



**Standard Terms & Conditions**

**SOUFFLET MALT AMERICAS**

18110 SE 34<sup>th</sup> Street – St. 240

Vancouver, WA 98683

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**T+1 360.991.0888**

**SOUFFLETMALT.COM**

THESE TERMS AND CONDITIONS (“TERMS”) APPLY TO ALL SALES (EACH A “SALE”) OF GOODS PROCESSED AND/OR DISTRIBUTED (COLLECTIVELY, “PRODUCTS”) THROUGH OR BY ANY DIVISION, SUBSIDIARY, OR AFFILIATE (EACH AN “AFFILIATE”) OF SOUFFLET MALT TO ANY PURCHASER OF THE PRODUCTS (EACH A “CUSTOMER”). THE TERM “SELLER” REFERS TO THE SPECIFIC SOUFFLET MALT AFFILIATE FROM WHICH CUSTOMER PURCHASES THE PRODUCTS, AS NAMED ON THE INVOICE OR OTHER SIMILAR DOCUMENT ISSUED BY SUCH SOUFFLET MALT AFFILIATE IN CONNECTION WITH THE SALE (AN “INVOICE”).

SALE OF PRODUCTS BY SELLER TO CUSTOMER IS EXPRESSLY CONDITIONED ON CUSTOMER’S ASSENT TO THESE TERMS. BY ACCEPTING DELIVERY, RETAINING, OR USING ALL OR ANY PORTION OF THE PRODUCTS, CUSTOMER ACCEPTS AND AGREES TO BE BOUND BY ALL TERMS UNLESS EXPRESSLY MODIFIED BY SEPARATE AGREEMENT SIGNED BY AUTHORIZED REPRESENTATIVES OF BOTH CUSTOMER AND SELLER.

SOUFFLET MALT MAY, FROM TIME TO TIME, AND IN ITS SOLE AND ABSOLUTE DISCRETION, REVISE THESE TERMS WITHOUT NOTICE TO CUSTOMER BY POSTING THE REVISED TERMS ON ITS WEBSITE ([HTTPS://WWW.UNITEDMALT.COM/LEGAL](https://www.unitedmalt.com/legal)) (THE “WEBSITE”). THE TERMS POSTED ON THE WEBSITE AT THE TIME OF ANY PARTICULAR ORDER SHALL GOVERN THAT ORDER.

1. **Product Orders.** Customer shall place orders for individual Product shipments according to the procedures set forth in the applicable Commitment (as defined below). If not otherwise specified in a Commitment, or if no Commitment exists, then Customer may submit orders for individual Product shipments (each, an “Order”) in accordance with Seller’s then current ordering mechanisms or procedures. Orders may be submitted to Seller either orally or in writing (including via online ordering platforms, e-mail, and all forms of electronic communication (e.g., fax, instant message, SMS text, social media, etc.)).

2. **Offer and Acceptance.** Each Order constitutes a separate offer to purchase Products. No particular Order shall be binding upon Seller unless and until accepted by Seller in writing. Seller’s written confirmation (including e-mail and all forms of electronic communication (e.g. fax, instant message, SMS text, etc.)), receipt of payment, commencement of work, or shipment of all or any portion of Products in connection with an Order, whichever occurs first, shall constitute acceptance of Customer’s Order. All Orders incorporate these Terms whether or not separately referenced on any individual Commitment, Order, or Invoice. Accepting delivery, retaining, or using all or any portion of Products sold by Seller shall constitute acceptance by Customer of these Terms. In the event of a conflict between these Terms and any term or condition of the Commitment, Order, or other similar document, these Terms shall control unless expressly modified by specific reference in a separate written agreement signed by authorized representatives of both Customer and Seller. Any terms included in a Customer purchase order, bid, proposal, statement, or other memoranda or attachment of any nature whatsoever, shall not govern the transaction between Customer and Seller unless signed by authorized representatives of both Customer and Seller. Any such additional or different terms proposed by Customer, or any other attempt by Customer to vary, modify, supersede, supplement, or otherwise alter these Terms, shall constitute a counteroffer by Customer, which counteroffer is rejected by Seller.

3. **Purchase Commitments.** Customer may elect to commit to volume, pricing, and other commercial terms during a specified period of time (the “Term”) via separate written agreement signed by authorized representatives of both Seller and Customer (a “Commitment”). A Commitment includes any written agreement between Customer and Seller detailing planned future Product Orders during the Term, whether or not titled a “Purchase Commitment.” Commitments may include, for example and without limitation, documents titled Sales Agreement, Price Contract, Malt Contract, Contract Confirmation, Supply Agreement, and/or Purchase Commitment. Customer commits and agrees to purchase and take delivery from Seller of not less than the quantities specified in the Commitment or Order (the “Agreed Base Quantity”) within the corresponding time periods. Customer’s obligation to purchase and take delivery of the Agreed Base Quantity within such periods shall be on a take-or-pay basis.

4. **Forecasts.** If Customer has executed a Commitment, then Customer must provide Seller with a good faith written forecast detailing anticipated Orders in the first calendar year of the Commitment within TEN (10) days of Commitment execution (the “Forecast.”) The Forecast must specify the type, volume, and requested delivery dates for each anticipated Order during the Term. Customer shall update the Forecast on not less than a QUARTERLY basis. Seller will use its best efforts to accommodate Orders deviating from Customer Forecasts, but shall not be liable for damages, losses, expenses, or other liabilities of any kind if Seller fails to meet deviations from Customer Forecasts. Customer shall be responsible for, and agrees to pay, any additional storage, transportation, insurance, customs, duties, and other similar costs or fees reasonably incurred by Seller as a result of any material deviation from Forecast terms and commitments.

5. **Delivery.** Customer shall communicate requested delivery dates for each Order to Seller. Seller will notify Customer as soon as practicable after receipt of any Order as to whether Customer’s particular Order is accepted and, if accepted, of the approximate date or dates on which

delivery of the Products will be made. Seller will use its best efforts to fill accepted Orders on or before requested delivery dates, but shall not be liable for damages, losses, expenses, or other liabilities of any kind if Seller fails to meet a requested delivery date. Seller may, in its discretion and without liability or penalty, elect to make partial shipment of any Order to Customer. Each shipment will constitute a separate sale, and Customer shall pay for units shipped whether such shipment is in whole or partial fulfillment of the quantity specified in the Order.

**6. Minimum Requirements.** Customer must provide Seller with advance notice of at least THIRTY (30) days in the case of domestic sales, or THREE (3) months in the case of international sales, of any requested delivery date ("Minimum Order Lead Time"). Seller will use reasonable commercial efforts to accommodate Customer requests for alternative delivery terms but shall not be obligated to accept or fill any Order that does not satisfy Minimum Order Lead Time and/or Seller's then-current minimum order size requirements.

**7. Non-Delivery.** The quantity of any installment or Order as recorded by Seller on dispatch from Seller's place of business shall be conclusive evidence of the quantity received by Customer on delivery unless Customer provides conclusive evidence of the contrary. Seller shall not be liable for any non-delivery of Products (even if caused by Seller's own negligence) unless Customer gives written notice to Seller of non-delivery within SEVENTY-TWO (72) hours of the date when the Products would in the ordinary course of events have been received. Any liability of Seller for non-delivery of Products shall be limited to delivering Products to Customer within a reasonable time after such written notice, or adjusting the Invoice relating to such Products to reflect the quantity delivered.

**8. Inspection and Testing.** Customer, at Customer's expense, may inspect and/or conduct reasonable, non-destructive testing at the final destination identified in the Commitment or Order (the "Delivery Point") to confirm that Products materially conform to the S Guarantee (as defined below) and any specifications detailed in the Commitment or separately submitted to Seller in writing prior to the Order (the "Specifications"). Any such inspections and/or testing must take place within TWENTY-FOUR (24) hours after delivery of Products for domestic shipments, or SEVENTY-TWO (72) hours after delivery of Products for international shipments (the "Inspection Period"). Failure to notify Seller of any non-conformities or other problems within the Inspection Period shall: (a) constitute acceptance of the Products; (b) waive Customer's rights and remedies in connection with the Products; and (c) relieve Seller of any further obligations in connection with the Products.

**9. Rejection.** Customer may, within the Inspection Period, reject and either return to Seller or hold at Seller's risk and expense any Products that: (a) do not conform to the Soufflet Malt Guarantee (as defined below); (b) do not conform to industry standards and practices for similar Products; (c) do not materially conform to agreed Specifications; or (d) violate applicable law ("Non-Conforming Products"). Customer must provide substantiating evidence for any allegedly Non-Conforming Products and must make such

Products available to Seller for inspection. Customer's failure to provide appropriate substantiating evidence and properly reject Products within the Inspection Period shall constitute acceptance of those Products. Customer shall bear all expenses and risks of unpacking, examining, repacking, storing, holding and/or reshipping, and returning any rejected Products. If Customer timely notifies Seller of and rejects Non-Conforming Products then, Seller, in its sole discretion, may either: i) replace such Non-Conforming Products with conforming Products; or ii) credit or refund the price for such Non-Conforming Products to Customer. If Seller exercises its option to replace Non-Conforming Products, then Seller, after receiving Customer's rejected shipment of Non-Conforming Products, will ship replaced Products to Customer at Seller's expense. THE REMEDIES SET FORTH IN THIS SECTION ARE CUSTOMER'S EXCLUSIVE REMEDIES AND SELLER'S ENTIRE LIABILITY FOR DELIVERY OF NON-CONFORMING PRODUCT.

**10. Carry-Over.** Customer's obligation to purchase and take delivery of committed sales volumes within such time periods as may be specified on the corresponding Commitment or Order, including any Agreed Base Quantity, shall be on a take-or-pay basis. "Carry-over" of committed volumes beyond any specified period must be separately negotiated and agreed between authorized representatives of Customer and Seller in writing and is subject to re-pricing at Seller's discretion to account for market and other business changes, including changes in input, production, and other costs. Any permitted "carry-over" volumes will also result in monthly storage charges to compensate Seller for additional costs, expenses, and other losses that result from retaining committed Product volumes beyond forecasted time periods. Customer commits and agrees to pay monthly storage fees as invoiced by Seller in connection with any permitted "carry-over" volumes.

**11. Payment.** Customer shall pay for all accepted Products as invoiced by Seller. Invoices shall be due and payable within the time period specified on the Invoice, measured from the date of the Invoice. If not otherwise specified, Invoices shall be due and payable THIRTY (30) days from the date of the Invoice via electronic funds transfer. All invoices are due and payable by Customer to Seller without set-off, deduction, or deferment on account of any claim or counterclaim. Seller will assume that Customer has reviewed each Invoice and found it in order unless Seller receives questions within FIVE (5) days from the date of the Invoice. Time is of the essence with respect to all payment deadlines.

**12. Delinquent Payment.** Should Customer fail to make any payment within FIVE (5) days of when due, then Customer shall pay a delinquency charge to Seller equal to the lesser of \$500 US or 5 PERCENT (5%) of the delinquent payment as liquidated damages for administrative expenses associated with such delinquent payment, and not as a penalty (the "Delinquency Charge"). Customer agrees that the Delinquency Charge is a reasonable estimate and fair compensation of the administrative costs, expenses, and other losses, which are incapable of exact determination, incurred by Seller as a result of Customer's delinquent payment. The Delinquency Charge shall not prejudice Seller's right to recover any and all other and/or

additional damages that may be available in connection with default by Customer, all of which are expressly reserved.

**13. Failure to Pay.** Seller reserves the right to suspend, reduce, or cancel any Order or Commitment if Customer has failed to make any payment when due. Customer shall pay interest on any and all past-due amounts at the rate of ONE AND ONE-HALF PERCENT (1.5%) per month or, if less, the maximum rate permitted by law from the date the amount became past due until the date of payment in full.

**14. Collection Agent.** Seller may appoint an agent to collect any past-due amounts owed by Customer and may pass on Customer information for that purpose. Customer shall compensate Seller for all reasonable costs and expenses of any kind, including, without limitation, attorney, paralegal, and other professional fees, actually incurred and reasonably necessary in connection with any efforts by Seller to collect past-due amounts owed by Customer.

**15. Soufflet Malt Guarantee:** Unless otherwise specified or agreed, Seller guarantees and warrants that, prior to transfer of title and risk of loss, all Products will be of good quality consistent with generally accepted industry standards for similarly situated buyers and sellers and free from material defects (the "Soufflet Malt Guarantee").

**16. Seller's Indemnity:** Seller agrees to indemnify, defend, and hold harmless Customer from and against any Claim (as defined below) caused by a material breach by Seller of the Soufflet Malt Guarantee. A "Claim" is any claim, loss, cost, liability, demand, action, suit, damage or expense arising from a physical injury, illness, or death of a human consumer of Products within the regular chain of commerce. The foregoing indemnity obligation shall not apply: (a) unless Customer promptly notifies Seller and Soufflet Malt.

17. of any such actual or threatened Claim; (b) to the extent that the Claim arises in whole or in part from Products not processed or manufactured by SOUFFLET MALT; or (c) to the extent that the Claim arises in whole or in part from the negligence or intentional conduct of Customer or any third party. Seller shall have the absolute right to defend, resolve, or otherwise handle any Claim which Seller is required to defend under this section in Seller's sole discretion with or without reservation of rights. In the event of a Claim, Customer shall provide Seller with all relevant information and shall fully cooperate with and assist Seller in resolving the Claim.

**18. Customer's Indemnity.** Customer, at its sole cost and expense, shall defend, indemnify, and hold harmless: 1) Seller, SOUFFLET MALT, and its Affiliates; 2) any and all other parties which Seller, SOUFFLET MALT, and/or its Affiliates are required to defend, indemnify, or hold harmless; and 3) each of their respective owners, directors, officers, employees, and agents, from and against all loss, direct or consequential damage, cost, expense, claim, fine, penalty, or other liability of any kind whatsoever (including attorney fees), actual or alleged, caused by, arising out of, resulting from, or occurring in whole or in part in connection with: (a) Customer's failure to comply with any obligation under these Terms or any Commitment (b) any failure or omission to perform any act that, as between Seller and Customer, was Customer's obligation to perform; or (c) bodily injury, death, or damage to property of any person caused by or

arising out of negligence or willful misconduct of Customer or any person for whom Customer is responsible.

**19. Currency.** If not otherwise specified, amounts due under or otherwise in connection with any Commitment, Order, Invoice, or Sale shall be payable in U.S. DOLLARS.

**20. Language.** All correspondence, statements, notices, and other documents associated with any Products, Commitment, Order, Invoice, and/or Sale shall be in English. *Les parties aux présentes confirment leur volonté que cette convention, de même que tous les documents, y compris tout avis, qui s'y rattachent, soient rédigés en langue anglaise.* In the event of a dispute regarding any Product, Commitment, Order, Invoice, and/or Sale, the English language shall govern the interpretation and meaning of these Terms.

**21. Measurements.** Seller may, in its sole discretion, determine whether measurements associated with any Products, Commitment, Order, and/or Sale are in the English system, the metric system, or some combination of the two. Customer shall not convert any measurements that Seller states in the English system into the metric system in any documents provided to Seller, or vice versa.

**22. Insurance:** Customer shall obtain and maintain throughout the term of any Order, at Customer's sole expense and with insurance companies reasonably satisfactory to Seller and authorized to do business in the jurisdiction in which the Delivery Point is located, insurance coverage of the types and limits described below in U.S. dollars. The limits set forth below are minimum limits and shall not be construed to limit Customer's liability. Limits may be satisfied through any combination of primary and umbrella policies.

a. Commercial General Liability insurance with a combined single limit of \$5,000,000 per occurrence and coverage for all liability associated with the Order, including, without limitation, bodily injury or property damage, personal injury, products, completed operations, sudden and accidental pollution, and Customer's indemnity obligations;

b. If Customer's employees or agents will drive on SOUFFLET MALT's property and/or premises, or take deliveries from SOUFFLET MALT's property and/or premises, Business Auto Liability insurance complying with the requirements of all regulatory bodies having jurisdiction, or a combined single limit of \$1,000,000 per occurrence for bodily injury or property damage, whichever is greater, including coverage for all vehicles used in the performance of any services related to the Order, whether owned, non-owned, or hired; and

c. If Customer's employees will enter onto SOUFFLET MALT's property and/or premises in an applicable jurisdiction, Workers Compensation insurance complying with the laws having jurisdiction over each employee, whether or not Customer is required by such laws to maintain such insurance, and Employer's Liability (if applicable) with limits of not less than \$1,000,000 per occurrence.

In each of the above-described policies, Customer shall waive, and shall require its insurers to waive, any rights of subrogation or recovery they may have against Seller, SOUFFLET MALT, and/or its Affiliates. Under the policies described in

(a) and (b) above, Seller, SOUFFLET MALT, and its Affiliates shall be named as additional insureds. Any cost associated with naming these additional insureds shall be the sole responsibility of Customer. Such policies shall be primary insurance with respect to Seller, SOUFFLET MALT, and its Affiliates, and any other insurance maintained by Seller, SOUFFLET MALT, and/or its Affiliates shall be excess and not contributory with this insurance. Non-renewal or cancellation of the policies described above shall be effective only after written notice is received by Seller THIRTY (30) days in advance of any such non-renewal or cancellation. Customer shall deliver to Seller certificates of insurance evidencing the existence of all insurance required above as a condition precedent to the rendering of any services by Seller related to any Order or Commitment. If the insurance policies described in this section are not obtained and maintained as provided, then Seller, in its sole discretion, shall have the right to immediately terminate the Order or Commitment, or to suspend delivery of the Products until such time as the obligations of this section are satisfied without any liability to Seller whatsoever.

**23. Intellectual Property.** All industrial and intellectual property rights of whatever nature throughout the world conferred under statute, common law, or equity, whether existing now or at any time in the future, including without limitation rights in respect of or in connection with copyright, inventions (patent), formulae, databases, business processes and methods, trademarks, service marks, business names, trade names, domain names, designs, confidential information, trade secrets, know-how, and all other industrial and intellectual property rights, whether or not registered or registrable, associated with the business of Seller, SOUFFLET MALT, and/or its Affiliates and/or the Products (collectively, "Intellectual Property"), are and shall remain the sole and exclusive property of Seller. Customer shall not acquire any ownership interest in or to any of Seller's Intellectual Property in connection with any Commitment, Order, or Sale. Any goodwill derived from the use of Seller's Intellectual Property shall inure to the benefit of Seller. Customer shall not: i) take any action that might interfere with any of Seller's rights in or to Seller's Intellectual Property; ii) challenge any right, title, or interest of Seller in or to Seller's Intellectual Property; iii) make any claim or take any action adverse to Seller's ownership of Seller's Intellectual Property; iv) use any mark anywhere that is confusingly similar to Seller's Intellectual Property; v) engage in any action that tends to disparage, dilute the value of, or reflect negatively on Seller Products or Seller's Intellectual Property; or vi) alter, obscure, or remove any of Seller's Intellectual Property or associated notices of proprietary rights placed on Products or on any marketing or other similar materials that Seller may provide.

**24. Limitation of Liability:** In no event shall Seller, SOUFFLET MALT, and/or its Affiliates be liable to Customer or any other person or entity, and Customer hereby releases Seller, SOUFFLET MALT, and its Affiliates from, any penalties and fines and any consequential, special, incidental, indirect, punitive or exemplary damages (including, without limitation, lost profits or revenues and injury to business reputation) whether arising out or otherwise relating to any Commitment, Order, these Terms, or any other contract or Sale between Customer and Seller, or from breach of the

SOUFFLET MALT Guarantee, or any other legal or equitable theory (contract, tort, or otherwise, including negligence or product liability or strict liability), and regardless of whether any person or entity has been advised of the possibility of any such loss or damage. IN NO EVENT SHALL SELLER, SOUFFLET MALT, OR ANY AFFILIATE BE REQUIRED TO INDEMNIFY OR OTHERWISE BE LIABLE TO ANY CUSTOMER THAT HAS FAILED OR REFUSED TO PAY FOR PRODUCTS AS INVOICED. THE TOTAL LIABILITY OF SELLER, SOUFFLET MALT, AND ITS AFFILIATES FOR CLAIMS OF ANY KIND ARISING OUT OF OR RELATED TO ANY PRODUCTS AND/OR ORDER SHALL NOT EXCEED THE TOTAL PRICE ACTUALLY PAID BY CUSTOMER TO SELLER FOR THE PRODUCTS AND/OR ORDER TO WHICH SUCH CLAIM RELATES. SELLER'S LIABILITY SHALL BE DIMINISHED TO THE EXTENT CUSTOMER'S ACTS OR OMISSIONS (OR THOSE OF ANY THIRD-PARTY NOT WITHIN SELLER'S IMMEDIATE CONTROL) CONTRIBUTE TO OR CAUSE SUCH LOSS OR LIABILITY.

**25. LIMITATION OF WARRANTIES.** TO THE EXTENT PERMITTED BY LAW, THE GUARANTEES, WARRANTIES AND REMEDIES SET FORTH IN THESE TERMS ARE EXCLUSIVE AND IN LIEU OF ALL OTHER GUARANTEES, WARRANTIES, REMEDIES, AND CONDITIONS, WHETHER ORAL, WRITTEN, STATUTORY, EXPRESS OR IMPLIED. SELLER DISCLAIMS ALL STATUTORY AND IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT AND WARRANTIES AGAINST HIDDEN OR LATENT DEFECTS, TO THE EXTENT PERMITTED BY LAW. CUSTOMER ASSUMES ALL RISK AND LIABILITY FOR RESULTS OBTAINED IN CONNECTION WITH USE OF PRODUCTS.

**26. Material Change.** Pricing and other elements of any accepted Commitment are quoted based on committed sales volumes and anticipated future conditions that cannot always be accurately forecasted at the time of agreement. If during the Term of any applicable Commitment: i) Customer fails to take delivery of any Agreed Base Quantity; ii) Customer otherwise fails to perform as agreed under the applicable Commitment; or iii) there is a material change in laws, regulations, crop conditions, or other external circumstance that substantially hinders or prevents Seller from continuing to provide Products as contemplated under the Commitment on commercially reasonable terms (a "Material Change"), then Seller may provide Customer with notice that a Material Change has occurred requiring renegotiation of some or all terms of the associated Commitment. Seller will deliver details reasonably substantiating the Material Change with any such notice to Customer. Upon notice, Customer and Seller shall negotiate in good faith for not less than THIRTY (30) days after the date of notice with the purpose of amending the Commitment to counteract the effect of such Material Change. If the Parties are unable to agree upon appropriate amendments to counteract the effect of the Material Change, Seller may, in its sole discretion, terminate the Commitment for convenience without liability to Customer of any kind.

**27. Price Adjustments.** Seller may, in its sole discretion, adjust prices and/or individual monetary pricing components quoted on any Commitment or Order on THIRTY (30) days prior written notice to Customer, but only by up to FIVE (5) percent if the adjustment is an increase. Customer shall have the right to terminate the affected Order or Orders if it does not agree with a price adjustment by Seller under this paragraph.

**28. Inflation Adjustments.** If Customer has executed a Commitment that specifies a Term length of greater than ONE (1) year, then, beginning on January 1 of the first year following execution, and each year thereafter (each, an "Adjustment Date"), any specified prices and/or monetary pricing components shall be adjusted to reflect the impact of inflation since the date of execution. In the event of inflation, each quoted price and/or monetary pricing component shall be multiplied by an adjustment factor (the "Adjustment Factor") to determine the actual value of the price and/or monetary pricing component that will apply to Products purchased until the next such adjustment (the "Adjusted Variable"). The Adjusted Variable shall be computed according to the following formula:  $A = B \times \text{CPI}_n / \text{CPI}_b$ , where A = the Adjusted Variable, B = the then applicable price or monetary pricing component,  $\text{CPI}_n$  = the CPI for the quarter ending immediately before the Adjustment Date, and  $\text{CPI}_b$  = the CPI on the date of the Commitment.

**29. Product Specifications.** Product characteristics, specifications, and availability are subject to change due to changes in natural conditions, government regulation, market dynamics, climate change, and other factors beyond Seller's reasonable control. Seller shall not be liable to Customer in the event that any such changes impede or prevent Seller from meeting quality, volume, or other requirements detailed under any Commitment, Order, or other similar agreement. Notwithstanding any other language or terms, agreed Specifications shall always incorporate a measurement uncertainty component based on current industry standards. Customer and Seller shall engage an independent laboratory to resolve any alleged discrepancies in Product characteristics relative to agreed Specifications. Required Specifications must be communicated to Customer in writing prior to each Order. Specifications included in any applicable Commitment shall be reviewed on not less than an ANNUAL basis. Seller will use commercially reasonable efforts to accommodate Customer Specifications, but shall not be liable for damages, losses, expenses, or other liabilities of any kind are no longer achievable on a commercially reasonable basis due to factors beyond Seller's reasonable control.

**30. Recall.** Upon learning or receiving notice of a credible claim or potential claim of a defect in, or tampering with, any Products, Customer shall promptly notify Seller and shall immediately conduct at its expense sufficient analyses of such Products to reliably determine the accuracy of such claim and the cause of any such defect or tampering. Customer and Seller shall assist each other in all reasonable ways to resolve any claims involving Products subject to a recall or safety notice. Customer agrees to take all reasonable and necessary actions requested by Seller in connection with any such event, including, without

limitation, notification to affected persons and retrieval of affected Products from the same.

**31. Risk of Loss.** Unless specifically agreed otherwise, title and risk of loss to Products shall pass from Seller to Customer when Products are first loaded onto carrier equipment at the point of origin with fixed and persisting intent to deliver such Products to the Delivery Point.

**32. Security.** Customer grants Seller a lien on and a security interest in and to all of Customer's right, title, and interest in, to, and under the Products, wherever located, and whether now existing, later arising, or acquired from time to time, and in all accessions to and replacements or modifications of the Products, as well as all proceeds (including insurance proceeds) of the foregoing to secure Customer's payment obligations in connection with each and every sale of Products. Seller may file a financing statement for such security interest in any applicable venue or jurisdiction. The security interest under this provision constitutes a purchase money security interest under the personal property security laws of any applicable jurisdiction.

**33. Shipping, Insurance, and Other Costs.** Unless specifically agreed otherwise, prices listed on any bid, price sheet, proposal, Commitment, or Order are exclusive of transportation, insurance, customs, duties and other similar fees and costs (collectively, "Shipping Expenses"). Customer shall be responsible for payment of any and all Shipping Expenses incurred in connection with shipments to Customer, notwithstanding any commonly understood or otherwise specified definitions for referenced trade terms under Incoterms as published by the International Chamber of Commerce, Paris, France, or other similar terms, the application of which shall be limited to title and risk of loss in transit. Any Shipping Expenses paid by Seller shall be for the Customer's account and Customer agrees to reimburse Seller for such payments as invoiced. Where quoted prices on a Commitment or Order do include explicit reference to Shipping Expenses and/or other transportation, shipping, or freight components, such quotations extend to and include only basic freight elements and do not include any addition or accessorial charges, including, without limitation, those relating to congestion and/or security, detention and/or demurrage, forwarding and documentation services, in-transit stop-off and/or drop, loading and unloading, re-consignment, re-delivery, split pickups, fuel surcharge, and other similar charges (collectively "Accessorial Charges"). Customer shall be responsible for any and all Accessorial Charges incurred or paid by Seller in connection with shipments to Customer. Customer acknowledges and agrees that Shipping Expenses and other transportation, shipping, and other freight costs vary from time to time and cannot be accurately calculated in advance of actual shipment. Where commercially reasonable, Seller will separately itemize Shipping Expenses and Accessorial Charges on Customer Invoices and retain appropriate backup paperwork Seller will use commercially reasonable efforts to secure shipping on favorable terms to Customer.

**34. Taxes and Other Fees.** Customer will pay or cause to be paid all taxes, fees, levies, penalties, licenses, charges, or interest imposed by any government authority ("Taxes")

on or with respect to the Products prior to or at the Delivery Point. If either party is required to remit or pay Taxes that are the other party's responsibility under these Terms, the party responsible for such Taxes shall promptly reimburse the other party for the same. Any party entitled to an exemption from Taxes shall furnish the other party with any documentation necessary to evidence such exemption.

**35. Termination for Convenience.** Seller reserves the right to cancel any Order, Commitment, or Sale, in whole or in part, for its own convenience without cause at any time by giving Customer written notice of such cancellation. Customer shall pay for Seller's performance under the Order, Commitment, or Sale satisfactorily completed as of the date of Seller's notice of cancellation as Invoiced by Seller. Under no circumstances shall Customer be entitled to any prospective profits or other damages because of such Seller cancellation. In no event shall Customer have the right or ability to cancel any Order and/or reject conforming Products, either in whole or in part, without Seller's prior written consent, which may be withheld in Seller's sole and absolute discretion. Should Customer attempt to cancel any Order and/or refuse to accept any conforming Products, then Customer shall be in default of its obligations under these Terms and any and all amounts owed in connection with such Order and/or Products shall become immediately due and payable. If Seller consents to cancellation of an Order and/or rejection of conforming Products, then Customer shall pay a restocking charge to Seller in the amount of TWENTY PERCENT (20%) of the value of any cancelled Order and/or rejected conforming Products as liquidated damages for administrative expenses associated with such cancellation and/or rejection, and not as a penalty (the "Restocking Charge"). Customer agrees that the Restocking Charge is a reasonable estimate and fair compensation of the administrative costs, expenses, and other losses, which are incapable of exact determination, incurred by Seller as a result of cancellation and/or rejection by Customer. The Restocking Charge shall not prejudice Seller's right to recover any and all other and/or additional damages that may be available in connection with default by Customer, all of which are expressly reserved.

**36. Termination for Cause.**

a. Default. Customer shall be in default if Customer: (i) fails to make any payment to Seller when due; (ii) makes an assignment for the benefit of creditors or consents to or acquiesces to the appointment of a receiver, liquidator, fiscal agent, or trustee; (iii) becomes insolvent or enters into a voluntary or involuntary bankruptcy or receivership; or (iv) fails to fully and faithfully perform and observe all covenants and obligations under these Terms (singularly and collectively, a "Default").

b. Remedies. If Customer is in Default, Seller may, in its sole discretion, avail itself to any or all of the following remedies: (i) elect not to pay Customer any amounts due for the purpose of setoff against and to the extent of Seller's damages caused by Customer's Default; (ii) terminate or suspend Seller's performance under any Commitment or Order, in whole or in part, effective upon Customer's receipt of Seller's notice of termination/suspension; or (iii) pursue

and enforce any and all other rights or remedies available to Seller at law or equity.

c. Wrongful Cancellation. Should a court or arbitrator determine that Seller's alleged termination for cause was wrongful or otherwise improper, then Seller's termination shall be deemed a termination for convenience.

**37. Confidentiality.** Customer shall: (a) maintain as confidential and proprietary all non-public, confidential, and/or propriety information provided by Seller pursuant to or otherwise in connection with any Order and/or any dispute or claim that arises out of or relates to any Products, Order, Sale, and/or these Terms ("Seller's Information"); (b) not divulge or disclose any of Seller's Information to third parties without prior written consent of Seller; (c) not use any of Seller's Information to the detriment of Seller or to the benefit of third parties; and (d) return all of Seller's Information to or as directed by Seller upon termination or expiration of the Order or as otherwise requested by Seller.

**38. Disputes.** In the event of a dispute or claim that arises out of or relates to the purchase of any Products, Order, Sale, and/or these Terms, or to the existence, validity, or scope of these Terms, Customer and Seller agree to first negotiate, in good faith and through representatives with appropriate decision making authority, in an attempt to resolve such dispute among themselves. Said negotiations shall continue for a period of at least SIXTY (60) days following receipt of written notice from either party to the other describing the nature of the dispute(s), the action(s) or inaction(s) which gave rise to the dispute(s), and the relief or remedy requested by the notifying party.

**39. Arbitration.** Any dispute or claim not otherwise resolved between the parties that arises out of or relates to the purchase of any Products, Commitment, Order, Sale, and/or these Terms, or to the existence, validity, or scope of these Terms, may, in Seller's sole discretion, be resolved by arbitration in accordance with the rules of the AMERICAN ARBITRATION ASSOCIATION in SEATTLE, WASHINGTON. The option to elect arbitration shall be vested exclusively in Seller and shall exist regardless of whether Seller is asserting or defending claims in the matter in dispute. Seller shall have SIXTY (60) days within which to make its election after receiving notice of any claims.

**40. Assignment.** Customer may not assign any of its rights or obligations under any Commitment, Order, Sale, and/or Terms without Seller's prior written consent. Any attempted assignment of such rights or obligations without Seller's prior written consent shall be VOID. Seller, however, may assign or transfer its rights and obligations under any Commitment, Order, Sale, and/or Terms, in whole or in part, to any Affiliate, or to any person acquiring all or substantially all of Seller's assets, without Customer's consent.

**41. Binding Effect.** These Terms shall apply to and bind the successors and permitted assigns of the parties.

**42. Change of Terms.** SOUFFLET MALT may change these Terms at any time by publishing the updated Terms to its Website. Customer's acceptance of delivery, retention, or use of all or any portion of Products, whichever occurs first, shall constitute acceptance of the amended Terms. The Terms in effect at the time of the Order shall govern that Order.

**43. Costs/Attorney Fees.** Customer agrees to compensate Seller for all reasonable costs and expenses of any kind, including, without limitation, attorney, paralegal, and other professional fees, actually incurred and reasonably necessary in connection with any efforts by Seller to enforce a right or obligation relating to any Commitment, Order, Invoice, or Sale which take place outside of suit, action, arbitration, or other legal proceeding. In the event that a suit, action, arbitration, or other legal proceeding of any nature whatsoever is brought relating to a Commitment, Order, Invoice, Sale, and/or these Terms, or any of the rights or obligations under a Sale and/or these Terms, each party shall pay its own attorney, paralegal, and other professional fees, as well as any and all other fees, costs, and expenses of any kind actually incurred and reasonably necessary in connection herewith, and including such fees, costs, and expenses incurred in any appellate or review proceeding, or in collecting any judgment or award, or enforcing any decree rendered with respect thereto.

**44. Cumulative Remedies.** All rights and remedies included in these Terms are cumulative and not exclusive, and the exercise of any right or remedy shall not preclude the exercise of any other rights or remedies that may not or subsequently be available at law, in equity, by statute, in any other agreement between the parties or otherwise.

**45. Force Majeure.** Seller shall not be responsible for, and no liability shall result to Seller in connection with, any delays in delivery or in performance which result from any circumstances beyond Seller's immediate control, including, without limitation, carrier delays, foreign or domestic embargoes, seizures, acts of God, insurrections, wars, adoption or enactment of any new laws, ordinances, or regulations, fires, crop failures, floods, droughts, weather event, explosions, accident, strikes or labor slow down, outbreak of illness, epidemic, pandemic, extraordinary currency devaluations, taxes or custom duties, shortage or inability to obtain (on commercially reasonable terms) necessary raw materials, equipment, or transportation, or any other similar events or contingencies.

**46. Further Assurances.** Upon a party's reasonable request, the other party shall, at its sole cost and expense, execute and deliver all such further documents and instruments, and take all such further acts, necessary to give full effect to the Order, Sale, and/or these Terms.

**47. Governing Law and Venue.** SOUFFLET MALT's global headquarters are located in Vancouver, Washington in the United States of America, and operates and maintains its website from that location. These Terms shall be construed and enforced according to the laws of the STATE OF WASHINGTON, UNITED STATES OF AMERICA notwithstanding any conflict-of-law principle that might implicate the laws of any other jurisdiction governing the same. The United Nations Convention for the International Sale of Goods shall not apply to these Terms or any Sale.

**48. Independence.** The relationship between Seller and Customer is solely that of vendor and vendee, and they are independent contracting parties. Nothing in these Terms creates any agency, joint venture, partnership, or other form of joint enterprise, employment, or fiduciary relationship between the parties. Neither party has any express or implied right or authority to assume or create any

obligations on behalf of or in the name of the other party or to bind the other party to any contract, agreement, or undertaking with any third party.

**49. Merger.** These Terms constitute the entire agreement between Customer and Seller pertaining to the Commitment, Order, Sale, Invoice, and Products and supersede any prior or contemporaneous agreements, understandings, negotiations and discussions, whether written or oral, except as specifically set forth herein.

**50. Modification.** No change, modification, or amendment of these Terms shall be effective unless made via separate written agreement signed by authorized representatives of both Seller and Customer. Unless otherwise agreed, each such change, modification, or amendment shall apply only to the specific Sale or Order to which the change, modification, or amendment relates and shall not apply to any future Sale or Order.

**51. Notices.** Any notice to Seller in connection with any Order or Sale shall be in writing and delivered to the Seller's Contact as listed on the Order, Commitment, or Invoice, with a copy to SOUFFLET MALT, Attn: Legal Department, 18110 SE 34<sup>th</sup> Street – Ste. 240, Vancouver, WA 98683. All notices to Seller shall be delivered via overnight courier requiring a signature for delivery, or received by Registered or Certified Mail, postage prepaid, return receipt requested.

**52. Set Off.** Seller, SOUFFLET MALT, and/or its Affiliates shall have the right at all times to set off any amount owing to or from Customer in connection with any Order, any Sale, or pursuant to any other agreement with Customer.

**53. Severability.** If any provision becomes or is found to be invalid, illegal, unenforceable, void, or voidable in the applicable jurisdiction, then such clause or provision shall be modified to the extent necessary to make it legal and enforceable. If modification of such provision is not possible, then it shall be severed from the remainder of the Order and/or Terms so that the remainder may remain in full force and effect.

**54. Survival.** Provisions of these Terms which by their nature should apply beyond their terms shall continue in effect and remain in force after termination or expiration of the applicable Order, Commitment, or Sale.

**55. Third-Party Beneficiaries.** Sales under or in connection with any Commitment, Order, and/or these Terms are for the sole benefit of Customer and Seller and their respective permitted successors and assigns. Except where specifically provided herein, nothing in any Commitment, Order, and/or these Terms shall be deemed to confer any legal or equitable right, benefit, or remedy of any nature whatsoever on any other person or entity.

**56. Waiver.** No waiver of any breach shall be deemed to be a waiver of any other or any subsequent breach, whether or not similar, nor shall such waiver constitute a continuing waiver unless expressly provided. The failure of either party to exercise or enforce any provision shall not constitute a waiver of the provision and shall not preclude or prejudice such party from later enforcing or exercising the same, or any other, provision.