

express authority of Supplier or its contractor.

5.4 Customer shall be obliged to arrange and supply electricity for Dispense Equipment where necessary. Customer shall ensure that Dispense Equipment supplied to or under the charge of Customer is maintained in good repair and condition, is kept in accordance with all relevant safety standards and instructions, without limitation, and that the Dispense Equipment is returned to Supplier in the name of and for the benefit of Supplier and is returned to Supplier when no longer used by Customer with Supplier's products supplied hereunder.

5.5 Dispense Equipment supplied by Supplier is not compatible with equipment of other suppliers and must be dispensed through Dispense Equipment provided by Supplier shall be those draught products supplied by Supplier for which the Dispense Equipment was installed. In the event that product not supplied by Supplier is dispensed through such Dispense Equipment, Supplier shall be entitled to remove such Dispense Equipment or charge for its use.

5.6 Supplier will not accept any liability whatsoever for loss, damage, nor consequential losses, arising from the negligence (whether or not caused directly or indirectly of any interchange or attempted interchange of Supplier's Dispense Equipment with equipment of other product suppliers and Customer will indemnify Supplier against: (i) any loss suffered by Supplier; and (ii) any such consequential losses arising against Supplier arising out of any such interchange or attempted interchange.

5.9 Customer shall comply with Supplier's reasonable guidelines as to storage, handling, transportation and dispensing of the Products from time to time.

5.10 Any point-of-sale material supplied by Supplier is for use by Customer for business purposes relating to the Products only and is returnable on demand by Supplier. Customer shall take good and proper care of any such point-of-sale material and make good any damage or loss caused to Supplier by failure to do so.

5.11 If Supplier has consented to Customer on-supplying Products to its 3<sup>rd</sup> party customers, then, without prejudice to the foregoing provisions of clause 5.10, Customer shall ensure that any such 3<sup>rd</sup> party customers (where applicable) Dispense Equipment relating to such Products are supplied by Customer to its 3<sup>rd</sup> party customer on the same terms as those set out in clause 5.9.

**6. Price**

6.1 The price payable for the Products (excluding Products supplied for export) shall be as stated in Supplier's current price list at the date of delivery unless otherwise agreed in writing by Supplier.

6.2 Any price quotation or order by Supplier shall not constitute an offer and is only valid for a period of 14 working days from its date of issue after which Supplier may alter such quotation (or any part of it) without notice to Customer.

6.3 All prices stated by Supplier (whether generally or in any Customer specific document) are inclusive of all taxes and duties (including VAT where applicable) and will be reviewed by 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 costs, duties, taxes, levies, import costs, transport, insurance, inflation, exchange rates, interest rates and charges, and costs imposed on Supplier pursuant to a deposit return scheme, customs clearances and/or foreign exchange rates.

6.4 Customer acknowledges that the price of the Products may vary from time to time and that Supplier shall be responsible for errors on any pricing notified by Supplier and shall be responsible for the cost of any such errors. Supplier shall provide a corrected invoice to Customer rectifying any error. Customer shall be responsible for settling such errors in the normal manner and in accordance with these Terms. Any invoice errors must be notified by Customer to Supplier within 14 days of the date of Supplier's relevant invoice.

6.5 Subject to clause 6.6, and unless otherwise agreed in writing by Supplier, the price of the Products is inclusive of all duties, standard packaging and delivery and exclusive of any special inspection or delivery requirements (including special inspection and emergency deliveries) any additional transportation costs imposed by law or regulation and value added tax, all of which shall be for the account of Customer.

6.6 Where Products are supplied under bond, Customer shall be responsible for any duties and shall be responsible fully indemnified against any liability, deduction, contribution, assessment or claim incurred as a result of Customer's failure to fulfil these obligations. Where Products are supplied for export, published and unpublished price lists shall apply in respect of the Products. Supplier's sole responsibility is to package the Products available to Customer at the chosen delivery destination. All risk in the Products shall pass to Customer after they leave Supplier's premises and Section 32(3) of the Sale of Goods Act 1979 shall apply to the Products. Supplier shall be responsible for duties and complying with all laws and regulations governing the importation, handling, use and re-sale of the Products shall be borne by Customer.

6.7 Unless Customer is an approved wholesaler and is purchasing Products from Supplier without price reduction, all prices for the Products supplied by Customer are being purchased by Customer for retail sale to end consumers at an outlet owned and operated by Customer (each an "Outlet") and if the Products are sold otherwise than in an Outlet Supplier reserves the right to clawback any discounts in respect of such Products and to charge the full price stated in Supplier's then current price list in respect of those Products.

**7. Payment**

7.1 Supplier may invoice Customer at any time before delivery or collection of the Products and Customer shall make payment in pounds sterling in cleared funds prior to the date of such delivery or collection to the account stated in Supplier's invoice. Customer acknowledges that any amounts due to Customer shall be payable to Supplier's nominated bank account as stated in Supplier's invoice.

7.2 All amounts due to Supplier shall be paid in full by 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 and Customer shall be deemed to have accepted and the Contract shall be treated as fully performed by Supplier.

7.3 All amounts payable by 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 Supplier to Customer, then the VAT amount shall be included in the invoice. Supplier, pay to 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.

7.4 Supplier makes any payment or overpayment to Customer in error, such payment shall be treated as a debt owed by Customer and shall be repayable to Supplier within 28 days of Customer having made Supplier aware of the error.

**8. Credit Accounts**

8.1 Supplier may, at its sole discretion, establish a credit account for Customer. Any credit account will be subject to Supplier completing credit reference or other enquiries to its satisfaction. A credit account shall only be established if the Customer has confirmed in writing that such a credit will be available to Customer and shall be subject to any additional terms and conditions notified by Supplier. Supplier shall be entitled, at its sole discretion, to refuse or at any time withdraw a credit account without giving reason and without prejudice to any other terms and conditions of the Contract.

8.2 If Customer has a credit account pursuant to clause 8.1, 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 Supplier's invoice. Supplier shall be entitled to refuse to accept any order at any time after delivery or collection of the Products.

8.3 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 or after the delivery or collection of the Products in satisfaction of any order notwithstanding any subsisting agreement to provide credit to Customer.

**9. Money Laundering**

9.1 Supplier reserves the right to require confirmation of the identity of Customer in advance of any order or receipt of payment. In the event of Regulations 2007 as amended (or similar type of legislation in any applicable jurisdiction) and to withhold Products until receipt of such confirmation.

9.2 Supplier shall not, under any circumstances, accept payments in cash.

**10. Non-Payment**

10.1 Customer must immediately notify 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.

10.2 Customer must make any payment when due to Supplier in accordance with these Terms (save where any invoice is disputed by Customer in accordance with clause 10.1), without prejudice to Supplier's other rights. Customer shall pay interest on the overdue amount at the rate of 8% per annum above the base rate of the Bank of England.

10.3 Interest shall accrue on a daily basis from the due date until payment of the overdue amount whether before or after judgment and Customer shall pay the interest together with the overdue amount. Upon an account being passed to the debt collectors for collection, Supplier shall be entitled to levy an additional collection charge of 5% on such Customer accounts in addition to any interest and legal charges payable.

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

10.5 Any credit and incentive applied to any invoice by Supplier shall be subject to additional charges as may be notified by Supplier from time to time. Supplier reserves the right to request on demand any alternative form of payment or to cancel any accounts and terms. Customer shall indemnify Supplier against any costs (including legal costs) incurred by Supplier in recovering such sums payable by Customer and/or in repossessing Products belonging to Supplier.

10.6 If payment is to be made by instalments, the failure of Customer to pay any instalment shall entitle Supplier to terminate the Contract, with a repudiation of the whole Contract by Customer and to recover damages for breach of Contract and the full balance outstanding on any account between Supplier and Customer shall become immediately payable.

10.7 Supplier shall have the right to request any sum due to Supplier from Customer against any amount due to Customer from Supplier, whether under the Contract or otherwise.

**11. Suspension or Cancellation**

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

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

11.1.2 terminate any uncompleted part of a Contract.

11.2 Supplier shall have the right to suspend or termination of a Contract. Customer shall immediately pay to Supplier all of Supplier's outstanding unpaid invoices and interest and, in respect of Products supplied but for which no invoice has been submitted, Supplier shall submit an invoice, which shall be payable in cleared funds on receipt. In addition, Supplier shall be entitled to any discounts (retrospective or otherwise), listing fees and/or marketing support in relation to unpaid invoices, and any discounts (retrospective or otherwise), listing fees and/or marketing support which have

accrued but not yet been paid will be cancelled and any rights to these shall automatically cease.

**12. Recovery of Products**

12.1 If Customer experiences an Insolvency Type Event or if Customer fails to make any payment when due to Supplier in accordance with these Terms, Supplier shall be entitled to enter into the premises where Products are stored, to enter or appoint a contractor to enter the premises where Products are stored (without prior notice), and repossess and dispose of any Products owned by Supplier in order to discharge any sums owed to it under this or any other Contract.

12.1.1 enter or appoint a contractor to enter the premises where Products are stored (without prior notice), and repossess and dispose of any Products owned by Supplier in order to discharge any sums owed to it under this or any other Contract.

12.1.2 require Customer not to resell or part with possession of any Products owned by Supplier until Customer has paid in full all sums owed to Supplier under this Contract or any other contract.

12.1.3 Supplier reserves its intention to recover the Products pursuant to clause 12.1. Customer's rights under clause 4.4 shall immediately cease and Customer shall continue to be solely responsible for the Products in accordance with clause 4.5 until such time as the Products have been returned to Supplier.

**13. Customer's Obligations**

13.1 Customer shall:

13.1.1 at all times store, handle, use and sell the Products in accordance with any applicable laws 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);

13.1.2 ensure that the terms of the Order and any Customer Materials (as defined in clause 15) are complete, accurate and meet requirements;

13.1.3 be responsible for checking and verifying the suitability of the Products (including any barcoding) and for its own stock control and rotation of stock;

13.1.4 provide Supplier (including its employees, agents and contractors) with access to Customer's premises and other facilities as reasonably required by Supplier to deliver the Products;

13.1.5 ensure that the Products 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;

13.1.6 ensure that the Products, until resold, remain in the Containers in which they are sealed and all labels, nameplates, reference marks and numbers and instructions are not removed, altered or covered at any time;

13.1.7 comply with all applicable laws, statutes, regulations and codes (including, but not limited to, the Portman Code) from time to time in force; and

13.1.8 comply with any additional laws or requirements that may be notified by Supplier from time to time.

13.2 If requested by Supplier, Customer shall give all reasonable assistance and cooperation in locating and recovering any defective Products and preserving their condition and any other records relating to such Products. Customer shall cooperate with Supplier and use all reasonable endeavours to ensure that its customers co-operate in a similar manner.

13.3 Customer shall indemnify Supplier against all liabilities, costs, expenses and 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 (including any expenses suffered or incurred by Supplier or its group of companies arising out of or as a result of) Customer's breach of warranty or breach of its obligations under these Terms.

**14. Quality of Products**

14.1 Supplier warrants to Customer complying with its obligations under the Terms. Supplier warrants that the Products will correspond with any description given in its price list or specification (subject to clause 14.2), be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and comply with all applicable legislation governing the sale of products in the United Kingdom.

14.2 Supplier reserves the right to amend the specifications of the Products (whether already agreed with Customer or otherwise) to reflect any changes made by the producer or manufacturer of the Product without notice.

14.3 Without prejudice to clause 7.2, Customer must notify 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 Supplier for inspection or returned to Supplier at Customer's own expense (in its original condition and packaging), as Supplier may require.

14.4 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 14.3. Except as expressly stated otherwise, no refund, credit or replacement will be given in respect of a defective Product. No refund, credit or replacement will be given for any out of date Products.

14.5 Except as provided for in these Terms, there are no warranties, express or implied, in relation to the Products, including any express or implied 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 13, 14 and 15 of the Supply of Goods and Services Act 1992) are hereby excluded to the fullest extent permitted by law.

**15. Intellectual Property Rights**

15.1 Customer acknowledges that Supplier reserves all intellectual property rights in the Products, including any trademarks, patents, designs or copyrights (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 and promote the Products, Customer may not use any such rights without Supplier's express written consent.

15.2 Customer warrants that it has authority to supply any materials, designs and specifications (together "Customer Materials") provided by it to Supplier for the purpose of the Products. Supplier warrants that it has authority to use the rights of any third party. Customer grants to Supplier a non-exclusive licence to use the Customer Materials.

**16. Limitation of Liability**

16.1 The Supplier's entire liability in respect of the Contract:

16.2 Nothing in these Terms shall limit liability for: (i) death or personal injury caused by negligence; (ii) fraud or fraudulent misrepresentation; (iii) breach of the terms implied by section 12 of the Sale of Goods Act 1979; or (iv) any consequential loss or damage suffered by a third party.

16.3 Supplier shall, subject to clause 16.2, under no circumstances be liable for any loss of anticipated profit, loss of revenue or savings, loss of business, loss of goodwill, business interruption, any economic loss, any indirect, special or consequential loss or damage suffered by a third party, or any loss or damage or non-performance of any of its obligations under a Contract or from the supply of or intended use of the Products, even if Supplier has been advised of the possibility of such potential loss.

16.4 Supplier's liability pursuant to clause 16.2, be liable for any loss, damage, claim, cost or expense arising from Customer's failure to comply with its obligations under clause 13 or for any loss or damage caused to or suffered by Customer as a direct or indirect result of the supply of the Products by Supplier beyond the circumstances set out in clause 16.2, in the event of any such circumstances outside the control of Supplier including, without limitation, any export or import restrictions, quota, prohibition, changes to taxes, duties levies, customs clearances or circumstances affecting the provision of fuel or any part of the supply chain or any other circumstances outside of Supplier's control.

16.5 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, industrial action, war, adverse weather or any other event which causes a total or partial breakdown of plant or equipment, delays in supply chain, material shortages).

16.6 Supplier's total liability to Customer shall not, subject to clause 16.2, exceed the price paid for the Products with respect to which the claim is made. Supplier's liability shall not be limited by any provision of the Contract (including negligence), misrepresentation, breach of statutory duty, or otherwise, arising under or in connection with the Contract.

16.7 Unless Customer notifies Supplier that it intends to make a claim within the notice period in respect of such claim, Supplier's liability shall not be limited, even subject to clause 16.2. The notice period for an event shall start on the day on which Customer becomes, or ought reasonably to have become, aware of the event having occurred and shall expire three months from that date. Supplier shall be notified of the claim and must identify the event and the grounds for the claim in reasonable detail.

16.8 This clause 16 shall survive termination of the Contract.

**17. General**

17.1 Supplier has a zero tolerance approach to violence, physical, verbal sexual or psychological harassment, bullying, abuse or threat, whether in person, on the phone or contained in any correspondence, and reserves the right to terminate any Contract it may have if Customer's personnel subject Supplier's personnel or anyone involved in Supplier's supply chain to the same.

17.2 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 Supplier's price list or specification is provided for guidance only and does not form part of the Contract. The sale of Products shall not be a sale by sample. Supplier's employees and agents are not authorised to make representations or give undertakings relating to the Products or the meaning of these Terms. Customer shall be responsible for ensuring that all representations or any other representations that are not expressly incorporated in the Contract.

17.3 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 provision of these Terms which is invalid, unenforceable or unpermitted 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.

17.4 The Supplier shall 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 Supplier's right to enforce such provision later. Supplier's express waiver of any breach of these Terms shall not be construed as a waiver of any subsequent breach of these Terms.

17.5 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.

17.6 The Supplier shall not be liable to any third party or to any company or permitted assignee (which 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.

17.7 Supplier reserves the right to amend or update the Terms from time to time. Otherwise, no variation of a Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).

17.8 Supplier may assign or novate its rights and obligations under a Contract to any third party without notice to Customer and without the consent of the Contract is personal to Customer and may not be assigned or transferred by Customer without Supplier's consent. Supplier may subcontract its obligations under a Contract provided Supplier will be responsible to Customer for the performance of the Contract and any subcontracted parties under the Terms.

17.9 These Terms and any Contract shall be governed by the law of the jurisdiction in which Supplier is incorporated and the courts of that jurisdiction shall have exclusive jurisdiction in relation to any dispute relating thereto.