



**GENERAL TERMS AND CONDITIONS OF PURCHASE**  
**of the Koninklijke Vereniging van Nederlandse Wijnhandelaren**  
**(Royal Association of Dutch Wine Merchants)**

**Article 1: Applicability**

- a. These general terms and conditions of purchase are applicable, to the exclusion of all other conditions, previously made undertakings and agreements, including oral agreements, to all agreements between a Dutch wholesaler and importer of wine and distilled drinks (hereinafter "the buyer") and the seller, as well as to all legal relationships which may arise as a result of such agreements between the parties in question, unless explicitly diverged from in writing in the purchase confirmation of the buyer.
- b. In these terms and conditions, the term 'seller' may refer to any person or legal entity who/which has concluded an agreement or wishes to do so with the buyer. The term may also refer to the latter's agent(s), authorised representative(s), legal assignee(s) and successors.
- c. By wine is meant the products as referred to in the GN codes 2204, 2205 and 2206, insofar as these codes are applicable, and fruit wine, as described in the Commodities Act, Commodities Act Decree reserved descriptions of 24th March 1998, State Bulletin 177, article 5.
- d. General terms and conditions of purchase which diverge from these provisions, in particular the general terms and conditions of sale of the seller, or non-binding legal regulations, are explicitly excluded, even if the seller's terms and conditions are received by the buyer after the seller has received those of the buyer, unless the buyer has accepted the divergent provisions in writing. The buyer's unreserved acceptance of goods or making of payments in no way constitutes the buyer's recognition of provisions which diverge from these general terms and conditions of purchase.

**Article 2: Quotation requests and offers**

- a. An agreement only comes about as the result of a written purchase confirmation from the buyer. The buyer is not bound by any quotation requests made by it or by any offers/quotation requests made by the seller.

- b. In the event of any difference between the buyer's purchase confirmation and any confirmation from the seller, only these terms and conditions and the buyer's confirmation will be valid.

**Article 3: Composition, contractual and legal regulations for wine and distilled drinks / Corporate Social Responsibility**

- a. All deliveries from the seller must be in accordance with samples – especially as regards quality, composition, odour, colour, taste and authenticity – and fulfil all specifications contained in the purchase confirmation, as well as all legal requirements and regulations of the country designated as the end destination by the buyer, including regulations from statutory industrial organisations and the European Union with regard to, amongst other things, method of preparation, quality, composition, shelf-life, packaging, labelling, environment and transport which are applicable to the goods in the end-destination country at the time of arrival in that country.
- b. All deliveries must satisfy the European Guideline 2000/13/EG and the Commodities Act Decree concerning the Labelling of Food Products which is based upon it, as well as the European hygiene guideline 93/43/EEG and the Dutch Commodities Act Decree concerning the hygiene of food products which is based upon it, especially as regards the HACCP regulations.
- c. Sellers of wine, flavoured wine and fruit wine must comply with the most recent version of the Hygiene Code for the wine industry.
- d. Packaging must satisfy the requirements of all countries in which or through which the goods are transported up to the end destination. The seller is responsible for the correctness of all paperwork, declarations and documents which accompany the goods or in which it is declared by the seller or on the seller's behalf that they relate to the goods.
- e. The seller is obliged to take into consideration all requirements, conditions, regulations, provisions and rules following from the conventions of the International Labour Organisation (ILO), the UN declaration on the rights of man, the UN conventions on the rights of children, as well as the abolition of any form of discrimination against women, the UN Global Compact and the OECD guidelines for multinational companies which apply to the execution of the agreement.

#### **Article 4: Delivery times**

- a. The deliveries must be made at the time stipulated in the agreement or in accordance with the schedule drawn up by the buyer. Partial deliveries are not permitted.
- b. The seller is bound to the time of delivery stipulated in the agreement or the delivery schedule drawn up by the buyer, on the understanding that the buyer is entitled to subsequently adjust the time of delivery or delivery schedule at its own option, without the seller being able to demand any price amendment or other form of compensation as a result
- c. If, for whatever reason, the buyer is not able to take receipt of the goods at the agreed time or via the established schedule, the seller will then store and safeguard the goods and take all reasonable measures in order to prevent any deterioration in their quality until such time as they are delivered.
- d. If the seller is unable to perform its contractual obligations at the time stipulated in the agreement or in accordance with the delivery schedule drawn up by the buyer, the seller is obliged to inform the Client thereof immediately.
- e. The seller is liable vis-à-vis the buyer for any potential fines or discounts on the purchase price which must be given to the customer by the buyer due to late delivery as the result of a delay attributable to the seller. The buyer has the right to recover these fines or discounts from the seller, if necessary by making deductions from the payments which the buyer still owes to the seller.
- f. Without prejudice to the right of the buyer to demand the fulfilment of the agreement at its choice and discretion, possibly with compensation, the buyer has the right to dissolve the agreement in accordance with article 9 of these general terms and conditions of purchase if the delivery(ies) in question does not take place at the agreed time or via the agreed schedule.

#### **Article 5: Delivery**

- a. Unless agreed otherwise, all goods will be delivered to the border of the country of the buyer FOB, FOT or FOR the means of transport intended for the further transportation of goods from that border. The means of transport in the country of the seller and from its border will be designated by the buyer.
- b. Any damage caused to goods during loading, transport and/or unloading is for the account of the seller.
- c. The goods must be properly packaged. The seller is liable for any damage caused to persons or goods as a result of inadequate packaging and/or damage to or destruction of the packaging in question.

- d. The prices stated by the buyer are deemed to include all official and government taxes, duties for exporter organisations, commissions etc. unless explicitly stated otherwise by the seller.

### **Article 6: Transport vehicles**

The seller shall in all cases inspect the transport vehicle, in particular the spaces into which goods are loaded, such as tanks and containers, immediately before loading and is liable for damage caused due to defects to the vehicle, even if the vehicle has been made available by the buyer. Any deliveries in receptacles of more than 60 litres must be accompanied by two sample bottles filled before each loading and sealed by or on behalf of the seller.

### **Article 7: Ownership, risk**

- a. Without prejudice to the other provisions of this article, the goods remain for the account and risk of the seller until transfer at the Dutch border or until the Dutch border if no transfer takes place, or until the moment of storage in a so-called excise warehouse in accordance with the instructions of the buyer. The seller is obliged to insure the goods against theft/damage and to ensure that they remain insured until the risk on the goods transfers to the buyer.
- b. Goods which are paid for by the buyer prior to delivery are the property of the buyer from the day of payment and will be held by the seller on behalf of the buyer. The seller is required to separate those goods as far as is possible from its own goods and to store them with due care.
- c. Goods which are not paid for by the buyer prior to delivery are the property of the buyer from the moment at which the risk on the goods transfers in accordance with paragraph a. The buyer is, in all cases, owner of the goods when they are in his possession.
- d. In the event that the goods are the property of the buyer but are still in the possession of the seller, the seller hereby undertakes vis-à-vis the buyer to mark, register and administer the goods held by it on behalf of the buyer and to ensure that they remain marked, registered and administered in such a way that they can at all times be identified, including on an individual basis, as being destined for the buyer.
- e. If the goods belonging to the buyer which are being held by the seller are seized or threatened with the seizure or third parties threaten to pursue remedy in any other way in respect of the goods of the buyer, the seller shall inform the buyer hereof as soon as possible and, if possible, separate the goods of the buyer from its own goods.

## **Article 8: Claims**

- a. The buyer has the right to inspect the goods for visible and non-visible defects prior to or during loading or delivery. If the buyer does not make use of this right, this cannot be invoked against him.
- b. The delivery is first deemed to have been accepted by the buyer when the delivery has been approved. The buyer has the right to reject the delivered goods for a period of up to eight (8) days following the date of delivery, as a result of which all other periods within which claims must be made, if and insofar as they should be applied by the seller, do not apply to the buyer.
- c. Approval and acceptance only apply to the quantity and outward appearance of the delivered goods. If goods are delivered in packaged or combined form, the approval and acceptance only relates to the quantity and outward appearance of packaging. The seller is at all times remains liable for defective deliveries if the defects in question can be reasonably identified following the aforementioned claim period and they are reported to the seller within a reasonable period of time.
- d. In the event of the rejection of goods, the buyer shall inform the seller within a reasonable period of time. The seller shall remove the rejected goods upon the first request of the buyer. If the seller fails to remove the rejected goods, the buyer is entitled to return them at the cost and risk of the seller.
- e. The goods must at all times satisfy the legal food-safety requirements in effect in the Netherlands or the other designated end-destination country, whereby, notwithstanding the analysis report of the seller, the goods are assessed according to investigation methods recognised in the Netherlands or the end-destination country.
- f. The buyer is entitled to defer the payment of the rejected goods.

## **Article 9: Price**

- a. All prices are fixed, unless agreed otherwise in writing. No adjustment can take place due to increases in wage costs and prices, unless agreed otherwise.
- b. All prices are valid for the delivery of the goods with carriage paid in the manner and at the location described in article 5 and include all packaging, loading transport, unloading and insurance costs relating to the goods, excluding VAT.

## **Article 10: Payment**

- a. Unless agreed otherwise, the buyer shall pay the purchase price within ninety (90) days following the delivery or invoicing of the goods in question, whichever is the latest. In the event of early payment, the buyer may apply a reduction of

- 1/30% per day. The buyer is only obliged to pay following the delivery of the goods in accordance with the agreement and approval by the buyer.
- b. In the event of late payments, the buyer will not immediately enter into default and the seller shall grant the buyer a second payment period of at least thirty (30) days.
  - c. Payments of the invoice sum or parts thereof to the intermediary involved in the purchase or by designated third parties count as payments to the seller.
  - d. If it has been agreed that the buyer must pay certain sums in advance, the buyer then at all times has the right to demand a guarantee for these sums which, in its judgement, is satisfactory.
  - e. Payment by the buyer for the delivered and approved goods does not relieve the seller of any guarantee and/or liability which follows from this agreement or the law.
  - f. If the seller, after having been served notice of default in writing, whether culpable or not, fails to fulfil its obligations on the basis of this agreement, the buyer is not obliged to pay any compensation, except payment of deliveries which have already been carried out and approved. If the seller is culpable for the aforementioned failure to fulfil its obligations, this payment will be made subject to the deduction of damages and costs which the buyer suffers and/or will suffer as a result of the culpable failure.
  - g. All claims of the buyer against the seller, on whatever basis, may be deducted from the purchase price owed and/or be thereby settled.
  - h. If payment on credit or by bill of exchange or upon the submission of documents or any other guarantee from a third party has been agreed, the payment or acceptance can in no case be regarded as acceptance of the goods or otherwise cause the rights of the buyer to lapse or be restricted.

#### **Article 11: Non-performance and dissolution**

- a. If the seller does not fulfil an obligation which follows from an existing agreement or relationship with the buyer, or fails to do so fully or on time, or in the event of:
  - the bankruptcy of the seller;
  - suspension of payment on the part of the seller;
  - an official receiver, administrator or liquidator being appointed for the seller;
  - debt restructuring on the part of the seller;
  - the seller having ended its activities;
  - a third party having taken over control of the seller; or

- if a situation arises which justifies immediate termination and the interests of the buyer;

the buyer is justified, without any notice of default or legal intervention being required and without the lapsing of any rights to compensation or the emergence of any liability vis-à-vis the seller, to:

- suspend its work activities which follow from the agreement or any other agreement or relationship with the seller;
  - dissolve or partially dissolve the agreement or any other agreement or relationship with the seller;
  - demand payment of all claims which the buyer has against the seller, irrespective of their origin or reason.
- b. In all cases of non-performance on the part of the seller, even if the buyer then demands partial fulfilment or accepts the goods, the seller is liable for all costs and damage of whatever nature which the buyer suffers or will suffer, including losses due to decline of profits, losses due to claims from third parties (whether or not on the basis of product liability), covering purchases, exchange rate losses, compensatory interests, tariff changes and lost from the facilities expected upon purchase, such as the exceeding of quota restrictions.
- c. Any claims which the buyer may have or acquire as a result of the dissolution or partial dissolution of the agreement, including any potential claims for compensation of damage and costs, are immediately payable in full.

## **Article 12: Indemnity and Liability**

- a. Insofar as the seller's non-fulfilment of its contractual or legal obligations result in the buyer being held liable by third parties, the seller hereby undertakes to indemnify the buyer against all consequences of this liability.
- b. The seller is liable for damage, including loss of profits and consequential damage, which the buyer, the persons or companies working for the buyer and third parties suffer and/or will suffer as a result of an attributable shortcoming or illegal action on the part of the seller.
- c. The buyer shall inform the seller immediately if it receives a claim as referred to in this article. The buyer shall also inform the seller within a reasonable period of time if it expects to receive such a claim. The seller shall, if it so desires or the buyer so requests, deal with a claim on behalf of the buyer, but only once it has secured a bank guarantee for a reasonable amount on behalf of the buyer in order to cover any potential damage, if the buyer so demands.

- d. The seller shall conclude an adequate insurance policy in order to cover its liability under these terms and conditions. The seller shall provide the buyer with documentary evidence of this insurance policy upon the request of the buyer.
- e. The seller shall make every effort to avoid damage or, if applicable, reduce the amount of the damage as the result of any defect in the goods. The buyer shall also take all reasonably appropriate measures in this regard according to the instructions of the seller and the seller shall compensate the buyer for the costs thereof insofar as those costs exceed the normal costs of the buyer's operational management.

### **Article 13: Industrial and intellectual property**

The seller safeguards the buyer against all claims from third parties concerning rights relating to trademarks, patents, trade names and similar industrial or intellectual property rights.

### **Article 14: Unforeseen events and other circumstances**

- a. All obligations of the buyer lapse in the event of *force majeure* and any events and circumstances which cannot be attributed to the fault of the buyer and as a result of which normal purchase at the agreed prices and subject to the expected import and excise duties and/or other official regulations upon the conclusion of the agreement or normal sale to third parties and normal payment by them to the buyer is impossible or hindered, such as, for example, war and equivalent situations, rioting, strikes, demonstrations and/or lock-outs, natural disasters, non-performance by third parties which have been engaged to carry out sales, storage and/or transport, quota restrictions, the hindering of imports or exports and/or use and/or processing of goods for the aim for which the buyer intends to use them.
- b. In the event of circumstances and events as referred to in this article, the buyer may request the seller to fulfil its obligations, partially or wholly, at a point in time to be indicated by buyer, provided this is not later than four weeks following the agreed delivery time, or declare the agreement dissolved, in both cases without the buyer being obliged to compensate any costs or damage.

### **Article 15: Recall**

- a. If the buyer has reason to suppose that the goods delivered by the seller are defective or may otherwise give cause to serious claims pursuant to articles

6:185 *et seq* the Dutch Civil Code (product liability), the buyer will be entitled to recall the goods in question and return them to the seller, but only following prior consultation with the seller.

- b. In the event of the recall or return of the goods, the seller shall compensate the buyer for all damage which it suffers as a result, including all costs of the recall notice, transport costs, excise duties, taxes, import duties and other out-of-pocket costs and additional costs of its organisation, in addition to the cost price of the goods which are returned to the seller.

#### **Article 16: Confidentiality**

- a. Unless any national or international legal provisions or regulations compel disclosure, the buyer shall not disclose or make accessible to third parties any information concerning the buyer or relating to the agreement including, but not limited to, the client details of the buyer which it has received from the buyer or has in any other way acquired knowledge of, even following the termination of the agreement for whatever reason, unless with the explicit written permission of the buyer.
- b. The seller shall impose its obligations on the basis of this article on its staff, representatives and/or third parties engaged by it.

#### **Article 17: Non-competition**

The seller shall completely refrain from the making of estimates and/or quotations, whether directly or through the agency of third parties, to clients of the buyer known to it in relation to the delivery of goods.

#### **Article 18: Contract assignment**

- a. Unless it has the explicit permission of the buyer, the seller is not permitted to transfer the agreement or any obligation on the basis of the agreement to third parties. The buyer is entitled to attach conditions to this permission. In any case, the seller then undertakes to impose all relevant obligations which follow from the agreement and these general terms and conditions on the third party in question. In addition to this third party, the seller remains liable at all times for the fulfilment of obligations which follow from the agreement and the General Terms and Conditions, unless the parties explicitly agree otherwise.
- b. In the event of contract assignment, the seller safeguards the buyer against all claims from third parties which may arise as a result of the non-fulfilment or incorrect fulfilment of any obligation which follows for the seller from the agreement and/or these general terms and conditions.

### **Article 19: Costs**

All costs, both judicial and/or extrajudicial, which the buyer incurs as a result of the non-fulfilment of the obligations which follow from the agreement, or any other relationship with the seller, are fully payable by the seller. The extrajudicial costs will be established at a minimum of 15% of the sum total plus interest, without prejudice to the right of the buyer to claim the actual extrajudicial costs which exceed this amount.

### **Article 20: Renunciation of rights**

The non-immediate enforcement of any right or authority of the buyer will not influence or restrict the rights and authorities of the buyer which follow from the agreement all these general terms and conditions of purchase. The renunciation of any right, provision or condition will only take effect if it has been confirmed in writing.

### **Article 21: Invalidity**

Provisions of these general terms and conditions of purchase of which the explicit or tacit intention is that they will also remain in effect following the termination of the agreement such as, but not limited to, the duty of confidentiality or provisions concerning intellectual property rights, will remain in force and remain binding for both parties.

### **Article 22: Changes in writing**

Any changes, additions and/or cancellations of an agreement or these general terms and conditions of purchase, including the provisions of this article, are only valid if the parties have agreed to them in writing.

### **Article 23: Partial nullity**

If one or more provisions of these general terms and conditions of purchase appeared to be wholly or partially invalid, they shall be interpreted in such a way that they approximate the content of those provisions as closely as possible. In such cases, the other provisions remain in full force.

### **Article 24: Translations**

Translations of these general terms and conditions of purchase which are provided to the seller or have been lodged as an addendum to these conditions have been carefully drawn up, but only the Dutch version is binding for the parties.

#### **Article 25: Applicable law and disputes**

- a. These general terms and conditions of purchase and the agreement(s) and other agreements which are referred to therein are subject exclusively to Dutch law. The applicability of the CISG ( the so-called Vienna Convention) is explicitly excluded. The most recent edition of the English-language version of the Incoterms, as published by the International Chamber of Commerce, is always applicable to the common terms and abbreviations used in international trade such as carriage paid, FOB etc. which appear in these conditions and/or conditions which diverge from them.
- b. All disputes which relate to these general terms and conditions of purchase and the agreement(s), which are referred to in these conditions, will initially be presided over by the competent court in the *de facto* place of business of the buyer to the exclusion of any other court.

(These general terms and conditions of purchase have been lodged with the Clerk of Court's Office at the district Court in Amsterdam on 11 February 2010, under number 19/2010)

## **CODE OF CONDUCT FOR THE TERMINATION OF AN EXCLUSIVE DISTRIBUTION AGREEMENT**

The members of the Royal Association of Dutch Wine Merchants have decided to establish the basic principles for the principal and distributor in the event of the termination of an exclusive distribution agreement in the form of a code.

### **Considerations:**

- The principal and distributor are one another's trading partners with a common interest *and* each with an individual interest.
- In the interest of both parties, the exclusive distribution agreement should be set down in as detailed form as possible in writing.
- Where this does not happen or where the relationship stems from earlier times without or with only a summary written agreement, in conflict situations an appeal must be made to what is customary law in the industry in the Netherlands.
- In such cases, the code of conduct below is a guideline for the termination of the exclusive distribution agreement, irrespective of whether there is a contractual relationship or merely a gentlemen's agreement.
- The code of conduct is explicitly not intended for the exceptional case of cancellation on the grounds of an urgent reason within the meaning of the law.

### **Code of conduct:**

In the event of the cancellation of the exclusive distribution agreement by one of the parties, the party in respect of whom the agreement has been cancelled will, in general, suffer damage as a result. In that case, this damage must be limited as much as is possible. Both parties bear responsibility in this regard.

Cancellation must always happen through the giving of a reasonable period of notice. In general, the period of notice is one year. With long-term contracts, that is to say, contracts in effect for more than seven years, this period of notice must be extended by one year for each period of seven years up to a maximum period of notice of three years.

This period of notice may be reduced if the continuation of the agreement would entail damage for one of the two parties. In this case, the party which has the commercial interest in the shorter period of notice must pay suitable compensation to be determined on a proportional basis. If the distributor has made investments in consultation with the principal which can no longer be recouped due to the

cancellation, the parties must make a special arrangement in order to recoup or compensate the damage caused in any way.