

M&J Gleeson & Co u.c. Standard Terms and Conditions of Sale

1. DEFINITIONS AND INTERPRETATION
 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, cowlings, 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 tuber and other related equipment, including chillers and cooling equipment but excludes carbon dioxide and nitrogen 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, bottles, casks, crates, pallets and cases but excluding GKN Chp Pallets, which shall at all times remain the property of Chp UK Limited, and excluding gas cylinders and gas equipment, which shall at all times remain the property of the gas provider;
Seller means: (1) for Goods comprising beer products sold under (a) any brands owned by the C&C Group of companies, including, without limitation, Tennent's Lager, Caledonia Smooth, Heverlee, (b) any brands owned by the AB InBev Group of companies; and/or (c) the Staropramen brand, Tennent's Beer Limited (acting by its agent M&J Gleeson & Co u.c.); and (2) for all other Goods, M&J Gleeson & Co u.c. as principal (and, where relevant, its agents or sub-contractors), as the context requires.
2. GENERAL
 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 Seller and Buyer, and any purported acceptance thereof by Seller's servants or agents.
 Goods comprising beer products sold under (a) any brands owned by the C&C Group of companies, including, without limitation, Tennent's Lager, Caledonia Smooth, Heverlee, (b) any brands owned by the AB InBev Group of companies; and/or (c) the Staropramen brand are sold by Tennent's Beer Limited (acting by its agent M&J Gleeson & Co u.c.).
 All Goods sold under these Conditions of Sale are offered subject to availability.
 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.
 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 or Buyer, and/or (ii) by any third party 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.
 All descriptions and illustrations contained in any catalogues, price lists or otherwise communicated to Buyer are for illustrative purposes only and do not constitute an offer by Seller on the terms and conditions of sale. Any Nothing contained in any such descriptions and illustrations contained in any catalogues, price lists of them shall form any part of a Contract.
 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
 No Order shall be deemed accepted by Seller until the Order is confirmed as accepted by Seller's duly 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.
 Seller may vary the specification of any Goods without notice.
 Goods are not supplied on sale or return or by way of consignment, and no order is accepted by Seller until the date of delivery date. Any paragraph 3.1 of these Conditions of Sale, Buyer shall have no right to cancel the Order or, following delivery, return the Goods (except where defective).
4. PRICES
Seller reserves the right, at any time, to change the price of Goods offered for sale.
 Prices stated are exclusive of: (a) delivery charges; and (b) all import, excise, customs, duties, levies, and all value added 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
 Seller shall determine the method, date and time of any delivery.
 Any delivery dates given by Seller are estimates only. Buyer may cancel any order at any time before the estimated delivery date.
 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.
 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 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.
 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).
 Seller may during any periods of shortage due to causes beyond its control supply Goods among its customers (including the 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
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.
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.
 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 any documentary evidence. 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.
7.3 The Goods shall remain the sole and absolute property of Seller as legal and equitable owner and title in the Goods shall not pass to Buyer until such time as Buyer shall have paid to Seller the full price of the Goods together with all other charges payable by 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 bailee 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 shall conduct 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 If Buyer breaches any of these Conditions of Sale, then the right of Buyer to all the Goods shall vest in Seller immediately. 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. RESALE OF GOODS
 It shall be the responsibility of Buyer to ensure that the Goods:
 8.1 are sold to a third party;
 8.1.1 "Best before Date" which is marked on their respective Containers; and
 8.1.2 all labels, names, barcodes, reference marks and numbers and instruction are not removed, altered or covered at any time;
 8.1.3 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
 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 Buyer shall pay each invoice on or before the last Business Day of the week following the week in which the invoice is issued.
9.3 Notwithstanding paragraph 9.2 of these Conditions of Sale, Seller may at any time demand payment in cash on delivery and Seller shall not be bound to deliver the Goods until it has received payment.
9.4 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.
9.5 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. CREDIT ARRANGEMENTS AND INSOLVENCY OF BUYER
 10.1 Seller shall not 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 If Buyer's payment is overdue:
 10.2.1 Seller shall be entitled to interest on all sums due at the rate of 8% above the main financing rate of the European Central Bank from time to time from the date of due payment until the date of actual payment including any period after the date of any judgment; and upon an account being passed to debt collectors for collection, an additional collection charge of 5% will be levied on such accounts of Buyer in addition to any interest and legal charges payable.
 10.3 Seller shall be entitled to recover all costs and expenses (including legal expenses) and losses incurred by Seller in recovering any unpaid sum or recovery of any Goods.
 10.4 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.
 10.5 The failure of Buyer to pay any part of the price of the Goods when due shall entitle Seller to:
 10.5.1 suspend further deliveries of Goods to Buyer, until payment is received in full;
 10.5.2 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 discount, incentive or benefit 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 enter on to Buyer's premises to retrieve the Goods for which payment is outstanding;
 10.6 Without limiting 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 without demand immediately on the happening of any of the following events:
 10.6.1 any threat or refusal by Buyer to pay any sum due to Seller on the due date for payment;
 10.6.2 if Buyer ceases or threatens to cease carrying on its business or becomes unable to pay its debts when they fall due within the meaning of section 214 of the Companies Act 1985;
 10.6.3 the commencement of any examinership, winding-up, liquidation, bankruptcy or insolvency proceeding or the appointment of any administrator, administrative receiver, liquidator, receiver of any asset of Buyer, examiner, trustee in bankruptcy or similar official in any jurisdiction or Buyer declaring or becoming entitled to any moratorium on the payment of its debts; or
 10.6.5 the levying or threat of execution of any distress or diligence on any asset of Buyer.
11. MONEY LAUNDERING
 Seller reserves the right to require confirmation of the identity of Buyer in accordance with the requirements of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 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 any other currency).
12. RETURNABLE PACKAGING, DISPENSE EQUIPMENT, CONTAINERS AND POS MATERIAL
12.1 All Returnable Packaging, Dispense Equipment and Containers supplied by Seller shall remain the property of Seller or its contractor but shall be at Buyer's risk and Buyer shall hold all such Returnable Packaging, 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, auditing and/or re-using any Returnable Packaging, Dispense Equipment and Containers. Buyer shall return all Dispense Equipment to Seller immediately on request or, in the case of Returnable Packaging and Containers, immediately and no later than two (2) months from the date of delivery.
12.2 Buyer shall be responsible for all loss and theft of and damage to all Returnable Packaging, Dispense Equipment and Containers. Where the Returnable Packaging, Dispense Equipment or Containers is lost, damaged or re-used by Buyer, Buyer shall return any Returnable Packaging, Dispense Equipment or Containers in a like-for-like state, or at all, Seller shall be 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 or premises with the approval or consent 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 operation, is 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, demand or proceeding against 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 such storage, handling or dispensing of the Goods 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 customers on the same terms as those set out in paragraph 12 of these Conditions of Sale.
13. SELLER'S LIABILITY
13.1 These Conditions of Sale set out Seller's entire liability in respect of the Contract.
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/or statutory provisions of any kind which would otherwise apply under section 39 of the Sale of Goods and Supply of Services Act 1980), 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 not be liable in any circumstances whatever for damage to Buyer, whether contract, 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, tort (including negligence), breach of statutory duty or otherwise) for any damage or loss of action or damage whether direct or (without prejudice to paragraph 13.3 of these Conditions of Sale) indirect, foreseen, foreseeable or known, however arising shall, be limited as provided in paragraph 13.5 of these Conditions of Sale, but except 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 the 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 section 12 of the Sale of Goods Act 1893 (as amended); (iii) for fraudulent misrepresentation; or (iv) for other liability that cannot be excluded under applicable law.
13.6 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.
13.7 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 by Buyer, wholly or partly by Seller's 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 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.
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 purchase 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, Irish law, and the parties irrevocably submit to the non-exclusive jurisdiction of the Irish 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 General Data Protection Regulation "GDPR") supplied by Buyer or held by Seller for the purposes of making 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.