

**Tennent Caledonian Breweries UK Limited Standard Terms and Conditions of Sale**

**1. DEFINITIONS AND INTERPRETATION**

1.1 In these terms and conditions, the following expressions shall have the following meanings:

**Buyer** means the person or company and, where relevant, its partners, directors, employees, officers, agents or sub-contractors (or any person holding themselves out as such), who makes an Order which is accepted by Seller.

**Conditions of Sale** means the standard terms and conditions of sale set out in this document, as may be modified and updated by Seller from time to time;

**Containers** means all containers of whatever kind in which Goods are supplied to Buyer and all returnable packaging of any nature, including, without limitation, the Returnable Packaging.

**Contract** means each and every contract between Seller and Buyer for the sale and purchase of Goods;

**Dispense Equipment** means, without limitation, all beer engines, couplers, pumps, taps, fountains, caws, badges, T-bars, pump clips, meters, pipes, lines, pressurisation cooling, flash coolers (including remote chilling units) to kegs and casks, other cooling and chilling equipment, and connectors to gas cylinders and beer tanks and ancillary apparatus and equipment for the dispensing of the draught Product, and stoppers, carbon dioxide tubes and other related equipment, including chillers and cooling equipment but excludes carbon dioxide and/or mixed gas bottles and cylinders of whatever size and any flow regulating or monitoring systems;

**Goods** means all those products, which Seller agrees to supply to Buyer and which Buyer agrees to purchase from Seller, which are the subject of a Contract;

**Order** means an order placed by Buyer with Seller for the supply of Goods;

**Returnable Packaging** means all kegs, casks, locator boards, crates, pallets, bottles, cans, cases, CO2 and/or mixed gas bottles and cylinders of whatever size and any other packaging;

**Seller** means Tennent Caledonian Breweries UK Limited or the C&C group company stated in the Contract, delivery note and/or order acknowledgement if different (and, where relevant, their agents or sub-contractors).

**2. GENERAL**

2.1 Save to the extent that a formal written supplemental agreement signed by Seller's duly authorised representative expressly amends these Conditions of Sale, these Conditions of Sale shall exclusively govern all Contracts and shall supersede, override and exclude Buyer's purported terms of business or any other terms of business wherever stipulated or incorporated or referred to, whether in Buyer's order or in any negotiations or course of dealing established between Buyer and Seller, including any purported acceptance thereof by Seller's servants or agents;

2.2 All Goods are offered for sale on the terms and conditions set out in these Conditions of Sale and are offered subject to availability.

2.3 Each Order shall be deemed to be an offer by Buyer to purchase Goods solely on the terms and conditions of these Conditions of Sale. Accepting delivery of Goods is deemed to be acceptance of these Conditions of Sale.

2.4 Buyer shall not rely upon and, except in the event of fraud, Seller shall have no liability for any representation made: (i) by its servants or agents to Buyer; and/or (ii) in any promotional literature or otherwise. Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other documentation or other information issued by Seller shall be subject to correction without any liability on the part of Seller.

2.5 All descriptions and illustrations contained in any catalogues, price lists or otherwise communicated to Buyer are for illustrative purposes only and are intended merely to represent a general idea of the relevant Goods. No such descriptions and/or illustrations contained in any catalogues, price lists or otherwise shall form any part of a Contract.

2.6 If any part of these Conditions of Sale is judged by any court in a competent jurisdiction to be invalid or unenforceable, the remaining part or parts thereof shall continue in full force and effect.

**3. ORDERS FOR THE GOODS**

3.1 Any Order shall be deemed to be accepted by Seller until the Order is confirmed as accepted by Buyer by Seller's authorised representative in writing (which, for the purpose of this paragraph 3.1, shall include confirmation by email or fax) or (if earlier) Seller delivers the Goods to Buyer. Buyer shall be responsible for ensuring the accuracy of any Order it submits and any Order acknowledgement it receives.

3.2 Seller may vary the specification of any Goods without notice.

3.3 Goods are not subject to return, refund or exchange by Buyer. Once an Order is accepted by Seller in accordance with the provisions of paragraph 3.1 of these Conditions of Sale, Buyer shall, subject to paragraph 5.2 of these Conditions of Sale, have no right to cancel the Order or, following delivery, return the Goods (except where defective).

**4. PRICES**

4.1 **Seller reserves the right, at any time, to change the price of Goods offered for sale.**

4.2 Prices stated are exclusive of: (a) delivery charges; and (b) all import, excise and customs duties, levies and all value tax and sales taxes, all of which shall be payable in addition at the rate in force at the invoice tax point date and shall be the sole liability of and shall be paid by Buyer to Seller against delivery of a valid invoice, whenever issued.

**5. DELIVERY OF THE GOODS**

5.1 Seller shall determine the method, date and time of any delivery.

5.2 In the absence of any other agreement, Seller may cancel any item not delivered two weeks after the estimated delivery date.

5.3 The time of delivery shall not be of the essence of any Contract. In no circumstances shall Seller be liable to compensate Buyer for non-delivery, early delivery or late delivery of the Goods or for any loss or damage arising therefrom or for any failure to deliver the Goods promptly or at all.

5.4 Seller shall be entitled to deliver Goods in one or more instalments. Each such instalment shall be delivered in compliance with the request of Seller to deliver any one or more of the instalments, or any claim by Buyer in respect of any one or more instalments, shall not entitle Buyer to treat the Contract as a whole as repudiated.

5.5 Where Seller has been unsuccessful in effecting delivery of Goods ordered for any reason Seller may (at its sole discretion):

5.5.1 store the Goods until actual delivery and charge Buyer for reasonable costs (including insurance) of storage and any additional costs of carriage incurred; and/or

5.5.2 sell the Goods at the best price readily available and charge Buyer for any shortfall below the price achieved and the price under the Contract together with all storage and sale related expenses (less any payment made by Buyer).

5.6 Seller may during any periods of shortage due to causes beyond its control supply Goods during its customers (including Buyer) in such a manner and proportions as it deems to be equitable in its sole judgment and without liability therefor.

**6. INSPECTION OF GOODS**

6.1 **Buyer shall inspect the Goods immediately on receipt thereof and shall within 3 working days notify Seller of any immediately apparent damage to, or shortage of, Goods.**

6.2 **If Buyer fails to give notice as above Buyer shall be deemed to have accepted the Goods accordingly and the Goods shall be presumed to be in all respects in accordance with the relevant Order.**

6.3 Following the giving of notification by Buyer to Seller pursuant to paragraph 6.1 of these Conditions of Sale, any affected Goods shall be held by Buyer, without cost to Seller, awaiting Seller's instructions, and Buyer shall allow Seller's representatives full access at any time during working hours to examine the affected Goods and Buyer must provide for inspection all relevant packaging, equipment and delivery documents.

6.4 If Buyer establishes to Seller's reasonable satisfaction that the Goods are defective, Buyer's sole remedy shall be limited to the return of the Goods and credit of any payment and Buyer shall be credited accordingly. Seller will not give Buyer credit for the return of any Goods where the "Best before Date" of those Goods has subsequently passed or is approaching; or which have been altered, tampered with, price marked or disfigured in any way.

**7. RISK AND TITLE IN RESPECT OF THE GOODS**

7.1 Risk of loss or damage to the Goods shall pass to Buyer at the time of delivery.

7.2 Buyer shall insure the Goods with a reputable insurer from the point at which risk passes to Buyer until payment is made to Seller for their full value. Goods shall be insured for their full value against all liabilities pursuant to these Conditions of Sale, to the satisfaction of Seller and Buyer shall procure and maintain adequate and appropriate documents to evidence this.

7.3 **The Goods shall remain the sole and absolute property of Seller and title in the Goods shall not pass to Buyer until such time as Buyer shall have paid to Seller (or its agent) the full price of the Goods, together with all other monies owed to Seller pursuant to any other contractual arrangement between Buyer and Seller, and until that time Buyer acknowledges that he is in possession of the Goods solely as trustee in a fiduciary capacity for Seller, and:**

7.3.1 Buyer shall at its own expense ensure that the Goods are stored in good condition, and kept identifiably separate whether on Buyer's or third party premises;

7.3.2 Buyer may sell the Goods in the ordinary course of business provided always that Buyer shall hold in trust and pay to Seller on demand the proceeds of any such sale to the extent that any monies are owed by Buyer to Seller on any account (Buyer shall not be the agent of Seller in relation to any such resale) but shall not otherwise (and shall not purport to) sell, mortgage, encumber or part with possession of the Goods or allow any lien or encumbrance to arise over them.

7.4 Buyer grants Seller an absolute right of access to enter Buyer's or third party premises where Goods are stored, without notice to Buyer in order to permit Seller to inspect, audit, collect and/or repossess the Goods.

7.5 If Buyer breaches any of these Conditions of Sale, then the right of Buyer to sell the Goods belonging to Seller will immediately cease. In the event of such breach, Buyer shall (at its cost) deliver the Goods to Seller and Buyer shall procure that Seller shall (without prejudice to any other rights) have the right to enter any place where the Goods may be stored and repossess any of the Goods.

**8. RESALE OF GOODS**

8.1 It shall be the responsibility of Buyer to ensure that the Goods: are rotated so that the oldest are sold first and in any event before the "Best before Date" which is marked on their respective Containers; until removed, remain in the Containers in which they are supplied and all labels, names, barcodes, reference marks and numbers and instruction are not removed, altered or covered at any time;

8.2 are stored and sold in compliance with the requirements of all governmental and competent bodies relating to the sale and storage of such Goods and in accordance with any reasonable instructions provided by Seller.

**9. PAYMENT**

9.1 The Goods are sold subject to payment (for which time shall be of the essence). Seller may invoice Buyer for the Goods on or at any time after notice by Seller that the Goods (or any instalment thereof) are ready for despatch from its premises (and any such invoice shall be deemed to be notice thereof).

9.2 Notwithstanding any provisional credit advanced to Buyer pursuant to paragraph 10.2, Seller may at any time at its sole discretion demand payment in cash on delivery and Seller shall not be bound to give up possession of or deliver the Goods until it has received payment.

9.3 Buyer shall pay the full amount invoiced to it by Seller on the due date by bank or cash and free of all deductions and/or any set off or counterclaim which Buyer may have or purport to have.

9.4 All invoices shall be paid in the currency stated on the invoice. In the event that Buyer purports to pay for the Goods in any other currency, Seller may in its discretion accept such payment and Buyer shall indemnify Seller against any loss on currency conversion and all currency transaction charges.

**10. ARRANGEMENTS AND INSOLVENCY OF BUYER**

10.1 Buyer hereby agrees and acknowledges that: (i) Seller shall be entitled to make any credit reference or other enquiries relating to Buyer that Seller considers appropriate; and (ii) details of how Buyer conducts its account with Seller may be recorded with a credit reference agency and may be shared with other suppliers and creditors for the purpose of assessing further applications for credit by Buyer and for debt tracing and fraud prevention.

10.2 Any provisional credit allowed to Buyer shall be subject to the creditworthiness of Buyer being established to Seller's satisfaction in accordance with paragraph 10.1. If Seller, at its sole discretion, is not satisfied as to Buyer's creditworthiness at any time, Seller reserves the right to withdraw any such provisional credit and impose credit terms acceptable to Seller or to close Buyer's account without notice, including the right to demand immediate payment of all sums then outstanding by Buyer to Seller.

10.3 If Buyer's payment is overdue, Seller has the right to:

10.3.1 charge Buyer interest on all sums due in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 from the date of due payment until the date of actual payment including any period after the date of any judgment;

10.3.2 upon an account being passed to debt collectors for collection, levy an additional collection charge of 5% of such accounts of Buyer in addition to any interest payable; and

10.3.3 immediately terminate all Contracts with Buyer.

10.4 Buyer shall indemnify Seller against all costs, expenses (including legal expenses) and losses incurred by Seller in recovering any unpaid sum or recovery of any Goods.

10.5 If any cheque or direct debit due by Buyer to Seller is dishonoured, Seller may also levy a reasonable charge against Buyer's account to cover bank charges.

10.6 The failure of Buyer to pay any part of the price of the Goods when due shall entitle Seller to:

10.6.1 treat such failure as a repudiatory and/or material breach of the whole Contract which shall entitle the Seller to rescind the Contract and to recover damages for such breach of Contract;

10.6.2 suspend further deliveries of Goods to Buyer, until payment is received in full;

10.6.3 immediately remove, cancel or withdraw any discount, incentive or benefit (including on any other orders placed by Buyer) and re-invoice Buyer for the Goods at the full price stated in its then current price list (any discount from the list price is given on the basis that payment is made on or before the date specified); to set off the amount of any unpaid invoice for the Goods against any discount, incentive or benefit accrued or accruing due; and to demand the immediate repayment of any discount, incentive or benefit received by Buyer during the 12 month period immediately preceding such breach (whether remedied or not) and which Buyer hereby agrees to repay; and

10.6.4 enter on to Buyer's premises to retrieve any Goods in respect of which title has not passed to Buyer.

10.7 Notwithstanding any credit period allowed by Seller, the whole of the price of all Goods bought or agreed to be bought by Buyer shall fall due and payable on demand immediately on the happening of any of the following events:

10.7.1 any threat or refusal by Buyer to pay any sum due to Seller on the due date for payment;

10.7.2 if Buyer ceases or threatens to cease carrying on its business or Buyer becomes apparently insolvent or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 and/or is unable to or admits in writing its inability to pay its debts as and when they fall due;

10.7.3 the commencement of any legal proceeding or the taking of any steps (including, without limitation, the making of an application or the giving of any notice) for the winding-up, liquidation, bankruptcy, dissolution, reorganisation or insolvency or other similar process of Buyer or for the appointment of any administrator, administrative receiver, liquidator, administrator, trustee or receiver or of a receiver by Buyer of any of its revenues or assets in any jurisdiction or Buyer seeking, declaring or becoming entitled to any moratorium on the payment of its debts;

10.7.5 if Buyer convenes a meeting or takes any steps for the purpose of making an arrangement or composition for the benefit of its creditors (including, without limitation, signing a trust deed); or

10.7.6 the levying or threat of execution of any distress or diligence on any asset of Buyer or a third party encumbrance or landlord taking possession of any of the revenues or assets of Buyer for non-payment or otherwise or any security created by Buyer becoming enforceable.

10.8 The Seller shall be entitled to treat the happening of any of the events detailed in paragraph 10.7 as a repudiatory and/or material breach of the whole Contract which shall entitle the Seller to rescind the Contract and to recover possession of the Goods belonging to the Seller and damages for loss and expenses incurred.

**11. MONEY LAUNDERING**

11.1 Seller reserves the right to require confirmation of the identity of Buyer in accordance with the requirements of the Money Laundering Regulations 2007 as amended (or similar type legislation in any applicable jurisdiction) and to withhold Goods until receipt of such confirmation.

11.2 Seller reserves the right at any time to refuse cash payments and will not in any event accept cash payments of £5,000 or more (or the equivalent in other currencies).

**12. RETURNABLE PACKAGING, DISPENSE EQUIPMENT, CONTAINERS AND POS MATERIAL**

12.1 All Returnable Packaging and Dispense Equipment and Containers supplied by Seller to Buyer shall remain the property of Seller or its contractor but shall be at Buyer's risk while on Buyer's premises or under its custody or control and Buyer shall hold the Returnable Packaging and Dispense Equipment and Containers on trust for the Seller and shall not sell, assign, pledge, charge, underlet or in any way part with possession of any of it. Buyer hereby grants to Seller an irrevocable right of access to Buyer's premises at reasonable times and intervals and after giving reasonable notice for the purpose of inspecting or removing any Returnable Packaging and Dispense Equipment and Containers. Returnable Packaging shall be returned immediately. Seller shall be entitled to charge Buyer £30 for each keg (regardless of the size of the keg) returned to Seller.

12.2 In no circumstances shall Buyer be entitled to remove any equipment from an establishment to which it has been supplied or move it to another part of the establishment except with the approval of and under the control of Seller. Buyer shall not permit or suffer any third party to remove, repair or modify in

any way Dispense Equipment supplied by Seller, except with the express authority of Seller.

12.3 Buyer shall be obliged to arrange and supply electricity for Dispense Equipment where necessary. Buyer shall ensure that Dispense Equipment supplied to or under the charge of Buyer is maintained in good repair and condition, is kept in accordance with all relevant safety standards and instructions, is insured with a reputable insurer from the time of delivery in the name of and for the benefit of Seller and is returned to Seller when no longer used by Buyer with Seller's products supplied hereunder.

12.4 Dispense Equipment supplied by Seller is not compatible with equipment of other product suppliers and must not be interchanged with any such equipment. The only products which may be dispensed through Dispense Equipment provided by Seller shall be those draught products supplied by Seller for which the Dispense Equipment was installed. In the event that products not supplied by Seller are dispensed through such Dispense Equipment Seller shall be entitled to remove such Dispense Equipment or charge for its use.

12.5 Seller will not accept any liability whatsoever for loss, damage, nor (except arising out of Seller's negligence) death or injury arising directly or indirectly out of any interchange or attempted interchange of Seller's Dispense Equipment with equipment of other product suppliers and Buyer will indemnify Seller against: (i) any loss suffered by Seller; and (ii) any action, claim, demand or proceeding against Seller arising out of any such interchange or attempted interchange.

12.6 Buyer shall be responsible for all loss and theft of and damage to all Dispense Equipment and Returnable Packaging. Where the Dispense Equipment or Returnable Packaging is lost, damaged or stolen, or if Buyer fails to return any Dispense Equipment or Returnable Packaging in a like-for-like state, or at all, Seller shall be entitled to charge Buyer the cost of replacement as for the benefit of Seller and to the extent the cost to Seller of replacing lost Dispense Equipment or Returnable Packaging and the repair of any damage to Dispense Equipment or Returnable Packaging while it is in Buyer's custody or in transit.

12.7 Seller shall be entitled to levy a deposit charge from time to time in respect of Returnable Packaging and Dispense Equipment and Containers. Credit against such deposit will be given for the return in good condition of the same. In respect of Containers for which no deposit is charged Seller shall be entitled to retain such deposit until the Buyer's return of the same or not returned within such period as Seller may specify, or are not returned in good condition.

12.8 Buyer shall comply with Seller's reasonable guidelines as to storage, handling and dispensing of the Goods from time to time.

12.9 It is the responsibility of Buyer to ensure that returned Dispense Equipment or Returnable Packaging is noted on each related delivery note. Buyer's signature and seal of approval and affirmation of payment of any invoice shall be conclusive evidence that it agrees the accuracy thereof.

12.10 Any point of sale material supplied by Seller is for use by Buyer for business purposes relating to the Goods only and is returnable on demand by Seller.

**13. SELLER'S LIABILITY**

13.1 **These Conditions of Sale set out Seller's entire liability in respect of**

13.2 **Seller's liability under these Conditions of Sale or otherwise shall be in lieu and to the exclusion of all other warranties, conditions, terms and liabilities express or implied, statutory or otherwise in respect of the quality or the fitness for any particular purposes of the Goods or services or otherwise, notwithstanding any advice or representation to Buyer, all liability in respect of which, howsoever arising, is expressly excluded, except as provided in paragraph 13.5 of these Conditions of Sale.**

13.3 **Seller shall under no circumstances whatever be liable to Buyer, whether in contract, delict or tort (including negligence), breach of statutory duty, or otherwise, for any loss of actual or anticipated profit, loss of business, loss of contracts, loss of revenues, loss of anticipated savings, depletion of goodwill or for any special, indirect or consequential damage of any nature whatsoever, howsoever arising.**

13.4 **Seller's liability (whether in contract, delict or tort (including negligence), breach of statutory duty, or any other form of action) for losses or damage whether direct or (without prejudice to paragraph 13.3 of these Conditions of Sale) indirect, foreseen, foreseeable or known, however arising shall, except as provided in paragraph 13.5 of these Conditions of Sale, be limited to the price paid by Buyer (exclusive of all charges and taxes referred to in paragraph 4.2 of these Conditions of Sale) to Seller for the Goods that are the subject matter of Buyer's claim.**

13.5 **Nothing contained in these Conditions of Sale shall restrict or exclude Seller's liability: (i) for death or personal injury caused by Seller's negligence; (ii) under Part 1 of the Consumer Protection Act 1987 or section 12 of the Sale of Goods Act 1979 (as amended); (iii) for fraudulent misrepresentation; or (iv) for other liability that cannot be excluded under applicable law.**

13.6 **The parties acknowledge that the exclusions and limitations of liability contained in this paragraph 13.5 are fair and reasonable in the light of the Goods or services to be provided and the prices payable by Buyer. Subject to paragraph 13.5, but save as expressed herein, Seller shall not be under any liability howsoever arising in respect of any claim, action or proceedings brought by Buyer later than 2 years following the date the cause of action arose.**

13.8 **Seller shall be under no liability to any purchaser of the Goods from Buyer.**

**14. BUYER'S INDEMNITY**

Subject to paragraph 13.5 of these Conditions of Sale, Buyer shall indemnify Seller in respect of all damage, injury or loss occurring to any person or property and against all actions, suits, claims, demands, charges or expenses in connection therewith arising from the condition or use of the Goods (or, where relevant, the provision of the services) in the event and to the extent that the damage, injury or loss shall have been occasioned partly or wholly by the act, omission, negligence or carelessness of Buyer or its servants, agents or by any breach by Buyer of its obligations to Seller hereunder.

**15. PRODUCT RECALL**

15.1 In the event of a product recall, and if required by Seller, Buyer will enforce Seller's measures (as notified to Buyer) covering product recall, and will cooperate with Seller to ensure that the product recall is dealt with promptly and effectively.

15.2 Buyer will immediately report to Seller any defect or possible defect in the Goods which Buyer should reasonably be aware of, to ensure the safety of Buyer's customers.

**16. NOTICES**

Any notice given under the Contract shall be in writing in English and shall be sent by pre-paid ordinary post (airmail if to an address outside the country of posting) or personal delivery to the registered office or principal place of business of the recipient, for the attention of the Legal Department, or such other address as may be notified by a party hereto to the other party hereto in writing. Any notice given according to the above procedure shall be deemed to have been given at the time of delivery, if delivered by hand, or three working days from the date sent, if sent by post.

**17. FORCE MAJEURE**

Neither party hereto shall be liable for any failure or delay in the performance of its obligations under the Contract (other than an obligation to pay any sums due under the Contract) which is caused by circumstances beyond its reasonable control.

**18. INTELLECTUAL PROPERTY RIGHTS**

All intellectual property rights in the Goods shall remain the property of Seller or its licensors. Buyer shall not acquire any intellectual property rights, whether by licence or otherwise, relating to the Goods in any way and may not copy or imitate the Goods or do or omit to do, or permit any third party to do or omit to do, anything which may damage such intellectual property rights in any way.

**19. GOVERNING LAW**

These Conditions of Sale, the Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, Scots law, and the parties irrevocably submit to the non-exclusive jurisdiction of the Scottish courts.

**20. USE AND DISCLOSURE OF PERSONAL DATA**

Buyer consents to the processing by or on behalf of Seller of personal data (as defined by the Data Protection Act 1998) supplied by Buyer or held by Seller for the purposes of, without limitation, making any enquiries as to Buyer's creditworthiness and the creditworthiness of persons connected with Buyer's credit account and processing any orders. Unless Buyer notifies Seller in writing, Buyer consents to the use of such personal data for direct marketing purposes and disclosure by Seller to third parties for marketing purposes. Buyer's statutory rights under the Data Protection Act 1998 shall remain unaffected.