

SWAGGA BREWERIES (PTY) LTD

STANDARD TERMS AND CONDITIONS APPLICABLE TO CONTRACT BREWING

1. INTERPRETATION

In this agreement:

1.1. the following words and/or phrases shall bear the meanings ascribed to them below, and cognate expressions shall bear corresponding meanings:-

1.1.1 "Agreement" means any and every agreement entered into between the Customer and Swagga following upon an Order in respect of which these standard terms shall be applicable;

1.1.2 "Confidential Information" means any information or data of any nature, tangible or intangible, oral or in writing and in any format or medium, which by its nature or content is or ought reasonably to be identifiable as confidential and/or proprietary to a party ("the disclosing party") or which is provided or disclosed in confidence, and which the disclosing party or any person acting on behalf of the disclosing party may disclose or provide to the other of them ("the receiving party") (or which may come to the knowledge of the receiving party by whatsoever means. Without limitation, the Confidential Information of the disclosing party shall include the following even if it is not marked as being 'confidential', restricted or proprietary (or any similar designation) –

1.1.2.1 information relating to the disclosing party's products, processes, methods, methodologies, formulae, recipes, and Raw Materials;

1.1.2.2 information relating to the disclosing party's business activities, business relationships, distribution networks, and outlets and customers;

1.1.2.3 the disclosing party's technical, scientific, commercial, financial and market information and trade secrets;

1.1.2.4 the disclosing party's data concerning its business associates, potential investors, suppliers, contractors, representatives and the like;

1.1.2.5 Intellectual Property that is proprietary to the disclosing party or that is proprietary to a third party and in respect of which the disclosing party has rights of use or possession;

1.1.2.6 agreements to which the disclosing party is a party;

1.1.2.7 information which is ordinarily considered in a commercial environment to be confidential or proprietary by its nature.

but excludes information or data which –

- (a) is lawfully in the public domain at the time of disclosure thereof to the receiving party; or
- (b) subsequently becomes lawfully part of the public domain by publication or otherwise; or
- (c) is or becomes available to the receiving party from a source other than the disclosing party which is lawfully entitled without any restriction on disclosure to disclose such Confidential Information to the receiving party; or
- (d) is disclosed pursuant to a requirement or request by operation of law, regulation or court order but then only to the extent so disclosed and then only in the specific instance and under the specific circumstances in which it is obliged to be disclosed;

provided that –

- (i) the onus shall at all times rest on the receiving party to establish that such information falls within such exclusions; and
- (ii) the information disclosed will not be deemed to be within the foregoing exclusions merely because such information is embraced by more general information in the public domain or in a Party's possession; and
- (iii) any combination of features will not be deemed to be within the foregoing exclusions merely because individual features are in the public domain or in a Party's possession, but only if the combination itself is in the public domain or in a Party's possession;

The determination of whether information is Confidential Information shall not be affected by whether or not such information is subject to, or protected by, common law or statute related to copyright, patent, trade marks or otherwise;

1.1.4 "Customer" means any party who places an Order upon Swagga for Product;

- 1.1.5 “Effective Date” means the date upon which the Customer first places an Order upon Swagga;
 - 1.1.6 “Law” means any statute, regulation, proclamation, code, ordinance, rule, judgement, order, award, injunction, decree;
 - 1.1.7 “Notice” means a written notice;
 - 1.1.8 “Order” means a written all oral order placed upon Swagga by the Customer;
 - 1.1.9 “Premises” means 31 Barium Street, Alrode, Alberton, 1415, or such other address that Swagga may nominate in writing from time to time hereafter;
 - 1.1.10 “Product” means a malt beverage brewed to a specific recipe and packaged pursuant to the Customer’s specification in terms of an Order;
 - 1.1.11 “Raw Materials” means yeast, malt, hops and/or any other raw material or building materials necessary to prove the Product;
 - 1.1.12 “Staff” shall include but not be limited to directors, members, employees, agents, contractors, representatives and the like;
 - 1.1.13 Swagga” means Swagga Breweries (Pty) Ltd, registration number 2013/190320/07, with its principal place of business situated at 31 Barium Street, Alrode, Alberton, 1415 facsimile number _____ and email address:clinton@swaggabrewery.co.za.
- 1.2 clause and paragraph headings are for purposes of reference only and shall not be used in interpretation;
- 1.3 unless the context clearly indicates a contrary intention, any word connoting:
- 1.2.1 any gender includes the other genders;
 - 1.2.2 the singular includes the plural and vice versa;
 - 1.2.3 natural persons includes juristic persons and vice versa;
- 1.4 this Agreement shall be governed by and interpreted in accordance with the laws of South Africa;
- 1.5 the termination or expiry of this Agreement shall not affect the provisions of this Agreement which expressly provide that they will operate after such expiry or

termination, or those which of necessity must continue to have effect after such expiry or termination, notwithstanding that the clauses themselves do not expressly provide for this;

- 1.6 the rule of interpretation (*contra proferentum*) that a contract shall be interpreted against the party responsible for the drafting or preparation of the contract, shall not apply.
- 1.7 the rule of interpretation that general words associated with specific words will be interpreted narrowly in accordance with a class or genus of the specific words (the *eiusdem generis* rule), shall not apply.

2. COMMENCEMENT AND DURATION

- 2.1 This Agreement shall commence on the Effective Date and shall govern the relationship between the parties and shall apply to each and every Order placed upon Swagga by the Customer, save where expressly agreed otherwise in writing.
- 2.2 The terms and conditions herein contained shall apply as Swagga's standard terms of manufacture, save as otherwise agreed, and shall supersede any prior agreements including the Customer's own standard terms (if any).

3. APPOINTMENT

- 3.1 Pursuant to the terms and conditions of this Agreement, Swagga agrees to manufacture and provide the Product and to provide such other services as are described in this Agreement.
- 3.2 The Customer will deliver to Swagga all formulations, recipes and specifications necessary to manufacture the Product, and shall from time to time, place Orders upon Swagga for Product.
- 3.3 Swagga shall not change the formulation, recipe, or specifications of the Product without the prior written consent of the Customer.

4. ORDERS AND DELIVERY OF PRODUCT

- 4.1 The Customer may from time to time place Orders upon Swagga, specifying the quantity of such Product and the desired delivery date, and the preliminary price payable.
 - 4.1.1 The quantity to be brewed pursuant to any Order shall not be less than 1000 litres and shall be an integral multiple of the output of one fermentation tank;

- 4.1.2 The date upon which the Product is to be delivered shall not be less than 3 (three) weeks after the Order is received by Swagga. Whilst Swagga shall endeavour to meet specified dates for delivery, the Customer acknowledges that time shall not be of the essence in the delivery of Product pursuant to any Order.
- 4.1.3 The preliminary price payable shall be a price to be agreed upon by the parties prior to placement of the Order.
- 4.1.5 Swagga shall pay all excise taxes applicable to the Product with respect to each Order, such payment to be reflected in the price to be paid by the Customer.
- 4.1.6. Each Order shall constitute a separate contract.
- 4.2 Swagga shall brew and package the Product and notify the Customer when the Product is available for delivery.
- 4.3 The Customer shall take delivery of the Product from the Premises within 24 hours of notification in terms of clause 4.2 above.
- 4.4 The Customer shall ensure that it is properly and suitably equipped to take delivery of the Product.
- 4.5 The Customer shall not be entitled to delay or defer delivery of any Product ordered. Should delivery of Product be so delayed or deferred by the Customer for any reason whatsoever, Swagga shall be entitled to levy a storage charge at the rate of R0.50 (fifty cents) per litre, per day, calculated with effect from the time that delivery ought to have been taken, until the actual delivery takes place.
- 4.6 The Customer shall not be entitled to cancel an Order without the prior written consent of Swagga.
- 4.7. Where Product is delivered in kegs supplied by Swagga:-
- 4.7.1 ownership in into the kegs remains vested in Swagga;
- 4.7.2 all risk of loss/damage in and to the kegs shall vest in the Customer;
- 4.7.3 the Customer shall be liable to pay a deposit of R500.00 per keg, which deposit shall be refunded to the Customer upon return of the keg to Swagga, save that Swagga shall be entitled to deduct from any deposit monies held on hand, the reasonable repair cost to reinstate any keg to the condition in which it was received by the Customer, fair wear and tear included.

4.7.3 in the event that such kegs are not returned to Swagga within three months of taking of delivery, the Customer shall be liable for the replacement cost of such kegs plus an amount of R25.00 per day, per keg for every day until such kegs are returned, alternatively the replacement cost is paid.

4.8 Where the product is to be delivered in kegs supplied by the Customer;

4.8.1 all risks of loss, theft and/or damage in and to the kegs of whatsoever nature, and howsoever arising, shall remain vested in the Customer who waives all and any claims, direct and indirect, actual and consequential it might otherwise have had, whether delictual, contractual, enrichment-based, statutory or otherwise, and whether as a result of any wilful, reckless, or negligent act or omission on the part of Swagga or any person in respect of whom Swagga may otherwise have been liable vicariously, and/or any third party whomsoever.

4.8.2 and in the event that any Product is spoiled, or wasted consequent upon any defect, damage, or other impediment related to said kegs, the Customer shall remain liable for payment of spoiled/wasted Product.

5. PAYMENT

5.1 The Customer shall, upon placement of an Order, pay a non-refundable deposit equivalent to 50% of the preliminary price payable. The balance of the preliminary price payable is to be paid upon tender of delivery against receipt of a valid tax invoice from Swagga.

5.2 Should the Customer fail to make payment of the balance of the preliminary price payable within 7 days of date of receipt of a tax invoice, Swagga may, without prejudice to any other rights which it may have at law, dispose of or sell the Product as it deems meet, in its sole and absolute discretion.

5.3 Payment shall be made by way of an electronic funds transfer, directly into Nedbank, branch code 198765, account number 1131 521 269, free of exchange and or deduction and bear reference to the invoice number in respect of which payment is being made. Confirmation of payment shall be emailed to Swagga at clinton@swaggabrewery.co.za.

5.4 Late payments shall accrue interest at the rate of 12% *per annum* calculated with effect from the date that payment became due, until date of payment.

- 5.5 Notwithstanding the provisions of clause 5.1 above, Swagga shall be entitled at its sole and absolute discretion be entitled to call for payments in advance on any Order, or to vary the terms of payment.

6. LICENCE

- 6.1 The Customer grants to Swagga a non-exclusive, non-transferable licence to use all intellectual property related to the brewing and packaging of the Product, solely for the purposes of complying with its obligations in terms of this Agreement.
- 6.2 Swagga shall not use the intellectual property in connection with any other purpose without the Customers prior written consent or as otherwise agreed between the parties.
- 6.3 Swagga acknowledges that its use of the intellectual property does not create any right, title or interest in or to the intellectual property other than as specified in this Agreement. All goodwill accruing as a result of the use of the intellectual property will inure to the benefit of the Customer.

7. RAW MATERIALS

- 7.1 Subject to clause 7.2 below, Swagga shall obtain all Raw Materials for the brewing of the Product and the price to be paid by the Customer shall reflect the cost thereof.
- 7.2 Should the Customer require the use of any Raw Materials not used by Swagga in the ordinary course of business, the Customer will, at its own cost and expense, provide such Raw Materials to Swagga upon demand, failing which, Swagga shall be entitled to use such Raw Materials as are readily available to it, alternatively to dump the Product.

8. QUALITY CONTROL

- 8.1 Swagga warrants that the Product will be brewed in accordance with its recipe and specifications, and only at the Premises.
- 8.2 Swagga shall employ good manufacturing practices and shall ensure that the equipment and its operations are properly maintained.
- 8.3 Swagga shall employ all reasonable commercial endeavours to ensure that:-
- 8.3.1 the Product will exhibit the same physical and sensory characteristics and will be the same in all material respects throughout the term of this Agreement;

- 8.3.2 is free from defects in Raw Materials and workmanship and complies in all material respects with applicable Law.
- 8.4 The Customer acknowledges that the Product is susceptible to microbiological and other contamination in the brewing and packaging processes and accepts all risks of loss and/or damage in the event that the Product is or becomes contaminated, and/or is dumped.
- 8.4 In the event that Product is dumped as a consequence of contamination attributable definitively to a breach by Swagga of any of its obligations under and in terms of this Agreement, the liability of Swagga shall be limited to remanufacturing the Product so dumped. The onus shall at all times be on the Customer to establish that the contamination was definitively attributable to a breach on the part of Swagga.
- 8.5 The Customer shall have the right, upon reasonable prior notice to Swagga to review and inspect the facilities, procedures and equipment used by Swagga to produce, and package the Product.
- 8.6 Under no circumstances whatsoever, will Swagga entertain any claims for contamination once the Product has been accepted for packaging.

9. INDEMNIFICATION

- 9.1 The Customer indemnifies and holds Swagga harmless from and against any claim which might arise from the Customers failure to comply with any Law and/or all third party charges, actions, claims and proceedings (including legal fees on the scale as between attorney and client) arising out of:
- 9.1.1 a breach by the Customer of its obligations hereunder;
- 9.1.2 any claim that the use of the intellectual property as contemplated hereby violates the intellectual property rights of any other party; and
- 9.1.3 the negligence or wilful misconduct of the Customer or its officers, employees or agents in connection with the transactions contemplated hereby;
- 9.1.4 any claim lodged in terms of the Consumer Protection Act.
- 9.2 Swagga indemnifies and holds the Customer harmless from and against any and all third party charges, actions, claims and proceedings (including legal fees on the scale as between attorney and client) arising out of:
- 9.2.1 any claim that the use of intellectual property violates the intellectual property rights of any other party; and

9.2.2 wilful for misconduct of Swagga or its officers, employees or agents in connection with the transactions contemplated hereby.

9.3 The Customer shall ensure that it has adequate product liability insurance in place to meet any claim.

10. CONFIDENTIALITY AND PUBLICITY

10.1 The parties respectively acknowledge the importance of the Confidential Information to each other and, where applicable, third party proprietors of such information, and recognise that the disclosing party and/or third party proprietors may suffer irreparable harm or loss in the event of such information being disclosed or used otherwise than in accordance with this Agreement.

10.2 The receiving party agrees and undertakes

10.2.1 except as permitted by this Agreement, not to disclose any Confidential Information in any manner, for any reason or purpose whatsoever without the prior written consent of the disclosing party and provided that in the event of the Confidential Information being proprietary to a third party, it shall also be incumbent on the receiving party to obtain the consent of such third party;

10.2.2 except as permitted by this Agreement, not to utilise, employ, exploit, or use any Confidential Information for personal reward or benefit or otherwise, or for the benefit of and member of its Staff, or any other person whatsoever otherwise than for the purpose of this Agreement, without the prior written consent of the disclosing party and provided that in the event of the Confidential Information being proprietary to a third party, it shall also be incumbent on the receiving party to obtain the consent of such third party;

10.2.3 to restrict the dissemination of the Confidential Information to only those of its Staff who are actively involved in activities for which use of Confidential Information is authorised and then only on a "need to know" basis and the receiving party shall initiate, maintain and monitor internal security procedures reasonably acceptable to the disclosing party to prevent unauthorised disclosure by its Staff;

10.2.4 to take all practical steps, both before and after disclosure, to impress upon its Staff who are given access to Confidential Information the secret and confidential nature thereof;

10.2.5 that the authorised disclosure of Confidential Information to a third party may cause irreparable loss, harm and damage to the disclosing party.

Accordingly, the receiving party indemnifies and holds the disclosing party harmless against all and any loss, actions, claims, harm or damage of whatever nature, but excluding any indirect or consequential loss or damage, suffered by disclosing party pursuant to a breach by the receiving party of the provisions of this Agreement.

- 10.3 All Confidential Information disclosed by the disclosing party to receiving party or which otherwise comes to the knowledge of the disclosing party, is acknowledged by the disclosing party-
- 10.3.1 to be proprietary to the receiving party or where applicable, the relevant third party proprietor; and
- 10.3.2 not to confer any rights of whatsoever nature in such Confidential Information on the receiving party.
- 10.4 The receiving party shall protect the Confidential Information in the manner, and with the endeavour, of a reasonable person protecting their own Confidential Information. In no event shall the receiving party use less than reasonable efforts to protect the confidentiality of the Confidential Information.
- 10.5 The disclosing party may at any time on written request to the receiving party, require that the receiving party immediately return to the disclosing party any Confidential Information and may, in addition, require that the receiving party furnish a written statement to the effect that upon such return, it has not retained in its possession or under its control, either directly or indirectly, any such Confidential Information or material. Alternatively, the receiving party shall, as and when required by the disclosing party on written request to the receiving party, destroy all such Confidential Information and material and furnish the disclosing party with a written statement to the effect that the same has been destroyed. The receiving party shall comply with any request in terms of this clause within 7 (seven) days of receipt of such request.
- 10.6 The receiving party shall procure that their Staff who have access to Confidential Information, give a written undertaking in favour of the disclosing party in regard to the Confidential Information on substantially the same terms and conditions contained within this Agreement in a form prescribed by the disclosing party. The disclosing party shall be entitled to deny a Staff member access to Confidential Information, should the disclosing party not be in receipt of a signed undertaking from such member on such terms and conditions as determined by the disclosing party. The disclosing party's failure to obtain receipt of the undertaking referred to in this clause shall in no way detract from the receiving party's obligations in terms of this Agreement.

- 10.7 The Parties record that this clause shall not be applicable where the receiving party discloses Confidential Information to its attorneys or auditors, provided that such disclosure is reasonably required by The receiving party for the purposes of conducting its business activities.
- 10.8 In the event that the receiving party is required to disclose the Confidential Information pursuant to an order of court of competent jurisdiction, the receiving party –
- 10.8.1 will advise the disclosing party thereof prior to disclosure, if possible;
 - 10.8.2 will take such steps to limit the extent of the disclosure to the extent that it lawfully and reasonably practically can;
 - 10.8.3 will afford the disclosing party a reasonable opportunity, if possible, to intervene in the proceedings; and
 - 10.8.4 will comply with the disclosing party's requests as to the manner and terms of any such disclosure;
 - 10.8.5 will disclose Confidential Information only to the extent strictly prescribed in the court order.
- 10.9 The provisions of this clause shall survive termination of this Agreement.

11. DISPUTE RESOLUTION

If the parties are unable to resolve any dispute resulting from or arising out of this Agreement by means of joint cooperation or discussion between the individuals directly involved with the execution of this Agreement within one week after a dispute arises, or such extended period as the parties may agree in writing, then the dispute shall be submitted to the most senior executives of the parties who shall endeavour to resolve the dispute within five days after it has been referred to them.

12. ARBITRATION

- 12.1 A dispute between the parties relating to any matter arising out of this Agreement or the interpretation thereof may at the instance of either of the parties be referred to arbitration, by way of a notice to the other of them, in which notice particulars of the dispute are set out.
- 12.2 Such arbitration proceedings shall be held in Sandton and shall be held in a summary manner, which shall mean that it shall not be necessary to observe or carry out:

- 12.2.1 the usual formalities of procedure (e.g. there shall not be any pleadings or discovery);
- 12.2.2 the strict rules of evidence;
- 12.2.3 immediately and with a view to its being completed within 30 calendar days after it is demanded.
- 12.3 The arbitrator for such arbitration proceedings shall be a practicing advocate or attorney, admitted as such in accordance with the legislation of the law governing this Agreement, with at least 10 years experience, agreed upon by the parties and, failing agreement, nominated by the chairperson for the time being of the Johannesburg Bar Council, or the Law Society for the Northern Provinces as the case may be.
- 12.4 The decision of the arbitrator shall be final and binding on the parties, who shall summarily carry out that decision and either of the parties shall be entitled to have the decision made an order of any court with competent jurisdiction.
- 12.5 The “arbitration” clause in this Agreement shall be severable from the rest of this Agreement and therefore shall remain effective between the parties after this Agreement has been terminated.
- 12.6 No clause in this Agreement which refers to arbitration shall mean or be deemed to mean or interpreted to mean that either of the parties shall be precluded from obtaining interim relief on an urgent basis from a court of competent jurisdiction pending the decision of the arbitrator.

13. SEVERABILITY

If any provision of this Agreement is found or held to be invalid or unenforceable, such provision or provisions shall be severed from this Agreement and the validity and enforceability of all the remaining provisions of this Agreement will not be affected thereby and shall remain valid and enforceable.

14. NOTICES AND DOMICILIUM

- 14.1 The Customer, in the event that it is a juristic person selects its registered address for the purposes of receiving Notices as contemplated in this clause.
- 14.2 All Notices, requests, demands, and determinations under this Agreement (other than routine operational communications), shall be valid and effective only if in writing and if delivered by hand, or email. In this regard, a notice, request, demand and determination under this Agreement:

- 14.2.1 delivered by hand shall be deemed duly given when delivered by hand during business hours as evidenced by a receipt declaration by a person apparently over the age of 16 and in control of the premises, or a delivery declaration by a person authorised to deliver the notice, request, demand and determination by the addresser;
- 14.2.2 delivered by facsimile shall be deemed duly given when sent to the facsimile number set forth, which delivery shall be evidenced by the sender's facsimile confirmation sheet. For the avoidance of doubt, notice shall be deemed to have been given upon receipt of such delivery confirmation whether or not such notice has actually been read.;
- 14.2.3 delivered by email shall be deemed duly given when sent to the email address set forth, which delivery shall be evidenced by the senders email dispatch confirmation report. For the avoidance of doubt, notice shall be deemed to have been given upon receipt of the delivery confirmation whether or not such notice has actually been read.
- 14.3 Notices, requests, demands and determinations sent by facsimile and/or email and received prior to 13h00 on a business day shall be deemed duly given on such business day; notices, requests, demands and determinations sent by facsimile and/or email and received at other times shall be deemed duly given on the first business day following the date that such facsimile and/or email is received.
- 14.4 Where any provision of this Agreement requires either party to perform any act in writing (including the giving of any notice), this requirement will only be satisfied if such performance is made in a written or printed paper form.
- 14.5 Notwithstanding the foregoing, any notice given in writing, actually received by the party to whom the notice is addressed, will be deemed to have been properly given and received, notwithstanding that such notice has not been given in accordance with the provisions of this clause.

15. NON-VARIATION

- 15.1 This Agreement constitutes the whole agreement reached by the parties hereto and cancels and supersedes the terms and conditions of any and all prior negotiations and written and oral agreements, representations and understandings by or between the parties regarding the subject matter herein contained, including but not limited to the Customer's own terms and conditions (if any) and the parties will not be entitled to rely, in any dispute regarding this Agreement on any terms, conditions or representations not expressly contained in this Agreement.

15.2 No variation, addition, amendment alteration or consensual cancellation (including of this clause) shall be of any force or effect unless reduced to writing and signed by the parties hereto.

16. ASSIGNMENT, CESSION AND DELEGATION

Neither of the parties to this Agreement shall be entitled to assign, cede or delegate, or transfer any rights or obligations acquired in terms of this Agreement, in whole or in part to any other person without the prior written consent of the other, which consent may not unreasonably be withheld or delayed.

17. RELAXATION

No indulgence, leniency or extension of a right which either of the parties may have in terms of this Agreement, and which either party ("the grantor") may grant to the other party, shall in any way prejudice the grantor, or preclude the grantor from exercising any of the rights that it has derived from this Agreement, or be construed as a waiver by the grantor of that right.

18. WAIVER

No waiver on the part of either of the parties to this Agreement of any rights arising from a breach of any provision of this Agreement will constitute a waiver of rights in respect of any subsequent breach of this same or any other provision.

19. RELATIONSHIP AND PUBLICITY

19.1 Nothing herein contained constitutes the parties partners, agents or representatives of the other, or their relationship a partnership, joint venture or any other association other than that of manufacturer and customer.

19.2 Neither of the parties shall be entitled to bind the other to any onerous obligation, nor shall the parties attempt, or purport to do so.

19.3 Neither of the parties shall make any public statements of and concerning the other, or of their relationship, or of this Agreement or any transaction contemplated herein.

19.4 The parties shall refrain from conducting themselves in any manner whatsoever which reasonably considered, might, or could possibly disparage the good name and reputation of the other of them.