



Constellation Brands

EFFECTIVE DECEMBER 2017

CUSTOMER TERMS OF TRADE - CONSTELLATION BRANDS NEW ZEALAND LTD

1. Application of Terms

1.1 All goods (including any product or, if applicable, service) ("**Goods**") sold by Constellation Brands New Zealand Limited ("**Constellation**") to, or for the account of, the Purchaser are sold pursuant to these Terms and Conditions of Sale ("**Terms**"). By placing an order for Goods, the Purchaser will be deemed to have accepted these Terms, whether or not Constellation then supplies the Goods ordered.

2. Price

2.1 The Purchaser will pay the price of the Goods indicated on the invoice, order form or other similar document issued by Constellation.

2.2 All prices are subject to change without notice. Everyday discounts and promotional discounts (if applicable and only as stated in the Commercial Terms) are also subject to change without notice.

2.3. All prices are deemed to be Excise and Duty paid, but exclude GST, which is shown separately on Constellation's invoices.

2.4 Where GST or other tax may become payable in respect of the supply of the Goods, the Purchaser shall pay such tax.

2.5 The Purchaser will make all payments due to Constellation ("**Amount Owing**") in full without deductions, whether by way of set off, counter claim or any other equitable or legal claim.

2.6 The Purchaser is bound to pay the price in effect at the time that Constellation accepts the Purchaser's order. Each accepted order will constitute a separate contract for the supply of the particular Goods on these Terms. A quotation does not give rise to a binding contract in respect of particular Goods until the Purchaser places an order which is subsequently accepted by Constellation. The Purchaser will pay any difference between the prices in effect at the date of quotation and the prices in effect upon delivery of the Goods.

2.7 The Purchaser agrees to indemnify Constellation, upon demand, for all costs and expenses (including legal fees) incurred by Constellation:

- (a) as a result (whether directly or indirectly) of the occurrence of an Event of Default (including upon actual or attempted enforcement of the Security Interest and appointment of a receiver); and
- (b) in registering and maintaining any financing statement.

3. Terms of Payment

3.1 The Purchaser will pay the Amount Owing by the due date. Terms of payment shall be advised by Constellation at the time of approving the Purchaser's account and may be amended by Constellation at its sole discretion. In the absence of any express timing specified at the time of order approval, full payment is due and payable twenty (20) working days following the date of invoice.

3.2 If the Purchaser does not pay the Amount Owing by its due date, the Purchaser shall pay

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Constellation monthly interest at the default rate of 2% per annum above the current overdraft rate which Constellation has with its Bank in respect of the unpaid portion of the Amount Owing from its due date until payment in full is received by Constellation. Such interest shall accrue on a daily basis from the date when payment is due until the date when payment is actually made.

3.3 Constellation will be entitled to assign to any other person or company all or any part of the Amount Owing and the assignee will be entitled to claim all or part of such indebtedness and will have the same rights of recovery as Constellation.

4. Risk and Title

4.1 Notwithstanding clause 4.2, the risk in the Goods will pass from Constellation to the Purchaser when the Goods are delivered, or when Constellation first makes an attempt to deliver if the Purchaser fails to accept the Goods, or on the date of a request by the Purchaser to delay delivery.

4.2 Title in the Goods will pass from Constellation to the Purchaser when the Purchaser:

- (a) pays the Amount Owing in full and Constellation has released the Security Interest; or
- (b) resells the Goods pursuant to the authority granted by these Terms.

4.3 Until title passes from Constellation to the Purchaser in accordance with clause 4.2, the following terms will apply:

- (a) The Purchaser will be deemed to be in a fiduciary capacity as bailee of Constellation in respect of any Goods supplied by Constellation;
- (b) The Purchaser will store the Goods in such condition and place that it is clear that they are owned by Constellation;
- (c) The Purchaser will not under any circumstances mix the Goods supplied by Constellation with other goods in any manner whatsoever;
- (d) Constellation authorises the Purchaser, in the ordinary course of the Purchaser's business, to sell the Goods for full consideration. This authority is revoked immediately if:
 - (i) an Event of Default occurs; or
 - (ii) Constellation notifies the Purchaser in writing that this authority is revoked; and
- (e) the Purchaser must advise Constellation immediately of any Event of Default or any action by third parties (including any of its creditors) affecting Constellation's interest in the Goods.

4.4 Constellation may apply any payments received from or on behalf of the Purchaser in reduction of the Amount Owing in such order and manner as Constellation thinks fit (despite any direction to the contrary and whether before or after the occurrence of an Event of Default).

4.5 If the Purchaser resells or uses any Goods before ownership of the Goods has passed to the Purchaser, the proceeds of such sale or use will be received and held by the Purchaser (in whatever form) in trust for both the Purchaser and Constellation. Constellation's interest as beneficiary under that trust shall be that portion of the proceeds which does not exceed the Amount Owing. The balance of the proceeds (if any) shall be the Purchaser's beneficial interest under that trust.

4.6 Constellation may bring an action for the price of the Goods sold even where ownership of the Goods may not have passed to the Purchaser.

5. Personal Property Securities Act 1999 ("PPSA")

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5.1 Without limiting anything else in these Terms, the Purchaser acknowledges that:

- (a) these Terms create, in favour of Constellation, a security interest in all present and after acquired Goods (being, for the avoidance of doubt, all the Purchaser's present and after-acquired personal property except for any item of personal property which has not (or which is exclusively the proceeds of any item of personal property which has not) been supplied by Constellation to (or for the account of) the Purchaser) to secure the payment by the Purchaser to Constellation of the Amount Owing; and
- (b) these Terms will apply notwithstanding anything, express or implied, to the contrary contained in any purchase order (or its equivalent, whatever called) of the Purchaser; and
- (c) the Security Interest shall continue until Constellation gives the Purchaser a final release.

5.2 The Purchaser undertakes to:

- (a) promptly do all things, sign any further documents and/or provide any information which Constellation may reasonably require to enable Constellation to perfect and maintain the perfection of its Security Interest (including by registration of a financing statement);
- (b) give Constellation (addressed to the financial controller or equivalent) not less than 14 days' prior written notice of any proposed change in the Purchaser's name and/or any other change in the Purchaser's details (including, but not limited to, changes in the Purchaser's address, trading name or business practice).

5.3 The Purchaser waives its right to receive a verification statement in respect of any financing statement relating to the Security Interest.

5.4 To the extent permitted by law, the Purchaser and Constellation contract out of:

- (a) section 114(1)(a) of the PPSA; and
- (b) the Purchaser's rights referred to in sections 107(2)(c), (d), (h) and (i) of the PPSA.

5.5 The Purchaser agrees that the Security Interest has the same priority in relation to all amounts forming part of the Amount Owing, including future advances.

6. Default

6.1 If an Event of Default occurs:

- (a) Constellation may suspend or terminate any contract;
- (b) the Amount Owing shall immediately become due and payable notwithstanding that the due date has not arisen;
- (c) Constellation may enforce the Security Interest; and/or
- (d) Constellation may (without the consent of the Purchaser) appoint a receiver in respect of any Goods and any receiver is authorised to do anything referred to in these Terms and otherwise to exercise all rights and powers conferred on a receiver by law.

6.2 The Purchaser agrees that, at any time after an Event of Default has occurred and is continuing or at any time if any Goods are at risk, Constellation may:

- (a) take possession of any Goods; and/or
- (b) sell or otherwise dispose of any Goods,

in each case in such manner and generally on such terms and conditions as it thinks fit and, in each case, otherwise do anything the Purchaser could do in relation to those Goods. Constellation and the Purchaser agree that section 109(1) of the PPSA is contracted out of in respect of particular Goods if,

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and only for so long as, Constellation is not the secured party with priority over all other secured parties in respect of those Goods. As the Purchaser's agent, Constellation (and its employees and agents) may, without prior notice, enter any land or premises where the Goods are kept in order to take possession of and/or remove them, without being responsible for any damage caused in doing so. The Purchaser agrees to procure all other rights (including consents) necessary to enable, and to indemnify Constellation (and its employees and agents) against any liability incurred in connection with, such entry, taking of possession and removal. Constellation may resell any of the Goods and apply the proceeds of sale in reduction of the Amount Owed.

7. Cancellations

7.1 Where the Purchaser's order has been accepted a contract for supply will be deemed to exist and no cancellation, addition, deletion, amendment or variation of any kind may be made except with the consent of Constellation in writing.

8. Delivery

8.1 Constellation will deliver the Goods to the Purchaser's premises. Except as provided in clause 8.5 below, the Purchaser will indemnify Constellation for any liability or cost incurred by Constellation in providing this service, and will pay Constellation the amount of such liability or cost immediately upon receiving notice from Constellation of such amount (except where the parties agree in writing that Constellation is responsible for such costs).

8.2 Constellation may deliver the Goods by instalments, and each instalment will be treated as a separate contract under these Terms.

8.3 If Constellation fails to deliver or makes defective delivery of part of the Goods, this does not entitle the Purchaser to cancel the separate contract for that particular instalment (if applicable), or the contract for all the Goods or any other contract or other agreement with Constellation.

8.4 Any time stated for delivery is an estimate only. Constellation is not liable for any delay in delivery.

8.5 Auckland and Christchurch Metropolitan area deliveries are freight free. All orders outside the Auckland and Christchurch Metropolitan areas are freight free on orders of five cases or more. All Goods are forwarded at "Limited Carriers Risk" within the terms of the Carriage of Goods Act 1979.

9. Claims and Limitation of Liability

9.1 Subject only to mandatory liability or guarantee imposed by statute, and without prejudice to any rights granted thereby to the Purchaser:

(a) all warranties, descriptions, representations, or conditions, whether implied by law, trade, custom, or otherwise and whether relating to fitness, merchantability, suitability for purpose, or otherwise, and all specific conditions, even though such conditions may be known to Constellation, are expressly excluded.

(b) Constellation will not be liable in any way whatsoever to the Purchaser or any third party, whether in tort (including negligence), contract, or otherwise, for any loss or damage whatsoever, whether direct, indirect, special, or consequential, and all such liability is expressly excluded; and

(c) the liability of Constellation in respect of any order of Goods will in any event be limited to the lesser of the purchase price of the Goods, the cost of replacing the defective Goods, and the actual loss or

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damage suffered by the Purchaser.

9.2 In addition to any statutory rights and remedies that the Purchaser may have, Constellation may, at its complete discretion, replace or give credit for all Goods supplied and established to be defective; provided that the following conditions are met:

- (a) all claims must be received by Constellation within seven (7) days of delivery of the Goods and, where applicable, the dispatch number and/or invoice number must be quoted by the Purchaser;
- (b) all claims must specifically identify the defect and, where possible be accompanied by the defective Goods or a sample thereof; and
- (c) Constellation will have a reasonable opportunity to investigate the claim.

9.3 If Constellation replaces Goods, it will deliver such Goods to the Purchaser's premises at Constellation's risk and expense.

9.4 If at any time the Purchaser expressly or by implication holds itself out as acquiring from Constellation Goods for resale or Goods for the purposes of a business, all supplies of Goods to the Purchaser by Constellation will be deemed to be for the purposes of the Purchaser's business (as the latter term is defined in the Consumer Guarantees Act 1993). In such event, as between Constellation and the Purchaser, the guarantee provisions of the Consumer Guarantees Act 1993 are expressly excluded and will not apply to any supplies of Goods by Constellation to the Purchaser.

10. Credit Balances

10.1 The Purchaser may not assign any credit balance which it may have with Constellation and undertakes not to attempt any such assignment.

11. General

11.1 Non-Waiver

If at any time Constellation does not exercise any right or remedy available to it under these Terms or grants the Purchaser time or any other indulgence, Constellation will not be construed as having waived that right or remedy or its right to later exercise that or any other right or remedy.

11.2 Severability

Where any provision of these Terms is rendered void, unenforceable, or otherwise ineffective by operation of law, that shall not affect the enforceability or effectiveness of any other provision in these Terms.

11.3 Variation of Conditions

These Terms may only be varied by Constellation, in its absolute discretion, and the only circumstances in which any variation to these Terms will apply are where a duly authorised representative of Constellation has expressly agreed in writing to that variation. In the event that any of these Terms are in conflict with the terms of any other written agreement pursuant to which Constellation provides Goods to the Purchaser, the terms of such other written agreement will prevail.

11.4 Circumstances Beyond Constellation's Control

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Constellation will not be liable for any failure to supply Goods or meet any other obligation owed to the Purchaser where such a failure results from fire, flood, industrial dispute, act of government (such as a change in legislation, regulation, or order made under legislative authority), or other circumstances beyond Constellation's control.

11.5 Rights, Powers and Remedies

The rights, powers and remedies provided for in these Terms are in addition to, and do not limit or exclude (or otherwise adversely affect), any right, power or remedy provided to Constellation by law.

11.6 Governing Law

These Terms are governed by and construed in accordance with New Zealand law, and the parties hereby submit to the non-exclusive jurisdiction of the courts of New Zealand.

12. Definitions

12.1 In these Terms:

"**Commercial Terms**" means the pricing details and any discount terms that may be agreed by Constellation from time to time.

"**Event of Default**" means an event where:

- (a) the Purchaser fails to comply with these Terms or any other agreement with Constellation; or
- (b) the Purchaser is subject to any event which is in the nature of dissolution, winding up, bankruptcy, liquidation, insolvency or receivership, or which generally precedes such an event; or
- (c) an event occurs or information becomes known to Constellation, which in Constellation's opinion, might materially affect the Purchaser's creditworthiness, the value of the Goods the subject of the Security Interest, or the Purchaser's ability or willingness to comply with its obligations under these Terms or any other agreement with Constellation; or
- (d) any guarantor of the Purchaser's obligations under these Terms is in default under any agreement with Constellation (in any capacity).

"**person**" includes a corporation, association, firm, company, partnership or individual.

"**Security Interest**" means the security interest provided for by these Terms.

12.2 References to the PPSA, the Consumer Guarantees Act 1993 and the Privacy Act 1993 include that legislation as it is from time to time amended, re-enacted or substituted and any statutory instruments, regulations and orders issued under such legislation.

12.3 A reference to any party under these Terms includes that party's successors and permitted substitutes and assigns.

12.4 Unless the context otherwise requires, words and phrases have the meanings given to them in, or by virtue of, the PPSA.

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