



## DEFINITIONS

In these Terms of Sale the following meanings shall apply:

"We" and "Us"	means Charles Wells Limited trading as Wells & Co, its employees and agents and "Our" shall be interpreted accordingly.
"You"	means the person including bodies corporate and incorporate their employees or agents seeking to purchase Goods from Us and "Your" shall be interpreted accordingly.
"the Goods"	means the goods and/or services to be supplied by Us.
"Company Signatory"	means a director or manager employed by Us.
"the Contract"	means the contract for the supply of Goods incorporating these Terms
"the Terms"	means these terms and any special terms agreed in writing between a Company Signatory and You.
"the Regulations"	means any statute order in council regulation directive bye-law or other lawful requirement or instruction

## HEALTH & SAFETY INFORMATION ABOUT THE STORAGE USE AND CONSUMPTION OF THE GOODS IS PROVIDED AND IT IS YOUR RESPONSIBILITY TO BRING THIS TO THE ATTENTION OF THE USER OF THE GOODS.

### THE CONTRACT

- 2.1 Quotations are invitations to treat only and shall lapse 30 days from their date.
- 2.2 All orders are accepted by Us only under these Terms which (subject to Clause 13.11 of these Terms) may not be altered except with the written agreement of a Company Signatory. Any contrary or additional terms unless so agreed are excluded. All orders shall only be deemed to be accepted by Us when accepted over the telephone or by electronic communication by a Company Signatory or when confirmed by a Company Signatory in writing, at which point the Contract shall come into existence.
- 2.3 We publish minimum quantities which apply to all orders.
- 2.4 Orders are accepted subject to availability of Goods at the time of delivery. Substitutions for out of stock items will only be made with Your confirmation.
- 2.5 Orders may be cancelled only with the written agreement of a Company Signatory and You will indemnify Us against all losses damages costs and expenses We incur as a result of that cancellation. Unused Goods will be accepted for return at Our discretion and on terms agreed with Us.
- 2.6 Statements as to ABV and volumetric contents on Goods produced by Us are as agreed with Our Excise Officer. Where Goods are supplied under suspension of duty no claims will be accepted which seek to vary such agreement.
- 2.7 We reserve the right at any time and at our discretion to revise or change the style of labels and packaging or the specification of the Goods for any reason including, but without limitation, to comply with any Regulations.

### PRICE

- 3.1 Our quotations and prices are calculated by reference to costs and government imposed excise duty prevailing at the time when they are given or agreed. Any increase in costs (including costs of carriage), government imposed excise duty or any other taxes between the date of order and the date of delivery will be passed on in full. Orders accepted but not delivered at the date of such increase will be fulfilled at the increased price. All prices quoted are exclusive of Value Added Tax which is payable at the rate ruling at the date of delivery unless zero rated or exempt from VAT.
- 3.2 Any discounts, deductions, allowances or rebates agreed are only available if all sums due from You to Us are paid by the due date and if You are not in breach of any of these Terms, the terms of any Contract or any other agreement made between You and Us on the due date. Notwithstanding the foregoing, We reserve the right at any time and at our discretion to withdraw and or disapply any discounts, deductions, allowances or rebates.
- 3.3 Prices stated or quoted are applicable to the quantity specification and delivery dates. If the order placed varies or delay is caused by Your instructions or lack of instructions We shall be entitled to adjust the price.
- 3.4 You will reimburse Us the cost of all labelling, packaging and other materials purchased by Us for specific use with any private label product supplied to You.
- 3.5 If the price of any of the Goods delivered to you in accordance with these Terms and/or the terms of the Contract is incorrect, You shall notify Us in writing within 14 days of delivery of such Goods with details of the incorrect pricing sufficient for Us to identify the relevant Goods and review the pricing.

### PAYMENT

- 4.1 If We have agreed in writing to give You credit all accounts are due for payment without deduction on demand or within the time agreed with You for payment. The time of payment of the price is of the essence of the Contract.
- 4.2 Where credit is granted, it may be reviewed at any time at Our discretion. We reserve the right to refuse to execute any order or Contract if the arrangement for payment or Your credit rating is not satisfactory to Us.
- 4.3 If We, in our sole discretion, perceive there to be risk of default by You on a debt arising from You failing to make the required payments under the Contract or any other agreement between You and Us, We shall be entitled to immediately withdraw any credit granted by Us to You and to require that all amounts due for payment by You to Us are paid immediately.
- 4.4 You shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). We may at any time, without limiting any other rights or remedies We may have, set off any amount owing to Us by You against any amount payable by Us to You.

### DELIVERY

- 5.1 Delivery shall occur when the Goods have been delivered to the address agreed between You and Us or have been collected by You.
- 5.2 If You fail to take or make arrangements to accept delivery or collect the Goods or if We are unable to deliver because of inadequate notice, access or instructions delivery shall be deemed and We may do any one or more of the following (without prejudice to any other right or remedy We may have):-
- make additional charges for failed delivery
  - store the Goods at Your risk and cost
  - invoice You for the Goods
  - terminate the Contract without liability on Our part
  - recover from You all costs and losses incurred by Us including, without limitation, courier charges for expedited delivery
- 5.3 Delivery dates are given in good faith but are estimates only. Time for delivery shall not be of the essence of the contract.
- 5.4 We shall not be liable for any damages whatsoever whether direct or indirect (including for the avoidance of doubt any liability to any third party) resulting from any delay in delivery of the Goods or failure to deliver the Goods in a reasonable time whether such delay or failure is caused by Our negligence or otherwise howsoever.

- 5.5 If We fail to deliver the Goods Our entire liability shall be limited to the excess (if any) over the price of the Goods, of the cost to You (purchasing in the cheapest market reasonably available to You) of similar goods to replace those not delivered.
- 5.6 We reserve the right to make delivery by instalments and tender a separate invoice in respect of each instalment. Any claim which You may have in respect of one instalment shall not affect Your liability in respect of any other instalment.
- 5.7 You will indemnify Us in respect of all losses damages costs and expenses incurred as a result of delivery in accordance with Your instructions. This indemnity will be reduced in proportion to the extent that such losses damages costs or expenses are due to Our negligence.
- 5.8 In Clauses 5.8 to 5.11 and Clause 8.4 of these Terms "Container" means gas cylinders, pallets and cases and any vessel carrying beer including without limitation casks, kegs and returnable bottles.
- 5.9 Unless Containers supplied to You are:
- (as required by Us) made available for collection as soon as possible after usage and / or returned to us on demand; and
  - are received by Us in a clean and undamaged condition,
- We shall be entitled to charge You the then prevailing replacement cost of the relevant Container.
- 5.10 Deposit charges are made on certain Containers. These are notified on invoices and will be credited to You on the return of the Container in accordance with Clause 5.9 of these Terms.
- 5.11 Containers carrying beer are vessels not measures. Casks and kegs are filled according to the British Beer and Pub Association Code of Practice for large containers. Nominal contents are stated on the price list.
- 5.12 In the event that a delivery will (in Our opinion, acting reasonably) cost significantly more than Our usual average cost to deliver, We reserve the right to make an additional charge to cover the costs of that delivery. Such charge shall be notified in writing to You as soon as reasonably practicable after the relevant order is placed and the order shall not be deemed to have been confirmed until You have agreed the additional charge.
- 5.13 The residual contents of any Containers which are returned to Us is our property from the time they are collected by Us and/or returned by You (as appropriate) (except where title did not transfer to You prior to such collection, in which case title will always have vested in Us), without any further payment by Us.

### INSPECTION

- 6.1 You shall inspect the Goods at the place and time of unloading but nothing in these Terms shall require You to break packaging and/or unpack Goods which are intended to be stored before use.
- 6.2 You must mark the delivery paperwork to show if stock has been short delivered, broken in transit, is missing or suffers a Defect (as defined in Clause 9.1 of these Terms) capable of discovery on visual inspection of the packaged Goods ("Apparent Defect").
- 6.3 We shall be entitled to treat any signature obtained in good faith as binding you. Once Goods have been signed for you may not claim for short delivery, breakage in transport, missing Goods or Apparent Defects unless and to the extent that the same has been noted on the delivery paperwork. If (and to the extent only that the relevant short delivery, breakage or Apparent Defect is noted in the delivery paperwork returned to Us):
- You give Us notice in writing within 3 days of discovery that some or all of the Goods have been short delivered, broken in transit, are missing, or contain an Apparent Defect; and
  - We are given a reasonable opportunity of examining such Goods and, acting reasonably, confirm the relevant short delivery, breakage or Apparent Defect; and
  - You (if asked to do so by Us) return such Goods to Our place of business at Your cost,
- We shall, at Our sole option, either supply replacement Goods or refund the price paid by you for the relevant Goods and such replacement or refund shall, subject to Clause 9.2 and 9.3 of these Terms, be your sole remedy in respect of any claim by you in respect of Goods which have been short delivered, broken in transit, are missing, or contain an Apparent Defect and We shall not be liable for any damages whatsoever. You remain liable to pay the full invoice price of other Goods delivered in accordance with the Contract. Any other claim for damages is subject to Clause 9 of these Terms.

### TITLE AND RISK

- 7.1 Risk in the Goods shall pass to You when the Goods are delivered by Us or collected by You. If We effect delivery by a carrier the risk in the Goods passes to You when We deliver the Goods to the carrier.
- 7.2 The legal and beneficial title to the Goods shall remain with Us until You pay the price of the Goods.
- 7.3 Until title to the Goods referred to in Clause 7.2 of these Terms passes:-
- 7.3.1 You shall hold the Goods as Our fiduciary agent and bailee;
- 7.3.2 the Goods shall be stored separately from any other goods so that they remain readily identifiable as Our property and You shall not interfere with any identification marks labels batch numbers or serial numbers on the Goods; and
- 7.3.3 We agree that You may sell the Goods by way of bona fide sale Our fiduciary bailee in the ordinary course of Your business.
- 7.4 If before title to the Goods referred to in Clause 7.2 of these Terms passes to You You become Insolvent, or We reasonably believe that You are about to become Insolvent and notify you accordingly, then, without limiting any other right or remedy We may have, Your right to resell the Goods pursuant to Clause 7.3.3 of these Terms shall cease immediately and, provided that the Goods have not been resold, we may at any time require You to deliver up the Goods.
- 7.5 Notwithstanding delivery to You, We shall be legally and beneficially entitled to the ownership of the Goods until payment of the purchase price. Until such payment, and subject to the following provisions, You hold the Goods as bailee of Us and owe to Us the normal fiduciary obligations of a bailee by way of custody in respect of the Goods. In so far as You shall, or shall purport to, offer for sale and sell the Goods, You shall only do so as principal and not as agent for Us. We shall, by reason of the said relationship of bailment between You (as bailee) and Us (as bailor), be and remain legally and beneficially entitled to the proceeds of sale and You shall pay such proceeds of sale into a separate account or, otherwise, shall ensure that all the proceeds of sale are kept by or on behalf of You in a separate and identifiable form, and the proceeds of sale shall at all times be identifiable as monies belonging to Us. The proceeds shall not be paid into an overdrawn bank account.
- 7.6 We shall be entitled at any time to recover any or all of the Goods to which We have title and for that purpose We Our employees or agents may with such transport as is necessary enter upon any premises occupied by You or to which You have access and where the Goods may be or are believed to be situated.

### RESALE OF GOODS

- 8.1 You are responsible for ensuring compliance with all relevant Regulations affecting the storage and resale of the Goods including but not limited to compliance with Best Before Dates, equipment used and the premises on which the Goods are stored or resold.
- 8.2 You shall, and shall use your reasonable endeavours to procure that your customers shall, take all reasonable steps to preserve the quality of the Goods (including any containers or packaging in respect thereof) from the time of delivery until dispensed to the ultimate consumer. This includes:
- storing the Goods in clean, sound and dry premises, within appropriate temperatures and other ambient conditions; and
  - complying with industry best practice concerning the storage, temperature and method of dispensing to the ultimate consumer; and
  - observing any guidelines issued by us concerning the storage, temperature and method of dispensing to the ultimate consumer (including but not limited to our Storage and Handling Policy).
- 8.3 You shall not interfere with the packaging or labelling of the Goods nor sell bottled Goods in any other bottle or container.
- 8.4 Draught beer and other bulk beverages supplied by Us shall be stored labelled and sold by means of equipment approved by Us. You are responsible for complying with all Regulations covering the use and maintenance of such equipment.
- 8.5 Unless we otherwise permit in writing, you must not sell any Goods on a wholesale basis and must only offer those Goods for sale for consumption by members of the public at premises approved by Us.

- 8.6 You shall ensure, and shall use reasonable endeavours to procure that Your customers ensure, that all promotional and other activities relating to the Goods are undertaken in accordance with the guidance published by the Portman Group and the British Beer and Pub Association from time to time relating to responsible drinking and promotions.
- 8.7 You shall maintain records of all sales made by You of the Goods sufficient to effect a product recall if required by Us. In the event of a recall of the Goods, Equipment or Containers, You shall provide such co-operation and assistance as We may reasonably request in order to effect such recall and to comply with applicable legal requirements relating to the Goods, Equipment or Containers or any part of them.

#### LIABILITIES

- 9.1 In these Terms "the **Defect**" shall mean the condition and/or any attribute of the Goods and/or any other circumstances which results in the Goods supplied by Us to You under the Contract:
- (a) not being of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) at delivery;
- (b) not complying with applicable Regulations at delivery.
- 9.2 Nothing in these Terms shall limit or exclude Our liability for death or personal injury resulting from Our negligence, fraud, or any other liability to the extent that it cannot be limited or excluded by the operation of law.
- 9.3 If You deal as a consumer any provision of these Terms which is of no effect shall not apply. The statutory rights of a consumer are not affected by these Terms.
- 9.4 Subject to Clause 9.2 and 9.3 of these Terms We shall not under any circumstances whatsoever be liable to You (whether in contract, tort (including negligence), breach of statutory duty or otherwise) for:
- (a) any loss of profit, business, contracts, revenues or anticipated savings; and/or
- (b) any depletion of goodwill; and/or
- (c) any special, indirect or consequential loss or damage of any nature whatsoever arising under or in connection with this Contract.
- 9.5 Subject to Clause 9.2, 9.3 and 9.8 of these Terms, Our total aggregate liability to You in respect of all other losses arising under or in connection with the Contract, whether arising from misrepresentation or in contract, tort (including negligence), breach of statutory duty or otherwise shall be limited to the price of the Goods paid for by You under the Contract in the 3 months preceding the date of the event or circumstance giving rise to the claim.
- 9.6 Where but for the effect of Clause 9.4 of these Terms You would have been entitled to damages against Us in respect of a Defect, We shall not be liable to pay damages but (subject to Clause 9.5 of these Terms and the conditions set out in Clause 9.7 of these Terms below) may at Our sole discretion either supply replacement Goods or refund all (or where appropriate part) of the price paid.
- 9.7 We will not be liable under Clause 9.6 of these Terms:-
- (a) if the Defect would have been apparent on a reasonable inspection under Clause 6.1 of these Terms at the time of unloading unless You give Us notice as required by Clause 6 of these Terms.
- (b) unless the Defect is discovered within the declared shelf life of the product and is notified forthwith by telephone and in writing within two working days of discovery of the Defect.
- (c) unless after discovery of the Defect We are given a reasonable opportunity to inspect the Goods before they are sold or used or in any way interfered with.
- (d) if the Defect arises from Your negligence or your failure to handle, store and otherwise deal with the Goods in accordance with Clause 8.2 of these Terms.
- 9.8 Subject to Clause 9.2 and 9.3 of these Terms we will not be liable to You and We shall not be deemed to be in breach of the Contract, by reason of any delay in performing, or any failure to perform, any of Our obligations under the Contract if the delay or failure was due to any cause beyond Our reasonable control or was due to Your fault or negligence. This includes strikes, lock-outs or other industrial actions or trade disputes (excluding those involving Your employees) beyond Our reasonable control.
- 9.9 Subject to Clause 9.2, 9.3, 9.5 and 9.8 of these Terms, if the Goods are not produced by Us or have been processed by a third party whether at Our or Your request Our liability in respect of any Defect will be limited to such rights against the producer or the third party as We may have in respect of those Goods.
- 9.10 You will unconditionally fully and effectively indemnify Us against any and all losses, liabilities, damages, expenses, penalties, costs and third party claims We incur as a result of the Your negligence or any breach by You of the Contract. This indemnity will be reduced in proportion to the extent that such losses liabilities damages penalties costs and expenses are due to Our negligence.
- 9.11 Subject to Clause 9.2 and 9.3 of these Terms but without prejudice to any other provisions of these Terms in any event Our total liability for one claim or for the total of all claims arising from any one act of default on Our part (whether arising from Our negligence or otherwise) shall not exceed the limit of liability laid down by Our insurers in respect of such claim.

#### DATA PROTECTION, CONFIDENTIALITY & INTELLECTUAL PROPERTY

- 10.1 If You are an individual or a group of individuals You agree that We may process Your personal data in accordance with Our Data Protection Policy, copy available on request.
- 10.2 You undertake that you shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of Us or any data shared between Us to You in connection with this Contract ("**Confidential Information**"), except as permitted by Clause 10.3 of these Terms.
- 10.3 You may disclose Confidential Information:
- (a) to your employees, officers, representatives or advisers who need to know such information for the purposes of exercising Your rights or carrying out its obligations under or in connection with this Contract. You shall ensure that Your employees, officers, representatives or advisers to whom You disclose the Confidential Information comply with this Clause 10 of these Terms; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 10.4 You shall not use the Confidential Information for any purpose other than to exercise Your rights and perform Your obligations under or in connection with this Contract.
- 10.5 All copyright, patent, trade mark, trade secret, design rights, domain names and other proprietary and intellectual property rights whether registered or unregistered in the Goods and Equipment and Containers and information and knowhow which We may provide in relation to the Goods and Equipment and Containers ("**Intellectual Property Rights**") shall (as between You and Us) remain vested in Us. You shall not acquire any title in the Intellectual Property Rights. You may not copy or imitate the Intellectual Property Rights, Goods, Equipment or Containers or do or omit to do, anything which may damage such Intellectual property Rights. Any goodwill arising from the use of such Intellectual Property Rights shall accrue to Us.

#### DEFAULT & TERMINATION

- 11.1 "**Insolvent**" means (i) any distress or execution being levied on Your goods or (ii) an arrangement is made with Your creditors or (iii) you are unable to pay Your debts as they fall due or (iv) any resolution or petition to wind up is passed or presented in respect of You or (v) a liquidator, receiver, manager or administrator (including an administrative receiver) is appointed over the whole or any part of Your business .or (vi) You ceasing to pay Your debts in the ordinary course of business or (vii) You ceasing or threatening to cease to carry on Your business.
- 11.2 "Associated Company" means Your subsidiary or holding company as defined in Section 736 and Section 736A of the Companies Act 1985 or a subsidiary of such holding company, or any company over which Your directors or shareholders have control as defined in Section 840 of the Income and Corporation Taxes Act 1988.
- 11.3 You fail to pay any invoice or any sum due to Us under any contract on the due date or Your credit limit is exceeded or any trade credit insurance is withdrawn from You or Your Associated Company You or Your Associated Company becomes Insolvent or there is a material change in Your or Your Associated Company's constitution or You commit a material breach of this Contract and fail to remedy that breach after being requested to do so all sums outstanding between You and Us under this and any other contract shall become immediately due and payable and We shall be entitled to do any one or more of the following (without prejudice to any other right or remedy We may have):-
- (a) require payment in cleared funds in advance of further deliveries of Goods;
- (b) charge interest on the monies outstanding at the rate of 4 per cent above the Bank of England Official Dealing Rate in force from time to time from the due date until the date of payment after as well as before judgment
- (c) suspend or cancel any further deliveries of Goods to You under any contract without liability on Our part;
- (d) without prejudice to the generality of Clause 7 of these Terms exercise any of Our rights pursuant to that Clause; and/or
- (e) terminate this or any other contract with You or any Associated Company without liability on Our part.
- 11.4 You shall reimburse Us costs including legal costs on an indemnity basis which We incur in enforcing Our rights under this Contract including but not limited to recovery of any sums due.

#### EQUIPMENT

- 12.1 If We supply beer raising and dispense equipment or Containers on loan to You ("**the Equipment**"), all such Equipment shall remain our property at all times but shall be at Your risk whilst it is under your possession or control.
- 12.2 You shall:
- (a) hold the Equipment as our bailee bearing the risk of loss damage or theft (fair wear and tear excepted);
- (b) insure the Equipment against all risks at its full replacement value;
- (c) not sell assign charge or pledge or in any other way part with possession of the Equipment;
- (d) not without Our written consent remove the Equipment from the site to which it was delivered or otherwise interfere with or tamper with the Equipment;
- (e) not use the Equipment with any product save as specified by Us;
- (f) ensure that the Equipment is kept in good condition and is returned to us (or our nominee) on demand;
- (g) grant Us a licence at any time to enter upon any premises occupied by You or to which You have access for the purpose of inspecting maintaining taking an inventory of or repossessing the Equipment;
- (h) unconditionally fully and effectively indemnify Us against all losses damages penalties costs on an indemnity basis and expenses awarded against or incurred by Us in connection with or paid or agreed to be paid by Us in settlement of any claim by any third party arising from the supply or use of the Equipment. This indemnity will be reduced in proportion to the extent that such losses damages penalties costs and expenses are due to Our negligence.
- 12.3 We reserve the right to charge you for maintenance, repair and/or replacement costs to the Equipment if and to the extent that such maintenance, repair and/or replacement arises otherwise than in the ordinary course (excluding fair wear and tear) or arises as a result of Your negligence or failure to exercise due skill and care or failure to comply with our reasonable instructions in the use of the Equipment.

#### GENERAL

- 13.1 This contract shall be governed and interpreted according to the Law of England and Wales and You agree to submit to the non-exclusive jurisdiction of the English Courts.
- 13.2 Any reference in these Terms to any Statute or Statutory Provision includes a reference to that Statute or Statutory Provision as from time to time amended extended or re-enacted.
- 13.3 We shall not be liable for any breach of contract delay of failure to perform any of Our obligations if the breach delay or failure was due to any cause beyond Our reasonable control including industrial action.
- 13.4 The waiver by Us of any breach or default of these Terms shall not be construed as a continued waiver of that breach nor as a waiver of any subsequent breach of the same or any other provision.
- 13.5 If any clause or sub-clause of these Terms is held by a competent authority to be invalid or unenforceable the validity of the other clauses and sub-clauses of these Terms shall not be affected and they shall remain in full force and effect.
- 13.6 We reserve the right at any time to assign, transfer and/or novate to a third party, or otherwise to encumber or deal with, any or all of Our rights and obligations: (i) under the Contract; and/or (ii) relating to the supply of any individual Good(s) under the Contract. You agree to take such action as We may reasonably require to give effect to this clause.
- 13.7 You shall not assign, transfer, novate, encumber or otherwise deal with any or all of Your rights and obligations under the Contract.
- 13.8 No person may enforce any of these Terms under the Contracts (Rights of Third Parties) Act 1999. Our successors and assignees shall be entitled to enforce these Terms and the Contract.
- 13.9 The headings of these Terms are for convenience only and shall not affect their interpretation.
- 13.10 Termination of this Contract shall not affect rights and obligations which have already accrued at the time of termination.
- 13.11 We reserve the right at any time upon not less than 28 days written notice to You to amend these Terms for any reason. If You place an order with Us at any time following the expiry of such notice period You shall be deemed to have accepted the amended Terms and the amended Terms shall apply to such order and be read in conjunction with all future Contracts until the Terms are further amended in accordance with this Clause 13.11.
- 13.12 These Terms and the Contracts are to be read in conjunction with Our Ullage Policy and Our Storage & Handling Policy, copies of which are available on request.