

**Middleton Associates Ltd.**  
**Associates House, Grimshaw Lane, Middleton M24 2AE**  
**Company Registration: 03081014 England**

**TERMS & CONDITIONS OF SALE**

**1. DEFINITIONS**

In these Conditions the following words shall have the following meanings:

**COMPANY** – Middleton Associates Ltd  
**BRAND** – the design, labelling, and logo of or appearing on the packaging associated with the product,  
**CONDITIONS** – these Terms & Conditions of Sale  
**CONTRACT** – the agreement (which shall be governed by these conditions) between the Company and the customer for the sale and purchase of Goods.  
**CUSTOMER** – means the Company or person identified as being the Customer on the face hereof  
**GOODS** – all those beers, wines, spirits, soft drinks and other articles and services specified in the invoice, order acknowledgement or delivery note.  
**ORDER** – any order placed by the Customer to purchase goods from the company  
**PARTIES** – the Company and the Customer.

**2. BASIS OF SALE**

- 2.1 Any order constitutes an offer by the Customer which the Company shall be entitled to accept or reject at its discretion.
- 2.2 The Customer acknowledges that by placing an order with the Company it is bound by these conditions and all other terms and conditions whether express or implied are hereby excluded (to the extents permissible under English law) in their entirety. In particular, these conditions shall prevail in the event of any conflict between these conditions and any Terms and Conditions which appear on the customer's order form or on or in any other communication passing between the parties.
- 2.3 No variation or amendment to these conditions shall be binding unless agreed in writing by a director of the company and a duly authorized representative of the customer.

**3. DELIVERY**

- 3.1 Any time or date for delivery of the Goods given by the Company shall only be an estimate. The company shall use its reasonable endeavours to comply with such estimated time or date for delivery but time of delivery shall not be of the essence and the Company shall not be held liable for any loss or damage howsoever resulting to the Customer by reason of delay in delivery.
- 3.2 Delivery of the Goods shall be deemed to take place when the Goods arrive at the address designated by the Customer.
- 3.3 The Company shall be entitled but not required to deliver the Goods in instalments and to invoice the Customer for each instalment.
- 3.4 If the Customer refuses or fails to take delivery of the Goods at a time when the Company could reasonably expect the Customer to take delivery then without prejudice to any other right or remedy available to the Company, the Company may:
- 3.4.1 Store the goods until actual delivery is made and charge the Customer for the cost (including insurance) of storage and/or
- 3.4.2 Sell the Goods at the best price readily obtainable and (after deducting all storage and selling expenses) give the Customer a credit of such amount against the price payable for such Goods under the contract and in either case shall be entitled to charge interest (both before and after judgement) on the price payable for the goods under the contract at 4% above base rate from time to time from the date of delivery until the date on which the goods are actually received by the Customer.
- 3.5 The Company shall have no liability to the customer in respect of damage to goods the outside packaging of which is damaged on receipt by the Customer or where fewer than the number of goods indicated on the delivery note are actually received by the Customer unless the Customer notifies the Company of such damage or short delivery in writing received by the Company within two days of receipt of the goods or invoices as appropriate otherwise than merely by a note on the delivery note.
- 3.6 Where the Company agrees that the Customer has a valid claim for any loss of or damage caused to goods during transit the Company's only obligation in respect of such loss of or damage shall at the Company's option be to:
- 3.6.1 make good any shortage or non-delivery of the Goods; and/or
- 3.6.2 replace such damaged Goods which have been returned to it by and at the expense of the Customer or
- 3.6.3 in either case make a full refund in respect of such Goods

**4. PRICES AND PAYMENT**

- 4.1 The prices of the goods shall be as featured in the Company's price list at the time of placement of any order.
- 4.2 In addition to all amounts payable under the contract the Customer shall pay all applicable taxes including Value Added Tax.
- 4.3 Commodities may be available in single bottles except where stated otherwise in the Company's price list but these may be subject to surcharge.
- 4.4 Container sizes quoted in the Company's price list and on any other documentation are trade descriptions only and are not intended as a guarantee of the actual volume of product within the container.
- 4.5 The Customer shall make payment for the goods by cash (or by cheque if the prior agreement of the company had been obtained) on delivery and prior to the unloading of the goods.
- 4.6 If the Company has granted credit facilities to the Customer payment for the Goods shall be made:
- 4.6.1 within 7 days of date of invoice or
- 4.6.2 at such dates as are specified in correspondence from the Company
- 4.7 The Customer shall not deduct from the price of the Goods (and related costs charged by the Company) any other monies due or claimed to be due to the Customer from the Company in respect of the Contract or any other Contract.
- 4.8 Deposit charges on containers must be paid for at the time of delivery and will be credited in full when the containers are returned to the Company in good condition.
- 4.9 If the customer fails to make payment in accordance with the conditions the company shall be entitled without further notice to:
- 4.9.1 cancel this contract and any other contract with the customer or suspend all further deliveries of Goods.
- 4.9.2 You will be charged interest in accordance with the Late Payment of Commercial Debt Interest Act 1998 from the date payment was due and the date on which payment is made.
- 4.9.3 Request all other sums due from the customer to be paid immediately and
- 4.9.4 Charge the Customer for any third party charges incurred by the company in connection with any failure to make payment including but not limited to legal costs and bank charges for rejecting or presenting cheques.

**5. WARRANTIES AND LIABILITY**

- 5.1 The Company warrants that the goods shall be delivered to the Customer in an undamaged condition and free from any defects.
- 5.2 Except where expressly provided by these conditions the seller provides no warranties, conditions, guarantees or representations as to the quality of fitness for a particular purpose of the goods and all other warranties, conditions, guarantees or representations, whether express or implied, oral or in writing are hereby excluded.
- 5.3 The Company does not seek to exclude its liability for death or personal injury arising from use of the Goods to the extent that it results from negligence. The Company shall also be liable to the Customer for any direct physical damage to tangible property other than death or personal injury to the extent that it results from the proven negligence of the Company, its employees, agents or subcontractors up to a maximum of £100,000
- 5.4 Except as expressly provided by these Conditions the Company shall not in any event be liable for any indirect special or consequential losses or damages howsoever arising, in connection with or arising out of the design, manufacture, supply, use of or otherwise relating to the goods or in respect of any loss of anticipated profits or losses relating to or associated with wasted overhead or similar costs.
- 5.5 Except in respect of liability for death or personal injury, no action, regardless of form, arising out of the transaction under the Contract may be brought by the customer more than two years after the cause of such action has accrued.

**6. INDEMNITY**

- 6.1 The Customer shall indemnify the company in respect of all actions, claims, demands and expenses related to damage, injury or loss occurring to and person or property and which has arisen from the Condition or use of the goods or of any of the property referred to in Condition 7 below to the extent that such damage, injury or loss shall have been occasioned partly or wholly by the act, omission, negligence or wilful default of the customer, its servants or agents or by any breach by the Customer of its obligations to the Company under these conditions.

**7. PROPERTY OF COMPANY AND/OR SUPPLIER**

All Containers including but not limited to bottles, cases, kegs, cylinders and pallets in or upon which the goods are supplied shall remain the property of the Company or of the Company's supplier (as the case may be) and the Company shall be entitled to charge the Customer a deposit for the safekeeping thereof. If the Customer fails to return such items upon request or returns them in a damaged condition, any deposit may be forfeited in whole or in part and the company shall in addition be entitled to charge the Customer the balance of the cost of any replacement thereof or repair thereto.

**8. RISK AND TITLE**

- 8.1 Risk of loss of or damage to the Goods shall pass to the Customer on delivery and the Customer shall ensure the products from that time until ownership of and title to them passes to the Customer.
- 8.2 Ownership of and title to the Goods shall be retained by the Company until such time as the Customer shall have paid the Company for the goods together with the price of any other Goods which are the subject of any other contract with the Company and until that time the Customer acknowledges that it is in possession of the Goods solely as Bailee in a fiduciary capacity for the Company. The Customer shall keep the goods separate from goods which belong to the customer and to third parties and ensure that such goods are properly stored, protected (and insured) and identified as the Company's property.
- 8.3 If the Customer sells or otherwise disposes of the goods it shall do so as agent for the company and shall hold the entire proceeds of sale of such goods whether tangible or intangible, including insurance proceeds, for and on behalf of the Company until the Company has recovered payment in full and shall keep all such amounts separate from any monies or property of the Customer and third parties and in the case of tangible proceeds, property stored and protected and insured. The Customer shall maintain records of the persons to whom it sells or disposes of such goods and of the payments made by such persons for those goods and will allow the Customer to inspect those records and the Goods themselves on request. The Customer shall be entitled to trace the proceeds of sale or otherwise of such Goods.
- 8.4 For avoidance of doubt the Goods and all other Goods supplied to the customer by the Company which are in the Customer's possession shall be presumed to belong to the Company unless the customer can prove otherwise.
- 8.5 Until ownership of and title to any Goods owned by the Company passes to the Customer (and providing the Goods are still in existence and have not been resold), the Company shall be entitled at any time to require the Customer to deliver up such Goods to the Company and if the Customer fails to do so immediately to enter upon any premises owned or occupied by the customer or any third party where such goods are stored and repossess them. The Customer shall procure that any third party which holds such Goods shall permit the Company to take possession of them and shall indemnify the Company against any liability, which it may incur to such third party in connection with taking or attempting to take possession of them. The Company shall be entitled to use or dispose of such Goods as it wishes.

**9. OWNERSHIP OF THE BRAND**

- 9.1 The Customer acknowledges that the ownership of all rights (whether registered or unregistered) in the brand shall remain at all times in the absolute ownership of the Company.
- 9.2 Notwithstanding Condition 9.1 above, the company shall permit the customer to use the brand in connection with the product.
- 9.3 Any and all goodwill derived from the Customer's use of the brand shall accrue to the Company.
- 9.4 The Customer shall not apply for registration of or obtain any design right, trademark or similar registrable right in the brand.
- 9.5 The Customer undertakes at the request and expense of the Company to bring into effect or do all acts and execute all documents which may be necessary to confirm the title of the company to the rights in the brand whether in connection with any registration of that title to design right or trade mark or other similar right or otherwise.

**10. TERMINATION**

The Company shall be entitled to cancel the contract or suspend deliveries of the goods forthwith by notice in writing if

- 10.1 The Customer commits any irremediable breach of any of these Conditions, persistently repeats a remediable breach or commits any remediable breach and fails to remedy it within 30 days of receipt of notice of the breach requiring remedy of the same.
- 10.2 The Customer becomes the subject of any voluntary arrangement, receivership, administration, liquidation or winding-up; or
- 10.3 The customer is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1988; or
- 10.4 The Customer becomes the subject of any restraint, execution or other similar process; or
- 10.5 The Customer ceases or threatens to carry on business; or
- 10.6 The Company reasonably believes that any of the events mentioned in Conditions 10.1 to 10.5 above is about to occur and notifies the Customer accordingly.

**11. MISTAKES AND INFORMATION**

The company reserves the right to amend any clerical, administrative or computer processing error which appears in the company's invoice, order acknowledgement, delivery note or other documentation issued by it.

**12. WAIVER**

No realisation, forbearance, delay or indulgence by either party in enforcing any of these conditions or the granting of time by either party to the other shall prejudice effect or restrict the rights and powers of the said party, nor shall any waiver by either party of any breach of these Conditions operate as a waiver of any subsequent or any continuing breach of these conditions.

**13. HEADINGS**

The headings in these conditions are for convenience only and shall have no effect on the interpretation thereof.

**14. JURISDICTION**

These conditions and the Contract shall be governed by and construed in accordance with English Law and any disputes shall be referred to the Courts of England and Wales.