

PENNSYLVANIA LIQUOR CONTROL BOARD WHOLESALE TERMS OF SALE FOR WINE, SPIRITS AND OTHER PRODUCTS

1. SCOPE

These Terms of Sale shall be the exclusive agreement between you ("Licensee" or "Purchaser") and the Pennsylvania Liquor Control Board ("PLCB" or "Wholesaler") for sales and purchases at wholesale of wine, spirits and other products (collectively, "Products"). This agreement is in consideration of the mutual covenants contained in it. Purchaser and Wholesaler acknowledge receipt and sufficiency of the consideration to this agreement and intend for it to be legally binding.

2. DEFINITIONS

As used in these Terms of Sale, the words and phrases that follow will be construed to have the associated meanings.

"Licensee" and "Licensees" shall mean any licensee made eligible by section 305(b) of the Pennsylvania Liquor Code, 47 P.S. § 3-305(b), to purchase wine and spirits from the PLCB at a Wholesale Discount for purposes of reselling such wine and spirits under the authority of its license.

"Product" and "Products" shall mean all wine, spirits and other products offered for sale by the PLCB. This word shall generally be construed to include Special Order Products, unless otherwise expressly noted.

"Purchaser" shall mean "Licensee" or "Licensees" as previously defined herein.

"Special Order Product" and "Special Order Products" shall mean any Products that are not within the PLCB's "Retail Consumer Product Catalog" or "Wholesale Product Catalog," and which have been designated as being available only on a Special Order basis by the PLCB.

"Specialized Wholesale Purchasing Program" and "Specialized Wholesale Purchasing Programs" shall mean purchasing programs offered to Licensees of the PLCB, including Planned Sales Events, One-Time Buys, and Direct Purchase Requests. The term does not include "Special Order Products" as otherwise defined herein.

"Retail Consumer Product Catalog" shall mean the assortment of Products, other than Special Order Products, actively marketed by the PLCB as being available for purchase by retail consumers at Fine Wine & Good Spirits (FW&GS) stores and FWGS.com.

"Wholesaler" shall mean the Pennsylvania Liquor Control Board or PLCB.

"Wholesale Discount" shall mean a discount of 10% off the retail price of any wine or spirits products for which such a discount is authorized under the Pennsylvania Liquor Code.

“Wholesale Product Catalog” shall mean the assortment of Products, other than Special Order Products, actively marketed by the PLCB as being available for purchase by Licensees from PLCB facilities including FW&GS stores, licensee service centers (“LSCs”), distribution centers (“DCs”) and FWGS.com. This includes all Products within the Retail Consumer Product Catalog as well as additional Products (whether consisting of different types, sizes, and/or varieties) not actively marketed to retail consumers.

3. PRODUCT AVAILABILITY

The PLCB shall sell to Licensees any Products within its Retail Consumer Product Catalog or its Wholesale Product Catalog, or that are otherwise made available by the PLCB as a Special Order Product or through its Specialized Wholesale Purchasing Programs, subject to these Terms of Sale.

All Products offered for sale by the PLCB are subject to availability at the time of placing an order. Product availability is subject to change without notice.

Product age statements, proofs, bottle shapes and labels may vary from time to time due to available inventory and/or manufacturer or supplier changes.

In order to ensure the equitable distribution of Products, the PLCB reserves the right to place limits on the quantity of products that may be purchased by any one Licensee and/or at any one time.

The PLCB also reserves the right to refuse to process orders for Special Order Products that are substantially similar to Products available within its Retail Consumer Product Catalog and/or Wholesale Product Catalog, or if the PLCB believes said products should be made available generally, in accordance with Section 305(a.1) of the Pennsylvania Liquor Code, [47 P.S. § 3-305\(a.1\)](#).

The PLCB also reserves the right to make any Product procured at the specific request of a Licensee, either as a Special Order Product or through its Specialized Wholesale Purchasing Programs, available for purchase by other Licensees and/or retail customers in order to comply with the prohibition against selling private label products as set forth in section 207(b)(9) of the Liquor Code, [47 P.S. § 2-207\(b\)\(9\)](#).

Additionally, although certain Products in the PLCB’s Wholesale Product Catalog are not actively marketed as being available to retail consumers, the PLCB reserves the right to fulfill retail consumer requests for those Products in order to comply with applicable law.

4. PRODUCT PRICING AND DISCOUNTS

Pursuant to section 305 of the Pennsylvania Liquor Code, [47 P.S. § 3-305](#), Licensees are generally eligible to receive a Wholesale Discount on any wine or spirits products

sold by the PLCB; however, Special Order Products and non-alcoholic beverage products are not eligible for the Wholesale Discount.

The PLCB, to the extent authorized by law, shall have the sole authority to set the retail price for any product it sells prior to calculating the Wholesale Discount. Posted or advertised retail prices of Products are subject to change at any time and without advance notice; however, where feasible, the PLCB will make every effort to provide reasonable notice in advance of a price change. Retail price changes made to a wine or spirits product, other than a Special Order Product, will also correspondingly impact pricing for Licensees due to the manner in which the Wholesale Discount is calculated.

The Wholesale Discount is applied after any other promotional price reduction – for example Planned Sales Events and clearance pricing – is applied.

Unless otherwise specified by the PLCB, Licensees are not eligible for any other discounts offered by the PLCB, including but not limited to discounts offered to retail consumers under the PLCB’s customer relationship management program authority.

Additionally, posted or advertised prices for Products are not subject to negotiation.

Pricing for Special Order Products is primarily at the discretion of the supplier, subject to Section 305(a) of the Pennsylvania Liquor Code, [47 P.S. § 3-305\(a\)](#).

5. PRODUCT PRICING ERRORS

The PLCB is not responsible for any pricing errors or incorrect prices appearing in/on any PLCB store location, online ordering platform or other advertisement. Errors will be corrected when and where discovered. The PLCB reserves the right to reject or cancel orders placed for any Products advertised at an incorrect price or involving rebates, sales or promotions containing incorrect information or errors. The PLCB further reserves the right to reject or cancel any such order in whole or in part, regardless of whether a Licensee’s order has been confirmed and/or the Licensee’s payment method has been processed. If a Licensee’s payment method has been processed prior to their order, or any portion thereof, being rejected or canceled due to a pricing error, the PLCB will issue a credit back to the Licensee’s original payment method in the amount of the original charge. The Licensee’s banking or credit card institution will control when the amount is credited to the Licensee’s account.

6. TAXES

Licensees are required to pay all applicable taxes on Products purchased from the PLCB.

The statutorily mandated 18% liquor tax is reflected within the posted retail price of all wine and spirits products sold by the PLCB, other than Special Order Products, and is not separately assessed.

Pursuant to applicable law, all qualifying sales made by the PLCB, including sales made at wholesale, are subject to the applicable state sales and use tax (currently 6%), as well as any applicable local sales tax (currently 2% in Philadelphia and 1% in Allegheny County), in effect at the time of the transaction. In accordance with guidance from the Pennsylvania Department of Revenue, local sales and use taxes are collected by the PLCB based on the location of a Licensee’s premises, or based on where the wholesale transaction takes place, as appropriate depending on the method of order placement that is utilized.

Delivery, shipping and handling fees are subject to sales tax.

Assessment and collection of taxes on Special Order Products shall be in accordance with Section 305(a) of the Pennsylvania Liquor Code, [47 P.S. § 3-305\(a\)](#).

7. ORDER PLACEMENT

Licensees may place orders for Product using the Licensee Online Ordering Portal (“LOOP”), buying at FWGS.com, engaging in electronic data interchange (“EDI,” when made available by PLCB), or by walking into a FW&GS store or LSC.

LOOP

LOOP is the PLCB’s preferred method for Licensee order placement because it allows orders to be received and processed in the most efficient manner. LOOP also provides Licensees with the ability to track and monitor order history. LOOP orders can be placed for delivery (subject to quantity thresholds) to a non-PLCB location or PLCB-location as agreed upon by the parties. Licensee participation in LOOP is subject to the [LOOP Terms of Use](#), which among other things, requires establishment of a LOOP account and the provision of Automated Clearing House (“ACH”) account and/or credit card information to be maintained on file.

FWGS.com

Use of FWGS.com is subject to the [FWGS.com Terms of Use](#). If placing orders on FWGS.com, Licensees are required to establish an account and provide a valid credit card as their method of payment. Licensees must also supply to FWGS.com their Licensee Identification Number (“LID”), which needs to be active and valid, in order to receive the Wholesale Discount. FWGS.com orders can be shipped to FW&GS stores or non-PLCB locations. Certain Products available on FWGS.com are subject to purchase limitations, including but not limited to wine and spirits sold exclusively on FWGS.com and through Limited-Release Lotteries.

EDI

Licensees wishing to use EDI to place orders must contact the PLCB in advance to be onboarded to the EDI system, when the PLCB makes it available. Utilizing EDI may require Licensees to develop or procure, at their own expense, the appropriate PLCB-compatible technology to enable EDI capability.

Walk-in Purchases

Licensees wishing to make walk-in purchases may do so at any FW&GS store or LSC without placing an order in advance. However, Licensees are encouraged to place orders in advance using one of the alternative methods discussed herein to better account for product availability and to allow for a more efficient experience. The PLCB also reserves the right to delay and/or refuse to fulfill large or disruptive Licensee walk-in transactions to ensure equitable service and distribution of available product to other Licensees and retail consumers.

8. ORDER PROCESSING AND ACCEPTANCE

The posting or advertisement of any Products for sale by the PLCB in a store or LSC or through an online or other electronic ordering platform is an opportunity for Licensees to submit an order to purchase the Products at the posted or advertised prices. Submission of an order relative to any Products will be considered an offer to purchase the Products at the posted or advertised prices. Except as otherwise set forth herein with regard to Specialized Wholesale Purchasing Programs, an order or offer to purchase the Products at the posted or advertised prices will not be considered accepted until the Products are delivered to the Licensee or its designated agent at the location and time agreed upon by the parties. The PLCB reserves the right to reject or cancel an order in whole or in part at any time for any reason. Any payments made by a Licensee for an order, or any portion thereof, that is rejected or canceled by the PLCB shall be refunded accordingly.

9. METHODS OF PAYMENT

Payment for any order placed by a Licensee must be made by cash, check, credit card, ACH transfer or PLCB gift card, subject to the specific requirements for the manner of order placement that is utilized.

Payments for orders placed by a Licensee must be made by the Licensee and/or from their authorized accounts. Payments made by third parties, such as management companies or transporters-for-hire, from their own accounts will not be accepted, as these businesses are not legally permitted to independently purchase and resell alcoholic beverages in Pennsylvania.

Full payment, via a Licensee's authorized ACH account or credit card, for orders placed through an online or other electronic platform will be immediately processed at the time of shipment or delivery/pickup, depending on the ordering platform used and the manner of Product delivery and/or receipt selected by the Licensee.

Full payment for walk-in orders at FW&GS stores and LSCs is immediately due at the time of the in-store transaction.

Under no circumstances will the PLCB subsidize purchases and/or extend credit to Licensees by giving free Product, accepting partial payments for Product, allowing for delayed payments for Product and/or through any other means.

The PLCB reserves the right to impose additional fees in situations where the method of payment provided by a Licensee is unable to be processed due to having insufficient funds present and/or when invalid payment information is provided. The PLCB also reserves the right to suspend the use of specific payment methods and/or suspend access to LOOP for Licensees who demonstrate a pattern or history of issues involving insufficient funds and/or providing invalid credit card information. This is in addition to the specific remedies set forth in section [47 P.S. § 3-305\(c\)](#).

10. PICKUP & DELIVERY OPTIONS FOR ORDERS PLACED IN ADVANCE

The PLCB offers Licensees a variety of pickup and delivery options for orders placed in advance using an online or electronic ordering platform, including FW&GS store or LSC pickup or direct delivery to an authorized non-PLCB location.

Note that the PLCB reserves the right to select the appropriate pickup or delivery option for Licensees in instances where the size and nature of the order make it more operationally feasible for the PLCB to use its preferred method over the method selected by the Licensee.

Pickup at a PLCB FW&GS Retail Location or LSC

When placing orders via LOOP or EDI, Licensees may choose to pick up orders at any of the PLCB's FW&GS stores or LSCs. When placing orders via FW&GS.com, the Licensee may choose to pick up the order at a FW&GS store or have it delivered to another properly licensed location within Pennsylvania designated by the Licensee. The PLCB prefers that Licensees designate an LSC for pickup of larger orders, as these locations are better equipped to process and load such orders.

Licensees may also elect to have orders for Special Order Products delivered to FW&GS stores or LSCs.

Direct Delivery

The PLCB offers direct delivery options for Licensees through its Licensee Delivery Program ("LDP"), for orders that exceed 20 full cases and originate from one of the PLCB's DCs. These delivery options are as follows:

- Direct-Store-Delivery ("DSD"), by which the PLCB will deliver full-case, palletized orders directly to Licensees;
- PLCB-DC-to-Licensee-DC Delivery, by which the PLCB will deliver full-case, palletized orders to a properly licensed DC location designated by the Licensee;
- Trailer Drop, by which the PLCB will load full-case, palletized orders onto a pre-positioned trailer, which is owned or leased by the Licensee's designated transporter-for-hire, at a PLCB DC.

All deliveries made through the LDP are scheduled on designated delivery days.

In order to participate in the LDP, Licensees must first register with the PLCB. Orders delivered through the LDP must be placed using LOOP or EDI.

Deliveries made through the LDP are subject to delivery and handling fees as set forth in the fee schedule communicated to LDP participants.

In select locations, the PLCB offers mixed-case direct delivery originating from LSCs. LSC deliveries are also subject to fees as set forth in the fee schedule communicated by the PLCB. As with LDP deliveries, mixed-cased deliveries are scheduled on designated delivery days.

Direct Delivery of Special Order Products may be offered at the discretion of suppliers and subject to any shipping or delivery fees imposed by suppliers.

Licensee orders placed through FWGS.com may also be designated for shipment to a Licensee's place of business or another properly licensed location within Pennsylvania designated by the Licensee.

The PLCB reserves the right to charge a redelivery fee of up to 12.5% of the total dollar value of the items purchased, in accordance with the PLCB's redelivery policy, if the Licensee is unable to accept delivery at the agreed upon date and time.

Questions regarding pickup and delivery options may be directed to the PLCB's Bureau of Wholesale Operations at ra-lbwholesale@pa.gov.

11. RIGHT OF INSPECTION, RECEIPT OF PRODUCT AND TITLE TRANSFER

Licensees are expected to reasonably inspect any walk-in purchases made at FW&GS stores and LSCs for obvious damage, errors, non-conformities or defects prior to completing the purchase. Once a Licensee has completed a walk-in purchase, title to the Product and liability for same passes to the Licensee.

Any damage, errors, non-conformities or defects discovered after completion of the sales transaction shall be handled through the return process and are subject to the applicable return requirements discussed herein.

For all orders, except orders for Special Order Products, placed by Licensees using an online or other electronic platform, including LOOP, FWGS.com or EDI, and which have been accepted by the PLCB, Licensees (either directly or through their authorized agents) shall have the right to reasonably inspect the Products, when provided to them by the PLCB, for obvious damage, errors, non-conformities or defects prior to acknowledging receipt of Product. Upon such reasonable inspection, Licensees (or their authorized agents) may reject Products due to any obvious damage, errors, non-conformities or defects discovered at that time. Licensees shall also have an additional 48 hours from the time of acknowledging receipt of Products to notify the PLCB of any additional damage, errors, non-conformities or defects discovered during that window of time and to reject the Product only for these stated reasons. Once this 48-hour period has expired, the sales transaction shall be

considered fully completed and all title to and liability for any non-rejected Product shall pass to the Licensee.

Any damage, errors, non-conformities or defects discovered after completion of the sales transaction shall be handled through the return process, subject to the applicable return requirements discussed herein. The PLCB is not responsible for any damage to Product caused while in the custody and care of a Licensee or its agent, prior to or after the passage of title to the Licensee.

Right of inspection, receipt of Product, and title transfer for Special Order Products shall be as set forth in Section 305(a) of the Pennsylvania Liquor Code, [47 P.S. § 3-305\(a\)](#).

12. PRODUCT RETURNS

Product returns from Licensees will only be accepted for ordinary and usual commercial reasons as set forth in the PLCB's Regulations at [40 Pa. Code §§ 11.231 to 11.238](#). Additional conditions for Product returns by Licensees, including but not limited to the amounts to be refunded, required documentation, and applicable handling fees, are set forth in the PLCB's Regulations at [40 Pa. Code § 11.231](#).

Returns involving Special Order Products are subject to the conditions in the PLCB's Regulations at [40 Pa. Code § 11.239](#).

The [PLCB Licensee Return Policy](#) is available online.

13. PRODUCT REPURCHASES BY PLCB

In certain circumstances as set forth in the PLCB's Regulations at [40 Pa. Code §§ 9.112 – 9.113](#), the PLCB will consider requests from Licensees for the PLCB to repurchase Products, other than Special Order Products, that are not otherwise eligible for return. Repurchase decisions are at the sole discretion of the PLCB, based on its operational business needs, as set forth in the PLCB's Regulations at [40 Pa. Code § 9.114](#). Repurchase requests should be directed to the PLCB's Bureau of Wholesale Operations at ra-lbwholesale@pa.gov.

14. SPECIAL ORDER PRODUCTS

As previously indicated, Licensees may purchase Special Order Products from the PLCB. To purchase Special Order Products, Licensees must work directly with suppliers, which will place orders for the desired Special Order Products in LOOP on the Licensee's behalf. The Licensee must then approve the order in LOOP before the order can be processed and fulfilled.

Special Order Products are not eligible for the Wholesale Discount.

Suppliers may ship Special Order Products to any FW&GS store or LSC, or directly to Licensees, once payment has been received by the PLCB and authorization for the delivery is provided. The PLCB will process a Licensee’s payment for Special Order Products when shipment or delivery is confirmed by the supplier.

The PLCB bears no responsibility for any costs or terms related to Special Order Products or shipments/deliveries other than as set forth herein. Any issues concerning Special Order Products, including returns, must be handled between the Licensee and the supplier, with the assistance of the PLCB’s Special Order Department.

Additional information and terms concerning Special Order Products can be found in Section 305(a)-(a.1) of the Liquor Code, [47 P.S. § 3-305\(a\)-\(a.1\)](#), as well as in the PLCB’s [Special Order Program Guide](#).

15. SPECIALIZED WHOLESALE PURCHASING PROGRAMS

The PLCB makes a variety of Specialized Wholesale Purchasing Programs available to Licensees, including Planned Sales Events (“PSEs”), One-Time Buys (“OTBs”), and Direct Purchase Requests (“DPRs”). Licensees interested in receiving communications concerning Specialized Wholesale Purchasing Program opportunities may contact the PLCB’s Bureau of Wholesale Operations at ra-lbwholesale@pa.gov. Specialized Wholesale Purchasing Programs offered are as follows:

- PSEs:** The PLCB offers PSEs, or per-unit discounts/promotional sales, for hundreds of Products, other than Special Order Products, each month. PSE offers are communicated to large-volume Licensees via email, typically 22 weeks prior to the planned promotional pricing, at which time Licensees are given the opportunity to firmly commit to purchasing specific quantities of the Products based on available forecasting data. During the PSE sale period, the Licensee must complete purchases of orders through LOOP as previously committed.

- OTBs:** The PLCB purchases certain products from suppliers on an OTB-basis, meaning these Products are not consistently carried by the PLCB and/or are vintage/production-specific. The PLCB may give Licensees the opportunity to preorder specific volumes of OTB Products.

- DPRs:** Licensees may request that the PLCB source and procure specific Products not currently offered by the PLCB. The decision to grant any DPR is at the sole discretion of the PLCB. The PLCB reserves the right to determine the assortment strategy for the requested item(s) (e.g., whether it will be made available only via Special Order or as part of the PLCB’s Retail Consumer Product Catalog and/or Wholesale Product Catalog, etc.). DPRs require a minimum quantity of 50 cases for the initial order. Products obtained through DPRs will be available for

purchase by any other customer, although the Licensee initially requesting the item will be given priority to receive its requested quantities, if available.

The PLCB agrees to rely on the Licensee's advance commitment to purchase when ordering Products from its suppliers as part of a Specialized Wholesale Purchasing Program in exchange for the Licensee's agreement to purchase and take delivery of/pick up the saleable Product to which they have committed to purchasing or any lesser amount thereof procured by the PLCB in reliance on such commitment. The Licensee further agrees that failure to honor its advance commitment to purchase Product may subject the Licensee to order cancellation and handling fees, as set forth herein.

Once an irrevocable commitment to purchase Product has been accepted, the PLCB will exercise reasonable and good faith efforts to procure the Product and/or quantities requested from its suppliers. The PLCB cannot make any guarantees regarding the availability of Product and/or specific quantities. The PLCB also reserves the right to limit the volume of Product that each Licensee may order as part of a Specialized Wholesale Purchasing Program offer based on available supply, demand amongst Licensees, and the need to ensure availability of Product to retail consumers. The PLCB reserves the right to modify the terms and conditions of any Specialized Wholesale Purchasing Program offer at any time based on its own operational needs and/or because of Product changes made by a supplier, including but not limited to pricing, available quantities and timing of when product will be delivered to the PLCB.

The PLCB also reserves the right, within its sole discretion, to allow Licensees to make modifications to previously accepted irrevocable order commitments impacted by any modification to a Specialized Wholesale Purchasing Program offer initiated by the PLCB. Further, any cancellation or handling fees assessed in accordance with this section may be waived as circumstances warrant and at the PLCB's sole discretion.

The provisions of these Terms of Sale regarding "Right of Inspection, Receipt of Product and Title Transfer" as well as "Product Returns" shall be applicable to Products purchased through a Specialized Wholesale Purchasing Program. However, under no circumstances shall a Licensee be permitted to reject or return Product because of overordering or other ordering errors on the part of the Licensee.

PSEs

The following specific terms of sale apply in addition to the general Terms of Sale otherwise set forth herein, for any orders placed through a PSE.

Upon notification of a PSE purchasing opportunity, the Licensee will have four weeks to provide the PLCB with a firm commitment to purchase. A Licensee that holds multiple retail licenses must submit its firm commitment to purchase as an aggregate of all the Licensee's associated LIDs. After returning the firm commitment to the PLCB, the licensee will have five business days to rescind and/or make modifications

to its commitment within this window. No rescission or modifications are permitted once this time period has elapsed.

The Licensee’s most recent order communication prior to the expiration of the fifth business day will be accepted by the PLCB as an irrevocable commitment by the Licensee to order at least 80% of the Product specified therein or at least 80% of any lesser amount of Product procured by the PLCB in reliance on such commitment (“Monthly Performance Target”).

Determination of the Licensee’s compliance with its Monthly Performance Target will be calculated across all Products ordered through PSEs. Licensees holding multiple retail licenses will have their performance measured in the aggregate, across all associated LIDs. At the close of each month, the Licensee will receive a report detailing the Licensee’s ordering activity, on an item-by-item basis, for all PSE Products the Licensee committed to purchase. If the report shows the Licensee met its Monthly Performance Target in the aggregate, i.e., the Licensee ordered at least 80% of the total quantity of PSE Products procured by the PLCB and made available to the Licensee in reliance on the Licensee’s advance commitment during the commitment period, then the Licensee will incur no handling fees under this section. If the report shows the Licensee failed to meet its Monthly Performance Target in the aggregate, the Licensee shall be assessed a handling fee for each case of Product below the 80% threshold, in accordance with the schedule below. Handling fees are not subject to state or local sales tax.

PSE Ordering Performance & Handling Fee Schedule

Ordering Performance	Handling Fee (Per Case)
80.0% - 100%	\$0.00
70.0% - 79.99%	\$5.50
60.0% - 69.99%	\$5.75
Below 60.0%	\$6.00

OTBs and DPRs

The following specific terms of sale apply in addition to the general Terms of Sale otherwise set forth herein, for any orders placed through an OTB or DPR.

After ordering and receiving the Licensee-requested OTB or DPR Product, the PLCB will notify the Licensee when the Product is available for delivery and/or pickup along with the specific quantities being made available to the Licensee. The Licensee will then have 30 calendar days to schedule delivery/pick up of the Product. Payment will not be processed until the time of delivery/pick up, at which point the payment method previously provided by the Licensee will be charged in full at the price(s) identified in the final purchase order, plus all applicable taxes and fees.

If a Licensee fails to schedule delivery/pickup, the PLCB will cancel the order, and the Licensee will not be charged for the Product (title to which shall never pass to the Licensee). However, the Licensee shall be required to pay a 15% handling fee on any

order canceled for this reason. Such fee will be calculated against the total wholesale price of the Product ordered by the Licensee and is not subject to state or local sales tax. For any order canceled for this reason involving a non-bailment Product (i.e., a product the PLCB would not have acquired if not for the specific licensee request and therefore has no plans to otherwise distribute), the Licensee shall be required to pay an additional order cancellation fee equal to the full wholesale price of the Product ordered by the Licensee (which shall not be subject to state or local sales tax), and the Licensee shall not have any rights or claim to the Product. For any canceled order involving a non-bailment Product, the PLCB shall have the discretion to either destroy the Product or attempt to sell the Product to someone else. In the event the PLCB sells the Product (or a portion thereof) to someone else, the Licensee whose order was canceled will receive a credit of the cancellation fee (or a percentage of the cancellation fee in proportion to the amount of Product sold).

Repeated failure to take delivery of or pick up Products ordered may result in the Licensee being barred from participating in future OTB offers. In such cases, written notice will be provided to the Licensee, and the Licensee will still be permitted to make regular purchases of inventory from the PLCB, but will no longer be permitted to take part in the OTB program.

16. RIGHTS TO PURCHASE AND RESELL PRODUCTS

In order to purchase Products from the PLCB for purposes of resale, a Licensee must have a valid qualifying license in good standing. Should a license become temporarily or permanently invalid, through non-renewal, suspension, revocation or for any other reason, the PLCB will not process any new or pending orders from such Licensee. However, this will not relieve the Licensee and/or any successor in interest from any previously incurred debts or obligations owed to the PLCB relative to Product purchases. Further, Licensees are generally prohibited from attempting to resell any alcoholic beverage Products without a valid license, unless expressly permitted to do so pursuant to an exception under applicable law.

17. FORCE MAJEURE

Neither the Licensee nor the PLCB will incur any liability to the other if its performance of any obligation under these Terms of Sale 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 the following: 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, pandemics and quarantines; acts of terrorism; labor strikes; and freight embargoes. The Licensee shall notify the PLCB orally within 5 days and in writing within 10 days of the date on which the Licensee becomes aware, or 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 these Terms is prevented or delayed and (iii) if performance is delayed, state a reasonable estimate of the duration of the delay. The Licensee 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 to either cancel the transaction at issue or extend the time for performance as reasonably necessary to compensate for the Licensee's delay.

In the event of a declared emergency by competent governmental authorities, the PLCB may, by notice to the Licensee, suspend all or a portion of these Terms of Sale.

18. LIMITATION OF LIABILITY

IF A LICENSEE DISAGREES WITH THESE TERMS OF SALE, THEIR SOLE AND EXCLUSIVE REMEDY IS TO NOT PROCEED WITH PLACING AN ORDER FOR PRODUCTS.

TO THE EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL THE PLCB OR ITS MEMBERS, EMPLOYEES, AGENTS, CONTRACTORS OR SUPPLIERS BE LIABLE TO A LICENSEE OR ANY THIRD PARTY FOR ANY LOSSES OR DIRECT, INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES ARISING FROM ANY PRODUCTS OFFERED FOR SALE BY THE PLCB, EVEN IF SUCH LOSSES OR DAMAGES WERE FORESEEABLE OR THE PLCB WAS MADE AWARE OF OR SHOULD HAVE REASONABLY KNOWN OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES. THESE LIMITATIONS SHALL APPLY TO ANY CAUSE OF ACTION, REGARDLESS OF WHETHER IT IS BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, STATUTE OR ANY OTHER LEGAL OR EQUITABLE THEORY. THESE LIMITATIONS SHALL NOT APPLY TO LIMIT THE LIABILITY OF ANY MANUFACTURERS OR SUPPLIERS (OTHER THAN THE PLCB) OF PRODUCTS OFFERED FOR SALE BY THE PLCB, TO THE EXTENT THAT SUCH MANUFACTURERS OR SUPPLIERS HAVE MADE THEIR OWN REPRESENTATIONS OR WARRANTIES RELATIVE TO SPECIFIC PRODUCTS.

19. DISCLAIMER OF REPRESENTATIONS AND WARRANTIES

THE PLCB MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO ANY PRODUCTS THAT IT OFFERS FOR RESALE AS A WHOLESALER. TO THE EXTENT PERMITTED BY LAW, ALL SUCH REPRESENTATIONS OR WARRANTIES – INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT – ARE EXPRESSLY DISCLAIMED. THIS DISCLAIMER DOES NOT APPLY TO ANY REPRESENTATIONS OR WARRANTIES THAT MAY BE OFFERED OR PROVIDED BY MANUFACTURERS OR SUPPLIERS (OTHER THAN THE PLCB) RELATIVE TO PRODUCTS OFFERED FOR RESALE BY THE PLCB.

20. INDEMNIFICATION AND DEFENSE

To the extent permitted by applicable law, and except as otherwise indicated herein, Licensees making purchases from the PLCB agree to defend, indemnify and hold harmless the PLCB, its members, employees, agents, contractors and suppliers from and against any and all claims, suits, damages, losses, liabilities and costs and

expenses (including attorney fees) arising from or related to the products being purchased.

21. GOVERNING LAW

Any disputes arising from these Terms of Sale, or any activity related thereto, shall be governed by the laws of the Commonwealth of Pennsylvania. By engaging in business activities with the PLCB, Licensees submit to the exclusive personal jurisdiction and venue of the administrative bodies and/or courts located in Dauphin County, Pennsylvania.

22. AVAILABLE DEFENSES

The PLCB expressly reserves the right to assert any available defenses to claims arising from these Terms of Sale or any activity related thereto, including but not limited to the defense of sovereign immunity.

23. DURATION AND CHANGES, REPLACEMENT OR TERMINATION

The Terms of Sale shall remain in effect unless and until updated, replaced or terminated by the PLCB. Failure by the PLCB to exercise any rights or remedies provided herein shall not be construed as a waiver by the PLCB of its rights and remedies in regard to the event of default or any succeeding event of default.

These Terms of Sale shall be subject to change, replacement or termination at any time at the sole discretion of the PLCB. However, the PLCB will make best efforts to provide reasonable notice of at least 30 days prior to any change to or replacement or termination of these Terms of Sale becoming effective.

If these Terms of Sale are updated, replaced or terminated, this shall not limit the PLCB's rights in defending against any claims arising from such Terms of Sale. The Terms of Sale in effect at the time of an order being placed will govern any disputes concerning such order.

24. INTEGRATION

These Terms of Sale represent the entire agreement between the parties. No agent, representative, employee or officer of either the PLCB or the Licensee has the authority to make, or has made, any statement, agreement or representation, oral or written, in connection with these Terms of Sale, 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 these Terms of Sale.

25. SEVERABILITY

In the event any specific provision or portion of these Terms of Sale is deemed to be invalid by an administrative body and/or court having jurisdiction over matters of this nature, this shall not serve to invalidate the other provisions or portions of these Terms of Sale, which shall continue to be valid and enforceable.

26. ASSIGNMENT

These Terms of Sale shall be binding upon the parties and their respective successors and assigns. The Licensee may not assign, in whole or in part, any right, duty, obligation or responsibility provided herein without the prior written consent of the PLCB.

27. CONTACT INFORMATION

Questions concerning these Terms of Sale may be submitted to the PLCB's Bureau of Wholesale Operations.

Email: ra-lbwholesale@pa.gov

Mail: Pennsylvania Liquor Control Board
Wholesale Operations
Northwest Office Building
Harrisburg, PA 17124

By completing and submitting an order for Products in any manner set forth in these Terms of Sale, Licensees acknowledge their understanding and agreement to be bound by these Terms of Sale.