

KLINKER BRICK WINERY - TERMS AND CONDITIONS

1. Title to KLINKER BRICK WINERY Products passes to Buyer when they have been loaded upon a common carrier at KLINKER BRICK WINERY'S premises or designated warehouse and risk of loss passes to Buyer upon the earlier of delivery or placement with a carrier. Buyer shall pay all taxes and shipping costs. Payment for Products is due to KLINKER BRICK WINERY within 30 days of invoice. Payment shall be by EFT, or otherwise as KLINKER BRICK WINERY may direct in writing. Payments over 30 days shall be subject to interest at 1.5% per 30-day period. KLINKER BRICK WINERY reserves the right to reassess Buyer's creditworthiness or require payment CBD or COD at any time. Buyer acknowledges these Terms and Conditions constitute a security agreement between KLINKER BRICK WINERY as secured creditor and Buyer as debtor for the purposes of the Uniform Commercial Code. Buyer agrees to execute and deliver to KLINKER BRICK WINERY such financing statements and other instruments as KLINKER BRICK WINERY may reasonably request to perfect its security interest. KLINKER BRICK WINERY is not liable for any incidental, consequential or special damages, interest, costs, or expenses, or for loss or use or lost profit or wages, incurred by Buyer in any fashion or manner in connection with the sales or use of the goods, whether or not KLINKER BRICK WINERY knew such damages might be incurred and Buyer may not off-set any costs against the invoice payment unless approved in writing by KLINKER BRICK WINERY.
2. Distributor buyers shall: (a) possess all necessary state and federal licenses and permits and will keep the same in force; (b) protect KLINKER BRICK WINERY'S trademarks, confidential information and business plans and shall cooperate with KLINKER BRICK WINERY (at KLINKER BRICK WINERY'S cost) in the defense or prosecution of any action related to KLINKER BRICK WINERY'S trademarks or confidential information; (c) not transfer their rights to distribute KLINKER BRICK WINERY Products in any way unless they have obtained permission in writing from KLINKER BRICK WINERY; (d) provide such storage, warehousing, delivery, merchandising, marketing and sales service to KLINKER BRICK WINERY as shall be necessary to properly market, sell and protect the Products, and (e) provide such depletion, sales and other reports as KLINKER BRICK WINERY requests. Distributor buyers agree KLINKER BRICK WINERY owns its own sales and depletion data, including data reported to KLINKER BRICK WINERY by Distributor; and KLINKER BRICK WINERY controls the use and any disclosure of such data, including any confidential or proprietary data.
3. If the law of the state in which Distributor does business requires procedures, times within which to act, respond to notices or cure defaults other than those set forth in these Terms and Conditions, such laws and regulations shall apply; provided, however, that the obligations, rights and responsibilities of Distributor shall be interpreted as set forth in these Terms and Conditions to the fullest extent not inconsistent with such law or regulation.
4. California law governs these Terms and Conditions. The term of Distributor's appointment is at-will, is renewable annually on 30 days' notice, and may be terminated by KLINKER BRICK WINERY on 30 days' notice at any time. Breach of any promise made

by Distributor or failure of Distributor to meet depletion and account placement requirements mutually agreed to between the parties shall be “good cause” for the purposes of any state law.

5. If any dispute occurs related to KLINKER BRICK WINERY, KLINKER BRICK WINERY Products or Distributor’s rights to continue distributing KLINKER BRICK WINERY Products, Distributor agrees that the same shall be resolved by arbitration in San Francisco in accordance with the Comprehensive Rules and Procedures of JAMS or its successor then in effect, and judgment upon the award rendered shall be final and binding on the parties. The arbitrators are not empowered to award damages in excess of compensatory damages but shall include in the final award an allocation of attorneys’ fees, costs and expenses incurred in the arbitration, whether or not such fees, costs and expenses would otherwise be recoverable under applicable statutes and rules of Court. The arbitrator shall render the award in writing, explaining the factual and legal basis for the decision as to each of the principal issues. The parties and each of them expressly agree that any petition to confirm, modify or enforce the arbitral award, other than for nonpayment of goods sold and delivered, shall be resolved in a State or Federal Court of competent jurisdiction in San Francisco, to which jurisdiction the parties submit. To the extent any dispute occurs related to KLINKER BRICK WINERY, KLINKER BRICK WINERY Products or Distributor’s rights to continue distributing KLINKER BRICK WINERY Products addressed in or by a State or Federal Court, Distributor agrees that the prevailing party is entitled to attorneys’ fees and costs.
6. KLINKER BRICK WINERY reserves the right to establish standards of re-sale for its Products that protect the brand image and value. KLINKER BRICK WINERY specifically reserves the right to terminate sales to accounts that engage in below-cost price promotions that harm the brand, or in practices (such as bait and switch) that are anticompetitive or violate the law of any state. KLINKER BRICK WINERY also reserves the right to terminate sales to accounts that repeatedly use “lost leader” advertising on its products that damages the image or reputation of the brand.
7. These Terms and Conditions apply to any goods purchased from KLINKER BRICK WINERY by Distributor; provided, however, these terms shall be subject to the terms of any mutually executed written Agreement between Distributor and KLINKER BRICK WINERY. Distributor or Buyer’s submission of a purchase order for any KLINKER BRICK WINERY product shall constitute agreement to these Terms and Conditions, which may be modified at any time by policies found at KLINKER BRICK WINERY’s website (www.klinkerbrickwinery.com)