

## TERMS & CONDITIONS OF USE

This site is maintained by Ditto Company Ltd – Trading as Distillerie Deinlein (“we” or “us”) for the personal use, of people who are lawfully permitted to consume alcoholic beverages, in countries and other territories where the consumption of alcoholic beverages is lawful.

The purpose of these terms of use is to let you know about the terms and conditions which apply to your use of our website.

By using our website, you confirm that you have read and agree to these terms of use and our privacy policy. If you do not agree to these terms of use and our privacy policy, you will not be able to use our website.

These terms of use apply only to your use of our website. These terms of use do not apply to your use of websites that we do not own or operate, but to which our website may link.

The terms and conditions of use govern your use of the Ditto Company Ltd, trading as Distillerie Deinlein web site and associated domains, [www.distillerie.co.nz](http://www.distillerie.co.nz), [www.8thtribe.co.nz](http://www.8thtribe.co.nz), [www.lemon-cello.co.nz](http://www.lemon-cello.co.nz), which shall include, without limitation, all pages under the above domain names, and all content thereon (the "Site") as provided by Ditto Company Ltd (or We). We may change the Terms and Conditions from time to time and at any time without notice to you, by posting such changes on the Site.

1. **BY USING THE SITE, YOU ACCEPT AND AGREE TO THESE TERMS AND CONDITIONS AS APPLIED TO YOUR USE OF THE SITE.** By using the Site following any modifications to the Terms and Conditions, you agree to be bound by any such modifications to the Terms and Conditions.
2. **Use of our website:** We may make certain services available to visitors of the Site. For example, you may be able to chat with other visitors, post comments on a bulletin board, enter a sweepstakes, and download a screensaver or other software. Site visitors are solely responsible for any user information and other content they post on and through the Site. Users should be aware that when they voluntarily disclose personal information on or through the public portions of the Site, that such information is generally accessible to and may be collected and used by others and may result in unsolicited messages from other people. Visitors to and users of the Site are encouraged to exercise caution when providing personal information about themselves. By accessing this Site, you, the user agree to release and discharge Ditto Company Ltd, its affiliates, owners and creators of this Site from any and all liability which may arise from your use of the site.
3. **Internet Access:** You acknowledge and agree that in connection with your use of the Site and Services you must provide for your own access to the World Wide Web and pay any service fees associated with such access, and provide all equipment necessary for you to make such access and connection to the World Wide Web, including a computer, software, a modem and a means of connecting to or accessing the Internet. Ditto Company Ltd shall not be responsible for any malfunctions, errors, crashes or other adverse events that may occur from your use of the Site.
4. **User Conduct:** Users agree not to use the Websites or Services to:

- a. Post, use or transmit Content that you do not have the right to post or use, for example, under intellectual property, confidentiality, privacy or other applicable laws;
- b. Post, use or transmit unsolicited or unauthorized Content, including advertising or promotional materials, "junk mail," "spam," "chain letters," "pyramid schemes," or any other form of unsolicited or unwelcome solicitation or advertising;
- c. Post, use or transmit Content that contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment or otherwise interfere with or disrupt the Websites or Services or servers or networks connected to the Websites or Services, or that disobeys any requirements, procedures, policies or regulations of networks connected to the Websites or Services;
- d. Post or transmit Content that is harmful, offensive, obscene, abusive, invasive of privacy, defamatory, hateful or otherwise discriminatory, false and misleading, incites an illegal act, or is otherwise in breach of your obligations to any person or contrary to any applicable laws and regulations;
- e. Intimidate or harass another;
- f. Use or attempt to use another's account, service, or personal information;
- g. Remove, circumvent, disable, damage or otherwise interfere with any security-related features that enforce limitations on the use of the Websites or Services;
- h. Attempt to gain unauthorized access to the Websites or Services, other accounts, computer systems or networks connected to the Websites or Services, through hacking password mining or any other means or interfere or attempt to interfere with the proper working of the Websites or Services or any activities conducted through the Websites or Services;
- i. Use any means to bypass or ignore robot.txt, or other measures we use to restrict access or use of the Websites or Services;
- j. Impersonate another person or entity, or falsely state or otherwise misrepresent your affiliation with a person or entity; or

In addition, you may not (and may not authorize another party to): (i) frame or otherwise co-brand the Websites or Services (for example, by displaying a name, logo, trademark or other means of attribution of a third party that is reasonably likely to give the user the impression that that third party has the right to display, publish or distribute the Website or Service); or, (ii) use any Website or Service in any manner that could disable, overburden, damage or impair such Website or Service, or interfere with any other party's use and enjoyment of any Website or Service.

This list is not an exhaustive list of the types of unacceptable uses that may result in the restriction, suspension or termination of your use of this site.

Any material you upload to our site will be considered non-confidential and non-proprietary, and unless otherwise agreed in writing between us, we have the right to use, copy, disclose and distribute to third parties any such material in whole or in part for any purpose. We also have the right to disclose your identity to any third party who is claiming that any material posted or uploaded by you to our site constitutes a violation of their intellectual property rights, or of their right to privacy. You waive any moral rights in respect of any material you upload to our site.

##### 5. **Disclaimer of Warranties.**

THE SITE, INCLUDING, WITHOUT LIMITATION, ALL CONTENT, FUNCTIONS AND MATERIALS IS

PROVIDED "AS IS," WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, including, without limitation, any warranty for information, data, data processing services, or uninterrupted access, any warranties concerning the availability, accuracy, usefulness, or content of information, and any warranties of title, non-infringement, merchantability or fitness for a particular purpose. Ditto Company Ltd does not warrant that the Site or the functions, features or content contained therein will be timely, secure, uninterrupted or error free, or that defects will be corrected. Ditto Company Ltd makes no warranty that the Site will meet users' requirements. No advice, results or information, whether oral or written, obtained by you from Ditto Company Ltd or through the Site shall create any warranty not expressly made herein. If you are dissatisfied with the Site, your sole remedy is to discontinue using the Site.

## TERMS OF PURCHASE

1. **Terms of Purchase:** These Terms of Purchase will govern the purchase of any products ("Products") you make from Ditto Company Limited trading as Distillerie Deinlein ("the Company", "us", "we") including purchases made through the Company website at [www.distillerie.co.nz](http://www.distillerie.co.nz) and associated domains [www.8thtribe.co.nz](http://www.8thtribe.co.nz), [www.lemon-cello.co.nz](http://www.lemon-cello.co.nz), [www.ditto.co.nz](http://www.ditto.co.nz) ("Website"). You should read and ensure you understand these Terms of Purchase before placing an order for any Products ("Order"). By placing an Order you are deemed to have read and accept these Terms of Purchase and agree to be bound by them.
  - a. **IMPORTANT:** Any sale/export of 8<sup>th</sup>TRIBE Liqueurs to Fiji is prohibited.
2. **Interpretation:** In these Terms of Purchase:
  - a. Terms given a defined meaning have that meaning where the context permits;
  - b. Words referring to the singular include the plural and vice versa;
  - c. Clause headings are for reference purposes only;
  - d. A reference to a person includes any other entity or association recognised by law;
  - e. All references to dollars and \$ are references to New Zealand dollars unless otherwise stated;
  - f. References to time of day are references to New Zealand time.
3. **Amendments:** The Company reserves the right to amend these Terms of Purchase from time to time. Amendments will be effective immediately upon being placed on the Website. Placing an order for Products following such amendments being posted on the Website will represent an agreement by you to be bound by the Terms of Purchase as amended. Such amendments may include replacing these Terms of Purchase with entirely new Terms of Purchase.
4. **Capacity:** The Products are offered for sale only to persons who can legally purchase alcohol. It is your responsibility to ascertain and obey all applicable laws (including minimum age requirements) in relation to the purchase of Products. By placing an Order for Products you represent that you are capable of making a legally binding contract and that the Products purchased will be used in a lawful manner.
5. **Intellectual Property:** You acknowledge that all intellectual property rights in the Website, the Products and their packaging, including, without limitation all copyright, trade names, trade marks or other proprietary marks (whether registered or unregistered), and all other

intellectual property rights belong to the Company. All content on the Website is protected. The Company is either the owner or licensee of all rights to such content. All such rights are reserved.

6. **Orders:**

- a. Orders may be placed with the Company:
  - i. By telephone; or
  - ii. By email; or
  - iii. By Fax;
  - iv. Via Shopping Cart
- b. All Orders must specify:
  - i. Your name;
  - ii. Your contact phone number and email address;
  - iii. The required quantity and size, eg 750ml.
- c. The Company will confirm receipt of any order within 3 business days, either by written or verbal confirmation.
- d. The Company is not obliged to accept any Order and may reject any Order for any reason. If the Company does not accept, or rejects an Order neither you or us will be under any further obligation to the other arising out of your Order or our rejection of that Order.

7. **Cancellation:** You may not cancel an Order once it has been submitted unless we agree otherwise, in our complete discretion.

8. **Delivery:**

- a. Delivery will occur ex works our premises at 656 Minden Road, Tauranga, unless we agree in writing that delivery will occur at another point in time.
- b. A target delivery date will be agreed at the time your Order is accepted. The Company will use reasonable endeavours to deliver the Products in accordance with the target delivery date but will not be liable for any delay in delivery of Products.
- c. Risk in the Products will pass on delivery.
- d. You must examine the Products immediately upon delivery and notify the Company within 5 business days of any defects in the Products that appear to be the result of transportation, together with details of the defects. Failure to provide notice within this timeframe will discharge the Company from all liability relating to defects that are the result of transportation.

9. **Incorrect Orders:** Short or incorrect Orders must be reported to the Company within 5 business days of their receipt together with the invoice number. Any Products returned must be clean and free from price markings. Goods that have been damaged or are not resalable may not be credited in full.

10. **Price:** The Price ("Price") payable for the Products will be the price set out in our most recent price list for the Products as provided to you from time to time, unless otherwise agreed. All Prices are expressed in New Zealand dollars and are exclusive/inclusive of GST (as that term is defined in the Goods and Services Tax Act 1985). The Company reserves the right to amend the Prices from time to time without prior notice.

11. **Other Charges:** Prices in our price list do not include freight and handling charges, unless otherwise agreed. These charges are additional and will be agreed with you at the time your Order is confirmed.

12. **Payment:**

- a. Payment for Products ordered, together with all GST, and if applicable, additional charges agreed pursuant to clause 11, must be made in full, without deduction or set off, prior to or upon delivery of the Products unless the Company has agreed to extend credit to you, in which case payment is required on the 20<sup>th</sup> of the month following the date of invoice, unless otherwise agreed.
- b. Payment is to be in cash, by electronic bank transfer into the Company's nominated bank account, or such other method as agreed between the Company and you.
- c. Late payment will be considered a breach of these Terms and will result in you being charged interest at the rate of 15% per month, calculated on a daily basis on the overdue amount from the due date to the date when payment is received in full by the Company. You will also be liable to pay all expenses and legal costs incurred by the Company as a result of your default in payment.
- d. Approval of credit may be conditional upon the provision of a personal guarantee in respect of your payment obligations under these Terms of Purchase.

13. **Title**

- a. Notwithstanding that risk passes upon delivery, ownership of the Products supplied shall not pass to you until payment in full has been received by the Company.
- b. You acknowledge that until such time as payment in full has been received by the Company, the Company has a Security Interest (as that term is defined in the Personal Property Securities Act 1999 ("PPSA") and that these Terms of Purchase constitute a security agreement for the purpose of the PPSA in respect of the Products supplied to you and their proceeds, to secure payment of all amounts owed by you to the Company from time to time, and at any time. You agree that you:
  - i. will, when requested by the Company, promptly execute any documents and do anything else required by the Company to ensure that the Security Interest created under these Terms of Purchase constitutes a first ranking perfected Security Interest over the Products and their proceeds, including any information the Company reasonably requires to complete a Financing Statement or a Financing Change Statement;
  - ii. waive any right to receive a copy of a Verification Statement under the PPSA;
  - iii. will pay to the Company all costs, expenses and other charges incurred, expended or payable by the Company in relation to the filing of a Financing Statement or a Financing Change Statement in connection with these Terms of Purchase;
  - iv. agree that nothing in sections 114(1)(a), 117(1)(c), 133 and 134 of the PPSA shall apply to these Terms of Purchase;
  - v. agree that your rights as debtor in sections 116, 119, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA shall not apply to these Terms of Purchase.
  - vi. will not allow a Security Interest to be created or registered over the delivered Products in priority to a Security Interest held by the Company; and

- vii. will on demand, pay all costs and expenses of, or incurred by, the Company as a result of enforcing any of its rights under this clause.
  - c. The provisions of this clause survive termination of these Terms of Purchase.
- 14. **Exclusion of Liability:** Under no circumstances will the Company, its employees or its agents be liable to you in contract, tort, equity, statute, regulation or otherwise for any loss, damage, costs, legal costs, professional and other expenses of any nature whatsoever incurred or suffered by you or by any other third party, whether direct or consequential which relates in any way to your access and use of the Website or the purchase of the Products. You acknowledge that if you are acquiring Products for the purpose of a business the provisions of the Consumer Guarantees Act 1993 will not apply.
- 15. **Limitation of Liability:** In the event that any limitation or provision contained in these Terms of Purchase is held to be invalid or unenforceable for any reason and the Company becomes liable for any loss or damage that would otherwise have been excluded, the Company's maximum liability in contract, tort, equity, statute, regulation or otherwise for any loss, damage or injury directly or indirectly arising in respect of the supply of the Products pursuant to an Order is to be limited to the lesser of the value of Products comprised in an Order to which a claim relates; the cost of replacing defective Products; and the actual loss or damage suffered by you. All other warranties, descriptions, representations and conditions as to fitness, suitability for any purpose or specific conditions, even though such conditions may be known to the Company, merchantable or otherwise, whether express or implied, and whether statutory or otherwise, are expressly excluded, except to the extent that such liability is required by law without right of exclusion.
- 16. **Privacy:** If you are an individual, any personal information that you may provide to the Company at any time shall be held by the Company in accordance with the principles of the Privacy Act 1993. You authorise the Company to use any personal information provided for the purposes of checking your credit (where applicable) and introducing other products or services to you.
- 17. **Combined Terms:** These Terms of Purchase together with any additional terms and conditions contained in the invoice or any other similar document issued by the Company shall be the terms which govern your purchase of the Products.
- 18. **Severability:** If any provision of these Terms of Purchase is held to be invalid, void, unenforceable or illegal for any reason, such provision shall be deemed to be severed from these Terms of Purchase and the remaining provisions shall continue in full force.
- 19. **Waiver:** If we delay or do not exercise any of our rights or remedies under these Terms of Purchase that will not be a waiver of the right or remedy. Any waiver or consent given must be in writing and will be effective only in the specific instance and for the specific purpose it is given.
- 20. **Governing Law:** These Terms of Purchase and any related dispute will be governed by New Zealand law. The United Nations Convention on Contracts for the International Sale of Goods (1980) does not apply to these Terms of Purchase or any related dispute.