



Smokenol Day, Inc.
48 Dunham Rd, Ste 5750
Beverly, MA 01915

Profound Naturals – WHOLESALE APPLICATION

Company Name	
Contact Name	
Email	
Phone	
Tax ID (EIN) <small>*Required</small>	
Mailing Address	
Shipping Address <small>(if different from mailing address)</small>	
Website URL	
Date	
Authorized Name, Title	
Authorized Signature <small>(I accept the Standard Terms and Conditions – attached below)</small>	

* *Please provide a copy of your business license or other documentation showing your federal tax ID number*

** *Massachusetts companies, please provide a signed ST-4 Sales Tax Resale Certificate*

Smokenol Day, Inc.

Standard Invoice Terms and Conditions

These Standard Invoice Terms and Conditions (these “T&Cs”) are referenced in and, by that reference, made a part of an invoice (the “Invoice”) from Smokenol Day, Inc. (“Seller”). Unless the context otherwise requires, references to the Invoice in these T&Cs refer to that Invoice including these T&Cs. That Invoice, together with these T&Cs, constitutes the entire agreement and all of the terms and conditions between the parties relating to the subject matter of that Invoice, and acceptance of Seller’s offer to sell the items described in the Invoice is strictly limited to the exact terms and conditions contained therein and herein. If, for whatever reason, that Invoice is construed as an acceptance of an offer made by the buyer identified on the face of that Invoice (“Buyer”) or as a confirmation of an existing contract, such acceptance or confirmation, as the case may be, is expressly conditioned on Buyer’s assent to any additional or different terms contained therein and herein and the terms thereof and hereof constituting the entire agreement and all of the terms and conditions between the parties relating to the subject matter of that Invoice. In all circumstances, additional or differing terms, conditions, or limitations proposed by Buyer, whether in a request, purchase order, acceptance, or other document, shall not become part of the agreement between Seller and Buyer, and Seller hereby objects to and rejects any and all such additional or different terms, conditions, and limitations.

Buyer’s acceptance of Seller’s products or materials, commencement of performance, or failure to object to these terms in writing as soon as practicable after receipt of the Invoice by Buyer (and in no event less than ten (10) days after Buyer receives the Invoice) shall constitute Buyer’s acceptance of these terms and conditions. The Invoice may be changed or modified only by written instrument by Seller’s authorized representative.

- 1. Invoicing; Payment.** Seller shall issue the Invoice on shipment of the products described in the Invoice (“Products”). Invoices may be issued in installments. Buyer agrees to pay the Invoice promptly when due regardless of other scheduled deliveries. Buyer shall not withhold payment of any amounts due and payable by reason of any set-off or any claim or dispute with Seller, whether relating to Seller’s breach, bankruptcy, or otherwise. Buyer may apply for open account credit. If credit is not approved or is not maintained, Buyer agrees to pay the Invoice amount in full in cash or to provide a letter of credit (acceptable to Seller in its sole discretion) to support the payment obligation prior to delivery. If credit is approved by Seller, Buyer shall pay all amounts due to Seller by wire transfer within the number of days shown on the face of the Invoice following receipt of the Invoice from Seller. Any Invoice not paid within that period of time will bear interest at a rate of 1.5% per month (or the maximum legally permissible rate if lesser) from the date of Invoice until the date of payment. Seller reserves the right, at its sole discretion, to change credit terms as a condition to acceptance of any order or to shipment of any Product. Time is of the essence relating to Buyer’s payment obligations. Buyer shall reimburse Seller for all costs incurred in collecting any payments, including, without limitation, attorneys’ fees.
- 2. Delivery; Risk of Loss.** Delivery shall be made Ex Works (as defined in Incoterms 2020) Seller’s manufacturing facility(ies), which shall mean for the purposes of these T&Cs that Seller shall have fulfilled its obligation to deliver when it has handed over the Products into the charge of the carrier at the place designated by Seller. Title and risk of loss to the Products shall pass to Buyer upon delivery. In the absence of specific instructions from Buyer, Seller will select the carrier and may provide for insurance, but such carrier shall not be the agent of Seller nor shall Seller assume any liability regarding the shipment, including risk of loss or damage to Products. Product acceptance shall occur or be deemed to occur upon passage of title and risk of loss.
- 3. Security Interest.** As collateral security for the payment of the purchase price of the Products, Buyer hereby grants to Seller a lien on and security interest in and to all of the right, title and interest of Buyer in, to, and under the Products, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this Section constitutes a purchase money security interest under the Massachusetts Uniform Commercial Code. For such purposes, Buyer authorizes Seller to file or caused to be filed in the applicable filing office a UCC financing statement identifying Buyer as “Debtor” and Seller as “Secured Party” and describing the Products as the collateral and such other filings as are necessary or appropriate to comply with the foregoing.
- 4. Taxes.** The purchase prices shown in the Invoice are exclusive of all foreign, federal, state, county, local and other taxes, or amounts in lieu thereof, regulatory and customs fees and duties, freight charges, C.O.D. charges, insurance, and the like, which shall be the responsibility of Buyer and separately stated on the Invoice. Buyer agrees to indemnify Seller against and reimburse it for any expenditures it may be required to make on account of Buyer’s failure to pay such taxes and other charges.
- 5. Shipment Quantities.** Seller will use its reasonable commercial efforts to ship every shipment requested by Buyer complete. However, Seller may allocate its products among its customers and may make partial shipments of Products to Buyer. Buyer agrees to purchase any partial shipments for a pro rated amount of the scheduled purchase price. If Seller delivers to Buyer a quantity of Products of up to five percent (5%) more or less than the quantity set forth in the Invoice, Buyer shall not be entitled to object to or reject the Products or any portion of them by reason of the surplus or shortfall and shall pay for such Products at the price set forth in the Invoice adjusted pro rata.
- 6. No Warranty; Disclaimers.** THE SELLER MAKES NO WARRANTIES WITH RESPECT TO THE PRODUCTS, WHETHER EXPRESS, IMPLIED, STATUTORY, OR ARISING BY CUSTOM, TRADE USAGE, OR COURSE OF DEALING,

INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND SELLER DISCLAIMS ANY AND ALL WARRANTIES TO THE MAXIMUM EXTENT PERMITTED BY LAW. To the extent any warranty cannot be excluded, such warranty is limited in duration to the a period of three (3) months commencing on the date of delivery to Buyer.

7. Disclaimer of Health Benefits. The U.S. Food and Drug Administration (the “FDA”) has the authority to regulate products containing cannabis or cannabis-derived compounds, including cannabidiol and cannabidiol. Buyer understands and accepts that some or all of the Products are expected to contain cannabis-derived compounds and that the FDA has not approved any Products for the diagnosis, cure, mitigation, treatment, or prevention of any disease or condition and has not evaluated the effectiveness, safety, or quality of any Products or any statements made or other information provided by Seller about the Products. Without limiting the generality of Section 6 above, none of the statements made or other information provided by Seller about the Products, including, but not limited to, in any Product literature, descriptions, advertising, labeling, Seller’s website(s), social media, and verbal communications, constitutes any representations or warranties about the Products or any medical or other professional health care advice, diagnosis, or treatment and must not be relied upon as such.
8. Liability Limitations. IN NO EVENT WHATSOEVER SHALL SELLER’S AGGREGATE LIABILITY ARISING OUT OF OR IN CONNECTION WITH THE INVOICE OR THE FURNISHING, FUNCTIONING, OR USE OF THE PRODUCTS EXCEED THE PURCHASE PRICE OF THE PRODUCTS WHICH DIRECTLY GIVE RISE TO THE CLAIM. IN NO EVENT WHATSOEVER SHALL SELLER BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR SPECIAL DAMAGES, including but not limited to, loss of profits or revenues, loss of use of or damage to any associated equipment, or costs or claims of Buyer’s customers, regardless of the form of action, even if Seller has been advised of the possibility of such damages or if such damages were foreseeable. In no event shall Seller be liable for any loss, claim, expense, or damage to the extent caused by or arising out of the acts or omissions of Buyer or any third party. Failure by Buyer to give written notice to Seller of any claim against Seller within three months from date of delivery (or from the date fixed for delivery in case of non-delivery) shall constitute a waiver by Buyer of all claims in respect of such Products.
9. Ownership of Proprietary Rights. Buyer agrees that Seller retains exclusive ownership of all intellectual property rights associated with Products and of any improvements, modifications, derivations, and enhancements pertaining to any Product or any part thereof however created, developed, or conceived and all documentation relating thereto (whether in electronic or paper form) and all good will and other benefits associated therewith. Buyer shall take all reasonable measures to protect Seller’s intellectual property rights in the Products. Buyer acknowledges that Buyer’s purchase of the Products represents a conveyance of title to the Products, with the exception that no title or ownership to any proprietary rights relating thereto is transferred or acquired. Buyer shall not modify, disassemble, decompile, or otherwise reverse engineer any Product or remove, obscure, or alter any notice of patent, trademark, copyright, or trade name that is affixed to any Product or its packaging. Buyer shall not reproduce or copy any Product. Buyer shall promptly notify Seller of any violation of this Section that comes to its attention.
10. Confidentiality. Buyer shall keep strictly confidential any and all designs, drawings, specifications, engineering data and other technical or proprietary information of Seller, whether or not marked as “confidential,” and shall not, without the written consent of Seller, use any such information except in connection with Buyer’s use of the Products.
11. Force Majeure. Seller shall not be liable to Buyer for any failure to perform its obligations if such failure is due to an event beyond Seller’s reasonable control, such as, but not limited to, fire, floods, earthquakes, strikes, work stoppages, shortages, component or raw material price increases, accidents, wars, acts of governmental authority, acts of terrorism, epidemics, pandemics, or acts of God.
12. Waiver. The failure of Seller to insist in any one or more instances upon performance of any of the terms, covenants or conditions of the Invoice or to exercise any right under the Invoice shall not be construed as a waiver or relinquishment of any future exercise of such right or any other right. Seller shall not be deemed to have waived any of its rights under the Invoice unless such waiver is in writing and signed by an authorized representative of Seller.
13. Beneficiaries; Assignment; and Set-Off. Unless otherwise expressly provided, no provision of the Invoice shall give any rights, remedies, or other benefits to any person or entity other than Buyer and Seller. Buyer shall not, without the written consent of Seller, assign, delegate, or subcontract the Invoice or any of its rights or obligations thereunder. Seller may set off any amounts due from it to Buyer against any amounts due to Seller from Buyer under the Invoice.
14. Publicity. Buyer shall not, without first obtaining Seller’s written consent, in any manner advertise, publish, disclose, or issue any news releases or make any public announcements about the Invoice or denial or confirmation of same or concerning the fact that Seller has furnished or contracted to furnish Buyer the Products.
15. Independent Contractor. The relationship of Buyer and Seller established by the Invoice is that of independent contractors, and nothing contained in the Invoice shall be construed to constitute the parties as partners, joint venturers, co-owners, or otherwise as participants in a joint or common undertaking or authorize or allow Buyer to act on behalf of or create or assume any obligation on behalf of Seller whatsoever (and Buyer shall not, and shall not hold itself out as having any right, power, or authority to, act on behalf of or create or assume any obligation on behalf of Seller).

16. Right to Suspend. In the event of a breach by Buyer of its obligations under the Invoice or in case Seller shall have any reasonable doubt at any time as to Buyer's financial responsibility or capability, Seller shall have the right to suspend its performance in addition to any other rights or remedies available to it.
17. Governing Law; Venue. The Invoice (specifically including these T&Cs) shall be interpreted in accordance with the laws of the Commonwealth of Massachusetts without reference to its conflict of law rules. Any dispute arising thereunder or concerning any transaction contemplated thereby shall be resolved by a court of competent jurisdiction located in the Commonwealth of Massachusetts, and Buyer and Seller each consents and submits to the jurisdiction of those courts.
18. Notices. Any notice and other communication relating to the Invoice shall be in writing and delivered to the parties at the addresses set forth on the face of the Invoice or to such other address that may be designated by the receiving party in writing as follows with notice deemed given as indicated: (a) by personal delivery when delivered personally, (b) by nationally recognized overnight courier (with all fees prepaid) upon verification of receipt, (iii) by telecopy or facsimile transmission when confirmed by telecopier or facsimile transmission, or (iv) by certified or registered mail, return receipt requested, postage prepaid upon verification of receipt.
19. Order of Precedence. In the event of a conflict between these T&Cs and other portions of the Invoice, the order of precedence shall be: (a) any written provisions on the face of the Invoice made by Seller that modifies these T&Cs with a citation to the section being modified and (b) these T&Cs.
20. Severability. The parties agree that (a) the provisions of the Invoice (specifically including these T&Cs) shall be severable in the event that any of those provisions are for any reason whatsoever invalid, void or otherwise unenforceable, (b) such invalid, void or otherwise unenforceable provisions shall be automatically replaced by other provisions which are as similar as possible in terms to such invalid, void or otherwise unenforceable provisions but are valid and enforceable, and (c) the remaining provisions shall remain enforceable to the fullest extent permitted by law.
21. Survival. These T&Cs shall survive any performance of the Invoice.