

**GENERAL TERMS AND CONDITIONS OF SALE OF GOODS  
BY MOËT HENNESSY DIAGEO HONG KONG LIMITED (“MHD”)**

**1. GENERAL**

- 1.1 Goods will be sold by MHD to BUYER only in accordance with these terms and conditions (“Conditions”).
- 1.2 Unless otherwise expressly agreed between MHD and BUYER (collectively referred to as “Parties” and individually a “Party”), these Conditions shall form the entire Contract between the Parties and shall apply to all contracts for the sale of goods by MHD to BUYER (“Goods”) to the exclusion of all other terms and conditions including but not limited to any terms or conditions which BUYER purports to apply under any quotation, proposal and/or any other documents or communications regarding the Goods.
- 1.3 No addition, variation or modification by BUYER to these Conditions shall be valid or binding on MHD unless such addition, variation or modification is agreed upon in writing by MHD. No course of dealing or business between the Parties will be relevant to explain or supplement any condition save as provided for in these Conditions.
- 1.4 Any other contractual terms of BUYER (whether in BUYER’s quotation or otherwise) which are contrary to or inconsistent with these Conditions shall not apply nor shall they constitute a counter-offer. By receiving delivery and/or supply of all or any portion of the Goods supplied or delivered by or on behalf of MHD under these Conditions, BUYER shall be deemed to have accepted these Conditions and to have agreed that these Conditions shall apply to the exclusion of all others.
- 1.5 In the event of a conflict or inconsistency between these Conditions and any additional or other terms and conditions agreed upon in writing by MHD, the additional/other terms and conditions as agreed upon in writing by MHD shall prevail.

**2. PRICE AND PAYMENT**

- 2.1 The price of Goods shall be as stated in MHD’s latest price list of Goods (as may be amended, supplemented, replaced or otherwise modified from time to time by MHD) as made available by MHD upon request.
- 2.2 An invoice will be issued by MHD for Goods sold to BUYER (“Invoice”). The Invoice shall include:-
- i) the price for the Goods; and
  - ii) all such other costs and expenses chargeable under these Conditions and/or incurred by MHD at the request or on behalf of BUYER, such costs and expense includes but not limited to costs of carriage, loading and unloading, freight charges, insurance premiums, fees for export, transit, import and other permits.
- 2.3 Unless otherwise agreed by MHD, all payment of Invoice shall be made by BUYER in HK Dollar, being the lawful currency of Hong Kong.
- 2.4 If BUYER fails, refuses or neglects to make payment on the due date of payment, then in addition to and without prejudice to any other rights and remedies available to MHD whether under the Contract or otherwise, MHD shall be entitled but not obliged to:-
- i) suspend and/or terminate delivery of all or any Goods which have yet to be delivered to BUYER until BUYER has paid all outstanding amount due and payable to MHD;
  - ii) offset relevant overdue amounts against amounts payable by MHD to BUYER under any other contract between the Parties; and/ or
  - iii) re-posses or recover Goods (or any portion thereof) from BUYER towards settlement of any amount due or owing by BUYER to MHD.
- 2.5 In addition to and without prejudice to any other rights and remedies available to MHD whether under the Contract or otherwise, if BUYER fails, refuses or neglects to pay on the due date any amount payable under an Invoice or a Contract, BUYER shall pay to MHD, interest at the rate of 2% (two percent) per month on such amount remaining unpaid by BUYER calculated from the due date of payment until the date of actual payment thereof. Unless otherwise agreed by MHD, any payment made by BUYER towards payment of any unpaid amount shall firstly be utilised towards settlement of the interest charged pursuant to this Clause 2.5.
- 2.6 A written statement signed by any of MHD’s director or manager of the amount of indebtedness due, owing or payable from time to time by BUYER to MHD shall be conclusive evidence against BUYER as to such amount save for manifest error.
- 2.7 Any amount payable under an Invoice shall be paid by BUYER to MHD without any demand, set off, counter claim, qualification or conditions whatsoever. MHD shall be entitled to set off any amount owed or payable by BUYER to MHD against any amount which may be payable by MHD to BUYER whether pursuant to a Contract or otherwise.

**3. DELIVERY OF GOODS**

- 3.1 MHD shall use its reasonable endeavours to deliver to BUYER, on the Delivery Date and at the Delivery Address, the Goods purchased by BUYER.
- 3.2 MHD shall not be held liable or responsible to BUYER for any reason whatsoever including but not limited to any consequential loss of trade or profit suffered by BUYER if delivery is frustrated or delayed by force majeure described in Clause 9.
- 3.3 MHD shall not be responsible or obliged to transport the Goods to BUYER if BUYER requires the Goods to be delivered to a location where transport is not provided by MHD.
- 3.4 Risk of loss or damage to the Goods shall pass to BUYER when such Goods are delivered or deemed to have been delivered to BUYER. If, in pursuance to Clause 3.3, BUYER requires the Goods to be delivered to a location where transport is not provided by MHD, the risk of loss or damage to the Goods shall be deemed to have been passed to BUYER when such Goods are delivered to the carrier.
- 3.5 Title in the Goods shall remain with MHD until and unless the Goods are fully paid by the BUYER.

**4. SPECIAL PACKING REQUIREMENT**

Unless MHD otherwise agrees in writing to BUYER’s specific requirement on packing, the Goods to be delivered to BUYER shall be packed in the ordinary and usual manner in which such Goods are packed by MHD. All additional costs, charges and expenses incurred by MHD for any specific requirement on packing as agreed by MHD (such as specific containers, packaging materials, crates, box or storage) in relation to the Goods shall be borne and paid by BUYER.

**5. ACCEPTANCE OF THE GOODS**

- 5.1 BUYER shall (whether by itself or by its representative) forthwith inspect all Goods comprised in the delivery order issued by MHD (“Delivery Order”) upon delivery of such Goods to BUYER. Such inspection must include the physical appearance of the Goods and the quantity thereof. Upon such inspection, BUYER shall immediately notify MHD in writing by way of an annotation in the duplicate of the Delivery Order if the Goods or any portion thereof are not in conformity.
- 5.2 If no such notification is received by MHD on the day of delivery, the Goods comprised in the Delivery Order shall be deemed to be in conformity with the Contract in all respects including the following and BUYER shall be deemed to have accepted the same:-
- i) in good order and condition;
  - ii) free from material defects.

**6. WARRANTIES**

- 6.1 Save as specifically accepted/agreed in writing by MHD:-
- i) no warranty whatsoever is given by MHD to BUYER or any party as to the merchantability, quality and/or fitness for any particular purpose of any of the Goods; and
  - ii) all terms, conditions, representations or warranties (whether implied or express) whether made by MHD, its duly authorised representatives or otherwise relating to the merchantability, quality and/or fitness for any particular purpose of the Goods or any part thereof are hereby expressly excluded to the fullest extent permitted by law.
- 6.2 By placing an order of Goods with MHD, BUYER acknowledges and agrees with MHD that:-
- i) in entering into the contract, it has not relied on any representation or warranty whether given by MHD or otherwise save as specifically accepted/agreed in writing by MHD; and
  - ii) save for the right to use or resell the Goods, no right, title, interest and/or licence whatsoever in any patent, trademark, copyright, registered design or any other intellectual property rights or goodwill pertaining to the Goods is granted to BUYER.

**7. INDEMNITY**

In addition to and without prejudice to any of MHD’s rights and remedies at law, BUYER shall indemnify and keep MHD indemnified at all times and to the fullest extent permitted by law against all claims, loss, demands, actions, damages, costs, expenses (including legal costs) and liabilities whatsoever (if any) awarded against or incurred, sustained, suffered or paid (or which may be incurred, sustained, suffered or paid) by MHD as a result of or in connection with any non-performance or non-compliance by BUYER of any of its agreements or obligations under the relevant contract.

**8. EXCLUSION & LIMITATION OF LIABILITIES**

Notwithstanding anything herein to the contrary (whether express or implied), MHD shall not be liable to BUYER for any punitive or exemplary damages or for any indirect or consequential loss or damage of any kind howsoever arising (including but not limited to loss of profits, economic loss, loss of revenue, business interruption, loss of business or loss of opportunity, whether founded in contract, tort, strict liability or any other legal characterisation whatsoever). BUYER accordingly waives and relinquishes all and any of its rights to any claims to any such punitive or exemplary damages or indirect or consequential loss or damage against MHD.

**9. FORCE MAJEURE**

In the event MHD shall be rendered wholly or partly unable to carry out or perform all or any of its obligations under any contract by reason of causes beyond its control including (but not limited to) any act of God, fire, flood, drought, explosion, action of the elements, strike, lock-out, industrial action, insurrection, riot or other civil commotion, war, terrorist activity, enemy action, embargoes, acts, demands or requirements of the Governments (whether Federal or of any States) or by other causes which it could not reasonably be expected to avoid, then the performance of MHD’s obligations as it is affected by any such causes shall be excused during and for the extent only of the continuance of any inability so caused. In any of such event, MHD shall not be liable or deemed to be in breach of any contract for any delays or failures in the performance of any of such Contract.

**10. MISCELLANEOUS PROVISIONS**

- 10.1 MHD shall be entitled to amend, from time to time and at any time, these Conditions in such manner as it deems fit in its absolute direction. Such alteration will, however, not affect any contract that MHD may have entered into with BUYER prior to such alteration.
- 10.2 MHD shall be entitled to assign, transfer or subcontract all or any of its rights and/or obligation under any contract to any other person and/or company/corporation directly or indirectly related to MHD.
- 10.3 The existence and the terms of a contract including any negotiations in respect of such contract relating to MHD or its business disclosed to BUYER by or on behalf of MHD prior to, at the time or after the entering into such Contract shall be treated as confidential information of MHD.
- 10.4 Each contract is made in the English language and shall be the authoritative version of such contract. If there is any conflict in meaning between the English language version and any translation of such contract in any other language, the English language version shall prevail.
- 10.5 These Conditions shall be governed by the laws of the Hong Kong and the Parties shall submit to the exclusive jurisdiction of the courts in Hong Kong