

AGREEMENT FOR THE SUPPLY AND MAINTENANCE OF TECHNICAL SERVICES EQUIPMENT

1. **Interpretation**
 - 1.1. In this Agreement:
 - "**CUK**" means Carlsberg UK Limited (company no. 00078439);
 - "**Customer**" means the customer to whom the Equipment and/or the Services are supplied;
 - "**Equipment**" means any technical services equipment supplied by the Owner or CUK to the Customer from time to time and includes all ancillary equipment and any alterations, additions or replacements thereto;
 - "**Maintenance Services**" means the services detailed in clause 4.1;
 - "**Owner**" means the owner of the Equipment as notified by CUK to the Customer;
 - "**Services**" means the installation of the Equipment in accordance with clause 3 and the Maintenance Services.
 2. **Equipment**
 - 2.1. CUK will procure that the Owner will loan the Equipment to the Customer. Where agreed, CUK will also provide the Services in respect of the Equipment. CUK will be entitled to sub-contract any of its obligations under this Agreement.
 - 2.2. Ownership of the Equipment will not pass to the Customer, but will remain with the Owner at all times.
 - 2.3. The Equipment must be kept in the Customer's possession and must remain at the location agreed with CUK.
 - 2.4. The Customer must keep the Equipment in good condition, and operate it reasonably and in accordance with any guidelines or specifications issued by or on behalf of CUK or the manufacturer of the Equipment.
 - 2.5. Where the Equipment includes cash hand pulls such Equipment should only be used for dispensing cash ales supplied by CUK or its approved suppliers. Where the Customer uses such Equipment to dispense other products, CUK reserves the right to charge the Customer a weekly fee for the ongoing maintenance of that Equipment. CUK will notify the Customer of the fee which shall be due monthly on demand.
 - 2.6. The Customer must not agree to sell or otherwise dispose of the Equipment in any way or use it or allow it to be used as security.
 - 2.7. The Customer may only alter the Equipment with CUK's prior written permission or if by law it must be altered.
 3. **Delivery and Installation**
 - 3.1. CUK will arrange for the delivery of the Equipment to, and the installation of it at, the agreed location ("**Location**").
 - 3.2. The Customer will at its own expense prepare the Location for the installation of the Equipment, provide the proper environmental and operational conditions necessary for the efficient working and maintenance of the Equipment before it is delivered and comply fully with any reasonable instructions or guidelines issued by or on behalf of CUK or the Owner in connection with the installation of the Equipment.
 - 3.3. If in the opinion of CUK or its contractor it is necessary to remove or otherwise disconnect any of the Customer's existing equipment at the Location in order to carry out the installation of the Equipment, then the Customer will permit, and obtain all necessary consents for, that removal and/or disconnection and will give CUK and its contractor all necessary assistance to enable that work to be carried out.
 4. **Maintenance**
 - 4.1. Subject to the other provisions of this clause 4, CUK will use its reasonable endeavours to fix any faults in the Equipment. Any parts replaced in the provision of such services will become the property of the Owner.
 - 4.2. CUK shall use its reasonable endeavours to provide the Services as soon as is reasonably possible after being notified by the Customer of any fault, but having regard to the availability of personnel, commitments to other customers and the seriousness of the reported problem.
 - 4.3. CUK will not be liable to provide the Maintenance Services:
 - 4.3.1. in respect of any equipment other than the Equipment;
 - 4.3.2. where they are required as a result of neglect or misuse;
 - 4.3.3. where they are required as a result of the Equipment being maintained or modified or attempts to maintain or modify the Equipment have been made by anyone other than CUK's or its contractor's personnel, or the Customer under the guidance of CUK's or its contractor's personnel.
 - 4.4. CUK will be entitled to charge the Customer for any work undertaken as a result of any of the causes stated in clause 4.3 or the Customer failing to comply with any of its obligations under this Agreement at the rates prevailing at the time of repair. Such charges shall be payable by the Customer on demand.
 - 4.5. If the Equipment requires replacement due to loss or damage caused by flood, fire, vandalism or rodent damage, or as a result of the Equipment being put otherwise than to normal use, the Customer will be liable to pay CUK on demand the full GBV replacement cost of the Equipment together with labour charges relating to the supply and installation of the replacement.
 5. **Customer's Obligations**
 - 5.1. The Customer must:
 - 5.1.1. keep the Equipment insured for its full replacement value with a reputable insurance company and provide evidence of this insurance to CUK on request;
 - 5.1.2. keep the Equipment clean and use it correctly, in accordance with the relevant manufacturer's guidelines;
 - 5.1.3. properly clean any product dispense lines on a 7 day cycle. Where the Customer fails to do so, it will pay to CUK on demand the cost of any work carried out to return the lines to the correct quality. In addition, if product python lines require replacement due to the Customer adopting incorrect cleaning practices, the Customer will pay to CUK on demand all costs associated with the replacement (including labour charges);
 - 5.1.4. notify CUK immediately if any defect in the Equipment becomes apparent and provide CUK and its contractor with accurate information regarding that defect;
 - 5.1.5. provide CUK and its contractor with such other information and assistance as they may reasonably require in connection with the provision of the Services including full access to the Location and the Equipment, and access to relevant employees of the Customer;
 - 5.1.6. ensure that any beer supplied by or on behalf of CUK that is dispensed using the Equipment, is dispensed and resold only in the condition prescribed by CUK from time to time and so as to meet any relevant brand specification issued by CUK.
 - 5.2. Where the Customer wishes to install and maintain the Equipment itself, the Customer agrees:
 - 5.2.1. to carry out the work at its own risk;
 - 5.2.2. to comply with the manufacturer's guidelines and any instructions issued CUK, its contractor or the Owner from time to time;
 - 5.2.3. to ensure that the work is only carried out by competent engineers who have the necessary qualifications and experience to complete the work safely;
 - 5.2.4. to comply with all applicable legislation and codes of practice, including those relating to health and safety.
 - 5.3. Subject to clause 7.4, neither CUK nor the Owner will be liable for any loss, damage or liability of any kind that the Customer may suffer as a result of it installing or maintaining the Equipment (or any related spare parts supplied by CUK, its contractor or the Owner from time to time).
- 5.4. CUK reserves the right to suspend or refuse to provide the Services when, in CUK's reasonable opinion, conditions at the Location represent a hazard to the health or safety of any of CUK's or its contractor's personnel or representatives.
6. **Warranties**
 - 6.1. The Equipment is hired free of charge and is therefore provided "as is" without any warranties of any kind (express or implied).
 - 6.2. CUK warrants that the Services will be provided with reasonable skill and care. All other warranties, conditions or other terms implied by statute or common law (including fitness for purpose) are excluded to the fullest extent permitted by law.
 - 6.3. The Customer shall give CUK a reasonable opportunity to remedy any failure by CUK to comply with its obligations under this Agreement before the Customer incurs any costs and / or expenses in remedying the matter itself. If the Customer does not do so then CUK shall have no liability to the Customer.
 - 6.4. Any advice or recommendation given by the Owner or by CUK or its employees, contractors or agents to the Customer or its employees or agents as to the storage, application or use of the Equipment which is not confirmed in writing is followed or acted upon entirely at the Customer's own risk, and accordingly CUK shall not be liable for any such advice or recommendation which is not so confirmed.
 - 6.5. In no circumstances will CUK be deemed to have represented that the Equipment is fit for any particular purpose.
7. **Liability**
 - 7.1. Any dates quoted for delivery of the Equipment or performance of the Services are approximate only and CUK shall not be liable for any delay in delivery or performance howsoever caused.
 - 7.2. Subject to clause 7.4, CUK is not liable to the Customer because of any representation (unless fraudulent), or any warranty (express or implied), condition or other term, or any duty at common law, or under the express terms of this Agreement, for:
 - 7.2.1. any loss of profit, business, contracts, opportunity, goodwill, revenue, anticipated savings, expenses, costs or similar loss; and/or
 - 7.2.2. any indirect, special or consequential loss or damage (whether for loss of profit or otherwise)whether caused by the negligence, breach of contract, tort, or breach of statutory duty of CUK, its employees, contractors or agents or otherwise, arising out of or in connection with this Agreement.
 - 7.3. Except as provided in clause 7.4, any other liability of CUK to the Customer in contract, tort, negligence, breach of statutory duty or otherwise arising out of or in connection with this Agreement is limited to £10,000.
 - 7.4. Nothing in this Agreement will operate or be construed to operate so as to exclude or restrict the liability of CUK for death or personal injury caused by the negligence of CUK or that of its employees acting in the course of their employment.
 - 7.5. CUK shall not be liable to the Customer or be deemed to be in breach of this Agreement by reason of any delay in performing, or any failure to perform, any of CUK's obligations, if the delay or failure was due to any cause beyond CUK's reasonable control.
8. **Termination**
 - 8.1. Clause 8.2 applies if:
 - 8.1.1. the Customer breaches this Agreement; or
 - 8.1.2. (if the Customer is an individual) an application for an interim order is made or a petition for a bankruptcy order (in Scotland for sequestration) is presented; or
 - 8.1.3. (if the Customer is a company, trust or corporation) a receiver, administrator, administrative receiver or liquidator is appointed, or the Customer is dissolved or otherwise wound up; or
 - 8.1.4. distress (in Scotland diligence) or execution is threatened or made against the Customer; or
 - 8.1.5. a meeting of the Customer's creditors or a voluntary arrangement is proposed, or the Customer ceases to trade or any step is taken with a view to the appointment of an administrator in relation to the Customer; or
 - 8.1.6. (if in Scotland) the Customer is apparently insolvent; or
 - 8.1.7. any supply agreement between the Customer and CUK is terminated; or
 - 8.1.8. the Equipment has been misused and mistreated to such an extent that CUK believes that the Customer is unable or unwilling to follow the prescribed health and/or safety guidelines associated with the Equipment or to continue to keep the Equipment in good and safe working order.
 - 8.2. If this clause applies then, without prejudice to any other right or remedy available to CUK, CUK shall be entitled to terminate this Agreement immediately by giving notice to the Customer.
 - 8.3. In addition, either party will be entitled to terminate this Agreement at any time by giving the other at least 14 days notice in writing.
9. **Consequences of Termination**
 - 9.1. On termination of this Agreement, the Customer's right to possession of the Equipment will cease and the Customer will either purchase the Equipment for the price notified to it by CUK or return the Equipment to any place which CUK may reasonably require. If the Equipment is not purchased or returned within two working days of the end of this Agreement CUK or the Owner shall be entitled to collect the Equipment at the expense of the Customer.
 - 9.2. The Equipment must be returned in working order and good condition (fair wear and tear excepted) commensurate with its age. It should be clean, complete with all necessary parts. If it is not in such condition then CUK or the Owner will, at the cost of the Customer, carry out such work at its rates prevailing at the time of repair as is necessary to bring the Equipment back into such safe and good condition. CUK will notify the Customer of the cost which shall be due on demand.
10. **General**
 - 10.1. This Agreement constitutes the entire agreement in relation to the hire and maintenance of the Equipment.
 - 10.2. If any provision of this Agreement is held to be invalid the validity of the remaining provisions shall not be affected.
 - 10.3. No failure or delay on the part of CUK in exercising any right, power or remedy will operate as a waiver of it nor will any single or partial exercise of any such right, power or remedy preclude any other or further exercise of such right, power or remedy.
 - 10.4. CUK will be entitled to assign its rights under this Agreement in whole or in part to any person and to engage sub-contractors, but the Customer will not be entitled to assign any of its rights.
 - 10.5. The Customer acknowledges that it will be treated as having received any communication sent to it 48 hours after posting to its usual or last known address.
 - 10.6. This Agreement may only be modified by a written agreement duly signed by an authorised officer or representative of CUK.
 - 10.7. This Agreement will only confer rights and benefits on CUK and the Customer and no third party will acquire any rights or benefits under this Agreement.
 - 10.8. The Customer acknowledges that in entering into this Agreement it has not relied on any representation, warranty, agreement or statement not set out herein.
 - 10.9. This Agreement shall be governed by the laws of England and the parties submit to the exclusive jurisdiction of the English courts.