

GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY

DISTILLERIES GROUP TOORANK B.V., TOORANK B.V. and TOORANK PRODUCTIONS B.V.

Version valid from 1 January 2013

- 1. Definitions**
 - 1.1. General Terms and Conditions: These general terms and conditions of sale and delivery.
 - 1.2. Buyer: The buyer or potential Buyer of Products.
 - 1.3. Products: The goods and services offered, sold and (to be) delivered by Seller to Buyer, as well as work performed or to be performed.
 - 1.4. Agreement: Each agreement between Seller and Buyer, including the General Terms and Conditions, concerning the sale and delivery of Products.
 - 1.5. Seller: Toorank B.V., Toorank Productions B.V. or Distilleries Group Toorank B.V. or any affiliated company, which has declared the General Terms and Conditions applicable and has entered into an Agreement with Buyer.
- 2. General**
 - 2.1. The General Terms and Conditions are applicable to the formation, contents and execution of the Agreement, as well as to all other legal acts and relationships between Seller and Buyer.
 - 2.2. Any and all provisions deviating from or supplementary to the General Terms and Conditions shall only have effect if these have been accepted in writing by Seller and shall only be applicable to the relevant Agreement.
 - 2.3. The invalidity of one or several provisions of the General Terms and Conditions shall not affect the legal force of the remaining provisions. Should any provision of the General Terms and Conditions or the Agreement be invalid for whatever reason, the parties will negotiate on the contents of a new provision, which shall be similar to the contents of the invalid provision as much as possible.
 - 2.4. In the event of resale or distribution of the Products, Buyer is obliged to impose on its own buyer, if and insofar as applicable, the rights and obligations Buyer has towards Seller under Articles 8, 10 and 13 of these General Terms and Conditions by way of a perpetual clause.
- 3. Agreement**
 - 3.1. Quotations made by Seller do not constitute a legally binding offer and may be revised or revoked by Seller at any time prior to the conclusion of the Agreement, even when a term for acceptance has been given by Seller. Unless the Seller has indicated otherwise in writing, a quotation will be deemed to be revoked in any case after a period of 30 calendar days from the date of the quotation has lapsed.
 - 3.2. An Agreement will only be concluded when Seller accepts, in writing, a verbal or written order from Buyer, within 2 days of receipt thereof or when Seller has commenced execution of the order, which is perceptible to the Buyer.
 - 3.3. Seller may require a written confirmation from Buyer of an order placed by telephone, in the form of a copy, signed for approval by Buyer, of the quotation, order confirmation or acceptance submitted by Seller, as the case may be.
- 4. Price**
 - 4.1. All prices provided by Seller in price lists, catalogues, brochures, information on websites, quotations, order confirmations, written acceptances or otherwise, are net prices and are thus exclusive of turnover tax (VAT) and any other levies imposed by the relevant authorities, and of any other amount paid for by Seller to any third party for the benefit of or at the request of Buyer in connection with the execution of the Agreement (including for instance transport costs). If applicable, all such taxes, levies and amounts will be borne by Buyer.
 - 4.2. Seller will have the right to pass on to Buyer all increases in production costs caused by the implementation or amendment of any statutory provision pertaining to applicable levies, taxes or permits during the execution of the Agreement.
 - 4.3. Any discounts given by Seller refer solely to the net price and are only applicable to the relevant Agreement.
- 5. Authorities of Seller**
 - 5.1. Seller may determine a minimum purchase quantity for each Product, below which Seller will not enter into an Agreement for said Product.
 - 5.2. The manner in which the Products are packed is determined by Seller and may be changed at any time. In such event, Seller will, insofar as possible, inform Buyer thereof in advance.
 - 5.3. All (intellectual) property rights to the formulas of the Products specifically developed for Buyer under the Agreement, shall exclusively vest in the Supplier and/or its licensors. Buyer is solely entitled to trade in these Products under own 'private label'.
- 6. Delivery**
 - 6.1. Seller will deliver "ex works" (Incoterms 2010) at the Seller's business locations in Zevenaar, the Netherlands. Every other manner of delivery must be agreed upon in writing. Unless otherwise explicitly agreed upon in writing, Seller will determine the manner of dispatch, transport and the like, without Seller bearing any responsibility whatsoever with regard thereto.
 - 6.2. Empty packaging, charged to Buyer by Seller, will be taken back by Seller at the price charged, provided that the packaging concerned is received back by Seller undamaged and in good condition, postage paid. For packaging received back at a later date than the return date agreed upon, a monthly rent is charged, amounting to 10% of the price charged, in which respect each part of a month is counted as a full month.
 - 6.3. In mutual consultation between Seller and Buyer, a period will be fixed within which Seller will deliver to Buyer. The period referred to will not commence until Seller has received the quotation, order confirmation or written acceptance, as the case may be, signed for approval by Buyer, and all other information necessary for the delivery.
 - 6.4. Seller will at all times have the right to deliver the Product ordered by Buyer in partial deliveries. The provisions of the preceding paragraph also apply to partial deliveries. Any partial delivery is considered to be an independent delivery, so that any claims concerning a partial delivery will not affect earlier or later partial deliveries. Invoicing will take place per partial delivery.
 - 6.5. The delivery period will be extended by the period in which Seller, as a result of force majeure, is unable to deliver. If the extension of the original period is more than one month, then both Seller and Buyer will have the right to dissolve the Agreement or -in the event of partial execution of the Agreement- the part thereof that has not yet been executed, by means of a written statement to that effect to the other party. Dissolution pursuant to this article does not entitle either party to any compensation whatsoever. "Force majeure" in this respect includes: war, riots and other types of mobilisation, fire and accidents, machine or other breakdowns in the factory, whether or not as a result of errors made by the employees of Seller, transport impediments, flooding, frost and other weather conditions, government measures prohibiting or hindering delivery, failure by suppliers to supply or to supply in good time, failure by carriers or forwarding agents to supply in good time, failures on the part of auxiliary persons engaged by Seller, illness, disturbances, sit-down strikes and similar actions and all disruptions of the normal continuation of business operations of Seller, which are a result of circumstances beyond the control of Seller and which temporarily or permanently hinder the performance of the Agreement or make it considerably more difficult or expensive to do so.
 - 6.6. The risk for loss of or damage to the Products will pass to Buyer from the time of delivery in accordance with this Article 6.
 - 6.7. Buyer is obliged to cooperate in the delivery, as well as to receive the Products delivered. In the event of failure on the part of Buyer to cooperate in the delivery and receive the Products in good time, Seller will have the right to charge Buyer for additional costs incurred (including for instance storage costs).
 - 6.8. If Seller, in respect of Products to be specifically developed for Buyer, has acquired raw materials to be used in the production and/or manufacture of said Products, such raw materials will be stored at Seller's business locations at the expense and -in deviation of the sixth paragraph of this Article 6- at the responsibility of Buyer.
- 7. Quality and usability; complaints**
 - 7.1. Buyer shall bear the risk of selecting the Products as regards quality, safety, merchantability, suitability or fitness for any purpose. Buyer shall be exclusively responsible for ensuring compliance of its intended use of the Products with applicable laws, regulations and industry codes and standards and for obtaining all necessary approvals, permits and clearances in this respect. All statements, representations, recommendations, advice or other information provided in this respect by Seller in its catalogues, brochures, specification sheets and/or other descriptive publications distributed or published by Seller (including on its website), or by means of supplying sample Products to Buyer, are provided for information purposes only. In no way does Seller warrant that the Products purchased by Buyer are appropriate for the use intended by Buyer, unless the intended use and any specification of the Product in that respect have been clearly and unequivocally agreed upon in the Agreement without any reservation.
 - 7.2. Unless the specifications of the Products have been clearly and unequivocally agreed upon in the Agreement to be firm for a certain period of time or for a certain quantity of Products, Seller reserves the right to change or modify the specifications, construction and/or manufacture of the Products and to substitute materials used in the production and/or manufacture of the Products from time to time without notice. Buyer acknowledges that information provided in Seller's catalogues, brochures, specification sheets and other descriptive publications distributed or published by Seller (including on its website), may accordingly be varied from time to time without notice.
 - 7.3. Buyer is obliged to inspect the delivered Product upon delivery for any defects with regard to quality, packaging and the like. Buyer must submit any complaint to Seller in writing within fourteen days of the time of delivery. In the event that a defect cannot be determined immediately upon careful inspection, the complaint must be made known to Seller in writing within 14 days of the time the defect should reasonably have been known to Buyer, in default of which Buyer will lose all claims against Seller as regards said defect. Submitting complaints does not entitle Buyer to suspend its payment obligation(s).
 - 7.4. In the event that complaints, submitted in good time, are accepted by Seller, Seller will send Buyer, at Seller's discretion, a credit note for the net invoice amount of the relevant Products that do not comply with the Agreement, or Seller will perform anew as soon as possible.
- 8. Labelling and packaging; promotional materials**
 - 8.1. Without the prior written permission of Seller, Buyer is not permitted to offer or (re)sell the Products delivered in any packaging and/or with any labelling other than the original packaging and/or labelling of Seller. However, Buyer may offer or (re)sell individually the Products that have been delivered in bulk packaging, provided the individual Products are offered or (re)sold in the original packaging and/or labelling of Seller.
 - 8.2. Furthermore, Buyer is not permitted, without the prior written permission of Seller, to use the distinguishing characteristics protected by Seller by copyright and trademark rights, other than by (re)selling the Products delivered.
 - 8.3. The promotional materials that Seller may make available to Buyer, whether free of charge or otherwise, in support of the sale of the Products, shall at all times remain the property of Seller. Upon Seller's first request, Buyer shall return said promotional materials to Seller carriage-free and for the own risk of Buyer.
- 9. Clearance of customs documents**

At the time Buyer or Buyer's carrier takes receipt of the customs documents for a batch of Products that are delivered with customs documents, Buyer assumes liability to ensure (full) clearance is given. If and at such time as Buyer or Buyer's carrier signs the CMR waybill (waybill based on the United Nations Convention on the Contract for the International Carriage of Goods by Road) or the standard consignment note belonging to the relevant consignment in acknowledgement of receipt, this will constitute comprehensive proof for receipt of the customs documents stated thereon. Buyer will indemnify Seller against all claims from third parties, including the tax authorities and customs, resulting from the fact that (full) clearance of the relevant customs documents, as referred to on the CMR waybill or the standard consignment note, was not obtained. The basis for this obligation to indemnify is, in so far as this concerns excise duty and other levies, the document whereon an obligation to pay is laid down or imposed, temporarily or otherwise. In any case, the obligation to indemnify, in so far as this concerns excise duty and other levies, is applicable from the time Seller has delivered the customs documents, in accordance with this stipulation, to Buyer or Buyer's carrier.
- 10. Limitation of liability**
 - 10.1. Seller, as well as Seller's subordinates and any third party engaged by Seller for whom Seller is liable, shall not be obliged towards Buyer to make good the costs, damages and/or interests resulting and/or arising from personal injury or damage to goods caused by the Products, if and in so far as this is not due to the intention or wilful recklessness on the part of the management of Seller.
 - 10.2. Seller, as well as Seller's subordinates and any third party engaged by Seller, shall not be liable towards Buyer for damage and/or loss caused by errors or omissions of third parties or by chemical effects or induction of materials not used by Seller.
 - 10.3. In the event that Buyer has instructed Seller to fill and/or label and/or pack products of Buyer, Seller shall not be liable towards Buyer for defects of the product itself, for the information on the labels and/or packaging delivered by or ordered on the instructions of and at the expense of Buyer, nor for any defects in the packaging material provided by Buyer or ordered on the instructions of and at the expense of Buyer.
 - 10.4. In the event that Buyer has delivered products to a third party, which partly consist of the Products delivered by Seller to Buyer, Seller shall not be liable for product liability ensuing from a defect in said products delivered by Buyer to said third party, except if and insofar as Buyer proves that the personal injury or damage to goods was solely caused by the Products delivered by Seller, in which latter event the first paragraph of this Article 10 shall apply.
 - 10.5. The liability of Seller shall in any case always be limited to direct damages to a maximum amount equal to the net price (the price as referred to in Article 3 of the General Terms and Conditions) of that Agreement, or, in the case of a partial delivery, of that part of the Agreement to which the case of damage is most closely related.
 - 10.6. Buyer will indemnify Seller, Seller's subordinates and any third party engaged by Seller, against all and any claims enforced by third parties against Seller by reason of the circumstances referred to in the previous paragraphs of this Article 10. Buyer will pay, in full, all damage and/or costs, connected with such claims, including any costs for legal aid.
 - 10.7. Under no circumstance is Seller liable for damage consisting of loss of turnover or goodwill, decline in proceeds, loss of profit or anticipated savings, or for other indirect or consequential damage.
- 11. Terms of payment**
 - 11.1. All payments must be made in euros upon delivery, unless otherwise agreed upon in writing.
 - 11.2. All payments must be made without any discount whatsoever. Buyer waives the right to put up the defence of set-off or to defer payment in respect of Seller or a company affiliated to the latter.
 - 11.3. Bank transfers and cheques will only become valid when the relevant amounts have been credited to the bank account of Seller.
 - 11.4. In the event that Buyer is in default on payment of the amount owed by Buyer, within the applicable payment period, as well as in the case of involuntary liquidation and moratorium on payments, all the amounts owed by Buyer to Seller will become immediately due and payable in full by operation of law, without any warning or notice of default being required thereto. In such case, all judicial and extrajudicial costs incurred at that time by Seller in order to collect the amounts due to Seller will be payable by Buyer.
 - 11.5. Extrajudicial collection costs payable by Buyer will be assessed in accordance with the Extrajudicial Collection Costs Decree (*Besluit vergoeding voor buitengerechtelijke incassokosten*) and amount to EUR 250 as a minimum, unless the actual extrajudicial collection costs are higher, in which case Buyer will owe the actual extrajudicial collection costs to Seller.
 - 11.6. In the event of failure to pay any amount in good time within the period agreed upon, Seller shall furthermore have the right to demand payment of interest of 1.5% per month, taking effect from the due date of the term of payment and to be calculated over the amount then due and payable, in which respect every part of a month will be counted as a full month, on the understanding that the interest charged by Seller will under no circumstance be lower than the statutory interest.
- 12. Termination**

In the event that Buyer:

 - a) files a petition for its own bankruptcy, is declared bankrupt, assigns an estate, petitions for a moratorium on payments, or part of Buyer's assets are seized and this is not lifted within ten days of seizure;
 - b) is in default as regards its fulfilment of any obligation under the Agreement, and -if it is not clear beyond reasonable doubt that Buyer will not be able to remedy the situation- remains in default, even after being sent a written notice of default in which it is given 10 days to remedy the situation;
 - c) fails to pay an invoice amount or a part thereof within the specified term; or
 - d) discontinues its company or an important part thereof or decides to do so,

Seller shall be entitled to dissolve the Agreement wholly or in part, merely by means of a written statement to that effect, and to demand the goods delivered, in so far as not yet paid for, be returned or to demand payment of that part of the Agreement that has been executed or to suspend further execution of all current Agreements until full payment has been made, or to demand payment in advance and/or security for further deliveries, without prejudice to the right of Seller to full compensation for the damage and/or loss resulting and/or arising from the shortcoming(s) of Buyer and without Buyer being entitled to any compensation whatsoever.
- 13. Retention of title**

Seller retains title to all Products delivered by Seller until such time as Buyer no longer owes Seller any sums of money, to be increased by all applicable collection costs and interest, for deliveries made to Buyer by Seller. Until such time as Buyer has fulfilled all (payment) obligations towards Seller pursuant to the Agreement, Buyer is not entitled to encumber the delivered Products or to alienate them other than in the course of ordinary business operations. Buyer must inform Seller promptly of any claims by or attempts on the part of third parties to get the Products subject to Seller's retention of title under their control or to seize them, and must confirm this forthwith to Seller in writing. Seller shall at all times (therefore also outside the normal business hours of Buyer or Buyer's holders) have the right to collect the delivered Products from Buyer or Buyer's holders, or to have the Products collected, in the event that Buyer fails or Seller has reason to assume that Buyer will fail to fulfil its obligations towards Seller in full, irrespective of whether Buyer has fulfilled its (payment) obligations as regards the specific Products to be collected. Buyer and its holders are obliged to fully cooperate in this matter. At its own expense Buyer must properly insure and keep insured the Products that are subject to Seller's retention of title against ordinary operating risks. In the event that Buyer uses the Products that are subject to Seller's retention of title in the production and/or manufacture of its own products, Seller will automatically obtain full title to the newly produced and/or manufactured products and the provisions of this Article 13 will apply in full as regards said newly produced and/or manufactured products.
- 14. Applicable law and competent court**

Unless otherwise explicitly agreed upon in writing, all Agreements and all Agreements ensuing therefrom are exclusively governed by the laws of the Netherlands. All disputes arising between Buyer and Seller shall be settled by the competent court in Arnhem, the Netherlands. However, Seller shall have the right to bring a dispute before the court within whose jurisdiction Buyer has its domicile.

Only the original Dutch version of these General Terms and Conditions shall be authentic and shall prevail, in case of any inconsistency, over any translation of these General Terms and Conditions in another language, including this translation in English.