

Supermalt UK Ltd
Standard Terms and Conditions
Sale of Goods

1. Definitions and Interpretation

1.1. In these standard terms and conditions, the following expressions shall have the following meanings:

Customer means the person or company who makes any order for the Goods which is accepted by the Supplier;

Goods means those products (or any part of them) which the Supplier agrees to supply and which the Customer agrees to purchase, as set out in an Order;

Order means an offer by the Customer to purchase the Goods by way of an order placed by the Customer for Goods, which is accepted by the Supplier and which shall be deemed to incorporate these Terms;

Purchase Price means the price payable by the Customer for the Goods, as set out in the Supplier's invoice or, if none, the Supplier's list price from time to time for the supplied Goods less the Customer's agreed discount (if any);

Supplier means Supermalt UK Limited, a company incorporated under the laws of England, with registered number 2627421 whose registered office is at the Old Truman Brewery, 91 Brick Lane, London E1 6QL; and

Terms means these standard terms and conditions.

2. General

2.1. These Terms shall apply to all contracts for the supply of Goods by the Supplier pursuant to one or more Orders 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. The Customer hereby waives any rights which it might otherwise have to rely on any term endorsed upon, delivered with or contained in any of the Customer's documentation which is inconsistent with these Terms (including, without limitation any delivery note). Accepting delivery of Goods is deemed to be acceptance of these Terms.

3. Contract formation

3.1. An Order constitutes an offer by the Customer to purchase the Goods set out in the Order in accordance with these Terms, subject to availability and to the Supplier's acceptance of the Order. An Order shall not be binding on the Supplier until the first to occur of the following:

3.1.1. the Supplier issuing written acceptance of that Order e.g. by way of an order confirmation; or

3.1.2. the Supplier delivers the Goods to the Customer,

at which point the Order is deemed to be accepted on these Terms.

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3.2. The Supplier shall not be bound by any inaccuracies, howsoever caused, in any document it issues or has issued, nor shall it be bound by any inaccuracies in a Customer order (including, without limitation, errors as to the Purchase Price).

4. Terms of Delivery

4.1. The terms of delivery are as specified in the Order, or, if none, Delivery At Place (Incoterms 2010).

4.2. Unless otherwise stated in the Order or otherwise agreed, the cost of packaging, carriage and insurance is included in the Purchase Price.

4.3. Any delay in shipment is at the Customer's risk, irrespective of the delivery terms agreed upon. Delivery dates shall not be of the essence for the purpose of these Terms.

4.4. In the event a delay in delivery caused by the Supplier's default, the Customer shall be entitled by notice in writing to require that the Supplier delivers the Goods within a period of not less than thirty (30) days from the date of the notice. In the event that delivery does not take place within the deadline set out in the notice plus ten (10) additional days, the Customer shall be entitled to terminate the Order. In the event of such termination, the Customer shall not be entitled to claim any other remedies for breach from the Supplier or to claim damages of any kind.

4.5. The risk of loss and damage to the Goods shall pass to the Customer upon delivery. Title in any Goods shall remain with the Supplier property until full payment of all outstanding accounts has been effected by the Customer.

4.6. The Customer shall preserve those Goods delivered to it which are subject to the Supplier's retention of title rights carefully and separately and as the Supplier's recognizable and identifiable property. The Customer shall notify the Supplier as and when requested of the location of the Goods concerned. The Supplier shall at all times be entitled to reclaim the Goods delivered to the Customer which are subject to retention of title where the Customer has not fulfilled its payment obligations under an Order, and the Customer hereby unconditionally and irrevocably gives its permission to the Supplier (or to a third party designated by it) to enter all locations where such Goods are located and to remove those Goods. Any and all costs relating to re-possession of Goods covered by retention of title shall be payable by the Customer. Further, the Supplier reserves the right to assert against the Customer all remedies for breach. Repossession of Goods shall not imply that the Order is rescinded, unless this is confirmed by the Supplier in writing.

4.7. The Customer shall be obliged on its own account to insure the Goods comprised by retention of title sufficiently against theft, destruction, fire and water damage and other normal business risks.

4.8. Point of sale material (if any) is supplied by the Supplier for use by Customer for business purposes only.

4.9. If any Goods supplied under these Terms are, in the Customer's reasonable opinion, short dated (i.e. there is an insufficient gap between the delivery date and the "Best Before Date" on the Goods in question) when delivered, the Customer shall notify the Supplier in compliance with the timetable set out in Clause 7.1. If the Supplier agrees (in its sole discretion) that the Goods in question were short dated, the remedies set out in Clause 7.3 shall apply to such Goods as if they were defective Goods.

5. Terms of Payment

5.1. Payment terms are as specified in the invoice accompanying the Order, or, if none, within thirty (30) days from the date of the invoice.

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- 5.2. The Purchase Price for the Goods will be as set out in the invoice and are exclusive of any applicable VAT, which is payable at the prevailing rate from time to time. Payment shall be made to the Supplier's bank account set out in the invoice.
- 5.3. All costs, including banking and other charges in connection with payment of the Purchase Price, whether by bank transfer, letter of credit or otherwise, shall be borne by the Customer.
- 5.4. If the Purchase Price is not paid by the due date, interest shall accrue on any outstanding amount from the due date until payment in full at the rate per annum (both before and after judgment) of three percent (3%) above the base rate from time to time of the Bank of England. That interest will accrue on a daily basis. The parties agree that interest payable at that rate is a substantial remedy for the purposes of the Late Payment of Commercial Debts (Interest) Act 1998.
- 5.5. In addition to the late payment interest set out in Clause 5.3, non-payment of invoices when due may result in a stop being put on the Customer's account until payment in full has been received.

6. Rebates

- 6.1. Any claim by the Customer in relation to rebates, disputed invoices, damaged Goods or incomplete deliveries shall be dealt with as set out in this Clause 6.
- 6.2. The Customer will fill out and send to the Supplier's account manager/sales representative a copy of the Supplier's "Credit Request Form" setting out the nature of the complaint, the reason for the requested credit, the date of the event giving rise to the claim, the amount claimed and invoice number in dispute (if applicable), together with any relevant additional information and supporting documentation. The Customer must notify the Supplier in writing within three (3) working days of the event giving rise to the claim.
- 6.3. The Supplier's account manager/sales representative will review the claim within five (5) working days of receipt of the claim and will notify the Customer in writing (including by email) whether it has approved or rejected the claim, setting out the reasons for the determination.
- 6.4. If the claim is approved, the Supplier's account manager/sales representative will authorise the credit and forward the claim to the Supplier's accounts department for processing, who will raise and forward credit note to the Customer within two (2) working days of the determination.
- 6.5. The Customer has no right of set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law) under these Terms other than as set out in Clauses 6.1 to 6.4. Debit notes issued by a Customer will not be accepted as valid documents giving rise to a deduction against a Supplier invoice. If deductions are made by the Customer in respect of any payment without a valid credit note issued by the Supplier in accordance with Clause 6.4, these will be treated as outstanding amounts and subject to late payment interest as set out in Clause 5.4.

7. Inspection by Customer

- 7.1. The Goods shall be inspected by the Customer immediately upon delivery, and any defect discoverable on examination and which is to be claimed against the Supplier, must be notified in writing within three (3) days of delivery.
- 7.2. If the Customer fails to comply with the deadlines set out in Clause 7.1, the Customer shall not subsequently be entitled to rely on such defects, nor shall the Supplier be prevented from rejecting the claim on the basis that the Customer failed to comply with the deadline if the Supplier nonetheless enters into discussions with the Customer in response to a claim.

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7.3. In the event that the Supplier accepts that any Goods supplied are defective or not in conformity with their specification, the Supplier shall, at its discretion:

7.3.1. replace the Goods; or

7.3.2. cancel the Order in respect of those Goods and agree a proportionate reduction of the purchase price under the Order or, if the Customer has already paid the related invoice, issue a credit note.

Such remedy will be in full and final settlement of any and all claims which the Customer may have as a consequence of the defect. The Customer shall not be entitled to cancel an Order as a consequence of defects established.

8. Compliance with laws

8.1. In performing its obligations in accordance with these Terms, each party agrees to comply with all applicable laws, statutes, regulations and accepted industry standards from time to time in force including but not limited to all relevant food hygiene, safety and other food laws, consumer protection and advertising laws, rules and guidance.

9. Product recall

9.1. If either party becomes aware of:

9.1.1. any possible defect (including latent defects) or any possible contamination of the Goods, including any claim from a third party in relation to the quality of the Goods; or

9.1.2. any matter which might affect the compliance of any of the Goods with the provisions of Clause 8.1 or other laws or regulatory requirements, including health and safety, weights and measures, packaging or transport, handling and storage requirements,

then that party must promptly notify the other party in writing, giving details of the possible defect, contamination or non-compliance.

9.2. Upon either party giving or receiving such information, the Parties will promptly discuss appropriate corrective actions, including whether any Product Recall should be initiated.

9.3. If either party believes that it is reasonably necessary to initiate a Product Recall or if it is directed to do so by a governmental agency:

9.3.1. that party must immediately notify the other party of the Goods that have been, or are intended to be, recalled;

9.3.2. the other party must comply with that party's reasonable requests and directions relating to the Product Recall;

9.3.3. each party must take all reasonable steps to effect the Product Recall and comply with all requirements under applicable Law and regulations and use reasonable efforts to mitigate both the costs of the Product Recall and any resulting damage to the reputation of the Supplier, the Customer and the Goods;

9.3.4. the parties must consult with each other on a regular basis during the course of the Product Recall; and

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9.3.5. neither party will make any media, social media, press or other announcement or release any information without the other party's prior written approval as to the form and manner of the announcement or release unless, and to the extent that it is required to be made, by law.

9.4. In the event of a Product Recall being undertaken in accordance with Clause 9.3, the Supplier will pay the Customer's reasonable costs and expenses incurred in relation to the Product Recall.

9.5. The Customer shall inform the Supplier in writing without undue delay if any damage to any Goods becomes known to the Customer or if any third party claims that product damage has been caused by the delivered Goods or that a risk exists that such damage will occur. The aforesaid notification to the Supplier shall not exempt the Customer from taking the measures necessary to prevent or control such damage.

10. Liability

10.1. The Supplier shall not under any circumstances be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any financial loss, operating loss, loss of time, loss of profit, consequential damage or any other similar indirect loss which the Customer may suffer as a result of the Supplier's breach of an Order.

10.2. Nothing in these Terms will exclude or limit either party's liability for:

10.2.1. death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);

10.2.2. fraud or fraudulent misrepresentation; or

10.2.3. any matter in respect of which it would be unlawful to exclude or restrict liability.

10.3. The Customer shall submit itself to legal proceedings at the same forum at which any product liability suit against the Supplier is heard. In the event that the Supplier is imposed with product liability towards any third party, the Customer shall indemnify the Supplier to the extent to which the Supplier's liability is limited pursuant to Clause 10.1.

10.4. The Supplier shall have no liability for any representation made by it, its employees, servants or agents, except where made fraudulently.

10.5. The Customer agrees not to do anything which could either directly or indirectly harm the Supplier, its products or reputation.

11. General

11.1. This Agreement may not be modified except by an agreement in writing executed by both parties.

11.2. A person who is not a party to this Agreement shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

11.3. If any provision of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions of this Agreement which shall remain in full force and effect. If any provision of this Agreement is found to be invalid or unenforceable but would cease to be invalid or unenforceable if some part of the provision were deleted, the provision in question shall apply with such modification as may be necessary to make it valid and enforceable.

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12. Legislation and jurisdiction

- 12.1. These Terms shall be governed by and construed in accordance with English law and the parties submit to the exclusive jurisdiction of the English courts in relation to any claim or matter arising from these Terms and/or any supply contract of which they form a part.