

Magners GB 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, founts, crows, 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 draught Product and all 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 Magners GB 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 In order 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 Seller and Buyer, including any purported acceptance by Seller of any agents or sub-contractors, their agents or 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;

2.2 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.

2.3 Buyer shall not rely upon and, except in the event of fraud, Seller shall have no liability for any representation made: (i) by it, its servants or agents to Buyer, and/or (ii) in any other literature or otherwise, including 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.

2.4 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 assist Buyer in the selection of the relevant Goods. Any descriptions and/or illustrations contained in any catalogues, price lists or otherwise shall form any part of a Contract.

2.5 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 An Order shall be deemed to be accepted by Seller until the Order is confirmed by Buyer and (i) in an order'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 supplied on sale or return or by way of consignment. Once an Order is accepted by Seller, it is irrevocable and 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 Any delivery dates given by Seller are estimates only. Buyer may cancel any item not delivered within 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 constitute a separate Contract. Any failure by Seller to deliver any one or more instalments, or any failure 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 among 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, endorsements and delivery documents.

6.4 If Buyer establishes to Seller's reasonable satisfaction that the Goods are defective, Buyer's 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 produce evidence of such insurance upon the request of Seller.

7.3 The Goods shall remain the property of Seller until the 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 cost procure 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 and use the Goods.

8. REPOSSESSION 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 resold, 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 to Buyer 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 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 way of cleared funds 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 rendered in the currency relating to Buyer. 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. CREDIT 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 interest on the 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% on such accounts of Buyer in addition to any interest and legal charges payable; and

10.3.3 immediately terminate all Contracts with Buyer.

10.4 Buyer and Seller agree that Seller's insolvency costs (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 and administrative costs.

10.6 The failure of Buyer to pay any part of the price of the Goods when due shall constitute a breach of the Contract.

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 an offer of other sums due in respect of an invoice) which Buyer has received or is entitled to receive in respect of the Goods.

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

10.6.5 immediately remove, cancel or withdraw any discount, incentive or benefit (including an offer of other sums due in respect of an invoice) which Buyer has received or is entitled to receive in respect of the Goods.

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10.6.7 immediately remove, cancel or withdraw any discount, incentive or benefit (including an offer of other sums due in respect of an invoice) which Buyer has received or is entitled to receive in respect of the Goods.

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10.6.9 immediately remove, cancel or withdraw any discount, incentive or benefit (including an offer of other sums due in respect of an invoice) which Buyer has received or is entitled to receive in respect of the Goods.

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

10.6.11 immediately remove, cancel or withdraw any discount, incentive or benefit (including an offer of other sums due in respect of an invoice) which Buyer has received or is entitled to receive in respect of the Goods.

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

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

10.6.15 immediately remove, cancel or withdraw any discount, incentive or benefit (including an offer of other sums due in respect of an invoice) which Buyer has received or is entitled to receive in respect of the Goods.

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

10.6.19 immediately remove, cancel or withdraw any discount, incentive or benefit (including an offer of other sums due in respect of an invoice) which Buyer has received or is entitled to receive in respect of the Goods.

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

10.6.21 immediately remove, cancel or withdraw any discount, incentive or benefit (including an offer of other sums due in respect of an invoice) which Buyer has received or is entitled to receive in respect of the Goods.

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10.6.23 immediately remove, cancel or withdraw any discount, incentive or benefit (including an offer of other sums due in respect of an invoice) which Buyer has received or is entitled to receive in respect of the Goods.

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10.6.25 immediately remove, cancel or withdraw any discount, incentive or benefit (including an offer of other sums due in respect of an invoice) which Buyer has received or is entitled to receive in respect of the Goods.

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10.6.39 immediately remove, cancel or withdraw any discount, incentive or benefit (including an offer of other sums due in respect of an invoice) which Buyer has received or is entitled to receive in respect of the Goods.

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

10.6.41 immediately remove, cancel or withdraw any discount, incentive or benefit (including an offer of other sums due in respect of an invoice) which Buyer has received or is entitled to receive in respect of the Goods.

entitled to charge Buyer and Buyer will, on demand, pay to Seller the cost of replacement as new.

12.3 Seller shall be entitled to levy a deposit charge from time to time in respect of Returnable Packaging, Dispense Equipment and Containers. Credit against any such deposit levied will be given for the return in good condition of the same.

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

12.5 In no circumstances shall Buyer remove the Dispense 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.

12.6 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.

12.7 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.

12.8 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 or proceedings brought by Seller arising out of any such interchange or attempted interchange.

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

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.

12.11 If Seller has consented to Buyer on-supplying Goods to 3rd party customers of Buyer then, without prejudice to the foregoing provisions of paragraph 12 of these Conditions of Sale, Buyer shall procure that all Returnable Packaging, Containers and (if applicable) Dispense Equipment relating to such Goods are supplied by Buyer to 3rd party customer on the same terms as those set out in paragraph 12 of these Conditions of Sale.

12.12 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 excluded by this Contract, except as provided in paragraph 13.5 of these Conditions of Sale.

12.13 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.

12.14 Seller's liability (whether in contract, delict or tort (including negligence), breach of statutory duty, or otherwise) for losses or damage whether direct or (without prejudice to paragraph 13.5 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 (including any taxes and duties) in respect of the Goods that are the subject matter of Buyer's claim.

12.15 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 fraud; or (iv) for other liability that cannot be excluded under applicable law.

12.16 The parties agree that the exclusions and limitations of liability contained in this paragraph 13 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.

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

12.18 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 costs incurred by or for Seller in connection with 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.

12.19 **PRODUCT RECALL**

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

12.20 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.

16.1 **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.

16.2 **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.

16.3 **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, the laws of England and Wales, and the parties irrevocably submit to the non-exclusive jurisdiction of the English courts.

16.4 **USE AND DISCLOSURE OF PERSONAL DATA**

Buyer consents to the processing by or on behalf of Seller of personal data (as defined by the General Data Protection Regulation "GDPR") supplied by Buyer or connected with it for the purposes of any enquiries as to Buyer's creditworthiness for the purposes of paragraph 10, administering Buyer's credit account and processing any orders. Unless Buyer notifies Seller in writing, Buyer consents to the use of such personal data in order to send marketing messages to Buyer about similar products. Buyer's statutory rights under the GDPR shall remain unaffected.