

TERMS & CONDITIONS OF TRADE

1. Definitions

In these Conditions unless the context otherwise requires:

“**The Buyer**” means the person who buys or agrees to buy the Goods from the Seller

“**Conditions**” means the terms and conditions of sale set out in this document with any special terms and conditions agreed in writing by the Seller

“**Delivery Date**” means the date specified by the Seller when the Goods are to be delivered

“**Goods**” means the articles which the Buyer agrees to buy from the Seller

“**Price**” means the price for the Goods excluding VAT

“**Seller**” means Branded Drinks Ltd (registered in England under number 3843119)

2. Conditions Applicable

These Conditions shall apply to all contracts for the sale of Goods by the Seller to the Buyer to the exclusion of all other terms and conditions including any terms and conditions which the Buyer may purport to apply under any purchase order, confirmation of order or other documents. All orders for Goods shall be deemed to be on offer by the Buyer to purchase goods pursuant to these conditions.

All Goods are offered for sale subject to availability and subject to the Seller’s acceptance of the Buyer’s order howsoever made. No order submitted by the Buyer shall be deemed accepted by the Seller unless and until confirmed by the Seller.

Acceptance of delivery of Goods shall be deemed exclusive evidence of Buyer’s acceptance of these Conditions. Any variations of these Conditions (including any special terms and conditions agreed between the parties) shall be inapplicable unless agreed in writing by the Seller.

3. Prices

The Seller reserves the right to alter prices without notice. All Goods are offered subject to availability. VAT will be added where applicable at the current rate.

4. Payment

Payment for goods supplied on Credit Account shall become due and payable not later than 30 days from the date of invoice. If the payment of any sum due under these Conditions is not made payable on or before its due date, the Seller shall be entitled to charge interest thereafter at a rate of 2% per annum over the Lloyds TSB Bank Base Rate on that money outstanding between the due date and the date when full payment is actually received both before and after any judgment or liquidation. This does not prevent the Seller from pursuing payment of outstanding invoices at any time after the due date. In the event of any cheque which is returned marked “Refer to Drawer” or “Re-present”, the Buyer will be charged £10.00 on each occasion and Credit Facilities may be withdrawn.

5. Delivery

Save as otherwise provided the Seller shall deliver the Goods to the Buyer or its agent at the stipulated delivery address and shall be responsible for insurance of Goods in transit. Risk of loss or damage to the Goods or (where supplied under bond) liability for Duty shall pass to the Buyer when the Good are delivered to the delivery address. Where the Seller supplies ex-cellars, responsibility for transport and insurance of Goods in transit is that of the Buyer following delivery at the Seller’s loading bay and the risk of loss or damage to the Goods or (where supplied under bond) liability for duty and CCT, if any, shall then pass to the Buyer. Delivery dates are estimates only and the Seller shall not be liable for the consequence of delay. The Seller’s liability for non-delivery shall in any event be limited to the excess (if any) of the cost to the Buyer of similar Goods to replace those not delivered over the price of such Goods. The Buyer must examine all Goods as soon as they are delivered and must sign the Delivery Note clearly to acknowledge receipt.

THE SELLER IS NOT RESPONSIBLE FOR LOSS OR DAMAGE TO GOODS WHILE HELD AT THE BUYER’S RISK UNLESS:

- (a) the Goods have been examined at the time of delivery and any loss or damage entered on the delivery note.
- (b) the damaged Goods and their packaging are kept for inspection.
- (c) the Seller shall have full control over the reclamation of damaged goods or determination of their disposal. No delay in payment or claims for non-delivery of goods despatched by the Seller via a third party carrier will be permitted unless written notice of non-delivery is given to Seller within 14 days of invoice date.

6. Description of Goods and Warranty

The Seller warrants that the Goods will correspond to the description of origin in the Seller’s catalogue and will be of satisfactory quality at the point of delivery. Due to factors outside the reasonable control of the Seller including but not limited to conditions of storage, the Seller gives no warranty with regard to the durability of the Goods.

All other terms, conditions, warranties and representations (whether implied or made expressly) made by the Seller, its servants or agents or otherwise relating to the quality and/or fitness for the purpose of the goods or any of the goods are excluded to the fullest extent permitted by law.

The Seller shall be under no liability whatsoever to the Buyer for any indirect loss and/or expense (including loss of profit) suffered by the Buyer arising out of a breach by the Seller of this contract.

7. Promotional Support

Promotional, financial or other support made available by the Seller to the Buyer is on a discretionary basis and subject to amendment or termination at the absolute discretion of the Seller from time to time. In no circumstances will promotional support be paid in relation to any delivery of Goods made more than two years from the date of the claim by or on behalf of the Buyer for promotional support.

8. Property

- 8.1** Property in and title to the Goods shall be retained by the Seller until payment in full of: (i) all sums due to the Seller from the Buyer in respect of the Goods; and (ii) all other sums which are or become due from the Buyer to the Seller on any account whatsoever.
- 8.2** Until property in and title to the Goods has passed to the Buyer, the Buyer shall: (i) hold the Goods and all items incorporating the Goods in a fiduciary capacity for the Seller as the Seller’s bailee; and (ii) store the Goods in appropriate conditions and in such a way as to be clearly identifiable as the property of the Seller. The Seller shall be entitled to recover from the Buyer any loss and additional costs incurred as a result of the Buyer’s failure to store the goods in a saleable condition.

- 8.3** In the event of any sale of the Goods by the Buyer before payment to the Seller in full of the price, the Buyer shall hold the proceeds of the sale in a fiduciary capacity for the Seller, and such proceeds of the sale shall be placed in an account of the Buyer in such a way as to be identified as the property of the Seller.

- 8.4** The Buyer grants the Seller and its agents an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer’s right to possession has terminated, to recover them.

9. Insolvency

- 9.1** The Buyer’s right to possession of the Goods shall terminate immediately if:
 - 9.1.1** the Buyer makes an arrangement or composition with its creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed over its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Buyer or notice of intention to appoint an administrator is given by the Buyer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer; or

- 9.1.2** the Buyer suffers or allows any execution, whether legal or equitable, to be levied on its property or obtained against it, or fails to observe or perform any of its obligations under these Conditions or any other contract or arrangement between the Seller and Buyer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade; or

- 9.1.3** the Buyer encumbers or in any way charges any of the Goods; or

- 9.1.4** the Buyer allows or suffers an event analogous to any of the foregoing.

- 9.2** The Seller shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Seller.

- 9.3** Where the Seller is unable to determine whether any Goods are the goods in respect of which the Buyer’s right to possession has terminated, the Buyer shall be deemed to have sold all goods of the kind sold by the Seller to the Buyer in the order in which they were invoiced to the Buyer.

- 9.4** Notwithstanding anything to the contrary set out at Condition 4 or otherwise agreed between the parties, upon the occurrence of any of the events set out in Condition 9.1 above (“Insolvency Events”) payment for all Goods supplied on Credit Account or other credit to the Buyer shall become immediately due and payable, whether or not due and payable at the date of the Insolvency Event.

10. Force Majeure

The Seller shall not be liable for any failure or delay in fulfilling any terms of any transaction governed by these if occasioned by trade dispute or other event or circumstance outside the reasonable control of the Seller.

11. Assignment

The Seller shall be entitled to assign the benefit of any contract between the Seller and the Buyer in connection with the sale by the Seller of the whole or substantially the whole of its business. The Buyer shall not be entitled to assign the benefit of any contract between the Buyer and the Seller without the prior written consent of the Seller. The Seller shall be entitled to subcontract the performance of the whole or any part of any contract between the Buyer and the Seller.

12. Notices

Any Notice served pursuant to these conditions shall be served in the case of the Seller at its place of business specified in the confirmation of order and in the case of the Buyer at the address of the Buyer last known to the Seller and/or at the registered office of the Buyer. Any Notice shall be in written (which for this purpose shall include facsimile transmission and electronic mail) and shall be served either personally or by prepaid post or by facsimile transmission or by electronic mail. In the case of service by post any Notice shall be deemed to have been served prior forty eight hours at the time of posting. In the case of service by facsimile transmission or electronic mail, service shall be deemed to have been effected upon proof on successful transmission if served between the hours 9.00am and 6.00 pm on any Business Day or otherwise on the next Business Day. “Business Day” for this purpose shall mean any days excluding Saturdays, Sundays and any Public or Bank Holiday in England and Wales.

13. Severance

If any Condition is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining Conditions and the remainder of such Condition shall continue in full force and effect.

14. Proper Law

This Contract shall be constructed and governed in all respects by English Law and all disputes arising under or relating to the Contract shall be the subject of the jurisdiction of the Courts of England to which the Seller and the Buyer hereby submit.

15. Whole Contract

These terms and conditions form the only terms and conditions between the parties and there shall be no variation or amendment of these terms either by terms sought to be imposed by the Buyer or in any other way unless agreed in writing between the parties and signed by a director of the Seller.