

CREDIT APPLICATION



COMPANY REGISTERED DETAILS					
Company reg name		Please list directors / partners / owners			
Registered office address		Name 1			
		Name 2			
		Name 3			
		Name 4			
Postcode				Name 5	
Date first incorporated				Company Reg No.	
This business is a: Limited Company Sole Trader Partnership Other					
VENUE DETAILS					
Site / Bar name		Venue contact name			
Delivery address		Venue telephone no.			
		Venue mobile no.			
		Venue email			
Postcode		Weekly order call required		Yes No	
Email for newsletter					
INVOICE DETAILS (IF DIFFERENT TO REGISTERED ADDRESS)					
Invoice address		Account contact name			
		Accounts telephone no.			
		Accounts mobile no.			
Postcode		Email for invoices / statements			
BANK DETAILS					
Bank name		Postcode			
Branch address					
TRADE REFERENCES					
Reference 1		Reference 2			
Contact name		Contact name			
Telephone no.		Telephone no.			
Email		Email			
Address		Address			
Postcode		Postcode			
Years of trading history		Years of trading history			
				Amount of monthly credit required	
DECLARATION					
Terms: Payment with first order. Credit Terms available upon approval of application. By completing and returning this you agree and accept Broom House Investments Ltd (t/a James Clay) terms and conditions, as supplied with this document. Please enclose / supply a copy of your company letterhead.					
Name		Position			
Signature		Date			
INTERNAL OFFICE USE					
Notes					
DON/DOF/W		DEPOT			
Delivery instructions		Minimum order			
CC		CR	Credit Limit		
Account name ref		DA			
AWRS number		SPA			
Invoice / statement email added?		Product news email added?		Call management added?	
Delivery day		Call day		Call time slot	

TERMS AND CONDITIONS FOR THE SALE OF GOODS

1. INTERPRETATION

1.1 DEFINITIONS

“**Business Day**” means Monday – Friday inclusive (excluding public holidays).

“**Conditions**” means the terms and conditions set out in this document (as amended from time to time in accordance with clause 13.8).

“**Contract**” means a Contract between the Seller and the Customer for the sale and purchase of Goods in accordance with these conditions.

“**Customer**” means the person who purchases the Goods from the Seller.

“**Force Majeure**” means as set out in Clause 10.

“**Goods**” means the Goods (or any part of them) set out in an Order.

“**Order**” means the Customer’s Order for the Goods as set out in the Customer’s purchase order form or the Customer’s written acceptance of the Seller’s quotation.

“**Equipment**” means any articles or Equipment provided to the Customer by the Seller which do not form part of the Goods, and including, but not limited to, beer dispense systems, cellar cooling equipment, Container, Containers, point of sale and promotional material.

“**Container**” means any Container for the containment and/or transportation of beer, including, but not limited to, kegs, casks, returnable bottles and cases (but not including non returnable bottles and cans).

“**Seller**” means Broom House Investments Limited who trade as James Clay and whose registered office is River Street, Brighouse, West Yorkshire, HD6 1LU.

“**Website**” means the Seller’s Website www.jamesclay.co.uk

“**Normal Delivery Area**” means the M62 corridor and its environs (as agreed by the Company) and Newcastle-upon-Tyne and its environs (as agreed by the Company).

“**Product Recall**” means a decision taken to recall any Goods once supplied to a Customer due to information or reasonable suspicion the Seller has that such Goods may be unsafe, defective, or in any way not compliant with the Seller’s warranty.

1.2 CONSTRUCTION

In these conditions, the following shall apply;

- a) A Person includes a natural person, firm, partnership, corporate or unincorporated body (whether or not having separate legal personality).
- b) A reference to a party includes its personal representatives, successors or permitted assigns.
- c) A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under the statute or statutory provision, as amended or re-enacted.
- d) Any phrase introduced by the terms “including”, “include”, “in particular”, or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- e) A reference to “writing” or “written” includes facsimile transmissions and emails.

2. BASIS OF CONTRACT

2.1 These Conditions apply to the Contract to the exclusion of any of the terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice, or cause of dealing.

2.2 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring the terms of the Order are complete and accurate.

2.3 The Order shall only be deemed to be accepted when the Seller issues a written acceptance of the Order, at which point the Contract shall come into existence.

2.4 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied upon any statement, promise or representation made or given by or on

behalf of the Supplier which is not set out in the Contract.

2.5 Any samples, descriptive matter, or advertising produced by the Seller (including upon the Website) and any illustrations contained in the Seller’s catalogues, brochures, or Website, are produced for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract nor have any contractual force.

2.6 A quotation for the Goods given by the Seller shall not constitute an offer. A quotation shall only be valid for a period of 30 days from its date of issue.

3. GOODS

3.1 The Goods are described in the Seller’s catalogue and/or on the Website.

3.2 The Seller reserves the right to amend the description of the Goods if there should be any change of the Goods by the Seller’s supplier or if required by any applicable statutory or regulatory requirements.

4. DELIVERY

4.1 The Seller shall ensure that:

- a) Each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, all relevant Customer and Seller’s reference numbers, the type and quantity of the Goods (including the code number of the Goods if applicable), any special storage instructions, and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and;
- b) If the Seller requires the Customer to return any Equipment to the Seller, that fact is clearly stated upon the delivery note. The Customer shall make any such Equipment available for collection at such times as the Seller shall reasonably request. Returns of Equipment shall be at the Seller’s expense, unless the Customer shall have not made the same readily available for collection in line with this clause 4.1 (b).

4.2 The Seller shall deliver the Goods to the Customer’s premises or such other location as the parties may agree (“Delivery Location”) on a Business Day to be notified by the Seller to the Customer (“Delivery Date”).

4.3 If the Seller is to deliver the Goods, the Seller shall deliver them free of charge to the Customer provided either:

- (i) the Delivery Location is situated in the Normal Delivery Area and the Order comprises in excess of 10 cases (24 bottle equivalent), or;
- (ii) the Delivery Location is outside the Normal Delivery Area and the Order comprises in excess of 40 cases (24 bottle equivalent).

If neither (i) or (ii) apply, then delivery shall be by way of a standard third party carrier and the Seller shall be entitled to charge the Customer for the costs of delivery incurred and the same shall be added to the Contract price. At all times, the Seller shall be under no obligation to deliver Goods outside the Normal Delivery Area.

4.4 Delivery of the Goods shall be completed upon the Goods arrival at the Delivery Location.

4.5 The Delivery Date or any other dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The Seller shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer’s failure to provide the Seller with adequate delivery instructions or any other instructions that are relevant to the Supply of the Goods.

4.6 If the Customer fails to accept delivery of the Goods on the Delivery Date notified by the Seller to the Customer then, except where such failure or delay is caused by a Force Majeure Event or the Seller’s failure to comply with its obligations under the Contract, the Seller shall store the Goods until delivery can be effected and charge the Customer for all reasonable related costs and expenses (including insurance).

4.7 If 20 Business Days after the Delivery Date the Customer has not arranged collection of the same, the Seller may re-sell or otherwise dispose of part or all of the Goods (and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods).

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4.8 In the event that the Customer does not take delivery of the Goods upon the Delivery Date notified by the Seller to the Customer, and the Customer requires the Seller to re-deliver the Goods, the Seller may at its sole discretion agree to do so, but shall be entitled to charge the Customer for reasonable costs of delivery.

4.9 The Seller may deliver the Goods by instalments, on a piecemeal basis, which shall be invoiced and paid for separately. Each instalment shall constitute a separate Contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

4.10 For the avoidance of doubt, delivery may be effected by the Customer attending at the Company's premises and collecting the Goods. Delivery shall be completed upon collection.

5. QUALITY

5.1 The Seller warrants that upon delivery the Goods shall:

- a) Conform in all material respects with their description, and;
- b) Be of satisfactory quality within the meaning of the Sale of Goods Act 1979.

5.2 The Customer shall inspect the Goods upon delivery, and, should the Customer believe that the same are defective or otherwise not in line with the Order, the Customer shall notify the Seller within 3 Business Days.

5.3 Subject to clause 5.4, if;

- a) the Customer gives notice in writing to the Seller within 3 Business Days of delivery that some or all of the Goods do not comply with the warranty set out in clause 5.1, and;
- b) the Seller is given a reasonable opportunity of examining the Goods, and;
- c) the Customer allows the Goods to be collected by the Seller

The Seller shall, at its option, replace the defective Goods or refund the price of the defective Goods in full.

5.4 The Seller shall not be liable for Goods failure to comply with the warranty set out in clause 5.1 in any of the following events:

- a) the Customer makes any further use of such Goods after giving notice in accordance with clause 5.3;
- b) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage of the Goods or good trade practice relating to the same;
- c) the Customer alters the Goods without the written consent of the Seller;
- d) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions;
- e) the Goods differ from their description as a result of changes made to them by the Seller's supplier or in line with any applicable statutory or regulatory requirements.

5.5 Except as provided in this clause 5, the Seller shall have no liability to the Customer in respect of the Goods failure to comply with the warranty set out in clause 5.1.

5.6 These Conditions shall also apply to any replacement Goods supplied by the Seller.

5.7 In the event that the Seller should decide or be advised to effect a Product Recall, then the Seller shall notify the Customer as soon as reasonably practicable of the same. The Customer shall upon receipt of such notice:

- (i) Not sell, transfer, dispose of or in any other way deal with the Goods;
- (ii) Make the Goods available for collection by the Seller at a reasonable date and time notified by the Seller to the Customer. The cost of collection shall be the Seller's.

5.8 In the event of a Product Recall, the Seller shall, at the Seller's election:

- (i) replace the Goods recalled, or;
- (ii) refund the Customer for the cost of the same.

5.9 In the event of a Product Recall, the Customer shall raise no requisition and shall not be entitled to any compensation whatsoever for the same, of whatever nature. A Product Recall

shall be treated as a Force Majeure event.

6. TITLE AND RISK

6.1 The risk in the Goods shall pass to the Customer upon completion of delivery.

6.2 Notwithstanding clause 6.1 above, title to Goods shall not pass to the Customer until the Seller has received payment in full (in cash or cleared funds) for:

- a) such Goods, and;
- b) all other sums which are or which become due to the Seller from the Customer for sales of Goods in any other circumstance.

6.3 Until title to the Goods has passed to the Customer, the Customer shall:

- a) hold such Goods on a fiduciary basis as the Supplier's bailee;
- b) store such Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Seller's property. In the event that the goods shall be in any way mixed, compounded, or entwined with the property of a third party or parties then the product or products thereof shall be deemed to be held in common with such third party or parties;
- c) not remove, deface or obscure any identifying mark or packaging on or relating to such Goods;
- d) maintain such Goods in satisfactory condition and keep them insured on the Seller's behalf for their full price against all risks with an insurer that is reasonably acceptable to the Seller. The Customer shall obtain an endorsement of the Seller's interest in the Goods on its insurance policy, subject to the insurer being willing to make the endorsement. On request the Customer shall allow the Seller to inspect such Goods and the insurance policy;
- e) immediately notify the Seller of any damage to the Goods and will hold any insurance monies received in trust for the Seller absolutely. In the event that a claim is to be made under the Customer's insurance, the Seller may, at the Seller's sole discretion, conduct negotiations and effect a settlement with the insurers in place of the Customer. The Customer at all times irrevocably authorises the Seller to collect any insurance monies from the insurers. The Seller may apply any insurance monies as the Seller shall see fit;
- f) subject to clause 6.6 the Customer may sell or use the Goods in the ordinary course of its business (but not otherwise) before the Seller receives payment for the Goods. However, if the Customer resells the goods before that time then;
- (i) it does so as principal and not as the Seller's agent, and;
- (i) title to the Goods shall pass from the Seller to the Customer immediately before the time at which resale by the customer occurs.
- g) at the Customer's own expense immediately return the Goods to the seller should the seller or its authorised representatives so request at any time after payment is due.

6.4 The Seller shall be entitled at any time following the date upon which payment is due and without additional notice to enter the premises of the Customer or any third party where the Goods are situate or shall be stored and repossess the same accordingly. For the avoidance of doubt, the Customer irrevocably consents to allow the Seller access onto their premises for this purpose. The Customer shall reimburse the Seller for all reasonable expenses and fees incurred (including, but not limited to, legal expenses) in so doing.

6.5 The Seller shall be entitled to maintain an action for the price of the Goods notwithstanding that title to the same shall not have passed to the Customer.

6.6 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events in clause 8 then without limiting any other right or remedy the Seller may have;

- (i) the Customer's rights to resell the goods or use them in the ordinary course of business ceases immediately, and
- (ii) the Seller may at any time require the Customer to deliver up such Goods and, if the Customer fails to do

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so promptly, enter any premises of the Customer or of any third party where the relevant Goods are stored in order to recover them.

7. PRICE AND PAYMENT

7.1 The price of the Goods shall be the price set out in the Order, or, if no price is quoted, the price set out in the Seller's published price list in force as at the date of delivery.

7.2 The Seller may, by giving notice to the Customer at any time up to 3 Business Days before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:

- a) any factor beyond the Seller's control (including increases in taxes and duties);
- b) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or;
- c) any delay caused by any instructions of the Customer or failure of the Customer to give the Seller adequate or accurate information or instruction.

7.3 Where delivery is to be charged to the Customer pursuant to clause 4.3 then the costs of transport and delivery shall be invoiced to the Customer.

7.4 The price of Goods is exclusive of the costs of delivery and transport of the Goods where delivery could not be effected by the Seller on the first Delivery Date notified to the Customer, and the same shall be invoiced to the Customer.

7.5 The price of the Goods is exclusive of amounts in respect of value added tax (VAT). The Customer shall, upon receipt of a valid VAT invoice from the Seller, pay to the Seller such additional amounts in respect of VAT as are chargeable on the supply of the Goods.

7.6 The Seller may invoice the Customer for the Goods on or at any time after the completion of delivery.

7.7 Unless the Customer has an approved Credit Account (as defined in clause 12.1 below) with the Seller, the Customer shall pay the invoice in full at the time delivery is completed. Time for payment is of the essence.

7.8 If the Customer has an approved Credit Account (as defined in clause 12.1 below) with the Seller, then the Customer shall pay invoices raised by the 15th day of the month following invoice (unless paying by Direct Debit in which instance the payment shall be made by the 28th day of the month following invoice).

7.9 If the Customer fails to make any payment due to the Seller under the Contract by the due date for payment ("Due Date"), then the Customer shall pay interest on the overdue amount at the rate of 8% per annum above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after Judgement. The Customer shall pay the interest together with the overdue amount.

7.10 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against the Supplier in order to justify withholding payment of any such amount in whole or in part. The Seller may at any time, without limiting any other rights or remedies it may have, set-off any amount owing to it by the Customer against any amount payable by the Seller to the Customer.

8. CUSTOMER'S INSOLVENCY OR INCAPACITY

8.1 If the Customer becomes subject to any of the events set out in clause 8.2, or the Seller reasonably believes that the Customer is about to become subject to any of them and notifies the Customer in writing accordingly, then, without limiting any other right or remedy available to the Seller, the Seller may cancel or suspend all further deliveries under the Contract or under any other Contract between the Customer and the Seller without incurring any liability to the Customer, and all outstanding sums in respect of Goods delivered to the Customer under any Contract shall become immediately due.

8.2 For the purposes of clause 8.1, the relevant events are:

- a) the Customer suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debt, or, being a company, is deemed unable to pay its debts within the

meaning of Section 123 of the Insolvency Act 1986, or, the Customer being an individual, is deemed either unable to pay his or her debts or as having no reasonable prospects of so doing, in either case, within the meaning of Section 268 of the Insolvency Act 1986, or, in the event the Customer is a partnership, has any partner to whom any of the foregoing apply.

- b) the Customer commences negotiations with all or any class of its creditors with a view to re-scheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors.
- c) being a company, a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding-up of a Customer, other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer.
- d) being an individual, the Customer is the subject of a bankruptcy petition or order.
- e) being a company an application is made to Court, or an order is made, the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer, or an administrative receiver is appointed.
- f) a creditor of the Customer attaches or takes possession of, or a distress, execution, sequestration, or other process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 7 days.
- g) a person becomes entitled to appoint a receiver over the Customer's assets or a receiver is appointed over the Customer's assets.
- h) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business.
- i) the Customer's financial position deteriorates to such an extent that in the Seller's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy, and;
- j) being an individual, the Customer dies, or by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.

8.3 Termination of the Contract, howsoever arising, shall not affect any of the parties rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

9. LIMITATION OF LIABILITY

9.1 Nothing in these Conditions shall limit or exclude the Seller's liability for:

- a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- b) fraud or fraudulent misrepresentation;
- c) breach of the terms implied by Section 12 of the Sale of Goods Act 1979;
- d) defective products under the Consumer Protection Act 1987.

9.2 Subject to clause 9.1:

- a) the Seller shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract, and;
- b) the Seller's total liability to the Customer in respect of all losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty or otherwise shall in no circumstances exceed the price of the Goods.

10. FORCE MAJEURE

Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that

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such failure or delay is caused by a Force Majeure Event. A Force Majeure Event means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs, or other industrial disputes (whether involving its own work force or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil promotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, contamination, fires, floods, collapse, storms, earthquakes, loss of sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, Product Recall or default of suppliers.

11. CUSTOMER'S OBLIGATIONS

11.1 The Customer is prohibited from and undertakes not to sell any Goods on a wholesale basis (or transfer any Goods by way of any form of exchange on a wholesale basis) to any third party for the purpose of re-sale or supply by or on behalf of such third party.

11.2 The Customer shall keep confidential all details of any terms agreed with the Seller in relation to the price paid under any Contract. The Customer may only provide the same to any third party if the same shall be:

- a) to the Customer's auditors, insurers, and/or lawyers on terms which preserve confidentiality;
- b) pursuant to an order of a Court of competent jurisdiction, or pursuant to any proper order or demand made by any competent authority or body where they are under a legal or regulatory obligation to make such a disclosure.

11.3 The Customer undertakes to keep the Seller's Equipment in safe and good condition. At all times, legal title to the Equipment shall remain with the Seller, and the Customer shall hold the same as a bailee and allow return of the Equipment to the Seller upon demand.

11.4 The Seller shall be entitled to regard any person placing an Order with Seller as having been authorised by the Customer to do so and so as to bind the Customer in its entirety.

11.5 The Customer undertakes not to do anything or act in any way which may directly or indirectly harm the Seller, affect the Seller's reputation, or cause the Seller financial loss.

12. CREDIT ARRANGEMENTS

12.1 The Seller may, entirely at the Seller's sole discretion, allow the Customer credit for Goods supplied ("Credit Account").

12.2 The Seller may withdraw the Customer's entitlement to a Credit Account at any time at the Seller's sole discretion and the Customer shall raise no requisition in relation to the same. The Seller shall notify the Customer pursuant to clause 13.3 below.

12.3 In considering whether to offer any Customer a Credit

Account, the Seller shall be at liberty to undertake all such checks and financial assessments as the Seller deems necessary to establish a Customer's creditworthiness. The Seller shall notify the Customer in advance if it intends to undertake such checks.

13. MISCELLANEOUS

13.1 The Seller may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

13.2 The Customer may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of the supplier.

13.3 Any notice or other communication given to a party under or in connection with the Contract shall be in writing. A notice or other communication shall be deemed to have been received if sent by pre-paid first class post or recorded delivery at 9.00 am on the second Business Day after posting or, if sent by fax or email, one Business Day after transmission. The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

13.4 If any Court or competent authority finds that any provision of the Contract (or any part of any provision) is invalid, illegal or unenforceable, that provision or part provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.

13.5 If any invalid, unenforceable or illegal provision of the Contract will be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

13.6 A person who is not a party to the Contract shall not have any rights under or in connection with it.

13.7 A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict any further exercise of that or any other right or remedy.

13.8 Except as set out in these Conditions, any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by the Supplier.

13.9 The Contract and any dispute or claim arising out of or in connection with it, or its subject matter or formation (including non contractual disputes or claims), shall be governed by, and construed in accordance with English Law, and the parties irrevocably submit to the exclusive jurisdiction of the Courts of England and Wales.