

Kereru Brewing Company Limited

Terms of Trade

1. Definitions

In these Terms of Trade unless the context otherwise requires:

- **Company** means Kereru Brewing Company Limited.
- **Company Property** means any kegs supplied to the Customer.
- **Contract** means the contract between the Company and the Customer for the purchase of the Products and includes these Terms of Trade and the attached Credit Application Form.
- **Customer** means the person or company buying the goods from the Company.
- **Invoice** means a GST invoice provided by the Company to the Customer, and which specifies the Products to be purchased by the Customer from the Company.
- **Intellectual Property** means all intellectual property rights and interests, whether registered or not and whether registrable or not, including copyright, trade marks, service marks, designs, business names and trade names.
- **Minimum Quantity** means the minimum amount of Products that must be ordered for the Company to provide complimentary freight, as determined by the Company from time to time.
- **person** includes a corporation, association, firm, company, partnership or individual.
- **PPSA** means the Personal Property Securities Act 1999.
- **Price** means the price of Products as agreed between the Customer and the Company and specified in the relevant Quotation or Invoice.
- **Products** means the products being purchased by the Customer from the Company, but excludes any Company Property.
- **Quotation** means a price for the supply of Products, valid for a fixed term, and which specifies the Products to be purchased by the Customer from the Company.

2. Order and Quotation

- 1.1. The Customer may order Products from the Company in such a manner as the Company directs from time to time.
- 1.2. The Customer may request a Quotation from the Company setting out the Price and quantity of Products to be supplied. If the Quotation is acceptable to the Customer, the Customer may place an order within the fixed term specified in the Quotation. Any order placed after the expiry of that fixed term may be accepted by the Company in its sole discretion (but the Company need not accept any such order).
- 1.3. A minimum order may apply as notified to the Customer by the Company from time to time.
- 1.4. The Customer is liable for any forged or fraudulent purchase orders issued by, or that purport to be issued by, the Customer.

3. Terms and conditions

- 1.5. These Terms of Trade (as may be amended from time to time pursuant to clause 3.2) will apply to all orders for the Products made by or on behalf of the Customer after the date and time at which these Terms of Trade are first delivered or sent by email or facsimile to, or otherwise brought to the notice of, any employee, staff member or representative of the Customer. It is the Customer's responsibility to ensure that these Terms of Trade are promptly brought to the attention of the appropriate staff of the Customer.
- 1.6. The Company may amend these Terms of Trade at its discretion (acting reasonably) from time to time, by notice to the Customer. Any such amendment will be binding on the Customer 14 days after the Company notifies the Customer of the amendment (by any reasonable means the Company chooses).

4. Price

- 1.7. The Price for any Products ordered by the Customer pursuant to a Quotation will be as set out in the Quotation. Otherwise, the Price will be the Company's current price for the relevant Products as at the date of order of those Products.
- 1.8. Time for payment for the Products will be of the essence and will be stated on the Invoice and Quotation (if applicable). If no time is stated then payment must be made in accordance with clause 5.2 of these Terms of Trade.

5. Payment

- 1.9. Payment must be made by cash or by bank cheque, or by direct credit to the Company's nominated bank account, or by any other method as agreed to between the Customer and the Company in writing prior to supply of Products.
- 1.10. Subject to any provision to the contrary in the Contract, payment must be received on or before the 20th day of the month following the date of the Invoice for the Products, which will be issued promptly on or after delivery of the Products.
- 1.11. Late payment will incur interest at the rate of 10% per annum calculated on a daily basis. This will be payable on any money outstanding under the Contract from the date payment was due until the date payment is received by the Company. Charging interest on late payments does not limit the Company's other rights or remedies in respect of the Customer's default in failing to make payment on the due date.
- 1.12. If at any time the Customer does not pay to the Company any amount due to the Company under or in relation to this Contract when due, then, without limiting its other rights and remedies, the Company may take such steps as it sees fit to recover the amount due, including engaging a debt collection agency or other third party to collect the amount due.

- 1.13. The Customer agrees that any debt collection costs, administration fees, legal costs or any other costs incurred by the Company in respect of any late payment by the Customer will be payable by the Customer on demand.
- 1.14. Without limiting any other remedies the Company may have, if at any time the Customer is in breach of any obligation (including those relating to payment), the Company may suspend or terminate the supply of Products to the Customer and any of its other obligations under these Terms of Trade. The Company will not be liable to the Customer for any loss or damage (whether direct or indirect) that the Customer suffers because the Company exercised its rights under this clause.
- 1.15. In the event that:
 - a. any money payable to the Company becomes overdue, or in the Company's opinion the Customer will be unable to meet its payments as they fall due; or
 - b. the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - c. a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer,
then without limiting the Company's other remedies at law:
 - d. the Company will be entitled to cancel all or any part of any order of the Customer that remains unperformed; and
 - e. all amounts owing to the Company will, whether or not due for payment, immediately become payable.

6. Reservation of title and risk

- 1.16. Ownership and title of the Products remains with the Company until the Price and all other monies owing by the Customer to the Company, under the Contract have been paid in full.
- 1.17. The Company will, at all times, retain ownership and title of any Company Property supplied to the Customer, and the Company may, at any time, require the immediate return of any Company Property at the Customer's expense.
- 1.18. While the Product remains the property of the Company:
 - a. the Customer agrees to ensure that all such Products are clearly identifiable as the property of the Company;
 - b. the Company may recover and/or sell any of the Products already delivered to the Customer;
 - c. the Company or its agents may enter the Customer's premises to access the Products for the purpose of recovering and/or selling the Products;
 - d. the Company will not be responsible for any damage caused by the use of reasonable force while entering the Customer's property and recovering the Products and the Customer will waive any rights it may have against the Company for the cost of any such damage;
 - e. if the Company recovers the Products from the Customer and sells them for a price below the amount owed to the Company by the Customer, the Company may claim the remaining amount from the Customer as a debt due to the Company;
 - f. the Customer will be liable to the Company for all costs incurred by the Company in entering into the Customer's premises and recovering and/or selling the Products, including transportation and storage costs; and
 - g. the Customer must advise the Company immediately of any action by any third party (including any of the Customer's creditors) affecting the Company's interest in the Products.
- 1.19. The Customer agrees that upon delivery of any Products and/or Company Property by the Company, the Customer will assume all risk in relation to those items. The Customer will indemnify the Company against any damage to, or theft of, any Company Property while in the Customer's possession or during return delivery to the Company.

7. PPSA

- 1.20. The Contract constitutes a security interest in the goods supplied by the Company to the Customer for the purposes of the PPSA as security for payment by the Customer of all amounts due under the Contract, including any future amounts.
- 1.21. The Customer agrees to promptly execute and deliver to the Company all assignments, transfers and other agreements and documents and do anything else which the Company may deem appropriate to perfect the Company's security interest over the Customer, or obtain the priority required by the Company or register (and renew registration) a financing statement for a security interest in favour of the Company.
- 1.22. To the extent that Part 9 of the PPSA applies, the Customer agrees that the provisions of sections 114(1)(a), 120, 122, 133 and 134 of the PPSA which are for the Customer's benefit, or place any obligations on the Company in the Customer's favour, will not apply; and where the Company has rights in addition to those in Part 9 of the PPSA, those rights will continue to apply.
- 1.23. To the extent that Part 9 of the PPSA applies, without limiting anything in the previous paragraph, the Customer waives its rights under sections 116, 120(2), 121, 125, 126, 127, 129 and 131 of the PPSA, and its rights to receive a copy of a verification statement under section 148 of the PPSA in respect of any financing statement or financing change statement registered by the Company.
- 1.24. The Customer agrees to treat the security interest in the goods as a continuing and subsisting security with priority over a registered general security interest and any unsecured creditors.
- 1.25. The Customer agrees to give the Company at least 7 days' written notice before changing its name.

8. Returns

- 1.26. If the Customer does not indicate within 7 days of receiving Products that it is not satisfied with the Products supplied, the Customer will be deemed to have accepted those Products and may not return them.
- 1.27. The Customer may not cancel an order placed under clause 2 without the prior written approval of the Company.

9. Inability to supply / force majeure

- 1.28. The Company will not be responsible for any loss or inconvenience which may be caused by the Company's inability to supply any Products to the Customer at any particular time or place.
- 1.29. Neither the Company or the Customer will be liable for any delay in meeting, or failure to meet, its obligations under these Terms of Trade (other than the obligation to pay money) to the extent that such delay or failure is caused by any event outside its reasonable control (including, without limitation, any delay or failure caused by any act or omission to the other party).

10. Warranty

The Company does not give any warranties, guarantees or representations in respect of the Products and any warranties, guarantees or representations implied by law are excluded to the extent that it is legal to do so. In particular, but without limiting this exclusion, where Products are not of a kind ordinarily acquired for personal, household or domestic use or consumption, or the Customer acquires or holds itself out as acquiring the Products for the purposes of a business, the provisions of the Consumer Guarantees Act 1993 are excluded from these Terms of Trade and will not apply.

11. Liability

The Company will not be liable for any loss of any kind whatsoever suffered by the Customer as a result of any breach of any of the Company's obligations under the Contract, including any cancellation of the Contract or any negligence on the part of the Company, its employees, agents or contractors, nor will the Company be liable for any loss, damage or injury caused to the Customer's employees, agents, contractors, buyers, visitors, tenants, trespassers or other persons. The Customer will indemnify the Company against any claim by any such person against the Company.

12. Freight

- 1.30. The Company reserves the right to include freight costs in the Price if delivery of Products is required outside of the Company's nominated delivery area, or if the Minimum Quantity is not ordered.
- 1.31. The Company can deliver Products purchased by the Customer by any means it may select.

13. Termination

- 1.32. The Company may at any time, at its discretion, without reason:
 - a. decline until further notice acceptance of any orders from the Customer; and/or
 - b. terminate the Contract.

14. Use of Information

- 1.33. The Company may obtain information about the Customer from the Customer or any other person (including any credit or debt collection agencies) in the course of the Company's business, including credit assessment, debt collecting and direct marketing activities. The Customer consents to any person providing the Company with such information.
- 1.34. The Company may use for credit assessment and debt collection purposes any information it has about the Customer relating to the Customer's creditworthiness and give such information to any other person, including any credit or debt collection agency. Any other information collected by the Company from the Customer is received or collected for the use of the Company in the course of its business, including direct marketing activities.
- 1.35. The Customer must notify the Company of any changes in circumstances that may affect the accuracy of the information provided by the Customer to the Company.
- 1.36. If the Customer is a natural person, the Customer has the rights under the Privacy Act 1993 to access and request the correction of any personal information that the Company holds about the Customer.

15. Intellectual property rights

- 1.37. The Customer acknowledges that any and all intellectual property used or embodied in or in connection with the Products is and will remain the sole property of the Company.
- 1.38. The Customer will have no claim to the Company's Intellectual Property and no licence to use the Company's Intellectual Property except for use of the Company's logo on beer taps, or as otherwise agreed by the Company in writing.
- 1.39. The Customer will not 'pass off' or represent goods not supplied by the Company as the Company's Products.
- 1.40. The Customer will not adulterate or otherwise mix or contaminate any Product.

16. Governing laws

These Terms of Trade will be interpreted in accordance with the laws of New Zealand, which will have exclusive legal jurisdiction over any dispute in relation to the products and/or services or these Terms of Trade.

17. Dispute resolution

The Company and the Customer will endeavour to resolve any dispute between the Customer and the Company by agreement. Failing agreement, a party can, on written notice to the other, refer the dispute to be resolved by mediation. The mediator will be appointed by agreement or, failing that, by the President of the New Zealand Law Society. Failing resolution at mediation, the parties may resolve the matter through the courts.

18. General

- 1.41. The Customer is not entitled to assign its rights under the Contract without the prior written consent of the Company.
- 1.42. The Company is entitled to assign any or all of its rights to any person without the consent of the Customer.
- 1.43. The Customer has no right of set off in respect of any payment to any amount due to the Company.
- 1.44. If any provision of these Terms of Trade is invalid, void or illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions will not be affected.
- 1.45. Failure by the Company to enforce any of its rights under these Terms of Trade will not be deemed to be a waiver of any of the rights or obligations the Company has.
- 1.46. If there is inconsistency between these Terms of Trade and any Quotation, or order submitted by the Customer, or any other arrangement between the Company and the Customer, these Terms of Trade will prevail unless otherwise agreed by the Company in writing.

19. Signature

Iof
have read and accept the Terms of Trade as outlined in this document.

Signature

Date:

Position: