

**WILLOW WATER LIMITED
STANDARD PURCHASING TERMS AND CONDITIONS (“Conditions”)**

THE SUPPLIER’S ATTENTION IS DRAWN, IN PARTICULAR, TO CONDITIONS 2.4, 3.1, 4, 9 & 11. SUBJECT TO ANY TERMS NEGOTIATED BETWEEN THE PARTIES AND EXPRESSLY RECORDED IN WRITING ON THE ORDER FORM THESE TERMS SHALL PREVAIL. THESE TERMS SHALL HAVE EFFECT FROM 20 FEBRUARY 2014.

1. INTERPRETATION

1.1 The definitions and rules of interpretation in this condition apply to all these Conditions.

Contract: the Order and the Supplier’s acceptance of the Order.

Legislation: shall mean all the laws, statutes, subordinate legislation, rules, regulations, good trade practices and codes of practice which are applicable to the provision of the Goods.

Goods: any goods or services agreed in the Contract to be bought by WWL from the Supplier (including any part(s) of them).

Order: WWL’s written instruction to supply the Goods incorporating these Conditions including a WWL purchase order number.

Supplier: the person, firm or company who accepts WWL’s Order.

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 purchased.

1.2 A reference to Legislation is that Legislation as may be amended, consolidated, modified, extended, re-enacted or replaced from time to time.

1.3 A reference to one gender includes a reference to the other.

1.4 Headings do not affect the interpretation of these Conditions.

1.5 ‘Including’ ‘includes’ or ‘in particular’ means including, includes or in particular without limitation.

2. APPLICATION OF TERMS

2.1 Subject to any variation under condition 2.5, these conditions are the only conditions upon which WWL is prepared to deal with the Supplier and they shall govern the Contract to the entire exclusion of all other terms or conditions.

2.2 Each Order for Goods by WWL shall be deemed to be an offer by WWL to buy Goods subject to these Conditions, which shall be deemed accepted on the earlier of the Supplier: (i) acknowledging the Order; or (ii) carrying out any act consistent with fulfilling the Order.

2.3 No terms or conditions endorsed upon, delivered with or contained in the Supplier’s quotation, acknowledgement or acceptance of order, specification or similar document shall form part of the Contract and the Supplier waives any right which it otherwise might have to rely on such terms and conditions.

2.4 The Supplier agrees that any attempt to incorporate, or the incorporation of, its terms and conditions into any Contract between WWL and the Supplier is a material breach of these Conditions for which WWL is entitled to claim Losses (defined in condition 4 below) incurred as a result of such material breach.

2.5 These Conditions apply to all WWL’s purchases and any variation to these conditions shall have no effect unless expressly agreed in writing and signed by a director of WWL. However, WWL reserves the right to amend the Conditions from time to time.

3. CONDITIONS

3.1 **In addition to the terms implied by the Sale of Goods Act 1979 or the Supply of Goods Act 1982 (As amended by the Sale and Supply of Goods Act 1994), the Supplier warrants that, the Goods shall be of the best available design, of the best quality, material and workmanship, be without fault and conform in all respects with the Order and specification and/or patterns supplied or advised by WWL to the Supplier and in so far as the Goods are services to be performed by the Supplier those services shall be provided using the utmost care, skill & diligence, by competent and appropriately trained and qualified personnel and the Supplier warrants that the scope of the Services are within its expertise and usual business.**

3.2 The Supplier shall comply with all Legislation applicable to the manufacture and supply of the Goods.

3.3 The Supplier warrants its expertise and confirms the accuracy of all statements and representations whether oral, written or otherwise made in respect of the Goods prior to the submission of each Order and acknowledges WWL’s reliance upon those statements.

3.4 The approval by WWL of any designs provided by the Supplier shall not relieve the Supplier of its obligations under any provisions contained in this condition.

3.5 Prior to delivery of the Goods to WWL’s place of business, or collection of the Goods by or on behalf of WWL, WWL shall have the right to inspect and test the Goods at all times.

3.6 If the results of such inspection or testing cause WWL to be of the opinion that the Goods do not conform or are unlikely to conform with the Order or to any specifications and/or patterns supplied or advised by WWL to the Supplier, WWL shall inform the Supplier and the Supplier shall immediately take such action as is necessary to ensure conformity and in addition WWL shall have the right to require and witness further testing and inspection.

3.7 Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the Goods and any such inspection or testing shall not diminish or otherwise affect the Supplier’s obligations under the Contract.

3.8 If any of the Goods fail to comply with the provisions set out in this condition 3 WWL shall be entitled to avail itself of any one or more remedies listed in condition 12.

4. INDEMNITY

4.1 **The Supplier shall keep WWL indemnified in full and hold WWL harmless from and against all direct, indirect or consequential liabilities (all three of which terms include, without limitation, loss of profit, loss of business, depletion of goodwill and like loss), loss, damages, injury, costs and expenses (including legal and other professional fees and expenses) (“Losses”) awarded against or incurred or paid by WWL (to the extent that**

such Losses are not reasonably capable of mitigation) as a result of or in connection with:

- (a) any breach of conditions 3.1 & 3.2;
- (b) an infringement or alleged infringement of any intellectual property rights caused by the use, manufacture or supply of the Goods; and
- (c) any claim made against WWL in respect of any liability, loss, damage, injury, cost or expense sustained by WWL’s employees or agents or by any customer or third party to the extent that such liability, loss, damage, injury, cost or expense was caused by, relates to or arises from the Goods as a consequence of a direct or indirect breach or negligent performance or failure or delay in performance of the terms of the Contract by the Supplier.

4.2 Insofar as the Supplier has any liability under condition 4.1 above WWL may request that such liability is discharged by way of payment in instalments (above).

5. DELIVERY/COLLECTION

5.1 Where it is agreed that the Goods are to be delivered the Goods shall be delivered, carriage paid, to WWL’s place of business or to such other place of delivery as is agreed by WWL in writing prior to delivery. Goods which are services are to be performed at the place specified by WWL in its order.

5.2 WWL shall off-load the Goods at its own risk, however, WWL can refuse to off-load the Goods (at the Supplier’s expense) if it reasonably suspects that: (1) the Goods are damaged; or (2) that the Goods are likely to be damaged by trying to off-load the Goods; and/or (3) it would be unsafe to off-load the Goods.

5.3 The date for delivery or collection shall be specified in the Order or, if no such date is specified, then delivery to WWL or availability for collection by or on behalf of WWL shall take place within 28 days of the Order.

5.4 The Supplier shall invoice WWL upon, but separately from, despatch of the Goods to WWL.

5.5 The Supplier shall ensure that each delivery (whether being delivered or collected) is accompanied by a delivery note which shows, amongst other things, the Order number, date of Order, number of packages and contents or where relevant the volume of bulk liquids. In the case of part delivery the delivery note will show the outstanding balance or volume remaining to be delivered or collected where applicable.

5.6 Unless otherwise agreed in writing by the parties time for delivery or collection shall be of the essence. It shall be the duty of the Supplier at all times to use his best endeavours to prevent any delay being caused and to minimise any such delay as may be caused and to do all that is reasonably required, to the satisfaction of WWL to effect delivery of or have ready for collection the Goods.

5.7 Subject to any agreed extension of time and to condition 15.1 should the Goods or any portion of the Goods immediately not be delivered or available for collection on time, the Supplier shall be liable to pay to WWL, by way of liquidated damages for each week or part thereof during which he is in default in respect of delivery of or making available for collection the Goods: (i) 2% of the relevant price stated in the Contract; or (ii) 2% of the proportion of that price appropriate to the portion of the Goods to which the Supplier is for the time being in default, provided that the maximum amount payable under condition 5.7 shall be 20% of the price to be paid by WWL for the Goods.

5.8 Unless otherwise stipulated by WWL in the Order, deliveries shall only be accepted by WWL in normal business hours.

5.9 If the Goods are not delivered or available for collection on the due date then, without prejudice to any other rights which it may have, WWL reserves the right to:

- (a) cancel the Contract in whole or in part;
- (b) refuse to accept any subsequent delivery or making available for collection of the Goods which the Supplier attempts to make;
- (c) recover from the Supplier any expenditure reasonably incurred by WWL in obtaining the Goods in substitution from another supplier; and
- (d) claim damages for any additional reasonable costs, loss or expenses incurred by WWL which are in any way attributable to the Supplier’s failure to deliver the Goods on the due date.

5.10 If the Supplier requires WWL to return any packaging material (i.e. pallets) to the Supplier that fact must be clearly stated on any delivery note handed over to WWL and any such packaging material shall only be returned to the Supplier at the cost of the Supplier.

5.11 Where WWL agrees in writing to accept delivery by instalments the Contract shall be construed as a single contract in respect of each instalment. Nevertheless failure by the Supplier to deliver any one instalment shall entitle WWL at its option to treat the whole Contract as repudiated.

5.12 Save where otherwise agreed, if the Goods are delivered to WWL in excess of the quantities ordered WWL shall not be bound to pay for the excess and any excess shall be and shall remain at the Supplier’s risk and shall be returnable at the Supplier’s expense.

5.13 If any of the Goods, or the packages, containers or similar containing the Goods, do not comply with the Order or with any term of this Contract, including those relating to quantity, quality or description, WWL shall be entitled to reject those Goods or any part thereof at any time after delivery or collection, regardless of whether WWL is regarded under Sale of Goods Act 1979 or otherwise as having accepted them. Any acceptance of such Goods by WWL shall be without prejudice to any rights that it might have against the Supplier. WWL shall be entitled to return any rejected Goods, carriage paid by the Supplier and at the risk of the Supplier. WWL reserves the right to charge the Supplier a non-conformance fee to cover its costs in respect of any such breach by the Supplier.

5.14 WWL shall not be deemed to have accepted the Goods until it has had five business days to inspect them following delivery. WWL shall also have the right to reject the Goods as though they had not been accepted for five business

- days after any latent or hidden defect in the Goods has become apparent.
- 5.15 From time to time Goods ordered by WWL may be bespoke to a WWL customer. In the event that WWL's customer cancels its order with WWL for such bespoke Goods, WWL shall not be liable to pay the Supplier for such bespoke Goods until such time as it has recovered the costs for such order from its customer.
- 6. RISK/PROPERTY**
The Goods shall remain at the risk of the Supplier until delivery to WWL is complete (which is after the Supplier or its nominated haulier has confirmed to an authorised WWL representative that the Goods are safe to unload) when ownership of the Goods shall pass to WWL. It shall be the duty of the Supplier at all times to maintain a contract of insurance over the Goods (until such times as the risk passes to WWL) and, on request from, to assign to WWL the benefits of such insurance. The Supplier shall or procures that its nominated haulier shall ensure that Goods to be delivered to WWL are stowed, loaded and secured properly and in accordance with best industry practice so as to prevent damage to the Goods during transportation.
- 6.1 For the avoidance of doubt, SAVE in respect of the delivery of specialist Goods (for example CO₂), after confirmation has been received by WWL in accordance with condition 6 above, WWL shall be responsible for off-loading of the Goods.
- 6.2 The Supplier shall or procures that its nominated haulier shall comply at all times with WWL's security procedures, booking in procedures and health and safety procedures details of which are available upon request.
- 6.3 In the event that it is agreed that the Goods are to be collected from the Supplier risk in the Goods shall pass to WWL or its nominated haulier when the Goods are safely and correctly stowed, loaded and secured for transportation onto WWL's or its hauliers vehicles. For the avoidance of doubt, WWL is not responsible for the loading of the Goods onto its and/or its nominated hauliers vehicles.
- 6.4 WWL may from time to time agree that certain third party stock (including labels) may be held on its site. Title to such stock passes to WWL when it is used by WWL on its products.
- 7. PRICE**
- 7.1 The price of the Goods shall be stated in the Order and unless otherwise agreed in writing by WWL shall be exclusive of value added tax but inclusive of all other charges.
- 7.2 No variation in the price or extra charges shall be accepted by WWL unless agreed by the parties in writing.
- 8. PAYMENT**
- 8.1 Save where otherwise agreed WWL shall pay the price of the Goods by the end of the month following receipt of the invoice, but time for payment shall not be of the essence of the Contract even where notice to the contrary is served.
- 8.2 Without prejudice to any other right or remedy, WWL reserves the right to set off any amount due and payable at any time from it to the Supplier against any amount due and payable by Supplier to WWL under the Contract.
- 8.3 If any sum under the Contract is not paid when due then, without prejudice to the parties' other rights under the Contract, that sum may bear interest from the due date until payment is made in full, both before and after any judgment, at 2% per annum over Lloyds TSB Bank base rate from time to time. The Supplier is not entitled to suspend deliveries without reasonable prior notice to WWL of the Goods as a result of any sums being outstanding.
- 9. CONFIDENTIALITY**
The Supplier shall keep in strict confidence all technical or commercial know-how, specifications, recipes, formulations, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Supplier by WWL or its agents and any other confidential information concerning WWL's business, its products and/or its new product ideas, information which the Supplier may obtain from WWL and the Supplier shall restrict disclosure of such confidential material to such of its employees as need to know the same for the purpose of discharging the Supplier's obligations to WWL and shall ensure that such employees are subject to like obligations of confidentiality as bind the Supplier. This condition 9 shall survive termination and/or expiry of any Contract.
- 10. WWL'S PROPERTY**
Materials, equipment, tools, dies, moulds, copyright, design rights or any other forms of intellectual property rights in all drawings, specifications and data supplied by WWL to the Supplier or not so supplied but used by the Supplier specifically in the manufacture of the goods in relation to any Contract shall at all times be and remain the exclusive property of WWL but shall be held by the Supplier in safe custody at its own risk and maintained and kept in good condition by the Supplier until returned to WWL and shall not be disposed of other than in accordance with WWL's written instructions, nor shall such items be used otherwise than as authorised by WWL in writing.
- 11. TERMINATION**
- 11.1 **SAVE where the Supplier and WWL have agreed in writing a fixed term contract, WWL shall have the right at any time and for any reason to terminate the Contract in whole or in part by giving the Supplier reasonable prior written notice whereupon all work on the Contract shall be discontinued and WWL shall pay to the Supplier fair and reasonable compensation for work-in-progress at the time of termination but such compensation shall not include loss of anticipated profits or any consequential loss.**
- 11.2 Without Prejudice to rights elsewhere in the Contract, WWL shall have the right at any time by giving notice in writing to the Supplier to terminate the Contract forthwith if:
- the Supplier commits a material breach of any of the terms and conditions of the Contract, which, for the avoidance of doubt, include any breach of conditions 2.4, 3.1, 3.2, 4, 5.3 and 9; or
 - the Supplier breaches any term of this agreement, other than those referred to at sub-paragraph 11.2(a) above, and does not remedy such breach within 7 days of being given notice to do so;
 - any distress, execution or other process is levied upon any of the assets of the Supplier; or
 - the Supplier has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief

- of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Supplier or notice of intention to appoint an administrator is given by the Supplier or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Supplier or for the granting of an administration order in respect of the Supplier, or any proceedings are commenced relating to the insolvency or possible insolvency of the Supplier; or
- the Supplier ceases or threatens to cease to carry on its business; or
 - the financial position of the Supplier deteriorates to an extent that, in the opinion of WWL, the capability of the Supplier adequately to fulfil its obligations under the Contract has been placed in jeopardy.
- 11.3 The termination of the Contract, however arising, shall be without prejudice to the rights and duties of WWL accrued prior to termination. The Conditions that expressly or impliedly have effect after termination shall continue to be enforceable notwithstanding termination.
- 12. REMEDIES**
- 12.1 Without prejudice to any other right or remedy which WWL may have, if any Goods are not supplied in accordance with, or the Supplier fails to comply with, any of the terms of the Contract WWL shall be entitled to avail itself of any one or more of the following remedies at its discretion, whether or not any part of the Goods have been accepted by WWL:
- to rescind the Order;
 - to reject the Goods (in whole or in part) and return them to the Supplier at the risk and cost of the Supplier on the basis that a full refund for the Goods so returned shall be paid forthwith by the Supplier;
 - at WWL's option to give the Supplier the opportunity at the Supplier's expense either to remedy any defect in the Goods or to supply replacement Goods and carry out any other necessary work to ensure that the terms of the Contract are fulfilled;
 - to refuse to accept any further deliveries of the Goods but without any liability to WWL;
 - to carry out at the Supplier's expense any work necessary to make the Goods comply with the Contract; and
 - to claim such damages as may have been sustained in consequence of the Supplier's breach or breaches of the Contract.
- 13. ASSIGNMENT**
- 13.1 The Supplier shall not be entitled to assign the Contract or any part of it without the prior written consent of WWL.
- 13.2 WWL may assign the Contract or any part of it to any person, firm or company without notice.
- 14. COMPLIANCE**
- 14.1 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.
- 14.2 WWL complies with the Ethical Trading Initiative (further details of which can be found at <http://www.ethicaltrade.org/>) therefore should WWL reasonably suspect that any Supplier (or its subcontractors or agents) fails to comply with the standards expected by the Ethical Trading Initiative it reserves the right to serve immediate notice of termination of Contract.
- 15. FORCE MAJEURE**
- 15.1 The Supplier reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods to be delivered if it is prevented from or delayed in the carrying on of its business due to circumstances beyond its reasonable control for the following specified reasons only, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion and flood.
- 15.2 WWL reserves the right to defer the date of delivery or payments or to cancel the Contract or reduce the volume of the Goods ordered if it is prevented from or delayed in carrying on of its business due to circumstances beyond the reasonable control of WWL including without limitation, acts of God, governmental actions, war or natural emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce) or restraints or delays affecting carriers inability or delay in obtaining supplies of adequate or suitable materials.
- 16. GENERAL**
- 16.1 Each right or remedy of WWL under the Contract is without prejudice to any other right or remedy of WWL 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 WWL in enforcing or partially enforcing any provision of the Contract shall not be claimed as a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- 16.4 Any waiver by WWL of any breach of, or any default under, any provision of the Contract by the Supplier 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 English law and the parties submit to the non-exclusive jurisdiction of the English courts.