

General Terms and Conditions of Sale (AGB Sales)

- Status March 2017 -

§ 1 Terms

- (1) Deliveries, services and offers of Josef Drathen GmbH & Co. KG are subject solely to these General Business Conditions (AGB Sales). These conditions shall be valid for all contracts which Josef Drathen GmbH & Co. KG – herein after named “**Seller**” – concludes either as seller or supplier. In any other case the General Terms of Purchase shall be valid (AGB – Purchase).

The AGB Sales is valid for present and future business between the Seller and the Buyer, even when they have not been explicitly agreed upon. The terms shall be valid at the latest on receipt of goods or services. Counterclaims on the part of the Buyer based on his own general terms of business or general terms of sale are herewith revoked.

Any former terms of business shall herewith lose validity.

- (2) The Seller is entitled at any time to modify or supplement these general terms of sale within a reasonable period of notice.
- (3) Any deviations from these terms shall only be binding if they are agreed for each individual transaction and formulated in writing.
- (4) The employees of the Seller are not authorized to conclude ancillary agreements or to give any verbal warranty which would go beyond the contents of the written contract. Any such declarations shall not justify an obligation on the part of the Seller.

§ 2 Offers and Conclusion of Contract

- (1) The offers of the Seller are subject to change without notice and are nonbinding.

§ 3 Scope of Deliveries

- (1) Deliveries shall be made for orders exceeding 600 bottles, which may be assorted, within Germany (mainland) franco domicile. Deliveries in the golden 6-pack-Kuki shall be charged with a deposit of 1.50 euros and invoiced accordingly; Euro pallets shall be charged with 10.00 euros. A credit note will be directly debited from the invoice on immediate return of empty bottles and pallets. Should empty bottles and pallets not be returned immediately, the amount must be fully paid. Return of empties which are not in direct connection with a delivery shall only be accepted on calculation of freight costs. In general, 6-pack-Kukis shall only be accepted in the number as delivered. Deliveries of less than 600 bottles will be charged with the incurring freight costs.
- (2) The Seller is entitled to send partial shipments or partial services unless from the Seller's point of view any partial shipment or service is not in the interest of the Buyer.
- (3) Should any vintage listed in the wholesale list (wholesale price list) not be available, the Seller may deliver a vintage of the following year to the Buyer on condition that the price remains the same.

- (4) Should any article be sold out, we reserve the right to deliver a replacement of similar quality.

§ 4 Prices

- (1) The prices are quoted, unless otherwise agreed, including glass and regular packaging (6 pack) plus the current legal value added tax, and the valid state tax for sparkling wines (German Sektsteuer – Sparkling Wine Tax) on the day of delivery which will be shown separately on the invoice.
- (2) If not otherwise quoted, the Seller shall guarantee the prices given in his quotations for 30 days after issue of quotation. In any other case, the prices quoted in the Seller's order acknowledgement shall be valid.

§ 5 Times of Delivery and Service

- (1) Delivery dates and deadlines which have been agreed to be binding or nonbinding shall be made in writing.
- (2) Delays in deliveries or services owing to any Act of God, or owing to events which impede the delivery either temporarily or long-term – in particular, industrial disputes (legal or illegal), strike, lock out, official orders and company disturbances etc – even when these take place at the Seller's suppliers' premises or subcontractors thereof - shall not be within the responsibility of the Seller even in the case of agreed binding dates and deadlines.

In this case the Seller may postpone the delivery or service for the length of the obstruction and adding a reasonable processing period, or in the case of partial non-fulfillment the Seller may rescind the contract entirely or partially.
- (3) Observance of the delivery and service obligation on the part of the Seller shall be the prerequisite for the timely and correct fulfilment of the Buyer's obligations.
- (4) Should the Buyer default of acceptance the Seller shall be entitled to demand compensation for the damages suffered; with the beginning of the default of acceptance the risk of accidental deterioration and of accidental loss passes to the Buyer.

§ 6 Passage of Risk

- (1) Any risk shall pass to the Buyer as soon as the shipment has been handed over to the person undertaking the transport, or when it has left the Seller's warehouse for the purpose of shipping. Should shipment be delayed on request of the Buyer, the risk will pass to the Buyer on expiry of the regular shipping date or on notice of shipping.
- (2) All deliveries take place at the risk of the Buyer. The Seller is however entitled to conclude the necessary insurance in the interest of the Buyer and on his account in so far as the Buyer has not contradicted this in writing at the time of ordering.

§ 7 Rights of Ownership

- (1) Until all debts are paid (including all balance debts on current accounts) which are due to the Seller from the Buyer for any legal reason either now or in the future, the Seller will be guaranteed the certain securities, which he may release of his own choice in as far as the value of the debts permanently exceeds more than 20 %.
- (2) The ownership of the goods remains with the Seller. Processing or change shall take place in the name of the Seller as producer but not without obligations. Should (joint) ownership of the Seller expire through any relationship, it shall be agreed now, that the (joint) ownership of the Buyer of the uniform object shall pass to the Seller (account value). The Buyer shall deposit the (joint) ownership of the Seller without payment. Goods to which the Seller has the right of (joint) ownership shall be declared as reserved property.
- (3) The Buyer is entitled to process and dispose over the reserved property in correct business transactions as long as he is not in default. Pledging or transfer of ownership by way of security is not permissible. Any accounts receivable (including all balance debts on current accounts) resulting from resale or any other legal reason (insurance, illegal transaction) regarding the reserved property shall be assigned in full as security to the Seller by the Buyer. The Seller shall empower him revocably to collect the debts assigned to the Seller on his account and in his own name. The direct debit authorization may only be revoked when the Buyer does not fulfil his obligations of payment properly.
- (4) The Buyer shall point out the ownership of the Seller on claims by third parties on the reserved property, especially pledges, and shall inform him immediately so that the Seller may claim his rights of ownership. In as far as any third party may not be in a position to remunerate any court costs or out-of-court costs arising in this connection, the Buyer shall become liable.
- (5) Any behaviour not in accordance with the contract on the part of the Buyer – especially default of payment – entitles the Seller to withdraw from the contract and to demand the reserved property.

§ 8 Payment

- (1) If not otherwise agreed, the Seller's invoices shall be payable directly after issue without deduction within 8 days with 2% cash discount or within 30 days net or net cash directly respectively. Using bank direct debit a 3 % cash discount is applicable, **excluding Sektsteuer (German Sparkling Wine Tax)**. This is not applicable for special prices which deviate from the wholesale price list (Price list for wholesalers).

The Seller is entitled to credit payments against outstanding debts despite any other stipulations required by the Buyer and he shall inform the Buyer of such offsetting of settlements.

Should costs and interest have occurred, the Seller is entitled to credit payment in the first place against the costs, then against interest and lastly against the main service.

- (2) Payment is considered to be settled when the Seller can dispose the amount. In the case of a cheque the payment is considered settled when the cheque has been cashed in.

- (3) In as far as the Buyer has not been given credit terms of more than 30 days he shall be in default of payment without any reminder after 30 days have expired after receipt of invoice. Subject to further claims the Seller is entitled to claim default interest of eight per cent over and above the basic interest rate.
- (4) If the Seller becomes aware of circumstances which put the creditworthiness of the Buyer in question, especially when a cheque is not cashed in or when payments are stopped or when the Seller recognizes any other circumstances by which the creditworthiness of the Buyer are put into question the Seller is entitled to demand full payment of outstanding debts even when he has accepted cheques. The Seller is entitled in this case to demand prepayment or securities.
- (5) The Buyer is only entitled to claim a set-off, withhold payments or request abatement of the purchase price, even when claims of defects or counterclaims have been made, if the counterclaims have been legally determined and are indisputable. The Buyer is, however, entitled to withhold payments due to counterclaims from the same concrete contractual relationship.

§ 9 Guarantee and Liability

- (1) The Seller guarantees general quality of the goods.
- (2) Sparkling wine and wine can develop natural tartaric acid in the form of crystals or flakes during transport in winter. This is only a cosmetic fault and does not influence the quality of the goods.
- (3) No replacement will be given for individual corky bottles. Thus claims on guarantee do not apply.
- (4) The Buyer shall claim any faults immediately in writing, at the latest within one week after receipt of the object of delivery. Faults which cannot be discovered after careful examination within this period should be forwarded to the Seller in writing. In any other case the goods will be considered as accepted. This is especially applicable regarding quantity, completeness and identity of the goods and also with regard to transport damage to packaging materials or to delivered pallets. The delivery note is valid for the quantity and completeness of the goods.

Transport damage which does not count as liability of the Seller should be communicated to the Seller immediately and a damage report should be signed by the Buyer and sent at the same time or be handed over by a forwarding company.

- (5) The period of time for fault claims or claims on guaranteed amounts to one year as of delivery of the products.
- (6) Fault claims against the Seller are only possible from the Buyer directly and are not transferable.
- (7) In as far as the goods are faulty the Seller has the option to remove the defect or is entitled to deliver fault free goods.
- (8) Any claim for compensation is excluded independent of the type of breach of duty including illegal transactions in as far as these are not negligent or gross negligent.

- (9) On breach of any substantial contractual obligation the Seller shall be liable for any negligence but only to the amount of the foreseeable damage. Claims for loss of profits on saved expenditure, from claims for damages from third parties as well as other direct or indirect consequential losses cannot be demanded unless the Seller has aimed to safeguard the Buyer against such damages through a guaranteed quality feature.
- (10) The limitations on liability and exclusions in paragraphs 7 and 8 are not valid for claims which occur due to fraudulent behaviour on the part of the Seller as well as liability for quality features, for claims according to product liability laws and damages resulting from injury to life, body or health.
- (11) In as far as the liability of the Seller is excluded or limited this shall also be extended to employees, representatives and vicarious agents of the Seller.
- (12) The products of the Seller must be stored in a frost-free, cool and dry place. The room temperature may not exceed + 25° C and may not be less than - 5° C.
- (13) Based on the carbon dioxide content sparkling wine in closed bottles shows higher internal pressure which reaches up to 6 bar at a temperature of +15° C. Every bottle is thus to be handled with care. The Buyer is obliged to advise his customers accordingly.

§ 10 Applicable Law, Jurisdiction, Part Invalidity

- (1) These terms of business and the entire legal relationship between the Seller and the Buyer shall be interpreted in accordance to the laws of the Federal Republic of Germany. The UN Convention of Contracts for the International Sale of Goods is not applicable.
- (2) In as far as the Buyer is a merchant and legal person under public law or of public assets the exclusive place of jurisdiction shall be 56856 Zell for all direct and indirect disputes relating to this contract.
- (3) Should any stipulation of these terms of business or any stipulation within the framework of other agreements be ineffective or become ineffective the remaining stipulations or agreements shall not be affected.

We don't participate in a dispute settlement procedure at a consumer arbitration board. Our e-mail address is: info@josef-drathen.de

But the law regarding the alternative settlement of disputes in relation to consumer issues provides, that we inform you about your competent consumer arbitration board nevertheless:

Allgemeine Verbraucherschlichtungsstelle des Zentrums für Schlichtung e. V.

Straßburger Str. 8

D-77694 Kehl

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