

# GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY FOCUS BEVERAGES B.V..

## 1. Definitions

- 1.1 Conditions : These General Terms and Conditions of sale and delivery.
- 1.2 Buyer : The buyer or potential buyer of Products.
- 1.3. Products : The goods and services offered, sold and to be delivered by the Seller to the Buyer, as well as work performed or to be performed.
- 1.4 Agreement : Every agreement between the Seller and the Buyer, including the Conditions, concerning the sale and delivery of Products.
- 1.5 Seller : Focus Beverages B.V. or any affiliated company, which has declared the Conditions applicable and has entered into an Agreement with the Buyer.

## 2. General

- 2.1 The Conditions are applicable to the formation, contents and execution of the Agreement, as well as to all other legal acts and relationships between the Seller and the Buyer.
- 2.2 Any deviating or intermediate stipulations to or of the Conditions shall only have effect if these have been accepted in writing by the Seller and shall only be applicable to the relevant Agreement.
- 2.3 The invalidity of one or several provisions of the Conditions shall not affect the legal force of the remaining provisions. Should any provision of the Conditions or the Agreement be invalid for whatever reason, the parties will negotiate on the contents of a new provision, which shall be as similar to the contents of the invalid provision as possible.

## 3. Agreement

- 3.1 Quotations made by the Seller do not constitute a legally binding offer and may be revised or revoked by the Seller at any time prior to the conclusion of the Agreement, even when a term for acceptance has been given by the Seller. Unless the Seller has indicated otherwise in writing, a quotation will be deemed to be revoked in any case after a period of 30 calendar days from the date of the quotation has lapsed.
  - 3.2 An Agreement will only be concluded when the Seller accepts, in writing, a verbal or written order from the Buyer, within 2 days of receipt thereof or when the Seller has commenced execution of the order, which is perceptible to the Buyer.
  - 3.3 The Seller may require a written confirmation from the Buyer of an order placed by telephone, in the form of a copy, signed for approval by the Buyer, of the quotation submitted by the Seller, or the order confirmation or the acceptance, as the case may be.
- ## 4. Price
- 4.1 All prices provided by the Seller in price lists, catalogues, brochures, information on websites, quotations, order confirmations, written acceptances or otherwise, are net prices and are thus exclusive of turnover tax (VAT) and any other levies imposed by the relevant authorities, and of any other amount paid for by the Seller to any third party for the benefit of or at the request of the Buyer in connection with the execution of the Agreement (including for instance transport costs). If applicable, all such taxes, levies and amounts will be borne by the Buyer.
  - 4.2 The Seller will have the right to pass on to the Buyer all increases in production costs caused by the implementation or amendment of any statutory provision pertaining to applicable levies, taxes or permits during the execution of the Agreement.
  - 4.3 Any discounts given by the Seller refer solely to the net price and are only applicable to the relevant Agreement.

## 5. Authorities of the Seller

- 5.1 The Seller may determine a minimum purchase quantity for each Product, below which the Seller will not enter into an Agreement for said Product.
- 5.2 The manner in which the Products are packed is determined by the Seller and may be changed at any time. In such event, the Seller will, in so far as possible, inform the Buyer thereof in advance.

## 6. Delivery

- 6.1 The Seller will deliver "ex works" (Incoterms 2010) at the production facility so chosen by Seller and referenced on price quotation document. Every other manner of delivery must be agreed upon in writing. Unless otherwise explicitly agreed upon in writing, the Seller will determine the manner of dispatch, transport and the like, without the Seller bearing any responsibility whatsoever with regard thereto.
- 6.2 Empty packaging, charged to the Buyer by the Seller, will be taken back by the Seller at the price charged, provided that the packaging concerned is received back by the Seller undamaged and in good condition, postage paid. For packaging received back at a later date than the return date agreed upon, a monthly rent is charged, amounting to 10% of the price charged, in which respect each part of a month is counted as a full month.
- 6.3 In mutual consultation between the Seller and the Buyer, a period will be fixed within which the Seller will deliver to the Buyer. The period referred to will not commence until the Seller has received the quotation, order confirmation or written acceptance, as the case may be, signed for approval by the Buyer, and all other information necessary for the delivery.
- 6.4 The Seller will at all times have the right to deliver the Product ordered by the Buyer in partial deliveries. The provisions of the preceding paragraph also apply to partial deliveries. Any partial delivery is considered to be an independent delivery, so that any claims concerning a partial delivery will not affect earlier or later partial deliveries. Invoicing will take place per partial delivery.
- 6.5 The delivery period will be extended by the period in which the Seller, as a result of force majeure, is unable to deliver. If the extension of the original period is more than one month, then both the Seller and the Buyer will have the right to dissolve the Agreement or -in the event of partial execution of the Agreement- the part thereof that has not yet been executed, by means of a written statement to that effect to the other party. Dissolution pursuant to this article does not entitle either party to any compensation whatsoever. 'Force majeure' in this respect includes: war, riots and other types of mobilization, fire and accidents, machine or other breakdowns in the factory, whether or not as a result of errors made by the employees of the Seller, transport impediments, flooding, frost and other weather conditions, government measures prohibiting or hindering delivery, failure by suppliers to supply or to supply in good time, failure by carriers or forwarding agents to supply in good time, failures on the part of auxiliary persons engaged by the Seller, illness, disturbances, sit-down strikes and similar actions and all disruptions of the normal continuation of business operations of the Seller, which are a result of circumstances beyond the control of the Seller and which temporarily or permanently hinder the performance of the Agreement or make it considerably more difficult or expensive to do so.
- 6.6 The risk for loss of or damage to the Products will pass to the Buyer from the time of delivery in accordance with this Article 6.
- 6.7 The Buyer is obliged to cooperate in the delivery, as well as to receive the Products delivered. In the event of failure on the part of the Buyer to cooperate in the delivery and receive the Products in good time, the Seller will have the right to charge the Buyer for additional costs incurred (including for instance storage costs).

## 7. Quality and usability; complaints

- 7.1 The Buyer shall bear the risk of selecting the Products as regards quality, safety, merchantability, suitability or fitness for any purpose. The Buyer shall be exclusively responsible for ensuring compliance of its intended use of the Products with applicable laws, regulations and industry codes and standards and for obtaining all necessary approvals, permits and clearances in this respect. All statements, representations, recommendations, advice or other information provided in this respect by the Seller in its catalogues, brochures, specification sheets and/or other descriptive publications distributed or published by the Seller (including on its website), or by means of supplying sample Products to the Buyer, are provided for information purposes only. In no way does the Seller warrant that the Products purchased by the Buyer are appropriate for the use intended by the Buyer, unless the intended use and any specification of the Product in that respect have been clearly and unequivocally agreed upon in the Agreement without any reservation.
- 7.2 Unless the specifications of the Products have been clearly and unequivocally agreed upon in the Agreement to be firm for a certain period of time or for a certain quantity of Products, the Seller reserves the right to change or modify the specifications, construction and/or manufacture of the Products and to substitute materials used in the production and/or manufacture of the Products from time to time without notice. The Buyer acknowledges that information provided in the Seller's catalogues, brochures, specification sheets and other descriptive publications distributed or published by the Seller (including on its website), may accordingly be varied from time to time without notice.
- 7.3 The Buyer is obliged to inspect the delivered Product upon delivery for any defects with regard to quality, packaging and the like. The Buyer must submit any complaint to the Seller in writing within fourteen days of the time of delivery. In the event that a defect cannot be determined immediately upon careful inspection, the complaint must be made known to the Seller in writing within 14 days of the time the defect should reasonably have been known to the Buyer, in default of which the Buyer will lose all claims against the Seller as regards said defect.
- 7.4 In the event that complaints, submitted in good time, are accepted by the Seller, the Seller will send the Buyer, at the Seller's discretion, a credit note for the net invoice amount of the relevant Products that do not comply with the Agreement, or the Seller will perform anew as soon as possible.

## 8. Labelling and packaging

- 8.1 Without the prior written permission of the Seller, the Buyer is not permitted to offer (re)sell the Products delivered in any packaging and/or with any labelling other than the original packaging and/or labelling of the Seller.
- 8.2 Furthermore, the Buyer is not permitted, without the prior written permission of the Seller, to use the distinguishing characteristics protected by the Seller by copyright and trademark rights, other than by (re)selling the Products delivered.

## 9. Clearance of customs documents

At the time the Buyer or the Buyer's carrier takes receipt of the customs documents for a batch of Products that are delivered with customs documents, the Buyer assumes liability to ensure (full) clearance is given. If and at such time as the Buyer or the Buyer's carrier signs the CMR waybill (waybill based on the UN Convention on the Contract for the International Carriage of Goods by Road) or the standard consignment note belonging to the relevant consignment in acknowledgement of receipt, this will constitute comprehensive proof of receipt of the customs documents stated thereon. The Buyer will indemnify the Seller against all claims from third parties, including the tax authorities and customs, resulting from the fact that (full) clearance of the relevant customs documents, as referred to on the CMR waybill or the standard consignment note, was not obtained. The basis for this obligation to indemnify is, in so far as this concerns excise duty and other levies, the document whereon an obligation to pay is laid down or imposed, temporarily or otherwise. In any case, the obligation to indemnify, in so far as this concerns excise duty and other levies, is applicable from the time the Seller has delivered the customs documents, in accordance with this stipulation, to the Buyer or the Buyer's carrier.

## 10. Limitation of liability

- 10.1 The Seller, as well as the Seller's subordinates and any third party engaged by the Seller for whom the Seller is liable, shall not be obliged to make good the costs, damages and/or interests resulting and/or arising from personal injury or damage to goods caused by the Products, if and in so far as this is not due to intention or willful recklessness on the part of the management of the Seller.
- 10.2 The Seller, as well as the Seller's subordinates and any third party engaged by the Seller, shall not be liable for damage and/or loss caused by errors or omissions of third parties or by chemical effects or induction of materials not used by the Seller.
- 10.3 In the event that the Buyer has instructed the Seller to fill and/or label and/or pack products of the Buyer, the Seller shall not be liable for defects of the product itself, for the information on the labels and/or packaging delivered by or ordered on the instructions of and at the expense of the Buyer, nor for any defects in the packaging material provided by the Buyer or ordered on the instructions of and at the expense of the Buyer.
- 10.4 In the event that the Buyer has delivered products to a third party, which partly consist of the Products delivered by the Seller to the Buyer, the Seller shall not be liable for product liability ensuing from a defect in said products delivered by the Buyer to said third party, except if and insofar as the Buyer proves that the personal injury or damage to goods was solely caused by the Products delivered by the Seller, in which latter event the first paragraph of this Article 10 shall apply.
- 10.5 The liability of the Seller shall in any case always be limited to direct damages to a maximum amount equal to the net price (the price as referred to in Article 3 of the Conditions) of that Agreement, or, in the case of a partial delivery, of that part of the Agreement to which the case of damage is most closely related.
- 10.6 The Buyer will indemnify the Seller, the Seller's subordinates and any third party engaged by the Seller, against all and any claims enforced by third parties against the Seller by reason of the circumstances referred to in the previous paragraphs of this Article 10. The Buyer will pay, in full, all damage and/or costs, connected with such claims, including any costs for legal aid.
- 10.7 Under no circumstance is the Seller liable for damage consisting of loss of turnover or goodwill, decline in proceeds, loss of profit or anticipated savings, or for other indirect or consequential damage.

## 11. Terms of payment

- 11.1 All payments must be made in euros upon delivery, unless otherwise agreed upon in writing.
- 11.2 All payments must be made without any discount whatsoever. The Buyer waives the right to put up the defense of setoff or to defer payment in respect of the Seller or a company affiliated to the latter.
- 11.3 Bank transfers and cheques (chèques) will only become valid when the relevant amounts have been credited to the bank account of the Seller.
- 11.4 In the event that the Buyer is in default on payment of the amount owed by the Buyer, within thirty days of the date of invoice, as well as in the case of involuntary liquidation and moratorium on payments, all the amounts owed by the Buyer to the Seller will become immediately due and payable in full by operation of law, without any warning or notice of default being required thereto. In such case, all judicial and extrajudicial costs incurred at that time by the Seller in order to collect the amounts due to the Seller will be payable by the Buyer.
- 11.5 Extrajudicial collection costs will be fixed at the former rate of the Netherlands Bar Association, with a minimum of EUR 250, unless the actual extrajudicial collection costs are higher, in which case the Buyer will owe the actual extrajudicial collection costs to the Seller.
- 11.6 In the event of failure to pay any amount in good time within the period agreed upon, the Seller shall furthermore have the right to demand payment of interest of 1.5% per month, taking effect from the due date of the term of payment and to be calculated over the amount then due and payable, in which respect every part of a month will be counted as a full month, on the understanding that the interest charged by the Seller will under no circumstance be lower than the statutory interest.

## 12. Termination

In the event that the Buyer:

- a) files a petition for liquidation, is put into involuntary liquidation, assigns an estate, petitions for a moratorium on payments, or part of the Buyer's assets are seized and this is not announced within ten days of seizure;
  - b) is in default as regards its fulfillment of any obligation under the Agreement, and -if it is not clear beyond reasonable doubt that the Buyer will not be able to remedy the situation- remains in default, even after being sent a written notice of default in which it is given 10 days to remedy the situation;
  - c) fails to pay an invoice amount or a part thereof within the specified term; or
  - d) discontinues its company or an important part thereof or decides to do so,
- the Seller shall be entitled to dissolve the Agreement wholly or in part, merely by means of a written statement to that effect, and to demand the goods delivered, in so far as not yet paid for, be returned or to demand payment of that part of the Agreement that has been executed or to suspend further execution of all current Agreements until full payment has been made, or to demand payment in advance and/or security for further deliveries, without prejudice to the right of the Seller to full compensation for the damage and/or loss resulting and/or arising from the shortcoming(s) of the Buyer and without the Buyer being entitled to any compensation whatsoever.

## 13. Retention of title

The Seller will retain title to all Products delivered by the Seller until such time as the Buyer no longer owes the Seller any sums of money, to be increased by all collection costs and interest, for deliveries made to the Buyer by the Seller. Until such time as the Buyer has fulfilled all obligations (to pay) pursuant to the Agreement, in respect of the Seller, the Buyer will not be at liberty to encumber the delivered Products or to alienate them outside the normal conduct of business. The Seller shall have the right to collect the delivered Products from the Buyer or the Buyer's holders, or to have the Products collected, in the event that the Buyer fails to fulfil the latter's obligations or the Seller has reason to assume that the Buyer will fail to fulfil the latter's obligations. The Buyer is obliged to cooperate in this matter.

## 14. Applicable law and competent court

Unless otherwise explicitly agreed upon in writing, all Agreements and all Agreements ensuing therefrom are exclusively governed by the laws of the Netherlands. All disputes arising between the Buyer and the Seller shall be settled by the competent court in Arnhem, the Netherlands. However, the Seller shall have the right to bring a dispute before the court within whose jurisdiction the Buyer has its domicile.

These Conditions have been filed at the Commercial Register of the Chamber of Commerce and Industry in 's Hertogenbosch and can also be found at [www.focusbeverages.eu](http://www.focusbeverages.eu). These Conditions are applicable with effect as of 1 January 2015. Only the English version of these Conditions shall be authentic and shall prevail, in case of inconsistency, over any translation of these Conditions in another language.

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