

## **General Terms and Conditions Applicable to the Sale and Delivery of Products by Pernod Ricard Nederland B.V.**

Version dated 1 May 2019

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### **1. General Terms and Conditions**

- 1.1 These terms and conditions shall apply to any and all offers and quotations by, and all orders placed with, Pernod Ricard Nederland B.V. (hereinafter referred to as "Pernod Ricard Nederland") for the sale and supply of alcoholic and non-alcoholic beverages and all related items by Pernod Ricard Nederland, and to all agreements with Pernod Ricard Nederland regarding the foregoing.
- 1.2 The applicability of the terms and conditions of the other party (hereinafter referred to as "the Buyer") purchasing Pernod Ricard Nederland's products is hereby explicitly rejected.
- 1.3 The Buyer shall only be able to invoke stipulations other than the present Terms and Conditions if and insofar as said other stipulations have been accepted in writing by Pernod Ricard Nederland.
- 1.4 Once the Buyer has signed one contract subject to the present Terms and Conditions, these Terms and Conditions shall also apply to any later agreements concluded between the Buyer and Pernod Ricard Nederland.
- 1.5 Pernod Ricard Nederland reserves the right to revise these General Terms and Conditions at any time. If a revision takes place, the new Terms and Conditions shall come into effect as soon as the Buyer has been notified of them. The Terms and Conditions shall be published on Pernod Ricard Nederland's website: [www.pernod-ricard-nederland.com](http://www.pernod-ricard-nederland.com).

### **2. Offers, Orders and Agreements**

- 2.1 All offers and quotations published by Pernod Ricard Nederland shall be non-binding, unless explicitly stated otherwise.
- 2.2 Once an order has been placed or once an offer has been accepted by the Buyer or its competent representative, whether it be in writing or in speech, said order or acceptance shall be deemed to be irrevocable.
- 2.3 All quotations and offers shall be valid for a fourteen-day period, unless explicitly stated otherwise.

- 2.4 Pernod Ricard Nederland shall be entitled to refuse orders, including orders previously accepted by representatives of Pernod Ricard Nederland, stating the reasons for said refusal.
- 2.5 Pernod Ricard Nederland shall not be bound to its written offers and orders placed with Pernod Ricard Nederland by the Buyer until said orders have been confirmed in writing or until said orders have been taken up. Moreover, Pernod Ricard Nederland shall only be bound to those orders it has accepted in writing. Pernod Ricard Nederland shall not be held to verbal promises made or agreements concluded by its staff, representatives, salespersons or other intermediaries until and to the extent that they have been confirmed in writing.
- 2.6 Additional agreements, revisions and/or cancellations shall only be binding if and insofar as they have been confirmed by Pernod Ricard Nederland in writing, or if they have been incorporated into the order.
- 2.7 In the event of oral agreements or orders, the risk of mistakes shall be borne exclusively by the Buyer.

### **3. Pricing**

- 3.1 All prices stated by Pernod Ricard Nederland or agreed with Pernod Ricard Nederland shall be per-bottle prices and shall not include value-added tax or any customs duties on imports or exports, excise duties, packaging taxes or other taxes or duties which may be due, unless explicitly stated otherwise. Nor shall they include the costs of packaging, loading, transport, unloading, insurance or any other services, unless explicitly stated otherwise. If any statutory excise duties or other taxes to be levied by Pernod Ricard Nederland are increased or reduced by the government, Pernod Ricard Nederland shall pass such increases or reductions on to the Buyer.
- 3.2 If a fixed price has been agreed with the Buyer, and if the Buyer wishes to change and/or expand an order, Pernod Ricard Nederland shall notify the Buyer of how the changes and/or additions to the order will affect pricing.
- 3.3 All prices stated by Pernod Ricard Nederland in offers, price lists, leaflets, catalogues, etc., are non-binding. Any discounts provided by Pernod Ricard Nederland shall be valid once and shall not bind Pernod Ricard Nederland in any way to similar discounts in follow-up orders or future agreements, unless explicitly agreed otherwise.

- 3.4 If the Buyer places an order whose value is less than EUR 1,000 (not including VAT, nor including any taxes and additional costs, including, but not limited to, excise duties and costs of transportation), or if the Buyer places an order of fewer than 120 bottles, Pernod Ricard Nederland shall be entitled to invoice the Buyer for the costs of transporting and delivering the order in question.

#### **4. Delivery Time and Delivery**

- 4.1 The dates on which and/or the time frames within which Pernod Ricard Nederland is expected to deliver the objects it has agreed to supply shall be indicative and shall never be construed as hard deadlines. Pernod Ricard Nederland shall not be in breach of contract until it has been served a notice of breach of contract by the Buyer, after which Pernod Ricard Nederland and the Buyer shall establish a reasonable time frame, being no fewer than fourteen days, during which Pernod Ricard Nederland shall be allowed to make a belated delivery.
- 4.2 The delivery time shall commence once the agreement has been signed, as soon as the Buyer has furnished Pernod Ricard Nederland with all the documents and information required and as soon as Pernod Ricard Nederland has received any advance payment which may have been specified, or as soon as security has been given for payment to Pernod Ricard Nederland. If, at the time of the signing of the agreement, the Buyer owes Pernod Ricard Nederland any outstanding sums arising from other agreements, the procedure governing the delivery of the new products ordered shall not commence until the day on which Pernod Ricard Nederland receives all the money it is owed under the other agreements.
- 4.3 If the delivery time is exceeded, the Buyer shall not be entitled to additional or alternative compensation, nor to suspension or non-performance of any obligations it may itself have under the agreement. However, the Buyer shall be entitled to have the agreement cancelled through a written notice, if and insofar Pernod Ricard Nederland, after the original delivery time has been exceeded, once again fails to deliver the products it was contracted to deliver within a reasonable time frame agreed with the Buyer in writing.
- 4.4 Delivery times shall be extended with the amount of time by which the performance of the agreement is delayed due to force majeure. They shall also be extended pro rata if the Buyer meets its obligations under the agreement later than agreed or later than could be reasonably expected by Pernod Ricard Nederland. Pernod Ricard Nederland reserves the right to extend the delivery time if a deadline has been established and if the Buyer wishes to change its order and/or order additional products.

- 4.5 The goods to be supplied by Pernod Ricard Nederland shall be deemed to have been supplied as soon as the Buyer has taken delivery of them at the agreed location. If the Buyer is unable or unwilling to take delivery of the products to be supplied by Pernod Ricard Nederland at the agreed time, they shall be deemed to have been supplied at the time they were supposed to have been taken delivery of if the Buyer had not been prevented from taking delivery of them. Starting from this time, the risk shall pass to the Buyer, as laid down in **Article 5.1**.
- 4.6 If Pernod Ricard Nederland has agreed to pay the Buyer a fine in the event that the delivery time has been exceeded, said fine shall only be payable if the late delivery can be attributed to negligence on Pernod Ricard Nederland's part and if the Buyer is able to demonstrate that it has suffered damage due to the late delivery. The fine payable to the Buyer shall never exceed the amount of the damage actually suffered by the Buyer.
- 4.7 Customary packaging materials (including the bottles) shall not be taken back, unless explicitly agreed otherwise. If the goods are delivered on pallets, the Buyer shall be expected to return the same number of similar pallets, all of which must be in good condition, to Pernod Ricard Nederland at once, unless explicitly agreed otherwise. In the event that the pallets within the meaning of the previous sentence are exchanged for the pallets on which the delivery is made, Pernod Ricard Nederland shall thus become the owner of the (returned) pallets it has been given, while the Buyer shall become the owner of the pallets on which the goods were delivered, subject to the retention of title outlined in **Article 5.3**. If the Buyer is unable or unwilling to return any pallets, Pernod Ricard Nederland shall be entitled to charge the Buyer a fee for the pallets. If such a fee has been charged, said fee, upon payment by the Buyer, shall be refunded to the Buyer by Pernod Ricard Nederland upon the pallets' return to Pernod Ricard Nederland, on the proviso that they are in good condition. In such cases, Pernod Ricard Nederland shall continue to be the owner of the pallets, unless it has been explicitly agreed that the pallets shall not have to be returned to Pernod Ricard Nederland.
- 4.8 Pernod Ricard Nederland shall be entitled to split orders. For the purposes of these Terms and Conditions, each split order shall be considered a separate delivery.
- 4.9 The goods shall be delivered in the order units and quantities mentioned by Pernod Ricard Nederland in its offers, price lists, leaflets, catalogues, etc. Pernod Ricard Nederland's system does not allow customers to order single bottles. Therefore, no individual bottles shall be delivered.

4.10 Pernod Ricard Nederland shall be entitled, without being bound to pay any form of compensation, to change its range of products at any time and/or to modify and expand its range of products, which includes the right to stop carrying particular brands. Pernod Ricard Nederland shall never be held to supply products or brands it no longer carries.

## **5. Risk and Transfer of Title**

5.1 The risk for the goods to be supplied by Pernod Ricard Nederland shall be borne by the Buyer from such time as the goods are deemed to have been delivered, within the meaning of **Article 4.5**.

5.2 If Pernod Ricard Nederland is responsible for the loading, shipping, transport or unloading of products to be delivered, said processes shall be at Pernod Ricard Nederland's risk, in which case Pernod Ricard Nederland shall be completely free to choose the manner in which the goods shall be shipped or transported.

5.3 All goods supplied by Pernod Ricard Nederland shall remain the property of Pernod Ricard Nederland until such time as Pernod Ricard Nederland has received the full amount it is owed by the Buyer under the present agreement and/or under previous or later agreements of the same nature, including damages, expenses and interest. The Buyer shall not have a right of retention with regard to these goods. The Buyer shall be required properly to insure goods that are Pernod Ricard Nederland's property against regular business risks.

5.4 Pernod Ricard Nederland shall be entitled to take back or cause to be taken back any goods it has delivered to the Buyer which are still Pernod Ricard Nederland's property if the Buyer fails to meet its obligations or gives Pernod Ricard Nederland reason to believe that the Buyer will not meet its obligations. The Buyer shall be obliged to enable this take-back, inform Pernod Ricard Nederland at once of where the goods in question are, and provide access to this location if necessary. The Buyer shall be required to reimburse Pernod Ricard Nederland for the costs associated with the take-back. In the event of a take-back, Pernod Ricard Nederland shall provide the Buyer with a refund based on the value of the goods on their return, which shall be determined by Pernod Ricard Nederland.

5.5 The industrial and intellectual property rights of or pertaining to the goods provided by Pernod Ricard Nederland shall remain Pernod Ricard Nederland's or the relevant third-party rightsholder's and shall never pass to the Buyer. Documents and information provided by Pernod Ricard Nederland (including publicity materials which may have been made available free of charge) shall remain the property of

Pernod Ricard Nederland and must not be made available or disclosed to any third parties, except with Pernod Ricard Nederland's express consent.

## **6. Force Majeure**

- 6.1 Pernod Ricard Nederland shall be entitled, without being held to pay any form of compensation, to invoke force majeure if the performance of the agreement, in whole or in part, is impeded or rendered difficult temporarily or permanently by any circumstances reasonably beyond its control, including war, the threat of war, civil war, insurgency, mobilisation, war risk, fire, water damage, flooding, frost, excessive sickness absence on the part of the company's personnel, factory pickets, strikes, flash strikes, work-to-rules and exclusion, disturbances in storage and transport, shortage of raw materials or energy, import and export restrictions, government measures, late provision to Pernod Ricard Nederland of components, goods or services ordered from third parties, not being circumstances, incidents and service interruptions which can be attributed to Pernod Ricard Nederland.
- 6.2 In the event of force majeure on Pernod Ricard Nederland's part, its obligations shall be suspended. If the force majeure situation lasts longer than ninety calendar days, both Pernod Ricard Nederland and the Buyer shall be allowed to cancel the part of the agreement pertaining to the obligations that cannot be met, by means of a written notice, without being held to pay damages, without prejudice to the provisions of **Article 13**.

## **7. Purchase and Inspection of Goods**

- 7.1 The Buyer shall be held to take delivery of the goods as soon as Pernod Ricard Nederland makes them available. Any and all costs incurred by Pernod Ricard Nederland related to the Buyer's failure to take delivery of the goods shall be borne by the Buyer, including the costs of storage and transport.
- 7.2 The Buyer shall be held to inspect the quality of the goods delivered by Pernod Ricard Nederland within a reasonable time frame following the date of delivery. This reasonable time frame shall not exceed the time frame mentioned in **Article 8.2**. If the Buyer fails to carry out such an inspection, the goods delivered by Pernod Ricard Nederland shall be deemed to have been accepted and approved unconditionally.

## **8. Shortages, Warranties and Complaints**

- 8.1 Pernod Ricard Nederland hereby guarantees that all goods it will deliver shall be of satisfactory quality, to the extent that it shall replace free of charge those goods about which it has rightfully and timely received complaints, and which have since been returned to it, or, alternatively, provide the Buyer with a reasonable full or

partial refund of the invoice value of the product concerned. The amount of such refund shall be determined at Pernod Ricard Nederland's discretion. Goods shall only be replaced within the meaning of the foregoing within the Netherlands.

- 8.2 With regard to deliveries whose defects (both in terms of quality and in terms of quantity) are visible upon inspection, the Buyer must file a written complaint within two business days of the delivery at the latest, adding any evidence which may be relevant. In the event that the Buyer fails to do so, it shall no longer be entitled to make any claim upon Pernod Ricard Nederland. Complaints about other types of defects must be filed within two business days of their becoming manifest. Failure to lodge a complaint within the specified time span shall result in the Buyer's no longer being entitled to make any claim upon Pernod Ricard Nederland.
- 8.3 In the event that a statutory warranty applies, such a warranty shall be void in the event that:
- a. the instructions for storage and/or use of a product, provided by Pernod Ricard Nederland or listed on the packaging, have not been followed to the letter;
  - b. the goods delivered by Pernod Ricard Nederland have been used improperly or not in accordance with their usual or agreed purpose;
  - c. the Buyer has failed to meet an obligation it has to Pernod Ricard Nederland under the present agreement in whole, in part, to the best of its ability or by the due date;
  - d. the defects are discovered more than two months after the date of delivery;
  - e. the goods delivered by Pernod Ricard Nederland have been negatively affected by exterior causes such as (rain) water, heat, fire, etc.
- 8.4 With regard to goods or components obtained by Pernod Ricard Nederland from third parties, Pernod Ricard Nederland's warranty obligations to the Buyer shall never exceed said third parties' warranty obligations to Pernod Ricard Nederland, be it in terms of value or in terms of period of validity. Pernod Ricard Nederland shall be discharged from any warranty obligation if it assigns its warranty claim on such third party to Buyer, which assignment is hereby accepted by Buyer in advance.
- 8.5 If the Buyer files a complaint about any goods delivered by Pernod Ricard Nederland, the Buyer must retain said goods so as to allow them to be inspected by Pernod Ricard Nederland, and must return said goods to Pernod Ricard Nederland upon Pernod Ricard Nederland's first request to do so. If the Buyer fails to honour such a request, it shall not be entitled to a refund or compensation if its

failure to return the goods limits Pernod Ricard Nederland's ability to determine whether the complaint is justified.

## **9. Liability and Indemnification**

- 9.1 Pernod Ricard Nederland's liability with regard to any defects which may be found in the goods it has delivered shall be limited to the warranty outlined in **Article 8**.
- 9.2 Pernod Ricard Nederland shall never be held to pay alternative or additional compensation except if and insofar as the damage suffered was caused by wilful misconduct or gross negligence on the part of Pernod Ricard Nederland or its employees. However, with the exception of wilful misconduct on the part of Pernod Ricard Nederland itself, Pernod Ricard Nederland's liability shall be excluded for loss of profits, consequential loss or indirect damage (including loss of business).
- 9.3 If either party becomes aware of a defect in the products that have been delivered, it must notify the other party at once, stating the type of defect and the type of product affected. The parties shall then take all measures necessitated by the circumstances, by mutual agreement. Pernod Ricard Nederland shall have the final say as to what measures shall be taken. In the event that Pernod Ricard Nederland decides to recall its products (i.e., withdraw faulty products from the market), the Buyer shall cooperate with such recall, even if the Buyer has already delivered or supplied the goods to a third party. This provision shall also apply in full if there is a suspicion or fear that a defect may have occurred or may occur at a later stage. If Pernod Ricard Nederland is to be deemed to be the manufacturer of certain products, the limited liability provided in the present **Article 9** shall not apply to imperative product liability, where relevant. The Buyer shall be required to keep any information it has received on any measures to be taken or possibly to be taken confidential.
- 9.4 In any cases in which Pernod Ricard Nederland will be required to pay damages, the amount of said damages shall never exceed the net invoice value of the products provided by Pernod Ricard Nederland which caused or were related to the damage, which value shall be determined at Pernod Ricard Nederland's discretion, or, in the event that the damage is covered by an insurance policy in which Pernod Ricard Nederland is mentioned as an insured party, the amount actually paid out in this matter by the insurer. In any event, the amount of damages payable to Buyer shall never exceed the maximum amount of EUR 25,000, unless if this limits liability disproportionally in the event of damage caused by personal injury or death. In the event of a continuing performance contract, the 'net invoice value' shall be deemed to be the amount invoiced by Pernod Ricard Nederland for deliveries made in the



three months preceding the event that caused the damage, less any applicable deductions or credited amounts.

- 9.5 In any cases in which Pernod Ricard Nederland is held to pay a fine, its obligation to pay compensation shall be limited to the payment of the sum of the fine, without prejudice to the provisions of **Article 4.6**.
- 9.6 Notwithstanding any other limitations of liability as stated herein, all claims of Buyer against Pernod Ricard Nederland, except those which have been acknowledged by Pernod Ricard Nederland, shall expire if the Buyer fails to notify Pernod Ricard Nederland of the existence of said claims within twelve months following discovery by means of an itemised and substantiated written claiming payment of the sum owed.
- 9.7 Conditions which limit, exclude or determine liability, which may be invoked against Pernod Ricard Nederland by Pernod Ricard Nederland's suppliers or sub-contractors in relation to the delivered goods, shall also be able to be invoked against the Buyer by Pernod Ricard Nederland.
- 9.8 Pernod Ricard Nederland's employees or any agents hired by Pernod Ricard Nederland for the performance of the agreement shall be able to invoke any and all means of defence that may be derived from the agreement as if they were parties to the agreement themselves.
- 9.9 The Buyer shall indemnify Pernod Ricard Nederland, its employees and any agents it may have hired for the performance of the agreement from any claims by third parties in relation to Pernod Ricard Nederland's performance of the agreement, insofar as these claims exceed or differ from those the Buyer has on Pernod Ricard Nederland.
- 9.10 With regard to the goods to be delivered, the Buyer shall fully comply with the restrictions regarding their import, export and use imposed by the Dutch government or any other government. It shall compensate Pernod Ricard Nederland for any damage Pernod Ricard Nederland may suffer as a result of any violation of these restrictions.

## **10. Payment and Security**

- 10.1 Payment must be made within fourteen days of the invoice date, unless otherwise agreed. However, Pernod Ricard Nederland shall be entitled at all times to demand a full or partial advance payment and/or otherwise obtain security for payment.

- 10.2 Pernod Ricard Nederland shall be entitled to send separate invoices for split orders which are delivered in instalments.
- 10.3 The Buyer hereby waives the right to set off debts owed back and forth. The Buyer shall not be excused from its payment obligations in cases wherein it has filed a complaint.
- 10.4 If the Buyer fails to make payment of any sum it owes Pernod Ricard Nederland on the aforementioned terms, it shall be considered to be in default, without being served a notice of default of payment. As soon as the Buyer enters into default regarding any payment, Pernod Ricard Nederland shall be entitled to demand that the Buyer make immediate payment of all other outstanding sums, regarding which the Buyer shall immediately be deemed to be in default of payment, as well.
- 10.5 When making a payment, the Buyer must always enter the invoice number provided by Pernod Ricard Nederland as a payment reference. Payments made by the Buyer that lack the specific information required, or certain aspects thereof, shall be used firstly to pay the oldest outstanding invoice, as well as any interest payable on said invoice.

## **11. Confidentiality**

- 11.1 The Buyer is obliged to observe confidentiality in respect of all confidential information that Pernod Ricard Nederland has provided to it and/or that has come to its attention in the context of the sale or delivery of products or services by Pernod Ricard Nederland. Confidential information is in any event considered to be all information regarding Pernod Ricard Nederland's operations and/or products and services (including customer information, price information and other commercial or technical know-how) that the Buyer knows or should reasonably understand to be of a confidential nature and/or regarding which the Buyer knows or should reasonably understand that sharing that information with third parties could harm Pernod Ricard Nederland's business. This confidentiality obligation does not apply: 1) to information that is in the public domain (through no fault of the Buyer); 2) if and insofar as the Buyer is required to release this information based on a legal obligation and/or any order from a competent authority; or 3) if Pernod Ricard Nederland has given permission to share the information.
- 11.2 The Buyer will take appropriate measures to safeguard the confidentiality of Pernod Ricard Nederland's confidential information, providing at least the same level of security as for the Buyer's own confidential information. The Buyer will ensure that only those employees who are bound by a contractual obligation of confidentiality have access to Pernod Ricard Nederland's confidential information.

## **12. The Buyer's Duty of Care**

- 12.1 The Buyer commits to treating the goods it has received with due care and to not acting in any way which may negatively affect the quality or safety of the products, or Pernod Ricard Nederland's reputation, or the reputation of Pernod Ricard Nederland's brands.
- 12.2 The Buyer shall ensure that it complies with applicable Dutch law and regulation governing corruption, bribery, money-laundering, terrorism, boycotts, conflicts of interest and counterfeit products.
- 12.3 The Buyer hereby guarantees that the personal details it provides to Pernod Ricard Nederland to facilitate the performance of the agreement are allowed to be processed by Pernod Ricard Nederland, insofar as such is done in compliance with applicable law and regulation.

## **13. Suspension and Cancellation**

- 13.1 In the event that the Buyer fails to perform one or more of its obligations in full, in a timely manner or in the manner specified, Pernod Ricard Nederland shall be entitled to suspend its obligations to the Buyer without serving the Buyer a prior notice of failure to perform, or to cancel the agreement in whole or in part by means of a written notice, after having served the Buyer a notice of failure to perform, to be decided at Pernod Ricard Nederland's discretion and without affecting any rights it has to compensation of costs, damage and interest incurred.
- 13.2 If the Buyer goes into administration, applies for a (provisional) moratorium, enters liquidation or transfers the shares in its company, or if its assets are seized in whole or in part, or in the event of a foreign equivalent to distraint applicable under foreign law, Pernod Ricard Nederland shall be entitled to suspend the performance of the agreement or cancel the agreement in whole or in part by means of a written notice, without serving a prior notice of failure to perform. This decision shall be made at Pernod Ricard Nederland's discretion and shall not affect any rights it has to compensation of costs, damage and interest incurred. In such cases each claim Pernod Ricard Nederland has on the Buyer shall be payable at once.
- 13.3 The Buyer shall only be entitled to cancellation of this agreement in those cases within the meaning of **Articles 4.3 and 6.2** of these Terms and Conditions, and only following the making of payment to Pernod Ricard Nederland of all sums owed to Pernod Ricard Nederland at that time, regardless of whether these are due.
- 13.4 If the agreement is terminated on the terms of **Articles 13.1** or **13.2** before the specified matters have been completed or delivered, Pernod Ricard Nederland

shall be entitled to the full price agreed for said matters, less any savings directly arising from the termination of the agreement. If the agreement is terminated on the terms of **Article 13.3**, Pernod Ricard Nederland shall be entitled to a proportionate part of the agreed price insofar as any agreed matters and any work necessary for that purpose were already delivered and performed prior to termination, less any savings directly arising from the termination of the agreement. Any costs incurred or investments made at the time of the termination of the agreement shall have to be refunded in full by the Buyer.

**14. Disputes, Applicable Law and Debt Recovery Expenses**

- 14.1 All disputes arising between the parties shall be heard exclusively by the competent judge at the Amsterdam Court of Law.
- 14.2 All relations between Pernod Ricard Nederland and the Buyer are subject to the law of the Netherlands. The applicability of the United Nations Convention on Contracts for the International Sale of Goods is expressly excluded.
- 14.3 All legal and non-legal expenses associated with the recovery of any sum owed by the Buyer shall be borne by the Buyer. Such non-legal expenses are deemed to amount to at least 15% of the sum owed.

Pernod Ricard Nederland B.V.  
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