

# Terms & Conditions of Trade

These terms and conditions of trade apply to all our Sales Contracts. Any order or goods purchased from The Emerson Brewing Co. Ltd constitutes your agreement to be bound by these terms of trade. Any changes or amendments to these terms of trade you wish to make are hereby objected to and will not bind The Emerson Brewing Co. Ltd unless The Emerson Brewing Co. Ltd agrees in writing.

## 1. Price & Variation

- 1.1 Prices quoted are excluding GST unless otherwise stated. The price of the goods shall be as indicated on invoices provided by The Emerson Brewing Co. Ltd to the customer.
- 1.2 The price of the goods shall, subject to clause 1.3 be The Emerson Brewing Co. Ltd's quoted price, which shall be binding upon The Emerson Brewing Co. Ltd.
- 1.3 The Emerson Brewing Co. Ltd shall be entitled to adjust any price quoted from time to time and the customer agrees to pay any such adjusted price to take account of variations in the cost to The Emerson Brewing Co. Ltd of carrying out the whole or any part of the contract arising from any of the following:
  - (a) Delays in delivery of the goods or any item as a result of lack of instructions from the customer, the customer's failure or inability to fulfill the obligations under the contract or any other circumstances beyond The Emerson Brewing Co. Ltd's control.
  - (b) Any correction of errors or omissions on the part of The Emerson Brewing Co. Ltd.

## 2. Goods/Services

- 2.1 The goods and/or services are as described on the invoices or quotation forms provided by The Emerson Brewing Co. Ltd to the customer.

## 3. GST

- 3.1 All goods sold are subject to Goods and Services Tax.

## 4. Payment

- 4.1 Unless otherwise agreed, the purchase price shall be paid in full to The Emerson Brewing Co. Ltd no later than the 20<sup>th</sup> of the following month in which the invoice was dated.
- 4.2 Payment will be made by cash, cheque, credit card, bank cheque, direct credit or any other method agreed to between The Emerson Brewing Co. Ltd and the customer.
- 4.3 If any account is in dispute, the undisputed portion of the account shall be payable in accordance with the normal terms of payment as provided in clause 4.1. Payment of the undisputed portion may only be withheld providing the dispute is brought to The Emerson Brewing Co. Ltd's attention immediately and a letter of explanation is sent within seven days of the dispute arising.

## 5. Default & Consequences of Default

- 5.1 Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 2.5% compounding per calendar month and shall accrue at such a rate after as well as before any judgment.
- 5.2 Any expenses, costs or disbursements incurred by The Emerson Brewing Co. Ltd in recovering any outstanding monies including debt collection agency fees or solicitor's costs shall be paid by the customer.
- 5.3 If any account remains unpaid at the end of the second month after supply of the goods or services the following shall apply; an immediate amount of the greater of \$20.00 or 10% of the amount overdue shall be levied for administration fees which shall become immediately due and payable in addition to the interest payable under clause 5.1 hereof.
- 5.4 If any account remains unpaid after 60 days, an immediate stop credit will apply, where the customer will not be able to purchase any further items until debt has been paid in full (inclusive of any additional costs), and any relevant credit criteria have been met.
- 5.5 If the customer shall:
  - (a) Commit a breach of any of their obligations under the contract; or
  - (b) Suffer execution under any judgment; or
  - (c) Commit an act of bankruptcy; or
  - (d) Make any composition or arrangement with any creditor; or
  - (e) Being a company, pass a resolution for winding up or have a receiver appointed over any of its property or have a winding up petition presented against it,The Emerson Brewing Co. Ltd may treat the contract as terminated and any part of the purchase price then unpaid, together with any monies owing, whether or not due under the terms of the contract shall immediately become due and payable.

## 6. Delivery of Goods

- 6.1 The Emerson Brewing Co. Ltd shall deliver the goods to the address stated on the order or address on file as customer's physical address.
- 6.2 The cost of certain carriage may be included as an additional charge to the invoiced price of the goods.
- 6.3 The customer agrees to inform The Emerson Brewing Co. Ltd within 30 days of invoice if proof of delivery is required. After this period, no liability will lie with The Emerson Brewing Co. Ltd. for proof of delivery.

## 7. Risk

- 7.1 If The Emerson Brewing Co. Ltd retains property in the goods, nonetheless all risk for the goods passes to the customer on delivery.

## 8. Privacy Act 1993

- 8.1 The customer and any guarantor's (if separate to customer) authorise The Emerson Brewing Co. Ltd to:
  - (a) Collect, retain and use any information about the customer, for the purpose of assessing the customer's creditworthiness.
  - (b) To disclose information about the customer, whether collected by The Emerson Brewing Co. Ltd from the customer directly or obtained from any other source, to any credit provider or credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the customer.

## 9. Return of Goods

- 9.1 The Emerson Brewing Co. Ltd will not accept the return of goods for credit unless The Emerson Brewing Co. Ltd agrees in writing. Return of goods will only be accepted within 7 days of delivery. Any return freight will be at The Emerson Brewing Co. Ltd's expense only if there has been an error on The Emerson Brewing Co. Ltd's behalf.

## 10. Personal Property Securities Act 1999

- 10.1 Upon assenting to these terms and conditions the customer acknowledges and agrees that:
  - (a) These terms and conditions constitute a security agreement for the purposes of the PPSA; and
  - (b) A security interest is taken in all goods previously supplied by The Emerson Brewing Co. Ltd to the customer (if any) and all goods that will be supplied in the future during the continuance of the parties relationship.
- 10.2 The customer undertakes to:
  - (a) Sign any further documents and/or provide any further information, such information to be complete, accurate and up to date in all respects, which The Emerson Brewing Co. Ltd may reasonably require to register a financing statement or financing change statement on the Personal Properties Securities Register;
  - (b) Indemnify, and upon demand reimburse, The Emerson Brewing Co. Ltd for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any goods charged thereby;
  - (c) Not register a financing change statement or a change demand without the prior consent written consent of The Emerson Brewing Co. Ltd.
  - (d) Give The Emerson Brewing Co. Ltd not less than fourteen days prior written notice of any proposed change in the customer's name and/or any other change on the customer's details (including but not limited to, changes in customer's address, facsimile number, or business practice)
- 10.3 Where the Customer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Customer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to The Emerson Brewing Co. Ltd or nominee to secure all amounts and other monetary obligations payable under the terms and conditions. The Customer and/or the Guarantor acknowledge and agree that The Emerson Brewing Co. Ltd (or the nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met.
- 10.4 The Emerson Brewing Co. Ltd retains ownership of all kegs at all times.

## 11. Guarantees

- 11.1 The following terms apply wherever the Consumer Guarantees Act 1993 does not apply to this contract, or where the following terms are not inconsistent with the Consumer Guarantees Act 1993:
  - (a) Defective goods or goods which do not comply with the contract may at The Emerson Brewing Co. Ltd's discretion be replaced, or the price refunded.
  - (b) Any right which the customer may have to reject non-conforming or defective goods will only be effective if:
    - (i) The customer notifies The Emerson Brewing Co. Ltd in writing within fourteen days following delivery and The Emerson Brewing Co. Ltd is given the opportunity to inspect the goods.
    - (ii) The goods are returned unused, re-saleable and/or in the condition the customer received them.
  - (c) The Emerson Brewing Co. Ltd will not replace or refund the price of any goods for so long as the customer is in default in relation to any amount owing.
  - (d) In any event, The Emerson Brewing Co. Ltd's liability under any claim shall not exceed the price of the goods.
- 11.2 Nothing in these terms is intended to have the effect of contracting out of the provisions of the Consumer Guarantees Act 1993 except to the extent permitted by that Act, and these terms are to be modified to the extent necessary to give effect to that intention.

## 12. Guarantor

- 12.1 The Guarantor, in consideration of The Emerson Brewing Co. Ltd supplying Goods at their request to the Customer, jointly and severally, irrevocably and unconditionally guarantees punctual payment of all amounts payable by the Customer to The Emerson Brewing Co. Ltd and punctual performance of all of the Customers obligations to The Emerson Brewing Co. Ltd and indemnifies The Emerson Brewing Co. Ltd against all costs, losses, expenses and liabilities (including legal expenses on a full indemnity basis) incurred or sustained by The Emerson Brewing Co. Ltd as a consequence of the Customers default in its obligations to The Emerson Brewing Co. Ltd.
- 12.2 The Guarantor is deemed to be principal debtor and liable as though they are each the Customer (even though as between Guarantor and Customer, the Guarantor is only guarantor and surety).
- 12.3 The Guarantor shall not be released from this Guarantee by any matter whatsoever, the happening of which might release a person liable only as a guarantor or surety.
- 12.4 This is a continuing Guarantee, which applies in respect of all Goods to be supplied to the Buyer.
- 12.5 The Emerson Brewing Co. Ltd may release or discharge the Guarantor from liability under this Guarantee (or may compromise its claim against any Guarantor) without prejudicing or affecting the rights of the Customer against the others.

## 13. Governing Law

- 13.1 These terms of trade are governed by the laws of New Zealand
- 13.2 The Emerson Brewing Co. Ltd and the customer shall submit to the non-exclusive jurisdiction of the courts of New Zealand in respect of any dispute or proceeding arising out of these terms and conditions of trade.