

GENERAL TERMS AND CONDITIONS OF SALE

1. Definitions

1.1 "Conditions" means the general terms and conditions set out in this document and (unless the context otherwise requires) any special terms and conditions agreed in writing between the Purchaser and the Supplier;

"Contract" means the contract for the purchase and sale of Goods and/or supply of Services, however formed or concluded, whether pursuant to a written order of the Purchaser or a quotation of the Supplier or otherwise, which it is agreed these Conditions are fully incorporated into and may not be modified by any additional writing or instruction of the Purchaser without the Supplier's written acceptance, which may be withheld in Supplier's sole and absolute discretion.

"Goods" means the goods (including any installment of the Goods, in whole or in part, which the Supplier is to supply in accordance with a Contract;

"Incoterms" means the latest version of the Incoterms Rules by the International Chamber of Commerce as of the date when the Contract is made;

"Purchaser" shall mean the party purchasing the Goods as specified on the applicable purchase order and/or invoice.

"Services" means the services (including any part thereof) which the Supplier is to supply, if applicable, in accordance with a Contract;

"Supplier" means Heinemann Americas, Inc. and

"Writing" includes email, facsimile transmission and any comparable means of communication.

1.2 Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended re-enacted or extended at the relevant time.

1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.



2. Basis of the Contract

- 2.1 The supply of Goods and/or Services by the Supplier to the Purchaser under a Contract shall be subject to these Conditions which shall govern the Contract to the exclusion of any other terms and conditions contained or referred to in any documentation submitted by the Purchaser or implied by trade custom practice or course of dealing.
- 2.2 If a license or consent of any third party (including without limitation any governmental or other authority) is required in connection with (a) the Purchaser's purchase or use of the Goods or (b) the performance of Services at the Purchaser's premises, the Purchaser shall obtain the license or consent at its own expense and produce evidence of it to the Supplier on demand. Failure to obtain any license or consent does not entitle the Purchaser to withhold or delay payment of the price. Any additional expenses or charges incurred by the Supplier resulting from such failure shall be paid by the Purchaser.
- 2.3 The Purchaser's employees or agents are not authorized to make any representations on behalf of the Supplier concerning any Goods or Services unless confirmed by the Supplier in writing. Any information made available in connection with any offer for the supply of Goods or Services, including photographs, drawings, data about the extent of the delivery, appearance, performance, dimensions, weight, consumption of operating materials or operating costs, is not binding unless expressly designated as binding by the Supplier in writing. In entering into a Contract, the Purchaser acknowledges that it does not rely on and waives any claim based on any such representations or information not so confirmed.
- 2.4 Any advice or recommendation given by the Supplier or its employees or agents to the Purchaser or its employees or agents and which is acted upon is entirely at the Purchaser's own risk.
- 2.5 No variation to these Conditions shall be binding unless agreed in writing between the authorized representatives of the Purchaser and the Supplier.
- 2.6 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Supplier may be corrected by Supplier without any liability on the part of the Supplier whatsoever.

3. Orders and specifications

- 3.1 No order submitted by the Purchaser shall be deemed to be accepted by the Supplier unless and until confirmed in writing by the Supplier's authorized representative.

- 3.2 The Purchaser shall be responsible to the Supplier for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Purchaser and for giving the Supplier any necessary information relating to the Goods and/or Services within a sufficient time to enable the Supplier to perform the Contract in accordance with its terms.
- 3.3 The quantity, quality and description of the Goods and/or the description of the Services shall be those set out in the Supplier's quotation (if accepted by the Purchaser) or the Purchaser's order (if accepted by the Supplier) or as otherwise agreed if accepted in writing by the Supplier.
- 3.4 If any process is to be applied to the Goods or in the performance of the Services by the Supplier in accordance with a specification submitted by the Purchaser, the Purchaser shall indemnify the Supplier against all loss, damages, costs and expenses awarded against or incurred by the Supplier in connection with or paid or agreed to be paid by the Supplier in settlement of any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from the Supplier's use of the Purchaser's specification(s). If any allegation of infringement is made by a third party, the Supplier is not obliged to enquire into the merits of the allegation but is entitled to terminate the Contract and claim compensation for all loss (including loss of profit,) costs (including the cost of all labor and materials used), damages, charges and expenses incurred by the Supplier.
- 3.5 The Supplier reserves the right to make any changes in the specification of the Goods or Services which are required to conform with any applicable laws, whether international, federal, state, local or city, and/or statutory or regulatory requirements including, but not limited to, those of where the Goods or Services are to be supplied per the Supplier's specification which do not materially affect their quality or performance. In the event such modification does affect their quality or performance Supplier may provide Purchaser with a reasonable substitution to the extent available.
- 3.6 No Contract including, but not limited to, the Goods associated with such Contract, may be modified or cancelled by the Purchaser except with the agreement in writing of the Supplier and on terms that the Purchaser shall indemnify the Supplier in full against all loss (including loss of profit) costs (including the cost of all labor and materials used) damages, charges and expenses incurred by the Supplier as a result of the modification or cancellation.
- 3.7 Unless agreed in writing by the Supplier all drawings, designs, specifications and particulars submitted by the Supplier are approximate and only for information purposes so the Purchaser cannot rely on the accuracy of the same.

- 3.8 All intellectual property rights, and without prejudice to the generality of the foregoing, including, but not limited to, copyright, patents, trademarks and know-how whether registered or not, related to the specifications, drawings or Goods and/or Services remain the absolute property of the Supplier and the Supplier's ownership shall not be affected by any contribution and/or payment by Purchaser towards any of the associated costs.

4. Price

- 4.1 The price of the Goods and/or Services shall be the price stated in the Supplier's offer which has been accepted by the Purchaser or the price stated in the Purchaser's offer which has been accepted by the Supplier.
- 4.2 The Supplier shall have at its sole discretion the right to change the price of the Goods and/or Services in accordance with the Contract.
- 4.3 The price excludes any applicable goods and services tax, value added tax or similar tax which the Purchaser shall be additionally liable to pay to the Supplier. The Supplier shall receive the price net of all bank charges, taxes and similar expenses.
- 4.4 The Purchaser shall meet the cost of any special packaging of the Goods which it may request, or which may be necessitated by delivery by any means other than the Supplier's normal means of delivery. The Purchaser shall unless otherwise agreed be solely responsible for the disposal of all packaging in accordance with all regulations whether statutory or otherwise.

5. Terms of payment

The terms of payment are found in the invoice.

6. Delivery/Performance

- 6.1 If the parties agree on some other mode of delivery per Incoterms, the Supplier's delivery obligations shall be determined according to the applicable Incoterm as specified in the invoice. Except as specified in writing as accepted by Supplier, the Supplier shall have no other obligations, in particular obligations which it might otherwise be required under the applicable law of Florida including those sections of the Uniform Commercial Code adopted in the State of Florida.
- 6.2 Where the Goods are to be delivered in installments each delivery shall constitute a separate Contract and failure by the Supplier to deliver any one or more of the installments in accordance

with these Conditions or any claim by the Purchaser in respect of any one or more installments shall not entitle the Purchaser to treat the Contract as a whole as repudiated.

- 6.3 The Supplier has the right at any time to sub-contract all or any of its obligations for the sale of the Goods or supply of the Services to any other party as it may from time to time decide without giving notice of the same to the Purchaser.
- 6.4 Any dates quoted for delivery of the Goods or performance of the Services are approximate only. The Goods may be delivered by the Supplier in advance of the quoted delivery date upon giving reasonable notice to the Purchaser. Unless previously agreed by the Supplier in writing, the time for delivery/performance shall not be of the essence, and the Supplier shall not be liable for any delay in delivery or performance regardless of cause.
- 6.5 If the Purchaser fails to take delivery of the Goods or fails to give the Supplier adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Purchaser's reasonable control, or by reason of the Supplier's affirmative negligence, then without prejudice to any other right or remedy available to the Supplier, the Supplier may:
- 6.5.1 store the Goods until actual delivery and charge the Purchaser for the reasonable costs (including insurance) of storage;
 - 6.5.2 sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Purchaser for the excess over the price under the Contract provided the price has been paid in cleared funds in full or charge the Purchaser for any shortfall below the price under the Contract; or
 - 6.5.2 terminate the Contract, in which case the Purchaser shall be liable for any and all damages and associated legal costs.
- 6.6 If the Supplier, being ready willing and able to perform the Services, is prevented by the Purchaser from doing so, then the Supplier shall be entitled to declare itself released from the performance of such Services, by notice in writing to the Purchaser, and to claim compensation for all loss (including loss of profit) costs (including the cost of all labor and materials used), damages, charges and expenses incurred by the Supplier as a result thereof.

7. Risk and property in the Goods

- 7.1 Risk of damage to or loss of the Goods shall pass to the Purchaser consistent with the Incoterms specified in invoice, which may, without limiting the requirements associated with such Incoterms, specify the following:
- 7.1.1 in the case of Goods to be delivered at the Supplier's premises, at the time when the Supplier notifies the Purchaser that the Goods are available for collection or
 - 7.1.2 in the case of Goods to be delivered otherwise than at the Supplier's premises, at the time of delivery or if the Purchaser wrongfully fails to take delivery of the Goods, the time when the Supplier has tendered delivery of the Goods.
- 7.2 Notwithstanding delivery and the passing of risk in the Goods or any other provision of these Conditions, the title in the Goods shall not pass to the Purchaser until the Supplier has received in cash or cleared funds payment in full of the price of the Goods and all other goods agreed to be sold by the Supplier to the Purchaser for which payment is then due.
- 7.3 Until such time as the title in the Goods passes to the Purchaser, the Purchaser shall hold the Goods as the Supplier's fiduciary agent and bailee and shall keep the Goods separate from those of the Purchaser and third parties and properly stored protected and insured and identified as the Supplier's property but shall be entitled to resell or use the Goods in the ordinary course of its business but shall account to the Supplier for the proceeds of sale or otherwise of the Goods whether tangible or intangible including insurance proceeds and shall keep all such proceeds separate from any moneys or property of the Purchaser and third parties and in the case of tangible proceeds properly stored protected and insured.
- 7.4 The Purchaser agrees with the Supplier that the Purchaser shall immediately notify the Supplier of any matter from time to time affecting the Supplier's title to the Goods and the Purchaser shall provide the Supplier with any information relating to the Goods as the Supplier may require from time to time.
- 7.5 Until such time as the property in the Goods passes to the Purchaser (and provided the Goods are still in existence and have not been resold) the Supplier shall be entitled at any time to require the Purchaser to deliver up the Goods to the Supplier and if the Purchaser fails to do so forthwith to enter upon any premises of the Purchaser or any third party where the Goods are stored and repossess the Goods.

- 7.6 The Purchaser shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Supplier but if the Purchaser does so all moneys owing by the Purchaser to the Supplier shall (without prejudice to any other right or remedy of the Supplier) forthwith become due and payable.
- 7.7 The Purchaser hereby irrevocably appoints the Supplier and its servants as its duly authorized agent for the purpose of entering upon any premises where the Goods are stored for the purpose of examination and/or recovery of the same at any time without notice.
- 7.8 Where the Goods have been incorporated by the Purchaser into any product or article in such a way that the substance and identity of the Goods have been irrevocably altered or destroyed, then property in such new product(s) or article(s) shall immediately upon its or their creation vest wholly in the Supplier, and the provisions of the preceding sub-conditions shall apply mutatis mutandis to such products or articles as if they were Goods remaining the property of the Supplier; provided that this sub-condition shall not apply if the Supplier has received in cash or cleared funds payment in full of the price of the Goods and all other goods agreed to be sold by the Supplier to the Purchaser for which payment is then due. For the avoidance of doubt, it is hereby declared that the provisions of the preceding sub-conditions shall continue to apply to Goods which have been incorporated by the Purchaser into any product or article in such a way that the substance and identity of the Goods have not been irrevocably altered or destroyed. Notwithstanding the foregoing, Supplier shall have no liability whatsoever with respect to any claims or actions arising from modifications made to such Goods or the incorporation of such Goods into and product or article that changes the substance and identity of the Goods, it being understood that Purchase shall indemnify Supplier in full with respect to any damages, costs and expenses incurred by Supplier associated with any such claims or actions.
- 7.9 If the provisions in this Condition 7 are not effective according to the law of the country in which the Goods are located, the legal concept closest in nature to retention of title in that country shall be deemed to apply mutatis mutandis to give effect to the underlying intent expressed in this condition, and the Purchaser shall take all steps necessary to give effect to the same.
- 7.10 Without limiting section 7.8, the Purchaser shall indemnify the Supplier against all loss damages costs expenses and legal fees incurred by the Purchaser in connection with the assertion and enforcement of the Supplier's rights under this condition.

8. Warranties and remedies

- 8.1 Any claim by the Purchaser which is based on any defect in the quality or condition of the Goods or their failure to correspond with specifications as represented by the manufacturer or producer of

such Goods shall be notified in writing to the Supplier within fourteen days from the date of receipt of the Goods or (where the defect or failure was not apparent on reasonable from inspection) within fourteen days after discovery of the defect or failure in such manner or format as may be required by the Supplier. The Purchaser shall also examine the Goods for defects before bringing to market, in particular regarding safety and suitability for use. During use, the Goods shall be monitored constantly with regard to safety and defects. If there are even slight reservations concerning the suitability for use or the slightest reservations concerning safety, the Goods must not be used or sold and their distribution must be shut down immediately. The Supplier shall be given written notification immediately thereafter, specifying the reservations or the defect. However in no event shall the Purchaser be entitled to reject the Goods, except where the defect or failure is such that the Goods are non-conforming to the order specified in such Contract..

- 8.2 With respect to such non-conforming Goods for which the Supplier has been properly notified, the Goods (or part thereof) will be, in Supplier's sole discretion, either repaired or replaced free of charge as originally ordered. Where the Goods have not been so repaired or replaced within a reasonable time, the Supplier and the Purchaser shall discuss in good faith and agree on the remedial action to be taken. In lieu of repair or replacement, the Supplier may, at its sole discretion, grant such a reduction to the Purchaser. Upon a repair, replacement or price reduction being made as aforesaid, the Supplier shall have no further liability whatsoever to the Supplier.
- 8.3 When the Supplier has provided replacement Goods or given the Purchaser a refund, the defective or non-conforming Goods or parts thereof shall be returned to the Supplier or destroyed by Purchaser, in Supplier's sole discretion, at Supplier's sole cost and expense.
- 8.4 It is expressly understood and acknowledged by the Purchaser that with respect to any defective Goods as between the Supplier and the manufacturer of the Goods, the Purchaser shall have no legal recourse against the Supplier and Supplier shall have no legal liability whatsoever, and without limiting the provisions specified in section 10, with respect to such Goods. Purchaser shall look solely to the applicable manufacturer's warranties as a remedy. Moreover, the Purchaser is in compliance with and shall continue to be in compliance with any federal, state, local or foreign statutes, laws or regulations with respect to the conduct of its business, or the ownership or operation of its business including, but not limited to, those laws and regulations relating to the sale of duty and or tax free goods.

9. Intellectual Property Rights

- 9.1 The Purchaser hereby acknowledges that it shall have no rights whatsoever to the Intellectual Property of either the Supplier or any manufacturer or producer of the Goods. "Intellectual Property"

shall mean patent, copyright, trademark, trade design and/or trade secret. Purchaser shall take no action that violate the Intellectual Property of the Supplier or applicable manufacturer or producer of any Goods.

10. LIMITATION OF LIABILITY

- 10.1 THE SUPPLIER SHALL HAVE NO LIABILITY WHATSOEVER WITH RESPECT TO ANY LOSSES ARISING IN CONNECTION WITH ANY FORCE MAJEURE EVENT AND/OR FROM ANY ACT OR DEFAULT OF THE PURCHASER.
- 10.3 UNLESS OTHERWISE RESTRICTED BY LAW, AND THEN ONLY TO THE EXTENT OF SUCH RESTRICTION, IN NO EVENT SHALL THE SUPPLIER BE LIABLE FOR LOSS OF PROFIT OR GOODWILL, LOSS OF PRODUCTION OR REVENUE OR ANY TYPE OF SPECIAL INDIRECT OR CONSEQUENTIAL LOSS WHATSOEVER (INCLUDING LOSS OR DAMAGE SUFFERED BY THE PURCHASER AS A RESULT OF AN ACTION BROUGHT BY A THIRD PARTY) EVEN IF SUCH LOSS WERE REASONABLY FORESEEABLE OR THE SUPPLIER HAD BEEN ADVISED OF THE POSSIBILITY OF THE PURCHASER INCURRING THE SAME.
- 10.6 THE REMEDIES SET OUT IN SECTION 8 ARE THE PURCHASER'S SOLE AND EXCLUSIVE REMEDIES FOR NON-CONFORMITY OF OR DEFECTS IN THE GOODS OR SERVICES AND THE SUPPLIER'S LIABILITY FOR THE SAME SHALL BE LIMITED IN THE MANNER SPECIFIED IN SECTION 8.
- 10.7 WITHOUT PREJUDICE TO THE LIMITS OF LIABILITY SPECIFIED UNDER THIS SECTION 10 OR ELSEWHERE IN THESE TERMS AND CONDITIONS, THE SUPPLIER'S MAXIMUM AND CUMULATIVE TOTAL LIABILITY (INCLUDING ANY LIABILITY FOR ACTS AND/OR OMISSIONS OF ITS EMPLOYEES AGENTS AND SUB-CONTRACTORS) WITH RESPECT TO ANY AND ALL CLAIMS FOR DEFECTIVE PERFORMANCE, BREACH OF CONTRACT, COMPENSATION, INDEMNITY, TORT, MISREPRESENTATION, NEGLIGENCE AT LAW OR EQUITY AND ANY OTHER DAMAGES OR LOSSES WHATSOEVER WHICH MAY ARISE IN CONNECTION WITH ITS PERFORMANCE OR NON-PERFORMANCE UNDER THE CONTRACT, SHALL NOT EXCEED 50% OF THE TOTAL APPLICABLE CONTRACT PRICE ACTUALLY PAID BY THE PURCHASER TO THE SUPPLIER.
- 10.8 IF A NUMBER OF EVENTS GIVE RISE SUBSTANTIALLY TO THE SAME LOSS THEY SHALL BE REGARDED AS GIVING RISE TO ONLY ONE CLAIM UNDER THESE CONDITIONS.



10.9 NO ACTION SHALL BE BROUGHT BY THE PURCHASER LATER THAN 12 MONTHS AFTER THE DATE IT BECAME AWARE, OR SHOULD HAVE REASONABLY BECOME AWARE, OF THE CIRCUMSTANCES GIVING RISE TO SUCH CLAIM.

11. General

11.1 Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in these Conditions but if there is any conflict between the provisions of Incoterms and these Conditions, the latter shall prevail.

11.2 No waiver by the Supplier of any breach of the Contract by the Purchaser shall be considered as a waiver of any subsequent breach of the same or any other provision.

11.3 If any provision of a Contract, of which these Conditions are a part, is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.

11.4 Supplier will not be liable to Purchaser for failing to perform or discharge any obligation of a Contract where such failure is caused by acts of God, labor disorders, fire, weather, pandemic, quarantine, civil unrest, civil or military interference, closing of public highways, government interference and other causes beyond the affected parties' control ("Force Majeure Event").

11.5 No person who is not a party to these Conditions (including any employee, officer, agent, representative, or sub-contractor of either party) shall have any right under the Contract to enforce any terms of these Conditions which expressly or by implication confers a benefit on that person without the express prior agreement in writing of the parties, which agreement must refer to this section 11.5.

11.6 All civil actions filed as a result of disputes arising out of a Contract shall be filed solely and exclusively in the court of proper jurisdiction in Miami-Dade County, Florida, and the laws of the State of Florida or applicable federal law shall apply. If any provision of a Contract violates any applicable law, that provision will be ineffective to the extent of the violation without invalidating any other provision of a Contract or these Terms and Conditions. The Supplier and Purchaser hereto agree that the rights and obligations of each party under these Terms and Conditions shall not be governed by any of the provisions of the [United Nations Convention on Contracts for the International Sale of Goods](#).

As of January 1, 2021