

General Conditions of Business of Swiss Drinks Ltd., Obermeilen



– Deliveries –

1. Area of Applicability

The below General Conditions of Business shall apply in business dealings between Swiss Drinks Ltd., Obermeilen (hereinafter: Supplier) and the Purchasers to orders and deliveries of products which the Supplier has in its range. Business dealings consist of all contracts, deliveries and other exchange of goods and performance between the Supplier and Purchasers.

2. Offer and Orders

- 2.1 The Supplier's offers are always without engagement and are non-binding.
- 2.2 Orders may be placed for goods by telephone, in writing, via the Internet or by e-mail.
- 2.3 Orders will only be accepted and executed by the Supplier subject to these General Conditions of Business. The Purchaser recognises these General Conditions of Business by placing an order or closing a sale, at the latest, however, upon acceptance of the delivery. In the last-mentioned case the Purchaser shall be deemed to have accepted these Conditions with retro-active effect as of the time of placing of the order. Any provisions - and in particular the Purchaser's general conditions of business - which contradict the present General Conditions of Business shall only be valid if they have been confirmed in writing by the Supplier.

3. Acceptance of the Order by the Purchaser

Upon delivery the Purchaser undertakes to accept and inspect the goods he ordered. If the Purchaser fails to do so, the Supplier shall be entitled – without having to grant a period of time and/or having to obtain judicial approval – to deposit the goods ordered at the risk and at the expense of the Purchaser or to demand compensation for damages arising from non-performance or to withdraw from the contract and demand compensation for the damages arising from the cancellation of the contract.

4. Prices and Conditions of Payment

- 4.1 Unless explicitly stipulated otherwise, prices are in Swiss francs (CHF).
- 4.2 Deliveries for which no fixed prices were explicitly agreed shall be invoiced at the Supplier's list prices valid on the day of the delivery plus value added tax.
- 4.3 Payment in advance may be requested for bulk deliveries of products.
- 4.4 Invoice amounts are payable on a net basis, without any deduction whatsoever, within 30 days of receipt of the goods. If the due date for payment has expired and payment is still outstanding, the Purchaser shall automatically be deemed to be in default without a reminder having to be sent. Default interest amounts to 5 %.
- 4.5 If the Purchaser is in default with acceptance of goods or with payments, the Supplier may refuse to take any further orders, even those based on other, separate contracts; the Supplier may also demand compensation for damages until the Purchaser has discharged all obligations existing towards the Supplier based on any contracts whatsoever.

5. Packaging

- 5.1 The products will either be delivered in non-returnable packaging (such as for example plastic bottles, non-returnable glass etc.), free of any deposit, which becomes the Purchaser's property upon delivery or in returnable packaging (such as containers, receptacles, crates, pallets, bottles with a deposit etc.) which is to be returned in perfect condition to the Supplier or, depending on the terms of the agreement reached, is to be held at the Supplier's disposal ready for pick-up.
- 5.2 The Purchaser has to pay for any damage it caused to returnable packaging.

6. Dispatch and Transport

The Supplier's prices for deliveries within Switzerland are basically free domicile. The Supplier may, however, charge reasonable costs for dispatch and transport.

7. Delivery Dates and Performance of Contract by the Supplier

- 7.1 The delivery dates are non-binding and are only to be considered as a guideline unless they were guaranteed in writing. The Supplier shall make every effort to carry out the deliveries as quickly as possible.
- 7.2 If the Supplier is in default in respect of a delivery date guaranteed in writing, the Purchaser must grant the Supplier a reasonable additional period of time for subsequent performance. The Supplier reserves the right to withdraw from the contract if the manufacture or delivery of the ordered products within the additional period of time should become exceptionally difficult or impossible. In this case the Supplier shall not be under any obligation to make a later delivery once such obstacles cease to apply.

- 7.3 In cases of occurrences or circumstances caused by force majeure for which the parties are not to be held responsible, the delivery dates shall be deferred for the duration of the occurrence causing the delay.

8. Transfer of Risk

Risk and benefit pass to the Purchaser upon dispatch of the goods from the Supplier's works. Goods are transported at the Purchaser's risk.

9. Warranty

- 9.1 All the Purchaser's claims under warranty are explicitly restricted solely to rectification of defective goods or subsequent delivery, whereby the Supplier shall have to the right to choose whether to remedy the defect by rectification or by subsequent delivery. Any claims over and beyond this, in particular also claims for compensation for the goods or for damages which arose directly or indirectly from the use thereof, are explicitly barred.

- 9.2 The Purchaser undertakes to immediately examine the goods delivered for obvious defects, in particular to check for wrong deliveries, wrong quantities or damaged goods and to send the Supplier a notice of defect immediately, at the latest however within two days of receipt of the goods.

10. Limitation of Liability

- 10.1 The Supplier shall only be liable for damages of any kind which are due to unlawful intent or gross negligence on the part of the Supplier or its employees in relation to a breach of the Supplier's own contractual obligations.
- 10.2 Contractual and non-contractual liability for slight negligence shall be excluded; this also applies to auxiliary personnel.
- 10.3 The Supplier shall only be liable – on its own behalf and on behalf of its auxiliary personnel – for damages to property or persons insofar as it was caused deliberately or as a result of gross negligence. Compensation for damages of a purely pecuniary nature or for indirect or consequential damages is excluded – to the extent permitted by statutory law.
- 10.4 The Supplier's maximum liability is limited to an amount equivalent to the sales price.
- 10.5 For the rest the limitations of liability shall not apply if they contradict mandatory provisions of law.

11. Disclaimer in Respect of Liability for Damages as a Result of Force Majeure

The Supplier shall not be liable for damages which were caused by force majeure. The Supplier shall in particular not be held responsible for delays in performance and delivery which were caused by force majeure. All cases of force majeure (e.g. war, strike, fire, natural disasters, disruption of operations at the Supplier's firm or at one of its sub-contractors) and measures ordered by the authorities as well as all other occurrences – for which the Supplier is not to be held responsible – which impair the performance of the contract, shall entitle the Supplier to withdraw from the contract or to defer the date of delivery for as long as the occurrence which caused the delay persists.

12. Partial Deliveries

The Supplier shall be entitled to make partial deliveries and/or partial performance.

13. No Right of Offset

The Purchaser's right to exercise offset is hereby explicitly excluded.

14. Place of Performance

The place of performance for all obligations shall be the Supplier's domicile, unless agreed otherwise.

15. Amendments and Supplements

Any amendments or supplements to these General Conditions must be in written form to be valid.

16. Place of Jurisdiction and Applicable Law

- 16.1 The ordinary courts at the Supplier's domicile are competent to judge all disputes arising out of this contract. The Supplier may, however, elect to file a lawsuit at the Purchaser's domicile or at any other statutory place of jurisdiction.
- 16.2 Swiss law is applicable exclusively to this contract, CISG, the United Nations Convention on Contracts for the International Sale of Goods, is barred.