

## Terms & Conditions of Sale

### KERRYGOLD IRISH CREAM LIQUEUR LIMITED

#### 1. Interpretation

1.1 In these Conditions, the following definitions apply:

**Contract:** the contract between KICL and the Customer for the sale and purchase of the Goods in accordance with these Conditions.

**Customer:** the person or firm who purchases the Goods from KICL.

**Force Majeure Event:** has the meaning given in clause 10.

**Goods:** the goods (or any part of them) set out in the Order.

**Intellectual Property Rights:** all copyright, design rights, trade marks, trade names, domain names and any other intellectual property rights of a similar nature (whether or not registered) subsisting anywhere in the world in or associated with the Goods.

**Order:** the Customer's order for the Goods.

**Specification:** any specification for the Goods which is agreed in writing by the Customer and KICL.

**KICL:** Kerrygold Irish Cream Liqueur Limited.

#### 2. Basis of contract

2.1 These Conditions apply to the Contract 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. For the avoidance of doubt, unless otherwise agreed in writing by KICL and the Customer, no other terms and conditions of the Customer shall apply to the sale by KICL of the Goods. Any such terms are hereby rejected and excluded. The Customer's acceptance of all or any part of an Order shall constitute acceptance by the Customer of these Conditions.

2.2 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification are complete and accurate.

2.3 The Order shall only be deemed to be accepted when KICL issues a written acceptance of the Order, at which point the Contract shall come into existence.

2.4 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of KICL which is not set out in the Contract.

2.5 Any samples, descriptive matter or advertising produced by KICL and any descriptions or illustrations contained in KICL's catalogues or brochures are produced for the sole purpose of giving

an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force.

2.6 A quotation for the Goods given by KICL shall not constitute an offer. A quotation shall only be valid for a period of two weeks from its date of issue.

### **3. Goods**

3.1 The Goods are described in the Specification.

3.2 To the extent that the Goods are to be manufactured in accordance with a Specification supplied by the Customer, the Customer shall indemnify KICL against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by KICL in connection with any claim made against KICL for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with KICL's use of the Specification. This clause 3.2 shall survive termination of the Contract.

3.3 KICL reserves the right to amend the specification of the Goods if required by any applicable statutory or regulatory requirements.

### **4. Delivery**

4.1 KICL shall ensure that each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, all relevant Customer and KICL reference numbers and the type and quantity of the Goods (including the code number of the Goods, where applicable).

4.2 KICL shall deliver the Goods at or to the location set out in the Order or such other location as the parties may agree (Delivery Location).

4.3 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence.

4.4 If KICL fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. KICL shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide KICL with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.5 If 10 days after the day on which KICL notified the Customer that the Goods were ready for delivery the Customer has not accepted delivery of them, KICL may resell or otherwise dispose of part or all of the Goods and charge the Customer for any reasonable storage and selling costs.

4.6 The Customer is responsible for obtaining, at its own cost, such import licences and other consents in relation to the Goods as are required from time to time and, if required by KICL, the Customer shall make those licences and consents available to KICL prior to the relevant shipment.

## **5. Quality**

5.1 KICL warrants that on at the date of delivery the Goods shall conform in all material respects with their description and any applicable Specification.

5.2 Subject to clause 5.3, if:

- (a) the Customer gives notice in writing to KICL within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 5.1;
- (b) KICL is given a reasonable opportunity of examining such Goods; and
- (c) the Customer (if asked to do so by KICL) returns such Goods to KICL's place of business at KICL's cost,

KICL shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

5.3 KICL shall not be liable for Goods' failure to comply with the warranty set out in clause 5.1 in any of the following events:

- (a) the Customer makes any further use of such Goods after giving notice in accordance with clause 5.2;
- (b) the defect arises because the Customer failed to follow KICL's oral or written instructions as to the storage, and use of the Goods or (if there are none) good trade practice regarding the same;
- (c) the defect arises as a result of KICL following any drawing, design or Specification supplied by the Customer; or
- (d) the defect arises as a result of wilful damage, negligence, or abnormal storage or working conditions.

5.4 Except as provided in this clause 5, KICL shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.

5.5 These Conditions shall apply to any replacement Goods supplied by KICL.

## **6. Title and risk**

6.1 The risk in the Goods shall pass to the Customer on completion of delivery.

6.2 Title to the Goods shall not pass to the Customer until KICL has received payment in full (in cash or cleared funds) for the Goods.

6.3 Until title to the Goods has passed to the Customer, the Customer shall:

- (a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as KICL's property;
- (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

(c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;

(d) notify KICL immediately if it becomes subject to any of the events listed in clause 8.2; and

(e) give KICL such information relating to the Goods as KICL may require from time to time,

but the Customer may resell or use the Goods in the ordinary course of its business.

6.4 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 8.2, or KICL reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided that the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy KICL may have, KICL may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

## **7. Price and payment**

7.1 The price of the Goods shall be the price set out in the Order.

7.2 The price of the Goods is exclusive of amounts in respect of value added tax (VAT). The Customer shall, on receipt of a valid VAT invoice from KICL, pay to KICL such additional amounts in respect of VAT as are chargeable on the supply of the Goods.

7.3 Unless otherwise agreed in writing, KICL may invoice the Customer for the Goods on or at any time after the completion of delivery.

7.4 The Customer shall pay the invoice in full and in cleared within 30 days of the date of the invoice. Payment shall be made to the bank account nominated in writing by KICL. Time of payment is of the essence.

7.5 If the Customer fails to make any payment due to KICL under the Contract by the due date for payment (due date), then the Customer shall pay interest on the overdue amount at the rate of 4% per annum above Barclays Bank plc's base rate from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

7.6 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against KICL in order to justify withholding payment of any such amount in whole or in part. KICL may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by KICL to the Customer.

## **8. Customer's insolvency or incapacity**

8.1 If the Customer becomes subject to any of the events listed in clause 8.2, or KICL reasonably believes that the Customer is about to become subject to any of them and notifies the Customer accordingly, then, without limiting any other right or remedy available to KICL, KICL may cancel or suspend all further deliveries under the Contract or under any other contract between the Customer

and KICL without incurring any liability to the Customer, and all outstanding sums in respect of Goods delivered to the Customer shall become immediately due.

8.2 For the purposes of clause 8.1, the relevant events are:

- (a) the Customer is the subject of an insolvency action or event;
- (b) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business;
- (c) the Customer's financial position deteriorates to such an extent that in KICL's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; and
- (d) (being an individual) the Customer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.

8.3 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

## **9. Limitation of liability**

9.1 **Nothing in these Conditions shall limit or exclude KICL's liability for:**

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);**
- (b) fraud or fraudulent misrepresentation; or**
- (c) any matter in respect of which it would be unlawful for KICL to exclude or restrict liability.**

9.2 **Subject to clause 9.1:**

**(a) KICL shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and**

**(b) KICL's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the price of the Goods.**

## **10. Intellectual Property Rights**

10.1 The Customer acknowledges that the Intellectual Property Rights are the KICL's property and nothing in the Contract shall be construed as conferring any licence or granting any rights in favour of the Customer in relation to the Intellectual Property Rights.

10.2 Any reputation in any trade marks affixed or applied to the Goods shall accrue to the sole benefit of KICL.

10.3 The Customer shall not use (other than pursuant to this agreement) or seek to register any trade mark or trade name (including any company name) which is identical to, confusingly similar to or incorporates any trade mark or trade name which KICL owns or claims rights in anywhere in the world.

## **11. Force majeure**

Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A Force Majeure Event means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

## **12. General**

### **12.1 Assignment and subcontracting.**

(a) KICL may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

(b) The Customer may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of KICL.

### **12.2 Notices.**

(a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid post, recorded delivery, commercial courier, fax or e-mail.

(b) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

### **12.3 Severance.**

(a) If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.

(b) If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

12.4 **Waiver.** A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

12.5 **Third party rights.** A person who is not a party to the Contract shall not have any rights under or in connection with it.

12.6 **Variation.** Except as set out in these Conditions, any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by KICL.

12.7 **Governing law and jurisdiction.** The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, Irish law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of Ireland.