

Terms & Conditions



DEFINITIONS

1. In these terms, "the Company" means Davy & Company Limited; "the Goods" means the goods to be supplied by the Company; "the Customer" means the person seeking to purchase the Goods from the Company; "the Terms" means the terms and conditions set out in this document and any special terms agreed in writing between the Company and the customer; "the Contract" means the contract for the supply of Goods incorporating these terms; "Associated Company" means any body corporate which is the ultimate Holding Company of the Customer or which is a Subsidiary of such ultimate Holding Company; Holding Company and Subsidiary bear the meanings respectively attributed by the Companies Act 2006.

THE CONTRACT

- 2.1 All orders are accepted by the Company only under these Terms which may not be altered without the written agreement of a Director of the Company. Any contrary or additional terms unless so agreed are excluded. Any order by the Customer shall be deemed to be an offer by the Customer to purchase Goods subject to these Terms. Any terms or conditions issued by the customer contained or referred to in any purchase order or offer or other document shall not apply to any contract concluded between the Customer and the Company and shall have no effect unless agreed in writing by a Director of the Company.
- 2.2 Any representations given by the Company or its employees or agents to the Customer or its employees or agents which are not confirmed in writing by the Company are followed or acted upon entirely at the Customer's own risk and the Company shall not be liable for any such representations unless fraudulent. In entering into the Contract the Customer acknowledges that it does not rely on any such representations which are not so confirmed.
- 2.3 The Company reserves the right to discontinue or alter the presentation packaging and constituents of any Goods without notice. All Goods are offered subject to availability and any quotation given is an invitation to treat.
- 2.4 Goods can be offered on sale or return terms by prior arrangement. Goods must be in resalable (un-tampered) condition and in unopened cases. A minimum collection charge of £8.47 ex vat will be applied to all sale or return orders. Maximum quantity acceptable for return is 1/3 of the original order delivered.
- 2.5. We do our utmost to make sure that every wine in a list is available. From time to time we may run out of a particular wine or vintage, when this happens we will contact you to try and offer a suitable alternative.
- 2.6 Broken or out of condition items must be reported within 24 hrs.
- 2.7 All Goods and any promotional support are supplied by the Company strictly on the condition that Goods supplied are not for resale or transfer outside the EU. If Goods are resold or transferred by the customer or anyone else outside the EU any promotional support provided in relation to the Goods in question shall become immediately repayable by the Customer to the Company and any future promotional support may be withheld or cancelled by the Company in relations to subsequent orders.
- 2.8 The Company shall not be bound by clerical or arithmetical errors in documents which it issues.
- 2.9 Acceptance of delivery of the Goods shall be deemed conclusive evidence of acceptance by the Customer of these Terms.

PRICE

- 3.1 For Wholesale and Trade Customers all prices quoted are duty paid and delivered (within the UK mainland*) but **exclude VAT**.
- 3.2 The company reserves the right to alter prices without notice and Goods will be charged at the price ruling at the date of despatch.
- 3.3 Prices are per case of size and quantity shown.
- 3.4 Any agreed discounts, deductions rebates or claims including claims under promotional activities are only available if,
 - (a) The invoice is paid on the due date
 - (b) Any promotional activity is undertaken with the applicable period agreed by the Company and
 - (c) A claim under any promotional activity is made within 4 months from the end of the relevant promotional activity;
- 3.5 All samples will be charged at our discretion and with your agreement.
- 3.6 For Wholesale and Trade Customers Delivery is FREE for orders over £250 + VAT to a single UK mainland address, additional charges may apply to areas of Scotland, Northern Ireland and the Isle of Wight. All orders of less than £250 + VAT will be subject to a delivery charge (minimum £8.47 + VAT).

PAYMENT

- 4.1 If credit terms have not been agreed cleared funds are required with order.
- 4.2 If credit has been agreed payment is due without deduction or retention within 30 days of invoice date. Time shall be of the essence in relation to all payments due to the Company.
Any Bank charges raised by the paying bank are payable by the Customer and if incurred by the Company will be re-invoiced for immediate payment.
- 4.3 An Application for credit must be made on the company's standard form. A bank reference and two trade reference are required together with a home address in the case of partnerships and sole traders and the Registered Office in the case of Limited Companies or PLCs. References are needed before new accounts can be opened and will be taken up before orders can be processed. Credit is granted at the sole discretion of the Company.
- 4.4 Interest at 4% per annum above H.S.B.C Bank base rate will be charged on overdue accounts.
- 4.5 The Company reserves the right at any time at its discretion to demand security for or vary the terms or method of payment before continuing with or delivering Goods in satisfaction of any order notwithstanding any subsisting agreement to provide credit to the Customer.
- 4.6 In the case of short delivery or partial delivery the Customer shall remain liable to pay the full invoice price of all Goods actually delivered.
- 4.7 The Customer may not withhold payment of any invoice or other amount due to the Company by reason of any right of set off or counterclaim which the Customer has or alleges to have for any reason.
- 4.8 In the event of non-payment of accounts (including storage charges) the Company reserves the right to exercise a lien over and/or to sell some or all of a customers' reserves and to deduct from the proceeds of sale any outstanding amounts.

DELIVERY

- 5.1 Delivery shall be treated as complete when the Company its servants or agents leaves the Goods at the place agreed by the Company or the Goods are collected by the Customer.
- 5.2 Delivery dates are given in good faith but are estimates only and no liability will be accepted for any delay in delivery of the Goods howsoever caused. Time for delivery shall not be of the essence of the Contract.
- 5.3 Subject to clause 5.2 the estimated delivery times are as follows (NB: where goods are required to be cleared from bond additional time will be required):-
 - 5.3a Orders received by 12 noon for delivery within the M25 will be delivered within 3 working days following the day of the order (ie order Monday before 12 noon) for delivery on Thursday.
 - 5.3b Orders elsewhere within England, Wales and Scotland (*excluding Channel Islands and Highlands) will be delivered at a mutually agreed time.
- 5.4 The Company can arrange carriage and packaging of orders outside the UK mainland (Channel Islands, N.Ireland) at a cost payable to the Customer
- 5.5 The Company reserves the right to make delivery by instalments and tender a separate invoice in respect of each instalment. Each delivery shall constitute a separate contract and failure by the Company to deliver any one or more of the instalments in accordance with these Terms or any claim by the Customer in respect of any one or more of the instalments shall not entitle the Customer to treat the Contract as whole as repudiated.

INSPECTION

6.1 The Customer is under a duty to inspect the Goods upon delivery and unless the Company receives notice within one working day of a claim for short delivery, losses or breakages or that the Goods do not conform with the Contract they will be deemed to have accepted and delivered in quantities shown in the delivery document. The Company's liability for short delivery is limited to making good the shortage or at its discretion crediting the applicable part of the purchase price. In the event of non-delivery notice must be given within 10 days of the date of the invoice.

RETENTION OF TITLE

7.1 Risk in the Goods shall pass to the Customer upon delivery.

7.2 The ownership of the Goods shall remain with the Company until the Customer has paid the price of Goods and all sums owed by the Customer to the Company on whatsoever grounds.

7.3 Until title passes the Customer will hold the Goods as a fiduciary agent and bailee for the Company and shall keep the Goods separately from the Customer's other goods and stored, protected, insured and identified without cost to the Company as the Company's property. The Customer shall not in any way pledge or charge by way of security for any indebtedness any Goods in which title has not passed to the Customer and (without prejudice to the Company's rights and remedies) if the Customer should do so all monies which the Customer owes to the Company shall become immediately due and payable.

7.4 The Customer is licensed by the Company to use or agree to sell the Goods as principal in the ordinary course of the customer's business (which expressly excludes selling the Goods to a Holding Company, Subsidiary Company or Associated Company of the Customer) subject to the overriding condition that the proceeds of any sale or insurance proceeds received in respect of the Goods are held in trust for the Company and are not mixed with other monies or paid into an overdrawn bank account and shall at all times be identifiable as the Company's money.

7.5 The Company may at any time revoke the power of sale and use granted to the Customer and recover and re-sell the Goods in which title shall not have passed to the Customer. The Company by its servants or agents shall be entitled to access to and egress with Goods from Customer's premises or those which the Customer has a right of access where the Goods or some of them are stored or thought to be stored for the purpose of repossession at any time.

LIABILITIES

8.1 Nothing in these Terms shall be deemed to exclude or restrict the Company's liability for death or personal injury resulting from its negligence.

8.2 If Goods supplied are defective in quality or condition ("the Defect") subject to the conditions set out below the Company shall in its sole discretion either supply replacement Goods or refund all (or where appropriate part) of the price paid for relevant Goods.

8.3 The Company will not accept any administration or other charges for dealing with claims under this clause.

8.4 The Company will not be liable under Clause 8.2

8.4a if the defect arises from the Customer's negligence, or failure to store the Goods in accordance with the producer's recommendations or industry practice;

8.4b unless the Defect is discovered within 1 month from the date of delivery and the Company is given notice of the Defect within seven working days of it being discovered;

8.4c unless the Company is given an opportunity to inspect the Goods and until such inspection occurs the Goods are not used

8.5 Except as expressly provided in these Terms all warranties, conditions, express or implied statutory or otherwise are excluded to the fuller extent permitted by law and except where the Goods are supplied to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977) in which case the Company does not exclude liability for obligations arising under Sections 13,14 and 15 for the Sale of Goods Act 1979) or under Sections 9,10 and 11 of the Supply of Goods (Implied Terms) Act 1973

8.6 If the Customer deals as a consumer as defined by the Unfair Contract Terms Act 1977 or the Unfair Terms in Consumer Contracts Regulations 1994 any provision of these Terms which is of no effect shall not apply. The statutory right of a Customers dealing as a consumer are not affected by these terms.

8.7 Save as set out in these terms. Or any duty at common law or under express terms of the Contract for any direct, indirect or special loss, loss of profit, bonus, business contracts, revenues, anticipated savings, or other losses whatsoever whether caused by negligence of the Company its employees or agents otherwise which arise out of or in connection with supply of the Goods of their use or resale by the Customer.

8.8 In no circumstances whatsoever shall liability of the Company to the Customer (whether in contract tort or otherwise) arising under out of or in connection with this Contract or the supply of Goods exceed the purchase price of the Goods the subject matter of any claim.

8.9 The Customer shall indemnify the Company against any loss damage claim or liability arising out of any accident or damage caused at any time on the Customer's premises of in the course of any delivery by reason of fault negligence on the part of the Customer its employees agents or contractors.

DEFAULTS

9.1 "Insolvent" shall mean the Customer becoming unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986: the levying or the threat of execution or distress on any property of the Customer the appointment of a receiver or administrator receiver over all or any part of the Customer's property; a proposal for a voluntary arrangement or compromise between the Customer and its creditors - whether pursuant to the Insolvency Act 1986 or otherwise; the passing of a resolution for voluntary winding-up or summoning a meeting to pass such a resolution otherwise than for the purpose of bona fide amalgamation or reconstruction; the presentation of a petition for the winding-up of a Customer or for an administration order in relation to the Customer; any process, proceedings or circumstances shall be issued or arise which is or are similar to any of the foregoing in any jurisdiction in which the Customer then carries on business; the Customer ceasing or threatening to cease to carry on its business;

9.2 If the Customer fails to pay for the Goods on the due date or there is a material change in the constitution of the Customer or the Customer becomes Insolvent or the Customer fails to remedy any of its breaches of the Contract after being requested to do so the full balance outstanding on any account between the Company and the Customer shall become immediately payable and the Company shall be entitled to do any of the following without prejudice to any other right or remedy it may have:-

9.2a Require payment in cash or cleared funds in advance of delivery of undelivered Goods

9.2b Cancel or suspend any further delivery to the Customer under any Contract;

9.2c Sell or otherwise dispose of any Goods, which are the subject of any Contract with the Customer

9.2d Without prejudice to the generality of clause 7 above exercise the powers there set out.

GENERAL

10.1 The construction, validity and performance of these Terms shall be governed by English Law.

10.2 The Company shall not be liable for any delay or failure to perform any of its obligations under the Contract due to any cause beyond its reasonable control including but not limited to strikes, lock-outs or other industrial action or trade disputes (whether Involving employees of the Company or of a third party)

10.3 If any provision of these Terms is held by any competent authority to be invalid or unenforceable in whole or in part the validity of other provisions of these Terms and the remainder of the provision in question shall not be affected

10.4 The waiver by the Company of any breach or default of these Terms shall not be construed as a continued waiver of that breach nor as a waiver of any subsequent breach of the same or any other provision.