

## General Terms and Conditions of Sale Australia

1. These Terms and Conditions of Sale apply to every sale of products by Suntory Beverage & Food Australia Pty Limited (SBFAU) to a customer (Customer) unless the Customer is otherwise party to an existing Sales Agreement between it and SBFAU or the Customer is a franchisee and is entitled to the benefit of terms and conditions of sale in an existing Sales Agreement between its franchisor and SBFAU.

### ORDERS

2. All quotations made or given by SBFAU are made or given subject to these Terms and Conditions of Sale (and any other terms notified in writing by SBFAU from time to time) (Terms). A quotation is not an offer by SBFAU, and may be withdrawn or varied by SBFAU in its discretion. Any order placed with SBFAU for any products is an offer by the Customer to purchase the particular products subject to the Terms and for the price notified (including the delivery and other charges and taxes) at the time of placing the order.
3. SBFAU reserves the right to accept or reject the Customer's order for any reason, including if any requested products are not available, if there is an error in the price or the description of the products, or an error in the order. Each order placed by the Customer for products from SBFAU that is accepted by SBFAU results in a separate binding agreement between the Customer and SBFAU for the supply of those products.
4. Cancellation of, or variation to, an order accepted by SBFAU will be accepted at the sole discretion of SBFAU, on such terms as SBFAU may specify, acting reasonably. SBFAU reserves the right to charge the Customer for any costs or losses incurred by SBFAU relating to an order which is cancelled or varied up to and including the date on which cancellation or variation is accepted by SBFAU.
5. If the Customer refuses to accept delivery of any products which it orders, the products will be considered to have been delivered when SBFAU was willing and able to deliver the products and SBFAU may charge you for any additional costs incurred as a result, including storage, insurance and transportation costs.

### PAYMENT

6. References to amounts owing to SBFAU for products, and payment in respect thereof, include all taxes and imposts authorised, charged or chargeable by any statute, federal, state or local government or regulatory authority in respect of such products levied from time to time, including but not limited to Goods and Services Tax (as that term is defined in A New Tax System (Goods and Services Tax) Act 1999 (Cth), and includes any additional tax, penalty, fine, interest or other charge relating to GST).
7. Payment terms are strictly cash on delivery (COD) unless otherwise agreed in writing between the Customer and SBFAU. If terms have been otherwise agreed which provide for payment after delivery (Due Date) and SBFAU does not receive payment by the Due Date, then the Customer shall pay SBFAU:
  - a. interest, computed from the Due Date until payment, at the rate of 3% per annum above the Westpac Bank reference lending rate for overdraft facilities (calculated on a daily basis) on the unpaid portion of any amount due to SBFAU.
  - b. the costs and expenses (including legal costs on a solicitor/client basis) incurred by SBFAU in obtaining payment of any amount not paid by the due date.
8. Returnable packaging materials (e.g. crates, pallets, and ottobins) remain the property of SBFAU unless paid for, returned or replaced in kind and may be invoiced separately by SBFAU to the Customer if such products have not been returned or replaced.

## LIMITATION OF LIABILITY AND INDEMNITY

9. Subject to any rights or remedies which arise under the Competition and Consumer Act 2010 (Cth) or any other Federal, State or Territory laws which may not be excluded, where any right or remedy may be excluded or limited, SBFAU hereby excludes all such rights or remedies and limits its liability under such rights or remedies which are not capable of exclusion to the maximum extent permitted by law. Subject to the foregoing:
- a. SBFAU will not recognise claims which are not received within 72 hours of the time of delivery of any products to or at the direction of the Customer;
  - b. As every care is used in the packaging of products, no responsibility is taken for any loss or damage which occurs in transit;
  - c. No warranty, condition, undertaking, express or implied, statutory or otherwise as to the condition, quality, performance, merchantability or fitness for purpose of the products is given or assumed and all such warranties, conditions, undertakings and terms are hereby excluded;
  - d. SBFAU and its agents shall not be liable for loss of profits, damage to goodwill or contracts or loss of use or for any special, indirect or consequential or economic loss whether arising out of or in connection with the products or these Terms (including as a result of not being able to use or resell the products or the late supply of the products whether at common law, from negligence, breach of contract or in equity or of statutory duty or otherwise);
  - e. Every effort will be made to make deliveries on time. Failure to do so due to circumstances outside of SBFAU's reasonable control including, but not limited to, strikes, lockouts, raw material shortages, accidents or breakdowns of plant machinery, does not constitute a breach of contract;
  - f. SBFAU will accept no claim for shortages unless endorsed on the delivery docket and invoice at the time of delivery. SBFAU will not accept an endorsement "Subject to Check". It is the responsibility of the Customer to check cartons at the time of delivery.
10. Nothing in these Terms limits or excludes any guarantees, warranties, representations or conditions implied or imposed by law, including the Australian Consumer Law (ACL) (or any liability under them) which by law may not be limited or excluded. If you are a "consumer" under the ACL, the following notice applies to you:  
"Our goods come with warranties and guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or a refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure."
11. Subject to clauses 9 and 10, the Customer shall indemnify and keep indemnified and hold SBFAU harmless from and against all liabilities, losses, damages, costs or expenses incurred or suffered by SBFAU and from and against all actions, proceedings, claims or demands made against SBFAU arising as a result of:
- a. The Customer's failure:
    - (i) to ensure that any safety markings on the products are adequately displayed;
    - (ii) to comply with any legislation as to the labelling or marking of foods;
    - (iii) to take any other reasonable precautions either to bring to the attention of any potential users of the products any dangers associated with the products, or to detect any matters in relation to which SBFAU may become liable, including, without limitation, liability, under the Competition and Consumer Act 2010 (Cth); or
    - (iv) otherwise to comply with any laws, rules, standards or regulations applicable in relation to the products or the use of the products;

- b. any other negligence or other breach of duty by the Customer; or
  - c. any compliance or adherence by SBFAU with any instructions of the Customer in relation to the products or their manner of preparation.
12. SBFAU's total liability arising out of or in connection with the products, the services or these Terms, however arising, including under contract, tort (including negligence), in equity, under statute or otherwise, will not exceed the total price paid by the Customer for the purchase of products under these Terms.
13. Where by law SBFAU is unable to exclude terms, guarantees, warranties, representations or conditions but are able to limit them, to the extent permissible by law SBFAU limits its liability for any breach, at its option, to the replacement of products, or payment of the cost of replacing the products.

#### **TITLE AND RISK**

14. Risk in the products shall pass at the time of delivery by SBFAU either at the place of unloading if transport is effected by SBFAU, or its agent, or at the place of loading at SBFAU's premises if transport is effected by the Customer or its agent.
15. Title to all products supplied by SBFAU shall remain with SBFAU until payment in full of all monies owing by the Customer to SBFAU on any account. Prior to such payment in full, the Customer shall hold all products supplied by SBFAU as bailee for SBFAU. If the products are sold or disposed of by the Customer prior to such a payment in full, any amount received by the Customer shall be set aside and held in trust by the Customer for SBFAU pending payment in full.
16. To secure the Customer's obligations to SBFAU under these Terms, the Customer grants to SBFAU a purchase money security interest (Security Interest) in all products supplied by SBFAU to the Customer as that term is used in the Personal Property and Securities Act 2009 (Cth) (PPSA) and the Customer acknowledges and agrees that:
- a. SBFAU's interest in the goods is a Security Interest for the purposes of the PPSA;
  - b. SBFAU has given value for the Security Interest and SBFAU's Security Interest in the goods is effective and attaches to the goods immediately upon the customer taking delivery of the goods;
  - c. SBFAU may take all steps as SBFAU considers necessary to perfect, record, register, amend or remove the registration of SBFAU's Security Interest on the Personal Property Securities Register;
  - d. The customer must, at its own cost, do anything which SBFAU considers reasonably necessary to:
    - (i) ensure that SBFAU's Security Interest in the goods attaches to the goods, is enforceable, perfected and otherwise effective and has the priority required by SBFAU;
    - (ii) enable SBFAU to exercise or enforce any of its rights in relation to its Security Interest in the goods, and the proceeds of those goods, or to perform any of its obligations under the Act; and
    - (iii) enable SBFAU to prepare, register or renew a financing statement on the Personal Property Securities Register.
  - e. The Customer must not:
    - (i) create any Security Interest in the goods, or any property which constitutes "personal property" under the Act and becomes an accession to the goods, without the prior written consent of SBFAU;
    - (ii) change its name without first giving SBFAU 14 days' notice of the new name or relocate its principal place of business outside Australia or change its place of registration or incorporation.

- f. To the extent permitted under the Act, SBFAU need not give any notice, including without limitation a notice of the receipt of a verification statement, to the customer under the Act.
  - g. Neither SBFAU nor the customer shall disclose information of the kind mentioned in section 275 (1) of the Act and the Purchaser will not authorise, and will ensure that no other party authorises, the disclosure of such information
17. If any payment by the Customer to SBFAU is overdue, in whole or in part, or the customer is otherwise in default under any contract with SBFAU, or the Customer shall become insolvent or suffer some form of external administration appointment, all sums then owing by the Customer to SBFAU shall become immediately due and payable and SBFAU may (without prejudice to any of its other rights) recover and resell the products and may, for the purpose, enter upon the Customer's premises by its servants or agents. SBFAU is irrevocably authorised to effect such entry, and to use the name of the Customer and to act on behalf of the Customer, if necessary, to recover possession of the products.
18. SBFAU shall insure the products until delivery. The Customer shall effect and maintain adequate insurance against loss or damage to the products between the time of delivery and passing of title in a full and proper amount. If the proceeds of such insurance are received prior to payment in full for the products, such proceeds shall be held by the Customer as trustee for SBFAU and shall at the option of SBFAU, be applied in or towards such payment, but otherwise SBFAU shall be entitled to make claim under that insurance for the loss of its products (as the case may be).

## GENERAL

19. These Terms form the entire agreement between SBFAU and the Customer in respect of purchase of the products and, unless expressly agreed to in writing by SBFAU no terms or conditions of the Customers, including any terms or conditions printed or referred to in the Customer's offer to purchase or order (if any) will be binding on SBFAU or have any legal effect.
20. SBFAU may change any provision in these Terms without notice so even if the Customer is a frequent purchaser from SBFAU, it is the Customer's responsibility to check these Terms whenever purchasing products from SBFAU. Any change of these Terms will only apply to future orders. None of SBFAU's agents or employees or any third parties have any authority to change these Terms.
21. SBFAU reserves the right to refuse supply of the products ordered by the Customer, or terminate any account of the Customer with SBFAU, at SBFAU's sole discretion and without incurring any liability to the Customer.
22. The Customer must not assign any rights and obligations under these Terms whether in whole or in part without SBFAU's prior written consent.
23. Any notice in connection with these Terms will be deemed to have been duly given when made in writing and delivered or sent by email, facsimile or post to the Customer.
24. If any provision of these Terms is invalid, illegal or unenforceable, these Terms take effect (where possible) as if they did not include that provision.
25. Any failure by a party to insist upon strict performance by the other of any provision in these Terms will not be taken to be a waiver of any existing or future rights in relation to the provision.

26. These Terms are governed by the laws of New South Wales, Australia. The parties each agree to submit to the non-exclusive jurisdiction of the courts of New South Wales, Australia