
BDI LIMITED
SALE TERMS

DEFINITIONS

In these Terms of Sale the following meanings shall apply:

"We" and "Us"	means BDI Limited.
"You"	means the purchaser of Goods from Us.
"Goods"	means the goods and/or services to be supplied by Us.
"Company Signatory"	means a director or manager employed by Us.
"Contract"	means the contract for the supply of Goods incorporating these Terms
"Terms"	means these terms and any special terms agreed in writing between a Company Signatory and You.
"Regulations"	means any statute order in council regulation directive bye-law or other legal requirement.

THE CONTRACT

- 2.1 Quotations are invitations to treat only and shall lapse 30 days from their date.
- 2.2 All orders are accepted by Us only under these Terms which may not be altered except with the written agreement of a Company Signatory. Any contrary or additional terms unless so agreed are excluded.
- 2.3 Orders are accepted subject to availability of Goods at the time of delivery.
- 2.4 Orders may be cancelled only with the written agreement of a Company Signatory and You will indemnify Us against all losses damages costs and expenses We incur as a result of that cancellation. Unused Goods will only be accepted for return at Our discretion and on terms agreed with Us.
- 2.5 Statements as to ABV and volumetric contents on Goods produced by Us are as agreed with our producers.
- 2.6 We reserve the right at any time to revise or change the style of labels and packaging or the specification of the Goods.

PRICE

- 3.1 Our quotations and prices are based on costs and excise duty prevailing at the time when they are given or agreed. The price of the Goods including excise duty shall be that ruling as at the date of the delivery.
All prices, and all sums mentioned in these terms, are exclusive of Value Added Tax which is payable at the rate ruling at the date of delivery (unless zero rated or exempt from VAT), and are exclusive of delivery charges.
- 3.2 Any discounts deductions allowances or rebates agreed are only available if all sums due from You to Us are paid by the due date.
- 3.3 Prices stated or quoted are applicable to the quantity, specification and delivery dates. If the order placed varies or delay is caused by Your instructions or lack of instructions We shall be entitled to adjust the price.
- 3.4 You will reimburse Us the cost of all labelling, packaging and other materials purchased by Us for specific use with any private label product supplied to You.

PAYMENT

- 4.1 Unless otherwise agreed the Goods or services are sold subject to payment in advance (for which time shall be of the essence) which shall be made by way of cleared funds and free of any deduction, set-off or counterclaim, and payable upon notice by Seller that the Goods (or any instalment of) are ready for dispatch.
- 4.2 If We have agreed in writing to give You credit, all accounts are due for payment without deduction set-off or counterclaim on demand or within the time agreed with You for payment. The time of payment of the price is of the essence of the Contract.
- 4.3 Where credit is granted, it may be reviewed at any time at Our discretion. We reserve the right to refuse to execute any order or Contract if the arrangement for payment or Your credit rating is not satisfactory to Us.
- 4.4 Any dishonoured cheque or direct debit due by Buyer to Seller will incur a charge of €35 to cover bank and administrative costs.
- 4.5 Seller reserves the right to require satisfactory confirmation of the identity of the Buyer and to withhold Goods until receipt of such confirmation.
- 4.6 Seller will not accept any cash payments in any event.

DELIVERY

- 5.1 Delivery shall occur when the Goods have been delivered to the address agreed between You and Us or have been collected by You.
- 5.2 If You fail to take delivery or to make arrangements to accept delivery or to collect the Goods or if We are unable to deliver because of inadequate access or instructions delivery shall be deemed failed and We may do any one or more of the following (without prejudice to any other right or remedy We may have):-
 - (a) make additional charges for failed delivery
 - (b) store the Goods at Your risk and cost
 - (c) invoice You for the Goods
 - (d) terminate this Contract without liability on Our part
 - (e) recover from You all costs and losses incurred by Us.
- 5.3 Delivery dates are given in good faith but are estimates only. Time for delivery shall not be of the essence of the contract.
- 5.4 We shall not be liable for any damages whatsoever whether direct or indirect (including for the avoidance of doubt any liability to any third party) resulting from any delay in delivery of the Goods or failure to deliver the Goods in a reasonable time whether such delay or failure is caused by Our negligence or otherwise howsoever.
- 5.5 If We fail to deliver the Goods Our entire liability shall be limited to the excess (if any) over the price of the Goods, of the cost to You (purchasing in the cheapest market reasonably available to You) of similar goods to replace those not delivered.
- 5.6 We reserve the right to make delivery by separate consignments and tender a separate invoice in respect of each consignment. Any claim which You may have in respect of one consignment shall not affect Your liability in respect of any other consignment.
- 5.7 You will indemnify Us in respect of all losses damages costs and expenses incurred as a result of delivery in accordance with Your instructions. This indemnity will be reduced in proportion to the extent that such losses damages costs or expenses are due to Our negligence.

- 5.8 In clauses 5.8 to 5.11 “Container” means gas cylinders, pallets and cases and any vessel carrying beer including without limitation casks, kegs and returnable bottles but excluding disposable bottles and cans.
- 5.9 Unless Containers supplied to You are:
- (a) made available for collection as soon as possible after usage; and / or
 - (b) returned to us on demand;
 - (c) and in either case, are received by Us in a clean and undamaged condition, We shall be entitled to charge You the current replacement cost of the relevant Container.
- 5.10 Deposit charges are made on certain Containers. These are notified on invoices and will be credited to You on the return of the Container in accordance with clause 5.9.
- 5.11 Containers carrying beer are vessels not measures. Casks and kegs are filled according to the Brewers and Licensed Retailers Association Code of Practice for large containers. Nominal contents are stated on the order.

INSPECTION

- 6.1 You shall inspect the Goods at the place and time of unloading but nothing in these Terms shall require You to break packaging and/or unpack Goods which are intended to be stored in their packaging before use.
- 6.2 Unless We or the delivery driver are notified forthwith and written notice is received by Us within 3 working days of unloading of any claim apparent on reasonable inspection for loss or damage in transit, short delivery, failure to conform to the Contract or that the Goods have passed or are approaching a “Best Before” date, the Goods will be deemed to have been delivered in accordance with the delivery documents and accepted by You and You shall not be entitled to and waive any right to reject the Goods.
- 6.3 Our liability for loss or damage in transit or short delivery apparent on reasonable inspection is limited to supplying the Goods as ordered and We shall not be liable for any damages whatsoever. You remain liable to pay the full invoice price of other Goods delivered in accordance with the Contract. Any other claim for damages is subject to Clause 9.

TITLE AND RISK

- 7.1 Risk in the Goods shall pass to You when the Goods are delivered by Us or collected by You. If We effect delivery by a carrier the risk in the Goods passes to You when We deliver the Goods to the carrier.
- 7.2 The title to the Goods shall remain with Us until You pay the price of the Goods and any other sums outstanding between You and Us whether in respect of this Contract or otherwise.
- 7.3 Until title passes:-
- 7.3.1 You shall hold the Goods as Our fiduciary agent and bailee.
 - 7.3.2 The Goods shall be stored separately from any other goods and You shall not interfere with any identification marks labels batch numbers or serial numbers on the Goods.

- 7.3.3 We agree that You may sell the Goods as principal and not as Our Agent in the ordinary course of Your business subject to the following express conditions:
- (a) that the entire proceeds of any sale or insurance proceeds received in respect of the Goods are held in trust for Us and not mixed with any other monies or paid into an overdrawn bank account and shall at all times be identifiable as Our money;
 - (b) that Your right to sell the Goods may be withdrawn by Us on notice at any time and will automatically cease in the event of Your becoming Insolvent.
- 7.4 We shall be entitled at any time to recover any or all of the Goods to which We have title and for that purpose We Our employees or agents may with such transport as is necessary enter upon any premises occupied by You or to which You have access and where the Goods may be or are believed to be situated.

RESALE OF GOODS

- 8.1 You are responsible for ensuring compliance with all relevant Regulations affecting the storage and resale of the Goods including but not limited to compliance with Best Before Dates, equipment used and the premises on which the Goods are stored or resold.
- 8.2 You shall not interfere with the packaging or labelling of the Goods nor sell bottled or canned Goods in any other bottle or container.
- 8.3 Draught beer and other bulk beverages supplied by Us shall be stored labelled and sold by means of equipment approved by Us. You are responsible for complying with all Regulations covering the use and maintenance of such equipment.
- 8.4 If We supply equipment on loan to You (“the Equipment”) You shall:
- (a) hold the Equipment as our bailee bearing the risk of loss damage or theft (fair wear and tear excepted).
 - (b) not sell assign charge or pledge or in any other way part with possession of the Equipment.
 - (c) not without Our written consent remove the Equipment from the site to which it was delivered.
 - (d) grant Us a licence at any time to enter upon any premises occupied by You or to which You have access for the purpose of inspecting maintaining taking an inventory of or repossessing the Equipment.
 - (e) unconditionally fully and effectively indemnify Us against all losses damages penalties costs on an indemnity basis and expenses awarded against or incurred by Us in connection with or paid or agreed to be paid by Us in settlement of any claim by any third party arising from the supply or use of the Equipment. This indemnity will be reduced in proportion to the extent that such losses damages penalties costs and expenses are due to Our negligence.

LIABILITIES

- 9.1 In this Clause “the Defect” shall mean the condition and/or any attribute of the Goods and/or any other circumstances which but for the effect of these Terms would have entitled You to damages.
- 9.2 Nothing in these Terms shall exclude or restrict Our liability for death or personal injury resulting from Our negligence or that of our employees or agents or Our liability for fraudulent misrepresentation.

- 9.3 If You deal as a consumer any provision of these Terms which is of no effect shall not apply. The statutory rights of a consumer are not affected by these Terms.
- 9.4 Subject to Clauses 9.2, 9.3 and 11.5 of these Terms We shall not be liable by reason of any misrepresentation (unless fraudulent) or in contract tort (including negligence or breach of statutory duty) or otherwise howsoever and whatever the cause for any damages whatsoever. Instead of liability in damages We undertake liability under Clause 9.5 below.
- 9.5 Where but for the effect of Clause 9.4 of these Terms You would have been entitled to damages against Us We shall not be liable to pay damages but subject to the conditions set out in Clauses 9.6 and 9.7 below shall at Our sole discretion either supply replacement Goods or refund all (or where appropriate part) of the price paid.
- 9.6 We will not be liable under Clause 9.5:-
- (a) if the Defect would have been apparent on a reasonable inspection under Clause 6.1 of these Terms at the time of unloading unless You give Us notice as required by Clause 6.
 - (b) unless the Defect is discovered within the declared shelf life of the product and is notified forthwith by telephone and in writing within two working days of discovery of the Defect.
 - (c) unless after discovery of the Defect We are given a reasonable opportunity to inspect the Goods before they are sold or used or in any way interfered with.
 - (d) if the Defect arises from Your negligence or handling of the Goods or from storage of the Goods in conditions unsuitable to the nature of the Goods.
- 9.7 Our liability in respect of any Defect will be limited to such rights against the producer as We may have in respect of those Goods.
- 9.8 Subject to Clauses 9.2 and 9.3 We shall not be liable for misrepresentation (unless fraudulent) or in contract tort (including negligence or breach of statutory duty) or otherwise howsoever and whatever the cause for:
- (a) any loss of profit, business, contracts, revenues or anticipated savings or for damage to reputation or goodwill; and/or
 - (b) any special, indirect or consequential damage of any nature whatsoever.
- 9.9 You will unconditionally fully and effectively indemnify Us against all losses damages penalties costs on an indemnity basis and expenses awarded against or incurred by Us in connection with or paid or agreed to be paid by Us in settlement of any claim by any third party arising from the supply or use of the Goods. This indemnity will be reduced in proportion to the extent that such losses damages penalties costs and expenses are due to Our negligence.
- 9.10 Without prejudice to any other provisions of these Terms in any event Our total liability for any one claim or for the total of all claims arising from any one act of default on Our part (whether arising from Our negligence or otherwise) which falls within the scope of Our insurance shall not exceed the limit of liability laid down by Our insurers in respect of such claim.

DATA PROTECTION

10. If You are an individual or a group of individuals You agree that We may process Your personal data in accordance with Our Data Protection Policy, copy available on request.

EXPORT

- 11.1 Where Goods are supplied for delivery outside the United Kingdom (“UK”):-
(a) the Incoterms in force at the date of the Contract will be incorporated into the Contract. If there is any conflict between the provisions of Incoterms and these Terms the latter will prevail;
(b) the provisions of this clause 11 shall (subject to any special terms agreed in writing between You and Us) apply notwithstanding any other provisions of these Terms.
- 11.2 You shall be responsible for complying with any Regulations governing the importation of the Goods into the country of destination and for the payment of any duties on them.
- 11.3 You must advise Us in writing of any product labelling or packaging specification applicable in the country of destination otherwise Goods will be supplied to Our specification.
- 11.4 If We have agreed to insure the Goods during transit You must give written notice within 10 days of receipt of the Goods to the nominated local agent and to Us of any claim for loss or damage in transit or short delivery.
- 11.5 We will not be liable for any claim for damages under Clause 9 unless We receive written notice within 21 days of the delivery of the Goods to You.
- 11.6 Whether or not the Goods are supplied for delivery outside the UK, where Our invoices are exclusive of UK VAT and Excise Duty You will supply evidence of shipment satisfactory to UK/EU statutory authorities such as HMRC within 30 days of exportation. We reserve the right to charge You with any costs and expenses including any liability for VAT and Excise Duty if You fail to provide such evidence. You shall indemnify Us against any liability we may have (directly or indirectly) in respect of VAT and Excise Duty in respect of the Goods whether due to your failure to export the goods, to provide satisfactory documentation or otherwise.
- 11.7 No form of market or area exclusivity is granted or implied by the supply of Goods.

DEFAULT & TERMINATION

- 12.1 “Insolvent” means You becoming unable to pay Your debts as they fall due or You ceasing to pay Your debts in the ordinary course of business or being unable to pay Your debts as they become due or You ceasing or threatening to cease to carry on Your business or You entering into or threatening to enter into or having proceedings commenced to put You into any formal insolvency process.
- 12.2 “Associated Company” means Your subsidiary or holding company as defined in section 1159 Companies Act 2006 or a subsidiary of such holding company, or any company over which Your directors or shareholders have control as defined in section 1124 Corporation Taxes Act 2010.
- 12.3 If You fail to pay any invoice or any sum due to Us under any contract on the due date or Your credit limit is exceeded or any trade credit insurance is withdrawn from You or Your Associated Company You or Your Associated Company becomes Insolvent or You commit a material breach of this Contract and fail to remedy that breach after being requested to do so then all sums outstanding from You to Us under this and any other contract shall become immediately due and payable and We shall be entitled to do any one or more of the following (without prejudice to any other right or remedy We may have):-
(a) require payment in cleared funds in advance of further deliveries of Goods;

- (b) charge interest on the monies outstanding at the rate (including fixed sums) payable under the Late Payment of Commercial Debts (Interest) Act 1998 from time to time from the due date until the date of payment after as well as before judgment;
 - (c) suspend or cancel any further deliveries of Goods to You under any contract without liability on Our part; and/or
 - (d) terminate this or any other contract with You or any Associated Company without liability on Our part.
- 12.4 You shall reimburse Us costs including legal costs on an indemnity basis which We incur in enforcing Our rights under this Contract including but not limited to recovery of any sums due.

GENERAL

- 13.1 This contract shall be governed and interpreted according to the Law of England and Wales and You agree to submit to the non-exclusive jurisdiction of the English Courts.
- 13.2 Any reference in these Terms to any statute or statutory provision includes a reference to that statute or statutory provision as from time to time amended extended or re-enacted.
- 13.3 We shall not be in breach of contract due to, nor liable for, any delay of failure to perform any of Our obligations if the breach delay or failure was due to any cause beyond Our reasonable control including (but not limited to) industrial action, non-availability of supplies or the default of our suppliers, carriers or subcontractors. In such circumstances We shall be entitled to a reasonable extension of the time for performing our obligations, provided that if the period of delay or non-performance continues for four weeks, You may terminate the Contract without liability on either party by giving seven days' written notice to Us.
- 13.4 The waiver by Us of any breach or default of these Terms shall not be construed as a continued waiver of that breach nor as a waiver of any subsequent breach of the same or any other provision.
- 13.5 If any clause or sub-clause of these Terms is held by a competent authority to be invalid or unenforceable the validity of the other clauses and sub-clauses of these Terms shall not be affected and they shall remain in full force and effect.
- 13.6 No person may enforce any of these Terms under the Contracts (Rights of Third Parties) Act 1999.
- 13.7 The headings of these Terms are for convenience only and shall not affect their interpretation.
- 13.8 Termination of this Contract shall not affect rights and obligations which have already accrued at the time of termination.