



LCBO PURCHASE ORDER TERMS AND CONDITIONS

EFFECTIVE MARCH 1, 2010

The following terms and conditions apply to, and form part of, each purchase order for the purchase of beverage alcohol products ("Purchase Order") issued by the Liquor Control Board of Ontario ("LCBO"). For the purposes of this Purchase Order, any reference to products includes the packaging and labelling of the beverage alcohol products.

- 1. AGREEMENT TO PURCHASE:** The Supplier will be deemed to have entered into a binding agreement (the "Agreement") with the Liquor Control Board of Ontario (the "LCBO") upon: **(a)** signing and returning the acknowledgement copy of the Purchase Order; **(b)** giving the LCBO written notice of acceptance of the Purchase Order, or **(c)** supplying the products ordered in the Purchase Order. The Agreement is subject to all the terms and conditions contained in this document, which will supersede and take precedence over any conflicting provisions of any document submitted by the Supplier. Any Supplier proposal for additional or different terms or conditions or any attempt by the Supplier to vary the terms and conditions in this Agreement by any means will be considered as proposals for addition to this Agreement and will not be binding unless expressly agreed to in writing by the LCBO.
- 2. PRICE/QUANTITY:** The price payable by the LCBO shall not exceed the quoted price shown in the Purchase Order. The Supplier shall provide the LCBO with the benefit of any reduction in the price of any product ordered that is in effect prior to delivery to the LCBO. If "Ex Cellar" is specified, the price includes only the cost of the products, which shall be made available for shipment from the Supplier's warehouse. If "FOB (Port)" is specified, the price includes all charges (including, without limitation, customs clearance and transportation) up to and including loading on board vessel at the designated port of shipment.
Unless otherwise specified in the Purchase Order, all references to monetary amounts shall be in Canadian Dollars.
The Supplier shall not change the specific quantity or bottle size ordered nor make any substitutions without the prior written consent of the LCBO. Requests to change quantities or bottle sizes or to make substitutions must be communicated, before shipping the products ordered, to the attention of the appropriate LCBO buyer. The LCBO will be deemed to have accepted the changes or substitutions proposed by the Supplier only upon the LCBO issuing a revised Purchase Order corresponding to the changes or substitutions proposed by the Supplier.
- 3. PAYMENT:** Unless other payment terms are specified in the Purchase Order, payment will be due thirty (30) days after the LCBO's receipt at its warehouse of the product(s) in acceptable condition. Payment will be made to the Supplier unless the Supplier provides the LCBO written instructions by fax to the LCBO Accounts Payable Department at fax no. 416-365-5766 to make payment to a third party. Payment will be made by electronic funds transfer unless the parties agree otherwise.
- 4. SET-OFF:** Should the Supplier fail to pay or refund the LCBO any amounts owing by it pursuant to or in connection with the Agreement, when demanded by the LCBO, the LCBO may set-off such amounts against any amount that is or becomes payable by the LCBO to the Supplier for other orders for product(s) which it has placed or may place with the Supplier. The LCBO, in its sole discretion, may set-off any amount that is or becomes payable by the Supplier to the LCBO, whether in connection with the Agreement or otherwise, against amounts that become payable to the Supplier under the Agreement.
- 5. INSPECTION OF PRODUCT:** All product(s) ordered shall be subject to inspection and acceptance by the LCBO. Such acceptance will be given within a reasonable time after receipt of the products at the LCBO's warehouse, if the products are in satisfactory condition as described herein.
- 6. UNSATISFACTORY PRODUCT:** If, at any time before or after paying for the product(s), the LCBO determines in its sole discretion that all or any part of a shipment of any product(s) is unsatisfactory in that such product(s) **(a)** is not of merchantable quality or is defective in any manner; **(b)** does not satisfy the provisions of any applicable law of Ontario or Canada; **(c)** does not comply with any federal or provincial standards established for products of that description; **(d)** does not match the sample of the same product(s) previously submitted to and approved by the LCBO; **(e)** does not match the quality of the same product(s) previously supplied by the Supplier to the LCBO; **(f)** is delivered after the date specified for delivery in the Purchase Order; **(g)** is subject to or may become subject to any claim, allegation, suit or dispute whatsoever including without limitation a claim, allegation, suit or dispute that the product(s) violates or infringes any trade marks, patents, industrial designs, copyrights or other intellectual property rights of any person or **(h)** does not otherwise comply with any covenant, warranty or other requirements of the Agreement, then the LCBO may, in addition to any other remedies available at law or in equity or under Section 11(d), upon written notification to the Supplier: **(i)** return to the Supplier, at the Supplier's risk and expense, all or any portion of the shipment that is unsatisfactory; or **(ii)** refuse any portion of the shipment which is unsatisfactory and, with the Supplier's approval, dispose of same at the Supplier's expense; provided that where the LCBO exercises any of such remedies, the Supplier shall fully indemnify the LCBO for all costs including, without limitation, the purchase price of the product(s) and the freight expenses incurred in acquiring and returning the product(s) or any portion thereof.
- 7. CANCELLATION OF PURCHASE ORDER:** The LCBO reserves the right to cancel the Agreement in whole or in part at any time without liability and at the Supplier's expense and risk: **(a)** upon written notice to the Supplier, where the shipment or any part thereof is determined by the LCBO to be unsatisfactory within the meaning of Section 6; **(b)** by giving fifteen (15) days written notice to the Supplier, where, for any reason beyond the control of the LCBO including, without limitation, any reason relating to the marketing of the product(s), the LCBO is unable to complete the purchase of the product; **(c)** upon written notice to the Supplier where the Supplier has failed to comply with any covenant, warranty or other provision of the Agreement including failure to adhere to the provisions of the LCBO's Product Management Procedures as published from time to time, or **(d)** upon written notice to the Supplier where any product(s) has been ordered but has not yet been delivered to the LCBO's carrier. Notice of cancellation may be given by fax, mail, personal delivery, email or through the LCBO's Web-based Purchase Order System (the "WebPO System").
- 8. LCBO'S PRODUCT MANAGEMENT PROCEDURES:** The Supplier must at all times comply with the provisions of the LCBO's Product Management Procedures as amended from time to time, relating to the product(s) ordered, which shall form part of the Agreement, but such

Product Management Procedures shall not limit the rights and remedies of the LCBO contained herein. A copy of such Product Management Procedures may be obtained from the LCBO upon request in writing or at the LCBO Trade Resources Online Website at www.lcbotrade.com.

9. **NO PRICE DISCRIMINATION:** The Supplier shall not sell any product(s) ordered to the LCBO at a price (exclusive of taxes, duties and freight) which is higher than the price at which the product, in the same quantity, is being sold by the Supplier to another government liquor board or government liquor purchasing body in Canada; nor shall it sell any product(s) to the LCBO upon terms and conditions respecting sale or delivery which are less advantageous than those offered to any other government liquor boards or government liquor purchasing bodies in Canada; nor shall it in any other way discriminate against the LCBO with respect to the sale of the product(s) ordered or any portion thereof. Should the Supplier breach this provision, it shall pay to the LCBO on demand an amount equal to the difference between any amount(s) paid by the LCBO to acquire the product(s) which is in excess of the amount(s) paid by any other government liquor board or government purchasing body in Canada to acquire such product(s).
10. **TITLE:** Title to and risk of the product(s) shall pass to the LCBO upon acceptance thereof by the LCBO but this provision shall not limit the LCBO's rights and remedies under the Agreement. The Supplier will procure all necessary export permits or licenses at the Supplier's expense.
11. **INDEMNITIES:** The Supplier shall indemnify and save harmless the LCBO, its board members, officers, employees, customers, agents, representatives and persons it authorizes to sell the product(s) from and against all liabilities, losses, suits, claims, demands, damages, including consequential damages, and expenses of every kind (including, without limitation, legal fees on a solicitor client basis) arising in any manner (a) from its breach of any covenant, warranty or other provision of the Agreement or (b) from any defect with respect to the product(s), irrespective of the time when same is discovered or (c) from any violation or infringement by the product(s) or the Supplier of any trade marks, patents, industrial designs, copyrights or other intellectual property rights of any person including without limitation from any allegations of such infringement or violation which are made by any person even if such allegations are false or (d) from product(s) which is determined by the LCBO to be unsatisfactory within the meaning of Section 6.
12. **WARRANTIES:** The Supplier warrants that: (a) the products are of good and merchantable quality and will comply with the provisions of this Purchase Order; (b) the products are fit for the purposes for which the products are intended to be used; (c) the products are transferred to the LCBO with good title free and clear of liens, encumbrances and rights of others; and (d) neither the Supplier nor the products shall violate or infringe the trade marks, patents, industrial designs, copyrights or other intellectual property rights of any person.

The foregoing warranties are in addition to and shall not derogate from, any express warranty of the Supplier or any other right or remedy which the LCBO may have under applicable law.
13. **ASSIGNMENT:** The Agreement and the rights and obligations thereunder may not be assigned, subcontracted, transferred or ceded by operation of law or otherwise without the consent of the LCBO which may be withheld in its sole discretion.
14. **TIME OF ESSENCE:** Time shall be of the essence with respect to this Agreement.
15. **APPLICABLE LAW:** The Agreement shall be governed by the laws of Ontario and Canada, excluding the United Nations Convention on Contracts for the International Sale of Goods. Any legal proceeding relating to the Agreement shall be submitted to the exclusive jurisdiction of the Courts of the Province of Ontario, Canada.
16. **REMEDIES CUMULATIVE:** The provisions of the Agreement, and the rights and remedies of the parties under the Agreement are cumulative and are without prejudice and in addition to any rights or remedies a party may have at law or in equity; no exercise by a party of any one right or remedy under the Agreement, or at law or in equity, shall operate so as to hinder or prevent the exercise by it of any other right or remedy. No waiver of a breach of any provision herein shall constitute a waiver of any other breach of such provision.
17. **ENGLISH LANGUAGE:** The parties hereto confirm their desire that the Agreement, along with all other documents including all notices relating hereto, be written in English language. Les parties aux présentes confirment leur volonté que cette convention de même que tous les documents, y compris tout avis, s'y rattachant, soient rédigés en anglais.
18. **PACKAGING AND LABELLING (PRE-PACKAGED PRODUCTS):** All products must conform to the requirements established under (a) the LCBO's Product Packaging Standards and Guidelines for Chemical Analysis, as published from time to time (the "LCBO Product Packaging Standards"), (b) the Canadian Association of Liquor Jurisdictions' Product Identification Standards for use in the Distribution of Beverage Alcohol, as published from time to time (the "CALJ Product Standards"), and (c) the LCBO's Product Management Procedures, as published from time to time, all of which (collectively, the "Packaging Standards") form part of this Agreement. Without limiting the foregoing, (i) all selling units must conform to the packaging and labelling requirements in the LCBO Product Packaging Standards, and (ii) selling units must be packaged in shipping containers (cartons/trays) which meet or exceed the applicable requirements established under the LCBO Product Packaging Standards and the CALJ Product Standards. The Packaging Standards prescribe minimum requirements for package design, strength and construction, in addition to applicable mandatory markings (including without limitation, U.P.C., shipping containers, EAN bar coding and labelling and standards for tamper evident packaging). Shipping containers must be sealed in a manner that will plainly show any evidence of tampering. No hay, straw or other fodder packing may be used in a shipment to Ontario. The Packaging Standards are available at the LCBO Trade Resources Online Website at www.lcbotrade.com.
19. **BULK ALCOHOL:** Shipments of bulk alcohol must be accompanied by a gauge sheet showing the contents of each cask in litres, the net tare and gross weights and the percentage of absolute alcohol by volume. Percentage of obscuration is also to be shown for liquors only.
20. **ADVERTISING MATTER, ETC.:** Advertising matter or novelties of any sort must not be enclosed in cases or attached to bottles (excluding approved neck tags and approved value-add items) or shipped in LCBO containers. Unsolicited shipment of non-alcohol items in LCBO containers is prohibited.
21. **SHIPPING DOCUMENTATION:** The Supplier shall provide shipping documentation for the products ("Shipping Documents") for each shipment, including without limitation, a Bill of Lading, Canada Customs Invoice and a Certificate of Origin and any other documents required to support a claim (where applicable) for preferred tariff treatment under any applicable international trade agreement. The

Supplier shall ensure that all Shipping Documents are fully and accurately completed and are delivered to the carrier or freight forwarder at the time the products are shipped.

- 22. SHIPPING PALLET PATTERN:** If a shipping pallet pattern is designated in the Purchase Order, then the Supplier shall ship in the pallet configuration shown (cases per tier x number of tiers per pallet).
- 23. TYPE:** If a transportation platform type is designated in the Purchase Order, then the Supplier shall load the products according to such designation. "Type" refers to the platform to be used to transport products, where "C" means clamp loaded, "P" means pallet loaded and "Sn" means slip sheet loaded, where "n" refers to the number of tiers between slip sheets.
- 24. NOTICES AND COMMUNICATIONS:** Any communications (including notices) that are required or permitted under the Agreement may be given electronically by e-mail or through the WebPO System. The parties agree that communications given in such manner are acceptable as a signed writing. The use of a WebPO System user identification code ("user ID") issued by the LCBO to the Supplier is sufficient to verify the Supplier's identity and the authenticity of any Supplier communication made with the use of such user ID.
- 25. PRICE ADJUSTMENTS (ESTIMATED RETAIL PRICE).** The LCBO has established the retail selling price (including applicable bottle deposit) at which LCBO intends to initially offer the products (the "Estimated Retail Price"). The Estimated Retail Price is available by accessing the LCBO's New Item Submission System. This section does not limit the LCBO's right to establish a different retail selling price of the Product. The price specified in this purchase order is based upon an estimate of the price required to achieve the Estimated Retail Price, using the LCBO standard pricing and mark-up policy in effect at this time. If the actual LCBO retail selling price, calculated as of the date that the LCBO receives the products at its warehouse in Ontario, using the standard pricing and mark-up policy in effect at that time, is different than the Estimated Retail Price, then the price in this purchase order will be automatically adjusted to the extent necessary to produce the Estimated Retail Price. For example, but without limiting the foregoing, adjustments to the price may be required as a result of fluctuations in foreign currency exchange rates or in shipping rates between the purchase order date and the date that the products are received by the LCBO. The LCBO will notify the Supplier whenever an adjustment to the price is required under this section. This section does not apply if there is a prior written agreement between the LCBO and the Supplier regarding price adjustments that are required to achieve the Estimated Retail Price.
- 26. SALES TARGET REBATE (FOR VINTAGES PRODUCTS ONLY).** The Supplier shall pay the LCBO a 20% rebate of the price paid by the LCBO (subject to any price adjustments required under the Price Adjustments (Estimated Retail Price) section) if the LCBO does not sell 75% of the products received by the LCBO within 90 days after the date on which the LCBO makes the products available for distribution to its retail stores (the "Sell-Through Period"). Such rebate is payable in respect of all warehouse and retail inventories remaining on hand at the end of the Sell-Through Period. This section applies only if the products are sold through any LCBO "Vintages" sales channel. Despite the foregoing, this section does not apply if (a) there is a prior written agreement between the LCBO and the Supplier regarding rebates that are payable if sales targets are not attained, or (b) the LCBO expressly waives this rebate requirement in writing.