

# TERMS AND CONDITIONS FOR THE SUPPLY AND MAINTENANCE OF TECHNICAL SERVICES EQUIPMENT

1. **Interpretation**
  - 1.1. In these Conditions:
    - Authorised Wholesaler** means a wholesaler approved by the Company by way of a written notification from an authorised representative of the Company to the Customer;
    - CBAS** means Carlsberg Breweries A/S (company number CVR No. 25508343);
    - Company** Carlsberg Marston's Brewing Company Limited (company no. 00078439), including its successors and assigns;
    - Conditions** means these terms and conditions as they may be amended;
    - Contract** means the contract between the Company and the Customer for the supply of the Equipment and/or Services in accordance with these Conditions;
    - CQDS** means the beer dispensing system known as the Carlsberg Quality Dispense System;
    - Customer** means the customer to whom the Equipment and/or the Services are supplied or otherwise receives the Equipment and/or the Services;
    - DM Rights** means CBAS's Intellectual Property Rights in the DM System;
    - DM System** means the beer dispensing system known as DraughtMaster<sup>®</sup>, which combines PET kegs with in-built air compressors to store and dispense beer in a single or modular system, the modular system including a semi-automatic cleaning system, which has been designed by CBAS and incorporates the DM Rights;
    - Equipment** means any technical services equipment supplied by the Owner or the Company to the Customer from time to time and includes any CQDS or DM System and all ancillary equipment, and any alterations, additions or replacements thereto;
    - Intellectual Property Rights** means patents, rights to inventions, copyright and related rights, moral rights, trademarks and service marks, trade names and domain names, rights in get-up, rights to goodwill or to sue for passing off or unfair competition, rights in designs, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;
    - Maintenance Services** means the services detailed in Clause 5.1;
    - Owner** means any owner of the Equipment as notified by the Company to the Customer;
    - Premises** means the Customer's licensed premises or such other location as may be agreed with the Company in writing;
    - Products** means the products supplied by the Company or an Authorised Wholesaler to the Customer sold under the trademarks owned by the Company or CBAS and such other products as may be agreed by the Company in writing;
    - Services** means the installation of the Equipment in accordance with Clause 4 and the Maintenance Services;
    - Supply Agreement** means any supply agreement or trading terms relating to the supply of the Products, which are supplemental to these Conditions and which have been agreed by the Company and/or an Authorised Wholesaler and the Customer.
2. **Purpose and Scope**
  - 2.1. Subject to any variation pursuant to Clause 2.2, these Conditions apply to the Contract to the exclusion of all other terms and conditions, including any which the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. No terms endorsed on, delivered with or contained in the Customer's purchase order, confirmation of order or other document will form part of the Contract.
  - 2.2. Any variation of these Conditions or any representations about the Equipment or Services must be agreed in writing and signed by an authorised representative of the Company and none of the Company's employees, agents or subcontractors has any authority to bind the Company by an oral agreement at variance with these Conditions.
3. **Equipment and Services**
  - 3.1. The Company will procure that the Owner will provide the Equipment to the Customer on the terms set out in these Conditions. In addition, the Company grants the Customer, for the duration of the Contract, a non-exclusive licence to use the DM Rights and each CQDS and DM System at the Premises for the purpose of selling certain Products.
  - 3.2. Unless otherwise expressly stated in the Supply Agreement, ownership of the Equipment will not pass to the Customer, but will remain with the Owner at all times. The Customer must not sell or offer for sale, or lend, sub-let or assign the Equipment or allow the creation of any security interest in respect of it or otherwise dispose of the Equipment.
  - 3.3. The Equipment must be kept in the Customer's possession and must remain at the Premises.
  - 3.4. Where the Equipment includes cash hand pulls such Equipment should only be used for dispensing cask ales supplied by the Company, an Authorised Wholesaler or another supplier approved by Customer. Where the Customer uses such Equipment to dispense other products, the Company reserves the right to charge the Customer a weekly fee for the ongoing maintenance of that Equipment (**Hand Pull Charge**). The Company will notify the Customer of the Hand Pull Charge, which shall be due monthly in accordance with Clause 7.
  - 3.5. The Customer acknowledges and agrees that the Equipment shall not be:
    - 3.5.1. used in combination with products other than the Products;
    - 3.5.2. dismantled (other than for the purposes of cleaning or repair), split into separate components and/or combined with any third party component;
    - 3.5.3. altered, amended, reverse engineered or (in the case of the kegs) refilled;
    - 3.5.4. marked with any other marking.
  - 3.6. The Company will have the right (without thereby incurring any liability to the Customer and without prejudice to any other of its rights or remedies) to disconnect any Equipment used to dispense a third party brand owner's product where that brand owner is not contributing to the Company's costs of installing and/or maintaining that Equipment, and for such purposes the Customer shall ensure that the Company or its appointed agents are granted full and unrestricted access to the Premises.
  - 3.7. Where agreed, the Company will also provide (subject to availability) the Services in respect of the Equipment.
  - 3.8. All orders or requests for Services placed by or on behalf of the Customer shall be deemed to have been placed by persons duly authorised by the Customer.
  - 3.9. The Company reserves the right to suspend or refuse to provide the Services when, in the Company's or its contractor's reasonable opinion, conditions at the Premises represent a hazard to the health or safety of any of the Company's or its contractor's personnel or representatives.
4. **Delivery and Installation**
  - 4.1. The Company will arrange for the delivery of the Equipment to, and the installation of it at, the Premises. Risk of loss, theft, damage or destruction of the Equipment shall pass to the Customer on delivery to the Premises.
  - 4.2. The Customer will, at its own expense, prepare the Premises for the installation of the Equipment, provide the proper environmental and operational conditions necessary for the efficient working and maintenance of the Equipment before it is delivered, and comply fully with any reasonable instructions or guidelines issued by or on behalf of the Company or the Owner in connection with the installation of the Equipment.
  - 4.3. If in the opinion of the Company, its contractor or the Owner it is necessary to remove or otherwise disconnect any of the Customer's existing equipment at the Premises in order to carry out the installation of the Equipment, then the Customer will permit, and obtain all necessary consents for, that removal and/or disconnection and will give the Company and its contractor all necessary assistance to enable that work to be carried out.
  - 4.4. Where the Customer wishes to install and maintain the Equipment itself, the Customer agrees to:
    - 4.4.1. carry out the work at its own risk;
    - 4.4.2. comply with the manufacturer's guidelines and any instructions issued by the Company, its contractor or the Owner from time to time;
    - 4.4.3. ensure that the work is only carried out by competent engineers who have the necessary qualifications and experience to complete the work safely;
    - 4.4.4. comply with all applicable legislation and codes of practice, including those relating to health and safety; and
    - 4.4.5. be responsible for any resulting loss of or damage to the Equipment and fully indemnify the Company against all such loss and damage.
5. **Maintenance**
  - 5.1. Subject to the other provisions of this Clause 5, the Company will use its reasonable endeavours to fix any faults in the Equipment. Any parts replaced in the provision of such services will remain or become (as the case may be) the property of the Company or the Owner.
  - 5.2. The Company shall use its reasonable endeavours to provide the Maintenance Services as soon as is reasonably possible after being notified by the Customer of any fault, but having regard to the availability of personnel, commitments to other customers and the seriousness of the reported problem.
    - 5.3. The Company will not be liable to provide the Maintenance Services:
      - 5.3.1. in respect of any equipment other than the Equipment;
      - 5.3.2. in respect of Equipment (or any part thereof) used by the Customer to dispense any product other than the Products without the Company's prior written consent;
      - 5.3.3. where they are required as a result of neglect or misuse; or
      - 5.3.4. where they are required as a result of the Equipment being maintained or modified, or attempts to maintain or modify the Equipment have been made, by anyone other than the Company's or its contractor's personnel, or the Customer under the guidance of the Company's or its contractor's personnel.
  - 5.4. The Company may charge the Customer for any work undertaken as a result of any of the causes stated in Clause 5.3, or the Customer failing to comply with any of its other obligations under the Contract, at the rates prevailing at the time of repair. Such charges shall be payable by the Customer on demand.
  - 5.5. If the Equipment requires replacement due to loss or damage caused by flood, fire, vandalism or rodent damage, or as a result of the Equipment being put otherwise than to normal use, the Customer will be liable to pay the Company on demand the full replacement cost of the Equipment together with labour and delivery charges relating to the supply and installation of the replacement.
6. **Customer's Obligations**
  - 6.1. The Customer must:
    - 6.1.1. keep the Equipment in good condition, and operate it safely, reasonably and in accordance with any guidelines or specifications issued by or on behalf of the Company, CBAS, the Owner or the manufacturer of the Equipment;
    - 6.1.2. whilst the Equipment is in its possession, custody or control, keep it insured for its full replacement value with a reputable insurance company against all usual risks of loss, damage or destruction by fire, theft or accident, and such other risks as the Company may from time to time nominate in writing, and provide evidence of this insurance and of the payment of premiums under such insurance to the Company on request;
    - 6.1.3. keep the Equipment at all times free from distress, execution or other legal process and not create or allow to be created any lien for repairs or otherwise over the Equipment;
    - 6.1.4. keep the Equipment clean in accordance with the relevant manufacturer's guidelines and properly clean any product dispense lines as follows using only detergents supplied by the Company: on a 70 day cycle in relation to CQDS Plus; on a 28 day cycle in relation to the DM System or any other CQDS; and on a 7 day cycle for all other Equipment;
    - 6.1.5. notify the Company immediately if any defect in the Equipment becomes apparent and provide the Company and its contractor with accurate information regarding that defect;
    - 6.1.6. notify the Company immediately in the event of any damage to the Equipment or any theft, seizure or loss of possession of the Equipment;
    - 6.1.7. provide the Company and its contractor with such other information and assistance as they may reasonably require in connection with the provision of the Services, including full access to the Premises and the Equipment, and access to relevant employees of the Customer;
    - 6.1.8. ensure that each Product that is dispensed using the Equipment is dispensed and resold only in the condition prescribed by the Company from time to time and so as to meet any relevant brand specification issued by the Company;
    - 6.1.9. permit the Company or its duly authorised representative to inspect and/or test the Equipment at all reasonable times and for such purpose to enter the Premises or any other premises at which the Equipment may be located, and shall grant reasonable access and facilities for such inspection and/or testing; and
    - 6.1.10. pay the Company, on demand, all expenses and costs reasonably incurred by the Company in enforcing, or applying for payment of any sums payable under, the Contract or the Supply Agreement.
  - 6.2. Where the Customer fails to comply with its obligations under Clause 6.1.4, it will pay to the Company, on demand, the cost of any work carried out to return the lines to the correct quality. In addition, if product python lines and/or filters require replacement due to the Customer adopting incorrect cleaning practices, the Customer will pay to the Company, on demand, all costs associated with the replacement (including labour and delivery charges).
7. **Charges and Payment**
  - 7.1. The Company will notify the Customer (in the Supply Agreement or otherwise) of any line charges payable in respect of the Customer's use of the relevant Equipment (**Line Charges**). The Line Charges and the Hand Pull Charge shall together comprise the **Charges**.
  - 7.2. The Charges are exclusive of value added tax, which the Customer will pay, in addition, when it is due to pay the Charges.
  - 7.3. The Company may invoice the Customer for the Line Charges and any Hand Pull Charge monthly in arrears or otherwise at the frequency agreed with the Customer in writing.
  - 7.4. The Customer shall pay each invoice issued by the Company for the Charges in accordance with the payment terms agreed between them. In the absence of such agreement, the Customer shall pay each invoice within fourteen days of its date.
  - 7.5. The Customer shall pay all amounts due to the Company under the Contract by direct debit and in pounds sterling to the bank account designated by the Company from time to time, and the Customer shall pay any charges in connection with such transfer.
  - 7.6. Time for payment shall be of the essence. No payment shall be deemed to have been made until the Company has received cleared funds.
  - 7.7. The Customer shall pay all amounts due under the Contract in full without any deduction, set-off or counterclaim. The Company may set-off any amount due and payable by the Customer to the Company against any amount due and payable by the Company to the Customer.
  - 7.8. If the Customer fails to pay any Charges on the due date for payment, the Company may: (a) charge interest on the outstanding sum from the due date until the actual date of payment (after as well as before judgment) at a rate equal to the statutory rate together with a fixed sum by way of compensation for late payment each in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 (as amended and supplemented by the Late Payment of Commercial Debts Regulations 2002); and/or (b) terminate the Contract on written notice.

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## 8. Intellectual Property Rights

- 8.1. The Customer acknowledges CBAS's ownership and proprietary rights in the DM Rights and agrees and acknowledges that:
- 8.1.1. it shall not obtain any rights in the DM Rights, except as expressly granted to it under the Contract;
- 8.1.2. it shall not register or attempt to register any of the DM Rights in any jurisdiction; and
- 8.1.3. neither the Company nor CBAS gives any warranties in relation to the DM Rights and, in particular, neither the Company nor CBAS warrants that any registered DM Rights are valid or that any application will proceed to grant or will remain registered in any jurisdiction.
- 8.2. The Customer shall immediately give notice in writing to the Company if it becomes aware of any:
- 8.2.1. infringement or suspected infringement of any of the DM Rights; or
- 8.2.2. claims made or threatened that the DM Rights infringe the rights of any third party.
- 8.3. In the case of any infringement or suspected infringement by any third party of the DM Rights:
- 8.3.1. the Company and CBAS shall, in their sole discretion, decide what action, if any, to take;
- 8.3.2. CBAS shall have sole control over, and conduct of, all claims and proceedings;
- 8.3.3. the Customer shall, subject to an indemnity from the Company or CBAS for its reasonable costs, provide the Company or CBAS with all assistance that they may reasonably require in the conduct of any claims or proceedings; and
- 8.3.4. the Company or CBAS shall bear the cost of any proceedings and may retain all sums recovered in any action for their own account.

## 9. Confidentiality

- 9.1. The Customer shall, during the term of the Contract and after its termination:
- 9.1.1. keep secret and confidential all information in relation to the CQDS, the DM System or the DM Rights that it may acquire in the course of the Contract (**Confidential Information**) and protect it as the Customer would protect its own confidential information;
- 9.1.2. use the Confidential Information exclusively for the use of the relevant Equipment at the Premises and for the purpose of selling the Products and disclose it only to the extent that disclosure is reasonably necessary for the aforesaid purpose and procure that any disclosure is made under obligations of confidence at least equivalent to the obligations imposed by this Clause; and
- 9.1.3. not disclose the Confidential Information unless expressly permitted by the Contract.
- 9.2. The provisions of this Clause 9 shall survive termination of the Contract for any reason.

## 10. Quality

- 10.1. The Company will ensure that, at delivery, the Equipment complies with all applicable statutory and regulatory requirements.
- 10.2. The Company will provide the Services with reasonable skill and care.
- 10.3. All implied terms and conditions as to the quality or performance (including fitness for purpose) of the Equipment and any other goods or services provided under the Contract are, to the fullest extent permitted by law, excluded from the Contract.
- 10.4. The Customer shall give the Company a reasonable opportunity to remedy any failure by the Company to comply with its obligations under the Contract before the Customer incurs any costs and/or expenses in remedying the matter itself. If the Customer does not do so then the Company shall have no liability to the Customer.
- 10.5. Any advice or recommendation given by the Owner, CBAS or the Company or their employees, contractors or agents to the Customer or its employees or agents as to the storage, application or use of the Equipment which is not confirmed in writing is followed or acted upon entirely at the Customer's own risk, and accordingly neither CBAS nor the Company shall be liable for any such advice or recommendation which is not so confirmed.
- 10.6. In no circumstances will the Company or CBAS be deemed to have represented that the Equipment is fit for any particular purpose.

## 11. Liability

- 11.1. Any dates quoted for delivery of the Equipment or performance of the Services are approximate only and the Company shall not be liable for any delay in delivery or performance howsoever caused.
- 11.2. Subject to Clause 11.5, neither the Company nor the Owner will be liable for any loss, damage or liability of any kind that the Customer may suffer as a result of the Customer installing or maintaining the Equipment or any related spare parts supplied by the Company, its contractor or the Owner from time to time.
- 11.3. Subject to Clause 11.5, the Company is not liable to the Customer because of any representation (unless fraudulent), or any warranty (express or implied), condition or other term, or any duty at common law, or under the express terms of the Contract, for:
- 11.3.1. any loss of profit, business, contracts, opportunity, goodwill, revenue, anticipated savings, expenses, costs or similar loss; and/or
- 11.3.2. any indirect, special or consequential loss or damage (whether for loss of profit or otherwise) in each case whether caused by the negligence, breach of contract, tort, or breach of statutory duty of the Company, its employees, contractors or agents or otherwise, arising out of or in connection with the Contract.
- 11.4. Except as provided in Clause 11.3, any other liability of the Company to the Customer in contract, tort, negligence, breach of statutory duty or otherwise arising out of or in connection with the Contract is limited to the greater of (a) the Line Charges paid in the twelve months prior to the date of the event giving rise to the claim; and (b) £10,000.
- 11.5. Nothing in these Conditions will operate or be construed to operate so as to exclude or restrict the liability of the Company for death or personal injury caused by the negligence of the Company or that of its employees acting in the course of their employment.
- 11.6. The Company shall not be liable to the Customer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Company's obligations, if the delay or failure was due to any cause beyond the Company's reasonable control.

## 12. Termination

- 12.1. Without prejudice to any other right or remedy available to the Company, the Company may terminate the Contract immediately by giving notice to the Customer if:
- 12.1.1. the Customer fails to pay any amount due to the Company under the Contract, the Supply Agreement or any other agreement between the Customer and the Company, howsoever arising;
- 12.1.2. the Customer fails to comply with the terms of the Contract or the Supply Agreement is terminated;
- 12.1.3. the Customer ceases or threatens to cease to trade (either in whole, or as to any part or division involved in the performance of the Contract);
- 12.1.4. the Customer becomes or is deemed insolvent;
- 12.1.5. the Customer is unable to pay its debts as they fall due;
- 12.1.6. the Customer has a receiver, administrative receiver, administrator or manager appointed over the whole or any part of it or its assets or business;
- 12.1.7. the Customer makes any composition or arrangement with its creditors, has an order or resolution made for its dissolution or liquidation (other than for the purpose of solvent amalgamation or reconstruction), or applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;
- 12.1.8. the Customer takes or suffers any similar or analogous procedure, action or event in consequence of debt in any jurisdiction; or
- 12.1.9. the Equipment has been misused or mistreated to such an extent that the Company believes that the Customer is unable or unwilling to follow the prescribed health and/or safety

guidelines associated with the Equipment or to continue to keep the Equipment in good and safe working order.

- 12.2. In addition, unless otherwise stated in the Supply Agreement either party may terminate the Contract at any time by giving the other at least 14 days' notice in writing.

## 13. Consequences of Termination

- 13.1. On expiry or termination of the Contract for any reason, in respect of any Equipment other than the CQDS and DM System:
- 13.1.1. the Customer's right to possession of the Equipment will cease; and
- 13.1.2. the Customer will (at the Company's option) either purchase the Equipment for the price notified to it by the Company, or return the Equipment to any place which the Company may reasonably require or allow the Company to disconnect and collect it, and for such purposes shall ensure that the Company or its contractors are granted full and unrestricted access to the Premises.
- 13.2. On expiry or termination of the Contract for any reason, in respect of each CQDS and DM System:
- 13.2.1. the Customer's right to possession of the CQDS and the DM System will cease;
- 13.2.2. the Customer will cease to make any use of the DM Rights; and
- 13.2.3. the Customer shall return each CQDS and DM System to any place that the Company may reasonably require or allow the Company to disconnect and collect it, and for such purposes shall ensure that Company or its contractor is granted full and unrestricted access to the Premises.
- 13.3. On expiry or termination of the Contract for any reason, the Customer will immediately pay to the Company any Charges and any other charges or fees that have fallen due under the Contract but have not yet been paid.
- 13.4. If any Equipment due to be purchased or returned pursuant to Clause 13.1 or 13.2 is not purchased or returned within 7 days of the end of the Contract, the Company may collect that Equipment at the expense of the Customer and for this purpose may enter the Premises or any other premises at which such Equipment is located or, in the case of Clause 13.1 only, the Company may regard the Customer as having purchased that Equipment at the price notified to it by the Company, in which case the Customer will pay to the Company such price within 7 days of the Company notifying the Customer that it has made such election. For the avoidance of doubt, the Charges will continue to be payable until the Equipment is returned to, or collected by, the Company.
- 13.5. The Equipment must be returned in safe working order and good condition (fair wear and tear excepted) commensurate with its age. It should be clean, complete with all necessary parts. If it is not in such condition then the Company or the Owner will, at the cost of the Customer, carry out such work at its rates prevailing at the time of repair as is necessary to bring the Equipment back into such safe working order and good condition. The Company will notify the Customer of the cost which shall be due on demand.
- 13.6. If the Company is unable to collect the Equipment pursuant to Clause 13.1, 13.2 or 13.4, or is unable to bring the Equipment back into safe working order and good condition pursuant to Clause 13.5, in each case despite having taken reasonable steps to do so, then the Customer shall pay to the Company on demand the full replacement cost of the Equipment, such sum to be recoverable by the Company as a debt.

## 14. Data Protection

- 14.1. The Company collects and processes contact details, transaction history, payment details, employment information, and other necessary personal data, about the Customer and its personnel, in order to enter into and fulfil contracts, as well as for legitimate business purposes, including to maintain the business relationship, to facilitate the provision of the agreed products or services, to settle payments, to conduct certain checks for anti-fraud or other reasons, for auditing purposes and for internal evaluation. To fulfil these purposes, the Customer's data may be shared with other companies in the Company's group, the Company's service providers, suppliers or business partners within and outside the EU/EEA. The Customer's data will be treated as confidential, protected by appropriate security measures, and retained only for so long as the law allows, after which time it will be deleted. The Company's privacy policy can be found at <https://www.carlsbergmarstons.co.uk/cmbc-privacy-policy/>. At any time, the Customer may request further information about the processing of its personal data and ask that it be corrected, deleted or restricted in processing. To do so, please contact [uk.privacy@carlsbergmarstons.co.uk](mailto:uk.privacy@carlsbergmarstons.co.uk). If the Customer has any complaints about the Company's processing of its personal data, the Customer may contact its local data protection authority.

## 15. General

- 15.1. The Contract constitutes the entire agreement in relation to the provision and maintenance of the Equipment. Clauses 8 and 9 of these Conditions will apply to the Contract notwithstanding anything to the contrary in the Supply Agreement.
- 15.2. If any provision of the Contract is held to be invalid the validity of the remaining provisions shall not be affected.
- 15.3. No failure or delay on the part of the Company in exercising any right, power or remedy will operate as a waiver of it nor will any single or partial exercise of any such right, power or remedy preclude any other or further exercise of such right, power or remedy.
- 15.4. The Company may assign or novate its rights and obligations under the Contract in whole or in part to any person and may engage sub-contractors, but the Customer shall not assign or novate any of its rights.
- 15.5. The Customer acknowledges that it will be treated as having received any communication sent to it 48 hours after posting to its usual or last known address.
- 15.6. The Contract may only be modified by a written agreement duly signed by an authorised officer or representative of the Company.
- 15.7. The Contract will only confer rights and benefits on the Company and the Customer and no third party will acquire any rights or benefits under the Contract.
- 15.8. The Customer acknowledges that in entering into the Contract it has not relied on any representation, warranty, agreement or statement not set out herein.
- 15.9. The Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.