

# TERMS & CONDITIONS

## 1. INTERPRETATION

**1.1** In these Conditions: "the Buyer" the person(s), firm or company who purchases the Goods from the Company; "the Company" means Liberty Wines Ireland Limited; "Contract" any contract between the Company and the Buyer for the sale and purchase of the Goods, incorporating these Conditions; "Conditions" means the terms and conditions stated herein; "Delivery Point" the place where delivery of the Goods is to take place under Condition 4; "Goods" any goods agreed in the Contract to be supplied to the Buyer by the Company (including any part or parts of them); "Minimum Quantity" means the minimum quantity of Goods that are permitted to be ordered as stated on the Company's price lists from time to time or communicated by the Company to the Buyer.

**1.2** In these Conditions references to any statute shall, unless the context otherwise requires, be construed as a reference to that statute as from time to time amended, consolidated, modified, extended, re-enacted or replaced and includes any subordinate legislation for the time being in force.

**1.3** Headings will not affect the construction of these Conditions.

**1.4** Words in the singular include the plural and in the plural include the singular. A reference to one gender includes a reference to the other gender.

## 2. APPLICATION OF TERMS

**2.1** Subject to any variation under Condition 2.3 the Contract will be on these Conditions to the exclusion of all other prior representations, written and oral agreements and terms and conditions between the parties (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document) and the Contract constitutes the entire agreement between the parties.

**2.2** No terms or conditions endorsed upon, delivered with or contained in the Buyer's purchase order, confirmation of order, or other document will form part of the Contract unless agreed to in writing by the Company.

**2.3** These Conditions apply to all the Company's sales and any variation to these Conditions and any representations about the Goods shall have no effect unless expressly agreed in writing and signed by an authorised signatory of the Company. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract. Nothing in this Condition will exclude or limit the Company's liability for fraudulent misrepresentation.

**2.4** Each order or acceptance of a quotation for Goods by the Buyer from the Company shall be deemed to be an offer by the Buyer to buy Goods subject to these conditions.

**2.5** The Goods are subject to availability and no order which constitutes an offer by the Buyer placed by the Buyer shall be deemed to be accepted by the Company until a written acknowledgement of the order is issued by the Company or (if earlier) the Company delivers the Goods to the Buyer.

**2.6** The Buyer shall ensure the terms of its order and any applicable specification are complete and accurate.

**2.7** Any quotation is given on the basis that no Contract shall come into existence until either the Company dispatches an acknowledgement of order or, following such an order being placed by the Buyer, the Goods are delivered to the Buyer. Any quotation is valid for a period of 30 days only from its date, provided that the Company has not previously withdrawn it.

## 3. DESCRIPTION

All samples, drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of this Contract.

## 4. DELIVERY

**4.1** Delivery shall occur when the Goods have been collected by the Buyer or have been delivered to the address agreed between the Buyer and the Company (the "Delivery Point"). Subject to the order meeting the Minimum Quantity the Company shall deliver the Goods (where the Goods are available) to an address in the Republic of Ireland specified by the Buyer without charge.

**4.2** Where the Company supplies ex-cellars, responsibility for transport and insurance of Goods in transit is that of the Buyer following delivery at the Company's loading bay and the risk of loss or damage to goods or (where supplied under bond) liability for duty and CCT, if any, shall then pass to the Buyer.

**4.3** Any dates specified by the Company for delivery of the Goods are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery will be within a reasonable time.

**4.4** Subject to the other provisions of these Conditions, the Company shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Company's negligence), nor shall any delay entitle the Buyer to terminate or rescind the Contract unless such delay exceeds 120 days from the time the Goods were meant to have been delivered.

**4.5** If for any reason the Buyer will not accept delivery of any of the Goods when they are ready for delivery, or the Company is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations:

**4.5.1** risk in the Goods will pass to the Buyer at the time of the scheduled delivery;

**4.5.2** the Goods will be deemed to have been delivered; and

**4.5.3** the Company may store the Goods until delivery whereupon the Buyer will be liable for all related costs and expenses (including, without limitation, storage and insurance).

**4.5.4** The Buyer will provide at its expense at the Delivery Point adequate and appropriate equipment, storage space and manual labour for unloading the Goods.

**4.5.5** If 10 working days after the day on which the Company notified the Buyer that the Goods were ready for delivery, the Buyer has not taken or accepted delivery of them, the Company may resell or otherwise dispose of all or part of the Goods and in such case risk in the Goods shall pass back to the Company.

**4.6** The Buyer shall inspect the Goods at the Delivery Point and claims for breakages will only be accepted if the Buyer notifies the Company within 3 days of delivery and the damaged Goods and their packaging are kept for inspection and the loss or damage is noted at the time of delivery.

**4.7** The Company may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract. Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Buyer to repudiate or cancel any other Contract or instalment.

## 5. NON-DELIVERY

**5.1** The quantity of any consignment of Goods as recorded by the Company upon despatch from the Company's warehouse or the warehouses used by the Company shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.

**5.2** The Company shall not be liable for any non-delivery of Goods (even if caused by the Company's negligence) unless the Buyer gives written notice to the Company of non-delivery within 5 days of the date when the Goods would in the ordinary course of events have been received.

**5.3** Any liability of the Company for non-delivery of

the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.

## 6. RISK/TITLE

**6.1** Without prejudice to Clause 4.4.1, the Goods are at the risk of the Buyer from the time of delivery.

**6.2** Ownership of the Goods shall not pass to the Buyer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:

**6.2.1** the Goods; and

**6.2.2** all other sums which are or which become due to the Company from the Buyer on any account.

**6.3** Until ownership of the Goods has passed to the Buyer, the Buyer must:

**6.3.1** hold the Goods on a fiduciary basis as the Company's bailee;

**6.3.2** store the Goods (at no cost to the Company) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Company's property;

**6.3.3** not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods;

**6.3.4** maintain the Goods in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company; and

**6.3.5** hold the proceeds of the insurance referred to in Condition

**6.3.4** on trust for the Company.

**6.4** The Buyer may resell the Goods before ownership has passed to it solely on the following Conditions:

**6.4.1** any sale shall be effected in the ordinary course of the Buyer's business at full market value and the Buyer shall hold part of the proceeds of sale as represent the amount owed by the Buyer to the Company on behalf of the Company and the Buyer shall account to the Company accordingly; and

**6.4.2** any such sale shall be a sale of the Company's property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale.

**6.5** The Buyer's right to possession of the Goods shall terminate immediately if:

**6.5.1** the Buyer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) 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 appointed to its undertaking or any part thereof, or a resolution is passed or a petition presented to any court for the winding up of the Buyer or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer; or

**6.5.2** the Buyer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe/perform any of his/its obligations under the Contract or any other contract between the Company and the Buyer, or is unable to pay its debts within the meaning of section 214 of the Companies Act 1963 or the Buyer ceases to trade; or

**6.5.3** the Buyer encumbers or in any way charges any of the Goods.

**6.6** The Company shall be entitled to recover payment for the Goods not withstanding that ownership of any of the Goods has not passed from the Company.

**6.7** The Buyer grants the Company, its agents and employees 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.

**6.8** Where the Company 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 Company to the Buyer in the order in which they were invoiced to the Buyer.

**6.9** On termination of the Contract, howsoever caused, the Company's (but not the Buyer's) rights contained in this Condition 6 shall remain in effect.

## 7. PRICE

**7.1** Unless otherwise agreed by the Company in writing the price for the Goods shall be the price set out in the Company's price list published on the date of delivery or deemed delivery.

**7.2** The price for the Goods shall be exclusive of any value added tax and all additional costs or charges in relation to loading, unloading, carriage and insurance all of which amounts the Buyer will pay in addition when it is due to pay for the Goods.

**7.3** In the event that a pricing error shall be discovered after acceptance of an order by the Company, the Company shall notify the correct price to the Buyer and the Buyer shall have the option to either (i) cancel such order; or (ii) continue at the notified correct price. The Company shall not be obliged to supply Goods at the incorrect price.

## 8. PAYMENT

**8.1** Payment of the price for the Goods is due within 30 days from the end of the month in which the goods were invoiced (unless otherwise agreed between the Company and the Buyer) and time for payment shall be of the essence.

**8.2** No payment shall be deemed to have been received until the Company has received cleared funds and all payments payable to the Company under the Contract shall become due immediately upon termination of this Contract despite any other provision.

**8.3** The Buyer shall make all payments due under the Contract without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise.

**8.4** If the Buyer fails to pay the Company any sum due pursuant to the Contract the Buyer will be liable to pay interest to the Company on such sum from the due date for payment at the rate specified at that time under the European Communities (late Payment in Commercial Transactions) Regulations, 2002 (S.I. 580/2012).

**8.5** No orders will be accepted whilst any overdue account remains outstanding and the Company reserves the right to levy an additional administration charge of €40 (exclusive of VAT) to cover administration costs if the Buyer's cheque is returned by their bank.

## 9 RESPONSIBILITY

**9.1** The Buyer acknowledges that due to the nature of the Goods their quality may vary for different time periods, however the Company warrants that as at the date of delivery the Goods shall correspond to their description. The Company gives no warranty as to the durability of the Goods.

**9.2** The Company shall not be liable for a defect in the condition of the Goods:

**9.2.1** unless the Buyer gives written notice of the defect to the Company within 7 days of the time when the Buyer discovers or ought to have discovered the defect; and

**9.2.2** the Company is given a reasonable opportunity after receiving the notice of examining such Goods and the Buyer (if asked to do so by the Company) returns such Goods to the Company's place of business at the Company's cost for the examination to take place there.

**9.3** The Company shall not be liable for defects in the condition of the Goods if:

**9.3.1** the Buyer makes any further use of such Goods after giving such notice; or

**9.3.2** the defect arises because the Buyer failed to follow the Company's oral or written instructions as to the storage, use or maintenance of the Goods or (if there are none) good trade practice.

**9.4** Subject to Conditions 9.2 and 9.3, if there is a material defect in the condition of the Goods the Company shall at its option replace such Goods (or the defective part) or refund the price of such Goods at the pro rata Contract rate provided that,

if the Company so requests, the Buyer shall, at the Company's expense, return the Goods or the part of such Goods which is defective to the Company.

**9.5** If the Company complies with Condition 9.4 it shall have no further liability for any defects in the Goods.

## 10. LIMITATION OF LIABILITY

**10.1** Subject to Condition 4, 5 and 9, the following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of any breach of these Conditions, and any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

**10.2** All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by sections 14 and 15 of the Sale of Goods Act 1893) are, to the fullest extent permitted by law, excluded from the Contract.

**10.3** Nothing in these Conditions excludes or limits the liability of the Company for death or personal injury caused by the Company's negligence or fraud or fraudulent misrepresentation.

**10.4** Subject to Conditions 10.2 and 10.3:

**10.4.1** the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Contract shall be limited to the price paid by the Buyer for the Goods; and

**10.4.2** the Company shall not be liable to the Buyer for any direct, indirect or consequential loss or damage (whether for loss of profit, loss of business, depletion of goodwill or otherwise), costs, expenses or other claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

## 11. DATA PROTECTION

**11.1** If the Buyer is an individual or a group of individuals the Buyer agrees that the Company may:

**11.1.1** seek, hold and process any information obtained about the Buyer from the Buyer or third parties for the purpose of and as a result of any applications or agreements the Buyer has with the Company. This will include a search with a licensed credit reference agency which will keep a record of that search.

**11.1.2** use this information for credit assessment purposes including assessing the Buyer's credit limit and to administer and operate the credit account to the Buyer and analyse the conduct of that credit account. This may include further searches with licensed credit references agencies.

**11.1.3** disclose any information the Company holds about the Buyer to licensed credit reference agencies, other suppliers and creditors to help the Seller and other make credit decisions; to help prevent or detect fraud or other crimes; to trace debtors; to provide trade references on a confidential basis to the Company's agents and sub-contractors; to insurance companies for the purpose connected with insurance products that relate or might relate to the Buyer's credit account; to any person to whom the Company proposes to transfer its rights and/or responsibilities under these Conditions and to the extent the Company is required and permitted to do so by law.

**11.1.4** hold and use this information during and for 6 years after the trading relationship and thereafter destroy the information except for a record of credit limits and date of and grounds for account closure.

**11.1.5** if the Buyer is a body corporate or incorporate the Company may access information as above relating to the Buyer's directors, shareholders or members including searches with licensed credit reference agencies.

## 12. ANTICORRUPTION AND ANTIBRIBERY

In relation to any transaction involving the Goods that are the subject of this document, the Buyer shall not seek to obtain or retain business or gain any other advantage by making or offering to

make any payment of money or by providing or offering to provide anything of value, directly or indirectly, to: (i) any government official; or (ii) any non-governmental person, in either case with the intent that such official or person will perform their responsibilities improperly. The Buyer warrants that it will comply with the anticorruption laws and anti-bribery laws of any country having jurisdiction over Buyer or the transaction involving the Goods that are the subject of this document.

## 13. GENERAL

**13.1** The Company may at any time assign or subcontract all or any of its rights or obligations under the Contract. The Buyer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.

**13.2** The Company reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Buyer (without liability to the Buyer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company.

**13.3** Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.

**13.4** If any provision of the Contract 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 provisions of the Contract and the remainder of such provision shall continue in full force and effect.

**13.5** Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.

**13.6** Any waiver which must be in writing by the Company of any breach of, or any default under, any provision of the Contract by the Buyer will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Contract.

**13.7** The formation, existence, construction, performance, validity and all aspects of the Contract including any disputes or claims arising out of or in connection with it shall be governed by and construed in accordance with Irish law and the parties submit to the exclusive jurisdiction of the Irish courts sitting in Dublin.

**13.8** All communications between the parties about this Contract must be in writing and delivered by hand or sent by pre-paid first class post and addressed to the registered office or principal business address of the recipient.