

St Austell Brewery

STANDARD TERMS AND CONDITIONS

1. Interpretation

In these conditions the purchaser means St Austell Brewery whose registered office is at 63 Trevarthian Rd, St Austell PL25 4BY; "the Supplier" means any person, firm, Company or body who is entering into or considering entering into a contractual arrangement with St Austell Brewery; "Goods" means any goods (including Food) or products of whatever nature that are the subject of a contract entered into or being considered between the Supplier and St Austell Brewery; "Services" means any services or services provided or work undertaken of whatever nature that are the subject of a contract entered into by St Austell Brewery and the Supplier. "Food" includes any articles or substances (including drink, either alcoholic or otherwise) intended for human consumption and any article or substances used as ingredients or processing aids in the preparation of Food;

2. General

2.1 All orders or tenders or negotiations are entered into on these terms, which, save for any contract into which they are incorporated shall supersede any other terms appearing elsewhere, and override and exclude any other terms stipulated or incorporated or referred to by the Supplier, whether in the order or in any negotiations and any course of dealing established between St Austell Brewery and the Supplier or any that are customarily accepted or implied in the trade to which any order or agreement relates and/or the Supplier's own conditions of sale. All orders hereafter made by St Austell Brewery shall be deemed to be made subject to these terms.

2.2 No modification of these terms (or any agreement into which they are incorporated) shall be affective unless made by an express written agreement between the parties and signed by an authorised officer of St Austell Brewery, the signing by St Austell Brewery of any of the Supplier's documentation shall not imply any modification of these terms and without prejudice to the foregoing generality, these terms exclude and supersede any conditions of sale which the Supplier may seek, or may have sought to apply.

3. Prices

3.1 The only price payable shall be that specified in the order or agreement which is (unless otherwise expressly stated) exclusive of VAT but otherwise inclusive of all taxes, levies, duties, carriage, insurance and the like. No Goods shall be delivered, or Services performed against any order at a price in excess of that set out in that order unless the prior written approval of St Austell Brewery has been received.

3.2 If at any time during the term of this Agreement any other supplier who is capable of supplying goods and services similar to the Goods or Services in sufficient quantity and to the specification provided to the Supplier by St Austell Brewery, offers to supply those goods or services to St Austell Brewery at prices better than those under the terms of this Agreement, the Supplier will within 30 days reduce their current prices to match the offer made by that alternative supplier. The Supplier shall not increase or vary their prices without St Austell Brewery's written consent and approval. The Supplier must provide St Austell Brewery with at least 3 months written notice in advance of any changes for St Austell Brewery to review and consider any price changes or variations.

4. Payment

- 4.1** Payment will not be made for any Goods delivered or Services performed unless it is subject to an official St Austell Brewery order form. All Goods delivered must be accompanied by a delivery note and upon delivery a signature must be obtained by the Supplier from a representative of St Austell Brewery; such signature will not signify that the Goods have been inspected and/or are acceptable.
- 4.2** Unless otherwise agreed in writing, payment is conditional upon:
- a. Actual physical delivery and acceptance of the Goods or written confirmation from St Austell Brewery as to satisfactory completion of the Services, pursuant to an order from St Austell Brewery and
 - b. Receipt of a correct invoice bearing the order and VAT number of TI and correctly addressed as indicated in the order from St Austell Brewery; and
 - c. All invoices submitted must show VAT separately if applicable.
- Failure to correctly address or quote the order number may seriously delay payment to the Supplier and St Austell Brewery accepts no liability for such delay.
- 4.3** Risk in any Goods shall pass to St Austell Brewery when the Goods have been delivered and inspected by St Austell Brewery and are accepted as being of satisfactory quality in so much as it is reasonable to determine satisfactory quality from an initial inspection. If any Goods are rejected, risk in those Goods shall remain with the Supplier.
- 4.4** Legal and equitable ownership in any Goods shall pass to St Austell Brewery when the Goods have been delivered to St Austell Brewery at any of its premises as directed or if directed by St Austell Brewery when delivery is made to the premises or any distributor of St Austell Brewery or, if earlier, at the time of payment by St Austell Brewery for the Goods.
- 4.5** Late payments shall attract interest calculated daily from and including the due date up to the date of actual payment at four percent (4%) above the base lending rate (as defined by the Bank of England).
- 4.6** Upon timely invoice receipt, payment shall be made in sterling to the Supplier within 60 days from the date of invoice unless otherwise agreed in writing by St Austell Brewery.

5. Delivery

- 5.1** The time of delivery shall be of the essence of the contract and shall take place when the Goods or Services are received by St Austell Brewery at its premises (as directed to the Supplier) or if so requested by St Austell Brewery at the premises of any third party including but not limited to any party who may be acting from time to time as distributor for St Austell Brewery and St Austell Brewery has reasonably inspected the Goods.
- 5.2** The Supplier shall be entitled only to deliver the Goods in one consignment to all appropriate premises of St Austell Brewery as directed by St Austell Brewery unless otherwise expressly agreed.
- 5.3** If delivery of any item comprised in the Goods or Services has not been made by the delivery date St Austell Brewery shall be entitled to cancel its order in respect of that item. Nothing in this clause shall prevent St Austell Brewery from exercising any rights referred on it by clause 5.1 to terminate the agreement between St Austell Brewery and the Supplier.

6. Copyright

- 6.1** None of the Goods and/or Services supplied or their use shall infringe the copyright, patent, trademark, design (whether or not a registered design) or other intellectual property right of any third party or give rise to any claim against St Austell Brewery for passing off. The Supplier shall indemnify St Austell

Brewery against all costs (including but not limited to legal costs), charges, claims, expenses, losses, demands and liabilities incurred or made against St Austell Brewery as a result of any breach or alleged breach of any such third party rights, except and to the extent that St Austell Brewery supplied any design, artwork or copy used in the Goods or Services.

- 6.2** The copyright, patent, design rights or other intellectual property rights in any item produced pursuant to or in connection with any order or agreement to purchase made by St Austell Brewery, including but not limited to any plans, drawings, film and video materials, photographs, models, designs and/or statistics shall belong to St Austell Brewery and the Supplier will, if requested, execute or arrange the execution of a formal written assignment of the same to St Austell Brewery.

7. Containers

- 7.1** All returnable bottles, crates and/or other containers (together "the Returnable Supply Containers") in which the Goods are supplied to St Austell Brewery and all stoppers supplied with any such Returnable Supply Containers supplied to St Austell Brewery shall remain the property of the Supplier.

- 7.2** St Austell Brewery shall make available for collection by the Supplier all Returnable Supply Containers and all stoppers supplied therewith within 2 months ("the Return Period") of the date of delivery by the Supplier to St Austell Brewery. If the Supplier shall fail to collect any such Returnable Supply Containers and all stoppers therewith within the Return Period, St Austell Brewery shall be entitled to dispose of them at St Austell Brewery's discretion and shall not incur any liability towards the Supplier.

- 7.3** The Supplier shall insure and keep insured the Returnable Supply Containers, stoppers and carbon dioxide tubes at its own cost from the time of delivery to St Austell Brewery. Such insurance shall be all risks and shall be for replacement costs as new. The Supplier shall not do or permit to be done any act or thing which may invalidate the said insurance and shall bear all risks for the Returnable Supply Containers and all stoppers and carbon dioxide tubes supplied therewith whilst at the premises of St Austell Brewery or any distributor appointed by St Austell Brewery.

8. Inspection of Goods

- 8.1** St Austell Brewery, shall endeavour to inspect the Goods where reasonably practicable within 3 days of delivery thereof and shall within 6 days of delivery give notice to the Supplier of any damage to the Goods and shall within 21 days of delivery give notice to the Supplier detailing any ground on which St Austell Brewery alleges that Goods are not in accordance with the contract or order or are defective. In the event that St Austell Brewery notifies the Supplier that the Goods are not in accordance with the contract or order or are so defective St Austell Brewery shall be entitled to return the defective Goods to the Supplier (at the Supplier's expense) and receive replacement Goods of a standard acceptable to St Austell Brewery. Nothing in this clause shall prevent St Austell Brewery from exercising its right to terminate any agreement on the ground of fundamental breach for failing to comply with quality standards.

- 8.2** Where Goods and/or Services supplied by the Supplier do not correspond to the description or specification given, St Austell Brewery shall be entitled to demand from the Supplier the sum of £100 per complaint to recover third party costs if an external investigation determines the Goods and/or Services do not comply with the agreed description or specification. The Supplier shall pay this sum within 30 days of the demand.

9. Warranties and Liabilities

- 9.1** In addition to all other terms and conditions and warranties given or implied by law or otherwise incorporated herein and without prejudice hereto it is a condition of every order placed by and every agreement for purchase entered into by St Austell Brewery, that all Goods or Services ordered and where relevant their packaging will comply strictly and in all respects with the nature, substance, quality, description, specification and quality ordered (and with all samples, if any accepted by St Austell Brewery in writing).
- 9.2** Whenever the Supplier pursuant to any order or purchase agreement attends premises under the control of St Austell Brewery, the Supplier will comply with all instructions, notices and regulations whether statutory or otherwise relating to the security and safety of the premises and of all persons in or about those premises.
- 9.3** The Supplier shall indemnify St Austell Brewery against all costs, charges, claims and demands in respect of damage or injury to property or persons or any other claim whatsoever and howsoever arising as a result of any defect in the Goods or Services for which the Supplier or the employees, sub-contractors or agents of the Supplier are responsible. The Supplier shall ensure that it maintains in force with an insurer of good reputation and security a policy of public liability insurance with a deductible level not exceeding £10,000,000 which will settle the Supplier's liability to St Austell Brewery in the event that the Supplier shall not have sufficient funds to do so itself. The Supplier shall send St Austell Brewery a copy of their public liability insurance certificate each year when it is renewed. The Supplier shall ensure that any sub-contractors also maintain adequate insurance having regard to the obligations under this Agreement.
- 9.4** The Supplier shall be responsible for any property of St Austell Brewery issued to the Supplier in connection with any order or agreement and shall indemnify St Austell Brewery against expenses, claims, liabilities, loss or damage thereto arising from any act or omission of the Supplier or the Supplier's employees, agents or sub-contractors.
- 9.5** In addition to all other terms and conditions and warranties given or implied by law or otherwise incorporated herein and without prejudice the Supplier warrants that all Goods or Services supplied to St Austell Brewery by the Supplier (including all packaging, labels and descriptive matter) and the method of transportation and storage thereof and all Services supplied will comply with all United Kingdom legislation, regulations and relevant European Community directives and regulations relating hereto and in force at the time of delivery and any such additional specification as St Austell Brewery may direct from time to time.
- 9.6** The Supplier shall guarantee that on delivery of all fixtures, fittings and equipment supplied to St Austell Brewery and for a period of 24 months from delivery, the Goods shall be free from material defects.
- 9.7** The Supplier shall immediately indemnify St Austell Brewery against all costs, charges, claims, expenses, losses, demands and liabilities in respect of any breach of the warranty set out in clause 9.5 and 9.6 above.
- 9.8** The Supplier will provide to St Austell Brewery with each supply of Goods including packaging material, information on the properties of the Goods sufficient to alert St Austell Brewery to any taint or contamination characteristic of the Goods and to facilitate the safe storage, handling and transportation of the same.
- 9.9** All Food supplied shall be certified in writing as not having been subject to any irradiation procedure unless otherwise agreed in writing with St Austell Brewery that an irradiated Food shall be supplied.
- 9.10** St Austell Brewery reserves the right:
- a. On reasonable notice to visit and inspect, from time to time, the Goods during manufacture, quality systems and all premises and means of transport used in

the supply of Goods and if such premises or quality or means of transport are not under the Supplier's immediate control, the Supplier will ensure reasonable access to the same;

- b. To take and test samples of the Goods;
- c. To cancel any order/or reject any delivery of Goods from the Supplier who utilises any premises, means or production, transport or quality control system which St Austell Brewery believes may be injurious to employees or customers;
- d. To cancel any order for Goods to be supplied or part of the Goods supplied pursuant to that order if they are defective and to cancel any order for the provision of Services where part of the Services supplied to St Austell Brewery have not been performed to the reasonable satisfaction of St Austell Brewery.

10. Supplier's Liability

10.1 The Supplier shall indemnify St Austell Brewery in respect of all damage, injury or loss occurring to any person or property and any indirect or consequential loss to St Austell Brewery and against all actions, suits, claims, demands, charges or expenses in connection therewith arising from the condition or use of the Goods or Services in the event and to the extent that the damage, injury or loss shall have been occasioned partly or wholly by the act, omission, negligence or carelessness of the Supplier or his servants or agents or by any breach by the Supplier of its obligations to St Austell Brewery hereunder. Notwithstanding Clause 10.1 above, in the event of any failure on the part of the Supplier to supply the Goods and/or Services of the quality or in the quantity and to the time specified, St Austell Brewery will be entitled to obtain suitable replacement Goods or Services from an alternative source and the Supplier undertakes to reimburse St Austell Brewery for any additional costs in so doing.

11. Termination

- 11.1** Without prejudice to any of the rights of St Austell Brewery, St Austell Brewery shall be entitled to terminate any agreement or reject any delivery of Goods or proffered performance of Services pursuant to any order or agreement forthwith in the event that:
- a. The Supplier commits any material or persistent breach of the agreement;
 - b. The Supplier enters into liquidation (other than for the purpose of amalgamation or reconstruction approved by St Austell Brewery) or the Supplier enters into any Composition with its creditors or suffers any execution or distress order to be levied on its goods or become subject to any administration order;
 - c. The Supplier shall have a receiver of all, or part of the Supplier's assets appointed;
The Supplier becomes insolvent or becomes subject to any bankruptcy order.
The ownership of or control of the Supplier changes in any way.
- 11.2** In the event of any such rejection or termination, the Supplier shall not be entitled to any compensation or damages in respect of any loss (whether direct, indirect or consequential or otherwise) resulting directly or indirectly there from.
- 11.3** The provisions in clauses 1, 4, 6, 9, 10, 12, 15 and 16 of these terms together with those provisions that either are expressed to survive its expiry or termination or from their nature or context it is contemplated that they are to survive such termination, shall survive termination of the agreement into which these terms are incorporated.
- 11.4** The Supplier may not cancel the order or any contract with St Austell Brewery without the written consent of St Austell Brewery, which if given shall be deemed to be on the express condition that the Supplier shall indemnify St

Austell Brewery against all loss, damage, claims or actions arising out of such cancellation unless otherwise agreed in writing.

12. Miscellaneous

- 12.1** Without prejudice to any other conditions, St Austell Brewery hereby reserves the right to set off monies owed to St Austell Brewery against any payment due to the Supplier arising from the supply of Goods and/or Services (including any applicable VAT payable) and whether under the terms of any order or agreement or any other transaction between the parties.
- 12.2** The Supplier will arrange for collection of the Goods delivered to St Austell Brewery's premise within 3 working days of St Austell Brewery's notification to the Supplier that the Goods are not acceptable for whatever reason including delivery or quantity of Goods in excess of the quantity ordered. The Supplier shall bear the cost of collection of such Goods. St Austell Brewery reserves the right to store any Goods which are not accepted away from other Goods and shall not have liability if the storage of such Goods shall lead to their deterioration.
- 12.3** Save in relation to Clause 12.9 below, the Supplier shall not assign, transfer, charge or otherwise encumber, create any trust over or deal in any manner with these terms or any agreement into which these terms are incorporated or any right, benefit or interest under it nor transfer, novate (or sub-contract any of that party's obligations under them or it), without St Austell Brewery's prior written consent. Any purported assignment in breach of this clause shall confer no rights on the purported assignee.
- 12.4** St Austell Brewery's order number shown on any order or agreement shall be quoted on all delivery notes; invoices (with St Austell Brewery's VAT number) and shipping and other transport documents, invoices and statements shall be sent to the address indicated for that purpose on the order or agreement.
- 12.5** To the extent that the law permits each party shall not, and shall procure that its employees, agents and officers shall not at any time make use of (other than pursuant to its obligations hereunder) or divulge to any person, firm or corporation any information relating to the other party's affairs or any information received from the other party which is by nature confidential.
- 12.6** Any provision of these conditions which is found by any court or administrative body of competent jurisdiction to be void or unenforceable shall to the extent of such invalidity or enforceability be deemed to be severed and shall not affect any other provision of these conditions.
- 12.7** No waiver or forbearance by St Austell Brewery (whether express or implied) in enforcing any of its rights against the Supplier shall prejudice St Austell Brewery's rights to do so in the future.
- 12.8** Unless expressly provided, St Austell Brewery does not commit to purchase or order any Goods or Services from the Supplier exclusively. St Austell Brewery may at its discretion purchase or order similar Goods or Services from any other supplier, in addition to or as an alternative to the Supplier. Any preferential price given to St Austell Brewery by the Supplier is in consideration of St Austell Brewery agreeing to consider the Supplier as a preferred supplier.
- 12.9** The Supplier hereby assigns ownership of all intellectual property rights (including but not limited to copyright, design rights), in any work created or prepared for St Austell Brewery by the Supplier (other than any trademark or intellectual property right which subsists at the time of entering into this contract or belonging to an unrelated third party) which but for the operation of this clause may have vested in the Supplier. In the event that the Supplier is contracted to St Austell Brewery as a consultant or independent service provider, any such intellectual property rights which are created as a result of the contractual relationship with St Austell Brewery will be owned exclusively by St Austell Brewery. The Supplier will not be entitled to exploit or use (other than in the execution of this contract with St Austell Brewery) such intellectual

property rights belonging to St Austell Brewery without St Austell Brewery's prior written consent.

- 12.10** These terms and conditions and any Agreement in which they are incorporated constitute the entire agreement between the parties and the parties acknowledge that no reliance is placed on any previous documents, representations or descriptions provided prior to the signing of this Agreement. Nothing within this clause will limit either party's liability for fraudulent misstatement.
- 12.11** The Supplier and St Austell Brewery agree that the Contracts (Rights of Third Parties) Act 1999 shall be excluded from this Agreement and that any person who is not a party to this Contract shall have no rights under the Contracts (Rights of Third Parties) Act 1999 or otherwise to enforce any term hereof or any agreement into which these terms are incorporated.
- 12.12** St Austell Brewery shall not be liable to the Supplier for any loss of business, loss of goodwill, loss of profits, loss of revenue or any indirect, consequential or incidental damages arising as a result of any act or omission of St Austell Brewery, howsoever arising, including but not limited to any claim under tort or under contract. Nothing within these terms or any agreement into which they are incorporated shall have the effect of excluding or limiting St Austell Brewery from any liability for death, personal injury or fraudulent misrepresentation.
- 12.13** The Supplier shall not offer or provide to any St Austell Brewery director, employee, agent, contractor, or supplier any gifts, entertainment, bribes or enticements. A breach of this clause shall be a material breach of the contract.
- 12.14** The Supplier shall not make any public releases or announcements about this agreement including advertising or use of St Austell Brewery intellectual property.
- 12.15** All Suppliers, any sub-contractors and their third parties handling card payments that store, process or transmit any cardholder data must ensure they comply with the Payment Card Industry Data Security Standard and be fully PCI DSS compliant as defined on the Payment Card Industry Standard Security Council (PCI SSC) website. From time to time St Austell Brewery may ask for evidence of this compliance.

13. Quality Complaints

Quality complaints raised by St Austell Brewery will be responded to within 1 hour of the call being received by the Supplier. The corrective action will be identified to ensure no repeat calls and implemented within 24 hours of receiving the first call. Full liaison with any of St Austell Brewery's public houses concerned, will be the responsibility of the Supplier including the co-ordination of any product withdrawal. If a product complaint is received which relates to environmental health issues, food standards and/or hygiene St Austell Brewery will refer it to their appointed environmental health consultant.

14. Supplier Audits – Food Suppliers

The Supplier will fund auditing activity required by St Austell Brewery. The fee will be notified to the Supplier by St Austell Brewery prior to the audit being undertaken and shall include the cost of the audit and administration. All copies of audits will be made available to the Supplier and to St Austell Brewery within 3 working days of the audit being completed. The Supplier will co-operate fully with St Austell Brewery or their agents during this auditing process and will make available all documentation reasonably requested by St Austell Brewery or their agent's including, but not limited to, product specification and recipe details.

15. Governing Law

These terms, any agreement into which they are incorporated, and any non-contractual obligations shall be governed by and interpreted in accordance with English law and St Austell Brewery and the Supplier irrevocably submit to exclusive jurisdiction of the English Courts.

16. Notices

Any notice given under or pursuant to any contract or order may be sent by hand or by recorded delivery services (or any similar system of post if recorded delivery ceases to exist) or transmitted by facsimile or other means of telecommunication resulting in the receipt of a written communication in permanent form and if so sent or transmitted to the address, as notified to the other party from time to time (in the case of St Austell Brewery address for service of notice shall be its registered office), of the other party shall be deemed effectively given on the day when in the ordinary course of the means of transmission it would first be received by the addressee in normal business hours, provided that a hard copy of the document confirming the successful transmissions of the notice shall be sent by first class post to the other party within 3 days of the notice being given.

17. Force Majeure

17.1 For the purposes of this Agreement, "Force Majeure Event" shall mean any event beyond the reasonable control of a party including, but not limited to, acts of God, war, riots, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation, accident, fire, flood, storm. For the avoidance of doubt, strikes, industrial action, third party insolvency or failure shall not be considered to be Force Majeure Events nor shall any event which would but for this clause 17 constitute a breach of clause 10 be considered to be a Force Majeure Event.

17.2 If either party is prevented, hindered or delayed from performing any of its obligations under this Agreement by reason of a Force Mature Event, it shall notify the other party immediately in writing declaring the extent of the Force Mature Event, the date of its commencement and the effects of the Force Mature Event on its ability to perform its obligations under this Agreement. The obligations of the party seeking to rely upon this clause shall thereupon be suspended for so long as the Force Majeure Event shall continue. The party affected by the Force Majeure Event shall use its best endeavours to minimise the effects thereof and shall resume performance as soon as possible after removal of such event. If the period of non-performance exceeds 60 days from the receipt of the notice of the Force Majeure Event, the party whose performance has not been so affected may terminate this Agreement forthwith by serving notice of the same on the other party.

18. Inadequacy of Damages

Without prejudice to any other rights or remedies that St Austell Brewery have, the Supplier acknowledges and agrees that damages alone would not be an adequate remedy for any breach by the Supplier of the provisions of this Agreement and that accordingly St Austell Brewery shall be entitled, without proof of special damages, to the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of the provisions of this Agreement.

19. Partnership or Joint Venture

This contract shall not operate so as to create a partnership or joint venture of any kind or make either party the agent to the other.