

TERMS AND CONDITIONS OF SALE

1. GENERAL

1.1 In these General Conditions of sale ("General Conditions") the following words have the following meanings:

- (i) **"the Seller"** means Kenya Breweries Limited, UDV(Kenya) Limited and/or any of its affiliates as the case may be;
- (ii) **"the Customer"** means any person to whom the Seller has agreed to supply Products;
- (iii) **"Products"** means products sold by the Seller;
- (iv) **"Contract"** means a contract between the Seller and the Customer for the supply of Products;
- (v) **"Territory"** means the territory in Kenya to which the Products are dispatched.

1.2 Products are sold to the Customer subject to these General Conditions which form part of every contract between the Seller and the Customer for the supply of Products. Any conditions contained in any purchase order or other document of the Customer, except those specifically agreed to in writing by the Seller, shall be void and of no effect.

1.3 No variation of these General Conditions shall be binding unless agreed in writing by duly authorised officers of the Seller and the Customer.

1.4 If any provision of these General Conditions is held by any court or competent authority to

be void or unenforceable in whole or in part, the validity of the other provisions of these General Conditions and the remainder of the provision in question shall not be affected.

1.5 Notwithstanding Clause 1.3 above, the Seller may from time to time alter these General Conditions in such manner as it shall determine provided that such alteration shall not affect any Contract made prior to the date of the alteration.

1.6 The Customer confirms that it complies with all laws to which it is subject.

2. PRICE

Prices for the Products shall be those ruling at the date of dispatch of the Products and the Seller reserves the right to revise its prices at any time prior to the date of dispatch.

3. PAYMENT

3.1 Unless otherwise agreed in writing, payment for all Products sold shall be required on or before delivery of the Products to the Customer.

3.2 Time shall be of the essence in respect of all payments due by the Customer.

3.3 If any amount payable is not received by the due date then, without prejudice to any other rights or remedies the Seller might have:

- (i) the Customer shall be liable to pay interest on such amount (both before and after any judgment) at the rate of 2% per calendar month or part thereof, or the

maximum legal rate, whichever is lower, from the due date until payment in full is received;

- (ii) the Seller may cancel the Contract or suspend all further deliveries to the Customer; and
- (iii) the Seller may appropriate any payment made by the Customer to such Products or part thereof as the Seller may deem appropriate (notwithstanding any purported appropriation by the Customer).

4. RISK AND TITLE

- 4.1 Risk of damage to or loss of the Products shall pass to the Customer upon delivery of the Products into the custody of the Customer.
- 4.2 Notwithstanding delivery and the passing of risk in the Products or any other provision of these General Conditions, legal and beneficial title in the Products shall not pass to the Customer until the Seller has received payment in full in cash or cleared funds of all amounts owing to the Seller by the Customer on any account whatever.
- 4.3 Any payments made by the Customer for any Products supplied (whether under this or any other Contract) by the Seller shall, notwithstanding any purported appropriation by the Customer or anything in any demand by the Seller or in any statement of account between the Seller and the Customer, be appropriated first to Products which have at the date of receipt by the Seller of the payment been disposed of by the Customer, and the Seller shall likewise be and remain entitled to appropriate any balance after such appropriation of payments received to such other of the Products supplied by the Seller to the Customer as the Seller shall be in its

absolute discretion decide. All Products shall be deemed to have been supplied by the Seller to the Customer unless the Customer proves otherwise to the reasonable satisfaction of the Seller.

- 4.4 Until title in the Products passes to the Customer, the Seller may at any time require the Customer to deliver up the Products to the Seller or as the Seller may direct and, if the Customer fails to do so forthwith, enter any premises of the Customer or any third party where the Products are stored and repossess the Products.

- 4.5 Until title in the Products pass to the Customer, the Customer shall hold the Products as the Seller's agent and shall keep the Products separate from the property of the Customer and third parties and properly stored, protected and insured and identified as the Seller's property. The Customer may, unless otherwise directed by the Seller, resell or use in the ordinary course of business any Products in which title has not passed, but shall account to the Seller for the proceeds thereof (including insurance proceeds) and shall keep such proceeds separate from any monies or property of the Customer and third parties.

- 4.6 The Customer may not in any way pledge or charge by way of security for any indebtedness any Products in which title has not passed to the Customer and if the Customer does or purports to do so all monies owing by the Customer to the Seller shall (without prejudice to any other rights or remedies of the Seller) become due and payable immediately.

5. LIABILITY

- 5.1 Except as provided in this Clause 5, the Seller shall not be liable for any loss or damage arising from non-delivery or delay, for

whatever reason and whether in respect of the whole or part of the Products and the Customer shall not be entitled to repudiate the Contract for any such delay delivery or non-delivery.

5.2 The Products must be examined on receipt by or on behalf of the Customer. Any loss or damage to the Products must be notified in writing to the Seller within fourteen (14) days of such receipt and any Products which are damaged (including cartons) should be retained for inspection by the Seller. Non-arrival of Products must be notified in writing to the Seller within twenty-eight days after the estimated date of arrival at the port or place of destination.

5.3 Subject to the conditions in Clause 5.2 above being fulfilled by the Customer, the Seller shall replace any Products damaged or lost which are at the risk of the Seller or re-deliver any products not delivered or, at the Seller's option, credit the Customer for the price of Products so damaged or lost or not delivered.

5.4 If any of the Products are defective in manufacture or contained in defective containers, the Seller's liability howsoever arising in respect of, or consequent upon, any such defects shall be limited to the replacement of such defective Products or crediting the Customer with the price thereof as the Seller shall decide. The Products are otherwise sold without any guarantees or representations and all warranties or conditions to the contrary, statutory or otherwise and expressed or implied are expressly excluded.

5.5 Except as provided above, the Seller shall not be liable for any loss or damage of whatever nature and however caused.

6. RESALE BY THE CUSTOMER

6.1 The Products shall not be resold by the Customer except in or from the containers supplied by the Seller and exactly as supplied by the Seller or as otherwise authorized in writing by the Seller.

6.2 The Products are sold on the condition that and the Customer by entering into a Contract undertakes to the Seller that:-

6.2.1 The Products will not at any time subsequent to sale to the Customer become available for purchase as ships or aircraft stores or in any duty free shop or other duty free retail establishment wherever situated.

6.2.2 If this condition is breached, the Seller may without prejudice to any other rights or remedies available to it recover from the Customer damages for any loss or damage to the business of the Seller arising directly or indirectly out of such breach. (For the purpose of this condition, evidence of availability for purchase of a portion only of the Products delivered under the Contract shall (except to the extent to which the Customer shall prove to the contrary) be deemed to be conclusive evidence of availability of all the Products so delivered.

6.3 The Products are sold on the further condition that and the Customer by entering into a Contract undertakes to the Seller that:

6.3.1 The Products will not at any time subsequent to sale to the Customer become the subject of duty evasion.

6.3.2 If at any time the Seller reasonably suspects that the condition in sub-clause

6.3.1 has been, or will be breached, the Seller may at its sole discretion:

- (i) continue to supply the Products but only on a duty paid basis;
- (ii) suspend or cancel in whole or in part further deliveries, without any further liability to the Customer;
- (iii) request, and the Customer shall supply, full details (including name, address, type and quantity of product supplied) of the persons to whom the Products were re-sold; or
- (iv) withdraw credit facilities and, at the Seller's sole discretion, make further supplies on a strict cash with order basis only.

6.4 The Customer shall incorporate the conditions set out in Clauses 6.1 and 6.2 above in all resales of the Products except in the case of retail sales to persons not buying for re-sale and will procure that any person purchasing the Products from the Customer incorporates similar conditions (including this procurement obligation) in all such re-sales and if requested by the Seller will assign the benefit of those conditions to the Seller.

7. INSOLVENCY OF CUSTOMER

If:

7.1 the Customer, whether voluntarily or involuntarily, makes any arrangement with its creditors or becomes subject to an administration or government order or (being an individual or firm) becomes bankrupt or (being a Companies) goes into liquidation or receivership (otherwise than for the purposes of amalgamation or reconstruction) or the

equivalent occurs under any jurisdiction; or

7.2 an encumbrancer takes possession of, or a receiver, trustee or liquidator is appointed over, any of the property or assets of the Customer; or

7.3 the Customer is unable to pay its debts generally as they become due or suspends any payments thereunder or ceases, or threatens to cease, to carry on business; or

7.4 the Seller reasonably considers that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly; then, without prejudice to any other rights or remedies available to the Seller, the Seller shall be entitled to cancel the contract or suspend any further deliveries under the contract without any liability to the Customer and if any Products have been delivered but not paid for, all sums due by the Customer shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

8. FORCE MAJEURE

The Seller shall be under no liability whatsoever for failure to fulfil any order in whole or in part if such failure is due to any cause or event of whatever nature which is beyond the Seller's reasonable control or which makes such fulfilment impossible or illegal.

9. THIRD PARTY RIGHTS

The parties to this Contract do not intend that any term of this Contract should be enforceable by any person who is not a party to this Contract.

10. GOVERNING LAW

10.1 These General Conditions and any Contract of which these General Conditions form part shall be governed by Kenyan law and subject to clause 10.2 the Parties agree to submit to the exclusive jurisdiction of the Kenyan courts provided that the Companies may in its sole and unfettered discretion commence proceedings in any other court.

10.2 Any dispute of difference arising between the Parties hereto concerning this Agreement or the construction, meaning, operation or effect of all or any part thereof that cannot be settled

amicably shall be referred to a single arbitrator to be agreed upon by the Parties hereto, or failing such agreement the arbitrator shall be appointed by the Chairman for the time being of the Kenyan branch of the Chartered Institute of Arbitrators. The award or finding of any such arbitrator shall be final and binding on the Parties hereto, and the hearing of the arbitration shall be final and binding on the Parties thereto, and the hearing of the arbitration shall take place in Nairobi.