

# The Whitbread Conditions of Purchase

1. INTERPRETATION
  - 1.1 In these Conditions of Purchase:-

Conditions of Purchase' means the terms and conditions set out in this document together with any other terms or conditions incorporated into the Agreement by express written agreement between Whitbread and the Company

Agreement' means the contract for the sale of the Goods and / or the Services by the Company and purchase of the Goods and / or the Services by Whitbread

Delivery Address' means the delivery address overleaf

Goods' means the goods (if any) described overleaf

Order' means the order overleaf

Order Number' means the order number overleaf

Services' means the services (if any) described overleaf

Company' means the person, firm or company identified as supplier overleaf

Whitbread' means Whitbread Group PLC
  - 1.2 The headings in these Conditions of Purchase are for convenience only and shall not affect their construction.
2. AGREEMENT TO PURCHASE
  - 2.1 The order constitutes an offer by Whitbread to purchase the Goods and/or the Services subject to the Conditions of Purchase and written acceptance of the Order or despatch or delivery of the Goods or the commencement of supply of the Services by the Company shall be deemed conclusive evidence of the Company's acceptance of these Conditions of Purchase.
  - 2.2 These Conditions of Purchase shall apply to the Agreement to the exclusion of any other terms and conditions on which any quotation has been given to Whitbread or subject to which the Order is accepted or purported to be accepted by the Company.
  - 2.3 No variation of the Conditions of Purchase, Order or Agreement shall be binding unless made by written agreement between Whitbread and the Company.
3. PRICE
  - 3.1 The price of the Goods and Services shall be as stated in the Order and, unless otherwise so stated, shall be exclusive of value added tax (which shall be payable by Whitbread subject to receipt by Whitbread of a value added tax invoice) and inclusive of all charges for packaging, packing, carriage, insurance, and delivery of the Goods to the Delivery Address and any other duties or imposts other than value added tax.
  - 3.2 Whitbread shall be entitled to set off against any sum due to the Company any sum owed to Whitbread by the Company.
4. QUALITY AND DESCRIPTION
  - 4.1 The Goods and Services shall be of first class quality and durability and shall conform as to quality, quantity and description with the specifications, stipulations and any other information contained in the Order or supplied by Whitbread to the Company or agreed in writing by Whitbread and shall correspond in all respects with any samples or patterns provided by the Company to Whitbread or by Whitbread to the Company.
  - 4.2 The Company shall comply with all applicable regulations and other legal requirements concerning the manufacture, packaging, carriage, packing and delivery of the Goods and the performance of the Services.
5. INSPECTION AND TESTING
  - 5.1 The Company shall permit Whitbread or Whitbread's authorised representative to inspect and test the Goods at any time during manufacture, processing or storage and to inspect and test performance of the Services at the premises of the Company or any third party and the Company shall provide or procure the provision of all such facilities and accommodation as may reasonably be required by Whitbread for inspection and testing. The Company shall at the request of Whitbread, supply to Whitbread a copy of the Company's test sheets certified by the Company to be a true copy.
  - 5.2 If, as a result of such inspection or testing, Whitbread is of the opinion that the Goods do not comply with the Agreement or are unlikely on completion of manufacture or processing so to comply, upon Whitbread so informing the Company, the Company shall immediately take such steps as may be necessary to enable the Company to comply with the Agreement.
  - 5.3 For the avoidance of doubt such inspection or right to inspect on the part of Whitbread shall not constitute acceptance or approval by Whitbread of the Goods or Services.
6. DELIVERY
  - 6.1 The Goods shall be delivered and the Services shall be performed at the Delivery Address or as may be directed by Whitbread on the date or within the period stated in the Order in either case during Whitbread's usual business hours. Where the date of delivery of the Goods or of performance of the services is not specified in the Order, the Company shall give Whitbread reasonable notice of the date therefor.
  - 6.2 Whitbread shall be entitled to reject any Goods delivered which are not in accordance with the Agreement and shall not be deemed to have accepted any Goods until Whitbread has had a reasonable time to inspect them following delivery or, if later, within a reasonable time after any latent defect in the Goods has become apparent. In the event of any failure on the part of the Company to supply Goods or Services of the quality, in the quantity and to the time specified, Whitbread shall be entitled to:-
    - 6.2.1 obtain equivalent Goods or Services from an alternative source and the Company undertakes to reimburse Whitbread for any reasonable additional costs incurred in so doing;
    - 6.2.2 reject, and to require the Company to replace, at no charge, any such Goods.
  - 6.3 Time of delivery of the Goods and of performance of the Services shall be of the essence of the Agreement.
  - 6.4 Any extension of time for delivery or performance must be agreed in advance between Whitbread and the Company in writing. If time is so extended, time as extended shall be of the essence of the Agreement.
  - 6.5 If the Goods are to be delivered or the Services are to be performed by instalments, the Agreement will be treated as a single contract and not severable.
  - 6.6 Delivery shall not be effected until the Goods have been unloaded and (if relevant) the Services have been performed and accepted in writing by an authorised officer, employee, or representative of Whitbread.
  - 6.7 The Order Number must be quoted on all correspondence relating to the Order. A delivery or advice note must accompany all Goods despatched to the Delivery Address. Goods or Services not accompanied by a delivery or advice note may be refused.
  - 6.8 The Company shall give Whitbread in good time any instruction or information required to enable Whitbread to take delivery of the Goods and performance of the Services.
7. TITLE AND RISK
  - 7.1 Property in the Goods shall pass to Whitbread upon delivery unless payment is made prior to delivery in which case it shall pass to Whitbread once payment has been made and the Goods have been appropriated to the Agreement.
  - 7.2 Risk of damage to or loss of the Goods supplied shall pass to Whitbread upon delivery in accordance with the Agreement.
  - 7.3 The Company shall insure the Goods to their full value against all risks of damage or loss prior to completion of delivery by whomsoever effected.
8. WARRANTIES AND LIABILITIES
  - 8.1 The Company warrants to Whitbread that the Goods will:-
    - 8.1.1 be of satisfactory quality and fit for any purpose held out by the Company or made known to the Company by Whitbread;
    - 8.1.2 be free from defects in design, material and workmanship, and that the Company, upon becoming aware of any defect whatsoever in the Goods immediately notify Whitbread of such defect and confirm the same in writing to Whitbread within three (3) days of such defect being identified;
    - 8.1.3 correspond with any specification or sample;
  - 8.1.4 comply with all statutory requirements and regulations relating to the sale of the Goods
  - 8.2 The Company warrants to Whitbread that the Services will be performed by appropriately qualified and trained personnel acting with due care and diligence and to the best industry standard.
  - 8.3 The Company shall indemnify Whitbread in full against all liabilities, losses, costs, damages, expenses (including legal expenses) and claims made against, awarded against or incurred or paid by Whitbread as a result of or in connection with:-
    - 8.3.1 any breach of any warranty given by the Company in relation to the Goods or Services;
    - 8.3.2 any claim that the Goods infringe or their importation use or resale infringes the patent, copyright, design right, trade mark or other intellectual property rights of any other person except to the extent that any such claim arises from compliance with a specification or design supplied by Whitbread;
    - 8.3.3 any liability under the Consumer Protection Act 1987 in respect of the Goods;
    - 8.3.4 any act or omission of the Company or its employees, agents or subcontractors in supplying, delivering and installing the Goods or in performing the Services; and
    - 8.3.5 the supply, delivery and installation of the Goods and the performance of the Services provided however that nothing in this sub-clause 8.3.5 shall render the Company liable to indemnify Whitbread insofar as the matter in respect of which Whitbread seeks indemnity has been caused by the negligence of Whitbread or its employees acting in the course of their employment.
  - 8.4 Without prejudice to any other remedy, if any Goods or Services are not supplied or performed in accordance with the Agreement, then Whitbread shall be entitled:-
    - 8.4.1 to require the Company to repair the Goods or to supply replacement Goods or Services in accordance with the Agreement within 7 days; or
    - 8.4.2 at Whitbread's sole option, and whether or not Whitbread has previously required the Company to repair the Goods or to supply any replacement Goods or Services, to treat the Agreement as discharged by the Company's breach and require the repayment of any money which has been paid.
  - 8.5 The Company warrants that any equipment, software and system to be developed for or supplied to Whitbread pursuant to this Agreement, and any equipment, software and system used by the Company or used by any supplier of goods or services to the Company to provide the Goods and / or Services to Whitbread is and will be programmed to adapt to and accommodate changes in dates, including without limitation, the next millennium, the year 2000 and leap years, without detriment or deterioration in performance affecting Whitbread and undertakes to indemnify Whitbread and hold Whitbread harmless against all costs, losses and liability including legal fees arising from any breach of this Clause.
9. FORCE MAJEURE

Whitbread shall not be liable for any failure to take or make use of the Goods or Services or for any delay in taking or making use of the same which is due wholly or partially to any strike, lock-out or other industrial action, or any other event beyond the reasonable control of Whitbread including without limitation, acts of God, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, fire, flood, storm.
10. TERMINATION
  - 10.1 Without prejudice to any other rights or remedies to which it may be entitled, Whitbread shall be entitled to terminate the Agreement without liability to the Company by giving notice to the Company at any time if:
    - 10.1.1 the Company makes any voluntary arrangement with its creditors (within the meaning of the Insolvency Act 1986) or (being a company) becomes subject to an administration order or goes into liquidation (other than for purpose of amalgamation or reconstruction); or
    - 10.1.2 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Company; or
    - 10.1.3 the Company ceases, or threatens to cease, to carry on business; or
    - 10.1.4 Whitbread reasonably apprehends that any of the events mentioned above is about to occur in relation to the Company and notifies the Company accordingly; or
    - 10.1.5 the Company is in breach of any of its obligations under the Conditions of Purchase or the Agreement; or
    - 10.1.6 there is a change of control of Whitbread or the Company. For the purpose of this clause, "control" means the ability to direct the affairs of another whether by voting or contractual rights or otherwise and whether directly or indirectly.
11. ELECTRONIC DATA INTERCHANGE

Where the parties communicate using direct computer to computer interchange of computer processable data (whether with or without the assistance of a value added network or other intermediary) then the terms and conditions of the Interchange Agreement shall apply, a copy of which is available from Whitbread upon request. In the event of any conflict between the terms of the Interchange Agreement and the terms here set out, the latter shall apply.
12. GENERAL
  - 12.1 The Order is personal to the Company and the Company shall not without the written consent of Whitbread sub-contract or assign all or any of its rights or obligations under the Agreement or any part of the Agreement.
  - 12.2 Any consent given by Whitbread to the Company under condition 12.1 shall not impose any duty on Whitbread to enquire as to competency of any sub-contractor and the Company shall ensure that any sub-contractor is competent and that performance of the Agreement is properly carried out. In the event that any sub-contractor is subsequently deemed in Whitbread's reasonable opinion not to be suitable on technical or commercial grounds then the Company shall replace that sub-contractor with an alternative sub-contractor also approved in writing by Whitbread.
  - 12.3 No waiver by Whitbread of any breach of the Agreement shall be considered as a waiver of any subsequent breach of the same or any other provision.
  - 12.4 If any provision of these Conditions of Purchase is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions of Purchase and the remainder of the provision in question shall not be affected thereby.
  - 12.5 Any notice required or permitted to be given by either party to the other shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
  - 12.6 Notwithstanding the fact that the Company may have or have had business dealings with Whitbread Group PLC and/or its associated businesses Whitbread's name and those of its associated businesses shall not be used by the Company for the purpose of advertisement or publicity without the prior written consent of Whitbread.
  - 12.7 This Contract shall be governed by English law.