

## General Terms and Conditions for DISTRIBUTORS (“T&C”)

*Your appointment as a Distributor of Hector Beverages Private Limited (“Hector” or “the Company”) is subject to the T&C. You should agree to the T&C by sending a reply in writing or in the email stating that “I agree to the terms and conditions, as made available by Hector for my/our appointment as a Distributor”.*

The Company is engaged in the business of manufacturing, distribution and selling of products including but not limited to non-alcoholic beverages, dairy based drinks, confectionery products, fruit bars and similar products under its brand names Paperboat, Swing, Tzinga, Top Secret (“**Products**”).

The Distributor is desirous of being appointed as a distributor of the Company and purchase the Products on a wholesale basis from the Company for sale in such area and including such outlets, as mutually agreed, on the terms and conditions as mentioned hereunder.

### **OBJECTIVE**

The purpose of the T&C is to appoint the Distributor as a non-exclusive, authorized distributor of the Products of the Company within a mutually agreed area for which Distributor is being appointed (“**Primary Distribution Area**”).

### **SCOPE OF ENGAGEMENT AND AREA OF WORK**

1. The Distributor undertakes to purchase the Products of the Company
2. The Distributor shall affect the sale of the Products directly to the retailers or customers in the Primary Distribution Area.
3. It being agreed that the Primary Distribution Area stands, amongst others, to be in the interest and for the benefit of the consumers of the Products of the Company and the distribution of areas and/or any alteration thereto shall be done at the sole discretion of the Company.
4. The Company, in its sole discretion, shall have the right to add, delete or modify the list of Products and/or the Primary Distribution Area, as stated herein, in such manner as it may deem fit, with the objective of developing and stimulating demand for the Products or for attending to business exigencies; needs or requirements of the business; in furtherance of efficiency and quality of sales and services to consumers; and any other reason which the Company deems fit.
5. It is clarified that the Company shall have the right to appoint such number of other distributors in respect of all or any of its Products in the town/ areas in which the Distributor is situated and/or the Primary Distribution Area and/or at any other place as the Company deems fit, and the Company shall also have the absolute right to sell, directly or indirectly, whether by itself or through its Network, any of its Products to any other person / persons and/or directly to the consumers to whom the Company wishes to sell, at any time in the said areas.
6. The Distributor hereby agrees that it shall sell the Products to consumers at such price and such terms and conditions as may be agreed mutually between the Company and the Distributor on the date of the dispatch of the Products by the Company to the Distributor. The Company shall be entitled to vary the prices of the Products at any time upto the date of the dispatch of the Products to the Distributor.
7. For ensuring minimum damage to the Products, the Distributor shall ensure that stock of the Products is rotated basis the ‘Best Before Date’ mentioned on the pack of such Products (“**BBD**”).
8. It is further agreed that the Distributor shall take all care and diligence to ensure that Products of the Company are sold within the stipulated time for consumption mentioned as BBD on the pack of such Products.
9. The claim for BBD or expired Products will be passed on to the Distributor’s basic Price only It is hereby agreed that the Distributor shall not be entitled to claim any amount for the Products purchased under the brand named “Swing”, however, the Distributor shall be entitled for the claim made for the Products purchased under the brand named “Paperboat” provided the claim has been made within ONE months from the date of expiry of Products and not exceeding 2% of total net revenue transaction for “Paperboat”, between Company and Distributor

### **PLACEMENT OF ORDER**

1. The Distributor shall, place an order with the Company or its Network partner, if so required by the Company, by raising the purchase order (“**PO**”) for its requirements.
2. All PO’s placed by the Distributor with the Company shall be subject to acceptance by the Company. If an order is accepted, the Company may deliver the Products by such mode of transport and at such time and in such convenient lots and quantities, as the Company shall in its sole discretion decide.
3. The Company will sell the Products to the Distributor at agreed trade margin. The prices of the Products are subject to change from time to time, at the sole discretion of the Company, with or without prior notice to the Distributor. Each lot of Products shall be dispatched against the PO against the advance receipt of the purchase price.

Notwithstanding anything to the contrary stated elsewhere in the T&C, the Company shall be entitled at any time after acceptance of a PO to cancel the same in whole or in part, in case of non-payment of the purchase price for the total quantities ordered. The Distributor shall ensure payment at the time of placing the PO. It is hereby clarified that the Company shall have this right, even if it has partly executed the PO. For this purpose, each lot dispatched against a PO shall be deemed to be a separate contract.

### **DELIVERY PROCESS**

1. The Company shall be responsible for delivery of the Products at the place specified by the Distributor in the PO (“**Destination**”). It is hereby clarified that the Company is responsible for delivery of Products till the Destination. The cost of onward transport to the consumers shall be borne by the Distributor.
2. The Distributor and/or its authorised representative shall, on such delivery, acknowledge the receipt of the Products by signing an acknowledgement receipt (“**Acknowledgement Receipt**”) thereby ascertaining the nature and/or quantity of the Products.
3. It is hereby agreed that the Distributor shall be responsible for the unloading of the Products and bear the costs associated with such unloading. The Distributor and/or its authorised representative shall be present for supervising the unloading of the Products and handling of consignment documents.

The delivery by the Company shall be deemed to be complete if the Company makes the Products available for delivery purposes at the Destination. In case of failure of the Distributor to accept delivery/ unload the Products at the time of delivery by the Company, the Company shall not be responsible for the same and shall have the right to claim the purchase price for such Products. It is clarified that any shortage or discrepancy in the Products, shall be noted by the Distributor/its representative on the Acknowledgement Receipt and inform the Company in writing. The Company shall raise a credit note to adjust the amount of such short, discrepant or damaged Product.

### **4. PAYMENT MECHANISM**

1. It is clearly agreed between the Distributor and the Company that the sale and delivery of Products by the Company to the Distributor shall always be subject to advance receipt of the purchase price by the Company.

2. The payment shall be made by demand draft or RTGS/ NEFT and all supplies will be made against advance payment received by the due date. Such advance payment against the sale shall always be the essence of the PO, which the Company may accordingly and on basis thereof accept to execute wholly or in part on receipt of a PO from the Distributor.
3. It is hereby clarified that the Company is under no obligation to deliver the Products to the Distributor as per the accepted PO, unless the Distributor makes the payment by the due date or the extended due date, as the case maybe.
4. The Distributor's purchase price agreed shall be inclusive of the applicable excise duty, VAT/ GST and any other taxes as applicable. The Company shall charge excise duty, VAT / GST and any other taxes applicable at the applicable rates and indicate the same separately in the invoice as per the provisions of the applicable tax laws.
5. The Distributor will be liable to pay to the Company applicable GST, against necessary statutory forms to be submitted by Distributor. If any statutory related documents is required by the Company, the same needs to be provided by the Distributor within 3 (Three) days from the request raised by the Company.
6. The price charged by the Company shall be inclusive of freight but doesn't include unloading charges. The risk of any loss or damage to the Products during transportation from the Company's premises to the Destination shall be the responsibility of the Company.
7. If the Distributor wishes to purchase the Products from the factory/depots of the Company by using their own vehicles, same shall be permitted and the risk of loss or damage shall pass on to the Distributor at the factory/depot of the Company.

#### **ADVERTISING, MARKETING AND PROMOTIONAL OFFERS**

1. The Company may do such advertisements, as it deems appropriate and the cost of such advertisement including the advertising and promotional materials shall be borne by the Company. The Distributor shall ensure that such advertising and promotional material, if shared by the Company with the Distributor, continues to remain the property of the Company and should be used as per instructions given by the Company.
2. The Distributor shall participate in such marketing activities, as required by the Company and in accordance with the guidelines and standards laid down by the Company, and as may be required to maintain and/or to increase the demand for each of the Products in the outlets within the Primary Distribution Area.
3. As per the Company's business operations and trade practice; the Company may, from time to time, run sales promotion schemes offering trade schemes/price rebates in cash or kind in order to maximize the off-take and sale of Products by the Distributor and boost overall sales in the markets. It is hereby agreed that whenever such a scheme of trade scheme or price rebate is run by the Company; it shall be obligatory on the Distributor to satisfy and fulfill all the terms of the relevant scheme, particularly in relation to the condition requiring the Distributor to pass over the benefit of the trade scheme/price rebate schemes to the ultimate consumers for whom the benefit is intended, provided such scheme is communicated by the Company to the Distributor in writing.
4. It is hereby agreed that the Company would be under an obligation to settle claims related to expenses incurred under above clause, only if the scheme was undertaken subject to the written communication by the Company through its sales manager and provided such expenses were pre-approved by the Company in writing. The Distributor shall submit such claims within 30 (Thirty) days of completion of the campaign/promotional activity.
5. For any expenditure done by the Distributor for the promotion of its own business and for its own interest, shall in no situation be deemed that the Distributor is providing any advertising or marketing services to the Company.

#### **STORAGE AND WAREHOUSING**

1. The Distributor covenants and agrees that it shall provide necessary warehousing space and shall make such modifications as maybe necessary to its current storage area or warehousing space or shall rent such separate storage area or warehousing space as would enable good storage and sanitized storage conditions of Products as well as complete segregation (which the Distributor undertakes to ensure) of the Products purchased from the Company from any and all kinds of products, whether food/beverage or otherwise of other parties.
2. The Company shall have an unrestricted right to visit the premises of the Distributor for inspection of the inventory or otherwise. The Company and its representatives shall have the right to call for any documents or information that it may deem fit. The Distributor hereby agrees to provide such access and information and cooperate with the Company during such inspection.
3. The Distributor shall be wholly responsible for managing its outlets in the Primary Distribution Area and its related expenses, including but not limited to, electricity charges, water charges, salary, wages, service tax, municipal taxes and all other statutory payments to or for its workmen and staff, maintenance of equipment, consumables, housekeeping etc. The Distributor shall employ at its own cost sufficient number of suitable, trained and competent staff for its operation for providing such services, as may be mutually agreed by and between the Distributor and the Company from time to time. All such employed staffs shall at all times be treated as employees of the Distributor and not of the Company. It is hereby agreed that all supervision, management and control including taking disciplinary actions over such employed staffs will at all times vest with the Distributor. The Distributor nor its employees/representatives shall at any time make any warranties or commitments on behalf of the Company, unless so authorized in writing by the Company.
4. It is further clarified that the Distributor is fully responsible to maintain the stocks of the Products as per quality norms of the Company. In case of any damage or leakage due to mishandling of Products by the Distributor or not complying with quality norms, the Company shall assume no liability of the same whatsoever and the Company shall in no way be responsible for any claim/loss/ damage/legal consequence arising out of bad or improper storage.

#### **INSURANCE**

The Goods shall be insured till the time of delivery to the Distributor and as such, shall be in the responsibility of the Company. The title to the Products will pass to the Distributor at the time of delivery of the Products and after the Distributor signs the Acknowledgement Receipt. Once the title shall pass to the Distributor, the risks of the Products shall also simultaneously pass to the Distributor and the Distributor shall, insure such Products, post such delivery at its own risks and liabilities and the Company shall have deemed to conclude its sale once the Products are delivered to the Distributor. It is clarified that the Company shall in no way be responsible for any claim/loss/ damage/legal consequence arising after the delivery of the Products to the Distributor.

#### **INDEPENDENT RELATIONSHIP OF THE PARTIES**

It is agreed that the relationship between the Company and the Distributor shall be that of seller and buyer on a principal-to-principal basis. The Distributor shall at no point of time hold himself as an agent of the Company and the Company shall not be responsible for any act of commission or omission on the part of the Distributor. The Distributor shall have no power to bind the Company in any contract entered into by the Distributor with any other party whatsoever, for sale or supply of the Products or otherwise.

#### **RECORD OF SALE AND RECONCILIATION OF ACCOUNTS**

1. The Distributor shall maintain adequate records of sales of each of the Products, accounting and other records arising in and under the engagement and keep the Company informed, on monthly basis, about its stock position of various Products so as to enable the Company to plan its production and dispatch schedule.
2. The Distributor shall adhere to the Company's 'BBD' method and norms regarding purchase and supply with respect to stocks, stock levels to be maintained, terms of payment and other guidelines etc. given from time to time and as fixed by the Company and as agreed hereunder.

3. The settlement/ reconciliation of accounts between the Company and the Distributor shall be done on quarterly basis as may be determined by the Company.
4. For the purpose of reconciliation of the purchases from and the payments made to the Company, the Distributor shall render full co-operation to the Company and shall make available for inspection records and books of accounts relating to the purchases from and of payments made to the Company by it from time to time or otherwise as and when demanded by the Company.
5. On or before the 6th day of every month, Distributor shall, either on its own or on demand by Company, provide the correct and true detail of purchase of Products for the previous month and shall also submit all the pending claims related to damage, expiry, discount, sampling and distributor sales man (DSM) subsidy for the previous period on same day. In addition, at the end of every calendar quarter, the Distributor shall submit to the Company a 'no dues certificate' or summary of pending dues, as the case may be, on or before 20<sup>th</sup> day from each quarter end.

#### **RESPONSIBILITIES OF THE DISTRIBUTOR**

1. In addition to the other responsibilities of the Distributor stated hereunder, the Distributor shall also be responsible for the following:
  - a) Developing, stimulating and satisfying fully the demand for each of the Products within the Primary Distribution Area;
  - b) Notifying the Company promptly in the event of or upon obtaining knowledge of any third party action which may or will result in any change in the ownership or control of the Distributor;
  - c) Investing capital and incurring all expenses required for the organization, installation, operation, maintenance within the Primary Distribution Area, of such warehousing, marketing, distribution, delivery, transportation and other facilities and equipment's as shall be necessary to implement the engagement;
  - d) Maintaining proper inventories of the Products supplied by the Company and to transmit all data concerning stock deliveries, sales, including monthly account statements.
  - e) Making available from time to time and at the request of the Company, complete records of current ownership of the Distributor and full information concerning any third party or third parties by whom it is controlled directly or indirectly;
  - f) To the extent the Distributor has any legal control over changes in the ownership or control of the Distributor; not to initiate or implement, consent to or acquiesce in any such change without the prior written consent of the Company; and
  - g) If the Distributor is organized as a partnership, not to change the composition of such partnership by the inclusion of any new partners or the release of existing partners without the prior written consent of the Company.
2. The Distributor hereby agrees that it shall avoid deceptive, misleading or unethical practices that are or might be detrimental to the Company or its Products, and shall make no false or misleading representations with respect to the Company or its Products. The Distributor shall make no representations nor give any warranties or guarantees to consumers or to the trade with respect to the specifications, features or capabilities of the Products that are inconsistent with those stipulated or provided by the Company.
3. The Distributor agrees that the trademark on the Products is the sole and exclusive property of the Company. The Distributor hereby agrees that the Distributor or any of its agents/representatives will use such trademark only in the normal course of business and for no other purpose, unless a special written permission has been obtained from the Company.

#### **CONFIDENTIALITY**

1. For the purposes of this Document, "**Confidential Information**" includes: (i) the terms of the T&C; (ii) oral and written information designated by the Company as confidential prior to the Distributor obtaining access thereto; and (iii) any data, material, business information, papers, records, files, correspondence and communication sent, exchanged or disclosed by the Company to the Distributor in the course of the engagement and not generally known by or disclosed to the public.
2. The Distributor shall treat as highly confidential and appropriately safeguard, both, during the term of the engagement and thereafter, the Confidential Information of the Company.
3. The Distributor shall use Confidential Information solely for the purpose of the engagement. The Distributor can disclose relevant aspects of the Confidential Information to its employees, agents and representatives, to the extent that such disclosure is reasonably necessary for the performance of its obligations under the engagement and such persons shall be bound by confidentiality obligations as agreed hereunder. The Distributor shall be responsible for any breach of the terms of this clause, by any of its respective employees, agents and representatives. However, the Distributor shall not disclose the Confidential Information to a third party without the prior written consent of the Company.
4. If the Distributor is required to disclose the Confidential Information as part of a judicial process or other similar process, the Distributor shall give prior written notice of such requirement to the Company. Reasonable efforts shall be made to provide this notice in sufficient time to allow the Company to seek an appropriate protective order and the Distributor shall reasonably cooperate in such efforts.
5. Any materials or documents, which have been furnished by the Company, will be promptly returned, accompanied by all copies of such documentation, after the termination of the engagement. In the event it is not feasible or reasonable to return such material, the Distributor should destroy the same and certify such destruction in writing to the Company.

#### **INDEMNITY**

The Distributor shall indemnify and hold harmless, the Company and each of its employees, agents, contractors, consultants, officers and directors from and against any and all losses, claims, damages, liabilities, obligations, penalties, judgments, awards, costs, expenses, and disbursements, including, without limitation, the costs, expenses, and disbursements, as and when incurred, of investigating, preparing, or defending any action, suit, proceeding, or investigation asserted by a third party (including, without limitation, reasonable attorneys' fees and expenses) caused by, relating to, based upon, arising out of, or in connection with (a) the breach of any representation or warranty made by the Distributor; (b) the failure of the Distributor to perform or observe any term of this Document required to be performed or observed by it hereunder including confidentiality clause; or (c) the Distributor's violation of law; or (d) infringement of any trademark, copyright, patent, trade secret, or other IPR of the Company by the Distributor.

#### **INTELLECTUAL PROPERTY RIGHTS**

1. It is hereby agreed that all the trademarks, logos, and other IPR in the Products and/or the contents developed/delivered by the Company under the engagement, shall always be the exclusive property of the Company.
2. Except for the rights expressly granted to the Distributor under the engagement, the Company will retain all right, title and interest in and to the IPR, including all worldwide IPR and no license of any sort whatsoever is being given under the engagement to the Distributor.
3. Distributor hereby agrees that the Distributor or any of its agents/representatives shall use the Company's IPR only with prior written consent of the Company and only in such a manner and for such purposes as permitted by the Company. It is clarified that only license to use such IPR shall be provided and the ownership of such IPR shall always vest in the Company.
4. For the purposes of this engagement, "**IPR**" shall mean all patents, trademarks (whether registered or unregistered), trade or business names, registered and unregistered design rights, copyright (including rights in computer software and moral rights on any deliverable), rights in relation to databases, rights in the nature of copyright or any other industrial, commercial or intellectual property rights (whether or not registered and including applications for registration of any of them) and all rights or forms of protection of a similar nature or having an equivalent or similar effect to any of the above, which may subsist anywhere in the world.

#### **TERMINATION**

Notwithstanding anything to the contrary stated elsewhere in this Document, the Company shall have the right to terminate the engagement, at its sole discretion, with immediate effect in case the Distributor:

- a) is involved in illegal activities;
- b) death of the Distributor in the event the Distributor is an individual;
- c) dissolution of partnership in the event the Distributor is a partnership firm;
- d) in the event of material breach and/or non-performance of the terms, mentioned in the T&C, by the Distributor;
- e) involves in any misrepresentation, misconduct, unethical behavior and/or providing false or wrongful information;
- f) is being prohibited or is unable to carry on its business either due to any law, order of any governmental authority or regulator or for any other reason whatsoever;
- g) makes any assignment or any general arrangement for the benefit of creditors, files a petition in bankruptcy or has such petition filed against it, is adjudged bankrupt, becomes insolvent, is unable to pay its debts as they mature, or is placed in the hands of a receiver or trustee. The equivalent of any of these proceedings or acts, though known or designated by some other name or term, shall likewise constitute just cause for immediate termination of engagement;
- h) fails to abide by the provisions of the Food Safety and Standards Act and any other laws and rules made thereunder;
- i) forming or attempting to form cartels/associations and thereby indulging in or acting with intent to indulge in threats, criminal intimidation, boycott and/or raising unreasonable demands of whatsoever nature thereby hampering Company's business and goodwill;
- j) gives false representation;
- k) sells the Products at a price higher than the maximum retail price;
- l) fails to take due care of the Products resulting damage to them;
- m) fails to pass over the benefit of the trade schemes/ price rebate schemes/ promotional schemes to the ultimate consumer for whom the benefit is intended;
- n) commits default in complying with the obligations during the engagement; and
- o) wrongfully uses and/or refers or exploits the logo, trademark, trade-name, brand name of the Company and/or any third party.

#### **MUTUAL OBLIGATION**

Each Party agrees not to do anything or abstain from doing anything or make any statement, oral or written, which would injure the other Party's business, its interest, or its reputation, unless required to do so in a legal proceeding by a competent court.