

Standard Terms and Conditions of Sale

Last Updated: July 2020

1. Definitions

In these terms and conditions, unless the context otherwise requires:

Customer means the person acquiring or offering to acquire Product from the Company;
Loss means any delay, inconvenience, loss, liability, damage, expense or cost whatsoever and includes (without limitation) direct or consequential loss or damage;
Order means an order for Product placed by the Customer with the Company;
Product means beverage products, equipment or services supplied, or to be supplied, by the Company to the Customer from time to time;
Company means JACOBS DOUWE EGBERTS AU PTY LTD ABN 82 051 278 409 of 924 Pacific Highway, Gordon in the State of New South Wales;
Territory means the Commonwealth of Australia and its territories.

2. Application of Terms and Conditions

2.1 Unless otherwise agreed in writing by the Customer and the Company, these terms and conditions will apply to the provision by the Company of all Product to the Customer and will therefore be incorporated into all Orders. Any other terms and conditions contained in the Order or otherwise notified to the Company will apply only if and to the extent that they are accepted in writing by the Company.
 2.2 These terms and conditions are subject to change at the reasonable discretion of the Company. Any changes will take effect as follows:
 (a) For Orders accepted but not fulfilled, 7 days after notice of revised terms, unless the Customer terminates the Order during that period; or
 (b) For Orders accepted after publication date, from the date of publication.

3. Orders and Security

3.1 Each Order is subject to acceptance or rejection by the Company and is not binding on the Company until its written acceptance or performance of it (whichever occurs first).
 3.2 The Company may, prior to the acceptance of an Order, request the Customer provide security for the Order, including by way of a third party guarantee on terms acceptable to the Company.
 3.3 The Company reserves the right to reject the Order should a requested security not be provided.

4. Delivery

4.1 Any terms as to quantity of Product to be delivered or time of delivery agreed between the Company and the Customer are not of the essence to the relevant Order.
 4.2 The Customer acknowledges that underage and overage of not more than 15% of the ordered quantity will constitute good delivery by the Company.
 4.3 Unless otherwise agreed in writing, the Company reserves the right to make partial deliveries against an Order and to invoice each partial delivery separately. The Customer may not reject Product on the basis of partial or late delivery.
 4.4 Unless notified otherwise in writing by the Customer, all Product will be delivered to the address of the Customer notified to the Company at the time of the Order.
 4.5 The Customer must inspect Product on delivery and will be deemed to have accepted Product free of defects or other non-conformity unless the Company receives a substantiated written claim as to any defects or other non-conformity within 7 days from delivery.
 4.6 The specification of the weight, size and area of Product will be treated as prima facie accurate by the Customer and will not be subject to requisition or claim for replacement by the Company.
 4.7 The Company will not be liable for any Loss incurred or suffered by the Customer as a result of any delay in delivery of Product.

5. Prices

5.1 Unless otherwise agreed in writing by the Company, all price lists and prices quoted in respect of Product are subject to increase at any time with 10 business days' notice and Product will be invoiced at the price ruling at the date of delivery.
 5.2 No price list or Product catalogue delivered by the Company to the Customer constitutes an offer by the Company to sell Product.

6. GST

6.1 Unless expressly stated by the Company in writing, prices quoted or agreed for the supply of Product to the Customer (each a **Supply**) do not take into account any GST that the Company must pay in relation to that Supply (**GST Exclusive Price**). In respect of each GST Exclusive Price the Customer agrees that:
 (a) if any Supply is a taxable supply the GST Exclusive Price will be increased by an amount determined at the Company's discretion, being not greater than the GST Exclusive Price multiplied by the prevailing GST rate (expressed as a decimal) (**GST Factor**);
 (b) the price for each Supply that is a taxable supply will be the GST Exclusive Price plus the GST Factor (**GST Inclusive Price**); and
 (c) the Customer will be required to pay to the Company the GST Inclusive Price for a Supply at the time and in the manner for payment of the GST Exclusive Price for the Supply.
 6.2 For the purposes of this clause 6, unless the context otherwise requires, capitalised terms have the meanings given to those expressions in A New Tax System (Goods and Services Tax) Act 1999.

7. Payment

7.1 Unless otherwise agreed by the Company in writing and subject to clause 7.2, payment for all Product must be made by the Customer to the Company in accordance with the agreed trading terms or, in the absence thereof, within 10 business days from delivery of Product to the Customer or from receipt of tax invoice, whichever is earlier.
 7.2 The Company reserves the right to require immediate payment for all Product supplied.
 7.3 Punctual payment is of the essence of each Order.
 7.4 If the Customer fails to make a payment by the due date then, without affecting any other right or remedy available to the Company, the Company may:

- (a) suspend any further deliveries to the Customer of the Product in question or any other Product;
- (b) charge the Customer interest on the amount unpaid at a rate of 2% above the prime rate set from time to time by the Reserve Bank of Australia (such interest to be computed daily and compounded monthly) until payment in full is made;
- (c) enter the Customer's premises and remove and take into its possession the Product to which the overdue payment relates (and the Customer hereby consents to such entry and to the Company taking any action necessary to take possession of such Product);
- (d) take a general lien on all of the Customer's property in the Company's possession to cover the amount unpaid; and/or
- (e) recover from the Customer, in addition to the outstanding amount, all costs incurred by the Company in collection of the outstanding amount including, without limitation, all legal costs (on a solicitor and own client basis) and all debt collection agency costs.

8. Passing of Title and Risk & Personal Property Securities Act (PPSA)

8.1 Title in Product remains with the Company and does not pass to the Customer until payment in full for all Product and payment of all other amounts outstanding from the Customer to the Company.
 8.2 Subject to clause 8.4, the Customer may, as fiduciary of the Company and in the ordinary course of the Customer's business, market and sell Product belonging to the Company provided that the Customer must:
 (a) hold all proceeds of sale on trust for Company pending payment in full to Company of all amounts referred to in clause 8.1; and
 (b) keep a complete record of each sale.
 8.3 Until title in Product passes from the Company:
 (a) that Product must be stored by the Customer so that it is separately and clearly identifiable as Product of the Company; and
 (b) the Customer must not remove any marks identifying that Product.
 8.4 If the Customer fails to pay any moneys due and payable to the Company or otherwise defaults in the performance or observance of any contract with the Company, the Company may, by notice in writing (and without affecting any other rights or remedies it may have):
 (a) terminate the Customer's right under clause 8.2 to sell the Company's Product; and/or
 (b) terminate any agreement or arrangement under which the Company has provided, or agreed to provide, credit to the Customer and require all moneys owing by the Customer to the Company for Product supplied to be paid to the Company immediately.

8.5 This section 8 applies notwithstanding any agreement or arrangement between the parties under which the Company grants or agrees to grant the Customer credit.
 8.6 The Company is entitled to register its interest on the PPSA register and the Customer consents to and authorises such registration. The Customer will do anything reasonably required by the Company including executing documents in connection with the registration, continuing perfection and enforcement of its security interest. The Customer waives any right to receive a copy of any financing statement, financing change statement or verification statement in respect of any security interests created by or pursuant to these terms and conditions. To the extent permitted by law, the Customer waives its rights to any notice required by a provision of the PPSA. The Customer must not grant any other security interest which would rank equally with, or in priority to, a security interest granted to the Company by or pursuant to these terms and conditions without written consent of the Company.
 8.7 Risk in Product passes to the Customer on delivery of Product to the Customer and the Customer must at all times maintain adequate insurance to cover any Loss in respect of Product, however caused, between the time of delivery to the Customer and the time that title in the Product passes to the Customer.

9. Product Returns

Subject to clause 10, Product may only be returned to the Company if it is unused and resaleable and with the Company's prior written consent. All Product returned is subject to a restocking fee of 15% of its price.

10. Customer Rights and Remedies & Liability

10.1 The Customer does not have any rights or remedies in respect of Product other than the rights and remedies expressly provided for in these terms and conditions, including this clause 10.
 10.2 The Company agrees and acknowledges that the Customer may be entitled to the rights and remedies in respect of Product which the Customer may have under the Competition and Consumer Act 2010 and similar State and Territory laws and which cannot be lawfully excluded, restricted or modified. These terms and conditions do not purport to, and do not have the effect of excluding, restricting or modifying the exercise of any such right or remedy or the liability of the Company in respect of any such right or remedy.
 10.3 Subject to clause 10.2 and to the extent permitted by law:
 (a) all conditions, warranties and guarantees relating to Product other than those expressly contained or provided for in these terms and conditions are excluded;

(b) the Company will not be liable to the Customer for any Loss caused (in whole or in part) by or arising out of any use of Product, any defects in Product or any failure, malfunction, breakdown or deterioration of Product; and
 (c) the Company's liability to the Customer for breach of any express provision of these terms and conditions are limited at the Company's option to:
 (i) refund for or replacement of the Product in respect of which the breach occurred (and in respect of services, providing the services again in respect of which the breach occurred); or
 (ii) repair of the Product.
 10.4 The Customer warrants and acknowledges that it has not relied on any statement, representation or warranty by the Company (including any descriptions, illustrations or specifications in any document, catalogue, list, brochure or publicity material produced by the Company and/or supplied to the Customer) other than those expressly set out in these terms and conditions.
 10.5 The Customer acknowledges that it has not relied on the skill or judgement of the Company or any person purporting to act on behalf of the Company and that it has determined that Product being acquired will be fit for the purpose for which it is intended to be used. Any description of Product is for identification only and will not constitute an agreement for the supply of the Product by description.

11. Termination

11.1 The Company may terminate an Order and these terms and conditions, with immediate effect by giving notice in writing if the Customer is in breach of clauses 7 or 19.
 11.2 Where the Company provides the Customer with equipment on a free-on-loan or rental basis, the Company may terminate an Order and these terms and conditions with immediate effect if the Customer moves to another site without the prior written agreement of the Company.
 11.3 Either party may terminate an Order and these terms and conditions on written notice to the other (**Defaulting Party**) with immediate effect if:
 (a) the Defaulting Party breaches any provision of these terms and conditions and fails to remedy the breach within 10 business days after receiving written notice requiring it to do so; or
 (b) the Defaulting Party breaches a material provision of these terms and conditions where that breach is not capable of remedy.

11.4 Either party may terminate an Order and these terms and conditions, with immediate effect, if the other party has entered into any composition or arrangement with its creditors or has a receiver appointed over any of its assets or is the subject of any resolution or petition for winding up or judicial management (other than for the purpose of amalgamation or reconstruction), or disposes of the whole or part of its assets, operations or business other than in the ordinary course of its business, or ceases to be able to pay its debts as they become due.
 11.5 Any termination of an Order and these terms and conditions will be without prejudice to any rights which either party may have against the other arising out of or connected with these terms and conditions.
 11.6 The termination of an Order and these terms and conditions by the Customer or the Company will not affect the continuation or fulfillment of outstanding Orders between the Company and the Customer.
 11.7 On termination of an Order and these terms and conditions for any reason, the Customer will purchase from the Company all stocks of labels and packaging then held by the Company in respect of that Customer's stock.

12. Force Majeure

The Company will not be liable for any failure to perform or delay in performance of any of its obligations where such failure or delay is due to any cause or circumstance beyond the Company's reasonable control, including but not limited to strikes, lock-outs, labour disputes, fires, acts of God or public enemy, delays in transport, breakdowns in machinery, restrictions or prohibitions by any government or semi-government authorities, embargoes or any other events beyond the Company's reasonable control whenever occurring.
13. Assignment
 The Customer must not assign, transfer or otherwise dispose of any of the benefits or burdens of any Order and these terms and conditions without the prior written consent of the Company. In the event of a corporate reconstruction, the Company may assign or novate such contracts on notice to the Customer and the Customer agrees to execute such documents as are necessary to give effect to the assignment or novation.

14. Sub-Contracting

The Company reserves the right to subcontract the supply and/or the delivery of Product.

15. Notices

Any notice given under a contract between the Customer and the Company will be deemed to have been received by the person to whom it was sent:
 (a) in the case of hand delivery, on delivery;
 (b) in the case of pre-paid post, three days after the date of dispatch; and
 (c) in the case of email, one hour after the email is sent unless a return email is received by the sender within that one-hour period stating that the addressee's email address is wrong or that the message cannot be delivered.

16. Waiver

No failure to exercise nor any delay in exercising any right, power or remedy by a party operates as a waiver. A single or partial exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy.
 A waiver is not valid or binding on the party granting that waiver unless made in writing signed by that party granting the waiver and will be effective only to the extent specifically set out in that waiver.

17. Severability

If part or all of any provision of an Order or these terms and conditions or its application to any person or circumstance is illegal or unenforceable, the provision will be interpreted so as to ensure it is not illegal or unenforceable. If any provision or part of it cannot be so interpreted, the provision or part of it will be severed from these terms and conditions and the remaining provisions of these terms and conditions continue in force.

18. Authority to Obtain and Exchange Credit Information

18.1 In accordance with section 18K(1)(b) of the Privacy Act 1988 the Customer authorises the Company to obtain from a credit reporting agency a credit report containing personal credit information about the Customer in order to assess whether the Company will provide or continue to provide credit to the Customer.
 18.2 The Customer authorises the Company to contact any of the contacts or references provided by the Customer and make such enquiries as are necessary and reasonable to give proper consideration to the Customer's application for credit.
 18.3 The Company reserves the right to suspend the supply of further Products on credit to the Customer without prior notice of such action to the Customer.

19. Territory

19.1 Unless otherwise expressly agreed in writing by the Company, the Customer must not sell, distribute or deliver any Product other than within the Territory.
 19.2 The Customer acknowledges that any sale by it, or on its behalf, of the Product outside of the Territory is a breach of these terms and conditions and that the Company will suffer Loss as a result of that conduct.

20. Governing Law

Each Order and these terms and conditions are governed by and construed in accordance with the laws of the state of New South Wales.

21. Confidentiality

Each party acknowledges that all information relating to a party's present or contemplated products, services, marketing and pricing strategies, customers, financial or contractual arrangements (including the terms of any agreement between the Company and the Customer or an Order) and affairs and business operations is commercially sensitive and confidential to that party (**Confidential Information**). Each party will keep, and use the best endeavours to ensure that its employees and agents keep, Confidential Information confidential and not use or disclose the Confidential Information to any person other than:
 (a) in confidence to that party's professional advisers to obtain professional advice;
 (b) as may be properly required for the purpose of the provision of the Product and the performance of any obligations under these terms and conditions;
 (c) with the prior written consent of the other party, but subject to the terms of such consent;
 (d) as may be required by any law, rule, regulation or requirement of or any court of competent jurisdiction or stock exchange listing rules; or
 (e) if the Confidential Information is in the public domain otherwise than through breach of any agreement between the Company and the Customer.

22. Interpretation

In these terms and conditions:
 (a) where the Customer comprises two or more persons, an agreement or obligation to be performed or observed by the Customer binds those persons jointly and each of them severally;
 (b) headings are for ease of reference only and will be disregarded in interpreting any contract between the Company and the Customer;
 (c) the singular includes the plural and vice versa;
 (d) a reference to a party includes its executors, administrators, successors and permitted assigns;
 (e) a reference to an individual or person includes a corporation, firm, partnership, joint venture, association, government and governmental and local authority and agency; and
 (f) in the event of inconsistency of these terms and conditions and any additional agreement between the Customer and the Company, the terms and conditions contained herein will prevail to the extent of any such inconsistency.

