



## WILLOW WATER LIMITED CONDITIONS OF SALE OF GOODS

**THE CUSTOMER'S ATTENTION IS IN PARTICULAR DRAWN TO THE PROVISIONS OF CONDITION 6 AND OTHER CLAUSES HIGHLIGHTED IN BOLD TEXT** In these Conditions of Sale, the following words shall have the following meanings: "**Contract**" means any contract formed between WWL and the Customer for the sale and purchase of Goods or Services. "**Customer**" means the company, firm, body or person detailed in the Customer Account Application Form. "**Customer Application Form**" means the WWL account opening form from time to time "**Delivery**" means the delivery of the Goods by WWL and on behalf of WWL, direct delivery by a supplier of WWL or other third party or otherwise and "Delivered" shall be interpreted accordingly. "**Goods**" means the drink products, and where applicable any dry goods, which are the subject matter of the contract. "**WWL**" means Willow Water Limited whose registered office is at The Sovereign Distillery, Wilson Road, Huyton Business Park, Liverpool L36 6AD U.K. and any company associated with WWL through which the Goods or Services are sold. "**Order**" means the purchase order in respect of the Goods whether it be a telephone order or otherwise. "**Services**" means any services to be provided to the Customer by WWL as set out in the Order

### 1. GENERAL

- 1.1. WWL's quotations are not binding on WWL and the contract ("the Contract") will only come into being upon acceptance by WWL of the Order or (if earlier) the Delivery of the Goods, or the commencement of the provision of the Services to the Customer, and the following conditions shall be deemed to be incorporated in the Contract.
- 1.2. All Orders shall be deemed to be an offer by the Customer to purchase Goods or Services subject to these Conditions of Sale (as amended from time to time) and acceptance by WWL of the Order shall be deemed conclusive evidence of the Customer's acceptance of these Conditions of Sale. Under no circumstances is WWL obliged to accept an order.
- 1.3. Each Order will be subject to these Conditions of Sale (as amended from time to time). All terms and conditions appearing or referred to in the Order or otherwise stipulated by the Customer shall have no effect. No terms or conditions submitted by the Customer to WWL, irrespective of their date, shall prevail over these Conditions of Sale. Any variation of the Contract must be confirmed in writing by an authorised officer of WWL.
- 1.4. Tenders submitted by WWL shall remain open for acceptance for a period of 28 days from the date of the tender, unless in the tender some other period is specified or accepted or the tender is withdrawn by WWL.
- 1.5. The Customer acknowledges that no agent or salesman of WWL has authority to give any guarantee or warranty on behalf of WWL or to transact business other than on the terms of these conditions.
- 1.6. The Customer shall be responsible to WWL for ensuring the accuracy of the terms of the Order and for providing to WWL any necessary information concerning the Goods within a sufficient time to enable WWL to perform the contract. All offers are subject to market fluctuations and availability of stock.
- 1.7. Where Goods are to be supplied from stock, such supply is subject to availability of stocks when the Order is picked.
- 1.8. These conditions apply to Services in the same way as they apply to Goods.
- 1.9. WWL need not acknowledge receipt of an order from the Customer, and may execute any order without further reference to the Customer.
- 1.10. Clause headings will not affect the construction of these Conditions.

### 2. PRICES

- 2.1. Where the Goods are sold by reference to WWL's published price list, the price payable for the Goods shall be the price as published in the price list current at the date of despatch of the Goods from WWL's premises unless otherwise agreed between WWL and the Customer.
- 2.2. Where the price for the Goods is varied in accordance with clause **2**, the price, as varied, shall be binding on the Customer and shall not give the Customer any option of cancellation or re-negotiation.
- 2.3. Quotations in a currency other than sterling are based on the rate of exchange at the time of quoting and, unless otherwise stated, the price may, at WWL's sole discretion, be subject to revision up or down if any different rate of exchange is ruling at the date of invoice.

### 3. TERMS OF PAYMENT

- 3.1. All Prices are net and are in sterling unless otherwise agreed.
- 3.2. Payment must be made in cleared funds at the time of the Order unless WWL has agreed to give credit in writing and in which case the Customer shall pay the full invoice price in accordance with clause 3.4 below.
- 3.3. The time of payment of the price shall be the essence of the contract. All payments shall be made without deduction or set-off.
- 3.4. Save where lengthier credit has been approved and WWL has waived the right to advance payment as per clause 3.2, the Customer shall pay the price of the Goods, or for the Services, (and any costs incurred by WWL pursuant to these Conditions of Sale) without deductions, within 28 days of the date of WWL's invoice, notwithstanding that Delivery may not have taken place or property may not have passed.
- 3.5. Where deliveries are spread over a period, each consignment may, at WWL's sole discretion, be invoiced as despatched and each invoice will be treated as a separate account and be payable accordingly.
- 3.6. Where Services are to be performed over a period in excess of one month, the value of work carried out shall be ascertained by WWL at the end of each month and (unless the Contract otherwise expressly provides) a sum equal to such value shall be invoiced and such invoice shall be paid in accordance with the provisions of clauses 3.1 to 3.5 (inclusive).
- 3.7. Failure to pay any invoice in accordance with these conditions (including without limitation clauses 1.1, 2.3, 3.1, 3.2, 3.3, 3.4 or 3.5) shall entitle WWL to suspend or cancel further deliveries of Goods or the provision of Services without prejudice to any other right WWL may have to charge the Customer with any consequent and/or resulting loss. Further, the date for Delivery (if any) contained in any Order shall be postponed to the extent to which such suspension continues or deliveries are withheld.
- 3.8. WWL also reserves the right to charge interest on overdue credit accounts, such interest to be calculated on a day-to-day basis on the amounts overdue, at the rate of 8 per cent per annum above the base rate of Lloyds TSB Bank Plc as applying from time to time to run from the due date for payment until receipt by WWL of the full amount whether or not after judgment and without prejudice to any other right or remedy of WWL.
- 3.9. Unless otherwise expressly agreed, if the contract provides for Delivery of Goods by instalments or for periodical delivery WWL shall be entitled to withhold any and all deliveries and instalments until payment for all earlier deliveries has been made and the date for Delivery (if any) contained in any quotation shall be postponed to the extent to which such deliveries are withheld.

3.10. In addition to any right of lien given by law WWL shall have a general lien upon all Goods to be supplied to the Customer in respect of all sums due from or claims against the Customer.

3.11. Where genuine doubts arise as to a Customer's financial position; or in the case of failure to pay for any Goods or Services or any Delivery or instalment as aforesaid; or where any of the circumstances at clause 8.1.2 arise, WWL reserves the right to suspend Delivery or performance of any Order or any part or instalment without liability until payment or satisfactory security for payment has been provided.

### 4. TITLE TO GOODS

- 4.1. Title to the Goods (whether separate and identifiable or incorporated in or mixed with other Goods) shall remain with WWL until payment in full has been received by WWL in cleared funds:
  - 4.1.1. for those Goods and/or Services;
  - 4.1.2. for any other goods or Services supplied by WWL;
  - 4.1.3. of any other monies due from the Customer to WWL on any account; and
  - 4.1.4. the Customer acknowledges that while title remains with WWL, notwithstanding that if the Goods have not been ascertained, then title will only pass upon the Goods becoming ascertained. For the avoidance of doubt, Goods shall become ascertained once they have been identified and labelled as belonging to the Customer.
- 4.2. Until title to the Goods passes to the Customer under clause 4.1, the Customer shall keep the Goods separate from other stock and readily identifiable as the property of WWL. In the meantime the Customer may sell the Goods in the ordinary course of business to bona fide third party purchasers without notice of this clause but the Customer must account to WWL for the proceeds thereof pursuant to clause 4.3 below and, in the case where the Goods are in the possession of WWL, the Customer shall immediately inform WWL that such sale has taken place.
- 4.3. Any resale by the Customer of Goods in which title has not passed to the Customer, shall be made by the Customer as agent and bailee for WWL (but without any right to incur obligations on the part of WWL) whether the Customer sells on its own account or not and:
  - 4.3.1. the Customer shall hold the entire proceeds thereof in trust such proceeds shall be identifiable and not mixed with other monies; or
  - 4.3.2. if the Customer has not received the proceeds of any such sale he will within seven (7) days of WWL's request assign to WWL all rights against the person, body or entity to whom the Customer has supplied the Goods.
- 4.4. At any time before title to the Goods passes to the Customer (whether or not any payment to WWL is then overdue or the Customer is otherwise in breach of any obligation to WWL), WWL may (without prejudice to any other of its rights):
  - 4.4.1. retake possession of all or any part of the Goods; and
  - 4.4.2. enter any premises where the Goods are stored or where they are reasonably thought to be stored for the purpose of repossessing the Goods, or WWL may authorise others to do so; and
  - 4.4.3. require immediate delivery up to it of all or any part of the Goods, and in such and any of these events the Customer will cooperate in the identification of WWL's Goods.
- 4.5. WWL may, at any time, appropriate sums received from the Customer as it thinks fit notwithstanding any purported appropriation by the Customer.

4.6. Each clause and sub-clause of this clause **4** is separate, severable and distinct and, accordingly, in the event of any of them being for any reason whatever unenforceable according to its terms, the others shall remain in full force and effect.

### 5. SUB SALES

The Customer shall not sell the Goods except in or from the bottles or other packaging and containers in which they are supplied by WWL.

### 6. LIMIT OF RESPONSIBILITY

*The customer's attention is in particular drawn to the provisions of this condition **6**.*

- 6.1. **Nothing in this clause **6**, or otherwise in these conditions, excludes or limits the liability of WWL for death or personal injury caused by WWL's negligence or for fraud on the part of WWL.**
- 6.2. **Subject to clause 6.1 and save as otherwise agreed by WWL, WWL excludes all conditions and warranties (both express and implied, statutory or otherwise) to the fullest extent permitted in law.**
- 6.3. **Subject to clause 6.1, the Customer's remedies in respect of any claim regarding any condition or warranty implied by law or any other claim in respect of the Goods or Services or any workmanship in relation to them (whether or not involving negligence on the part of WWL) shall, in all cases, be limited to replacement, re-performance or refund of the purchase price and then such liability on the part of WWL is CONDITIONAL UPON the Customer having complied with the requirements set out at clause **3** above.**
- 6.4. **Subject to clause 6.1, WWL shall not in any circumstances be liable for (i) any loss of profit, (ii) any indirect or consequential loss or damage (whether for loss of profit, loss of business, loss of opportunity, loss of management time, depletion of goodwill, or otherwise), (iii) costs (including legal costs), (iv) expenses (including legal expenses), (v) other liabilities or claims for consequential compensation whatsoever (and howsoever caused), which (in any of the above cases) arise out of or in connection with the Contract.**
- 6.5. **WWL shall not be liable pursuant to clause 6.3 if relevant Goods have been tampered with or have not been handled or stored by the Customer in accordance with good industry practice. Damaged or defective Goods must be made available for inspection by WWL.**
- 6.6. **A claim in respect of any defect or failure to comply in respect of any Delivery or instalment of any Order or any part of it shall not entitle the Customer to cancel or refuse delivery of or payment for any other Order or Delivery or instalment or any part of the same Order.**
- 6.7. **Subject to clause 6.1, the maximum amount of liability of WWL in respect of each Order shall be limited to the price due from the Customer in respect of that Order (excluding any carriage and administration charges, any duty and any tax).**
7. **DELIVERY AND COMPLETION DATES**
  - 7.1. Save as otherwise stipulated by WWL, the minimum order for any one Delivery is 70 cases. Orders under 70 cases may be accepted at the discretion of WWL and will be subject to carriage surcharges.
  - 7.2. The dates for Delivery of the Goods are approximate only and, unless otherwise expressly stated, time is not of the essence for Delivery or performance. Delivery will be within a reasonable time if no date for Delivery is specified. Risk shall pass on delivery.
  - 7.3. Reasonable delay shall not entitle the Customer to reject any Delivery or performance or any further instalment or part of the Order or any other Order from the Customer or to repudiate the Contract or the Order.
  - 7.4. Unless otherwise expressly agreed Goods are sold Ex Works (Willow Water Limited, Moor Lane, Flockburgh LA11 7LS) (as defined in the INCOTERMS current at the time the Contract comes into being).
  - 7.5. Where WWL is responsible for arranging delivery and Goods are lost or damaged in transit WWL will replace, free of charge the Goods lost or damaged in transit provided the Customer:

- 7.5.1. inspects the Goods immediately in detail at the time of Delivery and notes any damage, shortages of Goods or other loss in detail on the carrier's delivery note and signs the delivery note accordingly;
- 7.5.2. gives written notice to WWL within seven (7) days of non-delivery or within five (5) days of the Delivery of the Goods in any other case; and
- 7.5.3. where the Goods are transported by an independent freight carrier, complies in all respects with the freight carrier's conditions of carriage including notifying claims for loss or damage in transit.
- 7.6. WWL will not accept claims made outside the periods detailed at 7.5.2.
- 7.7. The Customer acknowledges that WWL's carriers will not inform WWL of damages or shortages on behalf of the Customer.
- 7.8. If Goods are returned to WWL, through no fault of WWL, WWL will charge the Customer any costs associated with the re-handling of the Goods.
- 7.9. If overnight, express or air carriage is requested this will incur a surcharge.
- 7.10. Unless otherwise agreed by WWL, if Goods are ordered but are not in stock at the time of Delivery then the Customer shall be required to re-order the shortfall in Goods as a new Order and the previous Order shall be cancelled.
- 7.11. If the Customer fails to accept delivery of the Goods within 7 days from the date specified for Delivery WWL shall be entitled (at its sole discretion) to treat the Order as cancelled or make a storage charge in respect thereof at such rate per cubic metre as WWL considers reasonable.
- 8. TERMINATION**
- 8.1. WWL may terminate this Order immediately on giving notice to the Customer if:
- 8.1.1. the Customer commits any material or persistent breach of any of the terms in this Contract;
- 8.1.2. an order is made or a resolution is passed for the winding-up of the other party, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order of a party, or an order is made for the appointment of an administrator to manage the affairs, business and property of the other party, or such an administrator is appointed, or documents are filed with the Court for the appointment of an administrator, or notice of intention to appoint an administrator is given by the other party or its directors or by a qualifying charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a receiver is appointed of any of the other party's assets or undertaking, or circumstances arise which entitle the Court or a creditor to appoint a receiver or manager or which entitle the Court to make a winding-up order, or the other party takes or suffers any similar or analogous action in consequence of debt; or
- 8.1.3. anything analogous to any of the matters set out in Clause 8.1.2 above occurs in relation to that other party under the law of any jurisdiction; and
- 8.1.4. for the avoidance of doubt, upon so terminating the Contract, WWL may, without liability or prejudice to its other rights and remedies under these Conditions, stop the provision of Services and all Goods in transit and suspend further deliveries and Services.
- 9. FORCE MAJEURE**
- 9.1. WWL's obligations shall be suspended, and it shall not be liable to the Customer in any circumstances for the consequences of any delay in Delivery or performance or failure to deliver or perform, if the duration of the delay is not substantial or if the delay or failure is due to an act of God, fire, flood, storm, inclement or exceptional weather conditions, industrial action (whether at WWL's premises or elsewhere), riot, civil commotion, hostilities, shortage of labour, materials, power or other supplies, embargoes, late delivery or performance or non-delivery or non-performance by WWL or subcontractors, terrorism, explosions, governmental order or intervention (whether or not having the force of law) or any other cause whatever beyond WWL's control or of an unexpected or exceptional nature.
- 9.2. WWL, if affected by an event referred to in clause 9.1 above shall inform the Customer of the occurrence of force majeure.
- 10. PACKAGING**
- 10.1. Unless otherwise specified, packing cases and packing materials other than pallets will be included in the price. Where not returnable, the Customer will dispose of all packaging in accordance with all regulations (whether statutory or otherwise) relating to the protection of the environment.
- 10.2. The Customer will keep pallets in good condition until they are collected or returned to their owner.
- 10.3. All labels, trade marks, logos, confidential records and other information supplied by WWL are supplied on the express understanding that all copyright and other intellectual property rights are reserved to WWL (or its licensor) and the Customer shall not without the prior written consent of WWL, alter or make any addition to the labelling or packaging of the Goods.
- 10.4. The Customer shall promptly and fully notify WWL of any actual, threatened or suspected infringement of any intellectual property of WWL which comes to the Customer's notice and shall do all such things as may be reasonably required to assist WWL in taking or resisting any proceedings in relation to any such infringement claim.
- 11. ASSIGNMENT AND SUBCONTRACTING**
- 11.1. None of the rights or obligations of the Customer under the Contract may be assigned or transferred in whole or in part without the prior written consent of WWL.
- 11.2. WWL shall be entitled to subcontract any work relating to the contract without obtaining the consent of, or giving notice to, the Customer.
- 12. HEALTH AND SAFETY**
- The Customer agrees to pay due regard to any information on the Goods or any revised information whenever supplied by WWL (and is deemed to have read and understood it) relating to handling, storage or use for which the Goods are designed and where applicable, follow such directions, and the Customer further undertakes to ensure that, as far as reasonably possible, the Goods will be kept safe and without risk to health at all times as mentioned above. The Customer shall ensure any other persons who may store, handle or use the Goods will be informed of such information and revised information as required.
- 13. BRIBERY**
- WWL will not tolerate bribery. Offering bribes to employees or representatives of WWL will be treated seriously and may be reported to the appropriate authorities. If you believe that any employee or representative of WWL has offered a bribe on behalf of WWL, please contact WWL's Company Secretary without delay. E-mails may be sent to [legal@halewood-int.com](mailto:legal@halewood-int.com).
- 14. NOTICES**
- 14.1. Any notice or other communication to be given under these conditions must be in writing and may be sent by prepaid first class letter to the other party's registered office from time to time or by fax to a fax number previously provided by that party.
- 14.2. Any notice or document shall be deemed served; if sent by post, 2 Business Days after postal collection; and, if sent by facsimile transmission, at the time of transmission provided the facsimile transmission sheet is retained for proof PROVIDING THAT if deemed receipt occurs before 9am on a Business Day the notice shall be deemed to have been received at 9am on that day, and if deemed receipt occurs after 5pm on a Business Day, or on a day which is not a Business Day, the notice shall be deemed to have been received at 9am on the next Business Day. For the purpose of this clause, "Business Day" means any day which is not a Saturday, a Sunday or a public holiday in the place at or to which the notice is left or sent.
- 15. DATA PROTECTION ACT**
- 15.1. WWL may transfer information about the Customer to its bankers or financiers for the purposes of providing services and for the following purposes: (a) obtaining credit insurance (b) making credit reference agency searches (c) credit control (d) assessment and analysis (including credit scoring, market, product and statistical analysis) (e) securitisation and (f) protecting our interests. WWL will provide Customers with details of our bankers/financiers and of any credit reference agencies used upon request.
- 15.2. WWL or our bankers or financiers may make credit reference agency searches in respect of your business and its principals. Please note that credit reference agencies make a record of searches which may be used to prevent fraud or money laundering or by other subscribers to make credit decisions about you.
- 15.3. WWL's bankers or financiers may give information about you and your indebtedness to the following for the purposes stated:
- 15.3.1. any other divisions or associated companies of theirs – for the business purposes of such divisions or companies;
- 15.3.2. WWL's or their insurers – to quote for and issue any credit policy or to deal with any claims;
- 15.3.3. any advisers acting on WWL's or their behalf – so the advisers can carry out their services;
- 15.3.4. any business to whom the Customer's indebtedness or any business to which financing arrangements may be transferred - to facilitate such transfer; and
- 15.3.5. any person to whom they have a duty of disclosure or to whom the law permits disclosure.
- 15.4. WWL's bankers or financiers may make decisions about you solely using an automated decision-making process, such as credit scoring; however, they will tell WWL (and in turn WWL will tell you) if they make a significant decision only using such a process. Through WWL you can then request a review of their decision using other means.
- 15.5. WWL's bankers may monitor and/or record your phone calls to them for training and/or security purposes.
- 15.6. We will provide you with details of our bankers on request, including a contact telephone number from where you can obtain details of the credit reference agencies used by them and any third parties to whom information is transferred.
- 16. WAIVER**
- The waiver or failure of a party in insisting in any one or more instances upon the performance of any provision of this Contract shall not be construed as a waiver or relinquishment of that party's rights to future performance of such provision and the other party's obligation in respect of such future performance shall continue in full force and effect.
- 17. INVALIDITY**
- If any provision of the Contract is found by any court, tribunal or administrative body or competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and/or the remainder of such provision shall continue in full force and effect.
- 18. THIRD PARTY RIGHTS**
- A person who is not party to this agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.
- 19. LAW AND JURISDICTION**
- The Contract (and any proceedings whereby one party might be entitled to join the other as a third party) shall be governed by and construed in all respects in accordance with English law and the parties hereby submit to the non-exclusive jurisdiction of the English courts.
- June 2013**