

Appendix 2 - Terms of Sale

- 1.1 These Terms and Conditions (the “**Terms**”) apply to the agreement for the sale of goods (the “**Goods**”) by CCHBC to the person, firm or company who purchases the Goods (the “**Customer**”) (the “**Agreement**”).
- 1.2 These Terms apply to all CCHBC’s sales and deliveries of goods to the Customer to the exclusion of any other terms, conditions and/or warranties that the Customer seeks to impose or incorporate, or which are implied by law, trade, custom, practice or course of dealing to the maximum extent permitted by applicable law. Any variation of these Terms or any representations about the Goods shall have no effect unless expressly agreed in writing and signed by a Director of CCHBC. CCHBC reserves the right to amend the Terms unilaterally at any time.
- 1.3 Each order placed by the Customer with CCHBC shall be deemed to be an offer by the Customer to buy Goods subject to these Terms.
- 1.4 No order placed by the Customer shall be deemed to be accepted by CCHBC until CCHBC delivers the Goods to the Customer. For the avoidance of doubt, confirmation of the Customer’s order by CCHBC does not constitute legally binding acceptance of that order. CCHBC does not operate a sale or return policy.
- 1.5 CCHBC reserves the right to reject the terms of an order as set out in the Customer’s purchase order form, on the basis of any applicable statutory or regulatory requirements.
- 1.6 Products that are supplied in price-marked packs are recommended retail prices only and the Customer is free to resell them at different prices.
- 1.7 The Customer’s attention is drawn in particular to the provisions of paragraph 10.
- 1.8 Provided that they have been incorporated into the Agreement by the mutual consent of the parties, all sales of Goods under this Agreement shall be subject to CCHBC’s commercial terms as amended from time to time in accordance with paragraph 2 (“**Commercial Terms**”), save to the extent that any provision of the Commercial Terms is inconsistent with any express provision of this Agreement, in which case the latter shall prevail.
- 2. CUSTOMER’S ADHERENCE TO THE COMMERCIAL TERMS**
- 2.1 The Customer agrees that the Commercial Terms contained in Appendix 1 by which CCHBC incentivises the Customer to perform certain activities supporting CCHBC’s marketing, logistics and distribution are integral conditions of this Agreement.
- 2.2 The Commercial Terms are deemed agreed on the basis of an expected indicative volume of purchases, and on the understanding that the Customer will ensure the continuous availability at its outlets of a sufficient number of CCHBC stock keeping units (“SKUs”) to preserve the presence of the CCHBC brand. CCHBC reserves the right to change any SKU pack size or format.
- 2.3 The Customer agrees not to reduce or delist from the products available at its outlets throughout the duration of this Agreement any of the SKUs listed under Appendix 3 to this Agreement.
- 2.4 It is the Customer’s sole responsibility for (i) implementing or procuring the implementation of adequate stock rotation for the Goods and (ii) selling the Goods before the stated best before date, at its outlets and in an undamaged state.
- 2.5 In the event of a reduction or delisting, CCHBC may suspend all Performance Incentives owed under the Commercial Terms.
- 2.6 Without prejudice to any of CCHBC’s other rights or remedies under this Agreement (including under paragraph 13), in the event of a second reduction or delisting during the course of the Agreement, CCHBC may terminate this Agreement on fourteen (14) days’ written notice to the Customer.
- 3. PRICES**
- 3.1 The price for the Goods shall be the price agreed between CCHBC and the Customer, or should the parties fail to agree on a price, the purchase price shall be determined by reference to the prices in CCHBC’s price list as at the date of delivery or deemed delivery, as updated by CCHBC from time to time, (“**Purchase Price**”).
- 3.2 The Purchase Price is exclusive of the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Customer.
- 3.3 The Purchase Price shall be exclusive of any value added tax, deposits and recycling fees.
- 3.4 CCHBC will notify the Customer of any change in the Purchase Price as soon as reasonably practicable.
- 3.5 A quotation for the Goods given by the CCHBC shall not constitute an offer.
- 4. PAYMENT**
- 4.1 Payment of the Purchase Price is due within fifteen (15) days after the date in which the invoice is issued by way of direct debit, provided however that CCHBC reserves the right to reduce credit limits and/or payment terms if it determines (through credit checks or otherwise) at its sole discretion that there is an enhanced risk to CCHBC.
- 4.2 All amounts due under these Terms shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law). However, CCHBC shall be entitled to apply set off as regards any sum owing by it to the Customer.
- 4.3 All payments payable to CCHBC under these Terms shall become due immediately upon termination of the Agreement between CCHBC and the Customer notwithstanding any provision to the contrary.
- 5. LATE PAYMENT**
- 5.1 Payment will be deemed overdue if the whole or any part of the payment remains outstanding for seven (7) days after the due date. In the event of a returned direct debit payment or cheque CCHBC reserves the right to recoup from the Customer any bank charges or fees incurred. Any queries on invoice accuracy (including with regard to shortages) must be raised by the Customer in writing within seven (7) days of date of invoice after which time CCHBC shall be entitled to assume that the invoiced amount is not in dispute. In the event that there are repeated requests for copy invoices from a Customer, CCHBC reserves the right to charge a €20/£15 administration fee per copy invoice issued.
- 5.2 If payment is demanded by CCHBC it shall reserve the right to charge interest on the outstanding charges at a rate of 2% above Royal Bank of Scotland base rate for the time being in force plus any charges it incurs (including, without limitation, a reasonable administration charge and CCHBC’s legal expenses).
- 5.3 No payment shall be deemed to have been received from the Customer until CCHBC has received cleared funds.
- 6. DELIVERY**
- 6.1 Delivery of the Goods shall occur at the Customer’s place of business unless otherwise agreed between the parties.
- 6.2 Any dates specified by CCHBC for delivery of the Goods are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery shall be within a reasonable time.
- 6.3 Subject to paragraph 10.1 but without prejudice to the remainder of paragraph 10, CCHBC’s liability to the Customer for late delivery of the Goods, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed an amount equal to the Purchase Price.
- 6.4 If for any reason the Customer fails to accept delivery of any of the Goods, whether in whole or in part, when they are ready for delivery, or CCHBC is unable to deliver the Goods on time because the Customer has not provided appropriate instructions, documents, licences or authorisations (a) risk in the Goods (including for loss or damage caused by CCHBC’s negligence) shall pass to the Customer; (b) the Goods shall be deemed to have been delivered; and (c) CCHBC may store the Goods until delivery, whereupon the Customer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).
- 6.5 The Customer will return to CCHBC all empty packaging materials in good condition (with allowances for general wear and tear), including but not limited to, bottles, crates and pallets.
- 7. NON-DELIVERY/DAMAGED GOODS**
- 7.1 The quantity of any consignment of Goods as recorded by CCHBC upon despatch from CCHBC’s place of business shall be conclusive evidence of the quantity received by the Customer on delivery unless the Customer can provide evidence proving the contrary.

- 7.2 Subject to paragraph 10.1 but without prejudice to the remainder of paragraph 10 CCHBC shall not be liable for the delivery of an incorrect type or quantity of Goods unless the Customer gives written notice to CCHBC of the incorrect delivery upon inspection of the Goods when the goods are delivered. If the Customer does not notify CCHBC accordingly it shall not be entitled to reject the Goods and will be obliged to pay for them. CCHBC shall deliver the correct Goods to the Customer as soon as reasonably practicable.
- 7.3 Subject to paragraph 10.1 but without prejudice to the remainder of paragraph 10, CCHBC shall not be liable for delivery of defective Goods unless the Customer gives written notice to CCHBC of the defect within seven (7) days of the date when the Goods were delivered (or where the defect is not apparent on inspection) within a reasonable time of its discovery (not to exceed thirty (30) days from delivery) and if the Customer does not notify CCHBC accordingly it shall not be entitled to reject the Goods and will be obliged to pay for them.
- 8. RISK/TITLE**
- 8.1 The risk in the Goods shall pass to the Customer on completion of delivery.
- 8.2 Title to the Goods shall not pass to the Customer until CCHBC has received in full all sums due to it in respect of (a) the Goods and (b) all other sums which are or which become due to CCHBC from the Customer on any account.
- 8.3 Until title to the Goods has passed to the Customer, the Customer shall (a) hold the Goods on a fiduciary basis as CCHBC's bailee; (b) maintain the Goods in satisfactory condition; and (c) store the Goods separately from any other goods in its possession.
- 8.4 Subject to paragraph 8.5, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before CCHBC receives payment for the Goods. However, if the Customer resells the Goods before that time:
- it does so as principal and not as CCHBC's agent; and
 - title to the Goods shall pass from CCHBC to the Customer immediately before the time at which resale by the Customer occurs.
- 8.5 The Customer's right to possession and title of the Goods shall terminate immediately if (a) the Customer becomes subject to any of the events set out in paragraph 13.2; or (b) the Customer suffers or allows any execution, whether legal or equitable, to be levied on its property or obtained against it, or fails to observe or perform any of its obligations under the Agreement or any other contract between CCHBC and the Customer, or the Customer is unable to pay its debts when they fall due or the Customer ceases to trade; or (c) the Customer encumbers or in any way charges any of the Goods.
- 8.6 The Customer grants CCHBC its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Customer's right to possession and title has terminated, to recover them.
- 8.7 On termination of the Agreement, howsoever caused, CCHBC's (but not the Customer's) rights contained in this paragraph 8 shall remain in effect.
- 9. WARRANTIES**
- 9.1 The terms implied by sections 13 to 15 of the Sale of Goods and Supply of Services Act 1980 are, to the fullest extent permitted by law, excluded from the Contract.
- 9.2 CCHBC warrants that the Goods supplied are of merchantable quality and shall conform to all applicable laws relating to manufacturing, packaging, packing, marking, storage, handling and delivery.
- 9.3 CCHBC shall not be liable for the Goods' failure to comply with the warranty set out in clause 9.1 in the event that defects arise as a result of the Customer's arrangements for transportation and storage of the Goods.
- 9.4 The Customer warrants to CCHBC that it will ensure that the condition of the Goods is such that when sold, they comply with all applicable laws and regulations relating to health, safety and quality of consumer goods.
- 10. LIMITATION OF LIABILITY**
- 10.1 Nothing in these Terms shall limit or exclude CCHBC's liability for:
- death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
 - fraud or fraudulent misrepresentation; or
 - any matter in respect of which it would be unlawful for CCHBC to exclude or restrict liability.
- 10.2 Subject to paragraph 10.1:
- CCHBC shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit (whether direct or indirect), or any indirect or consequential loss arising under or in connection with the Agreement; and
 - CCHBC's total liability to the Customer in respect of all losses arising under or in connection with the Agreement, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed an amount equal to the Purchase Price.
- 10.3 All warranties, conditions and other terms implied by statute or common law, trade, custom, practice or course of dealing (save as set out in paragraph 10.1) are, to the fullest extent permitted by law, excluded from the Agreement.
- 11. ASSIGNMENT**
- 11.1 CCHBC may at any time assign, transfer, mortgage, charge or deal in any other manner with any or all of its rights and obligations under this Agreement, provided that it gives prior written notice to the Customer.
- 11.2 The Customer shall be entitled to assign, transfer, mortgage, charge or deal in any other manner with any or all of its rights and obligations under this Agreement, only with the prior written consent of CCHBC.
- 12. ENTIRE AGREEMENT**
- The Agreement constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of CCHBC which is not set out in the Agreement.
- 13. TERMINATION**
- 13.1 If the Customer becomes subject to any of the events listed in paragraph 13.2, CCHBC may terminate the Agreement with immediate effect by giving written notice to the Customer.
- 13.2 For the purposes of paragraph 13.1, the relevant events are:
- the Customer suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company or limited liability partnership) is deemed unable to pay its debts, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, or (being a partnership) has any partner to whom any of the foregoing apply;
 - the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where the Customer is a company) where these events take place for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
 - (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer, other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
 - (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer;
 - (being a company) the holder of a qualifying floating charge over the Customer's assets has become entitled to appoint or has appointed an administrative receiver;
 - a person becomes entitled to appoint a receiver over the Customer's assets or a receiver is appointed over the Customer's assets;
 - (being an individual) the Customer is the subject of a bankruptcy petition or order;
 - a creditor or encumbrance of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within fourteen (14) days;
 - any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in paragraph 13.2(a) to paragraph 13.2(f) (inclusive);

- (j) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business;
 - (k) the Customer's financial position deteriorates to such an extent that in CCHBC's opinion the Customer's capability to adequately fulfil its obligations under the Agreement has been placed in jeopardy; and;
 - (l) (being an individual) the Customer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.
- 13.3 Without limiting its other rights or remedies, CCHBC may suspend provision of the Goods under the Agreement or any other contract between the Customer and CCHBC if the Customer becomes subject to any of the events listed in paragraph 13.2(a) to paragraph 13.2(l), or CCHBC reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Agreement on the due date for payment.
- 13.4 CCHBC may terminate the Agreement by written notice to the Customer with immediate effect if the Customer commits a Default (meaning any breach of the obligations of the Customer including but not limited to fundamental breach or breach of a fundamental term or any other default, act, omission, negligence or negligent statement) if:
- (a) the Customer has not remedied the Default to the satisfaction of CCHBC within 14 days, or such other period as may be specified by CCHBC, after issue of a written notice specifying the Default and requesting it to be remedied; or
 - (b) the Default is not in the opinion of CCHBC, capable of remedy; or
 - (c) the Default is a material breach of the Agreement.
- 13.5 On termination of the Agreement for any reason the Customer shall immediately pay to CCHBC all of CCHBC's outstanding unpaid invoices and interest.
- 13.6 Termination of the Agreement, however arising, shall not affect any of the parties' rights, remedies, obligations and liabilities that have accrued as at termination.
- 13.7 Provisions which expressly or by implication survive termination of the Agreement shall continue in full force and effect.
- 14. FORCE MAJEURE**
- 14.1 Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A Force Majeure Event means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.
- 14.2 A party will not be liable if delayed in or prevented from performing its obligations due to a "Force Majeure Event", provided that it:
- (a) notifies the other of the Force Majeure Event and its expected duration, and
 - (b) uses reasonable endeavours to minimise the effects of that event.
- 15. SEVERANCE**
- If any provision or part-provision of the Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this paragraph shall not affect the validity and enforceability of the rest of the Agreement.
- 16. GENERAL**
- 16.1 Each right or remedy of the parties under the Agreement is without prejudice to any other right or remedy of the parties whether under the Agreement or not.
- 16.2 A person who is not a party to the Agreement shall not have any rights to enforce its terms.
- 16.3 Full or partial failure or delay by either party in enforcing any provision of the Agreement shall not be construed as a waiver of any rights under the Agreement.
- 16.4 A waiver of any right or remedy under the Agreement or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 16.5 The parties to this agreement agree to keep the Agreement contents confidential and neither party will disclose the contents to any third party without the prior approval of the other party or unless the disclosure is required by law.
- 16.6 At its own expense, each party shall, and shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute and deliver such documents and perform such acts as may reasonably be required for the purpose of giving full effect to the Agreement.
- 16.7 The Customer represents and warrants to CCHBC that (a) the obligations expressed to be assumed by it under this agreement are legal, valid and enforceable obligations (b) it has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of the Agreement and its obligations hereunder; and (c) it has freely selected the Goods to be provided from the range of products offered by CCHBC.
- 16.8 This Agreement and any non-contractual obligations arising out of or in relation to it shall be governed by and construed in all respects in accordance with the laws of (1) Northern Ireland, in relation to Coca-Cola HBC Northern Ireland Limited purchases and (2) the Republic of Ireland, in relation to Coca-Cola HBC Ireland Limited purchases. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to the Agreement.
- 16.9 Each party irrevocably agrees that the courts of Northern Ireland or, as the case may be the Republic of Ireland, shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Agreement or its subject matter or formation (including non-contractual disputes or claims).

