

**PENNSYLVANIA LIQUOR CONTROL BOARD  
STANDARD CONTRACT TERMS AND CONDITIONS  
FOR STOCK AND SPECIAL ORDERS WINE, SPIRITS AND  
ACCESSORIES/CONSUMABLES PURCHASE ORDERS**

The Vendor shall furnish products to the Bailment Warehouse Program, to Special Order customers, and to the Pennsylvania Liquor Control Board ("PLCB"), as appropriate, in accordance with these Standard Contract Terms and Conditions for Stock and Special Orders Wine, Spirits and Accessories/Consumables Purchase Orders ("Terms"). A complete Contract ("Contract") is comprised of the following documents as to the following particular purposes:

- a. Bailment Products: A signed Bailment Agreement, these Terms and, where applicable, a Blanket Purchase Agreement and a consumption advice document.
- b. Non-Bailment Products inclusive of Special Order products and Non-Bailment products such as seasonal items and one-time buys: A PLCB-approved and issued purchase order and these Terms.

**1. TERM OF CONTRACT**

The Contract shall end upon the expiration of the specified warranty period for any product accepted by the PLCB, or with respect to a Bailment Agreement, upon cancellation in writing by the PLCB or by the Vendor with thirty calendar days' prior written notice to the other party. Warranties for purchased products shall survive contract expiration or termination.

**2. INDEPENDENT CONTRACTOR**

In performing its obligations under the Contract, the Vendor will act as an independent contractor and not as an employee or agent of the PLCB.

**3. COMPLIANCE WITH LAW**

The Vendor shall comply with all applicable international, federal and state laws and regulations and local ordinances in performing its obligations under the Contract. Any Vendors selling wine and/or spirits to the PLCB pursuant to these terms must obtain the proper licensing pursuant to the Pennsylvania Liquor Code. Failure to obtain and maintain a valid license or permit to sell alcohol products to the PLCB will be considered a material breach of this Contract. The Vendor shall also specifically comply with the Pennsylvania Liquor Code Sections 210, 214, and 4- 491(13 and 14). 47 P.S. §§§§ 2-210, 2-214, 4-491(13) and 4-491(14).

**4. COMPENSATION/INVOICES**

The Vendor shall be required to furnish the products at the costs stated in the consumption advice and/or purchase order. All products shall be delivered within the time period specified in the consumption advice and/or purchase order. The Vendor shall be compensated only for products accepted by the PLCB.

Itemized invoices must reference the associated purchase order or consumption advice to which they apply.

- a) Invoices for non-bailment products will not be reviewed by PLCB until the products have been receipted into the PLCB distribution center(s).
- b) Products held in bailment may not be invoiced until they have been taken into PLCB inventory as indicated on consumption advice documents.
- c) Proof of delivery of Special Order products sent directly to customers (retail and licensee) or to a PLCB Fine Wine & Good Spirits store ("FW&GS") or licensee service center must be appended with each invoice.

## **5. PAYMENT**

The PLCB shall put forth reasonable efforts to make payment within 60 days after invoice creation or, with respect to bailment products, within 60 days after invoice review. No invoice will be paid until all items have been receipted into PLCB inventory and matched against its applicable Purchase Order. If any payment is not made within 15 days after the required payment date, the PLCB may pay interest as determined by the Secretary of Budget in accordance with Act No. 266 of 1982 and regulations promulgated pursuant thereto. The PLCB reserves the right to conduct further testing and inspection after payment, but within a reasonable time after delivery, and to reject the products if such post payment testing or inspection discloses a defect or a failure to meet specifications.

The Vendor agrees that the PLCB may set off the amount of any state tax liability or other obligation of the Vendor or its subsidiaries to the PLCB against any payments due the Vendor under any contract with the PLCB.

The payment terms documented in this paragraph 5 shall only be applicable to the extent that payment has not been blocked by the Commonwealth of Pennsylvania (known as a Contractor Responsibility Program or "CRP" Block). The imposition or removal of a CRP Block against the Vendor is not within the control of the PLCB. Upon removal of the CRP Block, purchase order(s) and/or payment(s) will be issued in normal course. The PLCB is not liable for any interest or late fees when a CRP Block is the cause for such delayed payment.

## **6. TAXES**

The PLCB is exempt from Pennsylvania state sales tax, local sales tax, public transportation assistance taxes and fees, and vehicle rental tax. No exemption certificates are required by Department of Revenue regulations and none will be issued.

## **7. LABELING**

All products must be labeled as required by the PLCB and in accordance with the regulations of the federal government. Should any liquor or wine regulations (federal or otherwise) cause a change to be made on the labels, thereby affecting the product's

present classification or type, Vendor agrees to take back for exchange or to grant PLCB credit at invoice price for any and all product which is in PLCB's possession at the time such amended regulations become effective.

## **8. WARRANTY**

The Vendor warrants that all products furnished by the Vendor, its agents and subcontractors shall be free and clear of any defects in merchantability, workmanship and materials. Vendor warrants that all products will conform to their specifications until any expiration date or end-of-shelf-life date indicated on the product by the manufacturer. Unless otherwise stated, all products are warranted for a period of not less than one year following delivery by the Vendor and acceptance by the PLCB. The PLCB has a right to reject any product that is within six months of its freshness date.

## **9. DELIVERY**

Except for products being consolidated internationally and shipped F.O.B. Shipping Point by the PLCB's contracted third-party freight forwarder, any products shipped to a designated PLCB delivery point shall be shipped F.O.B. Destination. All deliveries must be in compliance with all packing, labeling, and consolidation requirements defined by the PLCB and, excepting deliveries into bailment by the Vendor, in the quantities stated in the purchase order. Unless otherwise agreed in advance and in writing by the parties, delivery must be made on or before the requested delivery date identified on the purchase order, as applicable. Time is of the essence and, in addition to any other remedies, the Contract is subject to termination for failure to deliver as specified.

If a specific vintage year is specified in a purchase order, only that specific vintage is eligible for shipment to the PLCB. Any changes in vintages on vintage-specific orders must be approved by the PLCB prior to shipment. Otherwise, product may be subject to rejection or return pursuant to Paragraph 10 below.

Vendor is responsible for coordinating with the PLCB in advance to set an appointment time for any delivery made to a PLCB distribution center. The Vendor may be subject to the imposition of liquidated damages via debit memo for failing to honor any delivery appointment ("No Show Charge"). The No Show Charge shall reflect the actual time and labor costs incurred by the PLCB from its third-party distribution center operator as a result of Vendor's failure to honor the delivery appointment. The imposition of the No Show Charge shall be at PLCB's sole discretion.

## **10. RETURNED, REJECTED, AND RECALLED PRODUCTS**

It is understood and agreed that all products received under this Purchase Order may be returned for "ordinary and usual commercial reasons" in accordance with federal and state regulations.

PLCB will notify Vendor in the event that a product return needs to be initiated. The Vendor shall: 1) if commercially reasonable and upon agreement of the PLCB, replace

returned products with conforming products at Vendor's sole cost and expense; or 2) reimburse the PLCB in the amount of the full invoice cost, plus any additional amount which will be fixed by the PLCB as reimbursement for expenses incurred by the PLCB for further handling and storing of the product.

Upon consultation with the PLCB, the Vendor may retrieve its returned product or direct the PLCB to properly destroy the product. Vendor bears full responsibility for the cost to retrieve returned product and shall reimburse the PLCB for expenses incurred by the PLCB to store the product until retrieval occurs. If Vendor fails to retrieve returned product within 10 days of notification, the product will be considered abandoned and may be destroyed at the PLCB's discretion.

Vendor shall reimburse the PLCB by application of a debit memo against accounts due Vendor for any expense incurred by the PLCB when product is destroyed on behalf of the Vendor due to Vendor's direction or abandonment.

In the event that a Vendor issues a recall for its product, regardless of where the subject product is in the distribution chain, the Vendor will immediately assume financial responsibility for the product, including any and all costs involved in recalling the product, including the cost of retrieval or destruction.

Rejected product will not be receipted into the distribution center or received by any other PLCB location and remains the sole responsibility of Vendor.

## **11. TITLE**

Vendor will retain title and all liability and responsibility for its products until:

- a) Confirmed delivery to the customer for all direct delivered Special Orders;
- b) Receipt by the PLCB at a FW&GS store or licensee service center for all indirect Special Orders;
- c) Receipt into a PLCB facility of any non-bailment products;
- d) PO issuance following a vendor-approved bailment consumption advice; or
- e) Receipt by the PLCB's contracted third-party freight forwarder for all international consolidation products.

Title to product that has been rejected or designated for return shall immediately vest with the Vendor.

## **12. TERMINATION PROVISIONS**

Except as it relates to products being consolidated and shipped internationally by the PLCB's contracted third-party freight forwarder, in the event that the PLCB terminates the Contract, in whole or in part, as provided in this Paragraph 12, the PLCB will only be responsible for the payment of products that have been properly delivered and accepted in compliance with the terms of this Contract. The PLCB will reject receipt of any product that has not yet been delivered as of the date of termination. Any

products that have been accepted into PLCB inventory will be withdrawn from inventory and prepared for shipment back to the Vendor. If product is not retrieved by the Vendor within 10 days, such product will be considered abandoned and may be destroyed at the PLCB's sole discretion. Vendor shall reimburse the PLCB by application of a debit memo against accounts due Vendor in the amount of the full invoice cost, plus any additional amount which will be fixed by the PLCB as reimbursement for any expenses incurred by the PLCB in storing the product until retrieval or disposal of the product.

As it relates to products being consolidated and shipped internationally by the PLCB's contracted third-party freight forwarder, in the event that the PLCB terminates the Contract, in whole or in part, as provided in this Paragraph 12, the PLCB will only be responsible for the payment of products that have been shipped by the PLCB's contracted third-party freight forwarder and are en route to the PLCB's designated delivery point on the effective date of the termination. Such payments are subject to all other provisions of these terms and conditions, including but not limited to the PLCB's right to reject and/or return products within the parameters of federal laws and regulations.

The PLCB has the right to terminate the Contract for any of the following reasons. Termination shall be effective as indicated in the written notice to the Vendor.

a) **TERMINATION FOR CONVENIENCE:** The PLCB shall have the right to terminate the Contract for its convenience if the PLCB determines termination to be in its best interest.

b) **NON-APPROPRIATION:** The PLCB's obligation to make payments during any PLCB fiscal year succeeding the current fiscal year shall be subject to availability and appropriation of funds. When funds (state and/or federal) are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal year period, the PLCB shall have the right to terminate the Contract.

c) **TERMINATION FOR CAUSE:** The PLCB shall have the right, upon written notice to the Vendor, to terminate the Contract for cause as specified in the Contract or by law. If it is later determined that the PLCB erred in terminating the Contract for cause, then, at the PLCB's discretion, the Contract shall be deemed to have been terminated for convenience under Subparagraph 12.a.

### **13. HOLD HARMLESS PROVISION**

The Vendor shall hold the PLCB harmless from and indemnify the PLCB against any and all claims, demands and actions based upon or arising out of any activities performed by the Vendor and its employees and agents pursuant to the Contract and shall, at the request of the PLCB, defend any and all actions brought against the PLCB based upon any such claims or demands.

#### **14. PATENT, COPYRIGHT, AND TRADEMARK INDEMNITY**

The Vendor warrants that it is the sole owner or author of, or has entered into a suitable legal agreement concerning either: a) the design of the products or the process provided or used in the performance of the Contract which is covered by a patent, copyright, or trademark registration or other right duly authorized by state, federal or international law or b) any copyrighted matter in any report document or other material provided to the PLCB under the Contract. The Vendor shall defend any suit or proceeding brought against the PLCB on account of any alleged patent, copyright or trademark infringement in the United States of the products provided or used in the performance of the Contract. This is upon condition that the PLCB shall provide prompt notification in writing of such suit or proceeding; full right, authorization and opportunity to conduct the defense thereof; and full information and all reasonable cooperation for the defense of same.

As principles of governmental or public law are involved, the PLCB may participate in or choose to conduct, in its sole discretion, the defense of any such action. If information and assistance are furnished by the PLCB at the Vendor's written request, it shall be at the Vendor's expense, but the responsibility for such expense shall be only that within the Vendor's written authorization.

The Vendor shall indemnify and hold the PLCB harmless from all damages, costs, and expenses, including attorneys' fees that the Vendor or the PLCB may pay or incur by reason of any infringement or violation of the rights occurring to any holder of copyright, trademark, or patent interests and rights in any products provided or used in the performance of the Contract. If any of the products provided by the Vendor are held in such suit or proceeding to constitute infringement and the use is enjoined, the Vendor shall, at its own expense remove the product from the possession of the PLCB and/or its distribution centers and reimburse the PLCB for the actual cost of procuring a replacement product. If no replacement product can be procured, then Vendor shall reimburse PLCB for the amount paid by the PLCB for the products as well as any additional handling, warehousing, and transportation fees incurred by the PLCB. The obligations of the Vendor under this paragraph continue without time limit.

#### **15. OWNERSHIP RIGHTS**

The PLCB shall have unrestricted authority to reproduce, distribute, and use any submitted report, data or material, including product images and any associated documentation that is designed or developed and delivered to the PLCB as part of the performance of the Contract.

#### **16. ASSIGNMENT OF ANTITRUST CLAIMS**

The Vendor and the PLCB recognize that in actual economic practice, overcharges by the Vendor's suppliers resulting from violations of state, federal or international antitrust laws are in fact borne by the PLCB. As part of the consideration for the Contract, and intending to be legally bound to the extent permissible by applicable law, the Vendor assigns to the PLCB all right, title and interest in and to any claims

the Vendor now has, or may acquire, under state, federal or international antitrust laws relating to the products which are the subject of the Contract.

## **17. AUDIT PROVISIONS**

In addition to any statutory record retention requirements associated with Vendor's license or permit to sell products to the PLCB, the Vendor agrees to maintain records which will support the costs incurred for the Contract ("Records"). The Vendor shall preserve the Records for a period of three years from date of final payment. The PLCB shall have the right, at reasonable times and at a site designated by the PLCB, to audit the Records and Vendor shall give full and free access to all Records to the PLCB and/or its authorized representatives.

## **18. RIGHTS AND REMEDIES**

The rights and remedies of the PLCB provided in this Contract shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract. The PLCB's failure to exercise any rights or remedies provided shall not be construed to be a waiver by the PLCB of its rights and remedies.

## **19. FORCE MAJEURE**

Neither party will incur any liability to the other if its performance of any obligation pursuant to the Contract is prevented or delayed by causes beyond its control and without the fault or negligence of either party. Causes beyond a party's control may include, but are not limited to, acts of God or war, changes in controlling law, regulations, orders or the requirements of any governmental entity, severe weather conditions, civil disorders, natural disasters, fire, epidemics and quarantines, general strikes throughout the trade and freight embargoes.

The Vendor shall notify the PLCB as soon as practicable, or as soon as Vendor should have reasonably become aware, that such cause would prevent or delay its performance. Such notification shall (i) describe fully such cause(s) and its effect on performance, (ii) state whether performance under the Contract is prevented or delayed and (iii) if performance is delayed, state a reasonable estimate of the duration of the delay. The Vendor shall have the burden of proving that such cause(s) delayed or prevented its performance despite its diligent efforts to perform and shall produce such supporting documentation as the PLCB may reasonably request. After receipt of such notification, the PLCB may elect either to cancel the Contract or to extend the time for performance as reasonably necessary to compensate for the Vendor's delay.

In the event of a declared emergency by competent governmental authorities, the PLCB, by notice to the Vendor, may suspend all or a portion of the Contract.

## **20. CONTRACT CONTROVERSIES**

a) In the event of a controversy or claim arising from the Contract, the Vendor must, within 6 months after the cause of action accrues, file a written claim

with the PLCB for a determination. The claim shall state all grounds upon which the Vendor asserts a controversy exists. If the Vendor fails to file a claim or files an untimely claim, the Vendor is deemed to have waived its right to assert a claim in any forum.

b) The PLCB shall review timely filed claims and issue a final determination, in writing, regarding the claim. The final determination shall be issued within 120 days of the receipt of the claim, unless extended by consent of the PLCB and the Vendor. The PLCB shall send the written determination to the Vendor. If the PLCB fails to issue a final determination within the 120 days (unless extended by consent of the parties), the claim shall be deemed denied. The PLCB's determination shall be the final order as the purchasing agency.

c) Within 15 days of the mailing date of the determination denying a claim or within 135 days of filing a claim if, no extension is agreed to by the parties, whichever occurs first, the Vendor may file a statement of claim with the Commonwealth of Pennsylvania Board of Claims. Pending a final judicial resolution of a controversy or claim, the Vendor shall proceed diligently with the performance of the Contract in a manner consistent with the determination of the Contracting Officer and the PLCB shall compensate the Vendor pursuant to the terms of the Contract.

## **21. ASSIGNABILITY AND SUBCONTRACTING**

a) The Vendor shall not subcontract with any person or entity to perform all or any part of the work to be performed under the Contract without the prior written consent of the PLCB, which consent may be withheld at the sole and absolute discretion of the PLCB.

b) The Vendor may not assign, in whole or in part, the Contract or its rights, duties, obligations or responsibilities hereunder. For the purposes of the Contract, the term "assign" shall include any instance where a new entity intends to be bound by the terms of this Contract.

c) Notwithstanding the foregoing, the Vendor may assign its rights to payment to be received pursuant to the Contract, provided that the Vendor provides written notice of such assignment to the PLCB together with a written acknowledgement from the assignee that any such payments are subject to all of the terms and conditions of the Contract.

d) A change of name by the Vendor, following which the Vendor's federal identification number remains unchanged, shall not be considered to be an assignment hereunder. The Vendor shall give the PLCB written notice of any such change of name and update its profile and licensing records. No name change will be recognized by the PLCB until the Vendor has updated the information in the Portal.

## **22. CONTRACTOR CONDUCT REQUIREMENTS**

a) **Nondiscrimination/Sexual Harassment.** The Vendor shall abide by

the Commonwealth's requirements regarding Non-discrimination/Sexual Harassment in its performance of the Contract. The requirements are set forth in [Management Directive 215.16, as amended](#).

b) **Contractor Integrity.** The Vendor shall abide by the Commonwealth's requirements regarding Contractor Integrity in its performance of the Contract. The requirements are set forth in [Management Directive 215.8, as amended](#).

c) **Contractor Responsibility.** The Vendor shall abide by the Commonwealth's requirements regarding Contractor Responsibility in its performance of the Contract. The requirements are set forth in [Management Directive 215.9, as amended](#).

d) **Americans With Disabilities Act**

i) Pursuant to federal regulations promulgated under the authority of [The Americans with Disabilities Act, 28 C.F.R. §35.101 et seq.](#), the Vendor understands and agrees that it shall not cause any individual with a disability to be excluded from participation in the Contract or from activities provided for under the Contract on the basis of the disability. As a condition of accepting this Contract, the Vendor agrees to comply with the "[General Prohibitions Against Discrimination](#)," 28 C.F.R. §35.130, and all other regulations promulgated under Title II of [The Americans with Disabilities Act](#).

ii) The Vendor shall be responsible for and agrees to indemnify and hold harmless the PLCB from all losses, damages, expenses, claims, demands, suits and actions brought by any party against the PLCB as a result of the Vendor's failure to comply with the provisions of Subparagraph 22.d.i above.

e) **Vendor Code of Conduct.** Entry into a contract containing these terms serves as acknowledgement of and agreement to the [PLCB Vendor Code of Conduct](#).

**23. RIGHT TO KNOW LAW.**

The Pennsylvania *Right-to-Know Law*, Act of February 14, 2008, P.L. 6, No. 3, 65 P.S. §§ 67.101-3104 ("RTKL"), applies to this Agreement.

**24. ENVIRONMENTAL PROVISIONS**

In performing its obligations under the Contract, the Vendor shall minimize pollution and shall strictly comply with all applicable environmental laws and regulations, including but not limited to, the Clean Streams Law Act of June 22, 1937 (P.L. 1987, No. 394), as amended 35 P.S. §691.601 set seq.; the Pennsylvania Solid Waste Management Act, Act of July 7, 1980 (P.L. 380, No. 97), as amended, 35 P.S. § 6018.101 et seq.; and the Dam Safety and Encroachment Act, Act of November 26, 1978 (P.L. 1375, No. 325), as amended, 32 P.S. § 693.1. In addition, the Vendor shall abide by the Commonwealth's requirements regarding the identity and hazards

of hazardous substances supplied or used by the Vendor in performance of the Contract. The requirements for the identification and labeling of hazardous substances are detailed in 25 Pa. Code §261a, et. seq.

## **25. COVENANT AGAINST CONTINGENT FEES**

The Vendor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the Vendor for the purpose of securing business. For breach or violation of this warranty, the PLCB shall have the right to terminate the Contract without liability or in its discretion to deduct from the Contract price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

## **26. APPLICABLE LAW**

The Contract shall be governed by and interpreted and enforced in accordance with the laws of the Commonwealth of Pennsylvania (without regard to any conflict of laws provisions) and the decisions of the Pennsylvania courts. The Vendor consents to the jurisdiction of any court of the Commonwealth of Pennsylvania and any federal courts in Pennsylvania, waiving any claim or defense that such forum is not convenient or proper. The Vendor agrees that any such court shall have in personam jurisdiction over it, and consents to service of process in any manner authorized by Pennsylvania law.

## **27. INTEGRATION**

The Contract is comprised of the documents as indicated in the Preamble to these Terms, above, and constitutes the entire agreement between the parties. No agent, representative, employee or officer of either the PLCB or the Vendor has authority to make, or has made, any statement, agreement or representation, oral or written, in connection with the Contract, which in any way can be deemed to modify, add to or detract from or otherwise change or alter its terms and conditions. No negotiations between the parties, nor any custom or usage, shall be permitted to modify or contradict any of the terms and conditions of the Contract.

## **28. PROHIBITION OF AMENDMENT**

Any changes to these standard terms and conditions must be approved by the Commonwealth of Pennsylvania Office of Attorney General. The PLCB reserves the right, in its sole discretion, to modify, terminate or re-issue any Purchase Order as needed to mitigate any delays or interruptions of its operations.

## **29. SPECIAL ORDERS**

"Special Orders," as that term is defined in the Liquor Code, may be delivered directly to the customer or to a PLCB FW&GS store or licensee service center. The PLCB will charge the customer on the date Vendor specifies that shipment will occur. The PLCB

bears no responsibility for the payment of shipping costs or any other miscellaneous fees associated with a Special Order. It is the responsibility of the Vendor to arrange shipping with an appropriate carrier for all Special Orders. The Vendor may not invoice the PLCB for any Special Order until proof of delivery can be provided.

In the event that a Special Order product must be returned or refunded, the Vendor is responsible for working directly with the customer and collecting all necessary documentation, including photographs, if necessary. The Vendor must then notify the PLCB of the incident and the PLCB, in its sole discretion, will process the refund.

All Special Orders must be fulfilled and delivered within 30 days of the date the order is placed, or the transaction may be cancelled.