

**General Terms and Conditions of Sale Moët Hennessy (Nederland) B.V.**

**UNOFFICIAL TRANSLATION**

**1. Definitions**

In these General Terms and Conditions of Sale, the terms below are used in the following sense, unless expressly stated otherwise.

**General Terms and Conditions of Sale:** The General Terms and Conditions of Sale of Moët Hennessy (Nederland) B.V. as filed with the Chamber of Commerce of Amsterdam under number **32027920**;

**Purchaser:** the natural person with whom or legal entity with which the Agreement is concluded;

**Moët Hennessy:** Moët Hennessy (Nederland) B.V., with its registered office in Naarden and place of business in (1114 BC) Amsterdam at MediArena 19, registered with the Chamber of Commerce under number: 32027920;

**Order:** the order to deliver certain Goods placed by the Purchaser with Moët Hennessy;

**Agreement:** the agreement concluded by Moët Hennessy and Purchaser for delivery of Moët Hennessy Goods.

**Parties:** Moët Hennessy and Purchaser jointly;

**Price List:** the price list made by Moët Hennessy for sale including the current sale prices of the Goods;

**Good(s):** the good(s) offered and/or delivered by Moët Hennessy to the Purchaser.

**2. Applicability**

These General Terms and Conditions of Sale are applicable to all offers, quotes, services, legal relationships and agreements, under any denomination, with Moët Hennessy committing itself to deliver Goods to the Purchaser.

**3. Changes**

3.1 Moët Hennessy reserves the right to amend these General Terms and Conditions of Sale with immediate effect by notifying the Purchaser in writing. This shall not affect the key provisions of the Agreement, such as the nature, price, scope and content of the performance of the Parties.

3.2 Changes to the Agreement will only be effective if they have been agreed upon in writing between Moët Hennessy and the Purchaser.

## 4. Price List and Orders

- 4.1 Before the Purchaser can place an Order, the Purchaser must return the signed Moët Hennessy customer form to which these General Terms and Conditions of Sale are attached. The acceptance of the customer form must show that the Purchaser agrees to the applicability of these General Terms and Conditions of Sale and that it, where necessary, relinquishes applicability of its own General (Purchase) Conditions.
- 4.2 The prices as stated in the last Price List by Moët Hennessy are exclusive of VAT and inclusive of excise duties, unless otherwise specified. The taxes and excise duties shall be charged at the rates prevailing at the time of the shipment of the Goods.
- 4.3 The Price List will be valid for a period of one month, unless otherwise indicated in the Price List. The Price List can be changed at any time by Moët Hennessy without prior notice to the Purchaser.
- 4.4 The Purchaser shall place its Order in conformity with the most recent Price List. The Agreement shall only be concluded when Moët Hennessy has received the Order of the Purchaser and Moët Hennessy (i) has confirmed the Order in writing to the Purchaser (including by e-mail); or (ii) proceeds to shipment and packaging as referred to in **Article 5** of the General Terms and Conditions of Sale.
- 4.5 If reservations or changes will be made to the Order with respect to the Price List by way of derogation from **paragraph 4 of this Article**, an Agreement can only be concluded if Moët Hennessy has notified the Purchaser specifically and in writing to agree upon these deviations from the Order.
- 4.6 Moët Hennessy is entitled to refuse an Order if the Purchaser has placed an Order for a Good of a certain vintage and there are insufficient quantities of this Product available to fulfil the Order. In such an event, Moët Hennessy may substitute the Good by a Good of a comparable vintage and invoice Purchaser for the price that applies to this Good.
- 4.7 The Purchaser acknowledges that the fulfilment of the Order is dependent on the availability of the Goods. If the demand exceeds the offer (for any reason) Moët Hennessy is permitted to allocate, at its own discretion, the available Goods to different customers.

## **5. Packaging and Shipping**

- 5.1 Moët Hennessy is committed towards the Purchaser to package the Goods properly.
- 5.2 The Goods will be delivered, or sent for delivery, to the agreed place or places in the manner as specified in the Order or agreed upon afterwards.
- 5.3 For shipments that do not exceed an invoice amount of €750 Moët Hennessy will charge €25 for shipping costs.

## **6. Delivery and Risk**

- 6.1 Any dates and times quoted by Moët Hennessy with respect to the delivery are approximate. Where no date is quoted for delivery, delivery will take place within a reasonable period of time after the conclusion of the Agreement.
- 6.2 Moët Hennessy is entitled to deliver the Order in instalments. If Moët Hennessy delivers the Order in instalments, Moët Hennessy will inform the Purchaser of the date of delivery of each of the instalments.
- 6.3 The risk of loss, theft and damage of the Goods to be delivered shall pass to the Purchaser at the time of delivery.
- 6.4 If, at the moment of delivery, upon inspection of the Purchaser, there are defects, damage or non-conformity of the Goods (“visible defects”), Purchaser shall make a mention of this on the concerning adjoined delivery note and sign this delivery note with name and date. Purchaser shall report its complaints in writing (including by email) to Moët Hennessy within ten (10) days after delivery of the Goods on the premises of the Purchaser, including beforementioned delivery note. When Purchaser refrains from doing so, he cannot claim the defect, damage or non-conformity.
- 6.5 Moët Hennessy will not be liable for the damage caused by, or resulting from, late delivery or a delay in delivery.
- 6.5 The Goods cannot be returned by the Purchaser as soon as the delivery has been carried out, unless the Parties have agreed expressly otherwise.

## **7. Limitation of Liability**

- 7.1 Moët Hennessy shall not be liable for claims regarding defects, damage to or non-conformity of the Goods which reasonably could have been established while inspecting the Goods (“visible defects”), unless the Purchaser within ten (10) days after delivery of the Goods on the premises of the Purchaser, has reported its complaints in writing (including by email) to Moët Hennessy including the signed delivery note (conform **article 6.4** of these General Terms & Conditions of Sale).
- 7.2 Moët Hennessy shall not be liable for all other claims regarding defects, damage to or non-conformity of the Goods (“invisible defects”), unless the Purchaser has reported its complaints in writing (including by email) to Moët Hennessy within two (2) months after he discovered or should have reasonably discovered the defect.
- 7.3 The Purchaser shall, at the request of Moët Hennessy, return the Goods of which the Purchaser claims they are defective, non-conforming or damaged to Moët Hennessy for the purpose of inspection by Moët Hennessy.
- 7.4 Moët Hennessy will not accept any claims that are not in accordance with the requirements and within the deadlines set out in this Article.
- 7.5 Moët Hennessy shall, in case Moët Hennessy is responsible for defective, damaged or non-conforming Goods, at its sole discretion, replace the Goods by new Goods or return the purchase price for the Goods to the Purchaser. Except as provided in the preceding sentence, Moët Hennessy shall not be liable for damage caused by or arising from the delivery of defective, damaged or non-conforming Goods.

## **8. Storage**

- 8.1 The Purchaser is obliged to store and secure the Goods and to take all reasonable measures to prevent any deterioration in quality.
- 8.2 Moët Hennessy is not liable for loss or damage of the Goods in case the Purchaser fails to meet his obligations under this Article.

## **9. Retention of Title**

- 9.1 All Goods delivered to the Purchaser will remain the property of Moët Hennessy until all amounts the Purchaser is due to Moët Hennessy under the Agreement concluded between the Parties have been paid fully to Moët Hennessy.
- 9.2 Until the ownership will be transferred to the Purchaser, the Purchaser will (a) keep the Goods as the agent of Moët Hennessy; and (b) keep the Goods separately from all other Goods of the Purchaser or any other Party and – where necessary - mark the Goods clearly as Goods belonging to Moët Hennessy; and (c) maintain the Goods in good condition and take out insurance for the full amount against all risks for the benefit of Moët Hennessy, including, but not limited to, theft and destruction for any reason. On request of Moët Hennessy, the insurance certificate will be submitted by the Purchaser.
- 9.3 The Purchaser is entitled to sell the Goods purchased under retention of title before the property thereof has been transferred to it, under the condition that the sale shall be carried out as part of its normal business activities at full market value and that it regards the sale of Goods owned by Moët Hennessy so that it will be carried out in the interest of Moët Hennessy.
- 9.4 Moët Hennessy is at all times entitled to claim possession of the Goods delivered under retention of title, without further notice being required.

## **10. Force Majeure**

- 10.1 Force majeure on the part of Moët Hennessy exists if Moët Hennessy, after conclusion of the Agreement, fails to fulfil the obligations from this Agreement or to perform the preparations thereof as a result of events which have arisen without fault and beyond the control of Moët Hennessy, including, but not limited to, machinery defects, fire, war, terrorism, water damage, flooding, power supply failure, riots, civil disorder, local or national strike, faulty delivery or non-delivery of suppliers, bad harvest, worker shortage and/or lack of fuel, restriction on trade or currency and state intervention. Moët Hennessy is not obliged to inform the Purchaser if force majeure arises.
- 10.2 If, due to force majeure, the delivery is delayed with more than six (6) months, delivery is made impossible, or delivery can in all fairness no longer be claimed from Moët Hennessy, the Parties are entitled to terminate the Agreement by giving written notice to the other Party without incurring liability. In the event the Agreement is already partially carried out, the Purchaser is entitled to keep the already delivered Goods and pay the purchase price owed.

## **11. Resale**

- 11.1 The Purchaser is, without the prior written approval of Moët Hennessy, not entitled to export the Goods to countries outside the European Economic Area. The Purchaser is also required to impose the obligation upon the successive purchaser, that the successive purchaser is not entitled to export to countries outside the European Economic Area. Purchaser shall specify the quantity and (the country of) the destination for Orders destined for resale outside the European Economic Area. Moët Hennessy reserves the right to refuse such Orders.
- 11.2 The Purchaser may not (give instructions to) place or spread advertisements and announcements (advertisements and announcements on the Internet included) with a misleading or deceptive content or that may be detrimental to advertisements of Moët Hennessy, nor directly or indirectly make misleading offers in connection with the sale of Moët Hennessy Goods.
- 11.3 In the event the Purchaser ceases (part of) its activities or intends to cease its activities, inter alia due to dissolution, bankruptcy or acquisition of its company, the Purchaser is obliged at the request of Moët Hennessy to return the Goods against receipt of the paid invoices.
- 11.4 The Purchaser may not resell any Goods of Moët Hennessy if the lot code has been erased, has been damaged or has otherwise been made illegible.
- 11.5 All Goods intended for sale, trade or promotional use, both inside and outside licensed premises, may only be resold or used in the condition as prescribed by Moët Hennessy. In particular, all bottles, containers, labels, capsules and corks must remain intact and not be tampered with, added to, altered or obliterated in any way.

## **12. Intellectual Property**

- 12.1 The Purchaser expressly recognises Moët Hennessy's exclusive rights in all registered and unregistered trademarks owned by Moët Hennessy (hereinafter: the "Trade Marks") and in all trade names, business names, domain names, goodwill, database rights, rights in designs and other intellectual property rights, whether registered or unregistered owned by Moët Hennessy (hereinafter jointly: "Intellectual Property Rights").
- 12.2 Moët Hennessy's Intellectual Property Rights are the property of Moët Hennessy and may not be used by the Purchaser without Moët Hennessy's prior written permission.

- 12.3 The Purchaser shall not do, cause or authorise to be done anything which will or may impair, damage or be detrimental to the reputation or goodwill associated with Moët Hennessy or the Trade Marks, which will or may adversely affect the value or validity of the Trade Marks, which may bring the Trade Marks into disrepute or which might jeopardise or invalidate any registration or application for registration of the Trade Marks or Moët Hennessy's title to the Trade Marks.
- 12.4 The Purchaser shall not claim ownership of the Trade Marks nor shall it register the Trade Marks or any other trade mark which is in Moët Hennessy's opinion identical or confusingly similar to the Trade Marks (including any translation thereof into English).
- 12.5 The Purchaser shall not register or use any domain name or purchase or sell any keyword or hyperlink consisting of or containing a Trade Mark or any other trade mark which is in Moët Hennessy's opinion identical or confusingly similar to the Trade Marks unless with Moët Hennessy's prior written permission and exclusively to sell the Goods in accordance with the Agreement and with these General Terms & Conditions of Sale.
- 12.6 The Purchaser shall not make use of the Trade Marks or of Moët Hennessy's Intellectual Property Rights on any social networking site other than to sell the Goods in accordance with the Agreement and with these General Terms & Conditions of Sale and exclusively by using pictures and visuals of the Goods provided by Moët Hennessy upon request.

### **13. Processing of personal data**

- 13.1 Each party shall comply with its obligations under the data protection legislation in respect of personal data processed by it in connection with the Agreement.
- 13.2 For the performance of the Agreement, it is possible that the Parties exchange/process personal data of (third) parties with/for each other. Therefore, the Parties can be regarded as 'data controller' and/or 'data processor', depending on the situation.
- 13.3 The type of personal data that Moët Hennessy processes, the categories of data subjects and the nature and purpose of the processing are described in the Privacy Statement of Moët Hennessy, which can be consulted on the website [www.moethennessy.nl](http://www.moethennessy.nl)
- 13.4 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").

- 13.5 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.
- 13.6 The processor shall immediately inform the controller if, in its opinion, an instruction infringes the data protection legislation.
- 13.7 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.
- 13.8 The processor shall not keep the personal data longer than is strictly necessary for the personal data processing purpose.
- 13.9 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.
- 13.10 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.
- 13.11 The Parties shall provide each other in due time with the required cooperation and information to enable compliance with the data protection legislation.
- 13.12 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 Agreement. 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.



- 13.13 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.
- 13.14 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.
- 13.15 The processor shall make available to the controller all information necessary to demonstrate compliance with the obligations laid down in this article 13 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.
- 13.16 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.
- 13.17 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 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 13 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.

- 13.18 After the Agreement 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.
- 13.19 If a party is imputably defaulting in (one of) her obligations as laid down in this article 13, this party is liable for the damage the other part incurs as a result. The liability is limited to the compensation of direct damage.
- 13.20 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 13 by the processor.

## **14. Confidentiality**

The Purchaser is obliged to keep strictly confidential all data received from Moët Hennessy, that it knows or ought to know is of a confidential nature. Where the Purchaser receives confidential data, it is only allowed to use these for the intended purpose.

## **15. Fines**

The Purchaser who acts in contradiction to any obligation of Articles **11, 12 or 14**, forfeits, for the benefit of Moët Hennessy, an immediately payable fine of € 10,000 (ten thousand euros) per violation. Without prejudice to all other rights of Moët Hennessy, including, but not limited to, the right to claim supplementary payment of the damage actually incurred.

## **16. Payment**

- 16.1 The invoices of Moët Hennessy must be paid within 30 (thirty) days of the invoice date by the Purchaser without the possibility of suspension or setoff. If the Purchaser fails to pay within this term, the Purchaser will be in default by operation of law, and from that moment onwards, Moët Hennessy is entitled to charge the commercial interest at the statutory rate.
- 16.2 If Moët Hennessy will take extrajudicial measures for the collection of its invoices, the costs thereof will have to be borne by the Purchaser in accordance with the Netherlands Extrajudicial Collection Costs Decree (Besluit voor vergoeding van buitengerechtigde incassokosten). The aforesaid shall not affect Moët Hennessy's entitlement to claim in each proceeding separately reimbursement of the legal costs.

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## **17. Termination**

- 17.1 If the Purchaser fails to fulfil his (payment) obligations in good time, Moët Hennessy will be entitled to terminate, without court intervention, the Agreement by registered letter with immediate effect.
- 17.2 If the Purchaser has been declared bankrupt, or the Purchaser has applied for (provisional) moratorium, or a similar regulation which leads to total or partial loss of freedom of disposal should apply to the Purchaser, Moët Hennessy is entitled to terminate the Agreement without court intervention by registered letter with immediate effect.
- 17.3 If the Agreement will be terminated, for any reason, Moët Hennessy can claim its Goods with due observance of Article 9.
- 17.4 By the termination the claims on both sides will become immediately due and payable. The Purchaser shall be liable for the damage suffered by Moët Hennessy, which includes loss of profits, transport costs and the costs of its legal advisors.

## **18. Applicable law and disputes**

- 18.1 These General Terms and Conditions of Sale are governed exclusively by the laws of the Netherlands. The Vienna Sales Convention (Weens Koopverdrag) does not apply to these General Terms and Conditions of Sale.
- 18.2 All disputes that may arise between the Parties regarding the General Terms and Conditions of Sale, or any other agreements or acts in connection with these General Terms and Conditions of Sale, will be settled by the Court of Amsterdam.

## **19. Final provisions**

- 19.1 The applicability of terms and conditions of purchase and/or other terms and conditions of the Purchaser is expressly rejected.
- 19.2 In case of differences between the Dutch and the English text of the General Terms and Conditions of Sale, the Dutch version ("*Algemene Verkoopvoorwaarden*") will prevail.
- 19.3 If any provision of the General Terms and Conditions of Sale is invalid or void, the remaining provisions of the General Terms and Conditions of Sale will remain in force. In that case, Parties will hold consultations to determine new provisions that will replace the invalid or void provisions.

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- 19.4 These General Terms and Conditions of Sale do not apply to any goods purchased by Moët Hennessy and/or services received by Moët Hennessy from suppliers. To the goods purchased by Moët Hennessy and/or services received by Moët Hennessy from suppliers the Purchasing Terms and Conditions of Moët Hennessy apply.
- 19.5 These General Terms and Conditions of Sale have been filed at the Chamber of Commerce under number 32027920. Upon request the General Terms and Conditions of Sale will be forwarded free of charge and they can also be consulted on [www.moethennessy.nl](http://www.moethennessy.nl).