

# EContainer fair use policy

This EContainer fair use policy (**Terms**) applies to the supply by Us of Our EContainers on a rental basis and accordingly are binding as between You and Us where You rent EContainers from Us. For the purposes of these Terms, defined words used in these Terms have the meanings given in **Term 18**.

## 1. Basis of Rental

- 1.1. The Rental Period for each EContainer starts on Delivery and ends on Dispatch to an Agreed Wholesaler.
- 1.2. You will be charged fees for each Rental in accordance with Term 5 below.
- 1.3. Each Rental entitles You to fill an EContainer once. You may not refill an EContainer without Our consent. If You refill an EContainer (with Our consent), this counts as a new Rental, and Our Rental Charge for an Unwashed EContainer applies. Unless otherwise agreed, all ECasks are delivered Washed, but will not have been Sterilised. If You take Unwashed ECasks, a different fill fee may apply. EKegs are delivered Washed, Sanitised & Pressurised. If You take Unwashed EKegs, a different fill fee may apply.
- 1.4. You will not obtain or collect an EContainer except in line with Term 2. If You obtain an EContainer in another way, You will tell Us immediately and follow Our instructions.
- 1.5. Title to all EContainers will remain vested in Us at all times and You acknowledge and agree that You will have no right, title or interest in the EContainers other than the right to use them in accordance with these Terms. Accordingly, You will not without Our prior written consent (and then only in accordance with any conditions attaching to such consent) do anything that would give the impression that You own any EContainers. Further, You acknowledge and agree that these Terms do not constitute a lease
- 1.6. Risk of loss, theft, damage or destruction of EContainers passes to You on Delivery and remains with You until Dispatch to an Agreed wholesaler. During the Rental Period You will, at Your own expense, obtain and maintain any insurances required to protect the EContainers.

## 2. Order, Delivery and Dispatch

- 2.1. Orders will constitute an offer by You to Us when placed through an electronic mailbox which We may provide from time to time. Orders will only be considered accepted by Us when We have confirmed such acceptance by way of reply.
- 2.2. We will make the EContainers available for You to collect from one of Our Service Centres unless You ask Us to deliver such EContainers. If You ask Us to deliver EContainers, a delivery charge will be notified to You in advance and You will pay such delivery charges in accordance with the payment terms agreed at the point of the Order being accepted (or such later time as may be appropriate).
- 2.3. We will use reasonable efforts to make available for collection or deliver (as applicable) all EContainers requested by You. We will give You an indication of delivery quantities where We can, and You may cancel an order if You give Us at least forty eight (48) hours' notice prior to the agreed delivery or collection date (as applicable). You will accept and pay for all EContainers We Deliver, up to the requested number.
- 2.4. Delivery of an EContainer takes place when:  
(a) it arrives at the delivery location; or  
(b) You collect it from Us from one of Our Services Centres, (Delivery). We will agree with You the delivery time and, if applicable, the delivery location and You will make Yourself available for such Delivery. We may Deliver by instalments. Where You are permitted to reject one instalment this will not entitle You to reject others.
- 2.5. If You are not available for Delivery at the agreed time and location, You agree to pay for the attempted delivery and Your Order will be cancelled.

- 2.6. Any Order where palletised delivery by Us is required will be subject to an additional Pallet Fee to cover the cost of the pallets. You may provide Your own pallets to Us for any order which will remove any requirement for Us to charge a Pallet Fee.
  - 2.7. Dispatch takes place when an EContainer arrives with one of our Agreed Wholesalers. You may not collect an EContainer after Dispatch.
  - 2.8. You will Dispatch EContainers within twenty eight (28) days of Delivery.
  - 2.9. You may only Dispatch an EContainer to an Agreed Wholesaler. It is Your responsibility to ensure that You are Dispatching EContainers through an authorised channel. If You Dispatch an EContainer to anyone other than an Agreed Wholesaler, We reserve the right to charge You Our Collection Fee.
  - 2.10. If You wish to add any wholesalers to the list of Agreed Wholesalers, please notify us and we will consider such requests accordingly.
  - 2.11. If an EContainer has not been seen within a period of two (2) years of the date of Delivery, We reserve the right, following that date, to consider the EContainer to be 'lost' (and therefore never returned to Us). In the scenario we believe the container has been dispatched outside the Agreed Wholesaler network, We further reserve the right to charge You Our Replacement Fee and which You will pay for each EContainer container considered 'lost' in accordance with this section.
- 3. Looking After EContainers**
- You will:
- 3.1. other than when in transit from Delivery or until Dispatch, ensure that EContainers are kept at Your premises throughout the Rental Period;
  - 3.2. ensure that EContainers are kept in a suitable and safe environment, used only for the purposes they were designed for and operated properly by trained competent staff in accordance with the manufacturer's and Our instructions or, in the absence of the same, in accordance with the way in which a prudent person would operate containers of the nature of the EContainers or to any member of the public;
  - 3.3. take all necessary steps to ensure that EContainers are safe and do not pose a health or injury risk to a person using, cleaning or maintaining them;
  - 3.4. ensure EContainers are in as good a condition on Dispatch as on Delivery (subject to fair wear and tear), and not alter or tamper with an EContainer or any identifying marks or radio frequency identification in or on it, or do (or allow to be done) anything which might jeopardise Our right, title or interest in an EContainer;
  - 3.5. not put any labels on an EContainer, except one on the top and another on the belly of the EContainer;
  - 3.6. not part with possession of an EContainer except in line with Term 2, and will tell Us immediately if an EContainer is lost, stolen, seized, confiscated or damaged or if there is a Total Loss (Our Replacement Charge applies to Total Losses which You will be required to pay on demand);
  - 3.7. procure that the applicable Agreed Wholesaler keeps the EContainer in a good state of repair and condition, is required to use the EContainer in a safe and proper manner and does not make any modifications or pass control of an EContainer (unless previously agreed by Us in writing);
  - 3.8. pay promptly all licence fees, duties and other sums payable in relation to any EContainers;
  - 3.9. not abandon any EContainers;
  - 3.10. not sell, offer for sale, transfer, mortgage, charge or sublet the EContainers, nor create or permit any lien, nor encumber any EContainers or the benefit of these Terms, nor (other than in the ordinary course of Your business) part with possession of any EContainers, nor (under any circumstances) attempt to do any of the same; and
  - 3.11. indemnify Us against all costs, expenses (including legal expenses), losses, damages and other liabilities We suffer or incur arising out of or in connection with:
    - 3.11.1. any EContainers which are (at any time) located at any of Your stock locations or on any premises owned or controlled by You and (ii) any EContainers which are in transit to a location which is not owned or

- controlled by You or to Your stock location or premises owned / controlled by You (such transit arrangements having been made by You or on Your behalf);
- 3.11.2. Your use or possession of EContainers during the Rental Period;
  - 3.11.3. the return of any Containers that do not dispense correctly;
  - 3.11.4. costs associated with tracing You and any lost EContainers;
  - 3.11.5. Your prevention or attempting to prevent the arrest, confiscation, seizure, taking in execution, impounding, forfeiture or detention of any item of EContainers, or in securing or attempting to secure the release of any item of EContainers;
  - 3.11.6. the cleanliness of any EContainer (including any EContainers not being fully cleaned and/or sanitised by You), the condition of any products which are Filled by You and/or otherwise arising out of or in connection with any products with which You or any person on Your behalf uses to Fill the Containers;
  - 3.11.7. any breach by You of these Terms;
  - 3.12. procure that any landlord of Your stock location or any other premises on which EContainers may be located executes (in form and substance acceptable to us) a waiver with respect to such EContainers.
  - 3.13. Subject to Term 8.1, We are not liable for any issues relating to the brewing, filling or dispense process involving EContainers.
  - 3.14. You undertake that You will use the EKegs as stipulated in these Terms:
    - 3.14.1. Pressurised EKegs are only to be filled 'in situ' from a genuine manufacturer-approved s-type keg washer/racker with chilled, filtered and pasteurised beer with a designed shelf life of 8-12 weeks for beers of a suitable microbiological and non-biological standard. Any product which is not filled accordingly may deteriorate significantly in quality long before the end of its stated shelf life;
    - 3.14.2. EKegs must only be filled with 100% beer, should you wish to use an EKegs for fruit beers and ciders is permitted provided You have pre-agreed it with Us in writing;
    - 3.14.3. Filling EKegs with unpasteurised product should only be performed 'aseptically' in a 'sterile' environment; in particular an enclosed, positive air pressure 'kitchen-standard' filling room and pre-filling sterile filtration at 0.45µ is recommended; and
    - 3.14.4. EKegs are pre-pressurised prior to delivery, the spear must NOT be removed by You, otherwise the internal hygiene and O2-free atmosphere of the EKegs as well as the security and safety of the unit will be compromised. We reserve the right to charge You if You remove the spear for any damage to the extractor and/or the EKeg, and levy costs associated with making good any damage to the container.
  - 3.15. You acknowledge that an EKeg will only remain Sanitised for 3 months' after initial washing/pressurisation.
  - 3.16. You agree to notify Us immediately of any contravention of the provisions in these Terms relating to the chilling, filtration, pasteurisation and racking of EKegs.
- #### 4. Reporting
- 4.1. Notwithstanding that EContainers may only be Dispatched to Agreed Wholesalers, You shall provide us with a list of your wholesale route to market partners. A list of Agreed (Approved) Wholesalers can be found in Your Plus Portal account.
  - 4.2. We may audit:
    - 4.2.1. the volume of EContainers you have; and
    - 4.2.2. Your use of EContainers and records and documentation relating to them; at any time on notice during Working Hours, and You will give Us reasonable assistance including access to locations where EContainers are stored.
  - 4.3. If, following an audit, You have more EContainers than expected (or we reasonably suspect you have used EContainers in a manner other than as permitted) in accordance with Our records, We may charge You a Fill Fee for each additional EContainer or such other proportionate charges as related to such unauthorised use.

- 4.4. If We know, or reasonably suspect, that You have refilled an EContainer without written authorisation from Us, We may charge You an Unarranged Fill Fee for each unauthorised refill in accordance with the Unarranged Fill Escalator as shown in the Annex.
- 4.5. Your reporting obligations and Our audit rights set out in this Term 4 continue for a period of 12 months after the Rental Period ends.
- 5. Paying for EContainers**
- 5.1. The Rental Charge is the relevant price for the fill fee provided in your quotes, or can be obtained by contacting [orders@ekegplus.com](mailto:orders@ekegplus.com), which include:
- 5.1.1. Rental Fee which will always be payable by You;
- 5.1.2. Collection Fee which will only be payable to the extent We Collect EContainers dispatched outside of the Agreed Wholesaler route;
- 5.1.3. Replacement Fee/Total Loss which will only be payable in the event You have lost an EContainer in accordance with Terms 2.8 and 3.6;
- 5.1.4. Unarranged Fill Fee which will be payable to the extent you have filled an EContainer more than once, or acquired an EContainer into your possession with the intent to refill;
- 5.1.5. Keg Check due to spear removal which will only be payable to the extent We have carried out checks and/or removed spears;
- 5.1.6. New Spear and Extractor which will only be payable to the extent We have provided new spears or extractors; and
- 5.1.7. Pallet Fee which will only be payable to the extent we provide pallets, all prices shown are exclusive of VAT (which will attract VAT at the prevailing rate) and other applicable taxes, duties or similar charges, which You will also pay.
- 5.2. We will invoice you in respect of a Rental Fee at the point Your Order is accepted by us. All other Rental Charges will be invoiced by us shortly after it has become apparent to Us that such fees have been incurred.
- 5.3. You must pay the Rental Charge within 'x' days post the date of invoice (Due Date). X denotes credit terms (if applicable), confirmed by us in writing, in response to account application. No payment is considered received until We have received cleared funds. We reserve the right to charge interest at the Default Rate on any overdue amounts.
- 5.4. If You fail to pay any amount payable by You under these Term on the relevant Due Date, interest shall accrue on a daily basis on the overdue amount from such Due Date up to the date of actual payment (both before and after judgment) at the Default Rate. Any interest accruing under this Term 5.4 shall be immediately payable by You on demand by Us and, if unpaid, will be compounded on the first day of each calendar month (but will remain immediately due and payable).
- 5.5. The prices in Our Price List may be subject to an annual adjustment aligned with the PPI Rate to represent a reasonable reflection of any of Our changing costs associated with providing the EContainers under these Terms. The prices in the Price List may be adjusted by Us to reflect any annual increase in the PPI Rate as at 30 November in each calendar year.
- 5.6. In the event that any EContainer becomes the subject of confiscation, capture, detention, seizure or requisition on account of any failure by You to pay any amount due in respect of VAT or other applicable taxes, duties and charges or other amounts due or any other action or omission by You, We reserve the right to charge the Excess Dwell Charge (as set out in the Annex) until such EContainer is returned to Us without prejudice to Our right to treat such EContainer as a Total Loss under Term 3.6 or any other right or remedy which We may have under these Terms or at law generally.
- 5.7. All payments must be made in full. You will not be entitled to deduct, counterclaim, set off or withhold against any monies due to You unless required by law.
- 5.8. Subject to Term 5.5, prices, fees and charges will be as set out in the Price List unless otherwise agreed. We reserve the right to increase the prices at any point by notifying You in writing ahead of Your next order. If You do not want to agree to the new prices, fees and charges, then You can terminate the Order by giving 28 days' written notice to Us. You will not be charged the new prices, fees and charges for the Order.

## **6. Warranties and Customer Complaints**

- 6.1. Subject to Terms 6.2 and 6.4, We warrant that, on Delivery, EContainers will: (a) substantially conform to their specification; (b) be of satisfactory quality and fit for any purpose We hold out; and (c) be free from material defects in workmanship.
- 6.2. We are only liable for a Warranty Defect if: (a) You tell Us: i) within 12 weeks of delivery for leaking, filling, cleanliness issues, ii) within 16 weeks of delivery for contamination issues, iii) within 6 weeks of delivery for pre-fill attempt issues, as well as provide Us with reasonable details of the Warranty Defect; and (b) We have a reasonable opportunity to examine the relevant EContainer and You have made such EContainer available to Us at the location and time We ask You to. If an EContainer is defective, We will (at Our option) replace the defective EContainer or issue a credit note for the Rental Charge You paid for it.
- 6.3. Subject to Term 8.1, the remedies in Term 6.2 represent Your exclusive remedy in respect of a Warranty Defect. These Terms shall apply to any replacement EContainer supplied by Us.
- 6.4. We are not liable for a Warranty Defect if: (a) You use the relevant EContainer after notifying Us under Term 6.2(a); or (b) the Warranty Defect arose because You did not follow Our instructions on the storage, use or maintenance of the EContainers or (if there is none) good trade practice.
- 6.5. Save as set out in Term 6.1, no term, condition, warranty or representation of any kind whatsoever (express or implied) is or has been given by or on behalf of Us in respect of the EContainers or any other item of equipment. Subject to Term 6.1, all terms, conditions, warranties and representations (express or implied and whether statutory, collateral hereto or otherwise) relating to any EContainer or other equipment, its specification, age, quality (satisfactory or otherwise), description or as to its fitness for any purpose are hereby expressly excluded.
- 6.6. In the unlikely event of a customer complaint regarding the quality of an EContainer, We will investigate the cause of the complaint, following Our defined standards (available on request).

- 6.7. If the cause of the complaint is found not to have been through the fault of a CB company, then We reserve the right to charge You for all costs incurred by CB company in carrying out the investigation.

## **7. Representations**

You make the representations and warranties in Terms 7.1 and 7.2 to Us on the date these Terms are signed by You and on each day of during which these Terms are in force:

- 7.1. You:
  - 7.1.1. are a duly incorporated limited liability company validly existing under the laws of England;
  - 7.1.2. have the power to own Your assets and carry on Your business as it is being conducted;
  - 7.1.3. have the power to enter into, deliver and perform, and have taken all necessary action to authorise Your entry into, delivery and performance of, these Terms and the transactions contemplated by these Terms;
  - 7.1.4. have obtained all required or desirable authorisations to enable you to enter into, exercise Your rights and comply with Your obligations in these Terms. Any such authorisations are in full force and effect; and
  - 7.1.5. have disclosed all relevant information in respect of Your intended use of EContainers.
- 7.2. The entry into and performance by You of, and the transactions contemplated by, these Terms do not and will not contravene or conflict with Your constitutional documents, any agreement or instrument binding on You or Your assets or constitute a default or termination event (however described) under any such agreement or instrument, or any law or regulation or judicial or official order, applicable to You.

## **8. Liability**

- 8.1. Nothing in these Terms shall limit or exclude liability which cannot be legally limited including liability for: (a) death or personal injury caused by a Party's negligence; (b) fraud or fraudulent misrepresentation; or (c) any matter in respect of which it would be unlawful to exclude or restrict liability.

- 8.2. Subject to Term 8.1, We are not liable to You for any:
- 8.2.1. loss of profits;
  - 8.2.2. loss of anticipated revenue;
  - 8.2.3. loss of business opportunity;
  - 8.2.4. loss of goodwill;
  - 8.2.5. ullage beer cost;
  - 8.2.6. third party claim; or
  - 8.2.7. indirect or consequential loss, damage, cost, expense, claim or liability, arising out of or in connection with these Terms or a Rental.

- 8.3. Subject to Terms 8.1 and 8.2, Our aggregate liability for any Loss caused by Us or any of Our Affiliates under or in connection with these Terms shall not exceed: (a) 100% of the aggregate amount of all Daily Hire Fees paid by You or then due under these Terms; or (b) fifty thousand pounds (£50,000), whichever is the greater.

## 9. Default

- 9.1. Any of the following constitutes an Event of Default and shall constitute a repudiatory breach of these Terms:

9.1.1. You fail to pay Us any amount by the Due Date;

9.1.2. You fail more than 1 audit in any 12 month period;

9.1.3. You breach any of these Terms or any other agreement You have with a CB company provided that no Event of Default will occur if failure to comply is capable of remedy and is remedied within 7 days of Us giving notice to You or You becoming aware of the failure to comply;

9.1.4. You become subject to an Insolvency Event;

9.1.5. there is a change of control of You (within the meaning of section 1124 of the Corporation Tax Act 2010);

9.1.6. it becomes unlawful for You to perform any of Your obligations under these Terms;

9.1.7. [You do not supply to Our satisfaction know Your client or anti-money laundering documents (as may be required by Us from time to time);]

9.1.8. there occurs, in Our opinion, a material adverse change in Your financial condition; and/or

9.1.9. We have reason to think that any of the events in Terms 9.1.1 to 9.1.8 (inclusive) may occur.

- 9.2. If an Event of Default happens and You fail to remedy it within 7 days' written notice, unless the Event of Default is pursuant to Term 9.1.3 in which case Our rights in Terms 9.2.1 to 9.2.4 (inclusive) will be available immediately, We may do any of the following:

9.2.1. terminate all Rentals which will require You to give up and make no further use of all EContainers and any other equipment, property, materials and other items (and all copies of them) belonging to Us, and at Your cost collect the EContainers and enter any premises to do so;

9.2.2. cancel any or all orders;

9.2.3. withhold delivery of any orders until the Event of Default has been remedied to Our satisfaction;

9.2.4. end or suspend any credit facilities; and

9.2.5. You will pay Us all outstanding amounts immediately.

- 9.3. You shall on demand pay to Us all expenses (including legal and out-of-pocket expenses) incurred by Us in connection with, the enforcement of, or preservation of any rights under these Terms together with interest at the Default Rate from the date on which such expenses were notified to You, up to the date of payment (as well after as before judgment).

## 10. Ending Rentals

- 10.1. Upon expiry or termination of a Rental (and without prejudice to any other remedy We may have):

10.1.1. You shall ensure that EContainers are empty;

10.1.2. You shall promptly return any EContainer or any other equipment, property, materials or items belonging to Us and supplied to You. If You do not return any of the aforementioned items, We shall be entitled to enter upon any premises upon which such items may be located and You acknowledge and agree that, at our discretion:

10.1.2.1. We may charge you additional fees relating to your use of such EContainers until such time as they are empty and costs associated with our wasted effort in relation to such collection;

10.1.2.2. We shall be permitted to empty all EContainers so that we may collect such Econtainers and we shall not be liable to you in relation to any loss associated with emptying such Econtainers;

10.1.3. You shall pay to Us on demand all amounts:

10.1.3.1. which We notify You as being due by You under or in connection with these Terms (together with any interest due thereon in accordance with these Terms); and

10.1.3.2. any third party costs and/or claims made against us in relation to your use of the EContainers including (without limit) claims from brewers relating to emptying EContainers which were not empty at the point of collection.

10.2. Termination or expiry of the Rental shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of these Terms which existed at or before the date of termination or expiry.

10.3. Any provision of these Terms that expressly or by implication is intended to have effect after termination or expiry shall continue in full force and effect after termination or expiry including Terms 3.11, 4, 8, 10, 12, 17 and 18.

## 11. Data Protection

11.1. Both Parties, in the course of performing and/or administering our agreement, exchange business contact information of the other party's employees, contractors, and business partners in the nature of names, job titles, business email addresses, business physical address, residential address, date of birth, payment information (including bank account information and transaction data), communications, complaints and telephone numbers ("BCI"). Both Parties agree that BCI is provided, received, and processed for the sole purpose of performing or administering our agreement and shall not be processed, transferred, sold or otherwise shared at any time for any other reason unless required by law. We shall use such personal data in accordance with our Privacy Policy [link].

11.2. Both Parties (each in their role as a separate and independent controller)

shall comply with the EU General Data Protection Regulation 2016/679 of the European Parliament and of the Council as transposed into United Kingdom national law by operation of section 3 of the European Union (Withdrawal) Act 2018 and as amended by the Data Protection, Privacy and Electronic Communications (Amendments etc.) (EU Exit) Regulations 2019 ("UK GDPR"), together with the Data Protection Act 2018, the Privacy and Electronic Communications (EC Directive) Regulations 2003 (as amended) and other data protection or privacy legislation in force from time to time in the United Kingdom ("Applicable Data Protection Laws"), and without prejudice to the overarching obligation to comply with Applicable Data Protection Laws independently, and to the extent reasonably requested, assist the other in complying with all applicable requirements of the Applicable Data Protection Laws, in particular, each Party shall;

11.2.1. taking into account the state of the art and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, ensure that it has in place appropriate technical and organisational measures (including relevant policies) to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data; and

11.2.2. provide reasonable assistance to the other party in complying with the Applicable Data Protection Laws.

11.3. Both Parties agree that in some instances, You shall provide Us with the personal data of third parties for the purpose of them receiving the delivery and/or administering the collection of the EContainers. In such instances, You agree that You shall ensure that:

11.3.1. you have a valid legal basis under the Applicable Data Protection Laws to transfer such personal data to Us; and you shall provide such third parties with a copy of our Privacy Policy [link] and inform them that their personal data will be disclosed to Us, for the purpose of administering our agreement (i.e. the delivery and collection of the EContainers).

## **12. Confidentiality**

- 12.1. Each Party undertakes that it shall not disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other Party, except as permitted by Term 12.2 and shall only use the other Party's confidential information to perform its obligations under these Terms.
- 12.2. Each Party may disclose the other Party's confidential information to its Affiliates and its and their employees, officers, sub-contractors, representatives, or advisors who need to know such information for the purposes of carrying out that Party's obligations under these Terms. Each Party shall procure that its employees, officers, sub-contractors, representatives or advisers to whom it discloses the other Party's confidential information comply with this Term 12 and as may be required by laws, a court of competent jurisdiction or any governmental or regulatory body.

## **13. Force Majeure**

- 13.1. Neither Party shall be in breach of these Terms nor liable for delay in performing, or failure to perform, any of its obligations if such delay or failure results from events, circumstances or causes beyond its reasonable control. In such circumstances the affected Party shall be entitled to a reasonable extension of the time for performing such obligations.

## **14. Transfer and Sub-Contracting**

- 14.1. You shall not be entitled to assign, transfer, sub-contract or deal in any other manner with any or all of Your rights and obligations under these Terms without Our prior written consent.
- 14.2. We may at any time assign, transfer, sub-contract or deal in any other manner with any or all of Your rights and obligations under these Terms.
- 14.3. These shall be binding upon and endure to the benefit of each Party and each of its respective successors and permitted assigns. We may, without prior reference to You, disclose any information about these Terms, the EContainers, You or any other person as We thinks fit to any actual or potential assignee, as We may in Our sole discretion determine.

## **15. Changes to EContainers and these Terms**

- 15.1. We may change the specification of EContainers at any time before Delivery where required by law or where this will not materially affect Your use of them.
- 15.2. From time to time, We may find it necessary to amend these Terms. We will notify You of any substantial changes and will provide You with a copy of the latest version of these Terms.

## **16. Notices**

- 16.1. Any notice or communication to be made under these Terms shall be in English, in writing and delivered by hand or by prepaid first class or special delivery post or by email. Our address and email for any notice or communication is: Address: Unit 1, Kingfisher Park, Headlands Business Park, Blashford, Ringwood, Hampshire BH24 3NX; Email: [enquiries@closebreweryrentals.co.uk](mailto:enquiries@closebreweryrentals.co.uk)
- 16.2. Notices by hand shall be deemed given on the day of receipt by all recipients unless received after 5.00 pm on a Working Day or received on a day which is not a Working Day, in which case they shall be deemed given on the next Working Day. Notices sent by prepaid first class post or special delivery shall be deemed given two (2) Working Days after the date of posting. Notices by email shall be deemed to be effective when received in readable form.

## **17. General**

- 17.1. These Terms along with the Quote Letter constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations, and understandings between them, whether written or oral, relating to its subject matter. Accordingly, these Terms and the Quote Letter apply to the exclusion of any other terms that You seek to impose or incorporate, or which are implied by law, trade custom, practice, or course of dealing and by placing an order for EContainers You agree to them.



- 17.2. Each Party acknowledges that in entering into these Terms it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in these Terms or Quote Letter. Accordingly, each Party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in these Terms or Quote Letter. This Term 17.2 is subject to Term 8.1.
- 17.3. No failure or delay by a Party to exercise any right or remedy provided under these Terms or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy. Except as expressly provided in these Terms, the rights and remedies provided under these Terms are cumulative and are in addition to, and not exclusive of, any rights or remedies provided by law.
- 17.4. These Terms do not confer any rights on any person or party (other than the parties to these Terms and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 17.5. These Terms and any non-contractual obligations arising out of or in connection with them are governed by English law and the parties irrevocably submit to the exclusive jurisdiction of the English courts for the determination of any dispute arising out of or in connection with these Terms (including in relation to any non-contractual obligations). The submission to the jurisdiction of such courts shall not (and shall not be construed so as to) limit Our right to take proceedings against You in any other court of competent jurisdiction nor shall the taking of proceedings by Us in any one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not.

## 18. Definitions and Interpretation

- 18.1. In these Terms the following terms have the following meanings:

**Affiliate** means in relation to any person, a Subsidiary or Holding Company of that person or any other Subsidiary of that Holding Company;

**Agreed Wholesaler** means a business which is included in Our list of approved wholesalers. We may update this list from time to time;

**CB company** means Us or any other Close Brothers group company;

**Collection Fee** has the meaning given Term 5.1.2 but We may update the fee from time to time;

**Default Rate** means 8% plus the Bank of England base rate;

**Delivery** has the meaning given in Term 2.4 (and Deliver and Delivered shall be construed accordingly);

**Dispatch** has the meaning given in Term 2.7 (and Dispatched shall be construed accordingly);

**Due Date** has the meaning given in Term 5.2;

**ECask** means a 9 gallon cask we supply;

**EContainer** means either an ECask, an EKeg or any other container We supply;

**EKeg** means a 30 litre or 50 litre stainless steel keg We supply;

**Event of Default** means any event or circumstance specified as such in Term 9.1;

**Excess Dwell Charge** has the meaning given in Annex 1 and as may be updated from time to time;

**Fill Fee** has the meaning given in Annex 1 and as may be updated from time to time;

**Fit to Fill ECask** means the cask is supplied clean, and in particular there is no deep staining, no soiling or protein marks, no fly eggs or casing of any quantity, no bungs, corks, residual hops or malt, or any other foreign objects within the cask; slight marks or imperfections within the cask are permitted, the outside of the cask will have been processed through an automated external washer and will have all of the major soiling or labels removed. The ECasks end to end wash process is one of the most robust in the industry, every cask is manually inspected, and every operator trained to the highest possible standards. The cask will be provided 'Clean' but not sterile or sanitised, breweries will need to continue to ensure that the cask is 'Fit to Fill' before being filled with beer.

**[Insolvency Event** means: (a) any indebtedness owed by You is not paid when due or any such indebtedness becomes due and payable prior to its specified maturity as a result of an event of default (however described) or any creditor becomes entitled to declare any such indebtedness due and payable prior to its specified maturity as a result of an event of default (however described); (b) You suspend, or threaten to suspend, payment of Your debts or You are unable to pay Your debts as they fall due or You admit inability to pay Your debts or are deemed unable to pay Your debts within the meaning of section 123 of the Insolvency Act 1986, as if the words “it is proved to the satisfaction of the court” did not appear in sections 123(1)(e) or 123(2) of the Insolvency Act 1986; (c) You commence negotiations with all or any class of Your creditors with a view to rescheduling any of Your debts, or make a proposal for or enter into any compromise or arrangement with Your creditors; (d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with Your winding-up (other than a frivolous or vexatious winding-up petition which is discharged, stayed or dismissed within 30 days of commencement); (e) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over You; (f) the holder of a qualifying floating charge over Your assets has appointed an administrative receiver; (g) a receiver is appointed over Your assets; (h) any creditor or encumbrancer in respect of You attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of Your assets and such attachment or process is not discharged within 14 days after You have become aware of the same; (i) any event occurs, or proceeding is taken in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in (a) to (h) (inclusive); or (j) you suspend or cease, or threaten to suspend or cease, carrying on all or a substantial part of Your business or ownership of a material part of Your assets are transferred to a third party; ]

**Holding Company** means in relation to any person, an entity of which that person is a Subsidiary;

**Pallet Fee** means the fee as set out in Term 5.1.7. We may update the fee from time to time;

**Party** means You and We are each a Party and together You and We are Parties;

**Price List** means Our then-current list of applicable fees and charges;

**PPI Rate** means Producer Price Indices

**Quote Letter** means the letter dated accordingly at first point of communication

**Rental** means the supply of an EContainer and Your use of it in accordance with these Terms;

**Rental Charge** means all charges due to us made up of the charges set out in Term 5.1;

**Rental Fee** means the fee associated with the Rental as set out in Annex 1 and as may be updated from time to time;

**Rental Period** has the meaning given to it in Term 1.1;

**Sanitised** means We have used reasonable endeavours to reduce microorganisms to a ‘safe level’ but not to the extent of Sterilized;

**Service Centres** means either (1) Containers Services, Unit 9B Albion Drive, Thurnscoe, Rotherham, South Yorkshire S63 0BA or (2) ECasks, Lintridge Farm, Bromsberrow Heath, Nr Ledbury, Herefordshire HR8 1PB or (3) Ongar depot, Wood Farm, Moreton Road, Ongar, Essex, CM50EY;

**Subsidiary** means a subsidiary within section 1159 of the Companies Act 2006;

**Sterilized** means complete removal of microorganisms;

**Terms** means these terms governing Our supply of EContainers to You;

**Total Loss** means that an EContainer is damaged beyond repair, lost, stolen, seized or confiscated;

**Unwashed** means the EContainers will arrive to You direct from the wholesalers and will be sent with bungs, shives, and labels all still in place and potentially still with beer inside;

**Warranty Defect** means a breach of the warranties in Term 6.1;

**Washed** means the cask is supplied clean, and in particular there is no deep staining, no soiling or protein marks, no fly eggs or casing of any quantity, no bungs, corks, residual hops or malt, or any other foreign objects within the cask;

**Washed, sanitised & Pressurised EKegs** means the EKegs will arrive to You ready to fill, having been processed through a heavy duty multi-stage external and internal wash, then steam sanitised and filled with sterile nitrogen at 1.5 bar;

**We** mean Close Brewery Rentals Limited (trading as ECasks), a company registered in England and Wales with number 5826492 whose registered office is at Unit 1, Kingfisher Park Headlands Business Park, Ringwood, Hampshire, United Kingdom, BH24 3NX (and Us and Our shall be construed accordingly);

**Working Days** means a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business;

**Working Hours** means 08:00 – 17:00 on a Working Day; and

**You** means a person who places an order for EContainers (and **Your** shall be construed accordingly).

18.2. References to:

18.2.1. the singular include the plural and vice versa;

18.2.2. a person includes a natural person, corporate or unincorporated body (whether or not having a separate legal personality);

18.2.3. including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding them; and

18.2.4. a statute or a provision of a statute is a reference to that statute or provision as amended or re-enacted and includes all subordinate legislation made under that statute or statutory provision.

## ANNEX 1

Unarranged Fill Escalator	
Unarranged Fill Fee (First breach)	2 x the Fill Fee
Unarranged Fill Fee (Second breach)	3 x the Fill Fee
Unarranged Fill Fee (Third breach)	4 x the Fill Fee
Unarranged Fill Fee (Forth breach)	5 x the Fill Fee
Unarranged Fill Fee (Fifth breach or beyond)	8 x the Fill Fee
Excess Dwell Charge	£0.02 per EContainer per day on site above 42 days

