

- 1. Interpretation**
- 1.1 In these Terms and Conditions the following expressions have the following meanings:
- “Business Day”** means any day other than a Saturday, Sunday or bank holiday in England where banks in London are generally open for business;
- “Buyer”** means the person whose Order for the Goods is accepted by the Seller;
- “Contract”** means the contract for the purchase and sale of the Goods established between the Seller and the Buyer in accordance with these Terms and Conditions;
- “Contract Price”** means the price stated in the Invoice that shall be payable by the Buyer in consideration for the Goods;
- “Goods”** means the goods (including any instalment of the goods or any parts for them) which the Seller agrees to supply in accordance with the Contract;
- “Invoice”** means the invoice issued to the Buyer by the Seller upon receipt of an Order in respect of the Goods;
- “Order”** means the order placed for the Goods by the Buyer via e-mail, telephone or any other method;
- “Seller”** means Conker Spirit Limited, a company registered in England under number 08909751 with its registered office at c/o Lacey Solicitors, 5 Poole Road, Bournemouth BH2 5QL.
- 1.2 Unless the context otherwise requires, each reference in these Terms and Conditions to a statute or a provision of a statute is a reference to that statute or provision as amended or re-enacted at the relevant time. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- 1.3 The headings used in these Terms and Conditions are for convenience only and shall have no effect upon the interpretation of these Terms and Conditions.
- 1.4 A reference to writing or written includes emails but not faxes.
- 2. Basis of Sale**
- 2.1 The Buyer shall be deemed to accept these Terms and Conditions by placing an Order, paying the Contract Price for an Order or by confirming acceptance of these Terms and Conditions in writing (whichever occurs first after the Terms and Conditions are supplied to the Buyer). These Terms and Conditions shall continue to bind the parties in respect of each and every Order then placed by the Buyer unless and until they are amended in accordance with Clause 2.4.
- 2.2 These Terms and Conditions apply to the Contract to the exclusion of any other terms that the Buyer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.3 The Order constitutes an offer by the Buyer to purchase the Goods in accordance with these Terms and Conditions. The Order shall only be deemed to be accepted when the Seller issues a written acceptance of the Order, at which point the Contract shall come into existence.
- 2.4 No variation to the Contract shall be binding unless agreed in writing between the authorised representatives of the Buyer and the Seller.
- 2.5 The Buyer warrants and undertakes that:
- 2.5.1 it is purchasing the Goods in the course of its trade, business or profession;
- 2.5.2 to the extent necessary, it is fully compliant with the provisions of legislation relating to licensing and the purchasing, sale and/or supply of alcoholic beverages; and
- 2.5.3 where the Buyer is an individual, he/she is at least age 18 years of age.
- 3. Goods**
- 3.1 The specification for the Goods shall be that set out in the Seller's sales documentation unless varied expressly in the Seller's acceptance of the Order. The Goods will only be supplied in the minimum units stated in the Seller's price list or in multiples of those units. Orders received for quantities other than these will be adjusted accordingly.
- 3.2 Illustrations, photographs and descriptions whether in catalogues, price lists, on the Seller's website or elsewhere are intended as a guide only and shall not be binding on the Seller.
- 3.3 No assurance, promise or representation provided by any of the Seller's agents, contractors, employees or representatives concerning the Goods shall be binding on the Seller unless expressly confirmed by an authorised representative of the Seller in writing.
- 3.4 The Seller reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable safety or other statutory or regulatory requirement.
- 3.5 No Order which has been accepted by the Seller may be amended or cancelled by the Buyer without the prior agreement in writing of the Seller. If the Seller agrees to cancel an Order then the Buyer shall be liable for and shall pay on demand all costs (including but not limited to the cost of all labour and materials used) and expenses incurred by the Seller as a result of such cancellation.
- 4. Price**
- 4.1 The Contract Price of the Goods shall be the price listed in the Seller's price list current at the date of acceptance of the Order or such other price as may be agreed in writing by the Seller and the Buyer. Where the Seller has quoted a price for the Goods other than in accordance with the Seller's published price list, the price quoted shall be valid for 30 days or such lesser time as the Seller may specify.
- 4.2 The Seller reserves the right, by giving written notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Seller which is due to: (a) any factor beyond the reasonable control of the Seller; (b) any change in delivery dates, quantities or specifications for the Goods which are requested by the Buyer and agreed to by the Seller; and/or (c) any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.
- 4.3 Except as otherwise stated under the terms of any Invoice or in any price list of the Seller, and unless otherwise agreed in writing between the Buyer and the Seller, all prices are inclusive of the Seller's charges for packaging and transport.
- 4.4 The Contract Price is exclusive of any applicable value added tax, excise, sales taxes or levies of a similar nature, which the Buyer shall be additionally liable to pay to the Seller.
- 5. Payment**
- 5.1 The Buyer shall pay the Contract Price as set out in the Invoice by the date set out in the Invoice. All payments shall be made to the Seller as indicated in the Invoice. Time for payment is of the essence.
- 5.2 The Seller reserves the right to change its payment terms from one Order to the next, and in particular may at any time request that the Buyer pays the Contract Price in full before the Seller delivers the Goods set out any future Order if at any time the Seller believes that the Buyer may be unable to or may not pay the Contract Price when the same falls due.
- 5.3 The Buyer shall pay all amounts due under the Contract in full and cleared funds without any set-off, deduction or withholding (unless required by law). The Seller may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Buyer against any amount payable by the Seller to the Buyer.
- 5.4 If the Buyer fails to make any payment due to the Seller under the Contract by the due date, then (without prejudice to the Seller's other rights and remedies) the Seller may:
- 5.4.1 cancel or suspend any further deliveries of the Goods to the Buyer without liability; and/or
- 5.4.2 charge the Buyer interest on the overdue amount at the rate of 4% per annum above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment.
- 6. Delivery**
- 6.1 Either: (a) the Seller shall deliver the Goods to the location agreed between the parties; or (b) the Buyer shall collect the Goods at the Seller's premises within 5 Business Days of the Seller notifying the Buyer that the Goods are ready for collection, as shall be agreed between the parties and confirmed in writing by the Seller.
- 6.2 Where the Seller is to deliver the Goods, delivery shall be deemed to take place once the Goods have been unloaded at the agreed delivery location. Where the Buyer is to collect the Goods, delivery shall be deemed to take place once the Goods have been loaded at the Seller's premises.
- 6.3 Any delivery date agreed to by the Seller is approximate only and time for delivery shall not be of the essence. The Goods may be delivered by the Seller in advance of the delivery date upon giving reasonable notice to the Buyer. The Seller shall not be liable for any delay in the delivery of or failure to provide the Goods that is caused by the Buyer's failure to provide or delay in providing the Seller with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 6.4 The Seller may deliver the Goods by instalments, which shall be invoiced and paid for separately. Any delay in delivery or defect in an instalment shall not entitle the Buyer to cancel any other instalment.
- 6.5 If the Buyer fails to accept delivery or collect the Goods (as applicable) or any part of them by the agreed date, the Seller shall be entitled to the Buyer to store the Goods and then notwithstanding the provisions of Clause 7.1, risk in the Goods shall pass to the Buyer and the Seller shall be entitled to charge the Buyer for all costs and expenses including storage and insurance charges arising from such failure. If the Buyer fails to take delivery or collect the Goods within the 10 Business Days following the due date for collection or delivery (as applicable), the Seller may resell or otherwise dispose of part or all of the Goods.
- 6.6 If the Seller fails to deliver the Goods within 10 Business Days of the agreed date for delivery or collection (as applicable), its liability shall be limited to the costs and expenses incurred by the Buyer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods.
- 6.7 the Buyer shall examine the Goods on collection or delivery (as applicable) and notify the Seller of any shortages or defects. The Seller shall make good any shortage in the Goods as soon as it is reasonable to do so after being notified of the same, but otherwise shall be under no liability whatsoever arising from such shortage.
- 7. Risk and Retention of Title**
- 7.1 Risk of damage to or loss of the Goods shall pass to the Buyer:
- 7.1.1 in the case of Goods to be delivered to the Buyer at the Seller's premises, at the time when the Seller notifies the Buyer that the Goods are available for collection; or
- 7.1.2 in the case of Goods to be delivered to the Buyer otherwise than at the Seller's premises, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Seller has tendered delivery of the Goods.
- 7.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Terms and Conditions, legal and beneficial title of the Goods shall not pass to the Buyer until the Seller has received payment for the Goods in full and cleared funds.
- 7.3 If delivery of the Goods takes place prior to the Buyer paying for the Goods, the Buyer shall be in possession of the Goods as bailee for the Seller until title in the Goods passes to the Buyer, and shall: (a) store the Goods separately and in an appropriate environment; (b) ensure that they are identifiable as being supplied by the Seller and (c) insure the Goods against all reasonable risks. The Buyer shall not be prevented from selling the Goods during the ordinary course of its business.
- 7.4 If the Buyer becomes subject to any of the events listed in Clause 7.5 before title to the Goods passes to it then, without limiting any other right or remedy the Seller may have:
- 7.4.1 the Buyer's right to resell the Goods or use them in the ordinary course of its business ceases immediately; and
- 7.4.2 the Seller may at any time require the Buyer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product and if the Buyer fails to do so promptly, enter any premises of the Buyer or of any third party where the Goods are stored in order to recover them.
- 7.5 The Seller's right to repossession of the Goods shall come into force if any of the following occur prior to title in the Goods passing to the Buyer:
- 7.5.1 the Buyer fails to pay for any Goods provided to it by the Seller by the due date;
- 7.5.2 the Buyer enters into a voluntary arrangement under Parts I or VIII of the Insolvency Act 1986, the Insolvent Partnerships Order 1994 (as amended), or any other scheme or arrangement is made with his creditors;
- 7.5.3 the Buyer is or becomes the subject of a bankruptcy order or takes advantage of any other statutory provision for the relief of insolvent debtors;
- 7.5.4 the Buyer convenes any meeting of its creditors, enters into voluntary or compulsory liquidation, has a receiver, administrator or administrative receiver appointed in respect of its assets or undertaking or any part thereof, any documents are filed with the court for the appointment of an administrator in respect of the Buyer, notice of intention to appoint an administrator is given by the Buyer, a resolution is passed or petition presented to any court for the winding up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer.
- 8. Quality**
- 8.1 The Seller warrants that on delivery, and for a period of 3 months from the date of delivery (**warranty period**), the Goods shall:
- 8.1.1 conform in all material respects with their description;
- 8.1.2 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and
- 8.1.3 be fit for any purpose expressly held out by the Seller in writing.
- 8.2 Subject to Clause 8.3, if:
- 8.2.1 the Buyer gives written notice to the Seller within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in Clause 8.1;
- 8.2.2 the Seller is given a reasonable opportunity of examining such Goods;
- 8.2.3 the Buyer (if asked by the Seller) returns such Goods to the Seller's place of business; and
- 8.2.4 the Seller determines that the Goods do not comply with the warranty set out in Clause 8.1;
- then the Seller shall, at its option, replace any Goods or refund the price of such Goods.
- 8.3 The Seller shall not be liable for the Goods' failure to comply with the warranty set out in Clause 8.1 in any of the following events:
- 8.3.1 the Buyer makes any further use of or sells such Goods after becoming aware of the defect;
- 8.3.2 the Buyer alters such Goods without the written consent of the Seller;
- 8.3.3 the defect arises because the Buyer failed to follow the Seller's instructions as to the storage, use and maintenance of the Goods or (if there are none) good trade practice regarding the same; or
- 8.3.4 the defect arises as a result of willful damage, negligence, or abnormal storage or working conditions.
- 8.4 Except as provided in this Clause 8, the Seller shall have no liability to the Buyer in respect of the Goods' failure to comply with the warranty set out in Clause 8.1.
- 8.5 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.
- 8.6 These Terms and Conditions shall apply to any replacement Goods supplied by the Seller.
- 9. Termination**
- 9.1 If:
- 9.1.1 any of the events set out in Clause 7.5 occur; and/or
- 9.1.2 the Buyer breaches its obligations under the Contract and (if such breach is capable of being remedied) fails to remedy the same within 10 Business Days of being notified of the breach in writing by the Seller;
- then, without prejudice to any other right or remedy 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 Buyer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.
- 9.2 Termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract that existed at or before the date of termination. Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.
- 10. Limitation of Liability**
- 10.1 Nothing in these Terms and Conditions shall limit or exclude the Seller's liability for:
- 10.1.1 death or personal injury caused by its negligence;
- 10.1.2 fraud or fraudulent misrepresentation; or
- 10.1.3 any matter in respect of which it would be unlawful for the Seller to exclude or restrict liability.
- 10.2 Subject to Clause 10.1:
- 10.2.1 the Seller shall under no circumstances whatsoever be liable to the Buyer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, anticipated savings, business opportunity, revenue or goodwill or any indirect or consequential loss arising under or in connection with the Contract; and
- 10.2.2 the Seller's total liability to the Buyer 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 110% of the price of the relevant Goods.
- 11. Confidentiality, Publications and Endorsements**
- 11.1 The Buyer will regard as confidential the Contract and all information obtained by the Buyer relating to the business and/or products of the Seller and will not use or disclose to any third party such information without the Seller's prior written consent provided that this undertaking shall not apply to: (a) information which is in the public domain other than by reason of the Buyer's default; and/or (b) information that the Buyer is required to disclose by law.
- 11.2 The Buyer will not use, authorise or permit any other person to use any name, trademark, house mark, emblem or symbol which the Seller provides to the Buyer upon any premises, advertisement or printed matter or in any other manner whatsoever unless such use shall have been previously authorised in writing by the Seller and (where appropriate) its licensor.
- 11.3 The Buyer will use its reasonable endeavours to ensure compliance with this Clause 11 by its employees, servants and agents.
- 12. Communications**
- 12.1 Any notice given to a party under or in connection with the Contract shall be in writing, addressed to that party at such address as that party may have specified to the other party in writing (or, if none is given, their registered office address), and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier or email.
- 12.2 A notice shall be deemed to have been received: if delivered personally, when left at the address referred to in Clause 12.1; if sent by pre-paid first class post or other next working day delivery service, at 9:00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by email, one Business Day after transmission.
- 12.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.
- 13. Force Majeure**
- Neither party shall be liable for any failure or delay in performing their obligations where such failure or delay results from any cause that is beyond the reasonable control of that party. Such causes include, but are not limited to: power failure, Internet Service Provider failure, industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action or any other event that is beyond the control of the party in question. The Seller shall be entitled to terminate the Contract on written notice to the Buyer if such an event continues for more than 30 days.
- 14. Miscellaneous Terms**
- 14.1 The parties agree that no failure by either party to enforce the performance of any provision in the Contract shall constitute a waiver of the right to subsequently enforce that provision or any other provision. Such failure shall not be deemed to be a waiver of any preceding or subsequent breach and shall not constitute a continuing waiver.
- 14.2 The parties agree that, in the event that one or more of the provisions or part-provisions of the Contract are found to be unlawful, invalid or otherwise unenforceable, that / those provisions shall be deemed severed from the remainder of the Contract. The remainder of the Contract shall be valid and enforceable.
- 14.3 The Seller may assign the Contract or any part of it to any person, firm or company without the prior consent of the Buyer.
- 14.4 The Buyer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Seller.
- 14.5 A person who is not a party to the Contract shall have no rights under the Contract pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 14.6 The Contract and any dispute or claim relating to it (including any non-contractual matters and obligations arising therefrom or associated therewith) shall be governed by, and construed in accordance with, the laws of England and Wales.
- 14.7 Any dispute, controversy, proceedings or claim between the parties relating to the Contract (including any non-contractual matters and obligations arising therefrom or associated therewith) shall fall within the jurisdiction of the courts of England and Wales.