

## **BRITVIC EMEA COMMERCIAL TERMS AND CONDITIONS**

**1. Appointment & Territory:** From the Commencement Date, the Distributor is appointed to import, market, sell and distribute the Products in the Territory on a [non-exclusive/exclusive] basis under the terms and conditions of this Agreement across the Distribution Channel for the Term. **FOR EXCLUSIVE CONTRACT ONLY:** Strictly for Global Account Customers only Britvic reserves the right to deliver and manage the Global Account Directly or if Britvic decides to use the distribution model then the Distributor will manage the customer in accordance with terms to be agreed separately between Britvic and the Distributor. Where distributing to the Global Account the Distributor will be asked to provide mandatory sales out data to Britvic directly in order to measure agreements with Global Accounts and also ensure that no secondary wholesaling is taking place.

In case Britvic and the Distributor cannot mutually agree terms then Britvic reserves the right to appoint another distributor to service the Global Account. The Distributor accepts the appointment and undertakes to use its best endeavours to develop, advertise, promote and sell the Products in the Territory and to expand the sale of the Products by all reasonable and proper means and in accordance with Britvic's [Brand Building Principles] OR [brand guidelines] as supplied by Britvic from time to time and the JBP and the KPIs. The Distributor will be entitled to describe itself as Britvic's "Authorised Distributor" for the Products in the Territory but shall not hold itself out as Britvic's agent for sales of the Products nor be entitled to bind Britvic in any way. Nothing in this Agreement shall prevent Britvic from selling the Products in the Territory whether directly or indirectly. The Distributor is appointed in the Territory. All other territories in the world are reserved to Britvic (and/or its appointed distributors) (referred to as the Reserved Territories). The Distributor must not indirectly or directly: (i) actively approach, or solicit, customers in the Reserved Territories (including by way of visits, direct marketing and/or targeted online advertising); or (ii) establish, or maintain, any branch, sales outlet or distribution depot in the Reserved Territories for the sale of the Products; or (iii) manufacture, promote, sell, be interested in or act as agent for the sale of any products that compete with the Products meaning any brands of [premium mixers (tonics and ginger ales) and syrups] excluding the Products save that where the Territory includes a country within the European Economic Area (EEA), nothing shall prohibit the Distributor from selling the Products to a customer located outside of the Territory to a customer in another country within the EEA provided that (i) the Distributor has not directly or indirectly solicited such sale outside the Territory and (ii) the Distributor does not establish or maintain any distribution depot for the Products outside the Territory. For the avoidance of doubt, it shall not include any brands that do not belong to Britvic sold by the Distributor and communicated to Britvic as at the date of this Agreement.

**2. Orders & Delivery:** When Britvic accepts an order, its acceptance shall constitute a contract between the Distributor and Britvic for the supply by Britvic of Product subject to the terms and conditions of this Agreement. The Distributor shall order Product from Britvic by submitting a pdf purchase order by email to [export@britvic.com](mailto:export@britvic.com) or in accordance with such procedures as Britvic may from time to time specify. Purchase orders should as a minimum include the following information: the purchase order reference number (which should be used by the Distributor in all future correspondence regarding the order), Britvic's SKU codes and where appropriate the Distributor's own codes. Terms and conditions on the Distributor's order form or other similar document shall not be binding on Britvic and the placing of an order for or the acceptance of the Products by the Distributor shall indicate unqualified acceptance of these conditions. Britvic reserves the right to reject orders or any part thereof and does not regard any order the Distributor places as accepted until Britvic delivers the order to the Distributor. All Products are offered for sale subject to availability.

Britvic will not accept any order which is below the Minimum Order volume and/or value and will deliver orders to the Place of Delivery and in accordance with the Delivery Terms only. The Distributor shall maintain Minimum Stocks of the Products at all times throughout the Term of this Agreement and shall purchase the Minimum Volume of Products for the agreed Year(s) and thereafter, the parties shall agree the Minimum Stocks and Minimum Volume for each Year in advance, on the basis of growth against targeted and actual volumes in the preceding Year. Where the parties have failed to agree figures for the Minimum Volumes the Minimum Volumes shall increase for each Year by [X]% when compared to the prevailing Minimum Volume for the preceding Year. The parties acknowledge that the Minimum Volume obligations set out in this clause 5 shall be the essence of this Agreement and if the Distributor fails to meet the Minimum Volume requirement then Britvic will have the right to either (a) terminate this Agreement or (b) the exclusivity provisions of this Agreement shall cease to apply and Britvic may (either directly or via a third party/alternative distributor) sell the Products in the Distribution Channel and the Territory. In the event that the Distributor is responsible for managing the export clearances required for the Products, the Distributor will be required to complete and keep an electronic copy of the SAD/C88 document for the export and shall provide a copy of such document to Britvic within 7 days of completion. Britvic will supply with the order on delivery to the Place of Delivery the documentation deemed necessary to permit the Distributor to complete any such import formalities as may be required for the Territory, including a commercial invoice and a bill of lading. Any additional documentation may be supplied by Britvic on request from the Distributor at the Distributors cost.

If Products are delivered faulty or damaged Britvic has the right to replace those Products or issue a credit note in respect of such Products at its discretion. Britvic will not consider any claim for damage, fault or shortage unless it receives written notice from the Distributor within 4 weeks of the Britvic Delivery Date. The Distributor must hold any allegedly damaged or faulty Products at its own expense and must wait for Britvic's instructions and must allow Britvic's representative to examine the relevant Products and to take away samples if necessary.

The Distributor must store and maintain the Products in a satisfactory condition and take out and maintain suitable insurance to cover the Distributor's liabilities under the Agreement including insurance of the Products to a value not less than their full replacement value comprehensively against all usual risks of loss, damage or destruction.

**3. Products:** Britvic may remove products from, and/or add products to, the Product list at any time by giving the Distributor written notice. Britvic may update the Price of the Product(s) once per Year by giving the Distributor 1 months' prior written notice, or during the course of the Year to reflect any increase in the cost of supplying the Products due to: a) foreign exchange fluctuations, increases in taxes or duties, any increases in labour, materials and other manufacturing costs and third-party price increases or any factor beyond Britvic's reasonable control; b) any request by the Distributor to change the delivery date(s), location(s) or quantity or any other agreed delivery conditions or consignment specifications; c) any delay caused by the Distributor or any failure of the Distributor to give Britvic adequate or accurate information or instructions; and d) if the number of outlets/customers and/or channels materially decreases or the Distributor disposes of a substantial part, or changes the nature, of its business, acquires a business or fails to meet the Minimum Order and/or Minimum Volume. Any Orders placed after the end of the notice period shall be subject to the price as varied by the notice. Britvic may, from time to time, propose a recommended retail price and/or impose a maximum retail price for the Products. Notwithstanding this the Distributor shall determine its re-sale prices at its discretion and shall provide Britvic with copies of its up-to-date price lists.

**4. Reporting/Forecasting:** The Distributor shall provide to Britvic on a monthly basis a rolling 6 month forecast of its estimated requirement for the Products and a report of sales of the Products which it has made in the

preceding month and containing such other information as Britvic may reasonably require in a form set out by Britvic.

**5. Prices & Payment:** The Prices which the Distributor shall pay for the Products are exclusive of VAT (or equivalent other sales taxes), consumption taxes, packaging taxes, environmental taxes, customs and excise duties, any sugar/soft drink taxes and levies, corporate or any other income or withholding taxes. The Distributor is responsible for handling all import entry clearances for the Products, the collection, remittance and payment of any or all applicable local taxes, clearance charges, levies, import duties, assessments and other fees of any kind imposed by any governmental or other authority in respect of the purchase, importation, marketing, storage, warehousing and/or distribution of the Products in the Territory. The Distributor shall pay Britvic for the Products, without making any deduction or set off, on or before the Payment Date and in the Currency stipulated. Without prejudice to any other rights or remedies available to Britvic, if the Distributor fails to pay the price for any Products by the Payment Date, Britvic shall charge the Distributor interest at the rate of 4% per annum compounded monthly, from the date the payment became due until actual payment is made by the Distributor. Time is of the essence with regards to payment and is a condition precedent to future deliveries. Non-payment by the Distributor for the Products by the Payment Date shall be deemed a material breach under this Agreement. Title to the Products will not pass to the Distributor until full payment has been received by Britvic in cleared funds.

**6. Marketing & Promotion:** The Distributor shall use in relation to the Products only such advertising, promotional and selling materials as are approved in writing by Britvic. For the avoidance of doubt, the Distributor will not produce any point of sale or promotional material relating to the Products and bearing the intellectual property of Britvic without Britvic's prior written approval. If requested to do so, the Distributor shall prepare and submit to Britvic for approval a draft marketing and promotion plan for each Year of the Agreement in advance of the start of each Year in a format requested by Britvic ("Marketing and Promotion Plan"). Britvic shall at its discretion pay the Marketing and Promotion Contribution subject to the Distributor (a) complying with Britvic's reasonable instructions in respect of the relevant marketing activities and/or promotions; (b) complying with the relevant Marketing and Promotion plan or JBP and (c) providing to Britvic documentary evidence of completion of the relevant promotion/activity together with a correct and complete invoice submitted promptly following the completion of such activities but no later than 90 days after. No claims for payment will be considered after 90 days. Any unspent funds or investment in any Year will not be rolled over into the subsequent Year and should be returned to Britvic.

**7. Product Recall:** The Distributor shall allow with prior written notice Britvic or its nominee access to its premises in order to (a) inspect the storage of the Products or/and (b) inspect the books and records of the Distributor in connection with the proper performance of this Agreement. The Distributor shall immediately notify Britvic in writing of any customer complaints and reported defects relating to the Products. The Distributor shall maintain an effective system for the recall of the Products from the Territory, including keeping records of the sale of all Products in sufficient detail to enable appropriate recall procedures to be implemented, and shall assist Britvic in the event that Britvic recalls any of the Products for any reason whatsoever.

**8. Limitation of Liability:** Britvic's liability in respect of a recall or withdrawal shall be limited to the supply of replacement Products or, where replacement Products are not available, credit on receipt of the recalled or withdrawn Products or proof of destruction, and any costs of uplift and/or disposal which Britvic considers reasonable. Britvic shall not be liable to Distributor for (i) any loss of profit; loss of business; depletion of goodwill; reliance loss or wasted expenditure (in the case of all of the foregoing whether direct, indirect or consequential); and/or (ii) for consequential or indirect loss of any kind and howsoever caused, in connection with this Agreement whether for breach of contract, tortious act or omission, breach of statutory duty or otherwise. Britvic's total liability in contract, tort (including negligence), breach of statutory duty or warranty, misrepresentation, restitution or otherwise, arising out of or in connection with the performance or contemplated performance of the Agreement and all orders, including but not limited to claims relating to promotional discounts or trading investment, shall be limited in aggregate to the lesser of: (a) the total charges paid or payable for Products under that order or (b) the total charges paid or payable for Products in the 12 months prior to the cause of action/claim arising. Nothing in this Agreement shall limit either party's liability for death or personal injury caused by its (including its employees', agents' or subcontractors') negligence; fraud or fraudulent misrepresentation; or any other act or omission, liability for which cannot be excluded or limited under applicable law.

**9. Termination:** Britvic shall be entitled to terminate this Agreement forthwith by written notice to the Distributor if: a) the Distributor fails to achieve the Minimum Volume; b) the Distributor fails to comply with any Brand Building Principles; c) the Distributor fails to achieve the KPIs; d) the Distributor repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that the Distributor's conduct is inconsistent with the Distributor having the intention or ability to give effect to the terms of this Agreement; or e) there is a change in the legal or beneficial ownership of the Distributor.

Either party may terminate this Agreement by giving not less than 6 months' notice in writing to the other party, such notice not to expire before the last day of the Initial Term. Following the Initial Term, either party may terminate this Agreement without cause by serving at least 3 months' written notice on the other party. Either party shall be entitled to terminate this Agreement forthwith by written notice to the other if: a) the other party commits a material breach of any of the provisions of this Agreement and, in the case of a material breach capable of remedy, fails to remedy the same within 30 days of receipt of a written notice giving full particulars of the breach and requiring it to be remedied; b) an encumbrancer takes possession, or a receiver is appointed over any of the property or assets of that other party; c) the other party makes any voluntary arrangement with its creditors or becomes subject to an administration order, goes into liquidation or anything analogous under the law of any jurisdiction occurs in relation to that other party; or d) the other party ceases, or threatens to cease, to carry on business. Termination will not, of itself, give rise to any compensation, damages, payment for goodwill or other liability irrespective of: (i) any local laws or regulations to the contrary; or (ii) any importation, marketing and distribution carried out by the Distributor prior to entering into this Agreement. On termination of this Agreement for any reason the Distributor shall discontinue all distribution of the Products in the Territory and cease all use of intellectual property belonging to Britvic (including the Trademarks, as defined below), except for the sale of inventory remaining unsold and Products which were ordered prior to notice to terminate being served but not yet supplied at the date of termination. Britvic shall deliver to the Distributor any orders that were placed by the Distributor prior to receiving the termination notice. On termination the Distributor shall immediately pay to Britvic all of the Britvic's outstanding unpaid invoices and interest.

The Distributor shall at its own expense within 30 days of such termination send to Britvic or otherwise dispose of in accordance with the directions of Britvic all samples of the Products and any advertising, promotional or sales material relating to the Products then in the possession of the Distributor. Each party shall return, or at the request of the other party, destroy the confidential information that it has received from the other party pursuant to this Agreement.

The Distributor shall, from receipt of notice to terminate this Agreement, take such steps as Britvic may reasonably require in order to provide an orderly and smooth transition of the responsibility for the distribution, sale and marketing of the Products in the Territory from the Distributor to Britvic and/or any new distributor appointed by Britvic and efficiently and effectively manage all relevant exit activities.

**10. Trademarks & IP Rights:** In this Agreement, Trademarks means such registered or unregistered trademarks of Britvic which Britvic permits the Distributor to use in the Territory in respect to the Products.

Britvic hereby grants to the Distributor the non-exclusive and non-transferable right, in the Territory, to use the Trademarks in the promotion, advertisement and sale of the Products, subject to, and for the Term of this Agreement. All intellectual property rights in the Products shall remain the property of Britvic or its licensors. The Distributor will not acquire any intellectual property rights, whether by licence or otherwise relating to the Products and may not reproduce, amend, adapt or register any of Britvic's intellectual property, without Britvic's prior written consent, or do anything, or permit any third party to do anything which will damage or bring into disrepute such intellectual property rights. The Distributor shall immediately bring to the notice of Britvic any improper or wrongful use in the Territory of the Trademarks and the Distributor shall on being so requested by Britvic and at Britvic's cost assist in taking all steps to defend the rights of Britvic including the institution at Britvic's cost of any actions which it may deem necessary to commence for the protection of any of its rights.

**11. General:** The Distributor (and its officers, employees, agents and subcontractors) shall abide by all applicable laws, rules, regulations, permit and/or licence requirements relating to or affecting this Agreement and comply with all applicable laws, statutes, regulations relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010. The Distributor represents, warrants and covenants that it has complied, and shall continue to comply, with all applicable Export Compliance Laws and Regulations (as defined below) and therefore undertakes to hold Britvic harmless of any consequences arising from its breach. The Distributor, further represents, warrants and covenants that, directly or indirectly: (a) it is not: (i) owned or controlled by, or (ii) acting on behalf of, or for the benefit of any person or entity subject to economic sanctions ("Sanctioned Person"), and (b) no Sanctioned Person is or shall be involved in the performance of this Agreement. The Distributor undertakes that the Products deliverable under this Agreement shall not directly or indirectly be: (a) exported to or imported into any jurisdiction if such export or import is prohibited by the Export Compliance Laws and Regulations; (b) sold or delivered to any person if such sale or delivery is prohibited by the Export Compliance Laws and Regulations; (c) sold or delivered to any person for the purposes of any activity violating Export Compliance Laws and Regulations; or (d) sold or delivered to a destination prohibited by the terms on which Britvic has acquired the Products. Britvic shall be entitled, without incurring any liability and/or penalty, to terminate this Agreement with immediate effect if the Distributor becomes in any way sanctioned, restricted or prohibited by Export Compliance Laws and Regulations. For the purpose of this clause, "Export Compliance Laws and Regulations" shall mean any economic sanctions, prohibitions, conventions, treaties and/or import or export restrictions imposed by the United Nations (UN), the United States (US), the European Union (EU), the United Kingdom (UK) and by any applicable country laws in the Territory.

The Distributor shall comply with, and shall be responsible for all costs relating to compliance with, all laws and regulations from time to time in force in the Territory relating to the registration, labelling/artwork, storage, distribution, marketing and sale of the Products, and shall keep Britvic informed of all amendments to or proposals to amend the same and the progress/outcome of such compliance. The Distributor shall be responsible for any loss sustained by either party arising from the Distributor's failure to give immediate notice of and comply with such requirements.

Each party agrees to keep the following information confidential: (i) the terms of this Agreement; and (ii) any information which it receives from the other party in connection with this Agreement which is either identified as confidential or which a reasonable person would consider confidential in nature. The provisions of this confidentiality clause shall continue in force upon termination.

This Agreement will be governed by English law and any disputes (including non-contractual disputes or claims) relating to it will be referred to the exclusive jurisdiction of the English courts. The provisions of the United Nations Convention on the International Sale of Goods shall not apply to this Agreement.