promotions on Products, including a gift with your Order, free shipping, or other promotions "**Special Offers**." Special Offers may be for a limited time only.

e. Inaccuracy Disclaimer: Occasionally, there may be information on the Site that contains typographical errors, inaccuracies, or omissions related to Product descriptions, pricing, and availability. We reserve the right to correct any errors, inaccuracies, or omissions and to change or update information, at any time.

f. Product Availability. We reserve the right, but are not obligated, to limit sales of our Products to any person, geographic region, or jurisdiction for any reason. We may exercise this right on a case-by-case basis. We reserve the right to change or limit the availability of Products, Product pricing, Product descriptions, or to discontinue any Product at any time in our sole discretion.

g. Warranties: We take commercially reasonable measures to help chefs and home cooks build better bowls of ramen using fresh noodles and creative ingredients. However, we cannot control some aspects of shipping and handling, so we do not make warranties about the quality or safety of our Products. WE CANNOT AND DO NOT GUARANTEE THAT WHEN YOU RECEIVE OUR PRODUCTS THEY WILL BE FREE FROM ANY DEFECTS OR ERRORS OR THAT THEY WILL MEET YOUR EXPECTATIONS.

h. No Resale: If you are a home cook, you must not resell or provide Products you purchased to anyone else for any commercial purpose. If you are a restaurant, business owner, or other retail client, this provision may not apply to you if we have an agreement that states otherwise (“**Additional Terms**”).

### **3. Additional Terms**

We may have Additional Terms in place for some clients and types of Products or Orders. If Additional Terms apply, we will provide them to you and those Additional Terms may supplement or supersede these Terms.

### **4. Privacy**

Your privacy is very important to us. Our Privacy Policy explains how we collect, use, and secure Personal Information, as well as when we may share it. By using our Site or purchasing our Products, or otherwise placing an Order you agree to our Privacy Policy. If you have an account with us or Shopify, you are responsible for maintaining the confidentiality of your account information, including your username and password. You are responsible for all activities that occur under your account and you agree to notify us immediately of any unauthorized access or use of your account. To the extent permitted

by applicable law, we are not responsible or liable for any damage or loss related to unauthorized access to or use of your account.

## **5. Acceptable Use of the Site and Services**

Our goal is to create a positive, safe, and delicious experience for our customers. To promote this goal, we prohibit certain kinds of conduct that may be harmful to others or to us. When you use the Site, purchase our Products, or otherwise place an Order you may not:

- violate any law or regulation;
- violate, infringe, or misappropriate other people's intellectual property, privacy, publicity, or other legal rights;
- post or share anything that is illegal, abusive, harassing, harmful to reputation, pornographic, indecent, profane, obscene, hateful, racist, or otherwise objectionable;
- send unsolicited or unauthorized advertising or commercial communications, such as spam;
- engage in spidering or harvesting, or participate in using software, including spyware, designed to collect data from the Site;
- transmit any viruses or other computer instructions or technological means whose purpose is to disrupt, damage, or interfere with computers or related systems;
- stalk, harass, or harm another individual;
- impersonate any person or entity or perform any other similar fraudulent activity, such as phishing;
- use any means to scrape or crawl any Web pages in the Site;
- attempt to circumvent any technological measure implemented by us, our providers, or any other third party (including another user) to protect the Site;

- attempt to decipher, decompile, disassemble, or reverse engineer the software or other underlying code used to provide the Site; or,
- advocate, encourage, or assist any third party in doing any of the above.

## **6. Ownership of Protected Content**

We own or license all right, title, and interest in (a) the Site, including all software, text, media, and other content available on the Site (“**Our Content**”); (b) our trademarks, logos, and brand elements (“**Marks**”); and (c) recipes, Product preparation, Product descriptions, and similar information (“**Product Information**”). The look and feel of the Site is subject to copyright protection © Sun Noodle. The Site, Our Content, Marks, and Product Information are all protected to the fullest extent permitted by applicable law (“**Protected Content**”). We reserve all rights and you may not duplicate, copy, or reuse any portion our Protected Content without express written permission from Sun Noodle.

## **7. Links**

The Site may contain links to other websites and online resources. A link to a third party’s website does not mean we endorse it or that we are affiliated with it. We do not control those third parties, so we are not responsible or liable for any damage or loss related to your use of any third-party websites or services. Always read the terms and conditions and privacy policy of third-party websites before using them.

## **8. Changes to the Site**

We enhance and update the Site often. We may change or discontinue the Site or Products at any time, with or without notice to you.

## **9. Termination**

We reserve the right to refuse service to any person. We also reserve the right to terminate your right to access the Site, purchase our Products, or otherwise place and Order at any time, particularly if you violate these Terms.

## **10. Disclaimer and Limitations on Our Liability**

TO THE EXTENT PERMITTED BY APPLICABLE LAW, SUN NOODLE AND ITS OFFICERS, EMPLOYEES, DIRECTORS, SHAREHOLDERS, PARENTS, SUBSIDIARIES, AFFILIATES, AGENTS, AND LICENSORS (“**AFFILIATES**”) DISCLAIMS ALL WARRANTIES, CONDITIONS, AND REPRESENTATIONS OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING THOSE RELATED TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, AND THOSE ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE.

TO THE EXTENT PERMITTED BY APPLICABLE LAW, SUN NOODLE AND ITS AFFILIATES MAKE NO REPRESENTATIONS OR WARRANTIES ABOUT THE ACCURACY OR COMPLETENESS OF CONTENT AVAILABLE ON OR THROUGH THE SITE OR ABOUT PRODUCTS, OR THE CONTENT OF ANY THIRD-PARTY WEBSITES OR SERVICES LINKED TO OR INTEGRATED WITH OUR SITE. SUN NOODLE AND ITS AFFILIATES WILL HAVE NO LIABILITY FOR ANY: (A) ERRORS, MISTAKES, OR INACCURACIES OF CONTENT; (B) PERSONAL INJURY OR PROPERTY DAMAGE RESULTING FROM YOUR ACCESS TO OR USE OF THE SITE OR CONSUMPTION OF ANY PRODUCTS; (C) ANY UNAUTHORIZED ACCESS TO OR USE OF OUR SERVERS OR OF ANY PERSONAL INFORMATION OR USER DATA; (D) ANY INTERRUPTION OF TRANSMISSION TO OR FROM THE SITE; (E) ANY BUGS, VIRUSES, TROJAN HORSES, OR THE LIKE WHICH MAY BE TRANSMITTED ON OR THROUGH THE SITE OR SERVICES BY ANY THIRD PARTY; OR (F) ANY LOSS OR DAMAGE OF ANY KIND INCURRED AS A RESULT OF THE USE OF ANY CONTENT POSTED OR SHARED THROUGH THE SITE OR SERVICES.

TO THE EXTENT PERMITTED BY LAW, OUR COMPANY AND ITS AFFILIATES WILL NOT BE RESPONSIBLE FOR LOST PROFITS, REVENUES, OR DATA, FINANCIAL LOSSES OR INDIRECT, SPECIAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES.

TO THE EXTENT PERMITTED BY LAW, THE TOTAL LIABILITY OF OUR COMPANY AND ITS AFFILIATES, FOR ANY CLAIMS UNDER THESE TERMS, INCLUDING FOR

ANY IMPLIED WARRANTIES, IS LIMITED TO THE TOTAL AMOUNT YOU PAID US WHEN YOU PURCHASED PRODUCTS OR PLACED ORDERS IN THE PAST TWELVE (12) MONTHS.

Some jurisdictions do not allow the exclusion of certain warranties and limitations of liability provided in this Section. If you are in such a jurisdiction, some of the above limitations and disclaimers may not apply to you. To the extent we may not, as a matter of applicable law, disclaim any implied warranty or limit our liabilities, the scope and duration of such warranty and the extent of our liability will be the minimum permitted by applicable law.

#### **11. Indemnification**

You agree to indemnify and hold harmless our company and its Affiliates from and against any and all claims, costs, proceedings, demands, losses, damages, and expenses (including, without limitation, reasonable attorney's fees and legal costs) of any kind or nature, arising from or relating to, any actual or alleged breach of these Terms by you or anyone using your account. If we assume the defense of such a matter, you will reasonably cooperate with us in such defense.

#### **12. Arbitration Agreement & Waiver of Certain Rights, Including Class Actions**

**PLEASE READ THIS SECTION CAREFULLY BECAUSE IT LIMITS CERTAIN RIGHTS, INCLUDING THE RIGHT TO MAINTAIN A COURT ACTION, THE RIGHT TO A JURY TRIAL, THE RIGHT TO PARTICIPATE IN ANY FORM OF CLASS OR REPRESENTATIVE CLAIM, THE RIGHT TO ENGAGE IN DISCOVERY EXCEPT AS PROVIDED IN AAA RULES, AND THE RIGHT TO CERTAIN REMEDIES AND FORMS OF RELIEF. OTHER RIGHTS THAT YOU OR SUN NOODLE WOULD HAVE IN COURT ALSO MAY NOT BE AVAILABLE IN ARBITRATION.**

- a. Arbitration: YOU AGREE TO RESOLVE ANY DISPUTES BETWEEN US THROUGH BINDING AND FINAL ARBITRATION INSTEAD OF THROUGH COURT PROCEEDINGS. YOU WAIVE YOUR RIGHT TO ANY JURY TRIAL OF ANY CLAIM. All controversies, claims, counterclaims, or other disputes arising between you and Sun Noodle relating to these Terms, our Site, Products, or any

Orders (each a “**Claim**”) shall be submitted for binding arbitration under the Rules of the American Arbitration Association (“**AAA Rules**”). The arbitration will be heard and determined by a single arbitrator. The arbitrator’s decision will be final and binding upon the parties and may be enforced in any court of competent jurisdiction. The parties agree that the arbitration will be kept confidential and that the existence of the proceeding and any element of it (including, without limitation, any pleadings, briefs or other documents submitted or exchanged and any testimony or other oral submissions and awards) will not be disclosed beyond the arbitration proceedings, except as may lawfully be required in judicial proceedings relating to the arbitration or by applicable disclosure rules and regulations of securities, regulatory authorities, or other governmental agencies.

This arbitration agreement does not preclude you or Sun Noodle from seeking action by federal, state, or local government agencies. You and Sun Noodle may also bring qualifying claims in small claims court. In addition, you and Sun Noodle retain the right to apply to any court of competent jurisdiction for provisional relief, including pre-arbitral attachments or preliminary injunctions, and any such request shall not be deemed incompatible with these Terms, nor a waiver of the right to have disputes submitted to arbitration as provided in these Terms.

b. Arbitration Costs: If you demonstrate that the costs of arbitration will be prohibitive as compared to the costs of litigation, Sun Noodle will pay as much of the administrative costs and arbitrator's fees required for the arbitration as the arbitrator deems necessary to prevent the cost of the arbitration from being prohibitive. In the final award, the arbitrator may apportion the costs of arbitration and the compensation of the arbitrator among the parties in such amounts as the arbitrator deems appropriate.

c. Class Action Waiver: YOU MAY NOT ACT AS A CLASS REPRESENTATIVE OR PRIVATE ATTORNEY GENERAL, NOR PARTICIPATE AS A CLASS MEMBER OF ANY CLASS CLAIMANTS WITH RESPECT TO ANY CLAIM. CLAIMS MAY NOT BE ARBITRATED ON A CLASS OR REPRESENTATIVE BASIS. You may only bring individual Claims, and the

arbitrator may only decide individual Claims. The arbitrator may not consolidate or join the claims of other persons or parties who may be similarly situated.

### **13. Severability**

If any provision of these Terms is found to be unlawful or unenforceable, then that provision will be deemed severable from these Terms and will not affect the enforceability of any other provisions.

### **14. Other Provisions and Jurisdiction**

Under no circumstances will we be held liable for any delay or failure in performance due in whole or in part to any “acts or god”, forces of nature, or other causes beyond our reasonable control.

These Terms will be governed by and construed under the laws of the State of California, without giving effect to any conflict of laws rules or provisions.

You agree that any action of whatever nature arising from or relating to these Terms, the Site, or our Products will be filed only in the state or federal courts in San Francisco, California. You consent and submit to the personal jurisdiction of such courts for any such action.

The failure by us to enforce any right or provision of these Terms will not prevent us from enforcing such right or provision in the future.

We may assign our rights and obligations under these Terms, including in connection with a merger, acquisition, sale of assets or equity, or by operation of law.

### **15. Changes to these Terms**

We may change these Terms. If we change these Terms, we will take reasonable steps to notify you and post the revised Terms on the Site. Those changes will go into effect on the Revised Date of the revised Terms. By continuing to use the Site or Services, you are agreeing to the revised Terms.

**Please print a copy of these Terms for you records and PLEASE check the Site frequently for any changes to these Terms.**