

*The following terms shall be incorporated into each contract entered into between the Customer and Kings Liquor Limited (KLL) for the supply of Goods, except to the extent expressly varied by signed agreement in writing between them.*

## **1. PRICE**

1.1 The price shall be increased by:

- (a) the amount of any GST and other taxes and duties which may be applicable; and
- (b) the amount of any increase in the cost of any items affecting the cost of supply, production and/or delivery of the Goods prior to the date of Delivery.

1.2 A contract is created and the Customer is bound to pay the price when KLL accepts the Customer's order. Each accepted order shall constitute a separate contract. A quotation does not create a binding contract until the Customer places an order that is then accepted by KLL.

1.3 All quotes, estimates and pricing, unless otherwise specified, are valid for 30 days from the date of issue and may be subject to such further conditions as are expressly set out in the quote, estimate or pricing.

1.4 KLL reserves the right at any time to alter any price lists and any such alterations to any price list shall be effective from the date specified by KLL and shall apply to all orders accepted by KLL on or after that date or by negotiation.

## **2. PAYMENT**

2.1 Payment is due by the 20th of the month following the date of Delivery.

2.2 KLL may impose a credit limit on the Customer's account and alter the credit limit without notice. Where the credit limit is exceeded, KLL may refuse to supply Goods to the Customer or if the account is unpaid.

2.3 Any disputes or credit requests by the Customer relating to an invoice issued by KLL for Goods supplied must be received in writing within 30 days from the date of invoice.

## **3. DELIVERY**

3.1 Delivery shall be made as expressly agreed by the parties.

If KLL arranges transportation, storage or insurance of the Goods for the Customer, KLL does this as the Customer's agent. Any liability or cost incurred by KLL in providing these services shall form part of the Amount Owing and shall be paid immediately by the Customer to KLL upon a claim being made.

3.2 Any time stated for delivery is an estimate only. Other than liability that cannot be excluded by law, KLL is not liable for any delay in delivery.

## **4. RISK AND SECURITY**

4.1 Risk of any loss, damage or deterioration of or to the Goods passes to the Customer on Delivery.

4.2 As security for all the Customer's obligations under these Terms, the Customer grants to KLL a Security Interest in all the Goods KLL agrees to sell to the Customer under any contract, together with the Proceeds of such Goods, as security for payment of the Amount Owing and such security shall continue until all sums owing by the Customer to KLL in respect of any Goods supplied have been paid in full.

4.3 KLL may allocate all monies received from the Customer in any manner it determines.

4.4 Subject to clause 4.2 and the provisions of this clause 4, legal and equitable ownership of the Goods remains with KLL and does not pass to the Customer until the Customer pays the Amount Owing and any other monies owing by the Customer to KLL from time to time (whether in relation to any contract entered into under these Terms or on any other account whatsoever).

4.5 While legal or equitable ownership of the Goods remains with KLL, KLL retains the right to enter the premises or land where the Goods are held or stored and sever and remove them, as agent for the Customer, without being liable or responsible for any damage caused in doing so.

4.6 The security interest created by these Terms is not discharged nor the Customer's obligations affected by the administration, insolvency, receivership or liquidation of the Customer.

## **5. WARRANTIES AND LIMITATION OF LIABILITY**

5.1 Except as set out in this clause 5.1, the Customer is not entitled to return the Goods for any reason. The Goods will be deemed accepted unless the Customer notifies KLL in writing of any defects, errors or discrepancies within seven days following Delivery, provided KLL is able to inspect the Goods to confirm the defect, error or discrepancy. For Goods that the Customer is entitled to reject in accordance with this clause, KLL's liability is limited to either (at KLL's discretion) repairing or replacing the Goods, or refunding the price of the Goods, provided that KLL will not be liable for Goods that have been tampered with or modified without the approval of KLL or which have not been stored in a proper manner.

5.2 The maximum extent permitted by law KLL expressly excludes all other conditions, warranties, guarantees, descriptions, representations, conditions as to fitness or suitability or fitness for any purpose, tolerance to any conditions, merchantability, appearance, safety, durability or otherwise (whether of a like nature or not) and whether express or implied by law, trade custom or otherwise.

5.3 Notwithstanding any other provision of these Terms under no circumstances shall KLL be liable to the Customer or any other person (whether in contract, tort, including negligence, statute or otherwise) for any:

- (a) loss of profits;
- (b) consequential loss or damage;
- (c) indirect loss or damage; or
- (d) special loss or damage of any kind.

5.5 To the maximum extent permitted by law, KLL's total liability (whether in contract, statute, tort, including negligence, or otherwise howsoever arising) for any Claim by the Customer, its agents, employees or subcontractors, or any other person, relating to or arising from the supply of Goods or any quotation or estimate given shall not exceed the price of the Goods to which the Claim relates.

## **6. DEFAULT**

6.1 If the Customer does not pay the Amount Owing by the due date:

- (a) KLL may charge at its discretion, and the Customer must pay, default interest at the rate of 2.5% per month calculated daily on the Amount Owing from the due date until payment is received in full (both prior to and following any judgment obtained); and
- (b) any rebates or discounts may be cancelled (whether or not previously credited).

6.2 If an Event of Default occurs:

- (a) KLL may suspend or terminate any account; and

(b) any Amount Owing shall immediately become due and payable notwithstanding the due date for payment has not arisen; and

(c) KLL is entitled to recover from the Customer all costs that KLL may reasonably incur in attempting to collect the Amount Owing (including actual legal costs and expenses and costs of collection) and any other moneys owing by the Customer to KLL from time to time, whether in relation to any contract or on any other account whatsoever.

## **7. PAYMENT VALIDITY**

7.1 The Customer acknowledges that KLL continues to supply the Customer on the condition that all payments received by KLL from the Customer are made at a time when the Customer is able to pay its debts as they become due from the Customer's own money.

## **8. FORCE MAJEURE**

8.1 Notwithstanding any other provisions of these Terms, neither KLL nor the Customer shall be liable for any delay or failure in the performance of any obligation or the exercise of any right under these Terms or for any loss or damage if such performance or exercise is prevented or hindered by a Force Majeure Event. Nothing in this clause shall excuse payment of the Amount Owing as it becomes due under these Terms.

8.2 The rights and obligations of either party which are affected by a Force Majeure Event shall be suspended during the continuance of the event with either party claiming to be affected by the event giving immediate notice to the other party containing full particulars of the event. The party giving notice under this clause shall take all reasonable steps to mitigate the effects of the event. Neither party shall be required to remedy any Force Majeure Event if to do so would require it contrary to its judgement to settle a strike or labour dispute or otherwise submit to the demands of opposing parties.

## **9. USE OF INFORMATION**

9.1 The Customer understands that KLL may ask for personal information about the Customer so as to use credit reporting services to assess the creditworthiness of the Customer from time to time. The Customer acknowledges that:

(a) Credit Reporting Agencies will give KLL information about the Customer for that purpose;

(b) KLL may give the Customer's personal information to Credit Reporting Agencies and those agencies may hold that information on their systems and use it to provide credit reporting services;

(c) when other users of Credit Reporting Agencies use those agencies' services, the agency may give the information to those users;

(d) KLL may use credit reporting services in the future for purposes related to the provision of credit to the Customer. This may include using a Credit Reporting Agency's monitoring services to receive updates if any of the information about the Customer changes; and

(e) if an Event of Default occurs, information about that Event of Default may be given to a Credit Reporting Agency and the Credit Reporting Agency may give information about the Event of Default to other users of the credit reporting services.

9.2 The Customer agrees that KLL may obtain information about the Customer from third parties in the course of KLL's business including credit assessment, debt collection, any alleged fraud involving the Customer and direct marketing activities, and may use that information for those purposes.

## **10. ENTIRE AGREEMENT AND NO RELIANCE**

10.1 These Terms (together with any documents expressly referred to in these Terms) contain the entire agreement and understanding between the parties and supersede all prior agreements, arrangements and understandings (both oral and written) between the parties relating to the subject matter of these Terms. No other terms contained in any order or document submitted by the Customer (whether in writing, verbally or by Electronic Data Interchange (EDI)) or any other arrangement between the parties, shall apply unless otherwise expressly agreed in writing by the parties.

10.2 The Customer acknowledges and agrees that the Customer:

- (a) does not purchase the Goods on the basis of, and does not rely upon, any statement or representation (whether negligent or innocent) or warranty made or given by KLL, except as expressly set out in these Terms or confirmed in writing.

## **11. WAIVER**

If KLL exercises or fails to exercise any right or remedy available to it, this shall not prejudice KLL's rights in exercising that or any other right or remedy unless expressly waived by KLL in writing.

## **12. PRODUCT RETURNS**

KLL at its absolute discretion may allow the Customer to return new Goods that remain in re-saleable condition and KLL reserves the right to charge a return fee of up to 10% of the price of such Goods at its discretion or negotiation.

## **13. REVIEW OF TERMS**

KLL reserves the right to review and amend any of these Terms at any time. Any change will take effect on orders placed after the date on which KLL publishes the revised Terms on the KLL website ([www.kingsliquor.co.nz](http://www.kingsliquor.co.nz)), except where the amended Term is found by any court or administrative body of competent jurisdiction, or otherwise considered by KLL, to be invalid, unenforceable or illegal (whether as between the parties to these Terms or in relation to any third party) in which case the last previously valid, enforceable and legal Term shall continue to apply.

## **14. TERMS USED IN THESE STANDARD TERMS AND CONDITIONS OF SALE**

14.1 “**Amount Owing**” means the price charged by KLL for the Goods, together with any other sums which KLL is entitled to charge under these Terms that remain unpaid.

14.2 “**KLL**” means Kings Liquor Limited, including its successors and assigns.

14.3 “**Claim**”:

- (a) means any demand or assertion of right to compensation or other legal or equitable remedy (whether in contract, tort, including negligence, statute or otherwise) arising out of or relating to the supply of Goods;

- (b) includes any proceeding in any tribunal, court or other forum arising out of or relating to the supply of Goods.

14.4 “**Credit Reporting Agency**” means any credit reporting agency engaged by KLL.

14.5 “**Customer**” means the person purchasing the Goods from KLL pursuant to these Terms, including that person's successors and permitted assigns.

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14.6 “**Delivery**” means delivery of the Goods in accordance with clause 3 of these Terms.

14.7 An “**Event of Default**” means an event where:

- (a) the Customer fails to comply with these Terms with KLL, and does not remedy that failure within 5 working days of receiving notice from KLL advising them of the failure; or
- (b) the Customer commits an act of bankruptcy; or
- (c) the Customer enters into any composition or arrangement with its creditors; or
- (d) if the Customer is a company:
  - (i) the Customer does anything which would make it liable to be put into liquidation; or
  - (ii) a resolution is passed or an application is made for the liquidation of the Customer; or
  - (iii) a receiver or statutory or official manager is appointed over all or any of the Customer’s assets or the Customer, its board or shareholders is considering appointing an administrator or liquidator; or
  - (iv) an administrator is appointed to the Customer;
  - (v) if anything analogous to or having similar effect to any of the other events arises.

14.8 “**Force Majeure Event**” means any event or circumstance which is beyond the reasonable control of the affected party and which results in or causes the failure of that party to perform any of its obligations under these Terms.

14.9 “**Goods**” means all goods ordered by the Customer and supplied by KLL under these Terms (as detailed on each invoice issued to the Customer), together with any Services forming part of the supply of Goods.

14.10 “**Person**” includes a corporation, association, firm, company, partnership or individual.

14.11 “**Price**” means the purchase price of the Goods and any costs payable by the Customer under clauses 1 and 3.1 of these Terms.

14.12 “**Services**” means any services performed by KLL (its employees, agents or subcontractors) as part of supplying the Goods.

14.12 “**Terms**” means these KLL standard terms and conditions of sale;

14.13 References to any legislation includes as amended, re enacted or substituted and any statutory instruments, regulations and orders issued under such legislation.

Document updated June 2016.