



## Conditions

### 1. Interpretation

The following definitions and rules of interpretation apply in these Conditions.

#### 1.1 Definitions:

**Applicable Law(s):** the laws of England and Wales and any other laws or regulations (including tax and accounting rules), regulatory policies, guidelines or industry codes, including healthy and safety laws, which apply to the provision of the Products and/or of the Services.

**Artwork:** means the work carried out by designers and/or packaging suppliers in the creation of artwork for the Packaging for the Products.

**Business Day:** a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

**Commencement Date:** means the date agreed between the parties for commencement of a Contract.

**Conditions:** these terms and conditions as amended from time to time in accordance with clause 23.8.

**Contract:** the contract between the Supplier and the Customer for the supply of Products and/or Services in accordance with these Conditions.

**Courier:** a courier appointed by the Supplier or the Customer as the case may be to transport the Products from the Supplier either to the Customer or to a destination requested by the Customer.

**Customer:** the person or firm who purchases the Products and/or Services from the Supplier.

**Delivery:** in accordance with clause 3.

**Delivery Date:** the delivery date agreed between the parties from time to time.

**Delivery Location:** agreed distribution locations agreed between the parties from time to time.

**Force Majeure Event:** has the meaning given to it in clause 22.

**Intellectual Property Rights:** patents, rights to inventions, copyright and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Order:** the Customer's order for the supply of Products and/or Services, as set out in the Customer's purchase order or other form of order accepted by the Supplier in writing and subject always to clause 2.3;

**Packaging:** any packaging (or any part of it) used to contain, house or hold the Products as described in the Specification and all labels, other than the Transport Packaging.

**Products:** the goods (or any part of them) agreed in the Product Specification Form.

**Product Specification Form:** the product specification form agreed between the parties from time to time and which sets out the details of the Services.

**Services:** the services supplied by the Supplier to the Customer as set out in the Product Specification Form.

**Specification:** as described in the Product Specification Form.

**Supplier:** Brand Tap Bottling Limited (Co. No. 12313590) Registered office: 15-17 Church Street, Stourbridge, West Midlands, DY8 1LU, United Kingdom.

**Trademarks:** the Customer's trademarks which the Supplier will apply to the Products, as set out in the Product Specification Form.

**Transport Packaging:** any packaging other than the Packaging used to transport the Products.

**UK GDPR:** has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

## 1.2 Interpretation:

- (a) A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.

- (b) Any words following the terms **including, include, in particular, for example** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.
- (c) A reference to **writing** or **written** excludes fax but not email.

## **1. Services**

- 1.1 The Supplier shall supply the Transport Packaging and Services in accordance with the Specification in all material respects.
- 1.2 The Supplier reserves the right to amend the Specification if required by any Applicable Law, and the Supplier shall notify the Customer in any such event.
- 1.3 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

## **2. Orders**

- 2.1 Each Order shall be deemed to be a separate offer by the Customer to purchase Services on the terms of this agreement.
- 2.2 The Supplier shall have no obligation to accept Orders.
- 2.3 No Order shall be deemed to be accepted by the Supplier until the Product Specification Form and prices are agreed and this is confirmed by the Supplier.

## **3. Delivery of Products**

### **Where the Supplier is to deliver the Products**

- 3.1 The Supplier shall make the Products available to a Courier appointed by it which shall deliver the Products to the Delivery Location at times agreed between the parties from time to time. The Customer acknowledges and agrees that, if the Products are damaged after they leave the Supplier's premises but before they are delivered to the Customer, the Supplier's liability shall be limited to the amount the Supplier receives from the Courier as recompense for the Customer's claim. The Supplier agrees to seek recompense for such damage from the Courier and can upon request, assist the Customer in procuring appropriate in transit insurance for the Products.
- 3.2 Unless agreed otherwise in writing, deliveries are to mainland UK only. In the event the Supplier agrees to deliver outside of mainland UK, the Customer shall be solely responsible for any and all export and customs licences, clearances, taxes, levies, duties and any other costs associated with export outside the United Kingdom.

### **Where the Customer is to collect the Products**

- 3.3 The Customer shall collect or arrange for collection of the Products from the Supplier's premises within three Business Days of the Supplier notifying the Customer that the Products are ready for collection.

### **General provisions relating to Delivery**

- 3.4 Delivery of the Products shall be completed on the completion of:
- (a) Where the Supplier is to deliver the Products the Supplier makes the Products available for collection by its Courier; or
  - (b) Where the Customer collects the Products, on loading of the Products at the Supplier's premises at Unit 4A&B, Whitehouse Road, Kidderminster. DY10 1HT.
- 3.5 Where the Customer is to collect the Good and fails to do so within three Business Days of the Supplier notifying the Customer that the Products are ready, then except where such failure or delay is caused by the Supplier's failure to comply with its obligations under the Contract:
- (a) delivery of the Products shall be deemed to have been completed at 9.00 am on the third Business Day following the day on which the Supplier notified the Customer that the Products were ready; and
  - (b) the Supplier shall store the Products until actual delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 3.6 If ten Business Days after the day on which the Supplier notified the Customer that the Products were ready for delivery the Customer has not collected them, the Supplier may resell or otherwise dispose of part or all of the Products (but not any Packaging which contains the Trademarks) and, after deducting reasonable storage and selling costs and the costs of disposing of Packaging, account to the Customer for any excess over the price of the Products or charge the Customer for any shortfall below the price of the Products.
- 3.7 Any dates quoted for delivery of the Products are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Products that is caused by a Force Majeure Event, or transportation or, the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Products or to the extent that any failure or delay is caused or contributed to by the Customer's failure to comply with its obligations under this Contract.

3.8 If the Supplier fails to deliver the Products, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Products.

3.9 The risk in the Products shall pass to the Customer on collection by the Customer where the Customer collects them or where the Supplier is delivering the Products, on delivery to its Courier.

#### **4. Acceptance and defective Products**

4.1 The Supplier warrants to perform the Services in accordance with Product Specification Form.

4.2 The Customer may reject any Products delivered to it that do not comply with clause 4.1, provided that:

- (a) notice of rejection is given to the Supplier within five Business Days of Delivery;
- (b) defective or non-delivered Products are >10% of the relevant Order;
- (c) none of the events listed in clause 4.5 apply; and
- (d) at the Supplier's option, the Customer (if asked to do so by the Supplier) returns such Products to the Supplier's place of business at the Supplier's reasonable cost or the Customer allows the Supplier a reasonable period of time and provides all reasonable assistance (including access to Customer's premises and/or any premises of any third party appointed by or on behalf of the Customer to store or distribute the Products) as is reasonably required to enable the Supplier to inspect the rejected Products.

4.3 If the Customer fails to give notice of rejection in accordance with clause 4.2, it shall be deemed to have accepted the Products.

4.4 Where notice of rejection is accepted by the Supplier, it shall, at its option, replace the defective Products, or refund the price of the defective Products in full.

4.5 The Supplier shall not be liable for the Products' failure to comply with the warranty set out in clause 4.1 if:

- (a) the Defect arises as a result of the Supplier following any drawing, design, instruction or specification supplied by the Customer including but not limited to in the Product Specification Form or the Supplier complying with the Specification;
- (b) the Customer alters such Products without the written consent of the Supplier;
- (c) the Products differ from the Specification as a result of changes made to ensure they comply with Applicable Laws; or

- (d) (except to the extent caused by the Supplier's default) the non-delivery, non-availability or shortage in delivery of, or for any Defect in, Products results from non-delivery, non-availability or shortages in delivery of, or Defects in, Packaging, or other materials which are procured from a third party supplier or the Customer.
- (e) the Customer makes any further use of those Products after giving notice in accordance with clause 4.2;
- (f) a Defect arises because the Customer or its customers failed to follow the Supplier's written instructions for the storage of the Products or (if there are none) good trade practice regarding the same; or
- (g) the Products have been exported to countries outside of the United Kingdom or European Union.

## **5. Customer's obligations**

### **5.1 The Customer shall:**

- (a) ensure that the terms of the Order and any information it provides including in the Specification and the Product Specification Form are complete and accurate;
- (b) provide or procure the provision of all goods which are stated in the Product Specification Form to be provided by the Customer, at the Customer's cost; and
- (c) co-operate with the Supplier in all matters relating to the Services.

## **6. Charges and payment**

### **6.1 The price for Products:**

- (a) shall be as quoted by the Supplier to the Customer and finalised as part of the agreement of the Product Specification Form or if no price is agreed, the price set out in the Supplier's published price list as at the date of Delivery; and
- (b) shall be exclusive of all costs and charges of Transport Packaging, insurance, transport of the Products, which shall be invoiced to the Customer.

### **6.2 The Supplier reserves the right to:**

- (a) increase the price of the Services, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Services to the Supplier that is due to:
  - (i) any factor beyond the control of the Supplier (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);

- (ii) any request by the Customer to change the Delivery Date(s), quantities or types of Products ordered, or the Specification; or
- (iii) any delay caused by any instructions of the Customer in respect of the Products or failure of the Customer to give the Supplier adequate or accurate information or instructions in respect of the Products; or
- (iv) a change of law, regulation and/or taxes which results in an increase to the Supplier's costs of performing its obligations under this agreement.

6.3 The Supplier may invoice the Customer on or at any time after completion of Delivery.

6.4 The Customer shall pay each invoice submitted by the Supplier as notified to it but where not notified, within 30 days of the date of the invoice and in full and in cleared funds to a bank account nominated in writing by the Supplier.

6.5 Time for payment shall be of the essence of the Contract.

6.6 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**).

6.7 If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting the Supplier's remedies under clause 11, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 13.8 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.

6.8 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

## **7. Intellectual property rights**

7.1 All Intellectual Property Rights in or arising out of or in connection with the Products and Services (other than the Customer Trademarks or other Customer Intellectual Property Rights contained within any Customer created Artwork or origination which it requests to be affixed to, or used in the Packaging of the Products) shall be owned by the Supplier.

7.2 The Customer grants the Supplier a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by the Customer to the Supplier for the term of the Contract for the purpose of providing the Services to the Customer including of the Customer Trademarks and other Customer Intellectual Property Rights contained within any Customer created Artwork or origination which it requests to be affixed to, or used in the Packaging of the Products.

- 7.3 The Supplier's use of the Trade Marks is limited to distribution of the Products. The Supplier agrees to use the Trademarks in accordance with the Brand Guidelines.
- 7.4 The Supplier may use the Trade Marks and any Customer created Artwork in any advertising or promotional materials relating to the Products and/or Packaging.
- 7.5 The Customer warrants that it is authorised to permit all Trade Marks, or other Intellectual Property Rights contained within any Artwork, Packaging or origination which the Customer or it requests to be affixed to, or used in the packaging of the Products to be so used, and to grant all licenses it purports to grant to the Supplier under this agreement.
- 7.6 The Supplier shall have no liability under this clause 15 in respect of any infringement of Intellectual Property Rights where it has used Packaging supplied by the Customer or followed instructions of the Customer.
- 7.7 The Customer indemnifies the Supplier against all liabilities, costs, expenses, damages and losses (including any direct losses (but excluding indirect or consequential losses, loss of profit, loss of reputation)) and all interest, penalties and legal costs (calculated on a full indemnity basis) and all and other reasonable professional costs and expenses) suffered or incurred by the Supplier arising out of or in connection with any claim made against the Supplier:
- (a) for actual or alleged infringement of a third party's Intellectual Property Rights or moral rights arising out of or in connection with the use of the Trademarks or other Customer Intellectual Property Rights in accordance with the terms of this agreement; and
  - (b) actual or alleged infringement of Confidential Information in accordance with the terms of this agreement.

## **8. Data protection**

- 8.1 The Supplier's Data Protection Policy is available upon request.

## **9. Confidentiality**

- 9.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, assets, affairs, customers, clients or suppliers of the other party, except as permitted by clause 9.2.
- 9.2 Each party may disclose the other party's confidential information:
- (a) to its employees, officers, representatives, contractors or subcontracts or advisers who need to know such information for the purposes of exercising the



party's rights or carrying out its obligations under or in connection with the Contract. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 9; and

- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

9.3 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

**10. Limitation of liability: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.**

10.1 The restrictions on liability in this clause 10:

- (a) apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise; and
- (b) are in addition to the limits on liability for non-delivery or damage in clause 3 (Delivery).

10.2 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:

- (a) death or personal injury caused by negligence;
- (b) fraud or fraudulent misrepresentation.

10.3 Subject to clause 3.1, 3.8 and 10.2, the Supplier's total liability to the Customer shall not exceed 100% of Charges paid under a Contract.

10.4 Subject to clause 10.2, the following types of loss are wholly excluded:

- (a) loss of profits;
- (b) loss of sales or business;
- (c) loss of agreements or contracts;
- (d) loss of anticipated savings;
- (e) loss of or damage to goodwill; and
- (f) indirect or consequential loss.

10.5 This clause 10 shall survive termination of the Contract.

## **11. Termination**

- 11.1 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- (a) the other party commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within 7 days where the defaulting party is the Customer or the Brand owner and within 30 days where the defaulting party is the Supplier – in each case, after receipt of notice in writing to do so;
  - (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
  - (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
  - (d) the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.
- 11.2 Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.

## **12. Consequences of termination**

- 12.1 On termination of the Contract:
- (a) the Customer shall immediately pay to the Supplier:
    - (i) all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services and Products supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
    - (ii) for any costs incurred by the Supplier in anticipation of the fulfilment of an Order which become wasted costs, promptly upon receipt of the Supplier's invoice for the same.

(iii)

- (b) the Customer shall return all Products which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.

12.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

12.3 Any provision of the Contract that expressly or by implication is intended to have effect after termination or expiry shall continue in full force and effect.

### **13. Force majeure**

Neither party shall be in breach of the Contract or otherwise liable for any failure or delay in the performance of its obligations if such delay or failure results from events, circumstances or causes beyond its reasonable control (a **Force Majeure Event**). The time for performance of such obligations shall be extended accordingly. If the period of delay or non-performance continues for 12 weeks, the party not affected may terminate the Contract by giving 30 days' written notice to the affected party.

### **14. General**

#### **14.1 Assignment and other dealings**

- (a) The Supplier may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.
- (b) Neither the Brand owner nor the Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of their respective rights and obligations under the Contract without the prior written consent of the Supplier.

#### **14.2 Notices.**

- (a) Any notice given to a party under or in connection with the Contract shall be in writing and shall be:
  - (i) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or

- (ii) sent by email to the following addresses (or an address substituted in writing by the party to be served):

Supplier: Unit 4A&B, Whitehouse Road, Kidderminster. DY10 1HT.

Customer: the Customer's usual email address used in communications in connection with the Contract.

- (b) Any notice shall be deemed to have been received:
  - (i) if delivered by hand, at the time the notice is left at the proper address;
  - (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
  - (iii) if sent by email, at the time of transmission, or, if this time falls outside the business hours of (GMT) 9am – 5pm, when business hours resume.
- (c) 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.

**14.3 Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision or part provision of the Contract is deemed deleted under this clause 23.3\_the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the commercial result of the original provision.

**14.4 Waiver.**

- (a) A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.
- (b) A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

**14.5 No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.

**14.6 Entire agreement.**

- (a) The Contract constitutes the entire agreement between the parties.
- (b) Each party acknowledges that in entering into the Contract it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall

have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

**14.7 Third party rights.**

- (a) Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- (b) The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

**14.8 Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).

**14.9 Governing law.** The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

**14.10 Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.