

## TERMS AND CONDITIONS FOR THE SUPPLY OF POS AND RELATED MATERIALS

### THE BUYER'S ATTENTION IS IN PARTICULAR DRAWN TO THE PROVISIONS OF CONDITIONS 2.4 AND 11.

#### 1. INTERPRETATION

1.1 The following definitions apply in these conditions.

**Buyer:** the person, firm or company who purchases the Goods from Carlsberg.

**Carlsberg:** Carlsberg UK Limited.

**Contract:** any contract between Carlsberg and the Buyer for the sale and purchase of the Goods, in accordance with these conditions.

**Goods:** any point of sale or other branded promotional goods agreed in the Contract to be supplied to the Buyer by Carlsberg (including any part or parts of them).

1.2 In these conditions, any reference to an enactment (meaning any statute or statutory provision or any other subordinate legislation or regulations made under any statute or statutory provision) shall be construed as references to that enactment as re-enacted, replaced or modified from time to time in the course of dealing.

1.3 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.

1.4 Condition headings do not affect the interpretation of these conditions.

#### 2. APPLICATION OF TERMS

2.1 Subject to any variation under condition 2.3 these conditions apply to the Contract to the exclusion of all other terms and conditions including any which the Buyer seeks to impose or incorporate, or which are implied by trade, custom, practice, or course of dealing. No terms endorsed on, delivered with or contained in the Buyer's purchase order, confirmation of order or other document will form part of the Contract.

2.2 Each order for Goods by the Buyer from Carlsberg shall be deemed to be an offer by the Buyer to buy Goods subject to these conditions.

2.3 Any variation of these conditions or any representations about the Goods must be agreed in writing and signed by an authorised representative of Carlsberg and none of Carlsberg's employees or agents has any authority to bind Carlsberg by an oral agreement or variance of these conditions.

2.4 **THESE CONDITIONS DO NOT APPLY TO THE SUPPLY OF ALCOHOLIC OR NON ALCOHOLIC BEVERAGES OF ANY KIND OR TO THE SUPPLY OF TECHNICAL SERVICES OR TECHNICAL SERVICES EQUIPMENT.**

2.5 The Contract constitutes the entire agreement between the parties. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of Carlsberg which is not set out in the Contract. The Buyer further acknowledges that if it does rely on any untrue statement made by Carlsberg in entering in to any Contract, the Buyer shall not have any remedy unless the statement was made fraudulently.

#### 3. ORDERS

3.1 All Goods are subject to availability. The Buyer will only order Goods that it is willing and able to pay for. The Buyer shall be responsible for the accuracy of each of its orders.

3.2 All orders for Goods placed by the Buyer or on behalf of the Buyer shall be deemed to have been placed by persons duly authorised by the Buyer.

3.3 No order placed by the Buyer shall be deemed to be accepted by Carlsberg until a written acknowledgement of order is issued by Carlsberg or (if earlier) Carlsberg delivers the Goods to the Buyer, at which point the Contract shall come into existence. Carlsberg will be entitled to reject orders for any reason.

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- 3.4 Acceptance of delivery of the Goods shall be deemed conclusive evidence of the Buyer's acceptance of these conditions.
- 3.5 The Buyer shall not be entitled to cancel, suspend, or defer any delivery of Goods more than 30 minutes after the order has been placed.
- 3.6 Any quotation is given on the basis that no Contract shall come into existence until Carlsberg accepts an order. Unless otherwise stated, any quotation is only valid on the day it is given, provided that Carlsberg has not previously withdrawn it.

### 4. DESCRIPTION

- 4.1 The quantity and description of the Goods shall be as set out in a written acknowledgement of order issued by Carlsberg or, where no acknowledgement is issued, in the relevant order accepted by Carlsberg.
- 4.2 All samples, drawings, descriptive matter, specifications and advertising issued by Carlsberg and any descriptions or illustrations contained in Carlsberg'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 the Contract and this is not a sale by sample.

### 5. DELIVERY

- 5.1 Carlsberg will deliver the Goods to the agreed location within the UK mainland (**Delivery Location**). The Buyer shall ensure that any of its premises to which the goods are to be delivered are compliant with all relevant health and safety legislation and codes of practice (**Compliant**). If any such premises are not Compliant, then Carlsberg shall be entitled to suspend delivery until they are Compliant, without liability.
- 5.2 Any dates specified by Carlsberg for delivery of the Goods are approximate only and time of delivery is not of the essence. If no dates are so specified, delivery shall be within a reasonable time. Delivery of the Goods shall be accepted at any time of day and will be completed upon the delivery of the Goods at the agreed location.
- 5.3 On delivery of the Goods the Buyer will, if required, sign an acknowledgment of receipt (such as a delivery note or handheld terminal), which may include signature by electronic means. Any such signature will be deemed to carry the requisite authority of the Buyer and will, between Carlsberg and the Buyer be conclusive proof of delivery.
- 5.4 Subject to the other provisions of these conditions Carlsberg 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 similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by Carlsberg's negligence), nor shall any delay entitle the Buyer to terminate or rescind the Contract unless such delay exceeds 180 days.
- 5.5 If for any reason the Buyer fails to accept delivery of any of the Goods when they are ready for delivery, or Carlsberg is unable to deliver the Goods on time because of any act or omission of the Buyer (such as it not providing appropriate instructions, documents, licences or authorisations) risk in the Goods will pass to the Buyer, the Goods shall be deemed to have been delivered and Carlsberg may store the Goods until delivery and the Buyer shall be liable for all related costs and expenses (including storage and insurance).
- 5.6 Carlsberg 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.
- 5.7 Carlsberg accepts no liability for loss or damage to Goods in transit unless the Buyer:
- 5.7.1 at the time of delivery examines the Goods as delivered and retains for inspection all packaging material;
  - 5.7.2 endorses any delivery document which details any obvious loss or damaged; and
  - 5.7.3 notifies Carlsberg and, when applicable, any independent carrier, in writing of any claim for any loss or damage before the expiry of the third day after delivery.

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5.8 Carlsberg accepts no liability for damage to property (other than Goods) caused by the delivery of the Goods unless the Buyer notifies Carlsberg, and when applicable, any independent carrier, in writing of any claim for any loss or damage within 24 hours of the delivery.

### 6. NON-DELIVERY

6.1 The quantity of any consignment of Goods as recorded by Carlsberg on despatch from Carlsberg's place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.

6.2 Carlsberg shall not be liable for any non-delivery of Goods (even if caused by Carlsberg's negligence) unless the Buyer gives written notice to Carlsberg of the non-delivery within 3 days of the date when the Goods would in the ordinary course of events have been received.

6.3 Any liability of Carlsberg 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.

### 7. RISK/TITLE

7.1 Where the Goods are delivered using vehicles owned or hired by Carlsberg risk in the Goods shall pass to the Buyer upon delivery at the Delivery Location. Where delivery is effected by a third party, risk will pass when the Goods are handed over to the relevant carrier.

7.2 The Goods are at the risk of the Buyer from the time of delivery.

7.3 Ownership of the Goods shall not pass to the Buyer until Carlsberg has received in full (in cash or cleared funds) all sums due to it in respect of the Goods and all other sums which are or which become due to Carlsberg from the Buyer on any account.

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

7.4.1 hold the Goods on a fiduciary basis as Carlsberg's bailee;

7.4.2 store the Goods separately from all other Goods of the Buyer or any third party in such a way that they remain readily identifiable as Carlsberg's property;

7.4.3 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

7.4.4 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from delivery. On request, the Buyer shall produce the policy of insurance to Carlsberg; and

7.4.5 not mortgage, encumber or part with possession of the Goods or allow any lien or encumbrance to arise over them.

7.5 Without limiting any other right or remedy Carlsberg may have, if:

7.5.1 the Buyer fails to observe or perform any of its obligations or duties under the Contract, or any other Contract between the Buyer and Carlsberg;

7.5.2 any of the events in condition 12 occurs; or

7.5.3 Carlsberg reasonably believes that any such event is about to occur

before title to the Goods has passed to the Buyer, Carlsberg may at any time require the Buyer to deliver up the Goods and, if the Buyer fails to do so promptly, enter any premises of Buyer or of any third party where the relevant Goods are stored in order to recover them.

### 8. PRICE

8.1 Unless otherwise agreed by Carlsberg in writing, the price for the Goods shall be the price set out in Carlsberg's non-binding quotation or if no price is quoted (or a quoted price is no longer valid), the price listed in Carlsberg's price list published on the date (or deemed date) of delivery.

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8.2 Carlsberg reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to Carlsberg of supplying the Goods which is due to any factor beyond its control.

8.3 The price of the Goods is exclusive of any value added tax (VAT), and all costs or charges in relation to transport and insurance, all of which amounts the Buyer shall pay in addition when it is due to pay for the Goods.

### 9. PAYMENT

9.1 Unless Carlsberg agrees to the contrary with the Buyer in writing, payment for the Goods must be made in pounds sterling prior to delivery by credit or debit card.

9.2 Time for payment shall be of the essence. No payment shall be deemed to have been made until Carlsberg has received cleared funds.

9.3 Carlsberg may suspend delivery of the Goods until full payment is received.

9.4 By using a credit/debit card to pay for the Goods, the Buyer confirms that it is authorised to use that card. All credit/debit card holders are subject to validation checks and authorisation by the card issuer. If the issuer of the card refuses to authorise payment Carlsberg will not accept the relevant order and will not be liable for any delay or non-delivery. Carlsberg is not obliged to inform the Buyer of the reason for any such refusal nor is it responsible for the card issuer or bank charging the Buyer as a result of Carlsberg processing of the Buyer's credit/debit card payment.

9.5 The Buyer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise. Carlsberg may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Buyer against any amount payable by Carlsberg to the Buyer.

9.6 Carlsberg shall be entitled to recover payment for the Goods notwithstanding that ownership of any Goods may not have passed from Carlsberg.

### 10. QUALITY AND USE

10.1 The Buyer acknowledges that Carlsberg is not the manufacturer of the Goods, but Carlsberg will endeavour to transfer to the Buyer the benefit of any warranty or guarantee given to Carlsberg by the manufacturer.

10.2 Where the Goods are supplied free of charge, the Buyer acknowledges and agrees that they are supplied "as is" without any warranties of any kind (express or implied).

10.3 The Goods are supplied for use in the Buyer's business only and must not be resold.

10.4 If the Buyer does dispose of the Goods, for example by giving them away or taking them into private use, the Buyer acknowledges that this will normally constitute a supply for VAT purposes and, where it is a taxable supply, the Buyer will have to account for VAT on the disposal.

10.5 In consideration of Carlsberg agreeing to supply Goods to the Buyer which are to be displayed to the public (such as outside the Buyer's shop/outlet), the Buyer agrees that:

10.5.1 in using such Goods the Buyer will not act or omit to act in any way which could bring Carlsberg or any of Carlsberg's names, trademarks, logos or products into disrepute or which could be damaging or detrimental to their continuing reputation;

10.5.2 it will keep such Goods in good working order and in good condition cosmetically at all times when they are in view of the public;

10.5.3 it will be responsible for all maintenance of such Goods from the date of delivery to the Buyer;

10.5.4 in no circumstances will Carlsberg be deemed to have represented to the Buyer that such Goods are fit for any particular purpose;

10.5.5 it will not place such Goods in a location that is within close proximity (200m or less) of a school, children's centre or the equivalent.

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### 11. LIMITATION OF LIABILITY

- 11.1 This condition 11 sets out the entire financial liability of Carlsberg (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:
- 11.1.1 any breach of the Contract;
  - 11.1.2 any use made or resale of the Goods by the Buyer; and
  - 11.1.3 any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 11.2 There are no conditions, warranties, representations or terms, express or implied, that are binding on Carlsberg except as specifically stated in these conditions. Any condition, warranty, representation or term concerning the Goods which might otherwise be implied into or incorporated in these conditions or any Contract, whether by statute, common law or otherwise, is hereby expressly excluded, save for the conditions implied by section 12 of the Sale of Goods Act 1979. .
- 11.3 Nothing in these conditions excludes or limits the liability of Carlsberg:
- 11.3.1 for fraud, fraudulent misrepresentation or death or personal injury resulting from its negligence or that of its employees; or
  - 11.3.2 breach of terms implied by section 12 of the Sale of Goods Act 1979 or of section 2of the Consumer Protection Act 1987.
- 11.4 Without prejudice to condition 11.3, Carlsberg shall not be liable to the Buyer whether in contract, tort (including negligence) or restitution, or for breach of statutory duty, misrepresentation , or otherwise, for any loss of profit, loss of goodwill, loss of business, loss of business opportunity, loss of anticipated saving, loss or corruption of data or for any special, indirect or consequential damage or loss suffered by the Buyer that arises under or in connection with the Contract.
- 11.5 Without prejudice to condition 11.3 Carlsberg's total liability arising under or in connection with the Contract, whether arising in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation or otherwise, shall be limited to the invoice value of the Goods delivered in the consignment in relation to which the claim arises.
- 11.6 The Buyer shall, in relation to any loss or damage that may give rise to a claim under the Contract against Carlsberg, take all reasonable steps to avoid or mitigate that loss or damage including by pursuing any relevant third party, or claiming under any relevant insurance policy in respect of the loss or damage.

### 12. INSOLVENCY OF BUYER

- 12.1 If the Buyer makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt, or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of a solvent amalgamation or reconstruction), or an encumbrancer takes possession, or a receiver is appointed of any of the property or assets of the Buyer, or the Buyer ceases or threatens to cease to carry on business or Carlsberg reasonably apprehends that any of the events mentioned in this condition is about to occur (and notifies the Buyer accordingly) then, without affecting any of Carlsberg's other rights or remedies, Carlsberg is entitled to cancel the Contract or suspend any further deliveries without incurring any liability.

### 13. ASSIGNMENT

- 13.1 Carlsberg may assign, novate or sub-contract the Contract to any person, firm or company.
- 13.2 The Buyer shall not be entitled to assign the Contract or any part of it without the prior written consent of Carlsberg.

### 14. FORCE MAJEURE

- 14.1 Carlsberg shall not be liable or be deemed to be in breach of contract for any failure or delay in performance of its obligations to the Buyer under the Contract as a result of causes beyond Carlsberg's reasonable control, including (but not limited to) strikes, lock outs, trade disputes, adverse weather

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conditions, default of suppliers or sub-contractors, failure of energy sources or transport networks, breakdown of plant or equipment, or inability or delay in obtaining supplies of adequate or suitable materials.

### 15. BUSINESS ETHICS

- 15.1 In connection with the Contract, the Buyer will, and will procure that its officers, directors, employees, or any other party acting on its behalf (including without limitation, subcontractors or agents) will comply with all applicable foreign and domestic laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption as amended from time to time including but not limited to the Bribery Act 2010. The Buyer agrees to keep full and accurate books and records of all payments made in respect of any transaction or business effected in connection with the Contract and shall make all such books and records available to Carlsberg's representatives on request. The Buyer shall indemnify and hold harmless Carlsberg from and against all claims, actions, proceedings, suits, investigations, penalties and fines of any kind resulting from any breach of this condition, which shall survive any termination or expiry of the Contract

### 16. GENERAL

- 16.1 Each right or remedy of Carlsberg under the Contract is without prejudice to any other right or remedy of Carlsberg whether under the Contract or not.
- 16.2 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.
- 16.3 Failure or delay by Carlsberg 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.
- 16.4 Any waiver by Carlsberg of any breach of, or any default under, any provision of the Contract by the Buyer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- 16.5 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 16.6 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by and construed in accordance with English law and the parties submit to the exclusive jurisdiction of the English courts with regard to any such dispute or claim.

### 17. DATA PROTECTION

- 17.1 Personal data obtained by Carlsberg from the Buyer shall be held and processed in accordance with all applicable laws. Carlsberg may share such personal data with other Carlsberg entities, agents, or subcontractors performing services for Carlsberg. The Buyer consents to such processing of its personal data.

### 18. COMMUNICATIONS

- 18.1 All communications between the parties about the Contract shall be in writing and delivered by hand or sent by pre-paid first class post or sent by fax:
- 18.1.1 (in case of communications to Carlsberg) to its registered office or such changed address as shall be notified to the Buyer by Carlsberg; or
- 18.1.2 (in the case of the communications to the Buyer) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Buyer set out in any document which forms part of the Contract or such other address as shall be notified to Carlsberg by the Buyer.
- 18.2 Communications shall be deemed to have been received:
- 18.2.1 if sent by pre-paid first class post, two days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting); or

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18.2.2 if delivered by hand, on the day of delivery; or

18.2.3 if sent by fax on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day.