

– Production and Delivery –

1. Area of Applicability

The below General Conditions of Business apply to business dealings between Swiss Drinks Ltd. (hereinafter: Supplier) and Purchasers with respect to the manufacture of products as well as the manufacture of beverages, fruit confections, flavours, toppings, bakers' jam, fillings, powdered products and the like. Business dealings comprise all contracts, deliveries and other exchange of goods and performance between the Supplier and Purchasers.
2. General Principles
 - 2.1 A contract shall be deemed to have been entered into on receipt of the Supplier's written confirmation that it accepts the order (order confirmation).

Offers which do not stipulate a deadline for acceptance are non-binding.
 - 2.2 These General Conditions of Business shall be binding if it was stated in the offer or the order confirmation that they are applicable. Any conditions of the Purchaser which contradict these General Conditions of Business shall only be valid if the Supplier has explicitly accepted them in writing.
 - 2.3 All agreements and legally relevant declarations made by the contracting parties shall only be valid if they are in written form.
3. Prospectuses, Catalogues, Technical Documentation
 - 3.1 Prospectuses and catalogues shall not be binding without a separate written agreement. Details in technical documentation such as declarations, specifications or basic formulations/recipes etc. shall only be binding if they have been explicitly guaranteed in writing.
 - 3.2 Each party shall retain all rights to recipes, specifications, declarations and the like which it handed over to the other party. These recipes etc. may not be made wholly or partly accessible to third parties or used apart from the designated purpose for which they were handed over without the prior written consent of the other contracting party.
4. Prices and Terms of Payment
 - 4.1 Unless explicitly stipulated otherwise, prices are in Swiss francs (CHF), exclusive of value added tax.
 - 4.2 Invoice amounts are to be paid on a net basis without any deduction whatsoever (discount, expenses, taxes, duties etc.) within 30 days of the date of the invoice. 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 needing to be sent. Default interest amounts to 5%.

The duty of payment shall be deemed to have been discharged once the invoiced amount is at the Supplier's free disposal at the Supplier's domicile. If payment by bill of exchange has been agreed, the Purchaser shall pay for the note discounting, the note tax and collection charges.
 - 4.3 Due dates for payment are to be complied with even if the transport, delivery or acceptance of deliveries or performance is delayed or rendered impossible for reasons for which the Supplier is not to be held responsible or if insignificant parts of the delivery are missing or if rectification proves to be required, without however rendering the use of the deliveries impossible.
 - 4.4 If partial payments have been agreed and the Purchaser is in arrears with one of the partial payments for any reason whatsoever or if – for some reason which arose after the contract was closed - the Supplier has serious grounds for concern that it will not receive payment in full or in good time, the Supplier shall be entitled to suspend further performance of the contract and to hold back deliveries ready for dispatch until new terms of payment and delivery have been agreed upon and the Supplier has received adequate security. If it is not possible for the parties to reach such an agreement within a reasonable period of time or if the Supplier does not receive adequate security, it shall be entitled to withdraw from the contract and demand compensation for damages.
 - 4.5 If the Purchaser is in default with payment, the Supplier may refuse to take any further orders, even those based on other, separate contracts, until the Purchaser has discharged all obligations existing towards the Supplier based on any contracts whatsoever.
- 4.6 All additional charges such as e.g. for freight, insurance, export, transit, import and other permits and legalisations shall be for the Purchaser's account, unless agreed otherwise in writing.
- 4.7 The Purchaser must also pay all types of taxes, levies, charges, customs duties and the like which are levied in connection with the contract or the Supplier is to be refunded upon production of the respective receipts, if the latter is obliged to pay such costs in advance.
5. Delivery Period
 - 5.1 The production and delivery period are agreed between the contracting parties in writing.
 - 5.2 The delivery period will be extended accordingly:
 - a) If the Supplier does not receive in good time the data (recipes and the like) which it requires in order to discharge the contract or if the Purchaser makes subsequent modifications to such data and thereby causes a delay in deliveries or performance;
 - b) If obstacles arise which the Supplier cannot avert despite having exercised due care, regardless of whether it is the Supplier, the Purchaser or a third party which incurs these obstacles. Such obstacles are for example war, strike, fire, natural disasters, interruptions of operations at the Supplier's firm or at one of its sub-contractors;
 - c) If the Purchaser or third parties are in arrears with the work to be carried out or in arrears with discharge of their contractual obligations, in particular if the Purchaser does not comply with the terms of payment.
 - 5.3 If a certain date is agreed instead of a delivery period, this has the same meaning as the last day of a delivery period.
 - 5.4 The Purchaser shall in principle not have any rights and claims arising out of any delay in deliveries or performance. This reservation does not apply to unlawful intent or gross negligence on the part of the Supplier; it does however also apply to unlawful intent or gross negligence on the part of auxiliary personnel.
6. Packaging
 - 6.1 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 for example 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.
 - 6.2 The Purchaser has to pay for any damage it caused to returnable packaging.
7. Transfer of Risk

Risk and benefits pass to the Purchaser upon dispatch of the goods from the Supplier's works. Goods are transported at the Purchaser's risk.
8. Dispatch, Transport and Insurance
 - 8.1 Any special requests regarding the dispatch, transport and insurance are to be communicated in good time to the Supplier. Transport is carried out at the risk and for the account of the Purchaser.

Immediately upon receipt of the deliveries or freight documents the Purchaser must notify the last carrier of any complaints in relation to dispatch or transport.
 - 8.2 Insurance against damages of any kind during transport shall be the Purchaser's responsibility.
9. Inspection and Acceptance of the Delivery / Warranty
 - 9.1 The Purchaser must examine deliveries and performance within seven days of receipt and immediately send the Supplier a written notice of any defects. If the Purchaser omits to do so, the deliveries and performance shall be deemed to have been approved.

- 9.2 The Purchaser's claims under warranty are explicitly restricted solely to rectification of defective goods or subsequent delivery. Any claims over and beyond this, in particular also claims for compensation for damages in respect of damages which arose directly or indirectly from the goods or from use thereof, are explicitly barred.
- 9.3 The only guaranteed properties shall be those which are explicitly designated as such in writing in the contract or in the specifications. If an acceptance test has been agreed, the guarantee shall be deemed to have been fulfilled if proof of the properties in question was provided by such test.
- If testing by the Purchaser shows that the guaranteed properties are not fulfilled or not wholly fulfilled, the Purchaser shall for the time being have a right to immediate rectification by the Supplier. In this connection the Purchaser must grant the Supplier a reasonable period of time and give the Supplier an opportunity to remedy the situation.
- If this rectification is not successful or only partially successful, the Purchaser shall have a right to compensation agreed upon for such event or, if no such agreement was entered into in advance, to a commensurate abatement of the price.
- If the defect is so serious that it cannot be remedied by the Supplier within a reasonable period of time and if the deliveries are of no use for the designated purpose or are only of substantially diminished use, the Purchaser shall have the right to refuse to accept the defective part or, if the Purchaser cannot reasonably be expected to accept a partial delivery for economic reasons, the Purchaser shall have the right to withdraw from the contract. Only the obligation to refund the amounts which were paid to it prior to withdrawal from the contract may be imposed on the Supplier.
10. Limitation of Liability
- 10.1 The Supplier shall only be liable for damages 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 shall also apply 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 responsible 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 (such as for example war, strike, fire, natural disasters, interruptions 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 – or 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. Termination of Contract by the Supplier
- If unforeseen events occur which create a substantial change in the economic significance or the content of the deliveries or performance or which have a substantial effect on the Supplier's work or if the contract subsequently becomes impossible to execute, the contract will be adjusted appropriately. If this is not economically justifiable, the Supplier shall have the right to terminate the contract or the parts of the contract affected.
- If the Supplier wishes to make use of this right to terminate the contract, it must inform the Purchaser, even if an extension of the delivery date was initially agreed upon. In the event of the termination of the contract the Supplier shall have the right to payment of deliveries and performance already made. The Purchaser shall not have any right to claim compensation for damages based on such termination of the contract.
13. No Right of Offset
- The Purchaser's right to offset is hereby explicitly excluded.
14. Place of Performance
- The place of performance for all obligations shall be the Supplier's domicile, unless otherwise agreed in writing.
15. Amendments and Supplements
- Any amendments or supplements to these General Conditions of Business 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; any treaties which may be applicable are barred.