

GENERAL CONDITIONS OF SALE AND DELIVERY

**of E&A SCHEER BV, which has its registered office and place of business at Herengracht
316, 1016 CD, AMSTERDAM, THE NETHERLANDS**

1. Scope of conditions

- 1.1 Unless explicitly set aside by E&A Scheer BV, these conditions shall apply to all offers, orders, tenders and/or agreements concluded or to be concluded between E&A Scheer B.V. ('Vendor') and the counterparty ('Buyer'), to all advice provided by Vendor to Buyer in relation to any goods sold, offered or made available by Vendor to Buyer, as well as to all mutually involving Vendor and Buyer.
- 1.2 Vendor expressly rejects any general conditions of Buyer.
- 1.3 If there is a translation of these conditions (made) available, the Dutch text or its interpretation shall prevail if differences occur between the Dutch text of these conditions and the relevant translation thereof.
- 1.4 References and names used in these conditions to identify goods (including delivered goods) shall apply to bulk cargoes of spirits called Rum, Batavia Arrack, or otherwise, and to any other goods and/or services delivered and any work performed by Vendor.

2. Tenders, prices, and documents

- 2.1 Unless explicitly otherwise indicated by Vendor or agreed by the parties, the offers, tenders and quotations submitted by Vendor shall be without any obligation.
- 2.2 Vendor shall be allowed to accept and reject orders of Buyer at its sole discretion. An agreement will be deemed to have been concluded after Vendor has provided written confirmation of an order placed by the Buyer, or has commenced the execution of that order.
- 2.3 For a period of 2 working days from the day an agreement came into existence in accordance with article 2.2, Buyer will be entitled to change the (order and the resulting) agreement or cancel the agreement.
- 2.4 The agreement, as confirmed by Vendor's order confirmation, (i) shall contain the parties' entire agreement with respect to the subject matter therein (in particular in relation to goods, quality, quantity and delivery), (ii) shall supersede all prior oral or written agreements and understandings, and (iii) may not be amended or modified except in writing signed by both parties.
- 2.5 Vendor may, at its sole discretion, accept any changes proposed by Buyer after Buyer submitted its order or after conclusion of the agreement, for example in relation to delivery. Any and all costs in relation to those changes shall be for Buyer's account.
- 2.6 Unless otherwise indicated, the prices stated in offers, tenders and quotations shall be exclusive of VAT, taxes, excise duties, levies and import duties (European or otherwise). Unless otherwise agreed, Vendor will charge the price payable according to its pricelist prevailing at the time of Buyer's order.
- 2.7 Vendor may pass on to Buyer any new taxes, levies and amendments or increases of taxes, excise duties, levies or import duties (Dutch, European or otherwise) payable over sold goods and/or their delivery. Buyer shall reimburse Vendor for its payment of any excise duties and/or levies owed over the deliverable goods.

- 2.8 If excise duty laws require presentation of documents for the discharge of customs or transport documents of Vendor, Buyer shall provide Vendor with those documents within fifteen days of receipt of the goods delivered by Vendor. Buyer shall keep documentary evidence of provision of the documents for at least two years.
- 2.9 At the time of delivery of the purchased goods, Buyer shall have the accompanying administrative documents duly signed by the competent customs or other authorities and return them to Vendor not later than fifteen days after signature. Vendor shall not accept liability for damage and/or costs occasioned by late dispatch of such documents.
- 2.10 Buyer shall indemnify Vendor against any excise duty liabilities and/or costs and/or damage that Vendor may incur due to document clearance or storage by or on behalf of Buyer or if Buyer fails to fulfil the obligations described in this article.

3. Invoicing and payment

- 3.1 Unless agreed otherwise, Vendor shall send the invoice to the Buyer entity that placed the order. If the shipping and invoicing address are in different countries Vendor will invoice with 0% VAT, and Buyer shall invoice the applicable local entity to which Vendor delivers the goods to (shipping address) with the local VAT of the country where the goods are delivered (shipping address). Buyer shall save, hold harmless, indemnify and compensate Vendor from and against any claims (including penalties) from any local authorities or third parties in relation to the foregoing (including but not limited to Buyer's failure to timely or adequately charge and invoice the correct VAT amount).
- 3.2 Invoices shall be payable within the payment terms and in the currency stated on the invoice with the proviso that Buyer shall pay all bank charges.
- 3.3 Buyer shall automatically be in default if it fails to pay an invoice on time. Buyer shall then owe monthly interest of 1.5%. In addition, all claims of Vendor will become fully due and payable immediately.
- 3.4 Under no circumstances shall Buyer have the right to suspend payment, set off any amounts or apply any discount or deduction. Submission of a complaint in relation to any goods will not suspend Buyer's obligation to pay.
- 3.5 Vendor shall have the right to require security for Buyer's fulfilment of its contractual obligations, for example payment in advance or provision of a bank guarantee.
- 3.6 Objections to invoiced amounts shall not suspend payment obligations. Nor shall Buyer have the right to suspend invoice payments for any other reason.
- 3.7 Breaches of and/or defaults in fulfilment (or timely fulfilment) of its obligations shall cause Buyer to owe debt collection costs equal to at least five percent of the principal amount. If the reasonable costs incurred to obtain payment out of court exceed five percent of the principal amount, Buyer shall additionally owe the excess. Court and enforcement costs shall also be recoverable from Buyer. Buyer shall further owe interest over the payable debt collection costs.

4. Delivery

- 4.1 Unless otherwise agreed in writing, delivery shall take place Free Carrier (FCA) Amsterdam, (Incoterms 2020).
- 4.2 Buyer shall accept and take delivery of the purchased goods at the time delivered to it or at the time made available to it under the agreement. The goods shall be stored

at Buyer's risk if it refuses to accept or otherwise fails to take delivery of the goods or is negligent in providing information or instructions necessary for their delivery. This shall cause Buyer to owe all additional costs, including but not confined to storage costs and the costs for re-delivery.

5. Delivery time

- 5.1 Unless otherwise agreed, any delivery date or time shall commence one day after establishment of the agreement between parties. If payment (or partial payment) prior to delivery has been agreed, the delivery time shall not commence until after receipt of the agreed payment (or partial payment).
- 5.2 Unless expressly otherwise agreed in writing, an agreed delivery date or time shall not constitute a deadline. Buyer shall serve Vendor with written notice of breach in the event of late delivery and shall thereby afford Vendor a reasonable time to fulfil its delivery obligation as yet. In the event that such extended term is exceeded, Buyer will be entitled to dissolve agreement or part of the agreement only with respect to the goods not delivered. In such event, Vendor shall not be liable for damages. If the goods cannot be delivered on time for any reasons attributable to Buyer (for example if Buyer's administration (in terms of warehouse keeper numbers) is incorrect or not up to date), Vendor shall not be liable to Buyer on any basis whatsoever, and Vendor may at its discretion extend the delivery time by a reasonable number of days necessary to fulfil its obligations under the agreement.

6. Partial deliveries

- 6.1 Vendor shall have the right to deliver purchased goods as partial deliveries. This right shall not apply if a partial delivery has no independent value.
- 6.2 Partial deliveries shall entitle Vendor to invoice each partial delivery separately.

7. Suspension and termination of agreement

- 7.1 Vendor shall have the right to terminate (i.e., "*beëindigen*", not "*ontbinden*") the agreement if circumstances that affect persons or materials used or required by Vendor for performance of the agreement render its performance impossible or are so onerous and/or disproportionately expensive that its performance cannot reasonably be required.
- 7.2 Without prejudice to Vendor's rights and remedies under these conditions, by virtue of law or otherwise, Vendor shall in any event have the right to suspend performance or further performance of the agreement in whole or in part, or to terminate (i.e., "*beëindigen*", not "*ontbinden*") the agreement in whole or in part forthwith without notice or court intervention, and without any liability towards Buyer if:
- a) Buyer fails to fulfill one or more of its obligations ensuing from any agreement with Vendor, and – if capable of being remedied – Buyer fails to remedy this failure within 7 working days from receipt of a notice from Vendor thereto;
 - b) Buyer is declared bankrupt or a petition for bankruptcy has been filed, insolvent or suspends payments (or requested suspension of payments), or loses the power to dispose of its assets, or portions thereof, as a result of an attachment, placement under guardianship or another reason;
 - c) Buyer ceases its business or control over the business of Buyer and/or its end-customer changes;

- d) Buyer acts in a way detrimental or potentially detrimental to the trading name and/or reputation and/or any rights of Vendor, including intellectual property rights;
- e) after concluding the agreement Vendor has sound reasons to believe that Buyer is or will be unable to fulfil its obligations thereunder;
- f) at the time of entering into the agreement Vendor asked Buyer to provide security for fulfilment of its obligations and the security is not provided or is insufficient.

7.3 Any right of the Buyer to suspend performance is hereby excluded.

8. Force majeure

8.1 Vendor shall not be bound to fulfil any obligation nor be liable towards Buyer in case of force majeure or any other circumstance beyond its control for which it cannot be held responsible by virtue of law, legal act, or views prevailing in society.

8.2 As used in these conditions, force majeure means any circumstance beyond Vendor's control or power, regardless of whether foreseeable on entering into the agreement, including but not confined to war, threat of war, disturbances, riots, terrorism, government measures, shortage of raw materials, any kind of factory or transport disruptions or problems (including but not limited to traffic impediments and a shortage of containers or tanks or other transport means), strikes, lockouts or shortage of personnel, breakdowns of machines or tools or other breakdowns within Vendor's company quarantine, pandemics, epidemics, floods, fire, other natural disasters, delays caused by frost, actions/measures by any customs authorities (including the temporary or other closing off of certain geographical areas) and failures by third parties engaged by Vendor in performance of the agreement. Vendor may further invoke force majeure if the circumstance that prevents fulfilment or further fulfilment of the agreement occurs after Vendor should have fulfilled its commitment. Force majeure must also be deemed to apply in the event that one or more of the above-mentioned circumstances occur within the companies of Vendor's suppliers or Vendor's subcontractors and Vendor cannot or could not perform its obligations or cannot or could not perform such in good time, as a consequence.

8.3 For the duration of force majeure, Vendor may suspend fulfilment of obligations under the agreement. If the duration exceeds twelve months, each party shall have the right to terminate the agreement without compensating the other party for damage.

8.4 Vendor shall have the right to charge to Buyer any (additional) costs or expenses incurred by Vendor ensuing from or relating to any force majeure event (including any costs resulting from (unexpected) additional waiting time).

8.5 To the extent that Vendor had partially fulfilled or is capable of fulfilling its obligations under the agreement, Vendor may separately invoice the fulfilled or fulfillable part. Buyer shall be bound to pay such an invoice as if a separate agreement existed.

9. No Guarantee

9.1 Vendor does not provide any guarantee in relation to any goods. In particular, Vendor does not guarantee that the goods that it delivers shall be usable for the purpose for which Buyer purchased them, regardless of whether Vendor knew or should have known the purpose for which Buyer concluded the (sales)agreement.

9.2 In particular, Vendor does not guarantee the presence or absence of certain characteristics indicated by Buyer with regard to the aroma or flavour of the delivered goods as it is impossible to determine such characteristics objectively.

- 9.3 The parties may – upon mutual agreement – arrange for an organoleptic assessment of the delivered goods. Without prejudice to article 9.1 and 9.2, insofar as Buyer and Vendor jointly conclude after this organoleptic assessment of the delivered goods that the aforementioned characteristics are missing, Buyer may have the right to return the delivered goods and to have them replaced by others, provided that (i) the parties have explicitly agreed upon this right of return and replacement, and (ii) the delivered goods have not yet been blended with other goods, with the exception of goods of the same type delivered earlier by Vendor to Buyer.
- 9.4 Vendor does not dilute the goods to bottle strength. If Buyer does request this however, Vendor shall not be liable for any possible differences in ABV or product quality.

10. Liability

- 10.1 Any liability on the part of Vendor, on any basis whatsoever, with respect to these conditions, any and all offers, orders, tenders and agreements as well as all (other) legal relationships to which Vendor is a party as referred to in article 1.1 will be restricted to the provisions laid down in article 12.5.
- 10.2 If and to the extent that Vendor is liable for any kind of damage, its liability shall be limited to the invoiced value of the order or, as the case may be, to the part of the order that the liability concerns. In all instances, the liability of Vendor shall be limited to the amount of the payout by its insurer in a particular case.
- 10.3 Notwithstanding the foregoing, Vendor shall not be liable for any indirect damage or consequential damage such as damage due to delay, loss of profit, penalties forfeited, loss of data, unachieved savings, and interruptions to business.
- 10.4 Vendor shall not be liable for damage to products as a result of shipment.
- 10.5 Buyer shall save, hold harmless, indemnify and compensate Vendor against any third party claims (and all resulting costs) in relation to any goods sold or delivered to Buyer (including but not limited to any claims from Buyer's customers), and from and against any other claims brought by third parties who incur damage through performance of the agreement for reasons imputable to parties other than Vendor.
- 10.6 Without prejudice to the foregoing case of any third party claims made against Vendor, Buyer shall assist Vendor at law and otherwise and shall immediately do everything that may reasonably be expected of it in the case in hand. Failure by Buyer to take proper measures shall give Vendor the right to take such measures itself without serving notice of breach. All resulting costs and damage incurred by Vendor and third parties shall be fully payable by and at the risk of Buyer.
- 10.7 Without prejudice to article 12.1, 12.2 and 12.3, any claims that Buyer has against Vendor for damages, costs or payment of any other compensation, on any basis whatsoever, shall lapse in all instances 6 months after the delivery of the goods that are the cause for those claims of Buyer. .
- 10.8 Nothing in these conditions shall exclude or limit Vendor's liability in the event that the damage is the consequence of gross negligence or willful misconduct by Vendor's executive management.

11. Reservation of title

- 11.1 Vendor shall retain title to the goods delivered and to be delivered until full payment of all purchase amounts for those goods has been received, as well as any

amounts owed by Buyer pertaining to work performed by Vendor in connection with those agreements under which the goods have been or are to be delivered and any amounts or claims pursuant to any failure in the performance of those agreements on the part of Buyer.

11.2 Goods delivered by Vendor under reservation of title within the meaning of article 11.1 may be resold only in the normal conduct of business. Buyer shall not have the right to pledge the goods and/or establish any other right to them.

11.3 If Buyer fails to fulfil its obligation or if legitimate doubt exists as to whether it will do so, Vendor may repossess or order repossession of the goods under reservation of title either from Buyer or from third parties holding the goods on its behalf. Failure by Buyer to provide all cooperation required for this purpose shall cause Buyer to owe a daily penalty equal to ten percent of the owed amount, without prejudice to any other right or remedies of Vendor by virtue of these conditions, any agreement, law or otherwise (including but not limited to the right to claim specific performance and/or to claim damages where the amount of the actual damages exceeds the amount of the penalty).

11.4 Buyer shall inform Vendor as quickly as may reasonably be expected if third parties seek to establish or to enforce any rights to goods under reservation of title.

11.5 At Vendor's first request, Buyer shall:

- a. Take out and maintain insurance for goods delivered under reservation of title against fire, explosion, water damage, and theft, and provide the insurance policy for inspection;
- b. Pledge to Vendor all of Buyer's entitlements from insurers for the goods delivered under reservation of title in the way described in Article 3:239 of the Civil Code of the Netherlands;
- c. Pledge to Vendor the claims that Buyer obtains on its customers by reselling goods delivered by Vendor under reservation of title in the way prescribed in Article 3:239 of the Civil Code of the Netherlands;
- d. Mark the goods delivered under reservation of title as the property of Vendor; and
- e. Cooperate in other ways in all reasonable measures that Vendor wishes to take to protect its rights of ownership of the goods and that do not unreasonably obstruct Buyer in its normal conduct of business.

12. Deficiencies and complaints

12.1 Buyer shall inspect the goods or have them inspected on delivery or as soon as possible thereafter and in any event within seven days of delivery and, where applicable, prior to blending. Buyer shall take a representative sample during unloading of any goods delivered by tank truck and shall keep the sample available with a view to complaints. As part of the inspection, Buyer shall establish whether the delivered goods conform with the agreement, namely:

- a. Whether the correct goods have been delivered;
- b. Whether the quantity of delivered goods corresponds with the agreed quantity;
- c. Whether the delivered goods meet the agreed quality requirements.

12.2 Within seven days of delivery, Buyer shall inform Vendor in writing of any visible deficiencies or shortcomings. All claims by Buyer on the grounds of or in connection with shortages or deficiencies shall lapse and be forfeited if Buyer fails to

complain and/or confirm a complaint within seven days from delivery and/or unloads or samples delivered goods in breach of the provisions in this article.

- 12.3 Buyer shall inform Vendor in writing of deficiencies not visible within seven days of discovery and in any event within two months of delivery.
- 12.4 Even if a complaint is made on time, Buyer shall remain under obligation to pay for and to take delivery of the ordered goods. Goods may be returned to Vendor only after its prior written consent.
- 12.5 In the event of a complaint on good grounds, Vendor will only be obliged - to be decided at Vendor's discretion - to replace the relevant good or to credit or refund the amount charged in connection with the defective good in whole or in part, according to its own reasonable judgment and to the exclusion of any other rights of the Buyer by law or otherwise.
- 12.6 In the event of a complaint on good grounds with respect to delivered goods, Buyer shall – at its own costs – return those goods to Vendor, as well as any goods of the same batch of those goods.
- 12.7 For the avoidance of doubt, any claims of the Buyer with respect to the goods, on any basis whatsoever, shall in any event lapse and be forfeited if the delivered goods have (already) been blended (by dilution or otherwise) or processed or mixed with other goods.
- 12.8 Any and all claims of the Buyer for payment of an amount of money and/or replacement of the good and/or supply of any missing part, on whatever basis, as well as any right of the Buyer to terminate or dissolve the agreement will lapse at the earliest of the following times: a) upon late reporting pursuant to article 12.2 or 12.3, or b) 6 months after the delivery date.

13. Intellectual property rights

- 13.1 All current or future intellectual property rights regarding the goods, including but not limited to patents, copyrights, trademarks or trade secrets, shall be and remain vested in Vendor. Conclusion and performance of the agreement between Vendor and Buyer shall not assign to Buyer any copyrights, trademarks, or other intellectual property rights attached to the delivered goods or any designs, images, or recipes thereof.
- 13.2 Vendor shall not be bound to disclose to Buyer the recipes of delivered goods.
- 13.3 Buyer warrants Vendor that no intellectual property rights that it makes available to Vendor for performance of the agreement shall infringe any rights of third parties, including intellectual property rights. Vendor does not warrant that goods delivered to Buyer shall not infringe any third-party intellectual property rights.

14. Confidentiality

- 14.1 Under no circumstances shall Buyer disclose any information about the agreement concluded by and between Buyer and Vendor, the suppliers involved, the recipes used, the origin data, or other resulting or related information, except to the extent legally required by a judicial or other authority and subject to prior consultation with Vendor regarding the time and content of disclosure.
- 14.2 Without Vendor's prior written permission or instructions Buyer shall not use any intellectual property rights (such as brand names and business names) and/or packaging of Vendor, its suppliers, producers or of any goods. In particular, certain

producers are not willing to give permission for their distillery to be disclosed to buyers of their rum through Vendor and its subsidiaries and also producers have strongly objected to their heritage material being used by other companies to promote private label brands, such companies include brand owners and their distributors and clients. Producers are keen to protect their trademarks and the integrity of their own brands. As a result Buyers wishing to declare on their labels or promotional material details of the origin, distillery or associated information relating to the producer must first approach Vendor or its subsidiaries for permission to be gained from the appropriate producer.

- 14.3 For the avoidance of doubt, Buyer shall be fully responsible and liable for any intellectual property rights and information that Buyer intends to use or apply in relation to the goods. In particular, Buyer shall be fully liable in case of a breach of article 14.2. If a supplier of Vendor takes legal action against Buyer for Buyer infringing upon this supplier's intellectual property rights, Vendor and its subsidiaries shall not be liable for any costs and damage of the Buyer (including any legal expenses incurred by Buyer), nor shall Vendor and its subsidiaries be liable for information used that has been obtained from sources other than from Vendor or its subsidiaries. Buyer shall indemnify, save and hold harmless Vendor and its subsidiaries from and against any costs and damage ensuing from or relating to the Buyer's use or application of any third party intellectual property rights or information (including of Vendor's suppliers)..

15. Applicable law, forum, and disputes

- 15.1 These conditions, all offers, orders, tenders and agreements as referred to in article 1.1 as well as all (other) legal relationships to which Vendor is party shall be governed exclusively by Dutch law. The Vienna Sales Convention shall not apply.

- 15.2 In the event that Buyer is domiciled in a Member State of the European Union or in Norway, Switzerland or Iceland at the time that proceedings are commenced, any and all disputes relating to these conditions, all offers, orders, tenders and agreements as referred to in article 1.1 as well as all (other) legal relationships to which Vendor is a party, on any basis whatsoever, shall be exclusively settled by the competent court in Amsterdam, the Netherlands. The above will not affect Vendor's right to submit a dispute to the court that would be competent in the absence of this provision.

In the event that the Buyer is not domiciled in a Member State of the European Union or in Norway, Switzerland or Iceland upon the commencement of proceedings, any and all disputes relating to these conditions, all offers, orders, tenders and agreements as referred to in article 1.1 as well as all (other) legal relationships to which Vendor is a party, on any basis whatsoever, shall be settled in accordance with the rules of the Netherlands Arbitration Institute [Nederlands Arbitrage Instituut, or NAI]. Arbitration will take place in Amsterdam, the Netherlands. The case will be submitted to three arbitrators and the arbitration proceedings will be conducted in Dutch. The arbitrators shall apply Dutch law. The above shall not affect Vendor's right to submit a dispute to the court that would be competent in the absence of this provision.