



GENERAL TERMS AND CONDITIONS OF SALES AND DELIVERY OF BAVARIA N.V.

Article 1: Applicability

1. All offers made by Bavaria, all agreements concluded with Bavaria regarding sale and delivery by Bavaria as well as the performance of same are exclusively governed by these general terms and conditions.
2. The applicability of the general terms and conditions used by the customer, regardless of their designation, is hereby explicitly excluded.
3. In these general terms and conditions, "customer" shall refer to the wholesaler, the retailer, the food and beverages company or any other contracting party of Bavaria.
4. Deviations from the general terms and conditions laid down below may only be agreed on in writing and shall only apply after the express written confirmation of same to the customer by the competent representative of Bavaria according to the Articles of Association.
5. The English text of the general terms of sales and delivery of Bavaria is always decisive.

Article 2: Offers

1. Unless agreed otherwise in writing, all offers Bavaria has made to the customer are free of obligation and valid for a period of 14 days after the date of dispatch to the customer, but until the day Bavaria receives the acceptance of same, they may be revoked by Bavaria at any time.
2. Bavaria shall at all times be entitled to change the specifications indicated in the offers.
3. Bavaria reserves the right to determine the minimum quantities of all goods to be delivered by it.
4. Unless indicated otherwise, the circumstances anticipated before the order and performance of the order during normal working hours for Bavaria were assumed in preparing the offer.
5. All documents and the information contained in these, whatever the nature, pertaining to offers made by Bavaria, such as price lists, drawings, brochures and other details are as accurate as possible, but shall only bind Bavaria in the event that Bavaria has explicitly guaranteed same in the offer.
6. The documents pertaining to this as referred to in paragraph 5 are and remain Bavaria's property and may not without its written consent be given to (passed onto) third parties, or made available for inspection, copied or reproduced in any way whatsoever.

Article 3: Conclusion of agreements

1. An agreement with Bavaria shall only be concluded if Bavaria has confirmed same in writing by means of an order confirmation.
2. Written confirmations as referred to in paragraph 1 of this article as well as all statements of intent referred to in these general terms and conditions, of any nature whatsoever, may only be made with legal force by a competent representative of Bavaria according to the Articles of Association.
3. The substance of the agreement between the parties shall be determined exclusively by the statements made regarding the agreement in the order confirmation and in these terms and conditions.
4. As regards agreements, deliveries and orders which are not covered by a written order or order confirmation by Bavaria, the invoice or delivery receipt sent by Bavaria is also regarded as an order confirmation, which is also deemed to reflect the agreement correct and fully.
5. The circumstance that Bavaria makes deliveries to the customer and/or has made deliveries to the customer previously does not entitle the customer to any future deliveries by Bavaria. Hence, this does not establish a permanent relationship, save in the event of an explicit written agreement to the contrary. Bavaria is not obliged to give a reason for the refusal to make any deliveries to the customer in the future.

Article 4: Prices

1. Unless indicated otherwise in writing, the prices mentioned in Bavaria's offer or its order confirmation are:
 - based on the price-determining factors and current prices prevailing at the time the offer or order confirmation was prepared;
 - exclusive of costs (processing of returned goods) packaging/deposits;
 - exclusive of VAT;

- exclusive of import and export duties;
 - based on postage for delivery at home;
 - expressed in Euros;
 - exclusive of any other payments, which Bavaria or the customer must make, regardless of the reason.
2. The goods to be delivered directly by Bavaria to the customer are subject to the prices set in Bavaria's price current at the time of delivery for the relevant category of customers or as specifically agreed in writing with the relevant customer.
 3. In case of a change of prices (charged by suppliers of Bavaria) and/or change of (other) price-determining factors, such as rates of exchange, wages, taxes, import and export duties, expenses, freight and the like after an offer of Bavaria or an order of the customer, Bavaria shall at all times be entitled to change the prices accordingly with due observance of the mandatory provisions applying to the matter, regardless of whether Bavaria could have foreseen the change at the time of the offer or the order, as the case may be. Bavaria shall inform the customer of said changes when Bavaria has become aware of the changes.
 4. The changes in the price referred to in the previous paragraph do not entitle the customer to annul or rescind the agreement in any way.

Article 5: Payment

1. The payment of the invoices forwarded by Bavaria to the customer must have been received by Bavaria before the goods shall be delivered. Unless agreed otherwise in writing, payment must be made by means of deposit or transfer into a bank or giro account designated by Bavaria, in Euros and inclusive of VAT. The value dates indicated on the bank/giro statements of Bavaria shall be decisive in determining the date of payment.
2. The customer shall not be entitled to postponement or a set-off.
3. If the amount due according to the invoice has not been paid in time, the customer shall be in default without any warning or prior notice of default being required, and as of the due date of the invoice he shall owe Bavaria legal interest. The legal interest will be equal to the refinance rate which has been determined by the European Central Bank for her most recent basic refinance transaction which took place on the first calendar day of the concerning half year increased with 7 %.
4. All – actual – (extra-)judicial costs incurred by Bavaria, caused by or in connection with the incorrect or late compliance with the obligations by the customer shall be borne by the customer.
5. The extra-judicial costs shall at least amount to a sum to be determined by applying the collection fee rates of the Netherlands Bar Association, with an absolute minimum of € 500,-- (500 Euros), exclusive of VAT.
6. The judicial costs are explicitly not restricted to the liquidated litigation costs, but shall be for the account of the customer in their totality, if the latter loses the action (on most counts).
7. Bavaria's claims on the customer, on any ground whatsoever, shall in any case be immediately –entirely – exigible and without any notice of default or other prior notice in the following cases:
In the event the customer does not pay exactly on time, if the customer is declared bankrupt or bankruptcy has been applied for, suspension of payment has been applied for or the customer is subject to suspension of payments, if the customer applies for debt rescheduling or debt rescheduling is declared applicable, if an application has been made for it to be placed under the control of a receiver, if its goods have been seized in any way, or in the event of the death of the customer, its liquidation or if it announces the discontinuation of its business operations or it has stopped these, in the event of transfer of its business or part of same, including the contribution of the company to a company yet to be incorporated or already in existence or (partial) transfer of the control of the company.
8. Bavaria shall at all times be entitled to require personal or property security from the customer, such at the discretion of Bavaria, in order to guarantee its (future) financial obligations vis-à-vis Bavaria, which shall be all the more applicable if Bavaria has good reason to fear that the customer shall not meet its payment obligations vis-à-vis Bavaria in time. If and as long as the customer refuses to or is not able to provide security in that event, Bavaria shall be entitled to suspend its obligations or immediately terminate (the) agreement(s), without being required to pay any damages.

Article 6: Title reservation and transfer of title

1. The title to all goods to be delivered by Bavaria to the customer or delivered already continues to reside with Bavaria until the customer has met all its obligations vis-à-vis Bavaria regarding the delivery in question, the previous and subsequent similar deliveries, regarding additional work performed or yet to

- be performed by Bavaria, as well as regarding the claims of Bavaria on the customer on account of default by the customer in the performance of its obligations vis-à-vis Bavaria.
2. The customer is not entitled to use or sell the goods in the course of his normal business operations, nor alienate the goods in any way whatsoever, to encumber same with a limited right of security or a right of enjoyment or to remove it from Bavaria's recovery in any other way.
 3. The customer is obliged to identify the goods delivered to it by Bavaria and still under its control as belonging to Bavaria and maintain said identification until the title has passed to it.
 4. The customer is obliged to insure the goods for the duration of the reservation of title against fire, explosion and water damage as well as theft and to make the policies of these insurances available for inspection by Bavaria upon first notice. All claims of the customer on the insurers of the goods pursuant to said insurance shall be pledged by the customer to Bavaria in the manner indicated in Art. 3:239 of the Dutch Civil Code as soon as Bavaria expresses that it wants such, by way of additional security for Bavaria's claims on the customer.
 5. If the customer is in default in meeting its payment obligations vis-à-vis Bavaria, or Bavaria has good grounds to fear that it will default as regards those obligations, Bavaria is entitled to take back the goods delivered subject to the reservation of title. After recovery, the customer shall be credited for the market value, which cannot be higher than the original sales price under any circumstances, less the costs pertaining to the recovery and the loss sustained by Bavaria due to taking back the goods.
 6. If Bavaria claims the goods as its property, the customer is obliged to show Bavaria the place where the goods are located and the customer already now gives permission that in such event, the appropriate sites and buildings can be accessed in order to take back the goods.
 7. If the customer makes new goods out of the goods delivered by Bavaria, subject to the reservation of title, the customer shall act pursuant to the instructions of Bavaria in doing so and the customer shall keep the new goods for Bavaria.
 8. To the extent that Bavaria has any (other) claims on the customer (as referred to in paragraph 1) and it has delivered to the customer goods not (any longer) subject to a reservation of title, the customer (already now) hereby vests in Bavaria (for such event) a non-possessory right of pledge on these goods, which is hereby accepted by Bavaria. The customer shall sign an instrument for the vesting of the right of pledge upon Bavaria's first request. The customer shall guarantee that it is authorised to pledge the goods and that the goods are not subject to a pledge and/or limited rights other than Bavaria's rights.
 9. The customer undertakes not to assign or pledge claims it acquires on its customers to third parties without the prior written permission of Bavaria. The customer also undertakes that as soon as Bavaria expresses its wish for same, it will pledge said claims to Bavaria in the manner indicated in Art. 3:239 of the Dutch Civil Code by way of further security for its claims on the customer, whatever their basis.

Article 7: Delivery and delivery times

1. The customer is obliged to take receipt of the goods offered to it by Bavaria by way of delivery.
2. To the extent there is no written agreement to the contrary, delivery shall occur free domicile at the delivery address agreed with the customer. The risk shall pass to the customer at the moment the goods are loaded. The supplier is free to choose the manner of transport of the goods to be delivered. Transport or relocation on the site and/or within the business premises of the customer are not included in the aforesaid delivery and are also effected for the account and risk of the customer.
3. The delivery address or the unloading place must be easily accessible by means of transport which are customarily used for the deliveries. The customer guarantees that there are sufficient loading and unloading facilities at the delivery address and that it will be possible to unload the goods immediately or to arrange for same. The customer shall for his own account and risk ensure that there is sufficient personnel and (mechanical) equipment in order to unload the goods and to load any return cargo. The customer guarantees that the waiting time between time of report of arrival at the delivery address and the time at which the unloading of the goods can be begun shall be restricted to a minimum. The customer is obliged in any event to give Bavaria or its transporter(s) the opportunity to deliver goods at its address on all working days between 8.00 a.m. and 6.00 p.m. and to collect return packaging, subject to deviating written agreements between the customer and Bavaria.
4. Bavaria shall at all times be entitled to deliver the goods subject to cash on delivery.
5. Returning goods shall only be permitted if Bavaria has granted express written permission for same.
6. If the customer does not take receipt of the goods before the delivery period has elapsed and/or the customer refuses the goods, Bavaria can store the goods for the account and risk of the customer, including the risk of quality reduction, in the warehouse of Bavaria or elsewhere.
7. The default by the customer referred to in paragraph 6 shall be deemed to constitute delivery to the customer. Bavaria shall inform the customer in writing of the storage and shall at the same time forward the invoice regarding the delivery.

8. The manner of the agreed transport and packaging, if any, shall be determined by Bavaria in the absence of any specific written agreement.
9. Bavaria shall at all times be entitled to make partial deliveries, which deliveries may be invoiced separately. The customer is obliged to make the payments for all partial deliveries in accordance with the provisions of Article 5 of these terms and conditions.
10. The delivery times indicated shall never be regarded as an absolute deadline, unless otherwise agreed in writing.
11. The delivery time shall begin to run after the agreement has been concluded, all the data and materials necessary for the commencement of performance of same are in the possession of Bavaria and any payment, insofar as same should be made by the customer at the time the agreement is concluded, has been made.
12. Only if a delivery time has been explicitly agreed in writing to be an absolute deadline, the customer shall be entitled to claim rescission of the agreement, if Bavaria has failed to deliver the goods ordered within this period, but not until after the customer has provided Bavaria by registered letter with a reasonable period to still meet its obligations.

Article 8: Transport and transfer of risk

1. Bavaria shall arrange the transport of the goods to be delivered.
2. The risk of damage or loss of the goods shall reside with the customer as of the moment that the goods are loaded for transport.

Article 9: Inspection and claims.

1. The customer shall be obliged to inspect the delivered goods immediately after receipt as to quality and quantity. Any defects regarding the quality or quantity must be entered on the delivery receipt and/or other transport documents immediately, stating the nature and extent of the complaints and the order number under which the relevant goods were delivered. In the absence of any of this, the customer shall be deemed to have approved the delivered goods and claims with respect to these shall no longer be accepted.
2. After the discovery of any defect, the customer may not continue the goods in question until after it has obtained written permission for this from Bavaria. In addition, the customer is obliged to return to Bavaria at its request the goods in question for its own account and risk, packaged in the same manner as by Bavaria.
In the absence of this, claims shall not be accepted.
3. Returns regarding invoices must be submitted in writing by the customer to Bavaria within 8 days after receipt of the invoice. Claims filed late shall not be accepted by Bavaria.
4. The customer is obliged to give an expert appointed by Bavaria the opportunity to assess the claim made. If the claim is found to be justified by the expert, the costs of the investigation shall be borne by Bavaria. Otherwise, the costs shall be borne by the customer.
5. The filing of a complaint shall never constitute reason for suspension or settlement of the payment obligations of the customer vis-à-vis Bavaria or rescission of the agreement(s).
6. If Bavaria finds that a claim is justified, it shall deliver replacement goods, if such is possible, or, if such should not be possible, credit the customer with the amounts invoiced to him. Bavaria is not obliged to render any other performance or to compensate any losses.
7. If Bavaria finds that a claim is not justified, goods returned to it in this matter shall be destroyed, unless the customer indicates in writing that it wishes the goods to be returned to it, which should already be indicated to Bavaria by the customer when the goods are returned to Bavaria. The forwarding to the customer shall be for its account and risk.

Article 10: Obligations of the customer in general

The customer guarantees that it:

1. Shall only trade any goods circulated by Bavaria in the original packaging from Bavaria, without making any changes to same or damaging same and, insofar as applicable, shall charge its customers for packaging equal amounts for deposits and/or fees for return packaging or refund this upon return as indicated in the price list or price current of Bavaria for the relevant goods;
2. Shall only advertise for Bavaria's brands in the manner approved by Bavaria.
3. Shall refrain from any negative statements about the name, brands, products or packaging of Bavaria.
4. Shall store and treat the beers, other beverages and other goods of Bavaria in a proper way. This shall include the regular cleaning and rinsing of tap equipment and other materials according to the regulations.

5. The customer shall pay a penalty of € 5,000,--(in words: five thousand Euros) for each violation of or failure to fully comply with the obligations indicated in this article, which penalty shall not be eligible for a discount or set-off, and it shall accept in such an event that Bavaria is entitled to annul (a) concluded purchase agreement(s) or declare same rescinded and/or exclude the customer from further delivery of goods, all with a right to damages, without prejudice to Bavaria's right to still claim performance, whether or not with damages.

Article 11: Sales bonus

Bonuses and/or discount amounts for the customer shall not be exigible until all amounts the customer owes have been paid to Bavaria. The amounts owed by the customer may be deducted by Bavaria from the bonus and/or discount amounts to be made.

Article 12: Liability.

1. Save in the event of intent of gross negligence on its part or its executives, Bavaria shall not be liable for any damage, whatever the nature, which the customer, its personnel or other assisting persons, or a third party might sustain due to the non-functioning or improper functioning of the goods delivered by Bavaria nor due to the goods delivered by Bavaria being unsound, nor for damage due to any advice by Bavaria regarding those goods, nor for damage due to late, incorrect or incomplete delivery of the relevant goods.
2. In case it were to be established legally that despite the provisions of the previous paragraph, Bavaria is nevertheless liable for any damage referred to there, its liability shall at any rate be limited to the amount of any insurance coverage taken out by it, or, should there be no insurance coverage, for any reason whatsoever, the invoice value of the goods delivered by it to which its liability is connected.
3. The customer shall indemnify Bavaria against all claims from its assisting persons, including its staff or representatives and/or third parties regarding damage for which Bavaria has excluded and/or limited liability vis-à-vis the customer.
4. With respect to a symbol under the Uniform Article Encoding as referred to in the European Article Numbering Association (EAN) regulations, Bavaria shall never be liable, unless it has not followed the EAN regulations.
5. The provisions in paragraphs 1-4 pertain to the contractual and non-contractual liability of Bavaria.

Article 13: Guarantee.

1. Bavaria guarantees the soundness, as well as the quality of the goods delivered by it and/or the goods processed by it, all this with due observance of the provisions elsewhere in these terms and conditions.
2. A guarantee for goods bought by Bavaria elsewhere is only given if and to the extent the relevant manufacturer/supplier provides a guarantee.
3. The guarantee shall only cover the replacement or the repair of the goods involved. All damage, both direct and indirect, caused by the failure to function properly or unsoundness of goods delivered by Bavaria, shall not be covered by the guarantee.
4. Claims on the guarantee shall not be accepted if in storing and/or using the goods, the (manufacturer's) instructions or our instructions were not followed, if the delivered goods are used for purposes other than the normal ones or in the event of injudicious treatment, use or maintenance of the delivered goods.
5. If the customer fails to perform its obligations, Bavaria shall also be relieved from its (guarantee) obligations.
6. Every guarantee shall lapse if the customer itself makes any changes with respect to the goods delivered by Bavaria or arranges for such changes, if the goods are used for purposes other than normal business purposes, or if they are treated or maintained carelessly or injudiciously.
7. Guarantees shall also be cancelled in the event of late or incorrect inspection or a claim as referred to in Article 9.

Article 14: Performance by third parties/Transfer of rights

1. Bavaria is entitled to use the services of third parties for the performance of the agreement.
2. Bavaria may at any time transfer its rights and/or obligations arising from the agreement(s) with the customer in full or in part or put them up as security in any way whatsoever, for which the customer already now gives its permission for such occurrence.

Article 15: Force majeure

1. Force majeure on the part of Bavaria refers here to: any circumstance independent of its volition or unforeseeable and unforeseen, which hinders the performance of the obligations governed by these terms and conditions, either permanently or temporarily.

Force majeure shall also include, insofar as not already included under the above description: strikes, sit-ins at the company, sickness leave of staff, transportation difficulties, riots, acts of war, fire, water damage, defects in machinery, defects in computers, electrical power disruptions, governmental measures, in any case including import and export restrictions, sales prohibitions and all other company disruptions and failed harvests, everything at Bavaria or its suppliers, as well as default by its suppliers due to which Bavaria cannot (any longer) meet its obligations vis-à-vis the customer.

2. If Bavaria believes that the force majeure is temporary, it shall be entitled to suspend the performance of the agreement until the circumstance causing the force majeure has ceased.
3. If Bavaria believes that the force majeure is permanent, it shall be entitled to adjust the agreement to the circumstances or to rescind it in part or in its totality without court intervention and without being obliged to pay any damages to the customer.
4. If at the time the force majeure situation begins, Bavaria has already met the agreed obligations in part, it is entitled to invoice separately and prematurely the work performed, and the customer should pay the invoice as if it concerned a separate transaction.

Article 16: Intellectual and/or industrial property rights.

1. All intellectual and/or industrial property rights, both of Bavaria and its suppliers, on the goods delivered by it are retained by Bavaria.

Article 17: Rescission.

1. If:
 - a. the customer does not meet any obligation of it vis-à-vis Bavaria, or fails to do so in a timely or correct manner;
 - b. the customer is declared bankrupt, or an application for same has been made, applies for suspension of payments, or if it is subject to suspension of payments;
 - c. the customer applies for debt rescheduling;
 - d. all or a part of its property will or has been seized;
 - e. Bavaria believes that the customer proves to be insufficiently credit-worthy to meet its obligations vis-à-vis Bavaria;
 - f. the customer is dissolved or liquidated;
 - g. the customer proceeds to cease or has already begun to cease its business operations, transfer of its business or part of same, including the contribution of its company to company yet to be incorporated or existing already, and the (partial) transfer of control in the company and the customer has not yet met all its obligations vis-à-vis Bavaria,

Bavaria shall be entitled, due to the mere occurrence of one of the aforesaid circumstances, without any warning or notice of default or judicial intervention being required, either to regard the agreement as rescinded in full or in part and to reclaim the deliveries as its property and/or demand any amount the customer should owe Bavaria in full, all this without prejudice to Bavaria's entitlement to damages.

Article 18: Termination.

1. In the event of an agreement for a(n) (in)definite period of time, Bavaria shall at all times be entitled to terminate this immediately for any reason whatsoever. Bavaria shall not be obliged to pay any damages under any circumstances.
2. Without prior written consent of Bavaria, the customer shall never be entitled to terminate the agreement. Bavaria may attach terms to granting this permission, such at its discretion.

Article 19: Set-off

1. Bavaria shall at all times be entitled to set-off all claims of the customer on Bavaria that can be expressed in terms of cash, with claims on the customer of Bavaria and companies associated with Bavaria in any way.
2. If the customer is in any way part of a group of companies, the customer in the sense of this article shall also include any companies belonging to the group in any way.

Article 20: Ownership packaging

1. The returned packaging, being packaging apparently intended to be used several times, including casks, tanks, bottles, crates and boxes, displays, as well as accessories such as pallets, shall remain the property of Bavaria, notwithstanding payment of the deposit for the return packaging by the customer.
2. If the customer obtains the packaging referred to in paragraph 1 and other goods apparently intended to be used several times, including carbonic acid bottles, in any way whatsoever, either from Bavaria or

from its customer or other third parties, it shall keep this packaging and the other returned goods as referred to above for Bavaria.

3. If the customer is a wholesaler, it shall impose on its customers the obligation to keep for the wholesaler the goods referred to in paragraph 2, which they obtain in any way whatsoever, either from the wholesaler or from their own customers or other third parties, and the wholesaler shall in turn keep the packaging for Bavaria as the owner.
4. The customer shall not be entitled to transfer the title to the goods referred to in paragraph 2 to third parties, nor to use it – or arrange to have it used – for purposes other than that for which it is intended.

Article 21: Deposit money packaging/fee for processing returned packaging (VBR).

1. The packaging shall be subject to payment of a deposit and a fee for the processing of returned packaging, to the extent this has been expressed by Bavaria.
2. A deposit can under no circumstances be regarded as payment of the real value of the packaging.
3. All returned packaging must be returned to Bavaria as soon as possible after use, in which respect the customer guarantees that the bottles have been sorted according to content volume, form and colour, in the appropriate crates, cases or boxes and that the packaging has been placed on a pallet according to kind and colour on the packaging. Loose bottles and bottles in packaging other than the cases, crates and boxes of Bavaria need not be accepted by it. If the customer in returning the packaging has not sorted it to a sufficient degree, Bavaria shall not be obliged to pay the advance levy or fee.
4. In case of return receipt of damaged packaging and other goods as referred to in Art. 20, paragraph 2, the deposit charged will not be refunded or credited.
5. Bavaria reserves the right to still demand a deposit for returned packaging and other goods as referred to in Art. 20, paragraph 2, for which no deposit has been or will be charged.
6. Invoicing or crediting of returned packaging and other goods as referred to in Art. 20, paragraph 2, subject to an advance levy or the fee for processing returned packaging (VBR) shall be on the basis of the delivery receipt to be signed by the customer and the transporter.
7. The copy of the aforesaid delivery receipt in possession of Bavaria shall be deemed to contain the correct statement of the delivered quantity of goods, on the understanding, however, that if returned packaging is offered on pallets or similar accessories by the customer, Bavaria shall not be bound by the specification on the delivery receipt of the volume of packaging placed on the pallets, if and to the extent same deviates from the quantity, which is observed upon inspections carried out by Bavaria. In this case, Bavaria shall presume the latter quantity (in invoicing).

Article 22: Applicable law and competent court

1. All agreements concluded with Bavaria which are governed by these general terms and conditions are exclusively subject to Dutch law. The Vienna Sales Convention and similar treaties do not apply.
2. All disputes arising between Bavaria and the customer in relation to agreements concluded by them, including these terms and conditions, may only be heard by the (President of) the 's Hertogenbosch District Court, save in the event the dispute falls within the jurisdiction of the Cantonal Court, in which event the statutory jurisdiction rules shall apply.
3. The provisions in paragraph 2 do not diminish in any way Bavaria's right to turn at all times to the competent court in the place where the customer has its registered offices or, if Bavaria should desire such, to turn to the Netherlands Arbitration Institute. The place of arbitration shall be 's-Hertogenbosch, the Netherlands. The proceedings shall be conducted in English.