



## TERMS AND CONDITIONS

### 1. Acceptance and Applicable Terms

- 1.1 These terms and conditions (the "Terms") apply to and form an integral part of all quotations, offers and sales made by Wine and Beer Supply, LLC, East Coast Mobile Bottling, LLC and East Coast Wine Fulfillment, LLC ("WBS"), all acceptances, acknowledgements and confirmations by WBS of any orders by Buyer and any agreements ("Agreements") regarding the sale by WBS and purchase by Buyer of goods and services ("Products"), unless and to the extent that WBS explicitly agrees otherwise in a writing signed by a WBS authorized representative.
- 1.2 ANY TERMS AND CONDITIONS IN ANY DOCUMENT OR DOCUMENTS ISSUED BY BUYER, WHETHER THEY ARE CONSISTENT, ADDITIONAL OR CONTRADICTORY TO THESE TERMS, EITHER BEFORE OR AFTER WBS ISSUES ANY DOCUMENT SETTING FORTH OR REFERRING TO THESE TERMS, ARE HEREBY EXPLICITLY REJECTED AND DISREGARDED BY WBS, AND ANY SUCH TERMS ARE WHOLLY INAPPLICABLE TO ANY SALE MADE BY WBS TO BUYER AND WILL NOT BE BINDING IN ANY WAY ON WBS.

### 2. Pricing

- 2.1 Prices are in the currency specified by WBS in an order confirmation or other relevant document, based on delivery according to any Incoterm and place of delivery specified by WBS. Prices do not include any taxes, duties or similar levies, now or later enacted, applicable to the Products. WBS will add taxes, duties and similar levies to the sales price where WBS is required or enabled by law to pay or collect them and these will be paid by Buyer together with the price.

### 3. Payment

- 3.1 Unless specified otherwise in an order confirmation from WBS, net payment is due on receipt of the invoice date. No discount is allowed for early payment unless agreed to in writing by WBS. In addition to all other rights and remedies WBS may have under applicable law, interest will accrue on all late payments at the rate of 3% per month from the due date until paid in full. Due on Receipt orders are due in full upon delivery of product and are considered late on the following day and are subject to an immediate 3% late charge.
- 3.2 All deliveries of Products agreed to by WBS are at all times subject to WBS's credit approval. If, in WBS's judgment, Buyer's financial condition at any time does not justify production or delivery on the agreed upon payment terms, WBS has the right to require full or partial payment in advance or other payment terms as a condition to delivery, and WBS has the right to suspend, delay or cancel any performance by WBS.
- 3.3 If Buyer defaults in paying any fees or charges due, or if Buyer violates these Terms in any other way, WBS has the right to do one or more of the following (i) refuse performance and/or delivery of any Products until payments are brought current and WBS has the right to suspend, delay or cancel any performance by WBS; (ii) if delivery has been made as to any goods, require Buyer to surrender title and possession of the goods to WBS, which shall be considered compensation for WBS's damages deriving from Buyer's breach, upon written notice from WBS; or (iii) seek collection of amounts due through legal or other processes, in which case Buyer shall be responsible for the costs associated with collection, including WBS's attorneys' fees. These rights are in addition to, and not in lieu of, any other rights and remedies available at law or in equity.

### 4. Delivery and Quantities

- 4.1 Unless WBS agrees otherwise in writing, Products will be delivered according to any Incoterm and place of delivery specified by WBS (INCOTERMS latest version). Delivery dates communicated or acknowledged by WBS are approximate, and WBS is not liable for, nor will WBS be in breach of its obligations to Buyer, for any delivery made within a reasonable time before or after the communicated delivery date. WBS will use commercially reasonable efforts to meet the delivery dates communicated or acknowledged by it on the condition that Buyer provides all necessary order and delivery information sufficiently before the delivery date.
- 4.2 With respect to any Order, such order shall be considered fulfilled (i) if WBS's delivery does not deviate in quantity more than 10% from the quantity ordered in the case of decorated goods or 5% in the case of other goods, and (ii) if at least 97% of the goods delivered are not damaged. Buyer will notify WBS of any discrepancies in excess of the above amounts within fourteen days after delivery of the Products.
- 4.3 Buyer will give WBS written notice of failure to deliver and 30 days within which to cure. If WBS does not deliver within the 30 day period, Buyer's sole and exclusive remedy is to cancel the affected and undelivered portions of the order.
- 4.4 Risk of loss in the Products will transfer in accordance with the applicable INCOTERMS and title shall pass at the same time as risk of loss transfers. When no INCOTERM is indicated, risk of loss shall transfer and title shall pass as indicated by WBS, and if not indicated by WBS, then at delivery.
- 4.5 If WBS's production is curtailed for any reason, WBS will have the right to allocate its available production and Products, in its sole discretion, among its various customers and as a result has the right to sell and deliver to Buyer fewer Products than specified in the Agreement or order, as the case may be.
- 4.6 WBS reserves the right to charge storage fees on any Product not delivered within 60 days of Order.
- 4.7 With respect to any Order containing Dunnage (including but not limited to pallets, slip sheets, top frames, etc), (i) WBS maintains inventory records for Dunnage delivered to Buyer, (ii) Buyer is responsible for retaining all Dunnage, (iii) WBS will arrange pick-up for all Dunnage, and (iv) WBS retains the right to bill Buyer for all Dunnage not returned at a rate not to exceed cost plus 25%.

### 5. Limited Warranty and Disclaimer

- 5.1 WBS warrants that the Products will, at the time of shipping from WBS's facility: (A) shall meet WBS's accepted quality levels; (B) substantially conform to all applicable specifications; (C) comply with all applicable law; and (D) except with respect to design elements provided by Buyer or others, not infringe upon the intellectual property rights of any third party.
- 5.2 It is Buyer's responsibility to determine the suitability of container closures and container liner materials for Buyer's product. WBS disclaims any express warranties or implied warranties, including warranties of merchantability or of fitness for a particular purpose. Buyer assumes all risks that merchandise purchased from WBS will be suitable for its intended use.
- 5.3 WBS offers no representations or warranties with respect to taste or aroma. By accepting the goods and services sold by WBS, Buyer acknowledges that wines that have been bottled using natural cork closures may occasionally exhibit taste or aroma characteristics which in the wine industry have been described as "corked." WBS gives no representation or warranty with respect to the effect of the use of the cork products being sold by WBS, or any cork supplied to the Buyer external to WBS, on the wine being bottled, and any such representation and warranty is hereby expressly disclaimed.
- 5.4 WBS offers no representations or warranties with respect to post bottling, canning or filtration issues that may arise from yeast, bacteria or other contaminants present after bottling, canning or filtration. WBS will use professional care and allow customer oversight and inspection of its sanitization and bottling, canning and filtration practices. Wine or other beverages sent to WBS (whether to our mobile lines or our facility) for bottling or canning should be clean and bottle ready, with appropriate levels of SO2 or other preservatives and free of contaminants. Although WBS utilizes a variety of established procedures, including steam or chemical sanitization, crossflow filtration, cartridge filtration, and other practices intended to minimize the risk of post bottling or post canning issues, we do not warrant the efficacy of such procedures or the final results as there are many factors (e.g. equipment or filter media failure, contaminants present in the air, water and/or packaging materials, etc.) outside of our control. In any case, the maximum financial liability of WBS for services provided will be limited to the amounts invoiced by WBS for the relevant services.
- 5.5 THE EXPRESS WARRANTY GRANTED ABOVE IN SECTIONS 5.1, 5.2, 5.3 AND 5.4 IS IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. WBS SPECIFICALLY DISCLAIMS ALL OTHER WARRANTIES.

### 6. Indemnity and Limitation of Liability

- 6.1 WBS will defend, indemnify and hold harmless Buyer and Buyer's directors, officers, employees, agents and affiliates (collectively, "Buyer Indemnified Parties") from and against all liabilities, penalties, fines, losses, damages, judgments and expenses (collectively, "Losses"), to the extent arising from or relating to any one or more of the following: (A) WBS's material breach of these Terms; or (B) any injury or death of any person, or loss of or damage to any property, to the extent arising out any defects in the Products supplied by WBS to Buyer, provided, however, that the defect was actually present in the Product as of the time of shipping from WBS's facility.

- 6.2 WBS's indemnification obligations are subject to all of the following: (A) Buyer must use commercially reasonable efforts to preserve and deliver to WBS any Product with respect to which Buyer is claiming indemnification; (B) Buyer gives WBS prompt written notice of such claim (which notice must be given in any event prior to the expiration of any applicable period for responsively pleading to any third-party action); (C) this indemnity will not be effective to the extent the loss is a result of the negligence or intentional misconduct of Buyer or any party other than WBS; and (D) neither Buyer nor WBS will settle any claim without the other's approval, unless in each case the settlement absolves from liability the other party.
- 6.3 Buyer will defend, indemnify and hold harmless WBS and WBS's directors, officers, employees, agents and affiliates (collectively, "WBS Indemnified Parties") from and against all Losses, to the extent arising from or relating to any one or more of the following: (A) Buyer's breach of these Terms; (B) any injury or death of any person, or loss of or damage to any property, to the extent not the responsibility of WBS under Section 6.1; or (C) any product designs or other intellectual property provided by Buyer to WBS or developed by WBS for Buyer.
- 6.4 NOTWITHSTANDING ANY OF THE FOREGOING, TO THE EXTENT PERMITTED BY APPLICABLE MANDATORY LAW, WBS WILL NOT BE LIABLE FOR ANY LOST PROFITS OR SAVINGS, LOSS OF GOODWILL OR REPUTATION, INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN RELATED TO THE ORDER OR AGREEMENT OR THE SALE OF ANY PRODUCTS BY WBS OR THE USE THEREOF WHETHER OR NOT SUCH DAMAGES ARE BASED ON TORT, WARRANTY, CONTRACT OR OTHER LEGAL THEORY, EVEN IF WBS HAS BEEN ADVISED, OR IS AWARE, OF THE POSSIBILITY OF SUCH DAMAGES. BUYER'S ONLY REMEDY UNDER THESE TERMS IS A REPLACEMENT OF NONCONFORMING PRODUCTS, IN WHICH CASE BUYER MUST NOTIFY WBS OF ANY NONCONFORMING PRODUCTS WITHIN 14 DAYS OF DELIVERY. FURTHER, WITH RESPECT TO GOODS DELIVERED BY WBS, WHICH WBS OBTAINS FROM THIRD PARTIES, THE ONLY LIABILITY OF WBS TO BUYER SHALL BE THAT OF THE RELEVANT THIRD PARTY TO WBS.

## **7. Confidentiality**

- 7.1 Buyer acknowledges that all technical, commercial and financial data disclosed to Buyer by WBS is WBS's Confidential Information. Buyer will not disclose any such Confidential Information to any third party and will not use any such Confidential Information for any purpose other than as agreed by the parties and in conformance with these Terms.
- 7.2 All Confidential Information remains the disclosing party's exclusive property and, except as noted in Section 7.4 below, nothing in these Terms is an express or implied grant of a transfer, assignment, license, or lease of any right, title or interest in the Confidential Information. The covenants in these Terms are reasonable and necessary to protect the parties' business interests. Any disclosure or unauthorized use of the Confidential Information will cause the disclosing party irreparable harm and loss, and the disclosing party will be entitled to an injunction restraining that breach or threatened breach without showing or proving any actual damages sustained by the disclosing party.
- 7.3 Upon the earlier of the order's or Agreement's termination or WBS's request, Buyer will return to WBS all written information, reports, analyses and like materials furnished to Buyer by WBS, or prepared for WBS by Buyer, pursuant to the order or Agreement. Buyer must not use WBS's name or the existence of WBS's relationship with Buyer in any publicity or promotional efforts. Except as required by applicable law, Buyer will not release to the press, public, or any regulatory agency, any matter relating to any order, Agreement or these Terms without WBS's prior written consent. The parties' rights and obligations under this Section 7 survive any expiration or termination of these Terms or any Agreement, and will continue to bind the parties, their employees, successors, heirs and assigns.
- 7.4 Title to all molds obtained by WBS for its business with Buyer, and all intellectual property associated with such molds, shall belong to WBS unless otherwise agreed in writing by WBS.

## **8. Anti-Corruption**

- 8.1 Buyer will comply with WBS's Anti-Bribery Policies, as amended from time to time.

## **9. Force Majeure**

- 9.1 WBS is not liable for any failure or delay in performance if: (A) the failure or delay results from interruptions in the manufacturing or distribution process; or (B) the failure or delay is caused by Force Majeure as defined below or by law.
- 9.2 In case of such a failure as set forth in Section 9.1, WBS's performance will be suspended for the period such failure continues, without WBS being responsible or liable to Buyer for any damages resulting therefrom.
- 9.3 The expression "Force Majeure" means and includes any circumstances or occurrences beyond WBS's reasonable control – whether or not foreseeable at the time of the order or Agreement – as a result of which WBS cannot reasonably be required to execute its obligations, including default by one of WBS's suppliers. Examples of Force Majeure events include but are not limited to riots, epidemic, natural disasters, exclusions, strikes, fire, utility failure, war conditions, disturbances, import and export obstructions, and shortage of raw materials, other materials or machines. If the Force Majeure extends for 3 consecutive months (or if the delay is reasonably expected by WBS to extend for 3 consecutive months), WBS will be entitled to cancel all or any part of the order or Agreement without any liability towards Buyer.

## **10. Assignment and Setoff**

- 10.1 Buyer will not assign any rights or obligations under these Terms or any Agreement without WBS's prior written consent. Buyer will have no right to withhold or reduce any payments or to offset existing and future claims against any payments due for Products sold under these Terms or under any other agreement that Buyer may have with WBS or any of its affiliates may have and agrees to pay the amounts hereunder regardless of any claimed offset which may be asserted by Buyer or on its behalf.

## **11. Governing Law and Forum**

- 11.1 All offers, confirmations, orders, Terms, and Agreements are governed by and construed in accordance with the laws of Virginia. All disputes arising out of or in connection with these Terms or any Order or Agreement will first be attempted by Buyer and WBS to be settled through consultation and negotiation in good faith in a spirit of mutual cooperation. All disputes that cannot be resolved amicably will be submitted to the exclusive jurisdiction of the courts of Virginia. Nothing in this Section 11 limits either WBS's or Buyer's right under applicable law for injunctive or other equitable relief or to take any action to safeguard its possibility to have recourse on the other party.

## **12. Breach and Termination**

- 12.1 Without prejudice to any rights or remedies WBS may have under the Terms, any Agreement or at law, WBS has the right to, by written notice to Buyer, terminate with immediate effect any order or Agreement or any part thereof without any liability whatsoever, if: (a) Buyer breaches any of these Terms or any Agreement; (b) any proceedings in insolvency, bankruptcy, liquidation or winding up are instituted against Buyer, whether filed or instituted by Buyer, voluntary or involuntary, a trustee or receiver is appointed over Buyer, or any assignment is made for the benefit of Buyer's creditors.
- 12.2 Upon occurrence of any of the events referred to in Section 12.1, all payments to be made by Buyer under the order Agreement will become immediately due and payable. If an order or Agreement is cancelled, terminates or expires, then the terms and conditions destined to survive such cancellation, termination or expiration will so survive.

## **13. Miscellaneous**

- 13.1 If any provisions of these Terms are held invalid or unenforceable by a court of competent jurisdiction or by any future legislative or administrative action, such holding will not negate the validity or enforceability of any other provisions thereof. If any provision of these Terms is finally determined to be unlawful or unenforceable, such provision will be deemed severed from these Terms, but every other provision will remain in full force and effect, and in substitution for any such provision held unlawful or unenforceable, there will be substituted a provision of similar import reflecting the original intent of the clause to the extent permissible under applicable law.
- 13.2 The failure on the part of either party to exercise, or any delay in exercising, any right or remedy arising from these Terms or any Agreement will not operate as a waiver thereof; nor will any single or partial exercise of any right or remedy arising therefrom preclude any other or future exercise thereof or the exercise of any other right or remedy arising from these Terms or any Agreement or from any related document or by law.
- 13.3 These Terms can only be amended or modified in a writing signed by WBS's authorized representative.
- 13.4 These Terms are binding on the parties, their legal representatives, successors, heirs and permitted assigns.