

# TUBES Production COMPANY B.V.

## GENERAL TERMS & CONDITIONS

### as from October 18<sup>th</sup>, 2021

#### ARTICLE 1. | DEFINITIONS

In these terms and conditions, the following terms, which also appear in the plural and/or singular, have the meanings given unless another meaning arises out of the nature or intention of the provisions.

1. Tubes Production Company: Tubes Production Company B.V., the user of these general terms and conditions, address Franciscusweg 14, 1216 SK Hilversum, registered in the commercial register under Chamber of Commerce number 62698990.
2. Co-Contracting party: each person or legal entity with whom Tubes Production Company has entered, or aims to enter, into an agreement.
3. Consumer: the Co-Contracting party as referred to in the previous paragraph who is a person not acting in the exercise of a profession or business.
4. Contract: each agreement entered into between Tubes Production Company and the Co-Contracting party where Tubes Production Company is bound to sell and supply Products in return for payment.
5. Products: an article or substance to be supplied to the Co-Contracting party by Tubes Production Company under the agreement, including, but not limited to, items for consumption packed in Tubes Production Company, which may or may not have been made available to Tubes Production Company by the Co-Contracting party.
6. Website: [www.wineintubes.com](http://www.wineintubes.com) and [www.tubes.nl](http://www.tubes.nl).
7. In writing: communication in writing, communication by e-mail or any other means of communication that can be considered as such in accordance with the current state of the art and views in society.

#### ARTICLE 2. | GENERAL PROVISIONS

1. These general terms and conditions are applicable to every offer or proposal made by Tubes Production Company and every agreement entered into.
2. Any general terms and conditions of the Co-Contracting party, however described, are not applicable to the agreement, unless and insofar as they are expressly agreed to in writing prior to entering into the agreement. Should there be a conflict between the provisions of these general terms and conditions and the general terms and conditions of the Co-Contracting party, insofar as it has been expressly agreed that the general terms and conditions of the Co-Contracting party will also be applicable to the agreement, only the provisions of these general terms and conditions will apply.
3. The provisions in these general terms and conditions may only be deviated from if expressly agreed to in writing. If and insofar as that which has been expressly agreed to in writing deviates from the provisions of these general terms and conditions, that which has been expressly agreed to in writing by the parties will apply.
4. If one or more provisions of these general terms and conditions is found to be null and void, it shall not affect the validity of the other provisions.

#### ARTICLE 3. | PROPOSAL AND MAKING AGREEMENTS

1. Every offer and proposal made by Tubes Production Company is made without obligation, even if a period in which to accept the offer or proposal is stated. Tubes Production Company has to reconfirm an accepted order or purchase order from Co-Contractor in order to constitute a legally binding Contract with the Co-Contractor.
2. The Co-Contracting party may not derive any rights from a Contract that is based on incorrect or incomplete information supplied by the Co-Contracting party.
4. These GENERAL TERMS & CONDITIONS can be downloaded from the Website and are applicable to any Contract.
5. A combined quotation shall never oblige Tubes Production Company to fulfil a part of the offer or proposal for a corresponding proportion of the quoted price.

6. If the acceptance by the Co-Contracting party deviates from Tubes Production Company's offer, the Contract will not be in accordance with this deviation unless Tubes Production Company expressly confirms said deviation.

7. Tubes Production Company may investigate Co-Contracting party's financial position.. Tubes Production Company reserves the right to cancel and terminate a Contract if it has a reason to believe that the Co-Contracting party will not fulfill its contractual obligations in due course.

#### **ARTICLE 4. | CO-CONTRACTING PARTY'S OBLIGATIONS AND CUSTOMIZED ORDERS**

1. Where, in particular but not exclusively, Product packaging is made to any degree to the specifications of the Co-Contracting party (hereafter: customized orders), the Co-Contracting party will guarantee that it will provide Tubes Production Company with, or make available to Tubes Production Company, all matters (including any items for consumption to be supplied by the Co-Contracting party) and information (including any logos to be supplied by the Co-Contracting party) that can be reasonably considered as relevant for the fulfilment of the Contract within a reasonable period, in full and, if applicable, in a way prescribed by Tubes Production Company.

2. Any specifications from the Co-Contracting party that Tubes Production Company requires for fulfilling the order must be provided by the Co-Contracting party by e-mail. Logos to be printed on tubes will have to be provided to Tubes Production Company by e-mail by the Co-Contracting party in .eps files. Delivery of the items for consumption to be packaged in Tubes Production Company is at the risk and expense of the Co-Contracting party.

3. Customized orders are based on the specifications confirmed by the Co-Contracting party. The co-Contracting party guarantees the accuracy of the specifications supplied and, where applicable, the suitability of the items to be consumed supplied by the Co-Contracting party to be packaged in tubes by Tubes Production Company. In this respect, the co-Contracting party indemnifies Tubes Production Company against all claims which might be made by third parties.

4. The Co-Contracting party guarantees that the information supplied by it for the fulfilment of the agreement, including trademarks, logos and the like, do not breach the (intellectual property) rights of third parties. By supplying the information referred to here, the co-Contracting party declares that it has the right to allow Tubes Production Company to process it to fulfil the order. In this respect, the Co-Contracting party indemnifies Tubes Production Company against all claims which might be made by third parties.

5. Differences between, on the one hand, the specifications received from the Co-Contracting party and, on the other hand, that which is actually produced and supplied, may not give rise for Co-Contractor to complaints, compensation, suspension or termination of the Contract or damages or any other form of compensation.

6. In case the Co-Contractor is planning to adjust previously signed orders downwards, the Co-Contracting party is obliged to immediately contact and inform Tubes Production Company. Tubes Production Company will then inform the Co-Contracting party on the order stage and the options and consequences for downsizing. Tubes Production Company has the right to charge the Co-Contracting party the lost profit margin and the costs involved in the downsizing of the order (such as but not limited to costs of raw material, costs of the reservation of the production line, printing material, designated tubes, etc.).

7. Notwithstanding any contrary language in Co-Contracting party's purchase order, each purchase order shall be subject to acceptance by an authorized employee of Tubes Production Company and each transaction shall be governed exclusively by these Terms & Conditions. Any additional or different terms proposed by Co-Contracting party automatically rejected unless expressly agreed to in writing by Tubes Production Company.

#### **ARTICLE 5. | TOLERANCES**

1. The characteristics stated and/or depicted by Tubes Production Company in the offer, proposal, webstore or otherwise of Products to be supplied may deviate to an insignificant degree from that which is actually supplied. All deviations in the characteristics of the Products that the Co-Contracting party should reasonably be expected to tolerate, such as small differences in color and dimensions and taste, are considered as insignificant. The presence of insignificant deviations does not represent grounds for the Co-Contracting party to make any complaint, to suspend any of its obligations arising out of the Contract, to terminate the Contract or to claim damages or any other form of compensation.

2. Co-Contractor is aware that wine remains a natural product, is a nature, of which the quality can evolve during transportation and storage. Tubes Production Company must always be given the opportunity to replace a Product free of charge when demonstrable and proven loss of quality is the result of the processing thereof by Tubes Production Company.

## **ARTICLE 6. | DELIVERY OF THE PRODUCTS**

1. Incoterms ExWorks are applicable to all orders.
2. In the event Tubes Production Company arranges the transportation of the Products, the invoice address will be treated as the delivery address if the delivery address has not been stated by the Co-Contracting party. The risk of loss and or damage of the Products resulting from the transportation thereof will be for the account of Co-Contractor unless expressly agreed upon otherwise by Tubes Production Company.
3. Tubes Production Company reserves the right to make part deliveries of orders.
4. If the period for delivery is exceeded by Tubes Production Company, it does not in any circumstances give the Co-Contracting party the right to refuse to receive the Products to be delivered or to refuse to pay to Tubes Production Company the amounts due under the Contract. If Tubes Production Company incurs additional expenses which it would not otherwise have incurred if the Products had been accepted at the time of delivery as envisaged, these expenses will be charged to the Co-Contracting party. These expenses may include, but are not limited to, any additional costs in connection with several attempts to make delivery or reasonable costs calculated by Tubes Production Company for storage of the Products.
5. The Co-Contracting party will take care of the timely provision of information regarding invoicing, including any specific payment features such as purchase order numbers (PO numbers) and/or cost center(s), in such a way that the delivery of Products is not delayed. Tubes Production Company can only start Production if this information is available or when Tubes Production Company is accepted as supplier in supplier systems. The Co-Contracting party will take care of the timely provision of the agreed specifications in such a way that the delivery of Products is not delayed.
6. Deliveries of tubes in excess of the number agreed, shall be allowed if such deliveries are not in excess of the following percentages:
  - number of tubes up to 25.000 per Contract: 10%
  - number of tubes above 25.000 per Contract: 5%The number of tubes delivered in excess of the agreed number shall be charged against the average agreed upon price per tube to Co-Contractor with the final invoice.
7. Deliveries in short of the number agreed, shall be allowed if such deliveries are not in short of the following percentages:
  - number of tubes up to 25.000 per Contract: 10%
  - number of tubes above 25.000 per Contract: 5%The number of tubes delivered in short of the agreed number shall be deducted against the average agreed upon price per tube from the final invoice to Co-Contractor. Tubes Production Company is not in default for short of number of tubes agreed when Co-Contracting party falls short on delivery of required and agreed upon content (liters of wines/spirits). In such event, the Contract will be invoiced in full.

## **ARTICLE 7. | DELIVERY PERIODS**

1. Tubes Production Company makes every effort to meet the lead times and/or delivery periods it has committed itself to with the Co-Contracting party. These periods are only indicative, not strict deadlines. Tubes Production Company cannot be considered to be in default before the Co-Contracting party has given notice in writing that Tubes Production Company is in default and that notice contains a reasonable period in which to replace or recover the default and that Tubes Production Company is still in default after that period has elapsed.
2. Should Tubes Production Company depend on information to be provided by the Co-Contracting party to fulfil the agreement, the lead times and delivery periods as referred to in the previous paragraph will not begin until Tubes Production Company has received this information.
3. Tubes Production Company is depending on the timely supply of material by third parties for the execution of a Contract. In the event the delivery of said materials are overdue Tubes Production Company cannot be held liable for the extended period of delivery of the Products resulting thereof. Tubes Production Company will inform Co-Contractor in due course.

## **ARTICLE 8. | INSPECTION AND COMPLAINTS**

1. The Co-Contracting party must examine on delivery, or immediately afterwards, whether the nature and quantity of the Products correspond with the Contract. If, in the opinion of the Co-Contracting party, the nature and/or amount of the Products do not correspond with the Contract, they must report this to Tubes Production Company at the moment of delivery or immediately afterwards, provided with the exact specifications, including pictures, batch code, packaging, etc.

2. If there are defects that could not reasonably have been seen or known at the time of delivery, the Co-Contracting party must report them to Tubes Production Company in writing within two days of becoming aware of the existence of the defects, or within two days of when it could reasonably have become aware of the defects.
3. If the Co-Contracting party does not make its complaint within the two days term as stated above, the complaint does not give rise to any obligation of Tubes Production Company towards the Co-Contracting party whatsoever.
4. Even if the Co-Contracting party does make its complaint on time, it is still obliged to pay Tubes Production Company's invoice on time.

#### **ARTICLE 9. | CONFORMANCE**

1. The procedure of the filling of tubes with wine or spirits has been explained to Co-Contractor and Co-Contractor is aware that the quality of the wine or spirit in the tubes might deviate a bit from the supplied quality and accepts said risk.
2. Product defects as a consequence of an external cause or as a consequence of other circumstances which cannot be attributed to Tubes Production Company do not constitute grounds for complaints
3. The Co-Contracting party has no right of return of the Products. If there is a shortcoming and the Co-Contracting party has submitted a complaint to Tubes Production Company on time in accordance with article 8, Tubes Production Company will either repair the defect, replace the failing tubes/ Products or refund the price of the failing tubes/Products in question as soon as Tubes Production Company deems possible. The Co-Contracting party shall not be able to claim any damages and or loss of profit, whatsoever, from Tubes Production Company on the grounds of a shortcoming besides the replacement of the failing tubes/Products and of the reimbursement of the paid price thereof as stated above.

#### **ARTICLE 10. | SPECIAL PROVISIONS FOR RESELLERS**

1. If the Products to be supplied by Tubes Production Company are intended by the Co-Contracting party for resale, that resale by the Co-Contracting party is at its own risk and expense.
2. Any co-operation between the reseller and Tubes Production Company is never exclusive unless expressly stated otherwise. Tubes Production Company has the right to appoint several resellers without geographical limitation.
3. The Co-Contracting party that operates as reseller of the Products is itself responsible for fulfilling its Contractual obligations towards its end consumers.

#### **ARTICLE 11. | FORCE MAJEURE**

1. Tubes Production Company is not obliged to fulfil any obligation in the Contract in the event of a force majeure.
2. If the force majeure means that it is permanently impossible to fulfil the agreement, the parties have the right to terminate the agreement with immediate effect.
3. If at the start of the force majeure Tubes Production Company has partially fulfilled its supply obligations, or is only able to fulfil those obligations in part, it has the right to charge for the part that has already been, or will be supplied.
4. Without prejudice to the provisions of the previous paragraph, damage or loss as a consequence of force majeure will not be considered for compensation.
5. Any government regulation or instruction related to a pandemic can construe a force majeure and will be considered as such in the event Tubes Production Company informs Co-Contractor accordingly.

#### **ARTICLE 12. | SUSPENSION AND TERMINATION**

1. Tubes Production Company has the right to suspend or partially or completely terminate the Contract with immediate effect if the Co-Contracting party does not completely fulfil its obligations under the Contract on time or if Tubes Production Company becomes aware of circumstances that provide good grounds to fear that the Co-Contracting party will not be able to fulfil its obligations.
2. If the Co-Contracting party is in a state of bankruptcy, has applied for a moratorium or temporary moratorium of payment has been applied, any goods have been seized or are subject to distraint or attachment, or if the Co-Contracting party cannot freely dispose of its capital, Tubes Production Company has the right to terminate the Contract with immediate effect.
4. The Co-Contracting party cannot claim any form of compensation in respect of a right of suspension or termination exercised by Tubes Production Company on the grounds of this article.

5. The Co-Contracting party is obliged to compensate Tubes Production Company for the damages and loss of profit, whatsoever, as a consequences of the suspension or termination of the Contract.
6. If Tubes Production Company terminates the Contract on the grounds of this article, all outstanding invoices become immediately due and payable

#### **ARTICLE 13. | PRICES, COSTS AND PAYMENTS**

1. All prices stated by Tubes Production Company are offered in EURO's and exclusive of VAT.
2. All prices are subject to change without prior notice due to circumstances such as currency fluctuation, transport prices, fluctuations in raw material prices and/or other unforeseen economic circumstances like a lock-down upon instruction of the government.
3. Unless agreed upon otherwise, on all orders a prepayment is applicable of 100%. This prepayment will be invoiced and paid within 14 days net by Co-Contracting party immediately after the concluded Contract unless otherwise stated within the Contract.
4. All orders are invoiced, with the deduction of the prepayment, when the order is ready for pick-up by Co-Contractor. All payments have to be made within 14 days from the date of the invoice unless otherwise stated on the invoice.
5. If the Co-Contracting party is in default on any of its payment obligations towards Tubes Production Company, Tubes Production Company will not be obliged to continue to fulfil the Contract.
6. Payment must be made in the way or ways indicated by Tubes Production Company.
7. Tubes Production Company has the right to invoice the Co-Contracting party exclusively by e-mail.
8. In the event of failure to pay, the Co-Contracting party will be in default by operation of the law. From the day that the Co-Contracting party is in default, it will be liable to 2% interest on the outstanding amount per month, of which a part of the month will be deemed a full month.
9. All reasonable costs, such as court, extrajudicial and enforcement costs, incurred in connection with the collection of the amounts due to Tubes Production Company from the Co-Contracting party, will be for the account of the co-Contracting party.
10. Tubes Production Company can uphold the delivery of the Products until full payment has been received of all outstanding invoices.

#### **ARTICLE 14. | LIABILITY AND INDEMNITY**

1. Tubes Production Company is not liable for defects to the supplied Products after the delivery thereof.
2. Tubes Production Company cannot be held liable for any damages and or loss of profit, whatsoever, suffered by Co-Contractor resulting from non-compliance of the Contract.
3. In the event there is a shortfall of delivery and or the delivered Products are not in conformity with the Contract, Tubes Production Company will replace the failing Products with new Products or reimburse to Co-Contractor the purchase price for said failing Products. Tubes Production Company shall in due contact with Co-Contractor try to solve the problem and inform Co-Contractor of its decision.
4. The Co-Contracting party indemnifies Tubes Production Company for any claims from third parties who suffer damages and or loss of profit, whatsoever, in connection with or resulting from the delivered Products.

#### **ARTICLE 15. | RETENTION OF TITLE AND POSSESSORY LIEN**

1. All of the Products supplied to the Co-Contracting party remain the property of Tubes Production Company until the Co-Contracting party has satisfied all of its payment obligations.
2. The Co-Contracting party is obliged to store the supplied Products on which title is retained with the necessary care and as recognizable property of Tubes Production Company.
3. If Products are sold and/or supplied to third parties by the Co-Contracting party in the course of its normal business or in contravention of the provisions of this article, the purchase price will become immediately due and payable.
4. The Co-Contracting party gives Tubes Production Company or parties appointed by Tubes Production Company unconditional permission to enter all those places where there are Products on which title is retained. The Co-Contracting party must provide Tubes Production Company with all information at the first request in order for it to exercise its rights of ownership. All reasonable costs incurred in connection with the exercising of Tubes Production Company' rights of ownership will be charged to the Co-Contracting party.
5. Tubes Production Company has the right to retain any goods of the Co-Contracting party that it might have in its possession in order to satisfy all payable claims that Tubes Production Company has against the Co-Contracting party.

**ARTICLE 16. | GENERAL COMPLAINT POLICY**

1. In the event Co-Contractor has a complaint, Tubes Production Company can demand that a sworn surveyor and/or certified laboratory will make a survey report about the delivered Products.
2. Said report will be at the expenses of Co-Contractor unless otherwise agreed between parties.
3. The survey report will be sent to both parties and deemed to be stating the truth about the Products.

**ARTICLE 17. | GENERAL FINAL PROVISIONS**

1. Every Contract and all legal relationships arising out of them are exclusively subject to Dutch law.
2. Parties will not apply for judicial intervention before having tried their best to resolve the dispute in mutual consultation.
3. The Court in Rotterdam in The Netherlands is hereby exclusively authorized to give a decision about any disputes arising from or in connection with the Contract or any agreement between Tubes Production Company and Co-Contractor subsequent to the Contract