

## MARSTON'S PLC TERMS AND CONDITIONS OF SALE (2007) EDITION

### 1. INTERPRETATION AND DEFINITIONS

#### 1.1 In these terms and conditions:

"Authorised Representative"	means any executive Director of the Company and/or its Company Secretary;
"Customer"	means the legal person on whose behalf an Order for Goods is accepted by the Company;
"Company"	means Marston's PLC and/or any subsidiary of it, and any of its or their nominees, and also includes its or their respective successors and assigns;
"Contract"	the Order and the Company's acceptance of the Order subject to these Conditions;
"Conditions"	means these terms and conditions of sale;
"Goods"	means any goods or services which the Company is to supply/supplies in accordance with these Conditions;
"Order"	means an order given orally, or in writing using an acceptable form of communication such as telephone, letter, facsimile, telex and given by an authorised representative of the Customer.

1.2 Where the Customer is two or more persons or bodies, their liabilities are joint and several, and any event referred to in these Conditions is to be deemed to have happened if it happens in relation to any one of them.

1.3 Where the Customer is/are the trustee(s) or other official(s) of an unincorporated body, obligations entered into by them are entered into so as to bind the trustees or other officials and the members of such body from time to time.

1.4 Any irregularity, unenforceability or invalidity of any provision in these Conditions shall not effect the validity or enforceability of the remaining provisions which shall be construed as if there were no such irregularity, unenforceability or invalidity.

1.5 Any reference in these Conditions to any provisions of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

1.6 The headings in these Conditions are for convenience only and shall not affect their interpretation.

### 2. APPLICATION OF TERMS

2.1 Each and every Order for Goods by the Customer from the Company shall be deemed to be an offer by the Customer to purchase Goods subject to these Conditions.

2.2 Unless otherwise agreed in writing by an Authorised Representative of the Company these Conditions shall:

2.2.1 Override and supersede any terms or conditions that have previously existed;

2.2.2 Shall be deemed to be incorporated in all Contract(s) which the Customer may enter into with the Company when purchasing the Company's Goods and the Customer acknowledges and agrees that they shall govern the terms of such Contracts to the exclusion of any other terms and conditions. All negotiations, statements, warranties and conditions in relation to such Contract(s) shall be deemed to be subject to these Conditions.

2.3 Any purported variation, waiver or suspension of these Conditions (or any part of them) shall not be binding unless agreed in writing by an Authorised Representative of the

Company and none of the Company's employees or agents have any authority to bind the Company by an oral agreement at variance with these Conditions.

- 2.4 The Customer shall ensure that all persons acting on behalf of the Customer in connection with the placing of Orders with the Company shall have full and sufficient authority to do so and the Company shall be entitled to assume that any persons placing Orders with the Company shall be an authorised agent/representative of the Customer whether there is ostensible agency or not.
- 2.5 Contracts may not be cancelled in any circumstance unless expressly agreed in writing by an Authorised Representative of the Company (such agreement being at the absolute and unrestricted discretion of the Company).

### **3. PRICE/GOODS AVAILABILITY/VARIATION**

- 3.1 All Goods are offered for sale subject to availability at the time of delivery and all negotiations shall be subject to such availability.
- 3.2 The prices in any price list of the Company or which may be quoted prior to or at the time of any Order being accepted are subject to subsequent alteration by the Company without prior notice. Goods will be invoiced at the prices ruling at the date of delivery and the Customer shall pay such prices prevailing at the date of delivery. In the event that Goods are invoiced and paid for at prices other than that prevailing at the date of delivery then the Company may invoice and the Customer shall pay the difference between the prices actually invoiced and/or paid and those prevailing at the date of delivery.
- 3.3 If the Company adopts any changes in manufacture or specification of the Goods the Customer shall accept the Goods so changed or amended in fulfilment of the Order.
- 3.4 The Company shall be entitled to withhold supplies of Goods where it has reasonable cause to believe that such supplies may not be duly paid for, or that any containers which are the property of the Company may not be returned or that any Goods which should be supplied may not be handled or kept properly.
- 3.5 The Company reserves the right to visit the premises where supplied Goods are on offer to the public to:
- 3.5.1 take samples and carry out any analysis deemed necessary; and
  - 3.5.2 inspect cooling, stillaging and dispense systems; and
  - 3.5.3 carry out cellar and Goods management audits.

### **4. PRICE AND PAYMENT**

- 4.1 All prices are exclusive of VAT which shall be paid in addition to the price. Payment for the Goods by the Customer shall be on the terms agreed between the Company and the Customer as evidenced in writing. Such terms may be varied from time to time by the Company at its absolute discretion without prior notice to the Customer. Time for payment shall be of the essence. The Customer shall not be entitled to set off against any payment due from the Customer any sums which may be due, or claimed by the Customer, from the Company on any account whatsoever.
- 4.2 All sums outstanding shall carry interest at the rate of 8% per annum over the base rate of the Bank of England calculated on a daily basis. No payment shall be deemed to have been received until the Company has cleared funds. If the Company so requires, payments shall be made by direct debit and, in respect of monthly direct debits, collection will be made on the 24<sup>th</sup> day of each month (or such other day as the Company shall specify).

4.3 The Company reserves the right to invoice (and the Customer agrees to pay) any bank or other like charges incurred in respect of cheques, direct debits or similar which are not met either at first presentation or at all.

## 5. DELIVERY

5.1 Any time or date named by the Company for delivery is given and intended as an estimate only and the Company shall not be liable to make good any damage or loss whether arising directly or indirectly out of delay in delivery or the accuracy of such delivery. Time for delivery shall not be of the essence and shall be accepted at any time of day.

5.2 Delivery shall be taken by the Customer within the period (if any) named in the Order and the Customer shall provide, in advance, all such information to enable the Company to complete delivery. If for any reason the Customer is unable to accept the delivery of the Goods at the time when the Goods are due and ready for or normally delivered or if the Customer requests delivery on a date other than the usual or date agreed for delivery with the Company, the Company may if it thinks fit (but is not obliged so to do) store the Goods and take all reasonable steps to prevent their deterioration until actual delivery and the Customer shall be liable to the Company for (and the Customer agrees to pay) the Company's cost (being the greater of £60 plus applicable VAT or the actual cost to the Company) of:

5.2.1 the storage fee for so doing; and

5.2.2 having to deliver the Goods at a further/alternative date.

This provision shall be in addition to and not in substitution for any other payment or damages for which the Customer may become liable in respect of failure to take delivery at the appropriate time.

5.3 Notwithstanding that the Company and its employees may deliver the Goods into the storage or cellar part of the premises of the Customer the Company and its employees shall be under no obligation to do so and delivery of the Goods shall have taken place if the Goods in question are left within any part of the curtilage of the premises of the Customer (whether inside the building or not and irrespective of whether the Customer or any representative of the Customer is present at the time of delivery) and the Customer shall be deemed to have taken delivery of the Goods and be responsible for the security of the Goods from such time as such delivery has taken place.

5.4 It is agreed by the Customer that signature by the Customer or their representative of the delivery note shall be conclusive (but for the avoidance of doubt not exclusive) proof of delivery and return of the items referred to therein. The Customer shall be responsible for the accuracy of any delivery.

## 6. SHORT DELIVERY/LOSS IN TRANSIT/COMPLAINTS

6.1 The Company shall not be liable to make good any damage or loss whether arising directly or indirectly out of short delivery or delivery of Goods which differ from the Goods ordered by the Customer. All Goods must be examined at the time of delivery and any alleged loss or damage noted by the Customer on the delivery document. The Company accepts no liability for the loss or damage to Goods in transit unless the Customer:

6.1.1 at the time of delivery examines the Goods; and

6.1.2 retains for inspection all packaging materials; and

6.1.3 endorses the delivery document with details of any loss or damage; and

6.1.4 notifies the Company and when applicable any independent carrier in writing of any claim for any alleged loss or damage before the expiration of 24 hours after delivery.

6.2 Where Goods are considered to be unfit for sale a suitably qualified employee of the Company will sample the remaining Goods and determine whether or not they are unfit for

sale/dispense. The determination of the suitably qualified employee shall be final and binding on the Customer save in the case of manifest error. The remaining volume of the unfit Goods will be measured and destroyed by disposal down a suitable drain. The suitably qualified employee will determine whether or not the destruction to drain will occur at the Customer's premises. If the Goods fault is of Company origin then a credit for the destroyed Goods volume will be issued to the Customer.

## **7. EQUIPMENT LOAN/PROMOTIONAL MATERIAL**

- 7.1 All equipment (which expression shall include any dispense system, beer raising system, cellar cooling system, signs, storage cabinets and other such items) and point of sale or other promotional material or items (the "Equipment") supplied by the Company to the Customer, other than such items that the Customer shall have paid for in full, shall at all times belong to and be the property of the Company which shall be entitled at any time to go onto the premises of the Customer for the purposes of removal of the said Equipment and the Customer shall take good and proper care of such Equipment and shall replace or make good any damage caused to it or any deterioration in such Equipment whether the same arises by fair wear and tear or otherwise. The Company shall use its reasonable endeavours to ensure such parts of the Equipment, supplied by the Company, as may be of a mechanical nature are maintained but shall not be liable to the Customer for any failure on the Company's (or any sub-contractor's nominated on its behalf) part to do so. The Customer shall afford the Company (or its nominated sub-contractor) all access that may be required for the purposes of the installation, removal, maintenance or replacement of the Equipment and in default of such access the Company's liability to repair the Equipment shall cease immediately. The Customer shall not sell, assign, pledge, charge, underlet, in any other way part with possession of the Equipment or utilise such Equipment in relation to the dispense, sale or promotion of Goods not supplied by the Company.
- 7.2 The Customer shall comply with all relevant rules and regulations (statutory or otherwise) covering the use and maintenance of such Equipment, and the sale and storage of Goods supplied by the Company, and shall indemnify the Company in respect of any breach of this clause, and the Company shall have no responsibility for any losses or damages (whether direct, indirect or consequential) caused by any breach of this Clause.
- 7.3 Upon the Company ceasing to supply the Customer pursuant to the terms of these Conditions, the Customer shall forthwith deliver, in a good state of repair, all items of Equipment mentioned in clause 7.1 above to the Company and, in the event of the Customer failing to so deliver the Equipment within 7 days of having been formally requested in writing to do so by the Company, the Company may elect to regard the Customer as having purchased the Equipment at the current price prevailing at the time and the Customer will pay to the Company such price within 7 days of the Company notifying the Customer that it has made such election and what the price is. In the event of the Customer failing to make payment of the price in question the same shall carry interest in favour of the Company at the rate of 8% per annum over the base rate of the Bank of England calculated on a daily basis.

## **8. LIMITATION OF LIABILITY**

- 8.1 These Conditions set out the entire liability of the Company (its employees, agents and sub-contractors) to the Customer in respect of any breach of these Conditions and any representation, statement or tortious act or omission including, but not limited to, negligence arising under or in connection with any Contract.
- 8.2 The Company's liability under these Conditions or otherwise shall be in lieu and to the exclusion of all other warranties, conditions, terms and liabilities express or implied, statutory or otherwise in respect of the quality, fitness for any particular purpose of the Goods or otherwise, notwithstanding any advice or representation to the Customer, all liability in respect of which, howsoever arising, is expressly excluded, except as provided in clause 8.6.

- 8.3 The Company shall in no circumstances be liable for any loss of actual or anticipated profit, loss of business, loss of contracts, loss of revenue, loss of anticipated savings, depletion of goodwill or for any special, indirect or consequential loss or damage of any nature whatsoever, howsoever arising.
- 8.4 All other liability of whatever nature, loss or damage whether direct or indirect, foreseen, foreseeable or known, however arising shall be limited to the price paid to the Company for the Goods delivered in the consignment in relation to which any claim arises.
- 8.5 The Customer shall indemnify the Company against all liability, actions, proceedings, costs, claims, damages or demands, in any way connected with any Contract, brought or threatened against the Company by any third party except to the extent that the Company is liable to the Customer in accordance with these Conditions.
- 8.6 Nothing in these Conditions shall restrict or exclude the Company's liability for death or personal injury caused by its negligence, under section 12 of the Sale of Goods Act 1979 or for fraudulent misrepresentation.

## **9. DEFAULT BY THE CUSTOMER**

- 9.1 The Company's obligations/liability pursuant to these Conditions shall cease if:
- 9.1.1 The Customer has not paid in full and by the due date all invoices for Goods supplied by the Company; or
  - 9.1.2 The Company's representatives are denied full and free access to the Goods; or
  - 9.1.3 The Customer has not properly maintained and stored the Goods; or
  - 9.1.4 The Customer has tampered with or interfered with the Goods; or
  - 9.1.5 The Customer breaches any terms hereof or the terms of any other agreements the Customer may have entered into with the Company.
- 9.2 Should the Customer default in paying any sum due under any Order or invoice as and when it becomes due or should there be a breach (or the Company has reasonable grounds for believing that there has been or may be a breach) of any of the terms hereof, or the terms of any other agreements the Customer may have entered into with the Company, the Company shall have the right either to:
- 9.2.1 suspend all further deliveries until the default is made good; or
  - 9.2.2 to cancel the Order insofar as any Goods remain to be delivered under it; or
  - 9.2.3 notwithstanding clause 4, require that any Goods to be sold or supplied be paid for in cash or banker's draft at the time of Order (or such other time as the Company shall require).
- 9.3 The Company may at its unrestricted discretion immediately consider any agreement or Contract between itself and the Customer as terminated if the Customer fails to comply with any of his/its obligations under these Conditions or, if an individual or individuals, becomes bankrupt, or, if an incorporated body, goes into liquidation either compulsory or voluntarily, or makes or seeks any form of assignment agreement or composition with his/its creditors or suffers distress or process of execution to be levied against his/its property or has a receiver or administrator appointed for all or any part of his/its undertaking or assets. Without prejudice to the above, the Company reserves similar rights of cancellation if it has reason to believe that any of the events mentioned in this Clause will occur or that the Customer is insolvent generally.
- 9.4 The Company's rights under clause 10 (but not the Customer's rights) shall continue beyond the discharge of the Company's and Customer's primary obligations under any Contract consequent upon its termination.

9.5 The termination of any Contract however arising shall be without prejudice to the rights and duties of either the Company or Customer accrued prior to termination.

## **10. OWNERSHIP OF GOODS**

10.1 Where the Company uses vehicles of its own nomination for delivery, risk shall pass to the Customer on completion of the delivery at the Customer's nominated address, or on completion of delivery in accordance with clause 5. Where delivery is effected by other means, risk shall pass when Goods are delivered by the Company to the Customer's nominated carrier. In the event the Customer wrongfully fails to take delivery of the Goods, risk shall pass at the time the Company has tendered delivery of the Goods.

10.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, title in the Goods shall not pass to the Customer until the Company has received in cash or cleared funds payment in full of the price of the Goods and all other Goods agreed to be sold by the Company to the Customer for which payment is then due.

10.3 Where the property and title remains with the Company after delivery the Company shall at all times be entitled to repossess the Goods if in the Company's opinion the Customer's creditworthiness has been impaired and the Customer hereby grants the Company or its agents an irrevocable licence to enter any premises of the Customer at any time for the purpose of so repossessing the Goods.

10.4 Until title in the Goods passes to the Customer or until the Company shall repossess the same, the Customer shall:

10.4.1 have power of sale and disposition provided that all sums due to or received by the Customer in respect of such sale or disposition shall be held in trust by the Customer for the Company absolutely unless and until the full amount due has been paid to the Company and shall account to the Company for such sums and shall keep all such proceeds separate from any monies or property of the Customer and third parties until so accounted;

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

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

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

10.4.5 maintain the Goods in satisfactory condition and insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request, the Customer shall produce the policy of insurance to the Company;

10.4.6 hold the proceeds of the insurance referred to in clause 10.4.5 on trust for the Company and keep all such proceeds separate from any monies or property of the Customer and third parties.

## **11. EMPTIES**

11.1 All containers, kegs, casks, returnable bottles, cases and gas cylinders (the "Containers") referred to in the invoice are the property of the Company and certain Containers will carry a deposit charge which will be refundable on their return. When empty, Containers should be returned on the vehicle which makes the next delivery. The Company reserves the right to charge the Customer a reasonable replacement price for any Containers not returned within a reasonable time and in good and sound condition. The Company shall maintain a container balance record representing the sum of all full and empty Containers recorded on each delivery note following a delivery. A copy of the container balance record will be made available to the Customer upon request. The Customer and the Company agree that the container balance record will be used to determine whether or not Containers have been returned within a reasonable time.

- 11.2 The Company hereby confirms that all relevant Goods are sold in compliance with the 'Brewers and Licensed Retailers Association Code of Practice on the Contents of Kegs and Casks'. Any complaints about possible short measure should be made to the Company at its registered office.

## **12. SECONDARY WHOLESALING/PRICING**

The Customer is prohibited from actively selling, marketing or soliciting the sale of the Company's Goods to other operators active within the licensed/leisure sector, whether on a wholesale basis or otherwise. For the avoidance of doubt, active sales include offering the Company's Goods for sale to such operators, except in response to unsolicited inquiries from wholesalers.

## **13. STORAGE**

- 13.1 Save as, and strictly limited to, any advice/instruction provided by the Company to the Customer expressly in writing, the Customer shall be exclusively responsible for storage of the Goods. All Goods must be properly kept and handled at all times and must be resold by the Customer only in the condition as sold or prescribed by the Company.
- 13.2 It is the Customer's responsibility to rotate Goods so that the oldest is sold first. No credit will be given for out of date Goods nor will they be refunded or exchanged.

## **14. NOTICES**

Any notice to be served under these Conditions shall be regarded as being properly served on the Customer if sent by first class pre-paid post to the Customer at his last known address and on the Company if sent by recorded delivery post to its registered office.

## **15. FORCE MAJEURE**

- 15.1 The Company shall not be liable for any consequences arising from any failure to fulfil any terms of any transaction if fulfilment has been delayed, hindered or prevented by fire, accident, strike, lock-out or other circumstances which are not directly within its reasonable control, nor shall any such failure entitle the Customer to avoid the transaction. If by reason of any such circumstances the Company is able to fulfil only part of its total commitments, the Company shall be entitled to allocate available supplies at its sole discretion.
- 15.2 If, by reason of any circumstances set out in clause 15.1 the Company is of the opinion that supply and/or delivery of Goods is rendered impracticable, the Company shall be at liberty to terminate the Contract by written notice to the Customer whereupon the Customer shall pay any sums due to the Company for any Goods already delivered.

## **16. APPLICABLE LAW**

The formation, existence, construction, performance and validity of all aspects of any Contract shall be governed by English Law and the parties submit to the exclusive jurisdiction of the English Courts and shall not create any right enforceable by a person not a party to them. Any person who is not a party to these Conditions or any Contract shall not have rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of their terms.

## **17. DATA PROTECTION & MONEY LAUNDERING**

- 17.1 The Customer acknowledges that the Company is required to comply with applicable data protection legislation and acts at all times in accordance with such legislation.
- 17.2 The Customer acknowledges that the Company is required to comply with applicable money laundering legislation and regulations. As a consequence, the Company reserves

the right to (and shall have no liability to the Customer for any losses of any nature which may be incurred as a result of):

17.2.1 require the Customer to produce satisfactory evidence of identity;

17.2.2 notify the appropriate authorities of issues relating to the Customers affairs;

17.2.3 cease trading with the Customer (temporarily or otherwise) without explanation;

17.2.4 refuse to accept cash payments.

## **18. RESPONSIBLE DRINKING**

The Customer acknowledges that the Company is a member of the Portman Group and agrees to promote drinking responsibly and not to encourage excessive drinking in any form.

## **19. CONFIDENTIALITY**

The Customer shall keep in strict confidence all prices for Goods negotiated with the Company, technical or commercial know-how, recipes, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed by the Company to the Customer or its agents and any other confidential information concerning the Company's business or its products which the Customer may obtain.

## **20. INTELLECTUAL PROPERTY**

Materials, Equipment, tools, recipes, copyright, design rights or any other forms of intellectual property rights in all drawings, specifications, products, Goods and data supplied by the Company to the Customer shall at all times be and remain the exclusive property of the Company.