

**These terms and conditions shall apply to all sales by Besmoke Limited ("the Company") to you (the Buyer) and no variation of these terms and conditions shall be binding unless agreed in writing between an authorised representative of the Buyer and the Company. The "Products" shall mean and include any products which the Company agrees to supply to the Buyer. The "Contract" shall mean the contract for the sale and purchase of any Products concluded by the Buyer's acceptance in accordance with these terms and conditions of any quotation or offer issued by the Company.**

#### 1. Quotations, offers, and acceptance of orders

1.1 All quotations are made, and all orders are accepted subject to these terms and conditions. All other terms, conditions, representations, or warranties whatsoever are excluded (save where not permitted by law) from the contract or any variation thereof between the Company and the Buyer unless expressly accepted by a duly authorised officer of the Company in writing.  
1.2 Quotations and offers issued by the Company are for all of the Products referred to therein and the Company reserves the right to refuse acceptance of any order which relates only to some of the Products forming the subject of a quotation or offer.  
1.3 If any statement or representation has been made to the Buyer by the Company or its servants or agents upon which the Buyer relies other than in the documents enclosed with the Company's quotation or acknowledgement of order then the Buyer must set out that statement or representation in a document to be attached to and endorsed on the order and in any such case the Company may confirm, reject, or clarify the point and submit a new quotation.

#### 2. Conditions of orders

2.1 All orders are subject to a minimum order value of £500 unless otherwise expressly agreed by the Company. Unless a Product is a standard stocked item, the minimum order for manufactured items is 100kg.  
2.2 All prices are, unless otherwise stated quoted inclusive of carriage but exclusive of VAT (where applicable). Any orders accepted for less than £250 will be charged additional carriage.  
2.3 All orders have a standard lead time of 20 working days unless expressly agreed otherwise. Any orders to be delivered outside mainland UK will be subject to a longer lead time to be notified by the Company to the Buyer in the quotation or offer. The Company reserves the right to extend any lead time for operational or other reasons and will notify the Buyer if this becomes necessary.  
2.4 All payments are quoted for and shall be paid in GBP, unless expressly agreed otherwise.  
2.5 Orders are deemed to be accepted upon receipt of a confirmation email. The Company accepts no responsibility for orders which are not received for any reason, save where the Company has sent confirmation of receipt.  
2.6 Orders will be despatched to the Buyer via third party carriers selected by the Company unless collection is agreed by prior arrangement.  
2.7 Any contract for the sale of Products to the Buyer is subject to DAP delivery terms, unless other terms are expressly agreed by the Company upon acceptance of the order.  
2.8 Written notification will be sent to the Buyer after it places an order should the price of the Products have increased since the price last quoted to the Buyer. The Buyer must send written notification to the Company within 5 working days of deemed receipt of the Company's notification of a price increase if it no longer wishes to purchase the Products.  
2.9 Products to be used as the Buyer's own label products are supplied subject to the same terms and conditions as all other supplied Products.

#### 3. Payment terms

3.1 Unless otherwise agreed by the Company in writing and subject to satisfactory trade references, payments shall be due and payable 30 days following the date of invoice. The Company shall be entitled to submit its invoice following delivery save that where delivery has been postponed at the request of or by the default of the Buyer then the Company may submit its invoice at any time after the Products are ready for delivery or would have been ready in the ordinary course but for the request or default as aforesaid.  
3.2 The Company may deliver Products in more than one instalment and will notify the Buyer if such action is necessary.  
3.3 Each instalment of delivered Products shall be treated as a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Buyer to repudiate or cancel any other Contract or instalment.  
3.4 Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract.  
3.5 The Buyer may not withhold payment of any invoice or other amount due to the Company by reason of any right of set off or counterclaim which the Buyer may have or allege to have for any reason whatsoever.  
3.6 In the event of default in payment by the Buyer, the Company shall be entitled without prejudice to any other right or remedy:-  
3.6.1 to suspend all further deliveries on any Contract between the Company and the Buyer without notice;  
3.6.2 to charge interest on any amount outstanding at the rate of 8% per annum above the base rate of Bank of England or the judgement rate (whichever is the greater in force at the time when payment was due);  
3.6.3 to serve notice on the Buyer requiring immediate payment for all Products supplied by the Company under this and any other Contract with the Buyer whether or not payment is otherwise due or invoiced;  
3.6.4 and to sue for the price of the Products even if title may not have passed to the Buyer.

#### 4. Delivery terms

4.1 Unless otherwise agreed in writing by the Company delivery of the Products shall take place at the Buyer's place of business, as notified to the Company.  
4.2 The Buyer shall take delivery of the Products within 5 working days of the Company giving it notice that the Products are ready for delivery.  
4.3 Any dates specified by the Company for delivery of the Products are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery shall be within a reasonable time.  
4.4 Subject to the other provisions of these conditions the Company shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Products (even if caused by the Company's negligence), nor shall any delay entitle the Buyer to terminate or rescind the Contract unless such delay exceeds 90 days.  
4.5 If for any reason the Buyer fails to accept delivery of any of the Products when they are ready for delivery, or the Company is unable to deliver the Products on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations, (a) risk in the Products shall pass to the Buyer (including for loss or damage caused by the Company's negligence); (b) the Products shall be deemed to have been delivered; and (c) the Company may store the Products until delivery, whereupon the Buyer shall be liable for all related costs and expenses, including, without limitation, storage and insurance.  
4.6 In the event of an over or under supply of no greater than 10%, the Buyer shall not be entitled to object to or reject the Products or any of them by reason of the surplus or shortfall and shall pay for such Products goods at the pro rata contract rate.

#### 5. Evidence of delivery

5.1 The quantity of any consignment of Products as recorded by the Company upon despatch from the Company's place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.  
5.2 The Company shall not be liable for any non-delivery of Products (even if caused by the Company's negligence) unless the Buyer gives written notice to the Company of the non-delivery within 5 working days of the date when the Products would in the ordinary course of events have been received.  
5.3 Any liability of the Company for non-delivery of the Products shall be limited to replacing the Products within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Products.

#### 6. Risk

6.1 Subject to condition 4.5, risk shall pass to the Buyer so that the Buyer is responsible for all loss, damage or deterioration of the Products:-  
6.1.1 if the Company delivers the Products by its own transport or in accordance with a specific contractual obligation arranges transport for the Products at the time when the Products or a relevant part thereof arrive at the place of delivery; or  
6.1.2 in all other circumstances at the time when the Products or a consignment of part thereof leave the premises of the Company or the premises of a third party which holds the Products on the Company's behalf.  
6.2 Title to the Products or any relevant part thereof shall only pass to the Buyer upon the happening of any one of the following events:-  
6.2.1 when the Buyer has paid to the Company all sums due from it to the Company under the Contract and under all other Contracts between the Company and Buyer including (for the avoidance of doubt) any sums due under Contracts made after the relevant Contract whether or not the same are immediately payable; or  
6.2.2 when a duly authorised officer of the Company serves on the Buyer notice in writing specifying that title in the Products or such part thereof has passed.  
6.3 The Company may recover the Products in respect of which title has not passed to the Buyer at any time and the Buyer hereby licences the Company, its officers, employees and agents to enter upon any premises of the Buyer for the purpose either of satisfying itself that condition below is being complied with by the Buyer or of recovering any Products in respect of which property has not passed to the Buyer.

6.4 Until title of the Products has passed to the Buyer pursuant to the terms hereof it shall possess the Products as a bailee of the Company on the terms of this contract. If the Company so requires the Buyer shall store the Products separately from other Products and shall ensure that they are clearly identifiable as belonging to the Company.

#### 7. Cancellation

7.1 Cancellation by the Buyer will only be agreed to by the Company on condition that all costs and expenses incurred by the Company up to the time of cancellation and all loss of profits and other loss or damage resulting to the Company by reason of such cancellation will be paid forthwith by the Buyer to the Company.  
7.2 The Company will have no obligation to credit Products returned to the Company without the Company's consent.

#### 8. Storage

8.1 Following delivery of the Products to the Buyer, the Buyer shall store the Products in sealed containers in a cool dry ambient or chilled environment, depending upon the Product, unless otherwise agreed in writing and in such conditions as the Company shall specify or recommend from time to time (and whether in any Contract, offer, quotation, order, acceptance of an order or otherwise).  
8.2 It shall be the responsibility of the Buyer to ascertain from the Company the Company's recommendations or requirements in relation to storage of Products.  
8.3 The Buyer will accept no liability whatsoever for any damage or defect in the Products which arises whether in whole or in part from the Products being stored or kept other than in accordance the Company's recommendations and/or requirements.

#### 9. Claims by the Buyer

9.1 The Buyer shall only be entitled to claim for loss, shortages or defects apparent on visual inspection if (and subject to Clause 11 below):-  
9.1.1 The Buyer inspects the Products, and notifies the Company within 24 hours of delivery in the event of damage which is obvious upon arrival, such as that which may have occurred during transit or loading  
9.1.2 The Buyer inspects the Products and notifies the Company within 3 working days of delivery, in the event of loss, shortage or defect which becomes apparent upon close inspection of the Products  
9.1.2.1 A written complaint specifying the loss, shortage or defect must be made to the Company within 3 working days of delivery in the event of partial loss, damage or non-delivery of any separate part of a consignment or within 14 days of the notified date of despatch in the event of non-delivery of a whole consignment; and  
9.1.3 The Company is given an opportunity to inspect the Products and investigate any complaint before any use of alteration to or interference with the Products.  
9.2 If a complaint is not made to the Company as herein provided then the Products shall be deemed to be in all respects in accordance with the Contract and the Buyer shall be bound to pay for the Products accordingly.  
9.3 Defects in quality in any instalment delivery shall not be a ground for cancellation of the remainder of the order.

#### 10. Unsatisfactory Products

10.1 In the event of the condition of the Products being such as might or would (subject to these conditions) entitle the Buyer to claim damages or to repudiate the contract the Buyer shall not then do so but shall first ask the Company to supply satisfactory substitute Products and the Company shall thereupon be entitled at its option to take back the defective Products and to supply satisfactory substitute Products free of cost within a reasonable time or to repay the price of the Products in respect of which the complaint is made.  
10.2 If the Company does supply satisfactory substitute Products or effect repayment the Buyer shall be bound to accept such substituted Products or repayment and the Company shall be under no liability in respect of any loss or damage whatsoever arising from the initial delivery of the Products or from the delay before the substitute Products are delivered or the repayment is effected.

#### 11. Complaints received by the Buyer from third parties

11.1 The Buyer shall at all times notify the Company in the event that the Buyer receives a complaint in relation to the Products and undertakes to the Company that neither it nor its employees or agents shall make any statement to a consumer whether orally or in writing which may be construed as an admission of any liability to the consumer.  
11.2 Any negotiations and agreements relating to a compensation payment if any, to be paid to the consumer shall be made by the Company and the Company shall not be liable to pay to either the Buyer or the consumer any sum not negotiated or agreed by it. The Company shall not be liable for any costs incurred by the Buyer without the Company's prior agreement.

#### 12. Liability of the Company

12.1 The Company shall not be liable in respect of claims arising by reason of death or personal injury except where such death or personal injury arises as a result of the Company's negligence.  
12.2 Under no circumstances shall the Company be liable (i) for any loss of profit, business, contract, revenue or anticipated savings, damage to property or wasted expenditure or (ii) for any special or indirect or consequential damage of any nature whatsoever unless pursuant to prior agreement with the Company.  
12.3 The Company's liability in respect of any one claim or the aggregate of various claims (other than claims for death or personal injury to the extent that the same is caused by negligence of the Company) shall not exceed the contract price of the Products and the Buyer agrees to insure adequately to cover claims in excess of such amount.  
12.4 The Buyer agrees to indemnify and keep harmless and indemnified the Company against any and all claims or alleged claims, actions or proceedings against the Company arising out of or in connection with the Products including without limitation any claims or alleged claims, actions or proceedings in relation to the sale, distribution, supply, marketing or promotion of the Products, any intellectual property infringement or any other action.

#### 13. Cancellation of any Contract by the Company

13.1 The Company shall be entitled to cancel any Contract in whole or in part by notice in writing without prejudice to any other right or remedy accrued or accruing to the Company if at any time:-  
13.1.1 the Buyer becomes bankrupt;  
13.1.2 the Buyer goes into liquidation, other than a members voluntary liquidation for the purposes of reconstruction or amalgamation of a solvent company where the reconstructed or amalgamated company assumes the obligations of the liquidated company;  
13.1.3 an administration order is made against the Buyer;  
13.1.4 a receiver or manager is appointed in respect of the Buyer's affairs or the whole or any part of its property or undertakings;  
13.1.5 the Buyer enters into any arrangement or composition with its creditors, including for the avoidance of doubt any voluntary arrangement within the meaning of the Insolvency Act 1986 Part I or Part VIII.

#### 14. Force majeure

14.1 The Company reserves the right to defer the date of delivery or to cancel any Contract or reduce the volume of the Products ordered by the Buyer (without liability to the Buyer) if the Company is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, the actions or directions of any governmental, administrative or regulatory body, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lockouts, strikes or other labour disputes (whether or not relating to either parties workforce) or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, including inability caused by any restriction imposed on the supply or use of any substance, provided that, if the event in question continues for a continuous period in excess of 10 days the Buyer shall be entitled to give notice in writing to the Company to terminate the relevant Contract.

#### 15. Assignment and waiver

15.1 The Company may assign any Contract or any part of it to any person, firm or company.  
15.2 The Buyer shall not be entitled to assign a Contract or any part of it without the prior written consent of the Company.  
15.3 Any waiver by the Company of any breach of any default under any provision of any Contract by the Buyer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of any Contract.  
15.4 Failure or delay by the Company in enforcing or partially enforcing any provision of any Contract shall not be construed as a waiver of any of its rights under the relevant Contract or any other Contract.

#### 16. General provisions

16.1 Each right or remedy of the Company under the contract is without prejudice to any other right or remedy of the Company whether under the contract or not.  
16.2 If any provision of any Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partially illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the relevant Contract and the remainder of such provision shall continue in full force and effect.  
16.3 The parties to any Contract do not intend that any term of any Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not party to it.  
16.4 All references to any statute or statutory provision shall be deemed to include references to any statute or statutory provision which amends, extends, consolidates, or replaces the same.  
16.5 Any notice or other communication required under these terms and conditions shall be in writing and signed by or on behalf of the party giving it and shall be served by delivering it personally or sending it by pre-paid recorded delivery or registered post. Any such notice shall be deemed to have been received:  
a) if delivered personally, at the time of delivery;  
b) in the case of pre-paid recorded delivery or registered post, 48 hours from the date of posting.  
16.6 The formation, existence, construction, performance, validity and all aspects of the contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.