

The customer's attention is drawn in particular to the provisions of clause 9

## 1 INTERPRETATION

1.1 In these Conditions, the following definitions apply:

"Business Day" means a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

"Conditions" means the terms and conditions set out in this document.

"Contract" means the contract between the Supplier and the Customer for the sale and purchase of the Goods in accordance with these Conditions.

"Customer" means the person, firm or company who purchases the Goods from the Supplier.

"Force Majeure Event" means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable.

"Goods" means the goods (or any part of them) set out in the Order.

"Order" means the order by the Customer for the Goods.

"Supplier" means The Leeds Brewery Company Limited (registered in England and Wales with company number 05741919).

1.2 A person includes a natural person, corporate or unincorporated body.

1.3 A reference to a party includes its personal representatives, successors or permitted assigns.

1.4 A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

1.5 Any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

1.6 A reference to writing or written includes e-mails but excludes faxes.

## 2 BASIS OF CONTRACT

2.1 These Conditions apply to the Contract to the exclusion of any other terms that Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.2 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer shall ensure that the terms of the Order submitted by the Customer are complete and accurate.

2.3 The Order shall only be deemed to be accepted when the Supplier issues a written or oral acceptance of the Order or, if earlier, upon the Customer accepting delivery, at which point the Contract shall come into existence.

2.4 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Supplier which is not set out in the Contract.

2.5 Any samples, drawings, descriptive matter, or advertising issued by the Supplier and any descriptions or illustrations contained in the catalogues or brochures of the Supplier are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force.

2.6 A quotation for the Goods given by the Supplier shall not constitute an offer.

## 3 GOODS

3.1 The Goods are described in the Supplier's brochure.

3.2 The Supplier reserves the right to amend the specification of the Goods if required by any statute, regulation or law.

3.3 The Supplier acknowledges that it shall take all practical steps and shall use its reasonable endeavours to procure that its own customers take all practical steps to ensure that the Goods are not the subject of any promotions or activity that are otherwise than in accordance with guidance published by the Portman Group and the British Beer and Pub Association (or any successor bodies) relating to responsible drinking and promotions.

## 4 DELIVERY

4.1 The Supplier shall ensure that each delivery of the Goods is accompanied by a delivery note which shows all relevant reference numbers of the Customer and the Supplier, the type and quantity of the Goods, and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered.

4.2 The Supplier requires the Customer to return all packaging materials which are not stated to be non-returnable. The Customer shall under no circumstances acquire title to such packaging material. The Customer shall make any such packaging materials available for collection at such times as the Supplier shall reasonably request. Returns of packaging materials shall be at the expense of the Supplier. The Supplier reserves the right to charge the Customer a price for any packaging materials not returned in a sound condition after a reasonable time and to enter upon any premises of the Customer at any reasonable time for the purpose of collecting such packaging materials.

4.3 The Supplier shall deliver the Goods to or make the Goods available for collection at the location set out in the Order or such other location as the parties may agree ("Delivery Location") at any time after the Supplier notifies the Customer that the Goods are ready. Delivery of the Goods shall be completed on the arrival of the Goods at the Delivery Location.

4.4 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods or failure to deliver the Goods that is caused by a Force Majeure Event or the failure of the Customer to provide the Supplier with adequate delivery instructions.

4.5 If the Supplier fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods.

4.6 If the Customer fails to take delivery of the Goods within 3 Business Days of the Supplier notifying the Customer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or the failure of the Supplier to comply with its obligations under the Contract:

4.6.1 delivery of the Goods shall be deemed to have been completed at 9:00 am on the third Business Day following the day on which the Supplier notified the Customer that the Goods were ready; and

4.6.2 the Supplier may store the Goods until delivery takes place, and may charge the Customer for all related costs and expenses (including insurance and costs of redelivery).

4.7 If 5 Business Days after the Supplier notified the Customer that the Goods were ready for delivery the Customer has not taken delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.

4.8 The Supplier may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate Contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

## 5 QUALITY

5.1 The Supplier warrants that on delivery the Goods shall:

5.1.1 be free from material defects in material and manufacture;

5.1.2 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and

5.1.3 be fit for any purpose held out by the Supplier.

5.2 The Customer acknowledges that the Goods are perishable and as such the Customer must notify any non-compliance with the warranty set out in clause 5.1 prior to the best before date for the relevant Goods.

5.3 Subject to clause 5.4, if the Customer gives the Supplier notice in accordance with clause 5.2 and:

5.3.1 the Supplier is given a reasonable opportunity of examining such Goods; and

5.3.2 the Customer (at the Supplier's request) returns such Goods to the Supplier's place of business at the Supplier's cost, the Supplier shall, at its option replace the defective Goods, or refund the price of the defective Goods in full.

5.4 The Supplier shall not be liable for failure of the Goods to comply with the warranty set out in clause 5.1 if:

5.4.1 the defect arises because the Customer failed to follow good trade practice regarding the storage of the Goods; or

5.4.2 the defect arises as a result of wilful damage, negligence, or abnormal storage or working conditions; or

5.4.3 the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

5.5 Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the failure of the Goods to comply with the warranty set out in clause 5.1.

5.6 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

5.7 It is the Customer's responsibility to rotate Goods so that the oldest product is sold first and to ensure that Goods are handled and resold in accordance with good trade practice. Unless the prior written approval of the Supplier shall have been given, equipment owned by the Supplier shall not be used to dispense products other than those supplied by or on behalf of the Supplier.

5.8 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.

## 6 TITLE AND RISK

6.1 The risk in the Goods shall pass to the Customer on completion of delivery.

6.2 Title to the Goods shall not pass to the Customer until the Supplier has received payment in full (in cleared funds) for:

6.2.1 the Goods; and

6.2.2 any other goods or services that the Supplier has supplied to the Customer in respect of which payment has become due.

6.3 Until title to the Goods has passed to the Customer, the Customer shall:

6.3.1 hold the Goods on a fiduciary basis as Supplier's bailee;

6.3.2 store the Goods in accordance with good trade practice and separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;

6.3.3 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

6.3.4 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;

6.3.5 notify the Supplier immediately if it becomes subject to any of the events listed in clause 8.2; and

6.3.6 give the Supplier such information relating to the Goods as the Supplier may require from time to time,

but the Customer may resell or use the Goods in the ordinary course of its business.

6.4 The Supplier shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed to the Customer.

6.5 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 8.2, or the Supplier reasonably believes that any such event is about to happen, then, provided that the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy the Supplier may have, the Supplier may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

## 7 PRICE AND PAYMENT

7.1 The price of the Goods shall be the price agreed between the parties and may include a volume discount if agreed by the Supplier at the point of Order.

7.2 The Supplier may increase the agreed price of the Goods to reflect any increase in the cost of the Goods that is due to:

7.2.1 any factor beyond the Supplier's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs); or

7.2.2 any delay caused by any failure of the Customer to give the Supplier adequate or accurate information or instructions.

7.3 Unless otherwise agreed, the price of the Goods is inclusive of the costs and charges of packaging, insurance and transport.

7.4 The price of the Goods is exclusive of amounts in respect of value added tax ("VAT"). The Customer shall pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods.

7.5 The Customer shall pay the Supplier's invoice for the Goods in full and in cleared funds on delivery unless credit terms are agreed with the Supplier in which case the Customer shall pay the invoice in full and in cleared funds within the payment period agreed. Payment shall be made to the bank account nominated by the Supplier. Time of payment is of the essence.

7.6 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment (due date), then the Customer shall pay interest on the overdue amount at the rate of 4% per annum above the base rate of Bank of England from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

7.7 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against the Supplier in order to justify withholding payment of any amount. The Supplier may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

## 8 THE CUSTOMER'S INSOLVENCY OR INCAPACITY

8.1 If the Customer becomes subject to any of the events listed in clause 8.2, or the Supplier reasonably believes that the Customer is about to become subject to any of them, then, without limiting any other right or remedy available to the Supplier, the Supplier may cancel or suspend all further deliveries under the Contract or under any other contract between the parties without incurring any liability to the Customer, and all outstanding sums in respect of Goods delivered to the Customer shall become immediately due.

8.2 For the purposes of clause 8.1 and 6.3.5, the events are:

8.2.1 the Customer suspends, or threatens to suspend, payment of its

debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;

8.2.2 the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;

8.2.3 (being an individual) the Customer is the subject of a bankruptcy petition or order;

8.2.4 a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;

8.2.5 (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer;

8.2.6 (being a company) a floating charge holder over the Customer's assets has become entitled to appoint or has appointed an administrative receiver;

8.2.7 a person becomes entitled to appoint a receiver over the Customer's assets or a receiver is appointed over the Customer's assets;

8.2.8 any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 8.2.1 to clause 8.2.7 (inclusive);

8.2.9 the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business; and

8.2.10 (being an individual) the Customer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.

8.3 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

## 9 LIMITATION OF LIABILITY

9.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:

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

9.1.2 fraud or fraudulent misrepresentation; or

9.1.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979; or

9.1.4 any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.

9.2 Subject to clause 9.1:

9.2.1 the Supplier shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or for any indirect or consequential loss arising under or in connection with the Contract; and

9.2.2 the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed 100% of the price of the Goods.

## 10 FORCE MAJEURE

Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event.

## 11 GENERAL

11.1 The Customer may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the Supplier's prior written consent.

11.2 Any notice or other communication under or in connection with the Contract shall:

11.2.1 be in writing, addressed to a party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing, and shall be delivered personally, sent by pre-paid first-class post, recorded delivery, or e-mail.

11.2.2 be deemed to have been received: if delivered personally, when left at the address referred to in clause 11.2.1; if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting; or, if sent by e-mail, one Business Day after transmission.

11.2.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

11.3 If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.

11.4 A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

11.5 A person who is not a party to the Contract shall not have any rights under or in connection with it.

11.6 Except as set out in these Conditions, any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by the Supplier.

11.7 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, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.