

THORNBRIDGE BREWERY



CONDITIONS OF SALE



The Customer's attention is drawn in particular to the provisions of clause 10.

1. BASIS OF CONTRACT

- 1.1 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 1.2 The Order constitutes an offer by the Customer to purchase the Products in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification are complete and accurate.
- 1.3 The Order shall only be deemed to be accepted on the Company issuing a written acceptance of the Order, or in the absence of such acknowledgement, the Company notifying the Customer that the Products are available for Delivery, at which point the Contract shall come into existence.
- 1.4 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Company which is not set out in the Contract.
- 1.5 Any samples, drawings, descriptive matter, or advertising produced by the Company and any descriptions or illustrations provided by the Company's are produced for the sole purpose of giving an approximate idea of the Products described in them. They shall not form part of the Contract or have any contractual force.
- 1.6 A quotation for the Products given by the Company shall not constitute an offer. A quotation shall only be valid for a period of 20 Business Days from its date of issue.

2. PRODUCTS

- 2.1 The Products are described in the Company's catalogue, price list or promotional materials supplied to the Customer.
- 2.2 The Company reserves the right to amend the Specification if required by any applicable statutory or regulatory requirements.
- 2.3 The Customer undertakes not to sell any Product which is outside its 'Best Before Date'. The Company shall be under no obligation to accept any returns or exchange any Products for the sole reason that such Product is approaching the end of its shelf-life.

3. CONTAINERS

- 3.1 Some Products require the return of Containers to the Company by the Customer, and details are set out in the Company's Product list from time to time.
- 3.2 If the Containers are not returned to the Company within three months of the date of delivery of the Products then the Company shall be entitled to invoice the Customer for the cost of the Containers as set out in the Company's price list from time to time.
- 3.3 The Customer acknowledges that the Containers do not form part of the Products and at no point shall ownership of or title to the Containers pass to the Customer.
- 3.4 The Customer shall at all times:
 - (a) not remove, deface or obscure any identifying mark or packaging on or relating to the Containers;
 - (b) maintain the Containers in satisfactory condition;
 - (c) notify the Company immediately if it becomes subject to any of the events listed in clause 9.2; and
 - (d) give the Company such information relating to the Containers as the Company may require from time to time.

4. DELIVERY

- 4.1 The Company shall ensure that:
 - (a) each delivery of the Products is accompanied by a delivery note which shows the date of the Order, all relevant Customer and Company reference numbers, the type and quantity of the Products (including the code number of the Products, where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Products remaining to be delivered; and
 - (b) if the Company requires the Customer to return any packaging materials or Containers to the Company, that fact is clearly stated on the delivery note. The Customer shall make any such packaging materials or Containers available for collection at such times as the Company shall reasonably request. Returns of packaging materials and/or Containers shall be at the Customer's expense.
- 4.2 Unless expressly agreed otherwise in an Order, the Customer shall collect the Products from the Company's premises at Thornbridge Riverside Brewery, Buxton Road, Bakewell, Derbyshire DE45 1GS or such other location as may be advised by the Company prior to delivery ("**Delivery Location**") within three Business Days of the Company notifying the Customer that the Products are ready.
- 4.3 Delivery of the Products shall be completed on the completion of loading of the Products at the Delivery Location.



- 4.4 Where the Company has agreed to deliver the Products to the Customer, Delivery shall be completed on the unloading of the Products at the Customer's premises.
- 4.5 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence unless expressly agreed in writing by the Company.
- 4.6 If the Customer fails to take delivery of the Products within three Business Days of the Company notifying the Customer that the Products are ready, then, except where such failure or delay is caused by a Force Majeure Event or the Company's failure to comply with its obligations under the Contract:
- (a) delivery of the Products shall be deemed to have been completed at 9.00 am on the third Business Day after the day on which the Company notified the Customer that the Products were ready; and
 - (b) the Company shall store the Products until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 4.7 If 10 Business Days after the day on which the Company notified the Customer that the Products were ready for delivery the Customer has not taken delivery of them, the Company may resell or otherwise dispose of part or all of the Products and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Products or charge the Customer for any shortfall below the price of the Products.
- 4.8 The Company may deliver the Products by instalments, 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.

5. QUALITY

- 5.1 The Company warrants that on delivery, and for the lesser duration of the shelf life of the Products or a period of three months from the date of delivery ("**Warranty Period**"), the Products shall:
- (a) conform in all material respects with their description and any applicable Specification;
 - (b) where applicable, be free from material defects in design, material and workmanship;
 - (c) where applicable be of a quality in accordance with Best Brewing Practice; and
 - (d) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).
- 5.2 Subject to clause 5.3, if:
- (a) the Customer gives notice in writing to the Company during the Warranty Period and within a reasonable time of discovery that some or all of the Products do not comply with the warranty set out in clause 5.1;
 - (b) the Company is given a reasonable opportunity of examining such Products; and
 - (c) the Customer (if asked to do so by the Company) returns such Products to the Company's place of business at the Customer's cost,
- the Company shall, at its option, repair (where possible) or replace the defective Products or refund the price of the defective Products in full.
- 5.3 The Company shall not be liable for Products' 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 Products after giving notice in accordance with clause 5.2;
 - (b) the defect arises because the Customer failed to follow the Company's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Products or (if there are none) good trade practice regarding the same;
 - (c) the defect arises as a result of the Company following any drawing, design or Specification supplied by the Customer;
 - (d) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
 - (e) the Products differ from their description or the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 5.4 Except as provided in this clause 5, the Company shall have no liability to the Customer in respect of the Products' failure to comply with the warranty set out in clause 5.1.
- 5.5 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.
- 5.6 These Conditions shall apply to any replacement Products supplied by the Company.

6. TITLE AND RISK

- 6.1 The risk in the Products shall pass to the Customer on completion of delivery.
- 6.2 Title to the Products shall not pass to the Customer until the earlier of:



- (a) the Company receives payment in full (in cash or cleared funds) for the Products; or
 - (b) the Customer resells the Products, in which case title to the Products shall pass to the Customer at the time specified in clause 6.4.
- 6.3 Until title to the Products has passed to the Customer, the Customer shall:
- (a) store the Products separately from all other goods held by the Customer so that they remain readily identifiable as the Company's property;
 - (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Products;
 - (c) maintain the Products in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
 - (d) notify the Company immediately if it becomes subject to any of the events listed in clause 9.2; and
 - (e) give the Company such information relating to the Products as the Company may require from time to time.
- 6.4 Subject to clause 6.5, the Customer may resell or use the Products in the ordinary course of its business (but not otherwise) before the Company receives payment for the Products. However, if the Customer resells the Products before that time:
- (a) it does so as principal and not as the Company's agent; and
 - (b) title to the Products shall pass from the Company to the Customer immediately before the time at which resale by the Customer occurs.
- 6.5 If before title to the Products passes to the Customer, the Customer becomes subject to any of the events listed in clause 9.2, then, without limiting any other right or remedy the Company may have:
- (a) the Customer's right to resell the Products or use them in the ordinary course of its business ceases immediately; and
 - (b) the Company may at any time:
 - (i) require the Customer to deliver up all Products and Containers in its possession which have not been resold, or irrevocably incorporated into another product; and
 - (ii) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Products and/or Containers are stored in order to recover them.

7. PRICE AND PAYMENT

- 7.1 The price of the Products shall be the price set out in the Order, or, if no price is quoted, the list price in effect as at the date of delivery.
- 7.2 The price of the Products is exclusive of the Deposit, costs and charges of packaging, insurance and transport of the Products, which shall be invoiced to the Customer.
- 7.3 Unless otherwise stated, the price of the Products is inclusive of Beer Duty.
- 7.4 The price of the Products is exclusive of amounts in respect of value added tax ("**VAT**"). The Customer shall, on receipt of a valid VAT invoice from the Company, pay to the Company such additional amounts in respect of VAT as are chargeable on the supply of the Products.
- 7.5 Where the Customer has been granted a credit account by the Company:
- (a) the Company may invoice the Customer for the Goods on or at any time after completion of delivery;
 - (b) the Customer shall pay the invoice in full and in cleared funds within its agreed credit terms. Payment shall be made to the bank account nominated in writing by the Company (referencing the relevant invoice number); and
 - (c) the Company may revoke or suspend the Customer's credit account or alter any credit limit at its sole discretion and need not provide any reason for doing so.
- 7.6 Where the Customer does not have a credit account with the Company then:
- (a) the Company may invoice the Customer for the Goods on or at any time after the acceptance of the Order; and
 - (b) the Customer shall pay the invoice in full and in cleared funds in advance of delivery or collection. Payment shall be made to the bank account nominated in writing by the Company (referencing the relevant invoice number).
- 7.7 Time of payment is of the essence.
- 7.8 If the Customer fails to make any payment due to the Company under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 4% per annum above Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 7.9 Each party shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law).



8. TRADE MARKS

- 8.1 Where the Company is providing point of sale promotional equipment or material to the Customer, the Customer shall have the non-exclusive right to use the Trade Marks contained on any such equipment or material solely for the promotion, advertisement and sale of the Products.
- 8.2 All other representations of the Trade Marks that the Customer intends to use shall be submitted to the Company for written approval before use.

9. TERMINATION AND SUSPENSION

- 9.1 If the Customer becomes subject to any of the events listed in clause 9.2, the Company may terminate the Contract with immediate effect by giving written notice to the Customer.
- 9.2 For the purposes of clause 9.1, 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 debts, or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being 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 rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors [other than (where the Customer is a company) where these events take place 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];
 - (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 the 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 a company) an application is made to court, or an order is made, for 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;
 - (e) (being a company) the holder of a qualifying floating charge over the Customer's assets has become entitled to appoint or has appointed an administrative receiver;
 - (f) a person becomes entitled to appoint a receiver over the Customer's assets or a receiver is appointed over the Customer's assets;
 - (g) (being an individual) the Customer is the subject of a bankruptcy petition or order;
 - (h) a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such 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 14 days;
 - (i) any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 9.2(a) to clause 9.2(f) (inclusive);
 - (j) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business;
 - (k) the Customer's financial position deteriorates to such an extent that in the Company's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; and
 - (l) (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.
- 9.3 Without limiting its other rights or remedies, the Company may suspend provision of the Products under the Contract or any other contract between the Customer and the Company if the Customer becomes subject to any of the events listed in clause 9.2(a) to clause 9.2(l), or the Company reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 9.4 On termination of the Contract for any reason the Customer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest.
- 9.5 Termination of the Contract, however arising, shall not affect any of the parties' rights, remedies, obligations and liabilities that have accrued as at termination.
- 9.6 Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

10. LIMITATION OF LIABILITY

- 10.1 Nothing in these Conditions shall limit or exclude the Company'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; or
- (e) any matter in respect of which it would be unlawful for the Company to exclude or restrict liability.

10.2 Subject to clause 10.1

- (a) the Company 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;
- (b) where the Company has provided Products as samples or free of charge, the Company excludes all liability in respect of such Products to the maximum extent permitted by law; and
- (c) the Company's total liability to the Customer in respect of all other 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 120% of the price of the Products.

11. FORCE MAJEURE

Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by an 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 ("**Force Majeure Event**").

12. GENERAL

12.1 **Assignment and other dealings.**

- (a) The Company may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- (b) The Customer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Company.

12.2 **Notices.**

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, fax or e-mail.
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 12.2(a); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, one Business Day after transmission.
- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

12.3 **Severance.**

- (a) If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- (b) If any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

12.4 **Waiver.** A waiver of any right or remedy under the Contract or law 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 prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

12.5 **Third party rights.** A person who is not a party to the Contract shall not have any rights to enforce its terms.

12.6 **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is in writing and signed by the Company.

12.7 **Governing law.** 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 the law of England and Wales.

12.8 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).



13. INTERPRETATION

13.1 **Definitions.** In these Conditions, the following definitions apply:

“Business Day”	a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.
“Company”	The Thornbridge Hall Country House Brewing Company Limited (registered in England and Wales with company number 05142189).
“Conditions”	the terms and conditions set out in this document as amended from time to time in accordance with clause 12.6.
“Containers”	includes all packaging of any nature, including but not limited to kegs, bottles, casks, crates, pallets and cases.
“Contract”	the contract between the Company and the Customer for the sale and purchase of the Products in accordance with these Conditions.
“Customer”	the person or firm who purchases the Products from the Company.
“Force Majeure Event”	has the meaning given in clause 11.
“Manual of Good Brewing Practice”	the industry guidelines issued by The Society of Independent Brewers (“SIBA”) contained within the SIBA Members Handbook, as amended or replaced from time to time.
“Order”	the Customer's order for the Products, as set out in the Customer's purchase order form, the Customer's written acceptance of the Company's quotation, or otherwise.
“Products”	the Products (or any part of them) set out in the Order.
“Specification”	any specification for the Products, that is agreed in writing by the Customer and the Company.
“Trade Marks”	any trade marks (whether registered or unregistered) that the Company may use in respect of the Products.

13.2 **Construction.** In these Conditions, the following rules apply:

- (a) A person includes a natural person, 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 that 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 faxes and e-mails.