



## GENERAL TERMS & CONDITIONS OF MSB-SPIRITS CVBA

### Article 1 – Definitions

- 1.1 Unless the context shows otherwise, any words and expressions which have been capitalized in these General Terms & Conditions are defined terms to which the following meaning is assigned:  
**‘General Terms & Conditions’**: these General Terms & Conditions of Supplier;  
**‘Products’**: any movable goods to be delivered and/or services to be provided by the Supplier.  
**‘Purchaser’**: the (potential) counter party of the Supplier.  
**‘Supplier’**: MSB-Spirits cvba, having its corporate seat at Avenue J. Bordet 160, 1140 Brussels, Belgium.  
**‘Working days’**: all days, except Saturday, Sunday and Bank Holidays.
- 1.2 Whenever ‘written’ or ‘in writing’ is used in these General Terms & Conditions it shall mean by letter, fax, email, internet or any other usual (electronic) trade medium.

### Article 2 – Applicability

- 2.1 These General Terms & Conditions are applicable to all offers by and agreements with the Supplier, relating to the delivery of Products by the Supplier to the Purchaser.
- 2.2 Supplier declines any General Terms & Conditions or stipulations used by or referred to by the Purchaser.
- 2.3 Any stipulations deviating from these General Terms & Conditions shall only apply in the event that and insofar as they have been accepted, in writing, by a duly authorized executive of the Supplier.

### Article 3 – Commercial quotation and order/contract

- 3.1 All offers made by the Supplier, in writing or verbally, are without obligations. This shall also apply if the offer includes a period for acceptance, unless explicitly stated differently in writing.
- 3.2 The Supplier is entitled to terminate any negotiations with the Purchaser at any time, without any compensation being due.
- 3.3 An agreement is concluded when the contract is signed by one of the executives of the Supplier and by the Purchaser, or on the date of dispatch of the order confirmation in writing by the Supplier, or of the Supplier’s invoice.
- 3.4 The Supplier is entitled to reject an order placed by the Purchaser in whole or in part, within seven (7) working days after the receipt of such order in writing. In such event, no compensation whatsoever shall be due by the Supplier.
- 3.5 Slight deviations with customary tolerances shall be permitted at the execution of the agreement.
- 3.6 One-sided cancellation by the Purchaser shall be null and void unless the Supplier agrees to this cancellation in writing.

### Article 4 – Prices

- 4.1 Unless agreed otherwise in writing, all prices of Products are based on Ex-Works delivery (as such term is defined in the Incoterms 2000), so excluding costs of transport, taxes, duties, insurance policies and VAT.
- 4.2 The Supplier shall have the right to increase prices for Products to be delivered in the event of an increase in cost prices relating to the contract, such as, raw materials, wages, insurance policies, freight tariffs, official currency rates, import- and transit duties, taxes or other measures imposed by authorities, which occur within three (3) months after conclusion of the contract, and to pass on such adjusted prices to the Purchaser.
- 4.3 Unless explicitly stated otherwise in writing, all given prices by the Supplier are in Euros.

### Article 5 – Delivery

- 5.1 Unless explicitly agreed upon otherwise in writing, all deliveries will be done Ex-Works (as such term is defined in the Incoterms 2000). If agreed between Supplier and Purchaser in writing that the Products shall be transported by the Supplier, parties will also agree in writing on the terms on which delivery of the Product takes place.
- 5.2 In case the Products are stored for the Purchaser by the Supplier at a third-party premise or elsewhere, delivery of the Product shall be deemed to have taken place at the first day of storage.

- 5.3 The delivery period shall be based on the circumstances applicable at the time of acceptance of the order from the Purchaser and on the timely delivery of the materials and goods ordered by the Purchaser. In case of any delay arising as a result of changes in these circumstances or because materials and Product, timely ordered, have not been delivered in time, the delivery period shall be postponed within a reasonable period of time taken the given circumstances.
- 5.4 Indicated times of delivery by the Supplier will only serve as an estimate. The Supplier will only be in default after receiving a written notice of default specifying a reasonable time for delivery and after it has failed to comply with such specified time.
- 5.5 The Supplier shall be entitled at all times to make partial deliveries and to invoice such deliveries separately. Unless explicitly agreed upon otherwise in writing.

### Article 6 – Transportation

- 6.1 If the Supplier provides for transport of the Product, the following provisions apply:
- 6.2 The Supplier shall be entitled to have the Product transported, unloaded, by a third party at the expense and risk of the Purchaser, in a manner to be determined by the Supplier and using means of transportation at the Supplier’s option.
- 6.3 The Purchaser will be responsible for any documents for the transportation of the Product to the place of destination.
- 6.4 The Purchaser will ensure that the Supplier can deliver the Product at the named place of destination on the agreed date and time of delivery. If the Purchaser does not comply with this obligation, the Purchaser is in default without any further notice of default being required. In that case, the Supplier has the right to decide either to take the Product back or to store the Product elsewhere at the costs and risk of the Purchaser. Any cost for storage or return shipment shall be payable by the Purchaser. The Purchaser is also still obliged to fulfill his obligations to the Supplier as if delivery had taken place.

### Article 7 – Return shipment

The Supplier will not accept any return shipments without a prior written consent of the Supplier. Should any return shipment take place, this will in principal be done at the risk and cost of the Purchaser. Unless it concerns the return of Product of which it is confirmed that this Product does not meet the agreed condition in which case the costs are for the Supplier’s account and expense.

### Article 8 – Payment

- 8.1 Payment by the Purchaser shall be made within the term mentioned in the relevant invoice. In the absence of such term in the invoice, payment shall be made within a maximum period of fourteen (14) days after the date of the invoice, unless agreed otherwise in writing.
- 8.2 Payment by the Purchaser will be done without deduction or settlement and in the currency set out in the invoice.
- 8.3 If payment is not received by the due date, the Purchaser is in default by operation of law and without any prior notice of default being required, Purchaser shall owe overdue interest of 2% per month on the amount due and payable from the date at which the payment should have been made, without prejudice to any other rights and remedies that the Supplier may have. The Supplier will also be entitled to request immediate payment of all invoices and to immediately suspend performance of all of its obligations.
- 8.4 All reasonable debt collection costs and any legal or judicial costs which the Supplier might have due to a default of the Purchaser, shall be borne by the Purchaser with a minimum of fifteen percent (15%) of the principal amount.
- 8.5 Payments by the Purchaser shall be used to settle judicial costs as mentioned in article 8.4 and interest as mentioned in article 8.3 first, thereafter shall be used for the oldest debt, irrespective of any indications made by the Purchaser.

#### Article 9 – Inspection and complaints

- 9.1 The Purchaser is obliged to inspect the Product upon delivery to evaluate whether the Product conforms to the contract and is not damaged. When Purchaser does not carry out this inspection, the Purchaser loses his right to claim that the Product is not conform contract or is defective or when Purchaser does not inform the Supplier in writing thereof within twenty-four (24) hours after delivery, or after such moment that the defect or deviation should reasonably have been detected.
- 9.2 Complaints are only accepted in writing.
- 9.3 In the event of timely and justifiable complaints, the Supplier shall only be obliged, at its option, to either repair the Product, proceed to redelivery or to credit the Purchaser for the defective goods.

#### Article 10 – Retention of Title

- 10.1 The Supplier retains title relating to the Products delivered or to be delivered, until the Purchaser has fulfilled its (payment) obligations under the contract.
- 10.2 Until the Purchaser has fulfilled all payment obligations, the Purchaser is neither entitled to pledge nor to otherwise encumber for security reasons or otherwise the Products. The Purchaser may only dispose of the Products in the normal course of its business, provided that the Purchaser undertakes to pledge immediately, upon first request of the Supplier, to the Supplier all present and future receivables of the Purchaser relating to the sale of the Products delivered by the Supplier to its customers and/or all goods co-owned by the Supplier by means of separation and/or confusion with the Products delivered or to be delivered by the Supplier in order to provide security with respect to any claim the supplier may have from time to time upon the Purchaser.
- 10.3 The Supplier shall be entitled to repossess any Product delivered under retention of title that is still present at the Purchaser's premises and without prior notice of default, in the event the Purchaser fails in the performance of his obligations. The Purchaser irrevocably authorizes the Supplier to exercise this right to repossess the Product insofar as is necessary.
- 10.4 The Purchaser shall notify the Supplier immediately if:
- An application of suspension of payments is made by the Purchaser or granted
  - An application of bankruptcy is filed with regard to the Purchaser or the Purchaser is declared bankrupt
  - Third parties exercise rights to the Products referred to in article 10.1 or if Purchaser becomes aware that third parties wish to do so

#### Article 11 – Liability

- 11.1 Except in case of gross negligence and willful intent of the Supplier or its directors, the Supplier will only be liable to compensate for damages and losses up to the invoice amount paid by the Purchaser with respect to the Products that caused the relevant damages and losses.
- 11.2 The Supplier's liability will never cover business damage or any other indirect damage.
- 11.3 The Supplier is not liable for damages and losses caused by gross negligence or willful intent of its employees and/or its agents.
- 11.4 The Supplier stipulates all legal and contractual defences that it can invoke in respect of its liability towards the Purchaser also for the benefit of its employees and agents for which it can be held liable by law.

#### Article 12 – Force Majeure

- 12.1 Force Majeure in these General Terms & Conditions mean any circumstance beyond the Supplier's control, whether or not foreseeable at the time of conclusion of the contract, that prevents the Supplier, either temporarily or permanently, from fulfillment of the contract, insofar not yet included, governmental regulations or orders which prohibit or restrict the use of the delivered Products or the Products to be delivered; strike or lock-out; labour shortage, shortage of (raw materials or additives for) the Products in question to be delivered; transportation problems; limitations/prohibitions of import and/or export; non- or untimely performance by the Supplier's suppliers or transport undertaking; disruption in the production process of the Products; nature-/nuclear disasters; war, danger of war; and other circumstances which are beyond the Supplier's reasonable control.
- 12.2 If the Supplier cannot properly perform its obligations in whole or in part, whether temporarily or permanently, as a result of circumstances which are not at the Supplier's risk, including those circumstances mentioned in Article 12.1, the Supplier is entitled to rescind the contract(s) with the Purchaser, without any compensation being due by the Supplier.

#### Article 13 – Intellectual Property Rights

- 13.1 The Purchaser hereby acknowledges that all intellectual property rights and knowhow, including but not limited to trademarks, trade names, patents, copyrights, domain names, e-mail addresses, mnemonic telephone numbers and recipes, used in connection with or embodied in the Products, including the marketing and sales are and shall remain the sole property of the Supplier, unless agreed otherwise.
- 13.2 The Purchaser shall not use the trademarks, trade names and other symbols referred to in Article 13.1 other than for the purpose of reselling the Products within the scope and during the term of the contract and under the conditions set forth by and in accordance with the instructions obtained from the Supplier, to which the Purchaser shall strictly adhere. The use of any other intellectual property rights and know-how, including recipes and ideas, referred to in Article 13.1 is strictly prohibited, unless agreed otherwise in writing.
- 13.3 The Purchaser shall not disclose to any third party in any manner whatsoever any confidential information obtained from the Supplier, including know-how and ideas referred to in Article 13.1, save to the extent required under applicable law or save to the extent such confidential information is or shall become public knowledge other than through any improper performance by the Purchaser.
- 13.4 Unless agreed otherwise in writing, the Purchaser may not affix its own trade names or trademarks on the packaging of the Products.
- 13.5 The Purchaser may only offer, sell and deliver any Branded Products in the original, undamaged, unopened packaging on which no change or amendment has been made. The Purchaser is permitted to add or affix (to the Product or its packaging) items legally required to sell the Branded Products in a certain country, such as translated labels or fiscal stamps as proof of payment of accise, duties or other taxes. The delivered Branded Products may only be donated or offered to third parties for a total price with products of third parties after having obtained the Supplier's prior written consent thereto. The Purchaser is obliged to impose this obligation on its customers, insofar these are not consumers.
- 13.6 In the event that the Purchaser does not observe the prohibitions set forth in Articles 13.2, 13.3 and/or 13.4 and/or does not meet the obligations set forth in Articles 13.1, 13.2 and/or 13.5, the Purchaser shall immediately, without any further action or formality being required, become liable to the Supplier for an immediately due and payable penalty in an amount (in Euros) equal to three (3) times the annual turnover realized by the Purchaser in respect of the Product(s) in question for each such breach and for a periodic penalty payment in an amount (in Euros) equal to ten percent (10%) of the aforementioned amount for each day such breach continues, without the Supplier having to prove any losses or damages and without prejudice to the right of the Supplier to claim full compensation for damages and profit gains in addition, if there are grounds for doing so, and to demand an injunction or a court order to perform the obligations referred to in this Article 13.
- 13.7 The Purchaser shall immediately notify the Supplier of any third party claims relating to an alleged infringement of any intellectual property rights, including alleged acts of unfair competition, as a result of the use of the intellectual property rights and/or the know-how referred to in Article 13.1. The Purchaser undertakes to supply the Supplier with all available evidence and to provide all reasonable assistance in the defense against such claims. However, the Supplier shall have the right to select the lead counsel in the litigation at its own expense. The Purchaser has the right to be represented by its own counsel in litigation at its own expense. Without the consent of the Supplier, no settlement may be agreed by the Purchaser with third parties concerning disputes on intellectual property rights and/or know-how related to the Branded Products, including the marketing and sales thereof.
- 13.8 Any liability of the Supplier to the Purchaser resulting from any situation referred to in Article 15.7 shall be limited to the replacement of the Branded Products concerned (or any part thereof) or the reimbursement of the purchase price for the Branded Products concerned, at the Supplier's election.

#### Article 14 – Applicable Law

- 14.1 Belgian law shall be applicable to all legal relationships between the Supplier and the Purchaser with the exception of the United Nations Convention on the International Sale of Goods (1980) and except in case the Supplier has made a choice of law other than Belgian law.
- 14.2 All disputes arising under or in connection with (the performance of) any contract between the Supplier and the Purchaser as well as any disputes regarding these General Terms & Conditions shall be exclusively settled by the competent court in Brussels, Belgium.