



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

Lodged on 1st February 2013 at the Amsterdam Chamber of Commerce under number 33158894

Article 1 Scope of conditions

- 1.1 Unless explicitly set aside by E&A Scheer BV, these conditions shall apply to all offers and/or tenders and/or agreements and/or activities mutually involving E&A Scheer BV ('Vendor') and a buyer/contracting party ('Buyer').
- 1.2 Vendor expressly rejects any general conditions of Buyer.
- 1.3 The Dutch text or its interpretation shall prevail if differences occur between the Dutch text of these conditions and the English, German or any other text 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 other goods and/or services delivered by Vendor.

Article 2 Tenders, prices, and documents

- 2.1 Unless explicitly otherwise agreed by parties, the tenders and quotations submitted by Vendor shall be without any obligation.
- 2.2 Vendor shall be bound by tenders/quotations only after its written confirmation thereof.
- 2.3 Unless otherwise indicated, the prices stated in tenders shall be exclusive of VAT, taxes, excise duties, levies and import duties (European or otherwise). Unless otherwise agreed, Vendor may charge the price payable according to its pricelist prevailing at the time of delivery.
- 2.4 Vendor may pass on to Buyer any new taxes, levies and amendments or increases of taxes, excise duties, levies or import duties (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.
- 2.5 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.
- 2.6 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.
- 2.7 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 obligation described in this article.





Article 3 Invoicing and payment

- 3.1 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.
- 3.2 Buyer shall automatically be in default if it fails to pay an invoice on time. Buyer shall then owe monthly interest of 1.5%.
- 3.3 Under no circumstances shall Buyer have the right to set off any amounts.
- 3.4 Vendor shall have the right to require security for Buyer's fulfilment of its contractual obligations.
- 3.5 Objections to invoiced amounts shall not suspend payment obligations. Nor shall Buyer have the right to suspend invoice payments for any other reason unless it is able to seek recourse to Part 6.5.3 of the Civil Code of the Netherlands (Articles 231 to 247 of Book 6).
- 3.6 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.

Article 4 Delivery

- 4.1 Unless otherwise agreed in writing, delivery shall take place Free Carrier (FCA) Amsterdam. (Incoterms 2010)
- 4.2 Buyer shall accept 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 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.

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Article 5 Delivery time

- 5.1 Unless otherwise agreed, a delivery 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 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. If the goods cannot be delivered on time for reasons attributable to Buyer, Vendor may at its discretion extend the delivery time by a reasonable number of days necessary to fulfil its obligations under the agreement.

Article 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.

Article 7 Suspension and termination of agreement

- 7.1 Vendor shall have the right to dissolve 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 Vendor shall have the right to terminate an agreement through dissolution without notice and without compensating Buyer if Buyer imputably fails to fulfil any provisions of the agreement. An imputable failure shall exist if Vendor has made Buyer aware of non-fulfilment of its obligations and Buyer fails to fulfil the obligations within a reasonable period of time set by Vendor. The agreement shall be dissolved in writing.
- 7.3 In any of the following circumstances, Vendor may suspend performance or further performance of the





agreement, or dissolve the agreement forthwith without notice, without compensating Buyer for damage and without prejudice to Vendor's right to require replacement or additional damage compensation from Buyer:

- a. If Buyer and/or its end-customer is insolvent or suspends payments
- b. If control over the business of Buyer and/or its end-customer changes
- c. If 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
- d. If after concluding the agreement Vendor becomes aware of circumstances that constitute legitimate grounds for doubting whether Buyer will fulfil its obligations
- e. If 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

Article 8 Force majeure

- 8.1 Vendor shall not be bound to fulfil any obligation towards Buyer if prevented from doing so by *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, insofar as of a such nature that Vendor cannot reasonably be required to perform the agreement, including but not confined to war, government measures, shortage of raw materials, any kind of factory or transport disruptions, strikes, lockouts or shortage of personnel, quarantine, epidemics, delays caused by frost, 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.
- 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 dissolve the agreement without compensating the other party for damage.
- 8.4 To the extent that Vendor had partially fulfilled or is capable of fulfilling its obligations under the agreement and insofar as the part already fulfilled or fulfillable has independent value, Vendor may separately invoice the fulfilled or fulfillable part. Buyer shall be bound to pay such an invoice as if a separate agreement existed.

Article 9 Warranty

- 9.1 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 purchase agreement.
- 9.2 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. Insofar as Buyer and Vendor jointly conclude after organoleptic assessment of the delivered goods that the aforementioned characteristics are missing, Buyer shall have the right to return the delivered goods and to have them replaced by others, provided always that 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.





Article 10 Liability

- 10.1 Vendor shall have no liability except in instances of malicious acts or serious misconduct on its part.
- 10.2 To the extent that Vendor is liable for any kind of damage, its liability shall be limited to not more than 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 Vendor shall not be liable for any indirect damage such as consequential damage or damage due to delay, loss of profit, unachieved savings, and interruptions to business.
- 10.4 Vendor shall not be liable for damage to products as a result of shipment, except in instances of malicious acts or serious misconduct.
- 10.5 Buyer shall indemnify Vendor against any claims brought by third parties who incur damage through performance of the agreement for reasons imputable to parties other than Vendor.
- 10.6 If Vendor is held accountable by third parties, 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 Any claims that Buyer has against Vendor for payment of compensation for any alleged failure on the part of Vendor within the meaning of this article shall lapse in all instances six months after Buyer discovered or should have discovered the failure.

Article 11 Reservation of title

- 11.1 Goods delivered by Vendor shall remain its property until Buyer has fulfilled all of the following obligations under all purchase agreements concluded with Vendor:
- a. Remittance of the consideration owed for delivered or deliverable goods
 - b. Remittance of anything owed by Buyer for its non-fulfilment of any purchase agreements
- 11.2 Goods delivered by Vendor under reservation of title within the meaning of Clause 1 of this article 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 within the meaning of Clause 1 of this article 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.
- 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
 - 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.





Article 12 Deficiencies and complaints

- 12.1 Buyer shall inspect the purchased goods or have them inspected on delivery or as soon as possible thereafter and always 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:
- Whether the correct goods have been delivered
 - Whether the quantity of delivered goods corresponds with the agreed quantity
 - Whether the delivered goods meet the agreed quality requirements or, if no such requirements exist, whether they meet expectable requirements for normal usage and/or trading
- 12.2 Within seven days of delivery, Buyer shall inform Vendor in writing of any deficiencies or shortcomings observed. All claims by Buyer on the grounds of or in connection with shortages or quality deficiencies shall be forfeited if Buyer fails to complain and/or confirm a complaint within the above meaning on time and/or blends delivered goods – except goods of the same kind delivered earlier by Vendor – 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 and/or observed within seven days of discovery and always within two months of delivery, except where the delivered goods have already been blended with other goods for the purpose of the production process.
- 12.4 Even if a complaint is made on time, Buyer shall remain under obligation to pay for and to take the ordered goods. Goods may be returned to Vendor only after its prior written consent.

Article 13 Intellectual property rights

- 13.1 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.

Article 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 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. Producers have threatened to take legal action against any Company declaring protected information without prior approval. Vendor and its subsidiaries cannot be held accountable should such legal expenses be incurred, nor can Vendor and its subsidiaries be held responsible for any conflict of information used that has been obtained from sources other than from Vendor or its subsidiaries. By checking the information buyer wishes to declare, Vendor and its subsidiaries endeavour that buyer will comply with all the rights, duties, obligations and terms prescribed under purchase agreements entered into by Vendor and its subsidiaries and the companies who supply Rums to Vendor and its subsidiaries.





Article 15 Applicable law, forum, and disputes

- 15.1 All legal relationships to which Vendor is party shall be governed exclusively by Dutch law, also in instances where a commitment is fulfilled entirely or partially in another country or where the party involved in the legal relationship is domiciled there. The Vienna Sales Convention shall not apply.
- 15.2 Any disputes arising from the agreement concluded by and between Buyer and Vendor and any related subsequent agreements shall be resolved exclusively by submission to the courts with jurisdiction at Amsterdam, the Netherlands.

