

**TERMS AND CONDITIONS OF SALE (BARR DIRECT ENGLAND BOTTOMLINE PAYMENT CUSTOMERS ONLY)****1. DEFINITIONS**

- (a) **"Company"** means A.G. BARR p.l.c. or any subsidiary or associated company thereof.
- (b) **"Contract"** means the contract for the supply of Products subject to these Terms and Conditions, formed by the Company's acceptance of an Order.
- (c) **"Customer"** means the person, firm or company to whom Products are sold or supplied by the Company.
- (d) **"Order"** means an order for Products submitted by the Customer.
- (e) **"Products"** means any goods or products sold or supplied by the Company under these Terms and Conditions.
- (f) **"Terms and Conditions"** means these terms and conditions of sale.

- (iii) not remove, deface or obscure any identifying mark or packaging on or relating to the Products; and
- (iv) store the Products separately so as to be identifiable as the property of the Company.
- (c) Until title in the Products passes to the Customer, and subject always to Condition 8(d), it may use or resell the Products in the ordinary course of business provided always that the Customer shall hold in trust and pay to the Company on demand the proceeds of any such sale to the extent that any monies are owed by the Customer to the Company on any account. The Customer shall not be the agent of the Company in relation to any resale.
- (d) If the Customer fails to make any payment to the Company when due, calls a meeting of or makes arrangements or compositions with creditors, has a bankruptcy order against it or, being a company, enters into voluntary or compulsory liquidation or has an administrator or administrative receiver or receiver appointed over all or part of its assets or takes or suffers any similar action in consequence of debt or becomes insolvent or if the Company has reasonable cause to believe that any of these events is likely to occur, then the Customer shall lose its right to use or resell the Products in the ordinary course of business in accordance with Condition 8(c) and the Customer may not resell any Products owned by the Company until the Customer has paid in full all sums owed by it to the Company under any contract. In addition, the Company shall have the right, without prejudice to any other remedies to:-

- (i) enter without prior notice any premises where Products owned by it may be and to remove such Products; and/or
- (ii) withhold delivery of any undelivered Products.
- (e) All containers, cases and returnable bottles ("Containers") supplied hereunder shall at all times remain the exclusive property of the Company. The Customer shall return all Containers to the Company and shall not transfer, sell or otherwise dispose of the same. The Customer is responsible for loss or damage to Containers from the point of delivery until they are collected by the Company or its agent and shall take out adequate insurance to cover such loss or damage. Certain Containers carry a deposit charge which will be refunded on their return in good condition.

**2. FORMATION OF CONTRACT**

- (a) The Company shall supply Products solely on these Terms and Conditions to the exclusion of any other terms and conditions and the placing of an Order for or the acceptance of the Products by the Customer shall indicate unqualified acceptance of these Terms and Conditions.
- (b) Any purported variation of these Terms and Conditions shall have no effect unless expressly agreed in writing and signed by an authorised signatory of the Company.
- (c) These Terms and Conditions apply only to certain Barr Direct England Customers who the Company designates to pay through the Company's third party payment system (Bottomline) from time to time.

**3. ORDERS**

- (a) All Products are sold subject to availability.
- (b) Products are not sold on a sale or return or exchange basis.
- (c) Orders shall be for the minimum order quantity as determined by the Company from time to time.
- (d) No Order which has been accepted by the Company may be cancelled or suspended by the Customer save upon terms expressly agreed by the Company in writing.

**4. PRICES**

- (a) Unless otherwise agreed by the Company in writing, the price for the Products shall be at the prices ruling on the date of Order.
- (b) All prices may be altered by the Company without notice, prior to acceptance of an Order, to reflect changes beyond the Company's control. However, once an Order has been accepted by the Company, such prices shall be fixed.
- (c) Prices are quoted exclusive of any applicable Value Added Tax which the Customer shall be liable to pay to the Company.

**5. DELIVERY**

- (a) Delivery shall take place when the Company or its carrier unloads the Products at the Customer's premises, or when the Customer or its carrier collects the Products from the Company's premises, or when the Company or its carrier hands over the Products to the Customer's shipping agent.
- (b) Although the Company will endeavour to meet delivery dates, any and all delivery dates provided are estimates only and the Company shall not be liable to the Customer for any loss or damage whether direct, indirect or consequential, or for any costs, charges or expenses arising out of or in connection with any delay in the delivery of the Products.
- (c) The Company reserves the right to deliver any Order in instalments at its discretion.
- (d) Any failure by the Customer to take delivery of the Products shall entitle the Company at its discretion to store the Products at the risk and expense of the Customer.
- (e) The Customer shall inspect the Products on delivery. No claim for damage, shortage, or non-conformance will be considered by the Company unless the Company receives written notice of such from the Customer within three days of the delivery date. Where the Customer indicates on the delivery note that the Products have been checked, no claim for damage, shortage or non-compliance will be accepted. Alleged damaged or non-conformant Products shall be retained by the Customer without cost to the Company, and the Customer shall allow the Company to inspect the Products and remove samples for examination. Where a valid claim in respect of any Products is notified to the Company in accordance with these Terms and Conditions, the Company may replace the relevant Products or, at the Company's sole discretion, refund to the Customer the price (or a proportionate part of the price) of the relevant Products in which case the Company shall have no further liability to the Customer. No deduction may be made by the Customer against invoice except on specific written authority from the Company.

**6. RISK**

The risk of loss or damage to the Products shall pass to the Customer upon delivery or attempted delivery of the Products in accordance with Condition 5(a).

**7. PAYMENT**

- (a) Payment for each order of Products supplied shall be received by the Company in full by the timescales set out below (depending on the payment method). Time for payment of the price shall be of the essence of the Contract. Payment shall be made by direct debit or card payment through the Company's chosen payment service provider from time to time.
- (b) No payment shall be deemed to have been received until the Company has received cleared funds.
- (c) If the Customer is designated by the Company as a direct debit payment customer, payment shall be made within 21 days of the date of the electronic invoice of such Order. If the Customer is designated by the Company as a card payment customer, payment shall be made via the Company's online platform on the date the Company provides the Customer with an electronic invoice relating to such Order.
- (d) The Customer shall make all payments due in respect of the Products without any deduction by way of any sums the Customer is owed by the Company or any claims which the Customer believes that it has against the Company.
- (e) The Company reserves the right to charge compound interest on overdue sums at the rate of 8% per annum above the Bank of England base rate from the due date until payment is made in full, plus any costs incurred in the recovery of overdue sums.
- (f) The Company may suspend delivery of further Products until all outstanding amounts have been received by the Company from the Customer.
- (g) All payments payable to the Company under the Contract shall become due immediately upon termination of the Contract notwithstanding any other provision.
- (h) If any sums contained in the account are disputed, the Customer shall not withhold payment of the remainder of the account.
- (i) On occasion (and in its sole discretion) the Company may agree in writing with the Customer an alternative payment method. In these circumstances, the Customer shall make payment within the timescales stipulated by the Company.

**8. TITLE**

- (a) Notwithstanding the passing of risk in the Products in accordance with Condition 6, the Products shall remain the property of the Company until the Company has received payment in full (in cash or cleared funds) for:
  - (i) the Products; and
  - (ii) any other goods or services that the Company has supplied to the Customer in respect of which payment has become due.
- (b) Until title to the Products has passed to the Customer in accordance with Condition 8(a), the Customer shall:
  - (i) hold the Products to the Company's order;
  - (ii) insure the Products and maintain them in satisfactory condition;

**9. LIABILITY**

- (a) Except as provided in these Terms and Conditions, all warranties and conditions express or implied, statutory or otherwise, are hereby expressly excluded to the fullest extent permitted by law.
- (b) Subject to the foregoing, the Company's total liability whether in contract, tort, delict or otherwise, arising in connection with the performance or contemplated performance of a Contract shall be limited in aggregate to all sums paid by the Customer to the Company under the Contract and the Company shall not in any circumstances be liable for any indirect or consequential loss or damage or for any loss of anticipated profit, loss of business, depletion of goodwill, third party claims or costs or expenses howsoever caused arising out of or in connection with the Contract.
- (c) The Company will not be liable for any loss, damage, claim, cost or expense arising from the Customer's failure to comply with the Company's instructions or applicable laws and regulations relating to the keeping, handling, use and storage of the Products or from any error in or absence of bar-code printing on the Products or their packaging.
- (d) Nothing in these Terms and Conditions excludes or limits the liability of the Company for death or personal injury caused by the Company's negligence or fraudulent misrepresentation or any other liability to the extent such liability may not be excluded or limited as a matter of law.

**10. CONSUMER PROTECTION ACT 1987**

In the event that the Company incurs any liability under the Consumer Protection Act 1987 (or any statutory modification or re-enactment thereof) to any person by virtue of a defect or defects in Products the Customer shall indemnify and keep indemnified the Company in respect of such liability to the extent that the said liability shall have arisen due to any act, omission or default on the part of the Customer.

**11. TERMINATION**

Should the Customer make default in any payment or otherwise be in breach of its obligations to the Company under a Contract or under any other contract with the Company or call a meeting of or make arrangements or compositions with creditors or commit any act of bankruptcy or, being a company, enter into voluntary or compulsory liquidation or have an administrator or administrative receiver or receiver appointed over all or part of its assets or take or suffer any similar action in consequence of debt or become insolvent or should the Company have reasonable cause to believe that any of these events is likely to occur, the Company may, by notice in writing to the Customer, without prejudice to any other rights, terminate any Contract made hereunder.

**12. REGULATORY REQUIREMENTS**

The Customer shall:

- (i) comply with all applicable laws, statutes, regulations relating to anti-corruption including but not limited to the Bribery Act 2010 (Relevant Requirements);
- (ii) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
- (iii) comply with the Company's Anti-corruption Policy in force from time to time, copies of which are available on request; and
- (iv) have and shall maintain and enforce, throughout the term of any Contract, its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements.

**13. FORCE MAJEURE**

The Company shall not be liable for the consequences of any failure to fulfil the terms of any transaction if fulfilment has been prevented, restricted or delayed by reason of any circumstances beyond the reasonable control of the Company.

**14. WAIVER**

Failure or delay by the Company in enforcing any provision of a Contract shall not be construed as a waiver of any of its rights under that Contract and any waiver by the Company in respect of any breach of contract by the Customer shall not operate as a waiver of any subsequent or continuing breach.

**15. SEVERABILITY**

If any provision of a Contract is held by a court or other competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of the Contract and the remainder of such provision shall not be affected and shall continue in full force and effect.

**16. ASSIGNATION**

The Customer shall not be entitled to assign a Contract or any part of it without the prior written consent of the Company.

**17. GOVERNING LAW**

These Terms and Conditions and the Contract shall be governed by and construed in accordance with the law of Scotland and the parties submit to the non-exclusive jurisdiction of the Scottish courts.

**Privacy Notice**

*As one of our customers, we may collect certain personal data about you. We will only use this information in ways we consider fair. More information about what we do with the information we collect about you can be found in our customer privacy notice at [www.agbarr.co.uk/termsofbusiness](http://www.agbarr.co.uk/termsofbusiness).*