

TERMS AND CONDITIONS FOR SUPPLY OF BEVERAGES AND PRODUCTS OF BANKS DISTRIBUTION LIMITED ('BDL')

1 DEFINITIONS

In this document the following words shall have the following meanings:

1.1 "**Agreement**" means these Terms and Conditions together with the terms of any Applicable:

- (i) Contract Letter and
- (ii) Storage Specification Document

executed between BDL and the Customer concerning the supply of Beverages.

1.2 "**Best-By Date**" means the date stamped, printed or otherwise applied to the Beverages by the manufacturer of those Beverages indicating the last date on which the Beverages are of optimal quality, compliant with any applicable food safety and quality standards or fit for sale or fit for human consumption;

1.3 "**Beverages**" means any and all beverages sold to the Customer by BDL;

1.4 "**Customer**" means the organisation or person who purchases beverages from BDL;

1.5 "**Intellectual Property Rights**" means all patents, registered and unregistered designs, copyright, trade-marks, know-how and all other forms of intellectual property wherever in the world enforceable owned by BDL or which BDL is licensed or authorised to use;

1.6 "**Price List**" means the statement of Prices for each of the Products supplied by BDL to the Customer as may be advised to the Customer and updated by BDL from time to time and may include prices for the delivery to Customer of the Products, at BDL's sole discretion;

1.7 "**Products**" shall include Beverages and shall also include any other food item offered for sale by BDL

1.8 "**Storage Specification Document**" means a statement of the conditions of storage under which the Beverages to be provided by BDL must be stored by the Customer;

1.9 "**Supplier**" means BDL Distribution Limited, Newton, Christ Church.

2 GENERAL

2.1 These Terms and Conditions shall apply to all Agreements for the supply of Products by BDL to the Customer.

2.2 All orders from the Customer shall be treated by BDL as an offer to purchase Products on these terms and conditions, and no Agreement shall come into existence until such offer has been accepted by BDL orally or in writing.

2.3 No variation of these Terms and Conditions shall be binding unless agreed in writing and none of BDL's employees or agents has any authority to vary these Terms and Conditions by oral agreement.

2.4 The Customer acknowledges that in entering into an Agreement with BDL, that it does not rely and has not relied on any representations or statements which may have been made by any such employee or agent to the Customer.

2.5 BDL shall use all reasonable endeavours to supply and (where applicable) deliver the Products within reasonable time frames but time shall not be of the essence in the supply or delivery of Products under this Agreement.

3 PRICE AND PAYMENT

3.1 The prices for the supply of Products are as set out in the Price List. BDL shall invoice the Customer for the cost and deliver (if applicable) of the Products on delivery.

3.2 Save and except where BDL agrees to extend credit facilities to the Customer, invoiced amounts shall be due and payable at the time of delivery.

3.3 BDL shall be entitled to charge interest on overdue invoices from the date when payment becomes due from day to day until the date of payment at a rate of 1.5% per annum above the base rate of the Central Bank of Barbados. In the event that the Customer's business procedures require that an invoice be submitted against a purchase order to facilitate payment, the Customer shall be responsible for issuing such purchase order sufficiently in advance of the supply and delivery of the Products by BDL to facilitate payment to BDL on delivery.

3.4 BDL reserves the right immediately to cancel any order or suspend any delivery without incurring any liability to the Customer if the Customer is in default of payment or if the Customer becomes bankrupt, goes into liquidation, makes a composition with its creditors, has a receiver or manager appointed of the whole or any part of its assets or business or

BDL DISTRIBUTION LIMITED
STANDARD TERMS & CONDITIONS – BEVERAGE SUPPLY AGREEMENT

takes or suffers any similar action in consequence of debt.

4. CREDIT ACCOUNT FACILITIES

4.1 BDL may, at its sole discretion, extend credit facilities to the Customer and Customers who wish to obtain credit facilities shall provide such information as BDL's credit and due diligence procedures may require to enable BDL to make its own assessment of the creditworthiness of the Customer;

4.2 Where the Customer has a credit account and unless the Customer is otherwise notified in writing by BDL, the Products must be paid for in full by the fourteenth (14th) day of the month immediately following the month in which the applicable invoice was issued.

4.3 Where the Customer has a credit account and is overdue with any payment or if BDL is in receipt of bank, credit or trade references which it regards as unsatisfactory, BDL reserves the right to change the Customer's account status to a Cash on Delivery (C.O.D.) account.

5. SPECIFICATION OF THE PRODUCTS

5.1 All Products shall be required only to conform to the specifications as to size, quantity and packaging in the Price List. For the avoidance of doubt, no description, specification or illustration contained in any product pamphlet or other sales, promotion or marketing literature of BDL and no representation written or oral, correspondence or statement shall form part of this Agreement.

6. DELIVERY

6.1 The date of delivery specified by BDL is an estimate only. Time for delivery shall not be of the essence of this Agreement and BDL shall not be liable for any loss, costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Products.

6.2 All risk in the Products shall pass to the Customer upon delivery.

7. TITLE

7.1 Notwithstanding delivery and the pass of risk in the Products, or any other provision of these Terms, the property in the Products shall not pass to the Customer until BDL has received in cash or cleared funds payment in full of all

the price of the Products and the balance of any other invoices due to BDL by the Customer. Until any such payment the Customer shall hold such Products as a fiduciary agent for BDL and shall keep them properly stored, protected and insured for no less than their invoice value and shall hold any proceeds of such insurance on trust for BDL. In the event of non-payment by the Customer by the due date for payment of the relevant invoice BDL may at any time require the Customer to deliver up the Products to BDL and, if the Customer fails to do so forthwith, BDL shall be entitled to enter any premises where the Products are stored and recover possession of them.

8. PRODUCT QUALITY & SAFETY

8.1 BDL disclaims any liability for Products sold, distributed or offered to the public for sale by the Customer after the Best-By Date, nor will credit for any returns be considered unless they are returned before the Best-By Date.

9. PALLET DEPOSITS & RETURNS

9.1 Certain Product containers carry a deposit charge which shall be repaid or credited to the Customer provided such containers are returned to BDL in a sound condition within three months of their receipt by the Customer.

9.2 The property in all returnable containers (whether or not a deposit has been charged) and all pallets (if any) used for delivery of the Products shall at all times vest in BDL. The Customer shall return all such returnable containers and pallets to BDL at BDL's expense in accordance with such instructions as BDL shall from time to time specify. The full replacement value of any returnable containers (including any pallets not returned to BDL in a sound condition shall be payable by the Customer to BDL on demand (less credit for any deposits forfeited).

10. CUSTOMER'S OBLIGATIONS

10.1 The following are the Customer's obligations under the Agreement, performance of which shall be deemed material to this Agreement:

BDL DISTRIBUTION LIMITED
STANDARD TERMS & CONDITIONS – BEVERAGE SUPPLY AGREEMENT

10.1.1 The Customer shall co-operate with BDL as to time and manner of delivery of Product and payment and otherwise;

10.1.2 The Customer shall provide BDL with any information reasonably required by BDL to facilitate supply or delivery of the Products or invoicing or payment therefor;

10.1.3 The Customer shall obtain all necessary permissions, licences and consents which may be required by any Governmental or regulatory authority to facilitate the sale of the Products by the Customer; and

10.1.4 The Customer shall not offer for sale, sell, deliver, distribute or otherwise provide the Products to any person after the Best-By Date displayed on such Products is passed;

10.1.5 The Customer may offer for sale, sell, deliver, distribute or otherwise provide the Products to any person within three (3) business days of the Best-By Date only if the Customer notifies that person, either personally or by prominent notification in close proximity to the Products where the Products are offered for sale, of the proximity of the Best-By Date;

10.1.6 The Customer shall inspect all Products upon delivery. BDL shall not in any circumstances be liable for short delivery unless the Customer notifies BDL upon receipt of delivery.

10.1.7 The Customer shall comply with any instruction from B&B to immediately cease the distribution, sale or offer to the public of the Products as a consequence of any Product Recall or Product Withdrawal by BDL or the Product manufacturer, immediately upon notification to the Customer by BDL of the implementation of such Product Recall or Product Withdrawal.

10.1.8 The Customer shall comply with such other requirements as may be set herein.

10.2 The Customer shall be liable to compensate BDL for any losses, damage, costs or expenses (including reasonable legal fees) incurred by BDL as a result of the Customer's failure to comply with Clause 10.1.

10.3 Without prejudice to any other rights to which BDL may be entitled, in the event that the Customer unlawfully or in breach of this Agreement refuses delivery of the Products or cancels an order for Products agreed to by the

Customer, the Customer shall be required to pay to BDL as agreed damages and not as a penalty the full amount of any third party costs to which BDL committed in furtherance of the supply and delivery of the Products, and the Customer agrees this is a genuine pre-estimate of BDL's losses in such a case. For the avoidance of doubt, the Customer's failure to comply with any obligations under Clause 10.1 herein shall be deemed to be a cancellation of the Products by the Customer and subject to the payment of the damages set out in this Clause.

10.4 In the event that the Customer or any third party, not being a sub-contractor of BDL, shall omit or commit anything which prevents or delays BDL from undertaking or complying with any of its obligations under this Agreement, then BDL shall notify the Customer as soon as possible and:

10.4.1 BDL shall have no liability in respect of any delay in supply and delivery of the Products to the Customer;

10.4.2 if applicable, the timetable for delivery of the Products by BDL will be modified accordingly.

11. CANCELLATION AND RETURN

11.1 The Customer may return the Products for credit or replacement on the grounds of the failure of the Products to comply with any fitness, quality or other implied warranty under applicable law, provided they are so returned to BDL's premises with the applicable invoice number quoted, within fourteen (14) days of the delivery to the Customer or within seven (7) days of the receipt by the Customer of such Products from its customers, provided in the latter instance that the Customer can demonstrate that the Products were sold by it to its customer(s) before the Best-By Date.

12. NON-AVAILABILITY OF STOCK

12.1 Products and Beverages are offered subject to availability. While every effort will be made to fulfil the Customer's orders for the products, BDL shall not be liable for any loss or damage arising as a result of non-availability of stock

13. ALTERATIONS TO THE PRICE LIST

BDL DISTRIBUTION LIMITED
STANDARD TERMS & CONDITIONS – BEVERAGE SUPPLY AGREEMENT

13.1 B&B may, at its sole discretion, amend or adjust the Price List, in which case BDL shall so notify the Customer in writing and such amended or adjusted prices shall take effect from and apply to any orders for Products made by the Customer after the date of such amendment or adjustment.

13.2 The Customer may at any time request adjustments to the Price List with reference to the volumes of Products ordered or required by the Customer but such request for adjustment by the Customer shall only apply if BDL agrees to such adjustment and that agreement is evidenced by a duly authorised officer of BDL in writing.

14. WARRANTY

14.1 BDL warrants that the Products shall be of acceptable quality and fit for human consumption at the time of delivery;

14.2 BDL shall in no way be liable for loss, damage or injury to any person or any costs or expenses associated therewith, howsoever arising, where such loss, damage or injury is caused by:

14.2.1 the failure or refusal of the Customer or any person who purchases or otherwise acquires the Products from the Customer to store or handle the Products in accordance with the Storage Specification Document and reasonable food safety, quality or handling standards;

14.2.2 the sale, supply or distribution by the Customer of the Products to any person after the Best-By Date.

15. INDEMNIFICATION

15.1 The Customer hereby indemnifies and holds BDL harmless from and against any losses, damages, liabilities, compensation awards, proceedings, costs (on a full indemnity basis and including fines and penalties) and expenses of whatsoever nature sustained or incurred by BDL and which, in any case, arises out of or in relation to or by reason of

15.1.1 the action or omission of the Customer, its servants, agents or customers in circumstances referred to at Clauses 14.2.1 and 14.2.2 hereof;

15.1.2 the negligence or recklessness of the Customer, its servants or agents with reference

to the promotion, storage, handling, distribution or sale of the Products to any person;

15.1.3 the breach by the Customer of any of the clauses of these Terms and Conditions.

16. LIMITATION OF LIABILITY

16.1 Except in respect of death or personal injury due to negligence for which no limit applies, the entire liability of BDL to the Customer in respect of any claim whatsoever or breach of this Agreement, whether or not arising out of negligence, shall be limited to the price paid by the Customer to which the claim relates.

16.2 In no event shall BDL be liable to the Customer for any loss of business, loss of opportunity or loss of profits or for any other indirect or consequential loss or damage whatsoever.

16.3 Nothing in these Terms and Conditions shall exclude or limit BDL's liability for death or personal injury resulting from BDL's negligence or that of its employees, agents or sub-contractors.

17. TERMINATION

The Agreement shall apply to each and every order for Products from the Customer. Either party may terminate this Agreement forthwith by notice in writing to the other if:

17.1 the other party commits a material breach of this Agreement and, in the case of a breach capable of being remedied, fails to remedy it within 30 calendar days of being given written notice from the other party to do so;

17.2 the other party commits a material breach of this Agreement which cannot be remedied under any circumstances;

17.3 the other party passes a resolution for winding up (other than for the purpose of solvent amalgamation or reconstruction), or a court of competent jurisdiction makes an order to that effect;

17.4 the other party ceases to carry on its business or substantially the whole of its business; or

17.5 the other party is declared insolvent, or convenes a meeting of or makes or proposes to make any arrangement or composition with its creditors; or a liquidator, receiver, administrative

BDL DISTRIBUTION LIMITED
STANDARD TERMS & CONDITIONS – BEVERAGE SUPPLY AGREEMENT

receiver, manager, trustee or similar officer is appointed over any of its assets.

18. INTELLECTUAL PROPERTY RIGHTS

All Intellectual Property Rights produced from or arising as a result of the performance of this Agreement shall, so far as not already vested, become the absolute property of BDL, and the Customer shall do all that is reasonably necessary to acknowledge and ensure that such rights vest in BDL.

19. FORCE MAJEURE

19.1 BDL shall not be liable for any delay in delivery or supply or failure to perform any of its obligations if the delay or failure results from events or circumstances outside its reasonable control, including but not limited to acts of God, strikes, lock outs, accidents, war, fire, the act or omission of government, highway authorities or any telecommunications carrier, operator or administration or other competent authority, or the delay or failure in manufacture, production, or supply by third parties to BDL of Products, and B&B shall be entitled to a reasonable extension of its obligations after notifying the Customer of the nature and extent of such events.

20. INDEPENDENT CONTRACTORS

20.1 BDL and the Customer are contractors independent of each other, and neither has the authority to bind the other to any third party or act in any way as the representative of the other, unless otherwise expressly agreed to in writing by both parties.

20.2 BDL may, in addition to its own employees, engage sub-contractors to provide all or part of any services (including delivery services) being provided to the Customer and such engagement shall not relieve BDL of its obligations under this Agreement.

21. ASSIGNMENT

21.1 The Customer shall not be entitled to assign its rights or obligations or delegate its duties under this Agreement without the prior written consent of BDL.

22. GOVERNING LAW AND JURISDICTION

22.1 This Agreement shall be governed in all respects by the Laws of Barbados and the parties hereby attorn to the jurisdiction of the Law Courts of Barbados;

23. SEVERABILITY

23.1 If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any Court of competent jurisdiction such provision shall be severed and the remainder of the provisions herein shall continue in full force and effect as if this Agreement had been agreed with the invalid illegal or unenforceable provision eliminated.

24. WAIVER

24.1 The failure by either party to enforce at any time or for any period any one or more of the Terms and Conditions herein shall not be a waiver of them or of the right at any time subsequently to enforce all Terms and Conditions of this Agreement.

25. NOTICES

25.1 Any notice to be given by either party to the other under the Agreement may be served by email, fax, personal service or by post to the address of the other party at such address as such party may from time to time have communicated to the other in writing, and if sent by email shall unless the contrary is proved be deemed to be received on the day it was sent, if sent by fax shall be deemed to be served on receipt of an error free transmission report, if given by letter shall be deemed to have been served at the time at which the letter was delivered personally or if sent by post shall be deemed to have been delivered at the expiration of two (2) business days after posting inclusive of the date of postage.

26. ENTIRE AGREEMENT

26.1 This Agreement contains the entire agreement between the parties relating to the subject matter and supersedes any previous agreements, arrangements, undertakings or proposals, oral or written. Unless expressly provided elsewhere in the Agreement, the Agreement may be varied only by a document signed by both parties.