

TERMS OF SALE

March 2022

1 Definitions

- "Containers"** means casks, kegs, pallets, returnable bottles and cases and gas cylinders.
- "Contract"** means a contract between the Supplier and the Customer for the supply of Products in accordance with these Terms.
- "Customer"** means the person, company or firm who purchases the Products from the Supplier.
- "Dispense Equipment"** means dispense equipment for draught products.
- "Insolvency Type Event"** means any event in which the Customer compounds with or executes an assignment for the benefit of its creditors, has a bankruptcy order against it, enters into voluntary or compulsory liquidation, has an administrator or administrative receiver appointed over all or part of its assets or takes or suffers any similar action in consequence of debt or becomes insolvent.
- "Order"** means the Customer's order for the supply of Products in any form or method, as the case may be.
- "Products"** means the products and/or materials (or any part of them) set out in the Order including any Containers and Dispense Equipment which are to be supplied to the Customer by the Supplier in accordance with these Terms.
- "Supplier"** means Matthew Clark Bibendum Limited registered in England and Wales with company number 02550982.
- "Terms"** means these terms and conditions as amended from time to time by the Supplier in accordance with clause 16.6.

2 Orders

- 2.1 An Order constitutes an offer by the Customer to purchase the Products in accordance with these Terms. The Supplier may acknowledge receipt of the Customer's Order but this does not mean that the Order has been accepted.
- 2.2 The Supplier's acceptance of the Order is subject to the availability of the Products and shall take place at the time the Products are dispatched for delivery or are made available for collection, at which point a Contract shall be formed.
- 2.3 The Supplier reserves the right to reject an Order if it does not fulfil the Supplier's minimum order value (which may be imposed by the Supplier from time to time).
- 2.4 These Terms apply to the Contract to the exclusion of any other terms that the Customer may seek to impose or incorporate (including, without limitation, any terms on the Customer's order form or similar document) or which may be implied by trade, custom, practice or course of dealing.
- 2.5 Unless the Supplier expressly elects otherwise, any Contract between it and the Customer for the supply of Products shall remain in existence notwithstanding any exercise by the Supplier of its rights under clauses 9, 10.1.1 or 11.

3 Delivery

- 3.1 Delivery of the Products shall be completed once the Products are unloaded by the Supplier at the Customer's premises or agreed place of delivery (where the Supplier arranges transport) or once the Products are loaded by the Customer or its agent (where the Customer arranges collection of the Products).
- 3.2 The Customer shall at all times comply with the Supplier's reasonable delivery or collection instructions.
- 3.3 Any dates quoted for delivery of the Products are estimated only and the time of delivery is not of the essence.
- 3.4 The Supplier shall not be liable for any delay in delivery of the Products or any loss or damage (including, without limitation, any loss of profit, sales, goodwill, business and/or contract) arising out of the Supplier's delay or failure in delivering the Products or making the Products available for collection.
- 3.5 The Supplier reserves the right to deliver the Products in instalments at its sole discretion. Each instalment shall be invoiced, paid for separately and shall constitute a separate Contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment or Contract.
- 3.6 The Supplier may during any periods of shortage due to causes beyond its control, supply the Products on a pro rata basis among its customers in such a manner as may be deemed equitable in the sole judgement of the Supplier and without any liability.
- 3.7 The Customer shall immediately inspect the Products on delivery and shall be entitled to reject any Products that have been delivered in excess or in error or which are damaged, missing or out of date, provided that the Customer endorses the delivery document at the time of delivery.
- 3.8 Unless inspected, notified and rejected by the Customer pursuant to clause 3.7, all Products delivered shall be deemed accepted and the Contract shall be treated as fully performed by the Supplier.
- 3.9 Except as set out in clause 3.7, if the Customer refuses or fails to take delivery of the Products or, where the Customer or its agent is to collect the Products from the Supplier and has not done so within three working days after the agreed collection date, the Supplier will be entitled to (at its sole discretion) store the Products at the risk of the Customer and the Customer shall in addition to the price payable under the Contract, pay for all related costs and expenses of such storage and redelivery (including, without limitation, insurance and carriage).
- 3.10 Except as set out in clauses 5, 11 and 13, the Products cannot be returned for any reason unless agreed in advance by the Supplier in writing.

4 Title and Risk

- 4.1 The risk in the Products shall pass to the Customer on completion of delivery in accordance with clause 3.1 and shall be and remain at the Customer's risk at all times unless and until the Supplier has retaken possession of them.
- 4.2 The Supplier shall retain title to and ownership of all Products, until, subject to clause 5, it has received payment in full of all sums due from the Customer. If payments received from the Customer are not stated to refer to a particular invoice the Supplier may appropriate such payments to any outstanding invoice.
- 4.3 Until title in the Products passes to the Customer pursuant to clause 4.2, it may resell the Products in the ordinary course of its business (but not otherwise) provided always that the Customer shall hold in trust and to the extent that any monies are owed by the Customer, pay to the Supplier on demand any proceeds of sale. The Customer shall resell the Products as principal and not as agent of the Supplier.
- 4.4 Until their resale the Customer shall hold the Products in satisfactory condition as the Supplier's bailee, keep them secure, separate from any other products and identifiable as the Supplier's property and shall not charge, pledge or deal with them or allow any lien or other interest to arise over them.

5 Containers and Dispense Equipment

- 5.1 The Customer acknowledges that delivery of the Products may include Containers and Dispense Equipment and title in such Containers and Dispense Equipment shall not pass to the Customer.
- 5.2 The Customer must at all times ensure that:
- 5.2.1 all empty Containers are made available for collection by the Supplier or its agent and such collection may take place at any time and without notice. The Supplier shall not be liable for any storage, handling or other charges for Containers awaiting collection; and
- 5.2.2 the Dispense Equipment is regularly cleaned and is maintained in good working order, and is made available for collection by the Supplier or its agent in accordance with the terms of its provision, having notified the Supplier that it is no longer in use.
- 5.3 Containers and Dispense Equipment are at the Customer's risk from the point of delivery until they are collected by the Supplier or its agent. The Supplier reserves the right to levy a deposit charge from time to time, and charge for any Containers and/or Dispense Equipment which are not returned, or are returned damaged or in a poor or unusable condition, or are only returned after an unreasonable delay. Credit against any deposit levied will be given for return in good condition of the same.

6 Price

- 6.1 The price payable for the Products (excluding Products supplied for export) shall be as stated in the Supplier's current price list at the date of delivery unless otherwise agreed in writing by the Supplier.
- 6.2 Any price quotation provided by the Supplier shall not constitute an offer and is only valid for a period of 14 working days from its date of issue after which the Supplier may alter such quotation (or any part of it) without notice to the Customer.
- 6.3 All prices stated by the Supplier (whether generally or in any Customer specific documentation) are subject to alteration without prior notice and will be reviewed by the Supplier at least once in each calendar year. In particular (and without limiting the foregoing) prices are subject to alteration to reflect changes to supplier pricing, supply chain, duties, taxes, levies, import costs, transport costs, fuel costs, customs clearances and/or foreign exchange rates.
- 6.4 The Customer acknowledges that there may be errors on any pricing notified by the Supplier and where this is the case, the Supplier shall provide a corrected invoice to the Customer rectifying any error. The Customer shall be responsible for settling such invoice in the normal manner and in accordance with these Terms.
- 6.5 Subject to clause 6.6, and unless otherwise agreed in writing by the Supplier, the price of the Products is inclusive of all duties, standard packaging and delivery, and exclusive of any special inspection or delivery requirements, any additional transportation costs imposed by law and value added tax, all of which shall be for the account of the Customer.
- 6.6 Where Products are supplied under bond, the Customer shall be responsible for any duties. Where Products are supplied for export, the Supplier's published export price list shall apply which excludes all costs of export. The Supplier's sole responsibility is to make the Products available to the Customer at the chosen delivery destination. All risk in the Products shall pass to the Customer after they leave the Supplier's premises and Section 32(3) of the Sale of Goods Act 1979 shall not apply. Responsibility for the customs clearance, duties and complying with all laws and regulations governing the importation, handling, use and re-sale of the Products shall be borne by the Customer.

7 Payment

- 7.1 The Supplier may invoice the Customer at any time before delivery or collection of the Products and the Customer shall make payment in pounds sterling in cleared funds prior to the date of such delivery or collection to the account stated in the Supplier invoice. The Customer acknowledges that any amounts due to the Customer by the Supplier shall not affect the Customer's obligations under this clause 7.
- 7.2 All amounts due to the Supplier shall be paid in full by the Customer without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law). Time for payment shall be of the essence of the Contract.
- 7.3 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time ("VAT"). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as is chargeable on the supply of the Products at the same time as payment is due for the Products.

8 Credit Accounts

- 8.1 The Supplier may, at its sole discretion, establish a credit account for the Customer. A credit account shall only become operational after the Supplier has confirmed in writing that such a facility will be available to the Customer and shall be subject to any additional terms and conditions notified by the Supplier. The Supplier shall be entitled, at its sole discretion, to refuse or at any time withdraw a credit account without giving reasons.
- 8.2 If the Customer has a credit account pursuant to clause 8.1, the Customer shall make payment in full for the Products in pounds sterling and in cleared funds in accordance with the credit terms and on the date set out in the Supplier invoice. The Supplier shall be entitled to invoice the Customer for each Order at any time after delivery or collection of the Products.
- 8.3 The Supplier may at any time and at its sole discretion demand security or suitable guarantee for or to vary the terms or method of payment before continuing with or delivering Products in satisfaction of any Order notwithstanding any subsisting agreement to provide credit to the Customer.

9 Non-Payment

- 9.1 The Customer must immediately notify the Supplier in writing if it disputes an invoice and shall continue to pay the undisputed portion of such invoice in accordance with clauses 7 and 8.
- 9.2 If the Customer fails to make any payment when due to the Supplier in accordance with these Terms (save where any invoice is disputed by the Customer in accordance with clause 9.1), then without prejudice to the Supplier's other rights, the Customer shall pay interest on the overdue amount at the rate of 8% per annum above the Bank of England's base rate.

Interest shall accrue on a daily basis from the due date until payment of the overdue amount whether before or after judgment and the Customer shall pay the interest together with the overdue amount.

9.3 Any discounts given to the Customer are subject to payment being made on or before the date specified by the Supplier. In the event of late payment the Supplier shall be entitled to remove any discounts (including those applied on any other Orders) and re-invoice the Customer for the Products at the full price stated in the Supplier's then current price list.

9.4 Any cheques or direct debits unpaid or returned by the Customer's bank shall be subject to additional charges as may be notified by the Supplier from time to time. The Supplier reserves the right to request on demand any alternative form of payment or to cancel any accounts and terms. The Customer shall indemnify the Supplier in full against all fees, costs and expenses incurred in seeking to recover such sums payable by the Customer and/or in repossessing Products belonging to the Supplier.

9.5 If payment is to be made by instalments, the failure of the Customer to pay any instalment in due time shall entitle the Supplier to treat such failure as a repudiation of the whole Contract by the Customer and to recover damages for breach of Contract and the full balance outstanding on any account between the Supplier and the Customer shall become immediately payable.

9.6 The Supplier reserves the right at any time to set off any sum due to the Supplier from the Customer against any amount due to the Customer from the Supplier, whether under the Contract or otherwise.

10 Suspension or Cancellation

10.1 If the Customer experiences an Insolvency Type Event, defaults in any payment or otherwise is in breach of its obligations to the Supplier under a Contract (or the Supplier reasonably believes that the Supplier will) then, without prejudice to any other rights or remedies, the Supplier may without penalty and by notice to the Customer:

10.1.1 immediately suspend or cancel delivery of any Products under any Order (including stopping any Products in transit); and/or

10.1.2 terminate any uncompleted part of a Contract.

10.2 Upon suspension or cancellation of an Order or termination of a Contract, the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Products supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt.

11 Recovery of Products

- 11.1 If the Customer experiences an Insolvency Type Event or if the Customer fails to make any payment when due to the Supplier in accordance with these Terms, the Supplier shall, without prejudice to any other remedies, have the right to:
- 11.1.1 enter the premises where Products may be (without prior notice), and repossess and dispose of any Products owned by the Supplier in order to discharge any sums owed to it under this or any other Contract; and
- 11.1.2 require the Customer not to resell or part with possession of any Products owned by the Supplier until the Customer has paid in full all sums owed to the Supplier under this Contract or any other contract.
- 11.2 If the Supplier notifies the Customer of its intention to recover the Products pursuant to clause 11.1, the Customer's rights under clause 4.3 shall immediately cease and the Customer shall continue to be solely responsible for the Products in accordance with clause 4.4 until such time as the Products have been returned to the Supplier.

12 Customer's Obligations

- 12.1 The Customer shall:
- 12.1.1 at all times store, handle, use and sell the Products in accordance with any instructions from the Supplier and all applicable laws and regulations from time to time (including without limitation ensuring compliance with those regulations relating to health and safety, bribery, corruption and the environment);
- 12.1.2 ensure that the terms of the Order and any Customer Materials (as defined in clause 14) are complete, accurate and meet requirements;
- 12.1.3 be responsible for checking and verifying the suitability of the Products (including any barcoding) and for its own stock control and rotation of stock;
- 12.1.4 provide the Supplier (including its employees, agents and subcontractors) with access to the Customer's premises and other facilities as reasonably required by the Supplier to deliver the Products; and
- 12.1.5 comply with any additional obligations or requirements that may be notified by the Supplier from time to time.
- 12.2 If requested by the Supplier, the Customer shall give all reasonable assistance and cooperation in locating and recovering any defective Products and preventing their sale to third parties and shall comply with any product recall procedures adopted by the Supplier and use all reasonable endeavours to ensure that its customers co-operate in a similar manner.
- 12.3 The Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Supplier or its group of companies arising out of or in connection with the Customer's breach of warranty or breach of its obligations under these Terms.

13 Quality of Products

- 13.1 Subject always to the Customer complying with its obligations under the Terms, the Supplier warrants that the Products will correspond with any description given in its price list or specification (subject to clause 13.2), be of satisfactory quality and comply with all applicable legislation governing the sale of the Products in the United Kingdom.
- 13.2 The Supplier reserves the right to amend the specification of a Product (whether already agreed with the Customer or otherwise) to reflect any changes made by the producer or manufacturer of the Product without notice.
- 13.3 The Customer must notify the Supplier immediately of any defects in a Product and not later than two days upon becoming aware of such defect. Any Products identified with a defect must be made available to the Supplier for inspection or returned to the Supplier at the Customer's own expense (in their original condition and packaging), as the Supplier may request.
- 13.4 The Supplier shall at its discretion either refund the purchase price or provide a replacement of any Product notified to it as defective pursuant to clause 13.3 and, except as set out in clause 15, the Supplier shall otherwise have no liability in respect of a defective Product. No refund, credit or replacement will be given for any out of date Products.
- 13.5 Except as provided for in these Terms, there are no warranties, express or implied, of fitness for a particular purpose, or of any other kind except as to title. In particular, all terms and warranties which would otherwise be implied by statute or under common law (including, without limitation, the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 3, 4 and 5 of the Supply of Goods and Services Act 1982) are hereby excluded to the fullest extent permitted by law.

14 Intellectual Property Rights

- 14.1 The Customer acknowledges that the Supplier reserves all intellectual property rights in the Products and any associated merchandise or documentation (including but not limited to copyright, registered and unregistered design rights, registered and unregistered trade marks and confidential know-how). Except for the honest use of any trade marks to identify the Products, the Customer may not use any such rights without the Supplier's express written consent.
- 14.2 The Customer warrants that it has authority to supply any materials, designs and specifications (together "Customer Materials") provided by it to the Supplier and that Supplier's use of the Customer Materials shall not infringe the rights of any third party. The Customer grants to the Supplier a non-exclusive licence to use the Customer Materials.

15 Limitation of Liability

- 15.1 Nothing in these Terms shall limit any liability for death or personal injury caused by negligence, fraud or fraudulent misrepresentation, breach of the terms implied by section 12 of the Sale of Goods Act 1979 or any other liability which cannot be legally limited.
- 15.2 The Supplier shall, subject to clause 15.1, under no circumstances be liable for any loss of anticipated profit, loss of revenue, loss of business, loss of goodwill, business interruption, any economic loss, any indirect, special or consequential loss or for any third party claims whatsoever arising either from breach or non-performance of any of its obligations under a Contract or from the supply of or intended use of the Products, even if the Supplier has been advised of the possibility of such potential loss.
- 15.3 The Supplier will not, subject to clause 15.1, be liable for any loss, damage, claim, cost or expense arising from the Customer's failure to comply with its obligations under clause 12 or for any loss or damage caused to or suffered by the Customer as a direct or indirect result of the supply of the Products by the Supplier being prevented, restricted, hindered or delayed by reason of any circumstances outside the control of the Supplier including, without limitation, any export or import restrictions, quota, prohibition, changes to taxes, duties levies, customs clearances or circumstances affecting the provision of all or any part of the Products by the Supplier's usual source of supply or means of delivery.
- 15.4 The Supplier's total liability to the Customer shall not, subject to clause 15.1, exceed the price paid for the Products with respect to which the claim is made. The Supplier's total liability includes liability in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract.
- 15.5 Unless the Customer notifies the Supplier that it intends to make a claim, the Supplier shall have no liability for that event, subject to clause 15.1. The notice period for an event shall start on the day on which the Customer becomes, or ought reasonably to have become, aware of the event having occurred and shall expire three months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

16 General

- 16.1 The Contract constitutes the entire agreement and understanding of the parties and supersedes all previous oral or written representations, undertakings and agreements relating to the Products. All information contained in the Supplier's sales literature or correspondence is provided for guidance only and does not form part of the Contract. The Supplier's employees and agents are not authorised to make representations or give undertakings relating to the Products or the meaning of these Terms. The Customer confirms that it has not entered into the Contract on the basis of any representations that are not expressly incorporated in the Contract.
- 16.2 The invalidity or unenforceability of any provision of these Terms shall not affect the validity or enforceability of the remaining terms or rights under a Contract. Any invalid or unenforceable term shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted.
- 16.3 The failure of the Supplier to insist upon the strict performance of any of the Terms shall not be construed as a waiver of any such term and shall in no way affect the Supplier's right to enforce such provision later.
- 16.4 Nothing in the Contract is intended to nor shall it create any partnership, joint venture, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.
- 16.5 Save for any company in the Supplier's group of companies or any permitted assignee (which the Supplier has consented to), a party who is not a party to the Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 16.6 The Supplier reserves the right to amend or update the Terms from time to time. No variation of a Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).
- 16.7 The Supplier shall not be liable for any delay or non-performance of its obligations arising from any causes beyond its reasonable control (including without limitation: act of God, governmental act, war, flood, explosion, pandemic / epidemic).
- 16.8 The Supplier may assign or novate its rights and obligations under a Contract to any group company or to any successor to its business or assets. The Contract is personal to the Customer and may not be assigned or transferred by the Customer without the Supplier's consent. The Supplier may subcontract its obligations under a Contract provided the Supplier will be responsible to the Customer for the performance of the Contract in accordance with these Terms.
- 16.9 The Contract shall be governed by English Law and the courts of England and Wales shall have exclusive jurisdiction in relation to any dispute relating thereto.