

1 INTERPRETATION

1.1 Definitions

'Business Day' a day other than a Saturday, Sunday or public bank holiday in England, when banks in London are open for business.

'Business Hours' the period of 9:00 am to 5:00 pm on any Business Day.

'Customer' the person or company who purchases the Goods from the Company.

'Company' John E Fells & Sons Limited, of Fells House, Station Road, Kings Langley, Hertfordshire, England, WD4 8LH (registered in England and Wales with Fells number 00167004) which also trades as The Premium Agency Partnership, The Gift Portfolio, Fells and Vintage Marque.

'Contract' the Contract between the Company and the Customer for the sale and purchase of the Goods in accordance with these Terms and Conditions.

'Goods' the Goods (or any part of them) set out in any order accepted by the Company.

'Group Company' in relation to a body corporate, means the body corporate, any other body corporate which is its holding company or subsidiary and any other body corporate which is a subsidiary of that holding company.

'London On-Trade' premises licensed to sell alcoholic beverages for consumption on the premises within [the M25].

1.2 Interpretation:

1.2.1 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.2.2 A reference to a party includes its personal representatives, successors and permitted assigns.

1.2.3 A reference to legislation or a legislative provision is a reference to it as amended or re-enacted and includes all subordinate legislation made under that legislation or legislative provision.

1.2.4 A reference to a party includes its personal representatives, successors and permitted assigns.

1.2.5 A reference to writing or written excludes fax but not email.

2 GENERAL

2.1 These Terms and Conditions shall apply to all sales made by the Company to a Customer. An order made by a Customer constitutes an offer by the Customer to purchase the Goods in accordance with these Terms and Conditions. The Customer must ensure that the order and any applicable specification are complete and accurate. The order shall only be deemed to be accepted when the Company issues a written acceptance of the order, at which point and on which date the Contract shall come into existence (the **'Order Acknowledgment'**). By placing an order, the Customer agrees to these Terms and Conditions.

2.2 All other conditions, guarantees, warranties, terms, undertakings, representations and any

terms provided by the Customer or stated on any order or other document (express or implied) are hereby expressly excluded unless previously agreed in writing by a director of the Company. In the event of any conflict or inconsistency between these Terms and Conditions and any other Terms or Conditions of any invitation to treat, order or acceptance, then these Terms and Conditions shall prevail.

- 2.3** The Company reserves the right to amend these Terms and Conditions if required by any applicable law or regulatory requirement, and shall notify the Customer in writing in any such event.

3 GOODS

- 3.1** The Goods are described on our website and in brochures.

4 QUALITY

- 4.1** All Goods supplied are warranted on delivery to the Customer to be of the nature, substance and quality invoiced and to conform in all respects with all appropriate statutory requirements.

5 PRICE & PAYMENT

- 5.1** Orders are subject to availability of stock and the price of the Goods shall be set out in the Order Acknowledgment. The Company may, by giving notice in writing to the Customer at any time up to Two Business Days before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:

- 5.1.1** any factor beyond the Company's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- 5.1.2** any request by the Customer to change the delivery date(s), quantities or types of Goods ordered; or
- 5.1.3** any delay caused by any instructions of the Customer or failure of the Customer to give or delay by the Customer in giving the Company adequate or accurate information or instructions.

- 5.2** The price of the Goods:

- 5.2.1** excludes amounts in respect of value added tax ('VAT'), which the Customer shall additionally be liable to pay to the Company at the prevailing rate; and
- 5.2.2** includes standard packaging, insurance and transport costs, save where additional delivery or related charges are payable pursuant to clause 6.

- 5.3** The currency of the Goods:

- 5.3.1** The Customer shall pay for the Goods in the currency set out in the order acknowledgment.

- 5.4** The Customer shall pay each invoice submitted by the Company:

- 5.4.1** the last day of the following month unless expressly agreed otherwise by a director of the Company in writing, subject to the Customer having an approved credit account; and

5.4.2 if the Customer does not have an approved credit account with the Company, payment should be paid in full for Goods prior to delivery to the Customer.

5.5 Time for payment shall be of the essence of the Contract.

5.6 If the Customer fails to make a payment due to the Company under the Contract by the due date, then without limiting the Company's remedies, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause will accrue each day at 7% a year above the Bank of England's base rate from time to time, but at 7% a year for any period when that base rate is below 0%.

5.7 All due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

5.8 If the Customer fails to make payment of any one invoice that has fallen due for payment, then all other unpaid amounts shall become due immediately and in this event the Company shall have the right to withdraw from any further delivery obligations without notice to the Customer and the Company may claim compensation for any and all damage caused thereby.

6 DELIVERY

6.1 The Company shall deliver the Goods to the location set out in the Order Acknowledgement ('**Delivery Location**') at any time after the Company notifies the Customer that the Goods are ready.

6.2 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The Company shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Company with adequate delivery instructions or any other information that are relevant to the supply of the Goods.

6.3 Upon delivery the Customer must examine all Goods and must sign the delivery note clearly with their signature and full name in capital letters to acknowledge receipt and acceptance of delivery. Any incorrect deliveries or damage should be detailed at the time of signing.

6.4 Delivery provisions:

6.4.1 all orders under £300.00 (exclusive of VAT) there is a £15.00 (exclusive of VAT) delivery charge;

6.4.2 Customers within the London On-Trade there is a minimum order of 5 cases / 30 bottles per order;

6.4.3 Next day delivery on orders outside of the M25, orders must be received by the Company's Customer Service Team by 12:00 pm; and

6.4.4 Next day delivery on orders within the M25, orders must be received by the Company's Customer Service Team by 2:30 pm.

6.4.5 Next day delivery is not guaranteed.

6.4.6 Precise post-code specific order deadline information is available on request.

6.4.7 Where delivery to a non-business address (personal address) or directly to a non-customer address (direct-delivery) is agreed, the customer remains liable for failed delivery and re-delivery charges.

6.5 If the Company 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.

7 RETENTION OF TITLE

7.1 Title to the Goods shall not pass to the Customer until the Company receives payment in full (in cash or cleared funds) for the Goods, and any other Goods that the Company has supplied to the Customer, in which case title to the Goods shall pass at the time of payment of all such sums.

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

7.2.1 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Company's property;

7.2.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

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

7.2.4 notify the Company immediately if it becomes subject to any of the events listed in clause 10.1.2 to clause 10.1.4; and

7.2.5 give the Company such information as the Company may reasonably require from time to time relating to:

7.2.5.1 the Goods; and

7.2.5.2 the Customer's ongoing financial position.

7.3 Subject to clause 7.5, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Company receives payment for the Goods. However, if the Customer resells the Goods before that time:

7.3.1 it does so as principal and not as the Company's agent;

7.3.2 title to the Goods shall pass from the Company to the Customer immediately before the time at which resale by the Customer occurs; and

7.3.3 a sale of the Goods shall not be made by the Customer to a Group Company unless agreed, prior, in writing by the Company.

7.4 At any time before title to the Goods passes to the Customer, the Company may:

7.4.1 by notice in writing to the Customer, terminate the Customer's right under clause 6.4 to resell the Goods or use them in the ordinary course of its business; and

7.4.2 require the Customer to deliver up all Goods in its possession and control that have not been resold or irrevocably incorporated into another product, 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, to recover them. The Customer shall procure entry to any such third party's premises if requested to do so by the Company.

7.5 If the Customer defaults on payment of any sums due to the Company may revoke the

Customer's power of sale in respect of the Goods. If an Administrative Receiver is appointed or the Customer goes into liquidation or initiates any meeting or arrangement with its creditors to deal with financial difficulties any power of sale it has on the Goods shall automatically cease.

7.6 Any payments made by the Customer for any Goods supplied by the Company shall, notwithstanding any purported appropriation by the Customer or anything and any demand by the Company or in any Statement of Account between the Company and the Customer or any other matter or thing whatsoever, be appropriated first to Goods which have at the date of receipt by the Company of the payment been disposed of by the Customer, and the Company shall likewise be and remain entitled to appropriate any balance after such appropriation of payments received, to such other of any Goods supplied by it to the Customer as it shall in its absolute discretion decide.

8 RISK

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

9 LIMITATION OF LIABILITY

9.1 Nothing in the Contract limits any liability which cannot legally be limited, including liability for death or personal injury caused by negligence, fraud or fraudulent misrepresentation and breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

9.2 Subject to clause 9.1, the Company shall have no liability with respect to any loss of profits or anticipated profits, loss of sales or business or business interruption, loss of agreements or contracts, loss of anticipated savings, loss of use or corruption of software, data or information, loss of or damage to goodwill or reputation, management or staff time, wasted expenditure, loss of operation time, or indirect or consequential loss, howsoever arising.

9.3 Subject to clauses 9.1 and 9.2, the Company's total liability to the Customer arising under or in connection with this Contract or otherwise, including liability in contract, tort (including negligence), breach of statutory duty, misrepresentation, restitution or otherwise, shall not exceed the price of the Goods.

9.4 This clause 9 shall survive termination of the Contract.

10 TERMINATION

10.1 Without limiting its other rights or remedies, the Company may terminate the Contract with immediate effect by giving written notice to the Customer if:

10.1.1 the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 5 business Days of it being notified in writing to do so;

10.1.2 the Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

10.1.3 the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or

10.1.4 the Customer's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.

- 10.2** Without limiting its other rights or remedies, the Company may suspend supply of the Goods under the Contract or any other contract between the Customer and the Company if the Customer becomes subject to any of the events listed in clause 10.1.2 to clause 10.1.4, or the Company reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 10.3** Without limiting its other rights or remedies, the Company may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.
- 10.4** On termination of the Contract for any reason the Customer shall immediately pay to the Company all of the Company's unpaid invoices and interest and, in respect of Goods supplied but for which no invoice has been submitted, the Company shall submit an invoice, which the Customer shall pay immediately on receipt.
- 10.5** Termination of the Contract, however arising, 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 the Contract which existed at or before the date of termination.
- 10.6** Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect.

11 FORCE MAJEURE

- 11.1** If the Company is prevented, whether directly or indirectly, from delivering the Goods or performing or completing any of its obligations by reason of Acts of God, war, fire, explosion, breakdowns, interruptions of transport, Government or Administrative Action, delays in delivery to the Company of any goods, trade disputes or other Industrial Action, whether official or unofficial, or any cause whatsoever outside its control, the Company shall be under no liability whatsoever to the Customer and shall be entitled to cancel the Contract or extend the time of its performance by a period equivalent to that during which performance by the Company has been prevented by the circumstances referred to or such other period as may be reasonable.

12 NOTICES

- 12.1** Any notice or other communication required to be given under these Terms and Conditions shall be:
- 12.1.1** delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
 - 12.1.2** sent by email to the following addresses (or an address substituted in writing by the party to be served):
 - 12.1.2.1** The Company: info@fells.co.uk
 - 12.1.2.2** The Customer: the email address used to make the order.
- 12.2** Any notice shall be deemed to have been received:
- 12.2.1** if delivered by hand, at the time the notice is left at the proper address; or
 - 12.2.2** 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; or

12.2.3 if sent by email, at the time of transmission, or, if this time falls outside Business Hours in the place of receipt, when Business Hours resume.

12.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

13 CONFIDENTIALITY

13.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, assets, affairs, customers, clients or suppliers of the other party, except as permitted by clause 13.2.

13.2 Each party may disclose the other party's confidential information;

13.2.1 to its employees, officers, representatives, contractors or subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Contract;

13.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

13.3 Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information pursuant to this clause 13.2.1, comply with this clause 12.

14 ASSIGNMENT

14.1 The Company may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract, provided that it gives prior written notice of such dealing to the Customer.

14.2 The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract.

15 WAIVER

15.1 A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.

15.2 A delay or failure to exercise, or the single or partial exercise of, any right or remedy does not waive that or any other right or remedy, nor does it prevent or restrict the further exercise of that or any other right or remedy.

16 SEVERANCE

16.1 If any one of these Terms and Conditions becomes invalid, illegal or unenforceable then that part shall be severable from these Terms and Conditions and they shall otherwise remain in full force and effect. If any provision or part-provision of the Contract is severable under this clause 16.1, the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

17 THIRD PARTY RIGHTS

17.1 The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

18 GOVERNING LAW

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

19 JURISDICTION

19.1 These Terms and Conditions shall be construed and governed in all respects by English law and the Customer and the Company shall submit to the Jurisdiction of the English Court.