

TERMS & CONDITIONS

PACIFIC STANDARD TRADING COMPANY LIMITED

(Including branches trading as Pacific Standard Imports)

TERMS & CONDITIONS OF SALE – WHOLESALE

1. INTERPRETATION

- 1.1 Throughout these terms and conditions (the "Conditions"), references to the "Supplier" are references to Pacific Standard Imports Limited, and references to "you" or the "Customer" are references to the company or entity who purchases the Products from the Supplier. "Products" means and includes all products, goods and materials, or combination of products, described in the Supplier's product brochure, and any other goods which the Supplier may offer for sale from time to time and which are the subject of an Order, supplied by the Supplier to the Customer whether under this contract or any other contract. An "Order" means the Customer's order for Products, as set out in the Customer's purchase order, given either verbally or in writing or the Customer's written acceptance of the Supplier's quotation.

2. BASIS OF CONTRACT

- 2.1 An Order constitutes an offer by the Customer to purchase the Products in accordance with these Conditions. The Customer is responsible for ensuring that the terms of any Order are complete and accurate.
- 2.2 Each Order shall be deemed to be a separate offer by the Customer to purchase Products on the terms of these Conditions, which the Supplier shall be free to accept or decline at its absolute discretion. An Order shall only be accepted when the Supplier confirms that it is accepted (whether verbally or otherwise), at which point a contract shall come into existence between the Supplier and the Customer (the "Contract").
- 2.3 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Supplier which is not set out in the Contract.
- 2.4 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation ("Customer Default"), without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to rely on the Customer Default to relieve it from the performance of any of its obligations in each case; and the Supplier shall not be liable for any costs or losses incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 2.4; and the Customer shall reimburse the Supplier on written demand for any costs or losses sustained by the Supplier arising directly or indirectly from the Customer Default.

3. DELIVERY

- 3.1 The Supplier shall deliver each accepted Order to the Customer's trading premises or other location as agreed between the parties (the "Delivery Location") and delivery shall be completed when the Supplier places the Products comprised in the Order at the Customer's disposal at the Delivery Location.

4. ACCEPTANCE AND BROKEN PRODUCTS

- 4.1 All Products must be examined at the time of delivery. Claims for damaged or broken Products will only be accepted if the damage or breakage is noted at the time of delivery, the damaged Products and their packaging are retained by the Customer for inspection by the Supplier, and the Supplier is notified in writing within 24 hours of delivery of the breakage or damage. If the Customer fails to give notice in accordance with this clause, it shall be deemed to have accepted such Products.
- 4.2 Out of condition Products must be returned by the Customer to the Supplier (at the Customer's expense or by arrangement with the Supplier) with the original bottle closure and details of original purchase date, invoice number and price charged. The Supplier, following receipt of the Out of Condition Products will inspect and clarify their condition. Any credit, if agreed, relating to the Out of Condition Products will be the same as the purchase price invoiced at the time of delivery. There is no obligation on the Supplier to credit any Out of Condition Products.
- 4.3 Subject to clauses 4.1 and 4.2 the Supplier shall only accept returns of the Products if the Products delivered were not the Products ordered by the Customer; or the Supplier and the Customer have previously agreed in writing that Products may be returned. The Supplier shall not accept the return of Products that are price marked, disfigured, or otherwise incapable of resale.
- 4.4 Out of date vintage returns, other than returns made as a result of the Supplier's error, may be accepted at the discretion of the Supplier and when so accepted shall be subject to a credit deduction of at least 20% against the original invoiced price. (% deduction dependent upon age of stock).

5. TITLE AND RISK

- 5.1 Risk in Products shall pass to the Customer on delivery. Title to Products shall not pass to the Customer until the Supplier has received payment in full (in cash or cleared funds) for such Products and all other sums which are (or which become) due to the Supplier from the Customer for sale of Products on any account.
- 5.2 Until title to Products has passed to the Customer, the Customer shall hold such Products on a fiduciary basis as the Supplier's bailee; store such Products separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property; not remove, deface or obscure any identifying mark or packaging on or relating to such Products; provide to the Supplier such information relating to the Products as the Supplier may require from time to time; and maintain such Products in satisfactory condition and keep them insured on the Supplier's behalf for their full price against all risks with an insurer that is reasonably acceptable to the Supplier. The Customer shall obtain an endorsement of the Supplier's interest in the Products on its insurance policy, subject to the insurer being willing to make the endorsement. On request the Customer shall allow the Supplier to inspect such Products and the insurance policy, but the Customer may resell or use Products in the ordinary course of its business.
- 5.3 Until title to the Products has passed to the Customer then, provided that such Products have not been resold and without limiting any other right or remedy the Supplier may have, the Supplier may at any time require the Customer to deliver up such Products and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the relevant Products are stored in order to recover them.
- 5.4 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 9.2, then, without limiting any other right or remedy the supplier may have, the Customer's right to resell the goods or use them in the ordinary course of its business ceases immediately. In addition, the Supplier may at any time require the Customer to deliver up all goods in its possession which have not been resold. Further if the Customer fails to do so promptly BWC may enter any premises of the Customer or any third party where the Goods are stored to recover them.

6. PRODUCT PRICES

- 6.1 Save as provided for in condition 15 below, the price of the Products shall be the price confirmed by the Seller at the time of accepting the Order, or, if no price is quoted, the price set out in the Supplier's published price list in force as at the date of delivery. If the Order is varied or delayed as a result of the Customer's instructions (or lack of instructions) then the Supplier shall be entitled to adjust the price to reflect the current published prices at the date of delivery.
- 6.2 The Product prices are exclusive of amounts in respect of VAT. The Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of Products.
- 6.3 Orders valued at less than £200.00 (exclusive of VAT) or orders for 4 dozen bottles or less, will be subject to a delivery charge payable by the Customer, details of which are available on request. Any applicable delivery charge in respect of all other Orders will be notified to the Customer prior to Delivery.
- 6.4 The Customer acknowledges and agrees that the Product Prices may be subject to change to reflect any changes in any governmental tax and or duty either within the UK or in the Product's country of origin. In the event of any such change, the Supplier shall be entitled to immediately implement the increase or decrease (as the case may be) of the Product Prices. The Supplier agrees to notify the Customer of any such price changes as soon as reasonably practicable after the change has been implemented.
- 6.5 The Supplier may, at its discretion, offer trade samples of the Products to the Customer, which shall be offered at a 15% discount to list price, or such other price as may be agreed between the parties.
- 6.6 Volume discounts may be given by the Supplier at its absolute discretion, and where given shall be calculated by reference to the price set out in the Supplier's published price list in force as at the date the discounts are offered, which shall for the purposes of calculating the discounts be exclusive of any VAT, other discounts, and any incidental costs payable in respect of the Products.
- 6.7 Any discounts, deductions, allowances, and rebates may become forfeited and immediately payable on any invoices outstanding beyond the agreed terms.



7. TERMS OF PAYMENT

- 7.1 The Supplier shall invoice the Customer for each Order on delivery.
- 7.2 Save as provided for in condition 16 below, the Customer shall pay each invoice in full and in cleared funds by the end of the month following the month in which it was received. Payment shall be made by cheque or to the bank account nominated in writing by the Supplier.
- 7.3 The Customer may not set off any amounts owed to it by the Supplier under these Conditions or any Contract against any amounts payable by it to the Supplier under these Conditions or any Contract.
- 7.4 If any sum is not paid by the due date for payment then, without prejudice to any other right or remedy all sums then outstanding from the Customer will immediately become due and payable not withstanding that such sums would not otherwise be due until a later date.
- 7.5 The Supplier reserves the right to charge interest on overdue accounts pursuant to, and at the rate specified in, the Late Payments of Commercial Debts (Interest) Act 1998 (as amended and in force from time to time). The Supplier further reserves the right to suspend deliveries to the Customer until such time as all accounts with the Customer are settled, and to refuse to accept any further Orders from the Customer.
- 7.6 The Supplier may charge an administration fee of £25.00 for each payment made under these Conditions, whether by cheque, direct debit or otherwise, which is dishonoured. An additional fee of £5.00 may be charged by the Supplier for each cheque returned to it stating, "refer to drawer".

8. STORAGE DETAILS

- 8.1 Paid reserves are available subject to a minimum quantity of 10 dozen bottles. Prices are available on request and are quoted exclusive of VAT per case per year (part years are charged as full years). This charge includes rental, handling and administrative costs and will be invoiced annually in advance. The Customer is responsible for arranging any insurance policy necessary to cover the 'paid reserves'.

9. CUSTOMER'S INSOLVENCY

- 9.1 If the Customer becomes subject to any of the events listed in clause 9.2, or the Supplier believes that the Customer is about to become subject to any of them and notifies the Customer accordingly then, without limiting any other right to remedy available to the Supplier, the Supplier may cancel or suspend all further deliveries under the Contract without incurring any liability to the Customer, and all outstanding sums in respect of Products already delivered to the Customer shall become immediately due.
- 9.2 For the purposes of clause 9.1 and clause 5.4 the events are: the Customer suspends or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, the Customer's financial position deteriorate to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy, the Customer makes an arrangement with its creditors, has a receiver or administrator, manager, trustee, liquidator or similar officer appointed over all or any substantial part of its assets, enters into a company voluntary arrangement (pursuant to Part I of the Insolvency Act 1986), commences to be wound up other than for the purposes of amalgamation or reconstruction or suspends or ceases, or threatens to suspend or cease, to carry on all or substantially the whole of its business.

10. LIMITATION OF LIABILITY

- 10.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors; fraud or fraudulent misrepresentation; breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or defective products under the Consumer Protection Act 1987.
- 10.2 Subject to clause 10.1 the Supplier shall under no circumstances be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with these Conditions.
- 10.3 The Supplier's total liability to the Customer in respect of all other losses arising under or in connection with any Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed an amount equal to the total sum invoiced by the Supplier and paid by the Customer under the terms of each Contract.
- 10.4 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from these Conditions and any Contract.
- 10.5 This Clause 10 shall survive termination of the Contract.

11. FORCE MAJEURE

- 11.1 Neither party shall be in breach of these Conditions or any Contract, nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control including without limitation acts of God, storms, floods, riots, fires, sabotage, civil commotion or unrest, interference by civil or military authorities, acts of war (declared or undeclared) or armed hostilities or other national or international calamity or one or more acts of terrorism or failure of energy sources (each a "Force Majeure Event").
- 11.2 A party claiming the benefit of this provision shall, as soon as reasonably practicable after the occurrence of a Force Majeure Event, notify the other party of the nature and extent of such Force Majeure Event and use all reasonable endeavours to remove any such causes and resume performance under these Conditions as soon as feasible.

12. NOTICES

- 12.1 Any notice or other communication required to be given to a party under or in connection with these Conditions shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or (in any other case) its principal place of business or sent by fax to the other party's main fax number.
- 12.2 Any notice or communication shall be deemed to have been received if delivered by hand, at the time the notice is left at the proper address, or if sent by fax, at 9.00 am on the next Business Day after transmission, or otherwise at 9.00 am on the second Business Day after posting.
- 12.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution. For the purposes of this clause, "writing" shall not include e-mail.

13. GENERAL

- 13.1 If any provision of these Conditions (or part of a provision) is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable, or illegal, that provision (or part provisions) shall apply with the minimum modification necessary to make it legal, valid or enforceable and all other provisions shall remain in force.
- 13.2 Any variation of these Conditions or any Contract must be in writing and signed by or on behalf of the Supplier and the Customer.
- 13.3 No failure to exercise or delay in exercising any right or remedy provided under these Conditions or by law constitutes a waiver of such right or remedy nor shall it prevent any future exercise of that or any other right or remedy. No single or partial exercise of any right or remedy under these Conditions shall prevent or restrict the further exercise of that or any other right or remedy.
- 13.4 A person who is not a party to the Contract shall not have any rights under or in connection with it, under the Contracts (Rights of Third Parties) Act 1999 or otherwise.

14. GOVERNING LAW AND JURISDICTION

- 14.1 These Conditions, any Contract, and any dispute or claim arising out of or in connection with them or their subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law. The Supplier and the Customer irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with these Conditions, any Contracts, or their subject matter or formation (including non-contractual disputes or claims).

CONDITIONS APPLICABLE SOLELY TO SALES EX-CELLAR, FOB OR FCA

15. PRICES

- 15.1 Prices are ex-cellar, FOB or FCA (as defined in the Incoterms® rules 2010) in the currency of the country of origin or as stipulated by the Supplier.

16. PAYMENTS

- 16.1 Payments are strictly 30 days from the date of availability of the Order or other such period as may have been agreed in writing between the Customer and the Supplier and shall be paid to the account of the Supplier by bank transfer or as otherwise directed in writing by the Supplier.