

## Terms and Conditions of Sale NZ

### 1 Interpretation

These Terms and Conditions of Sale (as amended from time to time) (**Terms**), apply to every sale of products by SBFNZ to the Customer unless otherwise previously agreed in writing. In these Terms, the term “Customer” means the person, firm, company or entity buying the goods from SBFNZ; “goods” means packaged beverages and other products supplied by SBFNZ and includes all the goods described in invoices issued by SBFNZ to the Customer; “Supplier” and “SBFNZ” means Suntory Beverage & Food New Zealand Limited; and “CGA” means Consumer Guarantees Act 1993.

### 2. Orders

2.1 All orders received by SBFNZ from the Customer will constitute an offer by the Customer to acquire the goods on these terms and conditions. A contract is made only on acceptance (in whole or part) of the order by SBFNZ.

2.2 SBFNZ reserves the right to accept or reject the Customer’s order for any reason, including if any requested goods are not available, if there is an error in the price or the description of the goods, or an error in the order. Each order placed by the Customer for goods from SBFNZ that is accepted by SBFNZ results in a separate binding agreement between the Customer and SBFNZ for the supply of those goods. Each order for goods must meet or exceed a minimum order requirement of \$250 invoiced sales or 4 cartons of the goods. No goods are offered on a sale or return basis and SBFNZ’s representatives are not authorised to accept orders for goods to be supplied on a sale or return basis.

2.3 Cancellation of, or variation to, an order accepted by SBFNZ will be accepted at the sole discretion of SBFNZ, on such terms as SBFNZ may specify, acting reasonably. SBFNZ reserves the right to charge the Customer for any costs or losses incurred by SBFNZ relating to an order which is cancelled or varied up to and including the date on which cancellation or variation is accepted by SBFNZ.

2.4 If the Customer refuses to accept delivery of any goods which it orders, or where delivery was unable to be effected a safe and secure location, the goods will be considered to have been delivered when SBFNZ was willing and able to deliver the goods and SBFNZ may charge the Customer for any additional costs incurred as a result, including storage, insurance and transportation costs.

### 3 Price

3.1 Unless expressly agreed otherwise by SBFNZ, the purchase price of the goods is the price specified in the current price list at the date of the order of the relevant goods. The Customer shall pay the price indicated on the invoice, current price list or other similar

document issued by SBFNZ (and where there is a conflict, the Customer shall pay the price indicated on the current price list).

3.2 The Customer acknowledges and agrees that prices are subject to increase due to circumstances such as exchange rate fluctuations, tax increases or changes, or increases in SBFNZ's costs beyond SBFNZ's reasonable control. SBFNZ may vary the price of goods supplied to the Customer by giving prior written notice of variation.

3.3 The variation will not apply to goods ordered before the date of receipt by the Customer of written notice of variation.

3.4 The Customer agrees to pay a \$1 pick fee for each individual spirit bottle not ordered in full case multiples (on a per SKU basis). Any applicable pick fees will be shown on the Customer's tax invoice.

3.5 All amounts payable under these Terms are exclusive of GST (unless expressed to be GST inclusive). If GST is payable, the Customer must pay the amount of GST specified in the tax invoice issued in relation to the relevant supply of goods. All amounts payable under these Terms are inclusive of excise tax where applicable.

#### **4 Payment**

4.1 The Customer must pay in full all amounts for goods ordered to SBFNZ upon, or prior to, delivery unless the Customer has a credit account. If the Customer has a credit account, the Customer must pay in full all amounts for goods ordered to SBFNZ on or before the 20th of the month following the date of the invoice, or as otherwise agreed in writing between the Customer and SBFNZ (each "the due date").

4.2 SBFNZ may require the Customer to pay cash in full prior to delivery if in SBFNZ's opinion the credit worthiness of the Customer becomes unsatisfactory, including where the Customer has a credit account.

4.3 If the Customer has not paid in full by the due date, SBFNZ may:

- (a) charge the Customer interest on the overdue monies from the date of delivery of the goods until paid in full. The interest rate shall be at a rate equal to the prevailing cost of funds to the company plus 5% per annum, calculated on a daily basis from the date payment is due until the date payment in full (including accrued interest) is received by SBFNZ;
- (b) pursue an action for the price of the goods for which payment has not been made, even though property in the goods remains with SBFNZ;
- (c) recover from the Customer the costs and expenses (including legal costs on a solicitor and own client basis) incurred by SBFNZ in recovering any overdue monies or in pursuing any action in respect of the overdue monies; and
- (d) without any prior notice or demand, set-off or deduct any amounts owing (or to

become owing) by SBFNZ to the Customer in order to reduce any payment due (or to become due) by the Customer to SBFNZ.

4.4 The Customer must pay SBFNZ in full and on time for the goods delivered even if:

- (a) there was a delay in delivery of the goods;
- (b) the Customer disputes the quality, quantity or condition of the goods delivered excluding where the Customer is making a claim under clause 8.

4.5 The Customer may not deduct or withhold any amount (whether by way of set off, counterclaim or otherwise) from any money owing to SBFNZ. All payments must be made in New Zealand dollars.

## **5 Risk**

The risk of loss or damage to the goods shall pass to the Customer when the goods arrive at the delivery point agreed with the Customer regardless of whether the Customer accepts delivery or, if the Customer is to arrange delivery of the goods, when the goods are available for collection by the Customer.

## **6 Title**

6.1 Until SBFNZ has received full payment in cleared funds for the goods and all other monies due and payable to SBFNZ by the Customer:

- (a) property in the goods shall remain with SBFNZ and title in them will not pass to the Customer;
- (b) the Customer shall store the goods in a way that clearly indicates SBFNZ's title to the goods.

6.2 The Customer may sell the goods in the ordinary course of its business, provided that if the Customer sells the goods to its customers before ownership has passed to the Customer, all proceeds of sale shall be received and held by the Customer in trust for SBFNZ to the extent of all amounts owing by the Customer to SBFNZ. The authority granted under this clause may be revoked by SBFNZ at any time and is automatically revoked upon the occurrence of an event described in clause 8 below.

6.3 This clause shall apply even though SBFNZ may give credit to the Customer.

6.4 SBFNZ may bring an action for an amount owing in relation to goods sold even where ownership of the goods may not have passed to the Customer.

## **7 Right of Entry and Resale**

If the Customer:

- (a) (being a natural person) commits an act of bankruptcy;
- (b) (being a company) does anything which entitles anyone to apply to liquidate the Customer or an administrator or receiver or receiver and manager of the Customer is appointed; or

(c) breaches any of these terms and conditions, then the Customer irrevocably authorises SBFNZ to use reasonable force to enter premises where the goods may be located, without notice directly or by its agents, to take possession of and resell the goods. The Customer indemnifies SBFNZ against all claims arising out of the entry by SBFNZ to premises to take possession of the goods.

## **8 Return of Goods**

All claims for delivery of an insufficient quantity of goods or for delivery of the wrong goods or for goods damaged in transit must be made to SBFNZ within 12 hours of delivery. SBFNZ will only accept claims under this clause if, as applicable:

- (a) the damaged or wrong goods are returned within two (2) days of delivery; and
- (b) the returned goods are accompanied by details of SBFNZ's original invoice number in respect of such goods; and
- (c) the claim is made in accordance with any other procedures advised by SBFNZ in writing from time to time.

## **9 Warranty and liability**

9.1 With respect to each good supplied by SBFNZ to the Customer under these terms and conditions of sale, SBFNZ warrants to the Customer that, subject to clause 9.2, the good is, at the date of delivery, fit for the purpose for which goods of the type in question are commonly supplied ("fit for purpose"). If, in the opinion of SBFNZ, the good is not fit for purpose, SBFNZ will, at its option, replace the good with an identical or similar good or provide a refund of any money paid for the good.

9.2 The warranty in clause 9.1 will not apply:

- (a) if the failure of the good is due to an act or default or omission of, or any representation made by, any person other than SBFNZ or a cause beyond the control of SBFNZ;
- (b) unless a written claim (other than a claim covered by clause 8, which will be dealt with under clause 8) is received by SBFNZ within 30 days after the date of delivery of the relevant good and SBFNZ is given the opportunity to inspect the relevant good immediately after the failure is discovered;
- (c) if the good has been modified or incorrectly handled or stored.

9.3 The Customer warrants to SBFNZ that:

- (a) it has and will maintain valid all necessary permits, permissions, licences, approvals and accreditations required to undertake the commitments specified in these Terms; and
- (b) it is fully compliant with all applicable standards, rules, codes, legislation, permits, permissions and licensing regimes when conducting its operations; and
- (c) it indemnifies SBFNZ in the event that it, or SBFNZ, is found to have breached any

standard, rule, code, legislation, permit, permission or licensing regime as a result of a supply of goods under these Terms.

9.4 The Customer acknowledges that it is acquiring the goods from SBFNZ for the purposes of resupplying them in trade and, accordingly, the Parties acknowledge and agree that the CGA does not apply.

9.5 In any event, to the extent permitted by law, the Parties agree that the CGA does not apply to the supply of the goods by SBFNZ under these Terms, as the goods are being supplied and acquired in trade.

9.6 Subject to clauses 9.1 and 9.2:

(a) all warranties (other than the warranty contained in clause 9.1), descriptions, representations or conditions whether implied by law, trade, custom or otherwise are, and all other liability of SBFNZ (other than the liability under clause 8), whether in tort (including negligence), contract, under statute or otherwise is, expressly excluded to the fullest extent permitted by law;

(b) insofar as SBFNZ may be liable notwithstanding clause 9.6(a), to the extent permitted by law, the total liability of SBFNZ whether in tort (including negligence), contract, under statute or otherwise for any loss, damage or injury arising directly or indirectly from any defect in any good or any breach of SBFNZ's obligations to the Customer is, to the extent permitted by law, limited, at SBFNZ's option, to:

(i) the price of the good complained of;

(ii) the cost of replacing the defective good; or

(iii) the actual loss or damage suffered by the Consumer;

(c) except where statute expressly requires otherwise, SBFNZ will not be liable in any event for any loss of profits or any consequential, indirect or special damage, loss or injury of any kind suffered by the Customer or any other person.

9.7 Nothing in these terms and conditions of sale will affect any rights a consumer may have under the CGA.

## **10 General**

10.1 These Terms and each order document form the entire agreement between SBFNZ and the Customer in respect of purchase of the goods and, unless expressly agreed to in writing by SBFNZ 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 SBFNZ or have any legal effect.

10.2 SBFNZ may change any provision in these Terms without notice. If a change is made to the Terms that SBFNZ believes may have a material impact on the Customer's rights or obligations, SBFNZ will notify the Customer of this change by sending the Customer a copy of the amended Terms at least five

working days in advance of the change being implemented. It is the Customer's responsibility to check these Terms whenever purchasing products from SBFNZ. Any change of these Terms will only apply to future orders. None of SBFNZ's agents or employees or any third parties have any authority to change these Terms.

10.3 SBFNZ may assign its rights or obligations under these Terms. The Customer must not assign its rights or obligations under these Terms whether in whole or in part without SBFNZ's prior written consent. A change in the effective management or control of the Customer or any parent company of the Customer will be deemed to be an assignment for the purpose of these terms and conditions, requiring SBFNZ's prior written consent. Any permitted assignment, transfer or sub-contracting will not relieve the Customer of the Customer's responsibility for due performance under these terms and conditions.

10.4 The parties each agree, for the purposes of section 5D of the Fair Trading Act 1986 (FTA) that they are contracting out of sections 9, 12A and 13 of the FTA in respect of all matters covered by these Terms. The parties each had the opportunity to receive advice from a lawyer prior to entering into the terms and conditions and agree that this clause is fair and reasonable in the context of those terms and conditions.

10.5 Any intellectual property rights created by SBFNZ in the course of performing its obligations under these Terms or otherwise in the manufacture of the goods shall remain SBFNZ's property. Nothing in these Terms shall be deemed to give the Customer a licence or any other right to use any of the intellectual property rights of or licensed to SBFNZ.

10.6 The Customer shall keep confidential and shall not, without the prior consent of SBFNZ, in writing, disclose to any third party any confidential or sensitive information of SBFNZ.

10.7 In the event that the Customer becomes aware of or suspects any infringement of SBFNZ's intellectual property, the Customer shall immediately notify SBFNZ and shall at the request of SBFNZ provide SBFNZ with such co-operation and assistance as may be reasonably required by SBFNZ in taking any action against any such infringement or suspected infringement.

10.8 Notwithstanding any other provision of these Terms, non-performance by either SBFNZ or the Customer of their respective obligations (other than to pay money) under these terms and conditions shall be excused, without liability for non-performance, during the time and to the extent that such performance is prevented, wholly or substantially, by Force Majeure.

10.9 The party claiming the benefit of this clause shall promptly give written notice to the other party specifying the cause and extent of its inability to perform any of its obligations under these terms and conditions and the likely duration of such non-

performance. Such party shall take all reasonable steps to remedy or abate the Force Majeure.

10.10 Performance of any obligation affected by Force Majeure shall be resumed as soon as reasonably possible after the termination or abatement of the Force majeure. For the purposes of this clause 10, “Force Majeure” means an event beyond the reasonable control of a party, which results in or causes the failure of that party to perform any of its obligations under these terms and conditions, provided that lack of funds will not be considered a Force Majeure.

10.11 The goods are intended for sale and consumption in New Zealand. If the goods are exported from New Zealand SBFNZ does not accept any liability or responsibility for complying with any overseas statute, regulation or other legal requirement relating to labelling, permitted containers, contents, or any other matter. The Customer’s right to export the goods is not in any way restricted by this clause.

10.12 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, post or hand delivered to the other’s business address as last known to the party giving it.

10.13 These Terms are governed by the laws of New Zealand and each Party submits to the jurisdiction of the Courts of New Zealand in respect of all matters arising out of or relating to these Terms.

10.14 SBFNZ and the Customer may from time to time agree to undertake and participate in promotional campaigns relating to the goods. All terms relating to such promotional campaigns will be agreed in writing between SBFNZ and the Customer.

10.15 The Customer shall follow all requirements of SBFNZ relating to the packaging of the goods, as advised by SBFNZ from time to time.

10.16 The provisions of this clause 10 will survive any termination or expiry of these Terms.

## **11 Severability**

If one or more of the provisions in these Terms is, or becomes illegal, invalid or unenforceable for any reason, the remaining provisions of these Terms shall not be affected and shall continue in full force and effect.