

# VCT EUROPE

## TERMS AND CONDITIONS OF SALE

Term	Definition
"the Company"	Means Concha y Toro UK Limited, trading as <b>VCT Europe</b> , whose registered office in the UK is at 9 Ashurst Court, London Road, Wheatley, Oxfordshire, OX33 1ER
"Sales Agreement"	Means the terms of sale for the purchase of Goods set out in the Terms and Conditions and Purchase Order
"Invoice" or "Invoices"	Means the invoice for the charges and associated costs of the Goods to be settled by the Customer.
"the Customer"	Means the person, firm or corporate body entering into the Sales Agreement for the purchase and supply of Goods
"Goods"	Means those goods ordered by the Customer, subject to the Sales Agreement to be delivered by the Company to the Customer and as set out in the Purchase Order.
"Specification"	Means the specification for the Goods and delivery requirements requested by the Customer and as set out in the Purchase Order
"Logistics Provider"	Means, the Customer's nominated consignee for the receipt, handling and final delivery of Consignment Stock
"Working Day"	Means Monday to Friday inclusive unless that day is a statutory holiday in England and Wales
"Purchase Order"	Means the Specification, order and charges for the Goods requested by the Customer and agreed by the Company
"Consignment Stock"	Means an order of Goods where such Goods are delivered to the Customer but remain the property of the Company until they are sold

Unless the context otherwise requires, references to the singular include the plural.

The headings contained in these Terms are for convenience only and do not affect interpretation.

This contract for the supply of Goods is subject to the definitions above and the terms and conditions that follow together with the Specification relating to the specific requirement and shall take precedence over any other terms and conditions, standard or otherwise, of the Customer. The Company agrees to provide Goods in accordance with the Sales Agreement and the Customer acknowledges that it has read and fully understood these. The issue of a Purchase Order by a Customer shall be deemed to constitute acceptance of these standard terms and conditions, but such Purchase Order shall only be valid once agreed by the Company. Subject to clause 21, no variation or alteration of these Terms shall be valid unless such variation is agreed in writing by a director of authorised officer of the Company and stating the date after which such varied terms shall apply.

**1. Terms of Payment** Accounts are to be paid by the Customer by the last day of the month following the date of Invoice unless otherwise specified in writing by a director or authorised officer of the Company and confirmed on the Sales Agreement, Invoices and statements. If payment is not received within such period the Company reserves the right to charge interest at the rate of 8% per month above the Bank of England base rate for business to business transactions as amended from time to time under the Late Payment of Commercial Debt (Interest) Act 1998 commencing on the date on which payment falls due until the date on which payment is actually received, notwithstanding that such claims to interest and/or to surcharges for non-payment may have been waived by us in the past. Any Customer account falling overdue will not qualify for a discount relating to the overdue amount and the Company reserves the right to withdraw in accordance with the notice provided by these Terms and Conditions, any discounts that have been allowed, if payment is not made in full by the due date. All costs including any legal fees incurred by the Company in the collection of amounts due hereunder or in enforcing repossession under clause 2 will be payable by the Customer.

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The payment method will be notified to the Customer. Any bank charges incurred by the Company, through cheques or Direct Debits not being honoured, for any reason, will be payable by the Customer. The Company reserves the right to suspend or terminate credit facilities at any time.

**2. Repossession** In the event of termination or a breach of this Agreement by the Customer including but not limited to late or non-payment for Goods delivered, title shall, (if it had passed to the Customer) revert to the Company and the Company shall be entitled to take possession of the Goods by entering the Customer's premises (such right of entry being irrevocable) and removing the Goods.

### 3. Delivery

3.1 The Company shall arrange for the Goods to be delivered to the Customer on such date and to such address as is set out in the Specification. Any time or date for delivery given by the Company is an estimate only and the Company shall not be liable for the consequences (financial or otherwise) of any delay in delivery nor shall delay of delivery entitle the Customer to reject the Goods.

3.2 The Customer shall provide sufficient labour, equipment and facilities to offload Goods at the place of delivery.

3.3 Any person purporting to accept delivery of the Goods at the address specified in the Sales Agreement shall be deemed authorised to do so by the Customer.

3.4 No changes to the delivery instructions for the Goods shall be valid unless agreed in writing by a director or authorised officer of the Company. The Customer shall neither forward nor sell on the delivery or part thereof beyond the UK without the express written permission of the Company.

**4. Claims** The Customer shall examine all Goods at the time of delivery and record any loss or damage or non-conformance to the Goods on the carrier's copy of the delivery note for the Goods and verbally notify the Company immediately of any such loss or damage. All damaged Goods must be kept for inspection until otherwise advised. Following verbal notification, the Company must be notified in writing of the details of any discrepancies and/or breakages in deliveries, such notice to be received not later than the first working day following the day of delivery of the Goods. Goods will be deemed to have been accepted unless rejected by giving written notice as provided for above. Goods damaged in transit or Goods delivered which do not conform to the Specification shall be returned to the Company. Goods not returned to the Company will be charged to the Customer as accepted Goods.

### 5. Title, Risk and Tax/Duty Liability

5.1 Goods despatched from the Company's warehouse in the UK, shall be delivered either in 'excise duty suspense' or on a 'home use' basis to the Customer at the address set out in the Specification. Risk of loss, or damage, to such Goods and (if applicable) liability for payment of excise duty shall pass to the Customer on delivery. Titles in such Goods shall not pass to the Customer until the Company received payment in full for the Goods, subject to clause 5.4 below.

5.2 Goods despatched ex-origin shall be delivered to the Customer in accordance with the agreed Incoterm, or term of sale, in the Sales Agreement. Risk of loss or damage to the Goods shall pass to the Customer on delivery of the Goods. Where the Customer has liability for VAT, title in such Goods shall pass to the Customer on delivery except where delivery is on Incoterm DAP, in which case title in the Goods shall pass to the Customer immediately prior to the Customer acquiring liability to HMRC for payment of VAT, any other applicable taxes and any customs or other import duties in respect of such Goods. Subject to clause 5.4 below, where the Company has liability for VAT, title in the Goods shall pass to the Customer upon full payment for such Goods.

5.3 From the time that the Customer acquires risk of loss or of damage to the Goods and (if applicable) liability for payment of excise duty, the Customer shall insure the Goods for their full replacement value and duty liability.

5.4 For Consignment Stock, the Company retains title to the Goods whilst in the care of the Customer or its Logistics Provider. Title shall pass to the Customer upon delivery of the Goods to the end Customer. Risk of loss or of damage to the Goods and (if applicable) liability for payment of excise duty shall pass to the Customer's appointed Logistics Provider at such time and the Customer or appointed Logistics Provider shall insure the Goods for their full replacement value and duty liability from that moment.

5.5. The price includes excise duty and customs duty at the rates prevailing at date of order (unless otherwise specified).

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5.6 When Goods are delivered to the Customer under bond or in 'excise duty suspense', the Customer shall be liable for payment of excise duty and any other applicable taxes and duties commencing on the date of delivery by the Company or in accordance with the agreed incoterm.

5.7. For deliveries where excise duty and any other applicable duties and taxes are deferred to the Customer's own deferment account, the Customer shall be liable for payment of excise duty and any other applicable duties commencing from the date of dispatch from the Company's warehouse to the Customer or in accordance with the agreed incoterm.

5.8 The Customer shall indemnify the Company on demand for all costs, claims, proceedings, actions, damages, expenses, and any other losses etc arising directly or indirectly from its failure to make timely payment of excise and any other applicable duties and taxes to HMRC or other relevant bodies.

## **6. Customer Responsibilities** The Customer shall:

- a. at all times comply with any instructions as to storage, contained in the Sales Agreement relating to the Goods or contained on the packaging or labels of Goods;
  - b. store the Goods separately from all other material in the Customer's possession;
  - c. take all reasonable care of the Goods and keep them in reasonable condition;
  - d. maintain product liability and public liability insurance policies:
    - (i) with a reputable insurer;
    - (ii) during the term of this agreement and for a year afterwards;
    - (iii) against all risks;
    - (iv) with a limit of at least £1,000,000; and
    - (v) noting the Company's interest on the policies;
  - e. subject to clause 4, inspect the Goods immediately upon receipt and record any loss or damage to the Goods on the carrier's copy of the delivery note for the Goods and verbally notify the Company immediately of any such loss or damage. All damaged Goods must be kept for inspection until otherwise advised; and
  - f. subject to clause 4, within one day of receipt notify both the Company and the Carrier in writing of any loss or damage to the Goods. No claim for loss or damage shall otherwise be accepted.
  - g. notify the Company for non-delivery no later than seven days after a delivery was due to be made. Any liability for non-delivery of the Goods shall be limited (at the Company's election) to replacing the Goods within a reasonable time (provided that the Company has available stocks) or issuing a credit note at the pro rata contract rate against any Invoice raised for such Goods.
  - h. not remove or alter any mark on or packaging of the Goods;
  - i. inform the Company as soon as possible if it becomes subject to any of the events set out in clauses 15.1 or 15.2;
  - j. provide the Company such information concerning the Goods as the Company may request from time to time.
- Notwithstanding the foregoing the Customer may use or resell the Goods in the ordinary course of its business until such time as it becomes aware or ought reasonably to have become aware that an event specified in clause 15 has or is likely to occur. If, at any time before payment of the Goods has been received by the Company, the Customer informs the Company, or the Company reasonably believes, that the Customer has or is likely to become subject to any of the events specified in clause 15 the Company may require the Customer at the Customer's expense to redeliver the Goods to the Company and if the Customer fails to do so promptly, the Company may enter any premises where the Goods are stored and repossess them, such right of entry being irrevocable. Furthermore, the Company shall be entitled to seek a court injunction to prevent the Customer from selling, transferring or otherwise disposing of the Goods.
- k. if Company becomes aware of an issue that may affect consumer safety, brand reputation or product legality may request the Customer to withdraw Goods from the market, and the Customer agrees that it shall fully cooperate with the Company's instructions about the process of implementing the withdrawal.
  - l. if the Customer is the subject of a request, court order or other directive of a governmental or regulatory authority to withdraw any Goods from the market ("**Withdrawal Notice**") it shall immediately notify Company in writing enclosing a copy of the Withdrawal Notice.

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m. unless required by law, the Customer may not undertake any recall or withdrawal without the written permission of the Company, and only then in strict compliance with the Company's instructions about the process of implementing the withdrawal.

n. any withdrawal or recall of Goods outlined above, is subject to the Customer first submitting a verifiable summary of the reasonable and proportionate costs involved, and the terms of the reimbursement of such costs shall be agreed in writing between the parties.

**7. Availability of Stock and Vintages** If the Customer's order request includes a product, which is either out of stock or discontinued the Company will inform the Customer. The Parties may agree an alternative product. The Customer acknowledges that replacement product may be charged at a higher price dependent upon the type and vintage of the product supplied.

**8. Prices** Where applicable, VAT shall be payable at the rate prevailing at the time of delivery. The Company reserves the right to alter any prices or specifications at any time without notice and all Goods are sold subject to prices and conditions applying at the date of despatch.

## **9. Minimum Orders**

9.1 Unless otherwise stipulated in the Sale Agreement the minimum order quantity is 56 x 9 litre equivalent cases (112 x 6 packs) for ex-UK sales and 40' full container loads for Delivered at Place (DAP) / Delivered Duty Paid (DDP) orders from origin producers (any consolidations between the Company's origin producers (Chile & Argentina based) should total 40' full container loads).

9.2 The Company does not operate nor will it enter into a Sale or Return scheme.

## **10. Warranty**

10.1 The Company warrants that upon delivery, the Goods covered by these Terms and Conditions will be of satisfactory quality within the meaning of the Sale of Goods Act 1979 (as amended).

10.2 The Company shall not be liable for a breach of the warranty in condition 10.1 unless:

10.2.1 the Customer complies with the notice obligations in clause 4; and

10.2.2 the Company is given a reasonable opportunity after receiving the notice of examining such Goods and the Customer (if asked to do so by the Company) returns such Goods to the Company's place of business for the examination to take place there.

10.3 The Company shall not be liable for a breach of the warranty in condition 10.1 if:

10.3.1 the Customer makes any further use of such Goods after giving such notice; or

10.3.2 the defect arises because the Customer failed to follow the Company's oral or written instructions as to the storage, installation, use or maintenance of the Goods or (if there are none) good trade practice; or

10.3.3 the Customer alters or repairs such Goods without the written consent of the Company.

10.4 If the Company agrees that Goods supplied are not of satisfactory quality then it shall, at its own discretion, supply replacement Goods or reimbursement to a maximum of the Invoice value of the Goods. Where Goods are replaced, the Customer shall return the defective Goods, or that part of the Goods which are defective, to the Company at the Company's own expense or upon agreement the Company will collect. No claims of the nature specified in clause 10.4 will be entertained by the Company after the expiry of six calendar months from the date of Invoice.

10.5. Subject to clause 10.2, all warranties, conditions and other terms otherwise implied by statute or common law are excluded to the fullest extent permitted by law.

## **11. Limitation of Liability**

11.1 Nothing in these Conditions shall limit or exclude the Company's liability for:

(a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);

(b) fraud or fraudulent misrepresentation;

(c) breach of the terms implied by section 12 of the Sale of Goods Act 1979;

(d) defective products under the Consumer Protection Act 1987; or

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(e) any matter in respect of which it would be unlawful for the Company to exclude or restrict liability.

11.2 Subject to clause 11.1 the Company's liability to the Customer under the Sales Agreement, whether in contract, tort (including negligence), breach of statutory duty or otherwise whatsoever and howsoever arising shall be limited to damages and shall not exceed the amount paid by the Customer for the specific Purchase Order of Goods being claimed

against. The Company shall not be liable to the Customer for any loss of goodwill, loss of savings, loss of profit, loss of reputation, or any indirect or consequential losses arising directly or indirectly from the supply of Goods hereunder.

**12. Force Majeure** The Company is not liable for delays in delivery and/or non-delivery in the event of any situation beyond the control of the Company.

**13. Intellectual Property** The Customer shall not infringe any trade mark, trade name, registered design, copyright, database right or other intellectual property belonging to the Company (or any third party) and/or relating to the Goods or any other thing supplied by the Company with or in relation to the Goods. If the Company makes any changes to any Goods at the request of the Customer then the Customer shall indemnify the Company against all claims, costs and liabilities arising from any resultant infringement of a third party's intellectual property rights.

**14. Confidentiality** The Customer shall ensure that it keeps all information it receives regarding the business and affairs of the Company confidential, and shall only be permitted to disclose such information to its professional representatives or advisers or as may be required by law or any legal or regulatory authority or with the prior written consent of the Company.

## **15. Termination**

15.1 The Company may immediately terminate the Sales Agreement without payment of compensation by giving notice in writing to the Customer if any one or more of the following events happens:

- a. the Customer commits a material breach of any of its obligations under the Sales Agreement which is incapable of remedy;
- b. the Customer fails to remedy, where it is capable of remedy, or persists in any breach of any of its obligations under the Sales Agreement after having been required by the Company in writing to remedy or desist from such breach within a period of 30 days;
- c. the Customer fails to make any payment due to the Company on its due date under these conditions or otherwise, or if any distress or execution is levied on any of the Company's Goods,
- d. the Customer convenes a meeting with creditors or if a proposal be made for voluntary arrangement (within the meaning of The Insolvency Act 1986) or a proposal for any other composition or arrangement with its creditors or if the Customer shall be unable to pay its debts within the meaning of Section 123 of The Insolvency Act 1986 or if a trustee receiver, administrative receiver, administrator or similar officer is appointed in respect of all or any part of the business or assets of the Customer or if a petition is presented or a meeting convened for the purpose of considering a resolution or other steps are taken for the winding-up of the Customer.

15.2 If the Customer commits any illegal act, or a default which entitles the Company to terminate under Clause 15.1 a, b or c, then a) the Company shall (without prejudice to any of its other rights and remedies) have the right to repossess and use the Goods. For this purpose the Company may enter the premises or vehicles owned, occupied or controlled by the Customer or third party where the Goods are reasonably thought to be, in order to remove them and the Customer gives the Company irrevocable authority to enter its premises or vehicles without notice and b) any rights of the Customer under Clause 5 to sell or otherwise dispose of the Goods shall immediately cease.

15.3 The termination of this agreement shall be without prejudice to the rights and remedies of either Party which may have accrued up to the date of termination.

15.4 Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect

**16. Severance** If any clause in these Terms and Conditions is found to be unenforceable, wherever possible this will not affect any other clause and each will remain in full force and effect.

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**17. No Waiver** The Company's failure to exercise or enforce any of its rights hereunder will not be deemed to be a waiver of such rights nor bar their exercise or enforcement in future.

**18. Third Party Rights and Assignment**

18.1 To the extent to which any Goods are supplied pursuant to this Agreement from any company in the same Group as the Company, that company may enforce the terms of this Agreement subject to and in accordance with this Agreement and the provisions of the Contracts (Rights of Third Parties) Act 1999.

18.2 Except where expressly stated in this clause a person who is not a party to the Sales Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to rely upon or enforce any term of the Sales Agreement including these Terms and Conditions.

18.3 The Company may assign its rights and obligations to any member of the group of companies of which it is a member at any time

**19. Entire Agreement** These terms together with the Sales Agreement and Specification shall constitute the Entire Agreement between the Parties and each Party agrees that it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or understanding howsoever made other than as expressly set out in this agreement.

**20. No Partnership** Nothing in these Terms and Conditions shall be construed as creating a partnership or joint venture of any kind between the parties or as constituting either party as the agent of the other party for any purpose whatsoever and neither party shall have the authority or power to bind the other party or to contract in the name of or create a liability against the other party in any way or for any purpose.

**21. Changes to Terms and Conditions** The Company reserves the right to change any of these Terms and Conditions at any time and in its sole discretion. Any changes will be effective immediately upon a copy of the amended Terms and Conditions being delivered to the Customer or made publicly available in the Company's website.

**22. Governing Law** The Sales Agreement including these Terms and Conditions is governed by the law of England and Wales and is subject to the exclusive jurisdiction of the Courts of England and Wales.

On Behalf of Concha y Toro UK Ltd T/A VCT Europe

Signed by: \_\_\_\_\_ Andrea Mirone (Supply Chain & Finance Director)

Date: \_\_\_\_\_

On Behalf of \_\_\_\_\_ Ltd.

Signed by: \_\_\_\_\_

Date: \_\_\_\_\_

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