

Terms and Conditions: Tomac Enterprise Limited

THESE TERMS AND CONDITIONS OF SALE (“**Agreement**”) APPLY TO EVERY ORDER YOU PLACE WITH TOMAC ENTERPRISE LIMITED.

PLEASE READ THESE TERMS AND CONDITIONS CAREFULLY.

AGREED TERMS:

1. DEFINITIONS AND INTERPRETATION

1.1 The following definitions apply in this Agreement:

- Agreement:** these terms and conditions for the sale of alcoholic drinks and related products on a wholesale basis.
- Business Day:** a day from Monday to Friday (both days inclusive), excluding bank holidays and public holidays in England.
- Customer:** a business that has been accepted as a customer and which places an Order with us. In this Agreement, in relation to the application stage towards becoming a Customer, we also refer to such business as “**you**” and through related words such as “**your**”.
- Data Protection Laws:** each law then in force relating to the collection, processing, storage, privacy and use of personal data, as applicable to either party, including (i) the Data Protection Act 2018; (ii) the UK GDPR, being the UK’s retained version of the General Data Protection Regulation (EU) 2016/679; (iii) the Privacy and Electronic Communications Regulations 2003; and (iv) all legally binding codes of practice and codes of conduct relating to such Data Protection Laws.
- Delivery:** delivery of an Order to a Customer or (where the parties have agreed on collection) collection of an Order by or on behalf of the Customer.
- Event of Force Majeure:** any act, event, circumstances, omission, or accident, in all cases beyond our reasonable control, causing us to be delayed or prevented in the performance of all or a material proportion of our obligations under this Agreement, including natural disaster, epidemic or pandemic, war, riot, civil commotion, malicious damage by a third party, strike, or compliance with any law.
- IPRs:** intellectual property rights, such as copyright, rights in

inventions, moral rights, patents, trade secrets, trade marks and trade names, service marks, design rights, database rights and rights in data, image rights, rights in software, the right to sue for passing off, utility models, and domain names, and in all cases all similar rights anywhere in the world.

- Order:** an order for Products that has been made binding in accordance with clause 4.
- Price:** the charges payable by the Customer for Products that are subject to an Order.
- Products:** alcoholic beverages and other such products that we sell.
- Tomac:** Tomac Enterprise Limited, a company incorporated and registered in England and Wales with company number 14269906, whose registered office is at 1 Quality Court, Chancery Lane, London WC2A 1HR. In this Agreement, Tomac is also referred to as “**we**” and through related words such as “**our**”.
- Website:** our website, www.tomacenterprise.com TBA

- 1.2 Clause headings do not affect the interpretation of this Agreement.
- 1.3 A ‘person’ includes a natural person and a corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 The words ‘include’, ‘including’, ‘for example’, or similar, are non-restrictive and will be deemed to be followed by the words ‘without limitation’.
- 1.5 Unless the context requires otherwise, (i) words in the singular include the plural and vice versa and (ii) words denoting one grammatical gender include all grammatical genders.
- 1.6 A reference to ‘writing’ or ‘written’, save where stated otherwise, includes e-mail.
- 1.7 A reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted from time to time.

2. NATURE OF THIS AGREEMENT

- 2.1 This Agreement applies both to the application process in relation to becoming a Customer and to every Order between Tomac and a Customer.
- 2.2 This Agreement applies to the matters set out in clause 2.1 in precedence to any other terms and conditions proposed by either party, and no such other terms and conditions are binding upon the parties.

3. OPENING AN ACCOUNT

- 3.1 In order to be entitled to purchase Products from Tomac, you must first be accepted as a Customer and be given an account number.
- 3.2 To apply to become a Customer, you must:
- (a) meet the criteria set out in clause 3.3;
 - (b) make a written request to Tomac;
 - (c) on request, fill in our application form; and
 - (d) supply such further information and documentation as we require to support your application.
- 3.3 As a wholesale business, we are limited in to the range of persons who may become (or remain as) a Customer. You must, as a minimum, meet the following criteria:
- (a) you must be a corporate entity (such as a limited company or limited liability partnership) registered in England and Wales, in Scotland, or in Northern Ireland, and **you must not be a consumer since this Agreement is not available to consumer purchasers.**
 - (b) we must be satisfied that your financial standing is sufficient to enable you to meet your obligations under this Agreement;
 - (c) you must supply all such further information and identification requested by us at any time; and
 - (d) your application, and all Orders, must relate to the sale of Products in the United Kingdom for resale by you in the United Kingdom or for your own use.
- 3.4 Upon receiving your application, we will consider it and, if we (in our absolute discretion) accept your application, you will be given an account number, which must be used on every order that you place.

4. PLACING AND AGREEING AN ORDER

- 4.1 A Customer may make an order for Products either through the Website (by clicking to place an order) or by emailing us at info@tomacenterprise.co.uk. The Customer must confirm the Products requested, along with its account number and confirmation of the desired delivery address (or, if applicable, confirmation that the order would be collected).
- 4.2 If the order is made through the Website, the Customer will be informed of an indicative delivery timescale at that point. If the order is made by email, the Customer is advised to check the indicative timings on the Website first, to give an idea of likely timescales.
- 4.3 An order is an offer to us, which we are entitled to accept or reject. The offer is made when the Customer clicks to confirm the order or to send the email.

- 4.4 An order must meet any minimum quantity requirements that we currently have in place.
- 4.5 We will generally send an acknowledgment of the order. This is merely a confirmation that the Customer's offer has been received: it is only if, and when, we later confirm acceptance in writing that a binding Order is formed between Tomac and the Customer for the provision of Products.
- 4.6 In any confirmation of Order, we will confirm a delivery date and the Price. If we do not accept the order, we will let the Customer know, and the Customer will not be charged.
- 4.7 Each Order is a separate contract for the supply of Products, subject to these terms and conditions and separate from all other Orders.

5. ORDER FULFILMENT

- 5.1 We aim to enable Delivery on or around the date confirmed in the Order. We will inform the Customer in writing of any delays or alterations to this timescale. Subject to the cancellation and termination rights explicitly set out under this Agreement, delays will not entitle the Customer to cancel the Order, refuse to accept Delivery, or claim damages.
- 5.2 Where a delay is likely, in Tomac's view, to be substantial, we will entitle the Customer to terminate the Order without further obligation to either party.
- 5.3 In relation to the Products subject to an Order:
 - (a) we may effect Delivery by instalments;
 - (b) Tomac will endeavour to provide the quantities stated in the Order, subject to a tolerance of plus or minus ten per cent of the requested quantities (and a pro-rated adjustment will be made to the Price for any such adjusted quantities).
- 5.4 **Delivery made by Tomac.** If we arrange Delivery to the Customer, Delivery is deemed completed once the Products are made available to the Customer or its representative at the Delivery address.
- 5.5 **Delivery made via collection.** If the Customer arranges for collection, Delivery is deemed made once Tomac places the Products at the Customer's disposal at the collection point.
- 5.6 If Delivery is not made owing to the Customer's failure to accept Delivery (when delivered by Tomac) or to make collection on the collection date, Delivery will nevertheless be deemed to have taken place, and Tomac will be entitled to charge the Customer for storing the Products, at its then-current storage rates (plus the cost of redelivery, where Delivery is made by Tomac to the Customer). Such storage will be at the Customer's risk, and if Delivery is not effected within 14 days of the date on which the Products were first made available, Tomac is entitled to cancel the Order and to charge the Customer the full Price of the cancelled Order plus storage costs to the date of cancellation.

6. RISK AND TITLE

- 6.1 Risk in Products passes to the Customer on Delivery (or deemed Delivery, as applicable under clause 5.6).
- 6.2 Title to the Products passes on the later of Delivery and payment in full of the Price for the Order.
- 6.3 Until title to Products has passed to the Customer, the Customer shall:
- (a) store those Products separately from all other goods held by the Customer so that they remain readily identifiable as Tomac's property;
 - (b) maintain those Products in satisfactory condition and keep them insured on Tomac's behalf; and
 - (c) give Tomac such information as it may reasonably require from time to time relating to:
 - (i) the Products; and
 - (ii) the ongoing financial position of the Customer.

7. ACCEPTANCE AND DEFECTIVE PRODUCTS

- 7.1 The Customer may reject any Products delivered to it that do not comply with clause 8.2, provided that:
- (a) notice of rejection is given to Tomac:
 - (i) in the case of a defect that is apparent on normal visual inspection, within 48 hours of Delivery; and
 - (ii) in the case of a solely latent defect, within 48 hours of the latent defect having become apparent; and.
 - (b) none of the events listed in clause 7.3 apply.
- 7.2 If the Customer fails to give notice of rejection in accordance with clause 7.1, it is deemed to have accepted those Products.
- 7.3 Tomac is not liable for a Product's failure to comply with the warranty set out in clause 8.2 if:
- (a) the Customer makes any further use of the Product after giving notice in accordance with clause 7.1;
 - (b) a latent defect arises only because the Product has reached its use-by date (or equivalent);

- (c) the defect arises because the Customer failed to follow Tomac's oral or written instructions for the storage, use and/or maintenance of the Products or (if there are none) good trade practice regarding the same;
- (d) the defect arises as a result of Tomac following any instruction supplied by the Customer;
- (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
- (f) the Products differ in any way (including appearance) from their description or specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements or changes made by the Product's manufacturer.

7.4 If the Customer rejects Products under clause 7.1, Tomac is entitled at its discretion to:

- (a) replace the rejected Products; or
- (b) repay the portion of the Price related to the rejected Products,

and Tomac shall have no further liability to the Customer for the rejected Products.

8. WARRANTIES AND OBLIGATIONS

8.1 Each party confirms that:

- (a) it has full capacity to enter into and perform this Agreement;
- (b) it has in place all licences and permissions required to enable it to perform its obligations under this Agreement.

8.2 Tomac warrants that the Products will:

- (a) conform to any specification stated on the Website;
- (b) be provided with no less than reasonable skill and care;
- (c) comply with all applicable statutory and regulatory requirements; and
- (d) be packed and secured in a manner to enable them to reach their destination in good condition;

and all other warranties or representations concerning Products are, to the greatest extent permitted by law, excluded from this Agreement.

8.3 The Customer will, as a condition of this Agreement:

- (a) pay all sums on time;
- (b) not remove, deface or obscure any identifying mark or label on or relating to the Products;

- (c) use Products on a First-In-First-Out basis;
- (d) not permit any person who is not the Customer to place an Order;
- (e) not provide any Products to any person under 18; and
- (f) not breach the IPRs of any party.

9. PRICE

- 9.1 The Price will be as set out in the Order.
- 9.2 Prices, and Delivery costs, will be based on those listed on the Website (adjusted as necessary in relation to quantity purchased), save in cases of error in pricing, in which case Tomac will confirm the correct Price to the Customer and seek agreement prior to confirmation of the Order.
- 9.3 Prices are stated exclusive of VAT, which will be payable in addition.
- 9.4 The full Price must be paid in pounds sterling within [48 hours] of the Customer's receipt of an invoice for the Order. No Delivery will be made if the Price has not been received in full and in cleared funds by Tomac; for the avoidance of doubt, this does not cancel the Order, and the Customer remains liable to pay the full Price.
- 9.5 All amounts due from the Customer under this Agreement must be paid in full without any set-off, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 9.6 If any part of the Price remains unpaid after its due date, Tomac will be entitled, without limiting any other rights it may have under this Agreement or at common law, to:
 - (a) charge interest on any overdue sum from the due date at the rate then in force under the Late Payment of Commercial Debts (Interest) Act 1998, accruing daily until the date on which Tomac receives payment together with all accrued interest; and/or
 - (b) suspend the performance of all Orders until payment in full is received.

10. DATA PROTECTION

- 10.1 Each party shall, at its own expense, ensure that it complies with all Data Protection Laws.
- 10.2 The Customer must ensure that it has a lawful basis enabling the transfer to Tomac of any personal data that it supplies.

11. INTELLECTUAL PROPERTY

- 11.1 This Agreement does not transfer any interest in IPRs from one party to the other party, and Tomac's IPRs in all material including the Website remain, as between the parties, the exclusive property of Tomac.
- 11.2 Nothing in this Agreement entitles the Customer to use the IPRs of any other person (including the manufacturers of Products) for marketing or promotional purposes or otherwise.

12. LIMITATION OF LIABILITY

- 12.1 This clause 12 sets out the entire financial liability of Tomac in respect of any performance or non-performance of this Agreement, any breach of this Agreement, and any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.
- 12.2 Nothing in this Agreement limits either party's liability for:
- (a) fraud or fraudulent misrepresentation;
 - (b) death or personal injury due to that party's or its subcontractor's negligence; or
 - (c) any other area in which limitation of liability is prohibited by law.
- 12.3 Subject to clause 12.2, neither party will be liable for any loss of the other party to the extent that it is consequential or indirect.
- 12.4 Subject to clauses 12.2 and 12.3, Tomac's maximum aggregate liability under an Order will not in any circumstances exceed the Price of the Order.

13. TERMINATION OF AGREEMENT

- 13.1 Without affecting any other right or remedy available to it at common law, either party may terminate this Agreement and all existing Orders, with immediate effect by giving written notice to the other party:
- (a) if the other party fails to pay any undisputed amount due under this Agreement on the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment;
 - (b) if the other party commits a material breach of this Agreement and such breach is irremediable;
 - (c) if the other party commits a material breach of this Agreement that is remediable, and such party fails to remedy that breach within a period of fifteen days after being notified in writing to do so by the non-breaching party, such notice to advise the breaching party of the potential termination of this Agreement in the event of a failure to remedy the breach;

- (d) if the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the Insolvency Act 1986;
- (e) if the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
- (f) if a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party;
- (g) if an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party;
- (h) if a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- (i) if any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 13.1(d) to clause 13.1(h) (inclusive); or
- (j) if the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

14. CONSEQUENCES OF TERMINATION

- 14.1 On termination of this Agreement, clauses that expressly or by implication continue in force beyond termination will do so.
- 14.2 Termination of this Agreement does not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the rights to be paid the Price for all Orders as yet unpaid for at the date of termination.

15. FORCE MAJEURE

- 15.1 Tomac will not be in breach of this Agreement, or be liable for any failure or delay in performance of any obligation under this Agreement, where such arises from or is attributable to an Event of Force Majeure, provided that Tomac gives the Customer written notice of the existence and nature of the Event of Force Majeure. In such circumstances, Tomac's time for performance will be extended accordingly.

16. ASSIGNMENT AND OTHER DEALINGS

- 16.1 This Agreement is personal to the Customer, which may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights and obligations under this Agreement without the prior written consent of Tomac.

17. VARIATION

- 17.1 Tomac may vary these terms and conditions from time to time. Any amended version of these terms and conditions will apply to any Order made after the date on which it is posted on the Website or otherwise brought to the Customer's attention.
- 17.2 In all other circumstances, no variation of this Agreement is effective unless it is in writing, is stated to vary this Agreement, and is signed by or on behalf of the parties.

18. NOTICES

- 18.1 A notice (other than a notice given in the commencement of or during any proceedings) given under this Agreement will be properly served only if it is in English and is sent by email to the other party using the following details:
- (a) info@tomacentepriase.co.uk for notices to Tomac; or
 - (b) any email address that has been used by the Customer, for notices to the Customer.
- 18.2 A notice will be deemed to have been received at 1730h on the day of sending, unless such day is not a Business Day, in which case it will be deemed delivered at 0900h on the next following Business Day. All times are those in the UK.

19. SEVERANCE

- 19.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it will be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision will be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause does not affect the validity and enforceability of the rest of this Agreement.

20. NO PARTNERSHIP OR AGENCY

- 20.1 Nothing in this Agreement is intended to, or will be deemed to, establish any partnership between any of the parties, constitute either party the agent of the other party, or authorise a party to make or enter into any commitments for or on behalf of the other party.
- 20.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

21. WAIVER

- 21.1 A waiver of any right or remedy under this Agreement or by law is effective only if given in writing and expressed as a waiver, and it will not be deemed a waiver of any subsequent breach or default.
- 21.2 A failure or delay by a party to exercise any right or remedy provided under this Agreement or by law does not constitute a waiver of that or any other right or remedy, or prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this Agreement or by law prevents or restricts the further exercise of that or any other right or remedy.

22. THIRD-PARTY RIGHTS

- 22.1 This Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

23. FURTHER ASSURANCE

- 23.1 Each party shall (and shall use all reasonable endeavours to procure that any necessary third party shall) promptly execute and deliver such documents and perform such acts as may reasonably be required for the purpose of giving full effect to this Agreement.

24. ENTIRE AGREEMENT

- 24.1 This Agreement constitutes the entire agreement between the parties in relation to its subject matter and supersedes and extinguishes all previous drafts, agreements, arrangements and understandings between them, whether written or oral, relating to its subject matter (but does not supersede or extinguish any Order).
- 24.2 Each party agrees that it has no remedies in respect of any representation or warranty (whether made innocently or negligently) that is not set out in this Agreement. Neither party has any claim for innocent or negligent misrepresentation based on any statement in this Agreement.

25. GOVERNING LAW

- 25.1 This Agreement, 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), is governed by and must be construed in accordance with the law of England and Wales.

26. JURISDICTION

26.1 Each party irrevocably agrees that the courts of England and Wales have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

END