



PURCHASE ORDER TERMS AND CONDITIONS – BEVERAGE ALCOHOL

The terms and conditions in this document are incorporated into every purchase order for beverage alcohol issued by Manitoba Liquor and Lotteries Corporation (MBLL). The promises, warranties and representations in this document are deemed to be given by every supplier who receives a purchase order from MBLL, as amended by either MBLL or the Supplier, which amendments have been accepted by MBLL. (the "Purchase Order")

The purchase order, together with these terms and conditions and the Supplier acknowledgement document forms the entire agreement between MBLL and the Supplier.

1. PURCHASE ORDERS

- a) MBLL will only purchase beverage alcohol as required and makes no guaranties to purchase any set quantity other than as detailed on Purchase Order.
- b) MBLL shall only purchase the beverage alcohol as described on the Purchase Order and MBLL shall be under no obligation to accept beverage alcohol that does not correspond to the description on the Purchase Order. If the beverage alcohol supplied does not correspond with the description, MBLL has the right to return, destroy or discount the product in whole or in part, at the Supplier's expense.
- c) The Supplier may request that a Purchase Order be amended in quantity, description, UPC, SCC or cancelled at any time prior to the goods being physically shipped from the Supplier's location. If agreed to by MBLL, a revised copy of the Purchase Order will be sent to the Supplier.
- d) MBLL may amend a Purchase Order in whole or in part at any time prior to goods being physically shipped from the Supplier's location.
- e) Risk of loss and or damage to the beverage alcohol will pass to MBLL upon delivery, in accordance with Incoterms 2010. MBLL shall have the right to inspect all products supplied to determine whether the products appear to be in accordance with the requirements of this Agreement.

- f) The Supplier must issue an acknowledgement to MBLL by email to the individual indicated on the Purchase Order. The acknowledgment should be issued within seven (7) calendar days after receipt by the Supplier, and should include the product description, confirmation of the price, shipping quantity, case size, and vintage. On beer and cask wine acknowledgments the best before date or production date must be included.
- g) The Supplier agrees to ship all wines ordered by MBLL with the newest vintage unless the vintage is specified in the description on the Purchase Order. If for any reason the vintage indicated on the Purchase Order is not available, the Supplier must notify MBLL indicating the next available vintage. MBLL must agree, in writing, to the vintage change before the wine can be shipped.
- h) A Supplier may change the case price at any time prior to the goods being physically shipped from the Supplier's location; however the retail price won't be affected until after the quarterly price change. If a specific retail price is requested by the Supplier, MBLL will adjust the case price to accommodate the firm retail price. Factors such as freight, customs, duties, excise duties exchange rates, etc. are all calculated when establishing a retail price. Additional details regarding MBLL pricing structure may be obtained from the MBLL Pricing and Listing document found on our corporate website.

2. PACKAGING

All packaging requirements must follow the guidelines of the Canadian Food Inspection Agency. The guidelines can be reviewed at <http://www.inspection.gc.ca>.

- a) The Supplier shall package the beverage alcohol with a duty of care to help ensure safe shipment. Corner posts should be used to reduce product damage during transport.
- b) The Supplier should clearly mark one side and one end of each case with a SCC or EAN code, MBLL Purchase Order number and a product description, SCC (shipping container code bar code) which are now called GTIN (Global Trade Identification Number) are 14 digits in length.
- c) All symbols on consumer products must meet the standards for quality of the Electronic Commerce Council of Canada, The Uniform Code Council (U.S.A.) or EAN International.
- d) All shipping container markings shall be positioned so they can be read when the consumer units packaged inside are placed in an optimum position for storage.

3. FREIGHT TERMS

- a) All Purchase Orders will contain an Incoterm so that all parties understand their obligations and responsibilities. MBLL uses Incoterms 2010 to eliminate misunderstanding, disputes and litigation caused from parties unaware of the different trading practices in their respective countries. The most common Incoterms used by the MBLL are EXW or FCA.

4. PRODUCT LABELING GUIDELINES

All packaging requirements must follow the guidelines of the Canadian Food Inspection Agency.

The guidelines can be reviewed at <http://www.inspection.gc.ca/food/labelling/food-labelling-for-industry/alcohol>.

5. SIGNED TRADE AGREEMENT RATES

- a) In order to qualify for the lower Agreement rates, each Supplier from the originating country must supply MBLL with a Certificate of Origin. This certificate must be submitted on an annual basis or the duty rate on these products will be raised to the Most Favoured Nation (MFN) rate. These certificates may be submitted in two ways:
 - (i) Per Purchase Order: each product supplied to MBLL is listed individually for each purchase order.
 - (ii) Blanket Certificate: the certificate indicates all products the supplier exports to Canada for one year. (New certificate required for each calendar year.)
- b) Each year if a Certificate of Origin has not been received by December 31st the supplier's products will revert to the higher MFN rate and the corresponding higher retail price will be implemented at the earliest convenient date after January 1.

6. QUALITY CONTROL

- a) MBLL has a comprehensive Quality Control program in place to ensure quality beverage alcohol is sold in the province of Manitoba, Canada. When quality concerns are noted, MBLL will work with the supplier and local agent to take corrective action. MBLL will charge back for any corrective action taken but not limited to, recalls, reworking (UPC codes, SCC codes, tamper evident seals), destruction, returning product to supplier, candling, label corrections, and glass contamination. Rates have been standardized for these services and are available in the MBLL Pricing & Listing document.

7. REPRESENTATIONS AND WARRANTIES

- a) The Supplier represents and warrants (and it is a condition hereof) that the beverage alcohol described in each Purchase Order complies with the requirements of Health Canada and the Food and Drugs Act & Regulations (Canada) and further warrants and certifies that the beverage alcohol does not contain any contaminants, chemical or otherwise, or foreign materials which render the product unacceptable by Canadian standards.
- b) The Supplier represents and warrants (and it is a condition hereof) that the manufacture, sale, distribution and use of the beverage alcohol described in each purchase order does not and will not infringe any patent, trademark, copyright, industrial design or other proprietary right, whether domestic or foreign, and the Supplier shall indemnify and hold the Commission harmless from any and all claims, demands, actions, judgments, damages, losses (including economic loss), liabilities and expenses (including legal costs and expenses) arising out of any such infringement or claim of infringement.
- c) The Supplier must comply with all applicable laws and regulations prescribed by any relevant governmental authority, including (without limitation) all fire, safety, employment, labour, workers' compensation and other applicable laws and regulations, and must obtain all necessary permits at its own cost unless the Purchase Order specifies that MBLL will obtain them.

8. CANCELLATION

- a) MBLL may cancel a purchase order at any time for any reason prior to the beverage alcohol being physically shipped from the Supplier's location.
- b) If the product from a cancelled Purchase Order arrives at MBLL, MBLL may return the beverage alcohol (or any part thereof) to the Supplier at the sole cost and risk of the Supplier, and the Supplier shall pay to MBLL any and all costs incurred in the receipt, acceptance or return of such beverage alcohol.
- c) MBLL shall not be liable for any costs, expenses or losses incurred by the Supplier (or Supplier's agent) as a result of the cancellation of an MBLL Purchase Order and the Supplier agrees that it will not impose any penalty or cancellation charge on MBLL.

9. FUTURES

- a) For all futures orders, the Supplier agrees to be liable for, and to replace any product that is damaged, does not conform with the Purchase Order, or does not meet the requirements as outlined in this agreement, and to reimburse MLCC for any costs associated therewith.

10. DELIST CHARGEBACK

- a) There are four classifications of products which may be discounted to clear inventories, general listings, specialty listings, Christmas listings and subsequent price reduction on products already delisted. Delisted products will be reduced in price to enable current inventory to be sold through. Discount costs are borne by the MBLL, with the exception of general list products. For general listings, the MBLL charges the Supplier 25% of the Supplier's invoice cost to cover the retail discount for each unit still in inventory at the time the discount period begins.

11. PAYMENT TERMS

- a) All payments shall be issued to the Supplier via electronic funds transfer (EFT) and email remittance;
- b) The Supplier shall provide MBLL with EFT bank information and an email address for EFT remittances.
- c) MBLL's standard payment terms are Net thirty (30) days after receipt by MBLL of beverage alcohol.
- d) The MBLL will pay the case price that appears on the Purchase Order unless the Supplier advises MBLL in writing of a case price change. The request must be sent before the product is physically shipped from the Supplier's location and the MBLL must agree to the change before any revisions will be considered to be part of the Purchase Order.

12. CONFIDENTIALITY

- a) While any Purchase Order is in effect, and at all times thereafter, the Supplier and any officers, employees or agents of the Supplier:
 - i) shall treat as confidential all information, documents and materials, including (without limitation) all data, research, reports, drawings, designs, plans, photographs and other materials, acquired or to which access has been given in the course of, or incidental to, the performance of this Contract, including any Personal Information (as defined in *The Freedom of Information and Protection of Privacy Act* (Manitoba)) or the Personal Information Protection and Electronic Documents Act, (collectively, "Confidential Information");
 - ii) shall not, without first obtaining written permission from MBLL,
 - use, or permit use of, Confidential Information except for the proper performance of the Contractor's obligations under this Contract, or
 - disclose, or permit disclosure of Confidential Information to any person, corporation or organization; and
 - iii) shall comply with any rules or directions made or given by MBLL with respect to safeguarding or ensuring the confidentiality of the Confidential Information.

b) Except for Personal Information, the obligations of confidentiality set out in section 9.01 do not apply to any Confidential Information which:

- i) is known to the public through no act of the Supplier at the time of the acquisition thereof by the Supplier;
- ii) after the acquisition thereof by the Supplier, becomes known to the public through no act of the Supplier;
- iii) is already known to the Supplier at the time of disclosure and is not known by the Supplier to be subject to any obligation of confidence of any kind; or
- iv) is lawfully received by the Supplier from a third party who is lawfully in possession of such Confidential Information.

13. INDEMNIFICATION AND LIABILITY

The Supplier indemnifies and holds MBLL, its officers, employees and agents, harmless from and against all claims, losses, expenses, damages, causes of actions and liabilities of every kind of nature, including (without limitation) legal fees on a solicitor and own client basis, arising from or out of:

- a) any breach of any of the Supplier's obligations, representations or warranties;
- b) any misrepresentation by the Supplier;
- c) any other act or omission of the Supplier, its officers, employees, agents or subcontractors or by those for whom it is responsible at law, howsoever caused, including claims or actions which may be made or instituted by persons who make purchases from MBLL or use products supplied by the Supplier;
- d) the presence or activity of the Supplier's officers, employees, agents, contractors and subcontractors on MBLL premises where the contract includes services or work to be done on MBLL premises;
- e) any builder's lien or claim in any way relating to work or services performed under the contract; or
- f) a determination that the contract creates the relationship of employer and employee between MBLL and the Supplier, to the extent that such an indemnity is not prohibited by law.

The Supplier is solely responsible for any personal injury, or loss of life, of its officers, employees, agents, contractors or subcontractors experienced by such persons in the course of performing the services or in any other way related to the requirements of the Purchase Orders except to the extent it was caused by the wrongful or negligent act of an employee of MBLL while acting within the scope of his or her employment. The Supplier is solely responsible for its officers, employees, agents, contractors and subcontractors while they are on MBLL premises. The Supplier is solely responsible for any damage to, or loss of, its own property or property owned by MBLL or others caused in the course of the services being performed or in any other way related to the requirements of the Purchase Order except to the extent it was caused by the wrongful or negligent act of an employee of MBLL while acting within the scope of his or her employment.

14. FORCE MAJEURE AND LOCK OUT

- a) Neither MBLL or a Supplier shall be liable for default or delay due to causes beyond its reasonable control and without fault or negligence on the part of such party, including not but limited to fire, flood, earthquake, snow storm or other natural disaster, as well as, failure of electricity or telephone service, labour lockout or strikes. The Supplier must give MBLL prompt notice in writing when any such cause appears likely to delay delivery of goods or the performance of services and must take appropriate action to avoid or minimize such delay. If any such default or delay threatens to impair the Supplier's ability to meet delivery requirements for its goods or services, MBLL is entitled to cancel the portion or portions of the Purchase Order so affected, without any liability to the Supplier. MBLL is not liable for the default or delay in performing its obligations due to causes beyond its reasonable control, or as a result of any suspension of the Supplier's obligations.

15. ASSIGNMENT

- a) No part of the Purchase Order, not any interest in the Purchase Order or any claim arising from the Purchase Order, may be transferred, assigned or subcontracted by the Supplier without the prior written consent of MBLL, which consent may be withheld for any or no reason or consent given with or without conditions.
- b) No assignments or transfer of the Purchase Order relieves the Supplier of any obligations under the Purchase Order or these terms and conditions, except to the extent they are properly performed by the Supplier's permitted assigns. Where MBLL approves a third party to perform any part of the services contemplated by the Purchase Order or these terms and conditions, the Supplier alone will be fully responsible for ensuring that all of the MBLL requirements are carried out by the third party in accordance with these terms and conditions.
- c) MBLL may transfer or assign the benefits of the Purchase Order in whole or in part, including the Supplier's warranties, without notice to the Supplier.
- d) The Purchase Order is binding upon and enures to the benefit of the successors and assigns of MBLL and upon the successors and permitted assigns of the Supplier.

16. GOVERNING LAW

- a) The Purchase Orders shall be governed by, interpreted, performed and enforced in accordance with the laws of the Province of Manitoba, and the federal laws of Canada applicable therein.
- b) The Supplier will respect all legislation governing its sector of activity including municipal, provincial, federal, and international laws, governing regulations, and licensing requirements, as amended from time to time during the Term.
- c) Any legal proceedings relating to the subject matter of this contract shall be submitted to the exclusive jurisdiction of the courts of the Province of Manitoba.

17. Disclosure of Information by MBLL

MBLL may disclose data and information regarding the purchase of Liquor to third parties without further notice to Suppliers.