

CONDITIONS OF PURCHASE

1. Definitions

In these Conditions:

“Order” means any order for the purchase of goods whether given by the issue of an order form by the Company by the Company’s acceptance of a quotation or tender (whether or not followed by the issue of an order form) or otherwise and the contract arising out of that order;

“the Company” means Distell International Limited and any subsidiary thereof;

“the Seller” means the person (firm or company) on whom an Order is placed;

“Goods” means the articles ordered by the Company from the Seller under an Order; and

“Delivery Order” means any order, call off note or other request made by or on behalf of the Company for delivery of all or part of the Goods.

2. General

All terms (which for the purpose of this condition includes conditions, warranties and representations) whether express or implied by statute, common law or custom are excluded with the exception of:

- (i) the terms expressed in these Conditions;
- (ii) terms expressly incorporated in the Order given by the Company or otherwise accepted by the Company in writing; and
- (ii) terms relating to the Goods whether implied by statute, common law, custom or otherwise or expressed by the Seller to the extent only that they confer rights on the Company or impose liability or obligations on the Seller (but not to the extent that they exclude, restrict or otherwise limit the rights of the Company or the liability or obligations of the Seller).

3. Quality

The Seller guarantees that:

- (a) The Goods and all materials used in their manufacture will be of good quality, design and workmanship and correspond in every respect to any sample, pattern, specification, description or drawing supplied or referred to.
- (b) The Goods will comply in all respects with all relevant legal requirements at the place and time of delivery and where the Goods are to be included within goods manufactured and sold by the Company that their use for this purpose will not by reason of the quality or composition of the Goods cause the Company to be in breach of any legal requirements.
- (c) The sale or use by the Company of the Goods will not infringe any patent, trade mark or trade name or registered design.

4. Passing of Risk and Inspection

The seller shall bear the risk of loss, destruction or damage of the Goods until delivery at the place specified in the Order or Delivery Order or otherwise as required by the Company. Beneficial ownership and legal title to the Goods shall pass to the Company on delivery or payment of the Goods whichever is the earlier. The Company reserves the right to reject any Goods, which on inspection whether before or after the delivery or performance are not in accordance with the Order, these Conditions or any sample description or specification. Goods rejected by the Company will be held by it for a reasonable period at the risk and expense of the Seller or at the Company’s option returned to the Seller at the risk and expense of the Seller.

5. Remedies

In addition to all other remedies granted to the Company by law, the Company shall have the rights specified in this paragraph in the event of any breach of any Conditions of the Order or Delivery Order, including any breach of warranty (whether such warranty is specified in these Conditions or is effective by operation of law). These rights are:

- (a) To require the Seller to correct such defect at their own cost and expense and to bring the Goods into conformity with the provisions of the Order or Delivery Order and, upon failure or refusal so to do, have such correction made in any manner the Company deem proper and feasible, and to charge the cost thereof to the Seller, which amount the Seller agrees to pay, or to require the Seller to replace such

defective Goods at their own cost and expense, or in the event that the Seller shall fail or refuse to do so, the Company may, at our own option, purchase similar Goods in the open market or procure the manufacture and delivery of the same and the Seller shall be obliged to reimburse the Company for the difference between the purchase price stipulated in the Order or Order Delivery and the price paid to any third party for the procurement of such replacement.

- (b) Irrespective of any breach of the Order or Delivery Order or its conditions on the part of the Seller, the Company shall nevertheless have the following additional options and rights:
- (i) to cancel the Order or Delivery Order in full or in part at any time without further obligation whatsoever if the Company is unable to make the intended use of any of the Goods by reason of contingencies or cause beyond their control, including but not limited to requirements of any legislation, acts, orders, regulations or requirements of any government, governmental agency or governmental subdivision, acts of God, fires, floods, epidemics, quarantine restrictions, strikes, labour difficulties, embargoes, unusually severe weather, acts of the civil or military authorities, inability to secure transportation facilities, any emergency conditions, war or termination of war. If the Order or Delivery Order is terminated in whole or in part, upon receipt of such from the Company the Seller shall discontinue all activities pursuant to the Order or Delivery Order and at the request of the Company deliver all Goods remaining undelivered in whatever stage of completion the same may be, and the Company agrees to pay to the Seller either of the following:
 - a) the price for such completed Goods accepted by the Company; or
 - b) the Seller's actual expenditure as determined by generally accepted accounting practices for the uncompleted Goods accepted by the Company, to which amount there shall be added a reasonable sum for the Seller's estimated profits with respect to such incomplete Goods.
 - (ii) To terminate the Order or Delivery Order if the Seller should file a petition in bankruptcy or make a general assignment for the benefit of creditors or if the assets of capital stock are sold in whole or in part to another person, firm or company.

6. **Quantity**

The Company will not accept quantities that vary from those provided in the Order or Delivery Order unless the Seller has obtained the Company's prior written consent.

7. **Delivery**

Time is of the essence of the contract and delivery or performance must be effected with the time specified in the Order or Delivery Order, failing which the Company may cancel the Order or Delivery Order, purchase replacement goods elsewhere and recover from the Seller any loss incurred. Any particular means of transport and/or delivery route specified in the Order or Delivery Order must be adhered to. A detailed advice note quoting the Company's official order number must be sent by the Seller by post to the Company at the delivery address quoted on the Order or Delivery Order on the day that the Goods are dispatched, unless the Goods are delivered to the Company by the Seller on that day.

8. **Payment**

Unless otherwise agreed by the Company, payment for the Goods will be made at the end of the month following the month in which the Goods are received, or accepted by the Company, or in which the invoice for such Goods is received, whichever is later.

9. **Price Variations**

All Goods are to be invoiced at the price ruling at the date of the Order, unless specific agreement has been reached in writing with the Company defining the extent of admissible price fluctuations or the method of assessing the price ruling at the time of delivery.

10. **Packing Materials**
Unless specifically agreed with the Company, the Seller shall not make any charge for delivery, packing cases, casks, drums, carboys, wrappers or packing material of any description. If any of these items are clearly marked as the property of the Seller and the Seller states on the invoice that they should be returned and to what address they should be sent, the Company will return them at the risk and expense of the Seller. In the absence of such instructions for their return the Company may, without notice to the Seller, dispose of them as the Company thinks fit, without being liable to account in any way to the Seller.
11. **Access to Seller's Premises**
The Seller shall give authorised representatives of the Company access at all reasonable times to the premises of the Seller and allow such representatives to inspect and examine the Goods both during and after manufacture and the materials being used in their manufacture.
12. **Publicity and Confidentiality**
- 12.1 The Seller shall not without the prior written consent of the Company advertise, use for the promotion of the Seller's business or in any way publish the fact that Goods have been supplied to the Company.
- 12.2 Except where necessary to fulfil its obligations under an Order, the Seller shall not disclose to any person confidential information which it has obtained by reason of seeking, obtaining or performing any Order concerning the specification, design, composition, manufacture, price, quantity or other characteristic of any Goods or the management, financing, conduct or extent of the business of the Company. Information about the Company or its Goods is to be treated as confidential whether or not it is known by persons other than the Company and the Seller, unless it is already in the public domain.
13. **Set-off**
The Company may apply any money due to the Seller under an Order in or towards payment of any sum owing by the Seller to the Company in relation to any matter whatsoever. For this purpose, references to "the Company" and "the Seller" include any company which is for the purposes of the Companies Act 1985 a holding company or a subsidiary of a holding company of the Company and the Seller respectively.
14. **Indemnity**
- 14.1 The Seller shall where it undertakes any work on premises of the Company indemnify the Company against any liability and maintain appropriate insurance policies against any such liability for:
- (a) claims made by the employees or contractors of the Seller against the Company or its employees, except those directly attributable to the negligence of the Company or its employees; and
 - (b) all costs, charges, damages and expenses incurred by the Company and directly or indirectly attributable to the performance by the Seller of the Order or the presence of the Seller's employees or contractors on the premises of the Company.
- 14.2 The Seller shall observe and ensure that its employees and agents observe any reasonable requirements of the Company relating to the premises in question.
15. **Insurance**
- 15.1 The Seller shall insure and at all times until its obligations under the Order are performed, maintain insurance for a minimum of £1,000,000 with an insurance company approved by the Company against all legal liabilities it may have to the Company under or in connection with the Order (whether those liabilities arise in contract tort or otherwise).
- 15.2 Whether required by the Company the Seller shall produce evidence that it has complied with its obligations under Condition 15.1.
- 15.3 If the Seller fails to insure or maintain insurance as required by Condition 15.1 the Company may without notice to the Seller effect insurance against those risks as Agent for the Seller in the joint names of the Company and the Seller. The cost to the Company of this is to be repaid by the Seller on demand.

16. **Overseas Requirements**

The Seller represents and guarantees that performance by each part of its obligations under the Order will not contravene any relevant law, regulations, exchange control or other requirement of any of the following countries if outside the United Kingdom:

- (a) The country from which the Goods or materials used in their manufacture originate or in which they are manufactured.
- (b) The country in which the Seller is resident.
- (c) The country to which payment of the purchase price is to be made.

17. **Services**

These Conditions shall be construed in respect of any Order for the performance of services as if references to Goods were references to services, reference to delivery were references to the time for performance and reference to the quality of the Goods were references to the quality of the service performed, quality of the material used in performing that service and the quality of the finished product or work.

18. **Governing Law**

These Conditions shall be governed by and construed in accordance with Scottish law and the parties hereby consent to the non-exclusive jurisdiction of the Scottish courts.

19. **ISO9000**

Any supplier having received accreditation under ISO9000 must supply all goods to the Company under ISO9000 approved procedures.