



Royal Association of Dutch Wine Traders (KVNW)

Founded on 26 June 1899

## **GENERAL PURCHASE TERMS AND CONDITIONS of the Royal Association of Dutch Wine Traders (KVNW)**

### **Article 1: Applicability**

- a. These General Purchase Terms and Conditions are, with the exclusion of other terms and conditions, previously made promises and (verbal) agreements, applicable to all agreements between a Dutch wholesaler and importer of wine and spirits who is a member of the Royal Association of Dutch Wine Traders (hereinafter referred to as: the “purchaser”) and the seller, as well as to all legal relationships that are (will be) established between parties as a result of such agreements, unless this is expressly derogated from in writing in the purchase confirmation from the purchaser.
- b. The seller includes in these terms and conditions, each legal entity/natural person, who entered, or wishes to enter, into an agreement with the purchaser, and besides these their representative(s), authorised person(s), successor(s) in title and beneficiaries.
- c. In these terms and conditions, agreement means all agreements between the purchaser and the seller concerning the purchase of goods and/or services by the purchaser from the seller, as well as any other assignment provided by the purchaser to the seller, as well as all (legal) acts related to all this.

### **Article 2: Requests and offers**

- a. An agreement will only enter into effect by a purchase confirmation in writing from the purchaser. The purchaser will not be bound by a request for an offer from the purchaser or by a tender/offer from the seller.
- b. Offers and tenders from the seller are irrevocable, unless it is unambiguously evident from the offer or tender that these are without obligation.
- c. In the event of a difference between the purchaser's purchase confirmation and a confirmation from the seller only these General Purchase Terms and Conditions and the purchaser's purchase confirmation will apply.
- d. Any costs attached to drawing up a tender or offer will be at the expense of the seller.



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### **Article 3: Composition, contractual and statutory regulations for wine and spirits / Corporate Social Responsibility**

- a. All deliveries from the seller must be in conformity with the sample – in particular with regard to quality, composition, smell, colour, taste and authenticity – and must meet all specifications in the purchase confirmation, as well as all statutory requirements and regulations of the country of final destination pointed out by the purchaser, including the regulations of the bodies of the European Union, *inter alia* with regard to the manner of preparation, quality, composition, durability, packaging, labelling, the environment and transport, which apply to the goods in the country of final destination at the time of the arrival in that country.
- b. All deliveries must meet the applicable and relevant European and Dutch regulations for producers and suppliers including, but not limited to:
  - the European Regulation 1169/2011 and the Provision of Food Information (Commodities Act) Decree based thereon,
  - national and international regulations in the field of hygiene including, but not limited to, the European Hygiene Directive 93/43/EEC and the Dutch Food Hygiene (Commodities Act) Regulations based thereon, in particular with regard to the HACCP regulations and the most recently applicable version of the Hygiene Code for the wine sector;
  - the (current and recently amended) Packaging Management Decree 2014, based on the European Directive 94/62/EC concerning packaging and packaging waste;
  - legislation in the field of corporate and social responsibility;
  - other environmental legislation.
- c. Packages must meet the requirements of all countries, in which or through which the goods must be transported, up to and including the final destination. The seller guarantees the accuracy of all paperwork, declarations and documents, in which he declares or it is declared on behalf of him that these relate to the goods or those that accompany the goods.
- d. The seller is obliged to comply with all requirements, conditions, regulations, provisions and rules applicable to the performance of the agreement ensuing from the conventions of the International Labour Organisation (ILO), the UN Declaration of Human Rights, the UN Conventions on the Rights of the Child, as well as the elimination of all forms of discrimination against women, the UN Global Compact and the OECD Guidelines for Multinational Enterprises. The seller makes efforts for a minimal environmental impact in all stages of the production, the packaging and during the transport of the wine.



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## Article 4: Delivery times

- a. The deliveries must take place at the time recorded in the agreement or in accordance with the schedule recorded in consultation.
- b. The delivery period is a final deadline. The seller will be in default by the mere exceeding of a delivery period, without the requirement of notice of default.
- c. The seller will be bound by the delivery time recorded in the agreement, or the delivery schedule recorded by the purchaser.
- d. Partial deliveries are not permitted, unless agreed otherwise in writing.
- e. Parties can agree that the purchaser will be entitled to further recorded the time or the schedule of delivery by delivery on a call-off basis, which will be without this giving the seller any claim to price change or any other form of compensation.
- f. The seller will immediately report any delay or expected delay in the performance of the agreement to the purchaser.
- g. If, for any reason whatsoever, the purchaser is unable to take receipt of the goods at the agreed time or through the recorded time schedule the seller will keep and secure the goods at his risk and expense and take all reasonable measures to prevent deterioration of quality until the goods are delivered.
- h. The seller will be liable vis-à-vis the purchaser for any financial penalties or reductions of the purchase price, which the customer gives to the purchaser due to late delivery, resulting from a delay to be attributed to the seller. The purchaser has the right to recover these financial penalties or reductions from the seller, possibly by means of deduction of the payments still owed by the purchaser to the seller.
- i. Without prejudice to the right of the purchaser to claim, at his discretion, performance of the agreement, possibly together with compensation, the purchaser has the right, if the delivery/deliveries does/do not take place at the agreed time or through the agreed time schedule, to terminate the agreement in conformity with article 9 of these General Purchase Terms and Conditions.

## Article 5: Delivery

- a. The goods will be delivered in the manner agreed by parties, by means of the manner of transport agreed by parties. Parties preferably agree to the applicable ICC Incoterms® 2020 by means of recording these in writing in the correct manner on the documents for the recording of the agreement.
- b. Damage to goods arisen at the loading, transport and/or unloading will be at the expense of the seller.
- c. The goods must be properly packaged. The seller is liable for personal injury or damage to goods caused by insufficient packaging and/or damage or destruction of this packaging.
- d. The seller is not entitled to suspend his obligation to deliver in the event that the purchaser fails in the fulfilment of (one of) his obligations, unless (i) there are any payment arrears on the part of the purchaser or (ii) the conduct of the purchaser results to such an extent in a serious infringement of a right of the seller that it cannot be required according to criteria of reasonableness and fairness that the seller fulfils the



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obligations to deliver. Before the seller proceeds with suspension, as referred to in this article, the seller must have offered a reasonable opportunity to the purchaser to cease and keep ceased this conduct resulting in the infringement.

## Article 6: Means of transport

If and insofar as the seller is responsible for the transport, the seller will inspect the means of transport, in particular the spaces in which there is loading, such as tanks and containers, immediately before loading and the seller will be liable for damage caused by defects in the means of transport, even if this was made available by the purchaser. Every delivery in containers of more than 60 litres must be accompanied by two sample bottles, drawn before each loading and sealed by or on behalf of the seller, unless agreed otherwise in writing.

## Article 7: Ownership, risk

- a. If and insofar as goods are delivered to the border of the purchaser's country, the goods will, without prejudice to the other provisions of this article, remain at the expense and risk of the seller up to and including the transshipment at the Dutch border, respectively up to the Dutch border if no transshipment takes place, or until the time of storage in accordance with the purchaser's instructions in a so-called excise warehouse. The seller will be obliged to insure and keep insured at his expense the goods against theft/damage until the risk of the goods transfers to the purchaser.
- b. The goods that have been paid for by the purchaser prior to the delivery will be the property of the purchaser from the day of payment and will be kept by the seller at his expense and risk for the benefit of the purchaser. The seller will be obliged to keep these goods as much as possible separate and with due care.
- c. The goods that have not been paid for by the purchaser prior to the delivery will be the property of the purchaser from the time at which the risk transfers in accordance with these General Purchase Terms and Conditions or by law. In all cases the purchaser will be the owner of the goods when the goods are in his possession.
- d. In the event that the goods are the property of the purchaser but still in the seller's possession, the seller furthermore hereby undertakes vis-à-vis the purchaser to mark, register and administer the goods kept by him for the purchaser and to keep these marked, registered and administered in such a manner that the goods kept by him for the purchaser can at all times be identified and individualised as being destined for the purchaser.
- e. If attachment is levied or pending to be levied against the purchaser on the purchaser's goods or if third parties are pending to recover in any other manner from the purchaser's goods, the seller will inform the purchaser of this as quickly as possible and will separate the purchaser's goods, if possible, from his own goods. The seller guarantees that the unencumbered ownership of the goods is acquired.



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- f. The seller waives all rights and entitlements that accrue to him on the basis of the right of retention or the right of recovery.

## Article 8: Complaints

- a. The purchaser has the right to inspect the goods prior to or at the loading for visible and invisible defects. If the purchaser does not exercise this right, this cannot be invoked against him.
- b. The delivery will only be deemed to have been accepted by the purchaser when the delivery has been approved. Until eight (8) days after the date of delivery, the purchaser has the right to reject the delivered goods, so that all other time limits within which complaints must be lodged, if and insofar as these may be applied by the seller, do not apply vis-à-vis the purchaser.
- c. Approval and acceptance exclusively apply to the quantity and the external condition of the delivered goods. If the goods are delivered packaged and bundled, the approval and acceptance will only relate to the quantity and the external condition of the packaging. The seller will always remain liable for defective delivery if the defects can only be noticed after the aforesaid complaint period and these have been reported to the seller within a reasonable period.
- d. In the event of rejection the purchaser will inform the seller of this within a reasonable period. The purchaser will (let) store the rejected goods at the expense and risk of the seller. If the seller has not taken back these goods within a period of 14 days after the purchaser has informed the seller that the delivered goods have been rejected, the purchaser can return these goods to the seller at his expense and risk without permission from him. If the seller refuses to take receipt of the goods, the purchaser can store, sell or destroy these goods at the expense of the seller.
- e. The goods must at all times meet the (food safety) requirements set out by law in the Netherlands or the designated other country of final destination, whereby, notwithstanding the seller's analysis report, the goods will be assessed in accordance with the examination methods recognised in the Netherlands or the country of final destination.
- f. The purchaser will be entitled to suspend the payment of rejected goods.

## Article 9: Price

All prices are fixed, unless agreed otherwise in writing. If the seller exercises an agreed entitlement of price increase, or an entitlement of price increase accruing to the seller on the basis of any statutory provision, the purchaser will be entitled to (partially) terminate the agreement between the seller and the purchaser with immediate effect and without notice of default, without thereby being liable for compensation.



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## Article 10: Payment

- a. Unless agreed otherwise in writing, the purchaser will pay the purchase price within sixty (60) days after delivery, or pay the invoicing of the goods, depending on the last of this date. The purchaser will only be obliged to pay after delivery of the goods in conformity with the agreement and approval by the purchaser.
- b. The payments of the invoice amount or a part thereof to the intermediary involved in the purchase or by designated third parties will apply as payments to the seller.
- c. If it has been agreed that the purchaser must pay amounts as advance payment, the purchaser will at all times have the right to require sufficient, in his opinion, provision of security from the seller for these amounts.
- d. Payment by the purchaser for the delivered and approved goods will not release the seller from any guarantee and/or liability as this ensues from the agreement or the law.
- e. If the seller, after notice of default in writing, whether or not attributable, fails in the fulfilment of his obligations under the agreement, the purchaser will not be obliged to make any payment whatsoever, with the exception of the payment for deliveries already made and approved, after deduction of the damage and costs suffered and/or to be suffered by the purchaser as a result of the failure, whether or not attributable.
- f. All claims of the purchaser against the seller can be deducted from and/or set off against the purchase price owed provided that this settlement is justified in the specific case. Justified settlement is in any event taken to mean settlement in the event of discounts or financial penalties owed to customers of the purchaser as a result of late delivery by the seller, financial penalties related to non-compliance with article 3 of these General Purchase Terms and Conditions, or costs as described in article 20 of these General Purchase Terms and Conditions.
- g. If payment on a documentary letter of credit or bills of exchange or documents or under any guarantee of a third party has been agreed, the payment or acceptance can never be regarded as acceptance of the goods or can otherwise cause the rights of the purchaser to lapse or limit.

## Article 11: Breach of contract and termination

- a. The purchaser will be entitled, at his discretion, to suspend the performance of all agreements between parties, wholly or partly, or to terminate these agreements, wholly or partly, by means of a written statement without judicial intervention (and with immediate effect) (without the purchaser being liable for any compensation) in the event of:
  - failure by the seller in the fulfilment of (one of) his / the obligations under the agreement, or agreements related thereto;
  - unforeseen circumstances such as, but not exclusively, pandemics, epidemics, strike action, lockout, fire, frost, flooding, extreme rainfall and/or storm, failure of the supply of energy, lack of means of transport, government regulations, refusal of permits by the authorities, government regulations riot, mobilisation, war, state of siege, blockade, crop failure, business interruption, excessive illness



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of personnel, late delivery or faulty delivery of packaging materials, raw materials and consumables and/or finished products, regardless of whether these circumstances occur at the seller;

- (an application for) moratorium or liquidation order of the seller;
- placement under guardianship or administration order of the seller;
- the sale or termination of the enterprise of the seller;
- attachment levied on an important part of the seller's operating resources;

b. The claims which the purchaser might have or acquire resulting from the (partial) termination of the agreement, including his possible claim to payment of damage and costs, will be immediately due and payable in full.

c. Notwithstanding any (partial) termination of the agreement as referred to in article 11 subclause a, the purchaser retains all his rights and the seller retains all his obligations as these are arranged in these General Purchase Terms and Conditions or as these ensue from the law.

d. The purchaser is at all times entitled to terminate the agreement, wholly or partly, by means of notice of termination in writing.

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

- a. The seller indemnifies the purchaser against all claims by third parties related to the agreement concluded between the seller and the purchaser.
- b. The seller will be liable for all damage, including trading loss and consequential loss, suffered and/or to be suffered by the purchaser, persons or enterprises and third parties working for or on behalf of the purchaser as a result of a failure, whether or not attributable, by the seller or an unlawful act on the part of the seller. The liability on the part of the seller relates to direct as well as indirect damage.
- c. The purchaser will immediately inform the seller if he receives a claim as referred to in this article. The purchaser will also inform the seller within a reasonable period if he expects such a claim. The seller will, if he wishes this or if the purchaser requests this, deal with the claim on behalf of the purchaser, but at first instance only after he has provided a bank guarantee up to a reasonable amount for the benefit of the purchaser to cover any damage, if the purchaser requires this.
- d. The seller will take out sufficient insurance to cover his liability under these General Purchase Terms and Conditions. Upon request from the purchaser the seller will provide him with documentary evidence of this insurance.
- e. The purchaser will not be liable for damage suffered on the part of the seller, unless the damage is the result of intent or wilful recklessness on the part of the purchaser.



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

- a. The seller provides the purchaser with a non-exclusive, perpetual, irrevocable, worldwide and transferable right of use with regard to any intellectual property rights related to the goods and/or services delivered by the seller. This right of use also consists of the right to provide such right of use to (possible) customers or to other third parties with whom the purchaser maintains contact related to the carrying on of his business.
- b. The seller guarantees that the use (including resale) of the goods delivered by him does not result in infringement of intellectual property rights or other (property) rights of third parties.
- c. The seller indemnifies the purchaser against claims by third parties ensuing from any infringement whatsoever of the rights referred to in article 13 subclause b and the seller will compensate the purchaser for all damage resulting therefrom.
- d. If the purchaser is confronted with a claim of a third party, as referred to in article 13 subclause b, he will promptly inform the seller of this. If requested, the seller will be obliged to act together with the purchaser at law and otherwise against third parties who (try to) enforce such a claim against the purchaser. In the event of legal proceedings the seller will indemnify the purchaser also against the costs of the proceedings incurred, also including amounts not ordered by the court including the full legal fees.

### **Article 14: Force majeure, unforeseen incidents and other circumstances**

- a. All obligations of the purchaser will be suspended in the event of force majeure and all incidents and circumstances that are not attributable to the purchaser's fault, as a result of which normal purchase at the agreed prices and under the import duties and excise duties and/or other government regulations to be expected at the concluding of the agreements or normal sales to third parties and normal payment by them to the purchaser become impossible or difficult such as, for example, war and situations comparable thereto, pandemics and epidemics, failure in the supply of energy, riot, strike action, demonstrations and/or (staff) strike actions, environmental disasters, frost, flooding, extreme rainfall and/or storm, breach of contract by third parties who have been engaged to ensure sales, storage and/or transport, quota restrictions, hindrance of imports or exports and/or use and/or processing of the goods for the purpose for which these are intended by the purchaser.
- b. In the event of the circumstances and incidents set out in this article the purchaser can:
  - require the seller to perform, wholly or partly, at a later time to be stated by the purchaser, provided that this time is not later than four weeks after the agreed delivery time, or
  - the seller can terminate the agreement,in both cases without the purchaser being obliged to pay any compensation of costs and damage.



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## Article 15: Recall

- a. If the purchaser has reason to assume that the goods delivered by the seller are defective or otherwise can give cause for serious claims pursuant to Sections 185 et seq. Book 6 of the Civil Code (Product Liability), he will be entitled to recall the goods concerned and to return these to the seller, but only after prior consultation with the seller.
- b. In the event of recall or return of the goods, the seller will compensate the purchaser for all damage suffered by him related thereto, including all costs from the recall until return, transport costs, excise duties, levies, import duties and other out-of-pocket costs and additional costs of his organisation, in addition to the cost price of the goods returned to the seller.

## Article 16: Confidentiality

- a. Unless any (inter)national statutory provision or regulation requires disclosure, neither party will disclose or otherwise make accessible to third party/third parties, any information concerning the other party, or related to the agreement, inter alia, but not limited to customer information one party has received from the other party, or that has otherwise come to their knowledge, even after termination of the agreement for any reason whatsoever, unless with the express permission in writing from the other party.
- b. Parties will impose their obligations on the basis of this article 16 on their personnel, representatives and/or third parties to be engaged by them.

## Article 17 Duty of disclosure seller

- a. The seller will immediately inform the purchaser in writing if he is aware of or ought to be aware of circumstances or incidents related to goods delivered or still to be delivered to by the seller to the purchaser, which can potentially result in a breach of the provisions of article 3 of these General Purchase Terms and Conditions, whereby negative statements are made in the media, anywhere in the world, related to the goods delivered or to be delivered by the seller to the purchaser and/or related to the production process thereof, and/or related to the seller in his capacity as the producer thereof.
- b. The seller will at all times make endeavours to prevent any negative statements in the media, anywhere in the world, related to the goods delivered or to be delivered by the seller to the purchaser and/or related to the production process thereof, and/or related to the seller in his capacity as the producer thereof and to limit any direct or indirect damage ensuing therefrom to a minimum.
- c. If the seller does not fulfil (any of) his obligations under article 17 up to and including d of these General Purchase Terms and Conditions (in a timely manner), the seller will incur towards the purchaser, without the requirement of notice of default, an immediately due and payable financial penalty of EURO



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5,000 (in words: five thousand Euro) for each breach of the prohibition concerned and EURO 1,000 (in words: one thousand Euro) for each day or part of a day during which this breach continues, with a maximum of € 50,000, all this will be without prejudice to the right of the purchaser to additionally claim in legal proceedings a further order and/or prohibition subject to a penalty payment and/or to claim (additional) compensation.

#### **Article 18: Non-solicitation, non-competition and non-recruitment clause**

- a. The seller undertakes vis-à-vis the purchaser, for five (5) years after the initial agreement between parties, to refrain from conducting, starting up, being involved in, participating in, carrying out or supporting, directly as well as indirectly, (whether as a shareholder, provider of equity or loan capital, employee, contractor, director, partner, executor, consultant, or in any other form) activities that compete or are comparable with the purchaser's current activities;
- b. The seller undertakes vis-à-vis the purchaser, during an agreement and for a period of two (2) years after the last agreement between parties, to refrain from attempting, directly as well as indirectly,
  - a. to induce or induce employees of the purchaser (or his subsidiary companies) to work for the seller or for the seller's subsidiary companies or third parties, without prior permission in writing from the purchaser; and
  - b. from attempting to induce or induce customers or the suppliers of the purchaser (or his subsidiary companies) or persons who otherwise do business with the purchaser (or his subsidiary companies) to (i) break off (wholly or partly) their contracts with the purchaser (or his subsidiary companies), or (ii) to no longer do or do less business with the purchaser (or his subsidiary companies).

#### **Article 19: Contract takeover**

- a. Without express permission in writing from the purchaser the seller is not permitted to transfer to third parties (any obligation ensuing from) an agreement between parties. The purchaser will be entitled to attach conditions to this permission. The seller will in that case undertake in any event to impose on the third party all relevant obligations in this respect ensuing from the agreement concerned and these General Purchase Terms and Conditions. The seller will remain at all times, in addition to this third party, liable for the obligations under the agreement and the General Purchase Terms and Conditions, unless parties have expressly agreed otherwise.
- b. In the event of contract takeover the seller indemnifies in this respect the purchaser against all claims by third parties, which might arise resulting from the failure to fulfil or incorrect fulfilment of any obligation by the seller under the agreement and/or these General Purchase Terms and Conditions.



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## **Article 20: Costs**

All costs, judicial and/or extrajudicial, which the purchaser must incur as a result of non-fulfilment of the obligations under the agreement, or any relationship whatsoever with the seller, expressly also including any financial penalties as a result of enforcement measures by authorities related to acting in conflict with article 3 of the General Purchase Terms and Conditions, will be fully at the expense of the seller. The extrajudicial costs are recorded at least at 15% of the principal sum and interest, without prejudice to the right of the purchaser to claim the actual extrajudicial costs exceeding this amount.

## **Article 21: Waiver of rights**

The failure to immediately enforce any right or entitlement of the purchaser will not have any impact on or limit the rights and entitlements of the purchaser under the agreement or these General Purchase Terms and Conditions. The waiver of the right under any provision or condition will exclusively have effect if this has been done in writing.

## **Article 22: Continued effect**

The provisions of these General Purchase Terms and Conditions, which are expressly or tacitly intended to remain in effect even after termination of the agreement, such as, but not limited to, the duty of confidentiality or provisions concerning intellectual property rights, will remain in effect thereafter and will continue to bind both parties.

## **Article 23: Requirement to set out in writing**

The amendment, addition to and/or cancellation of an agreement or these General Purchase Terms and Conditions, including this provision, will only be legally valid if parties have agreed this in writing.

## **Article 24: Severability**

If one or more provisions of these General Purchase Terms and Conditions appear to be, wholly or partly, null and void, these will be interpreted in such a manner that they approach the contents of these provisions as closely as possible. In that case the other provisions will remain in full effect.



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## Artikel 25: Applicable law and Disputes

- a. Dutch law exclusively applies to these General Purchase Terms and Conditions, the agreement(s) that refer thereto and all other agreements between parties. Any applicability of the CISG (the 'Vienna Sales Convention') is expressly excluded.
- b. All disputes related to these General Purchase Terms and Conditions, the agreement(s) that refer to these General Purchase Terms and Conditions and all other agreements between parties will be governed by the Dutch court with jurisdiction of the actual place of business of the purchaser with the exclusion of any other court.