

# Moët Hennessy

NEDERLAND

## GENERAL PURCHASING CONDITIONS

### 1. Scope of application

- 1.1. These general purchasing conditions apply to all the suppliers (hereinafter called "*the Supplier*") and for all the goods and/or services (hereinafter called "*the Products*") purchased by MOËT HENNESSY (NEDERLAND) B.V., a company registered under number 32027920, and whose registered office is located at Oude Utrechtseweg 22, Baarn (hereinafter called "*MH B.V.*") from the Supplier.
- 1.2. These general purchasing conditions cancel and replace the previous general purchasing conditions of MH B.V.. MH B.V. reserves the right to amend these general purchasing conditions with immediate effect by notifying the Supplier in writing. This shall not affect the key provisions of the contract between the parties, such as the nature, price, scope and content of the performance of the parties.
- 1.3. These general purchasing conditions expressly reject any other document emanating from the Supplier and, in particular, its general or specific conditions of sale.
- 1.4. The absence of reaction from MH B.V. in the event of breach by the Supplier of one or several clauses of these general purchasing conditions cannot be deemed to be a waiver by MH B.V. of the right to enforce them.
- 1.5. In the event where one of the clauses of these general purchasing conditions should be declared invalid or in breach of the regulations in effect, the validity of all of the other clauses of these general purchasing conditions shall not be affected thereby.

### 2. Compliance with the regulations

The Supplier declares that the Products comply with the laws and regulations in effect, notably as regards:

- the qualities, the composition, the presentation and the labelling of the Products,
- the safety measures,
- labour law, notably child labour,
- the protection of the environment.

### 3. Order

- 3.1. The Supplier undertakes to register the orders accepted from MH, to confirm them and to deliver them to MH B.V. under the conditions agreed. The volumes indicated by MH B.V. outside of any order do not constitute a firm purchase order.
- 3.2. On receipt of an order, the Supplier must send its acceptance or its refusal in return to MH B.V. and proceed with the delivery within the times specified on the order form of

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MH B.V. In the absence of a reply within a period of two business days, the order is deemed to have been accepted in all these parameters.

- 3.3. Once the order has been accepted by the Supplier, MH B.V. can notify any modification to the order until eight business days before the planned delivery date. The Supplier must then inform MH B.V. as soon as possible of any change in price or timetable pursuant to the modifications requested. Every modification must be approved in writing in an amendment to the initial order.
- 3.4. The order number must be mentioned on all the delivery or shipping documents that must always accompany the Product, in the absence of which the latter can be refused at its arrival.
- 3.5. The cancellation of an order by MH B.V. can be made in the event of late or incomplete delivery and in the event of non-compliant Products.

#### 4. Stocks / Manufacturing / Packaging

- 4.1. For certain Products, MH B.V. can request permanent stocks. A monthly statement of these stocks specifying the description of the Product must be sent by the Supplier to MH B.V.. In the event of additional needs during the term of validity of the contract, the price shall be maintained for the same economic production batches.

On the depletion of the forecast annual volume and within the period corresponding to the production time, the Supplier must make contact with MH B.V. to possibly agree on a reconstitution of the permanent stock.

For information, the economic production batches are provided in writing by the Supplier for every Product listed.

- 4.2. In the event of modification by MH B.V. of the Product purchased, MH B.V. shall only pay for the possible quantities in the process of production or in stock, within the limit of the quantity agreed between the parties for the permanent stock.

In all cases, the quantities produced beyond this limit – quantities in stock included – shall remain the responsibility of the Supplier.

- 4.3. The Supplier undertakes to respect the quantities and dimensional characteristics of the Products by packaging, grouping packaging and a palletising plan, without any change being able to be made without the prior, written permission of MH B.V..

#### 5. Prices and Invoicing

- 5.1. The prices are those agreed between the Supplier and MH B.V., as shown, in particular, on the order form. These are prices excluding taxes, firm and non-revisable, which include the costs of packaging as well as any other cost, risk or charge relating to the execution of the order.

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**5.2.** The invoices sent to MH B.V. must imperatively include the order number, the description of the Products, the references of the delivery, the registration code at the Chamber of Commerce as well as any other statements required under applicable law.

### **6. Transfer of the risks –transfer of ownership**

**6.1.** The Products are shipped at the risk and peril of the Supplier. The transfer of the risks takes place after the full unloading of the Products on the premises of MH B.V. or at any other place indicated by MH B.V..

**6.2.** The transfer of the ownership of the Products ordered by MH B.V. takes place at the time of the delivery of the Products to MH B.V. as stipulated in art. 7.2 of these general purchasing terms.

### **7. Deliveries**

**7.1.** The delivery times fixed by MH B.V. in the order form are binding and cannot be modified without its express consent.

The delivery date requested is the date of arrival of the Products on the premises of MH B.V. (or any other place indicated by MH B.V. in the order form) and not the date of shipping. The Supplier shall notify MH B.V. of the delivery at least 48 hours before the delivery to the place indicated on the order form.

**7.2.** The delivery of the Products is proven by the signature of a packing list and the shipping form by the authorised staff of MH B.V.. The delivery of the Products can be refused when the order is incomplete, when the Product is non-compliant or if the state of the packaging, of the pallet or of the container is deficient.

**7.3.** Since the delivery time is binding, in the event of incomplete or late delivery, MH B.V. reserves the right to cancel the remaining quantities to deliver after the delivery time stipulated, without prejudice to any late delivery penalty and without it being necessary to send any prior notice. In the event of late delivery penalties, Supplier can be held liable to forfeit an immediately payable penalty for the benefit of MH B.V. of 5% of the price of the corresponding order per business day late. The total amount of the penalty is at least €100, but shall not exceed 100% of the corresponding order. The penalty amount shall be automatically deducted from the invoiced amount. In addition to the penalty, MH B.V. reserves the right to claim damages and to require the shipping of the Products by the quickest means at the Supplier's expense.

**7.4.** Any shipment of Products must be the subject of a detailed packing list referring to the order number of MH B.V. drawn up in triplicate (one copy attached to the product shipped, one copy sent by mail to MH B.V. and one copy remitted to the shipper).

The size of a batch can vary according to the Product and method of production. If the same production batch is the subject of several deliveries, each delivery unit must bear the identification clearly of its being part of the batch produced. Similarly, the principle "first produced, first delivered" must be applied by the Supplier.

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## 8. Deliveries

Any modification by the Supplier of the quantities of Products indicated on the order form of MH B.V. must be the subject of the written agreement of MH B.V.. In the absence of the written agreement, any modification of the quantities by the Supplier compared with the initial order can justify the termination of the order and/or the refusal of acceptance of the delivery by MH B.V..

## 9. Compliance

- 9.1.** The Products delivered by the Supplier must be of irreproachable quality and presentation, be adapted to the use for which they are sold, be free from any defects, comply in all points with the order, with applicable law and European regulations and standards in effect, both as regards quality, safety and consumer protection, composition and labelling. Every anomaly compared with these requirements applicable to the Product is an event of non-compliance.
- 9.2.** In the event of a non-compliance recorded by MH B.V. either at the delivery of the Products or at the opening of the packages, Supplier can be held liable to forfeit an immediately payable penalty of 10% of the price of the corresponding order. These penalties are without prejudice to the consequences, notably damages claimed relating to the claims that would be made against MH B.V. because of this non-compliance of the Products.
- 9.3.** In the event of non-compliance, within a period of one month from the receipt of the Products in question in its premises, MH B.V. shall have the choice between cancelling the order after having informed the Supplier thereof or of obtaining, at the expense of the Supplier, the immediate replacement of the non-compliant Products by Products that are identical or of better quality under the same price conditions and within a period of eight days from receipt of the claim.
- 9.4.** The non-compliant Products refused by MH B.V. shall be kept in the state in which they are, at the disposal of the Supplier, which undertakes to remove them at its expense and risk from the premises of MH B.V. or any other place which shall be indicated to it by MH B.V., within a period of fifteen days from the notice sent by MH B.V.. Beyond this period, the non-compliant Products shall be destroyed at the Supplier's expense.

## 10. Quality and Traceability

- 10.1.** The Supplier undertakes to deliver a Product in compliance with the expectations and specifications sent by MH B.V. If the Supplier is the manufacturer of the Products, the Supplier declares that it has all of the means necessary for the manufacturing of its Products. In any event, the Supplier, as a professional, undertakes to deliver the Products in compliance with the professional standards of its profession. To do so, it undertakes to make all the inspections and to take all the measures necessary for the obtaining of the level of quality required.
- 10.2.** The Supplier declares that it is capable of finding in a reasonable time all of the data of its manufacturing process (raw materials included) important for the quality of the

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Product that it supplies to MH B.V.. It undertakes to notify MH B.V., as soon as it has a doubt about the quality of a batch delivered. The batch number and the order number are indispensable items of information for any communication about the traceability.

### **11. Processing of personal data**

- 11.1.** Each party shall comply with its obligations under the data protection legislation in respect of personal data processed by it in connection with the contract concluded by both parties.
- 11.2.** For the performance of the contract, it is possible that both parties exchange/process personal data of (third) parties with/for each other. Therefore, both parties can be regarded as 'data controller' and/or 'data processor', depending on the situation.
- 11.3.** The type of personal data that MH B.V. processes, the categories of data subjects and the nature and purpose of the processing are described in the Privacy Statement of MH B.V., which can be consulted on the website [www.moethennessy.nl](http://www.moethennessy.nl)
- 11.4.** Terms such as "processing", "personal data", "controller", "processor" and "personal data breach" shall have the meaning ascribed to them in the General Data Protection Regulation (2016/679/EU) ("GDPR") (hereinafter: the "data protection legislation").
- 11.5.** The processor shall only process personal data on written instructions from the controller, including with regard to transfer of personal data to a third country or an international organisation, except as required to comply with a legal obligation to which the processor is subject; in such a case, the processor shall inform the controller of that legal requirement before processing, unless that law prohibits such information on important grounds of public interest.
- 11.6.** The processor shall immediately inform the controller if, in its opinion, an instruction infringes the data protection legislation.
- 11.7.** The processor shall process personal data in accordance with the requirements of the data protection regulation. For the avoidance of doubt, controller's instructions for the processing of personal data shall comply with the data protection regulation. The controller shall have sole responsibility for the accuracy, quality, and legality of the personal data and the means by which the controller acquired the personal data.
- 11.8.** The processor shall not keep the personal data longer than is strictly necessary for the personal data processing purpose.
- 11.9.** The processor shall, taking into account the nature of the processing, assist the controller by appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the controller's obligation to respond to requests for exercising the data subject's rights laid down in chapter III of the GDPR.
- 11.10.** The processor shall assist the controller in ensuring compliance with the obligations pursuant to articles 32 to 36 of the GDPR taking into account the nature of processing and the information available to the processor.

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- 11.11.** Both parties shall provide each other in due time with the required cooperation and information to enable compliance with the data protection legislation.
- 11.12.** Without prejudice to any existing contractual arrangements between the parties, the processor shall treat all personal data as strictly confidential and shall inform all its employees, agents and/or sub-processors engaged in processing the personal data of the confidential nature of such personal data. The processor shall ensure that all such persons or parties are bound by similar confidentiality obligations or are under an appropriate statutory obligation of confidentiality. The confidentiality obligation shall remain in force after the termination of the contract between the parties. The confidentiality obligation does not apply if the controller or the data subject has given approval to the processor to issue the personal data to a third party or if there is a legal obligation to issue personal data to a third party.
- 11.13.** Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, the processor shall implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk, including inter alia as appropriate:
- a) the pseudonymisation and encryption of personal data;
  - b) the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;
  - c) the ability to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident;
  - d) a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing.
- 11.14.** The processor shall take measures to ensure that any natural person acting under the authority of the processor who has access to personal data does not process them except on instructions from the processor, unless he or she is required to do so by law.
- 11.15.** The processor shall make available to the controller all information necessary to demonstrate compliance with the obligations laid down in this article 11 and allow for and contribute to audits, including inspections, conducted by the controller or another auditor mandated by the controller. The controller will pay for the costs of an audit and will ensure that the auditor is bound by confidentiality.
- 11.16.** The processor shall as soon as reasonably possible after its detection (at least within 24 hours), notify the controller of any personal data breach with regard to the processing of the personal data, shall take measures to limit the possible damage, shall cooperate with the controller and shall follow the controller's reasonable instructions with regards to such incidents, in order to enable the controller to perform an investigation on the incident.
- 11.17.** The processor may only engage another processor for carrying out specific processing activities on behalf of the controller, after written approval of the controller. In the

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case of a written approval, the processor shall inform the controller of any intended changes concerning the addition or replacement of other processors, thereby giving the controller the opportunity to object to such changes. The same data protection obligations as set out in this article 11 shall be imposed on that other processor by way of a contract, in particular providing sufficient guarantees to implement appropriate technical and organisational measures in such a manner that the processing will meet the requirements of the data protection legislation. Where that other processor fails to fulfil its data protection obligations, the initial processor shall remain fully liable to the controller for the performance of that other processor's obligations.

- 11.18.** After the contract between the parties ends, all the personal data that the processor has received from/via the controller will be returned or deleted (at the choice of the controller) and existing copies must be deleted unless the relevant law requires storage of the personal data. In that case, the processor warrants that it will guarantee the confidentiality of the personal data received and will not actively process the personal data anymore.
- 11.19.** If a party is imputably defaulting in (one of) her obligations as laid down in this article 11, this party is liable for the damage the other part incurs as a result. The liability is limited to the compensation of direct damage.
- 11.20.** The processor shall indemnify, and keep indemnified, the controller of all claims, procedures or actions against the controller that result from a violation of this article 11 by the processor.

## **12. Liability**

- 12.1.** The Supplier is held liable for and undertakes to assume all of the direct and indirect financial consequences resulting from damage of any kind, direct or indirect, that the Products manufactured and/or delivered by it could cause to people or property, as well as for the withdrawal of the Products for any reason whatsoever.
- 12.2.** The Supplier must certify that it has taken out an insurance policy with a first class insurance company covering the financial consequences of its third party and/or professional liability for the Products delivered to MH B.V. for sufficient amounts. MH B.V. shall have the possibility at any time to require the Supplier to provide an insurance certificate.

## **13. Confidentiality**

Business secrets, the methods and/or any technical and/or commercial information of one or the other party sent within the framework of an order are considered to be confidential information.

Each of the parties shall respect the confidentiality of this information exchanged and shall not disclose it or make it available to third parties without having obtained the prior, written permission of the other party.

Each of the parties shall comply with the obligations resulting from this confidentiality clause throughout the duration of the relations and as long as the confidential information shall not have fallen into the public domain legally.



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At the simple written request of one of the parties, the other party undertakes either to return any document to it containing the confidential information or to destroy it and provide a certificate of destruction, to be extent permitted under applicable law. A copy of these documents can in no event be kept, except as otherwise provided by applicable law.

### **14. Intellectual property**

**14.1.** No right is transferred or granted to the Supplier to the trademarks of the products which MH B.V. distributes or for the items remitted by MH B.V. in performance of these general purchasing conditions apart from the right of use granted to the Supplier for the sole purposes and for the sole period of performance by the Supplier of its services. Any other use is subject to the prior permission of MH B.V..

**14.2.** Except in the event of a provision to the contrary in the order form, when intellectual property rights, of any kind whatsoever, attached to the Products that are the subject of the order are (i) either created or capable of being recognised for the first time at the time of the execution of the said order, (ii) or used exclusively by MH B.V. within the framework of the said order, the Supplier transfers to MH B.V., in consideration for the remuneration fixed under the specific purchasing conditions, as they are produced, all of the intellectual property rights attached to the Products concerned for the whole world and for the statutory period of protection, including all of the items prepared, directly or indirectly, by the Supplier during the term of these general purchasing conditions.

The rights thus transferred include, in particular, the industrial property rights to any trademarks, inventions that are patentable or not, drawings and/or models that MH B.V. can freely use and protect in its name, notably by filings with the Offices concerned.

The rights transferred include, moreover, the right of reproduction, representation, adaptation and modification, by any means and on any media, as well as the right of secondary and derived use of the goods and services and of all of the items specified above.

### **15. Guarantee**

**15.1.** The Supplier guarantees that the Products delivered are not subject to any special charges, encumbrances, industrial or artistic property claim (patents, trademarks, drawings and models) and that the photographs of the Products can be reproduced on any media, including the Internet, except in the event of a decision to the contrary expressed by registered letter with acknowledgement of receipt.

**15.2.** The Supplier guarantees that on the date of signature of the order form, (i) it is the owner of all of the intellectual property rights transferred under these general purchasing conditions, which have not been the subject of any transfer or license, total or partial, in any way whatsoever, and (ii) that no litigation is pending as regards the said rights transferred.

In the event where the Supplier should not be able to transfer or to obtain from a third party the transfer to MH B.V. of all of the intellectual property rights attached to the order, it must imperatively notify to MH B.V., before the acceptance of any order form,



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the scope and the limits of the intellectual property rights transferred. Whatever the case, the Supplier must obtain the prior, written agreement of MH B.V. to this (or these) restriction(s) on transfer before any commitment to produce. The possible negotiating of the transfer of rights of a third party to the Products that are the subject of the order shall take place by a separate deed drawn up in writing between the parties.

The Supplier guarantees the Client against any legal actions, claims or proceedings caused by or that are the subject of the rights transferred under the terms of these general purchasing conditions.

### **16. Documents**

**16.1.** In the event where the Supplier is the manufacturer of the Products, the Supplier shall provide, for information, the elements concerning its manufacturing and inspection process, and the composition of the products used in the making of the Products and necessary to obtain the quality of the Products ordered, with the exception of the information considered to be confidential or forming part of the know-how of the Supplier.

**16.2.** In the event where the Supplier, as a manufacturer, collaborates with MH B.V. in the creation of a new Product, technical documents may be created by the Supplier under the supervision of MH B.V.. The Supplier commits itself to the delivery date of these documents. This date shall be imperatively prior to that of the first delivery of Products, so that the documents can be validated by MH B.V. before the start of the manufacturing.

### **17. Sub-contracting**

**17.1.** The Supplier undertakes to inform MH B.V. in the event of any sub-contracting.

**17.2.** The Supplier guarantees to MH B.V. the compliance by the sub-contractors with all of these general purchasing conditions and shall alone be responsible for the acts of its sub-contractors. It undertakes to directly settle the possible disputes with the sub-contractors without making MH B.V. intervene and guarantees MH B.V. against any direct action of the sub-contractors against it.

**17.3.** The Supplier remains responsible for the execution of the whole order.

### **18. Payment**

**18.1.** The price for the Products shall be set out in the Order, or if no price is quoted, the price set out in the Supplier's published price list in force at the order date.

**18.2.** In consideration of the supply of the Products by the Supplier, MH B.V. shall pay the invoiced amount within 30 days of the date of the Supplier invoice to bank account nominated by the Supplier in writing.

**18.3.** MH B.V. may set off any amount owing to it by the Supplier against any amount payable to the Supplier.

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**18.4.** All payments are contingent upon the delivery of the Products confirming with the purchase order and to the satisfaction of MH B.V.

**18.5.** The Supplier shall invoice MH B.V. on or after the delivery of the Products. Each Supplier invoice shall include the relevant purchase order number and such supporting information required by MH B.V. to verify the accuracy of the invoice.

### **19. Termination**

Any breach by the Supplier of any commitment whatsoever within the framework of these general purchasing conditions can entail, without any formality other than a notice by registered letter with acknowledgement of receipt, the immediate and automatic termination of the current contractual relations subject to a notice period of thirty days, without prejudice to a possible right to compensation.

### **20. Notices**

Every notice that should be reciprocally made under these general purchasing conditions shall be actually and validly made by a simple registered letter with request for acknowledgement of receipt and in the event of an emergency proved by a fax or, in the event of interruption of the postal service, by any necessary means, with any times running either from the day of the delivery of the said letter or of its first presentation, with the statements of the Post providing proof, or from the day of the remittance of the notice delivered by another means.

### **21. Anti-Corruption**

The Supplier is aware of the obligation for MH B.V. to comply with anti-corruption rules and principles relevant to the contract parties and with acceptance of the purchase order, the Supplier agrees that it will not use money or other consideration paid by MH B.V. for unlawful purposes. Any such practice will constitute as a breach of contract and will be grounds for MH B.V. to terminate this contract immediately.

### **22. Contract - Essential Obligation**

The provisions of any other signed contract between parties, not including the Terms and Conditions of Supplier, shall prevail over any conflicting terms in these General Purchasing Conditions. Such conflict shall not affect the legality, validity or enforceability of the remaining parts of these General Purchasing Conditions.

### **23. Governing law – Attribution of jurisdiction**

These General Purchasing Conditions, and all purchase orders, shall be exclusively governed by Dutch law. The settlement of any dispute that may arise between the Supplier and MH B.V. shall lie within the exclusive jurisdiction of the Court of Amsterdam, the Netherlands, even in the event of the introduction of third parties or of a plurality of defendants.