

**A.G. BARR p.l.c.**  
**TERMS OF SALE FOR EXPORTED GOODS**

**1. DEFINITIONS AND INTERPRETATION**

- (a) **Company** means A.G. BARR p.l.c. (Company No. SC005653) having its registered office at Westfield House, 4 Mollins Road, Cumbernauld G68 9HD.
- (b) **Contract** means a contract for the supply of Products, formed by the Company's acceptance of the Customer's order and subject always to these Terms.
- (c) **Customer** means the person, firm or company to whom Products are sold or supplied by the Company.
- (d) **Products** means soft drink products (or products used in the manufacture of soft drinks) sold or supplied by the Company to the Customer.
- (e) **Terms** means these Terms of sale which will apply to every Contract.
- (f) Condition headings will not affect the interpretation of these Terms.

**2. FORMATION OF CONTRACT**

- (a) The Company will supply Products to the Customer solely on these Terms to the exclusion of any other Terms. The placing of an order for, or the acceptance of, the Products by the Customer will indicate unqualified acceptance of these Terms.
- (b) Any purported variation of these Terms will have no effect unless expressly agreed in writing and signed by an authorised signatory of the Company.

**3. ORDERS**

- (a) All Products are sold subject to availability.
- (b) Products are not sold on a sale or return or exchange basis.
- (c) Orders must be in writing and will be for the minimum order quantity as determined by the Company from time to time.
- (d) No order which has been accepted by the Company may be cancelled or suspended by the Customer save upon terms expressly agreed by the Company in writing.

**4. PRICES**

- (a) Unless otherwise agreed by the Company in writing, the price for the Products will be the prices prevailing on the date of order. The price for the Products will constitute the Company's confidential information for the purposes of Condition 15.
- (b) Prior to acceptance of an order by the Company, prices may be altered without notice to reflect changes beyond the Company's control.
- (c) Prices are quoted exclusive of any value added tax and any other government taxes, charges or duties which, if applicable, will be paid by the Customer.

**5. DELIVERY**

- (a) Delivery will take place in accordance with the delivery terms quoted by the Company and as defined in the latest version of Incoterms.
- (b) Any and all delivery dates provided are estimates only and the Company will not be liable to the Customer for any loss, damage, costs, charges or expenses (whether direct, indirect or consequential), arising out of or in connection with any delay in the delivery of the Products.
- (c) The Company reserves the right, at its discretion, to deliver any order in instalments.
- (d) Without prejudice to any other rights or remedies available to the Company, any failure by the Customer to take delivery of the Products will entitle the Company, at its discretion, to store the Products at the risk and expense of the Customer and the Customer will pay for all associated costs including, but not limited to, any associated demurrage charges.

**6. ACCEPTANCE**

- (a) The Products will be deemed to have been delivered and accepted in good condition unless notified to the Company in writing within two days of the delivery date.
- (b) The Customer will inspect the Products on delivery. No claim for damage, shortage, or defective Product will be considered by the Company unless the Company receives written notice within two days of the delivery date. Alleged defective Products will be retained by the Customer without cost to the Company, and the Customer will allow the Company to inspect such Products and take samples for examination.
- (c) The Company will only be liable for defective Products where the Products are proven to be defective through manufacture. Such Products will only be deemed to be defective if similar damage can be shown in relation to retained samples by the Company from the same production batch.
- (d) Subject to the limitations set out in Condition 11, where a valid claim in respect of any defective Product is notified to the Company in accordance with these Terms, the Company's liability will be limited to replacing the relevant Products or, at the Company's sole discretion, refunding to the Customer the price (or a proportionate part of the price) of such defective Products.
- (e) The Customer accepts that soft drinks and syrups are fragile commodities and can be damaged in transit if not properly handled. The Company cannot guarantee against damage or "leakers" which may occur in transit or due to climatic changes between place of despatch and final destination. The Customer accepts the risks in handling and storing the Products and, in particular, the potential flavour loss or damage through leakage resulting from, but not limited to, (i) the temperature to which the Products are exposed being below 3°C or above 20°C, (ii) can corrosion through contact with contaminants, including other leaking containers, especially when coupled with high temperature or moisture content, (iii) storage conditions where condensation can occur, and (iv) dropped or badly handled soft drinks or syrup containers.
- (f) No deduction may be made by the Customer against any invoice in the event of a dispute arising over alleged damage, shortage or defective Product, except on specific written authority from the Company.

**7. RISK**

- (a) The risk of loss or damage to the Products will pass to the Customer in accordance with the delivery terms quoted by the Company and as defined in the latest version of Incoterms.
- (b) Where agreed between the parties, the Company will arrange for insurance of the products on the basis of an insurance policy whose terms are in accordance with the minimum cover of the Institute Cargo Clauses (Institute of London Underwriters) as amended from time to time.
- (c) In the event of a claim or potential claim for loss or damage, it is the responsibility of the Customer to complete all necessary paperwork and to comply with any required insurance procedures. Where necessary, the Company will pursue the claim as far as possible on the Customer's behalf, but the Company will not be held liable for any unsuccessful claim.

## 8. PAYMENT

- (a) Payment for the Products will be by cash in advance or as otherwise agreed in writing (to include email) between the parties.
- (b) Payment for Products supplied will be received by the Company in full by such date as agreed in writing with the Company. Time for payment will be of the essence of the Contract.
- (c) The Customer will make all payments due in respect of the Products without any deduction by way of set-off, counterclaim or otherwise.
- (d) The Company reserves the right to charge compound interest on overdue sums at the rate of 8% per annum above the current Bank of England base rate from the due date until payment is made in full, plus any costs incurred in the recovery of overdue sums.
- (e) The Company reserves the right to charge £20 (plus VAT) on every occasion the Customer "bounces" a cheque or direct debit and the Customer will indemnify the Company fully against all fees, costs and expenses incurred in seeking to recover sums payable by the Customer.
- (f) The Company may suspend delivery of further Products until all outstanding amounts have been received by the Company from the Customer.
- (g) All payments payable to the Company under the Contract will become due immediately upon termination of the Contract notwithstanding any other provision.
- (h) If any sum on the Customer's account is disputed, the Customer will not withhold payment of the remainder of the account.

## 9. TITLE

- (a) Notwithstanding the passing of risk in the Products in accordance with Condition 7, title to such Products will remain with the Company until all sums due in respect of the Products (together with all other sums which are or which become due to the Company from the Customer on any account) have been received in full by the Company and, until such payment, the Customer will hold the Products to the Company's order at the Customer's expense and will insure and protect the Products and will store the Products separately so as to be identifiable as the property of the Company.
- (b) Until title in the Products passes to the Customer, it may use or resell the Products in the ordinary course of business provided always that the Customer will hold in trust and pay to the Company on demand the proceeds of any such sale to the extent that any monies are owed by the Customer to the Company on any account. The Customer will not be the agent of the Company in relation to any resale.
- (c) If the Customer fails to make any payment to the Company when due, calls a meeting of or makes arrangements or compositions with creditors, enters into voluntary or compulsory liquidation, has an administrator or administrative receiver or receiver appointed over all or part of its assets, takes or suffers any similar action in consequence of debt, becomes insolvent or if the Company has reasonable cause to believe that any of these events is likely to occur, the Company will have the right, without prejudice to any other rights or remedies, to:-
  - (i) without prior notice, enter any premises where Products owned by it may be and remove such Products;
  - (ii) require the Customer not to resell any Products until the Customer has paid in full all sums owed by it to the Company under any Contract;
  - (iii) withhold delivery of any undelivered Products; and/or
  - (iv) terminate any Contract made under the Terms.
- (d) All containers, cases and returnable bottles ("**Containers**") supplied under the Terms will at all times remain the exclusive property of the Company. The Customer will return all Containers to the Company and will not transfer, sell or otherwise dispose of the same. The Customer is responsible for loss or damage to Containers from the point of delivery until they are collected by the Company or its agent and will take out adequate insurance to cover such loss or damage. Certain Containers carry a deposit charge which will be refunded on their return in good condition.

## 10. CUSTOMER'S OBLIGATIONS

- (a) The Customer will not represent itself as a partner, agent or representative of the Company for any purpose, nor will it pledge the Company's credit, give any condition, warranty or make any representation on the Company's behalf nor commit the Company to any contract.
- (b) The Customer will:
  - (i) use all reasonable endeavours to promote the distribution and sale of the Products in the country in which it sells the Products; and
  - (ii) inform the Company immediately of any changes in ownership or control of the Customer and of any change in its organisation.

## 11. LIABILITY

- (a) Except as expressly provided in these Terms, all warranties and conditions express or implied, statutory or otherwise, are hereby expressly excluded to the fullest extent permitted by law.
- (b) Subject to the foregoing, the Company's total liability whether in contract, tort, delict or otherwise, arising in connection with the performance or contemplated performance of any Contract will be limited in aggregate to all sums paid by the Customer to the Company under such Contract and the Company will not in any circumstances be liable for any indirect or consequential loss or damage, or for any loss of anticipated profit, loss of business, depletion of goodwill, third party

claims or costs or expenses (in each case, whether direct or indirect) howsoever caused, arising out of or in connection with any Contract or these Terms.

- (c) The Company will not be liable for any loss, damage, claim, cost or expense (whether direct or indirect) arising from the Customer's failure to comply with the Company's instructions or applicable laws and regulations relating to the keeping, handling, use and storage of the Products or from any error in or absence of bar-code printing on the Products or their packaging.
- (d) Nothing in these Terms excludes or limits the liability of the Company for death or personal injury caused by the Company's negligence or fraudulent misrepresentation or any other liability that may not be excluded or limited as a matter of law.
- (e) The Customer will indemnify the Company from and against any and all costs, liabilities, damages, expenses which the Company may suffer and from any claims, actions or proceedings instituted by third parties of whatever nature arising as a result of a breach of Contract by the Customer or by the Customer's negligent performance of the Contract.

## 12. INTELLECTUAL PROPERTY

- (a) The Customer acknowledges and accepts that the Company is the sole owner or licensee of the trade marks, logos, copyright and all other intellectual property rights (whether registered or unregistered) which subsist in the Products (the **Intellectual Property Rights**).
- (b) The Customer undertakes that it will not take any action that might cause the Company, Products or Intellectual Property Rights to be brought into dispute.
- (c) The Customer agrees not to register (or attempt to register) any trade mark, logo or domain name in respect of the Products or any trade mark, logo or domain name which might infringe any of the Company's intellectual property rights. The Customer will notify the Company immediately if it becomes aware that a third party is infringing the Company's intellectual property rights.
- (d) The Company hereby grants to the Customer the non-exclusive right to use the trade marks applicable to the Products solely for the promotion, advertisement and sale of the Products, however any use or representation of such trade marks will be submitted to the Company for approval before use.
- (e) The Customer will not, without the prior written consent of the Company, alter or make any addition to the labelling or packaging of the Products unless otherwise agreed in writing by the Company.
- (f) The Customer will not sub-license, transfer or otherwise deal with the rights of use of any trade marks granted under this Condition 12.
- (g) The Customer will not feature the Products on a website, nor will it launch a website featuring the Products, without the Company's prior written approval.
- (h) The Intellectual Property Rights constitute the Company's confidential information for the purposes of Condition 15.

## 13. CONSUMER PROTECTION ACT 1987

If the Company incurs any liability under the Consumer Protection Act 1987 (or any statutory modification or re-enactment of that Act), the Customer will indemnify and keep indemnified the Company in respect of such liability to the extent that the liability has arisen due to any act, omission or default by the Customer.

## 14. LAWS AND REGULATIONS

- (a) The Customer will:
  - (i) comply with all applicable laws, statutes, regulations relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (**Relevant Requirements**);
  - (ii) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
  - (iii) comply with the Company's Anti-corruption Policy in force from time to time, copies of which are available on request;
  - (iv) have and will maintain and enforce, throughout the term of any Contract, its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements; and
  - (v) immediately notify the Company if a foreign public official becomes an officer or employee of the Customer or acquires a direct or indirect interest in the Customer (and the Customer warrants that it has no foreign public officials as officers, employees or direct or indirect owners at the date of entering into any Contract).
- (b) The parties acknowledge that the Products supplied by the Company under the Terms may be subject to various export laws and regulations. The Customer warrants and undertakes that it will comply with all such laws and regulations and will ensure that the Products can be legally marketed and sold in the export market in which the Customer operates.
- (c) Notwithstanding any other provisions herein, in the event that local law requires export authorisation for the export or re-export of any of the Products, no delivery can be made until such export authorisation is obtained, regardless of any otherwise promised delivery date. In the event that any required export authorisation is denied, the Company will be relieved of any further obligation relative to the sale and delivery of such Products without liability of any kind to the Customer or any other party.

## 15. CONFIDENTIALITY

- (a) Each party undertakes that it will not at any time disclose to any person any confidential information concerning the business or affairs of the other party (including information relating to the know-how, customers, suppliers, pricing, products, processes or plans of the other party), except as permitted by Condition 15 (b).
- (b) Each party may disclose the other party's confidential information: (i) to those of its employees or officers who need to know the information for the purposes of carrying out the party's obligations under any Contract (provided that each party ensures that the employees or officers to whom it discloses the other party's confidential information comply with this Condition 15); or (ii) as may be required by law, court order or any governmental or regulatory authority.
- (c) Neither party will use the other party's confidential information for any purpose other than to perform its obligations under any Contract.

## 16. FORCE MAJEURE

The Company will not be in breach of these Terms or any Contract, nor will it be liable for delay in performing, or failure to perform, any of its obligations under these Terms or any Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.

**17. WAIVER**

Failure or delay by the Company in enforcing any provision of these Terms or any Contract will not be construed as a waiver of any of its rights under these Terms or any Contract and any waiver by the Company in respect of any breach of these Terms or any Contract by the Customer will not operate as a waiver of any subsequent or continuing breach.

**18. SEVERABILITY**

If any provision of these Terms or of any Contract is held by a court or other competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of these Terms or of any Contract and the remainder of such provision will not be affected and will continue in full force and effect.

**19. ASSIGNATION**

The Customer may not assign or transfer or sub-contract any of its rights, benefits or obligations under these Terms or any Contract without the prior written consent of the Company.

**20. GOVERNING LAW**

These Terms and the Contract will be governed by and construed in accordance the law of Scotland and the parties submit to the exclusive jurisdiction of the Scottish courts.