

# CHURCHILL DINING OUT CONDITIONS OF SALE

## INTERPRETATION 1.

- (1) IN these Conditions (unless the context otherwise requires): "the Company" means Churchill Dining Out; "Goods" means the goods the subject matter of the Contract; "the Buyer" means the person, firm or company with whom the Contract is made by the Company; "Company's Premises" means the premises specified in the Contract or if not so specified means Marlborough Pottery, High Street, Tunstall, Stoke-on-Trent, Staffordshire, ST6 5NZ, England; "the Contract" means the contract for the sale or supply of the Goods; "Incoterms" means the international rules for the interpretation of trade terms of the International Chamber of Commerce (1990 Edition). Unless the context otherwise requires, a 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, then these Conditions shall prevail.
- (2) The headings in these Conditions are intended for reference only and do not affect their construction.

## GENERAL 2.

- (1) THESE Conditions shall apply to the Contract to the exclusion of any other terms and conditions contained or referred to in any order, letter or form of Contract sent by the Buyer to the Company and the provisions of these Conditions shall prevail unless expressly varied in writing and signed by a director on the Company's behalf.
- (2) Any concession made or latitude allowed by the Company to the Buyer shall not affect the strict rights of the Company under the Contract.
- (3) If in any particular case any of these Conditions shall be held to be invalid or shall not apply to the Contract the other Conditions shall continue in full force and effect.

## ORDERS 3.

- NOTWITHSTANDING any detailed quotation of the Company no order shall be binding on the Company unless accepted in writing by the Company.

## PRICES 4.

- (1) THE price payable for Goods shall be the list price of the Company current at the date of despatch less any discount to which the Buyer is entitled. Any samples provided to the Buyer shall be charged extra.
- (2) The Company reserves the right to issue new price lists at any time without prior notice.
- (3) All prices are exclusive of Value Added Tax which will be charged at the appropriate rate.

## ADDITIONAL COSTS 5.

- THE Buyer agrees to indemnify the Company in respect of any cost, loss, or expense incurred by the Company as a result, directly or indirectly, of any act neglect or default on the part of the Buyer, its agents or employees.

## INTELLECTUAL PROPERTY 6.

- (1) THE Buyer shall not re sell any Goods bearing or by reference to any trade mark of the Company or by reference to the Company which have been decorated or altered in any way nor supply the Goods to any person unless such person shall have been put on notice of this condition.
- (2) THE Buyer shall indemnify the Company against any cost, claim, loss, expense and damage incurred by the Company or for which it may be liable due to or arising directly or indirectly out of any infringement or alleged infringement of patents, trade marks, copyright, design right or other intellectual property right occasioned by the importation, manufacture or sale of the Goods made to the special requirements of the Buyer.

## TERMS OF PAYMENT 7.

- (1) SUBJECT to Condition 7 (7) below the Buyer shall pay the price of the Goods (less any discount to which the Buyer is entitled, but without any other deduction) in pounds sterling within 30 days of the date of despatch of the Goods.
- (2) If Goods are delivered in instalments the Company may invoice each instalment when delivery thereof has been made and payment in respect of each instalment shall be then due.
- (3) If the price is payable by instalments or if the Buyer has agreed to take specified quantities of Goods at specified times, non-payment by the Buyer of any instalment due or its failure to give delivery instructions in respect in any quantity of Goods outstanding shall cause the balance of the price to become due forthwith.
- (4) The price of the Goods shall be due in full to the Company in accordance with the Contract and the Buyer shall not exercise any set-off, lien or any other similar right or claim whether in respect of any defect in the Goods or otherwise.
- (5) The time of payment shall be of the essence of the Contract.
- (6) Without prejudice to its other rights the Company may (both before and after any judgement) charge interest at 3% above the then Current Base Rate of Lloyds Bank PLC on overdue payments for the Goods or any instalment.
- (7) In the case of orders for delivery outside the United Kingdom Condition 22 of these Conditions shall apply.

## DELIVERY 8.

- (1) ANY date quoted for delivery of the Goods is given in good faith but is approximate only and the Company shall not be liable for any delay in delivery of the Goods howsoever caused. Time of delivery shall not be of the essence of the Contract.
- (2) Where the Goods are handed to a carrier for carriage to the Buyer or to a United Kingdom port for export that carrier shall be deemed an agent of the Company and not of the Buyer for the purposes of sections 44, 45 and 46 of the Sale of Goods Act 1979.
- (3) The Buyer agrees that Section 32(3) of the Sale of Goods Act 1979 shall not apply to Goods sent by the Company.
- (4) The Company will incur no liability (whether in contract or for negligence or otherwise) for loss of or damage to or defect in the Goods prior to delivery or for any claim that the Goods are not in accordance with the Contract (being a defect or loss, damage or non-compliance obvious on a reasonable inspection of the Goods) or for non-delivery, unless such claims are notified in writing to the Company (and, in the case of claims for non-delivery, loss or damage, with a copy to the carrier):-
- (a) within 48 hours of delivery for loss, damage, defect or non-compliance with the Contract; or
- (b) within ten days of the date of the invoice for non-delivery.
- (5) In the event of a valid claim for non-delivery, loss or damage, the Company undertakes at its option to replace the Goods at its expense but shall not be under any further liability in connection therewith.
- (6) If the Buyer fails to give notice in accordance with 8 (4) above the Goods shall be deemed to be in all respects in accordance with the Contract and, without prejudice to earlier acceptance by the Buyer, it shall be bound to accept and pay for the same accordingly.
- (7) If for any reason the Buyer is unable to accept delivery when the goods are due and ready for delivery the Company may at its sole discretion, without prejudice to its other rights, and for such period as the Company may determine, store the Goods at the Buyer's risk and expense, provided that the Buyer shall be immediately informed thereof.
- (8) The Company may deliver Goods by instalments and at such intervals as it may decide.

## RETURNS 9.

- GOODS in accordance with the Contract cannot be returned without the Company's prior authorisation. Duly authorised returns shall be sent to the Company's Premises at the Buyer's expense and a cancellation charge of 25% of the price of the Goods shall be paid by the Buyer.

## CARRIAGE 10.

- (1) DELIVERY of Goods will take place at the address for delivery of the Goods within the United Kingdom as maybe specified in the Buyer's order. If no such address is specified, delivery shall take place at the premises of the Company. Delivery of Goods to the address within the United Kingdom specified in the Buyer's order shall be made at the cost of the Company and by any method of transportation regarded as suitable by the Company at its discretion. The Company shall be under no obligation to insure the Goods during transit.
- (2) Where the Buyer requests delivery in a manner other than ex works, any difference in price shall be charged to the Buyer.

## PASSING OF TITLE AND RISK 11.

- (1) FROM the time of delivery the Goods shall be at the Buyer's risk who shall be solely responsible for their custody and maintenance but, unless otherwise expressly agreed in writing, the Goods shall remain the Company's property until all payments to be made by the Buyer under the contract and any other contract between the Company and the Buyer and on any other account whatsoever have been made in full and unconditionally. Whilst the Company's ownership continues the Buyer shall keep the Goods labelled as belonging to the Company and separate and identifiable from all other goods in its possession as bailee for the Company.
- (2) The Buyer may only re sell the Goods to the Buyer's customers in the ordinary course of the Buyer's business as a fiduciary and trustee for the Company. In the event of any resale by the Buyer of the Goods the Company's beneficial entitlement shall attach to the proceeds of sale or other disposition thereof so that such proceeds or any claim therefore shall be assigned to the Company and until such assignment shall be held on trust in a separate identified account for the Company by the Buyer and such proceeds shall not be mingled with other moneys or paid into any overdrawn bank account and shall at all times be identifiable as the Company's moneys.
- (3) Without prejudice to the equitable rules as to tracing, in the event of failure to pay the price in accordance with the Contract the Company shall have power to re-sell the Goods, such power being additional to (and not in substitution for) any other power of sale arising by operation of law or implication or otherwise and for such purpose the Company and its servants and agents may forthwith enter upon any premises or land occupied or owned by the Buyer to remove the Goods.

- (4) Pending payment of the full purchase price of the Goods the Buyer shall at all times keep the Goods comprehensively insured against loss or damage by accident, fire, theft and other risks usually covered by insurance in the type of business carried on by the Buyer in an amount at least equal to the balance of the price for the same from time to time remaining outstanding. The policy shall bear an endorsement recording the Company's interest.
- (5) The company is hereby licensed to enter upon any premises in the ownership possession or control of the Buyer at any time to recover the Goods.

## CONDITIONS AND WARRANTIES 12.

- (1) THE Contract shall not constitute a sale by description or sample.
- (2) Any conditions or warranties (whether express or implied by statute or common law or arising from conduct or a previous course of dealing or trade custom or usage or otherwise howsoever) as to the quality of the Goods or their fitness for any particular purpose (even if that purpose is made known expressly or by implication to the Company) or as to the correspondence of the Goods with any description or sample are hereby expressly negated.
- DEFECTIVE GOODS 13.**
- (1) IN substitution for all rights which the Buyer would or might have but for these Conditions the Company undertakes that if within six months of delivery of any item of the Goods a serious defect in materials or workmanship appears in it it will at its own discretion replace it free of charge at the place of delivery of the original Goods provided that in any case they have been accepted and paid for.
- (2) In order to exercise its rights under this Condition the Buyer shall inform the Company within seven days of the date when such defect appeared or ought reasonably to have been discoverable and shall at the Company's request return the defective Goods carriage paid at the Buyer's expense to the Company's Premises.
- (3) Nothing herein shall impose any liability upon the Company in respect of any defect in the Goods arising out of the acts, or omissions, of the Buyer, its agents or employees including in particular (but without prejudice to the generality of the foregoing) its failure to comply with any recommendations of the Company as to storage and handling of the Goods.
- (4) Where the Goods are delivered by instalments any defect in an instalment shall not be a ground for cancellation of the remainder of the instalments and the Buyer shall be bound to accept delivery thereof.
- (5) Nothing herein shall have the effect of excluding or restricting the liability of the Company for death or personal injury resulting from its negligence in so far as the same is prohibited by the United Kingdom statute.

## BUYER'S DRAWINGS 14.

- THE Company shall not be liable for defects caused by inaccuracies in drawings, or specifications supplied by the Buyer.

## CONSEQUENTIAL LOSS 15.

- THE Company shall not be liable for any costs, claims, damages or expenses arising out of any tortious act omission or any breach of contract or statutory duty calculated by reference to profits, income, production or accruals or loss of such profits, income, production or accruals or by reference to accrual of such costs, claims, damages or expenses on a time basis.

## DEFAULT OR INSOLVENCY OF BUYER 16.

- IF the Buyer shall be in breach of any of its obligations under the Contract or if any distress or execution shall be levied on the Buyer's property or assets or if the Buyer shall make or offer to make any arrangement or composition with his creditors or if any bankruptcy petition be presented against him or (if the Buyer is a company) if any Resolution or Petition to wind up such company shall be passed or presented or if a receiver, administrative receiver or administrator of the whole or any part of such company's undertaking property or assets shall be appointed, the Company in its discretion and without prejudice to any other right or claim may by notice in writing determine wholly or in part any and every contract between the Company and the Buyer or may (without prejudice to the Company's right subsequently to determine the Contract for the same cause should it so decide) by notice in writing suspend delivery or any further deliveries (as the case may be) of Goods until default by the Buyer be remedied.

## LIMITATION OF LIABILITY 17.

- THE aggregate liability of the Company (whether in contract or for negligence or otherwise) to the Buyer for any loss or damage of whatsoever nature and howsoever caused shall be limited to and in no circumstances shall exceed the price of the Goods.

## REPRESENTATIONS 18.

- NO statement, description, information, warranty, or recommendation contained in any catalogue, price list, or advertisement or made verbally by any of the Company's agents or employees shall enlarge, vary or override any of these Conditions.

## FORCE MAJEURE 19.

- THE Company shall be entitled to delay or cancel delivery or to reduce the amount of Goods delivered if and to the extent that it is prevented from or hindered in or delayed in manufacturing, obtaining or delivering the Goods by normal route or means of delivery through any circumstances beyond its control including (but not limited to) strikes, lock-outs, accidents, war, fire, reduction in or unavailability of power at manufacturing plant, breakdown of plant or machinery or shortage or unavailability of raw materials from normal sources of supply.

## CANCELLATION 20.

- SAVE as provided in Conditions 16 and 19 hereof contracts may not be cancelled except by agreement in writing of both parties and upon the payment to the Company of an amount which indemnifies the Company against all loss resulting therefrom.

## SUB-CONTRACTING 21.

- THE Company may assign the Contract with the Buyer or sub-contract the whole or any part thereof to any person, firm or company.

## EXPORT TERMS 22.

- (1) WHERE the Goods are supplied for export from the United Kingdom, the provisions of this Condition 22 shall (subject to any terms in agreed in writing between the Buyer and the Company) apply notwithstanding any other provision of these Conditions.
- (2) The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination, and into any country through which the Goods are transported, and for the payment of any duties on or in respect of the importation or transportation of the Goods.
- (3) Payment of all amounts due from the Buyer to the Company shall be made by irrevocable letter of credit opened by the Buyer in favour of the Company and confirmed by a United Kingdom clearing bank acceptable to the Company.

## PROPER LAW 23.

- THE Contract shall in all respects be governed by and construed in accordance with English Law and shall be deemed to have been made in England and the Buyer and the Company agree to submit to the non-exclusive jurisdiction of the English Courts.



**CHURCHILL**

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