

# TUBES USA Inc.

## GENERAL TERMS & CONDITIONS

### as from 15-12-2022

**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 USA: TUBES USA Inc., the user of these general terms and conditions, address 228 East 45<sup>th</sup> Street, Suite 9E, New York NY 10017, United States of America registered in the commercial register under Chamber of Commerce number 6966920.
2. Co-Contracting party: each person or legal entity with whom TUBES USA 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 USA and the Co-Contracting party where TUBES USA 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 USA under the agreement, including, but not limited to, items for consumption packed in TUBES USA, which may or may not have been made available to TUBES USA by the Co-Contracting party.
6. Website: [www.wineintubes.com](http://www.wineintubes.com).
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 USA 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 in writing deviates from the provisions of these general terms and conditions, that which has been expressly agreed in writing by the parties will apply.
4. If one or more provisions of these general terms and conditions are 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 USA is made without obligation, even if a period in which to accept the offer or proposal is stated. TUBES USA 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 USA to fulfill 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 USA's offer, the Contract will not be in accordance with this deviation unless TUBES USA expressly confirms said deviation.

7. TUBES USA may investigate Co-Contracting party's financial position.. TUBES USA 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 USA with, or make available to TUBES USA, 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 fulfillment of the Contract within a reasonable period, in full and, if applicable, in a way prescribed by TUBES USA.
2. Any specifications from the Co-Contracting party that TUBES USA 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 USA by e-mail by the Co-Contracting party in .eps files. Delivery of the items for consumption to be packaged in TUBES USA 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 USA. In this respect, the co-Contracting party indemnifies TUBES USA against all claims which might be made by third parties.
4. The Co-Contracting party guarantees that the information supplied by it for the fulfillment of the agreement, including trademarks, logos, and the like, does 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 USA to process it to fulfill the order. In this respect, the Co-Contracting party indemnifies TUBES USA 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 USA. TUBES USA will then inform the Co-Contracting party of the order stage and the options and consequences for downsizing. TUBES USA 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 the Co-Contracting party's purchase order, each purchase order shall be subject to acceptance by an authorized employee of TUBES USA and each transaction shall be governed exclusively by these Terms & Conditions. Any additional or different terms proposed by the Co-Contracting party are automatically rejected unless expressly agreed to in writing by TUBES USA.

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

1. The characteristics stated and/or depicted by TUBES USA 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 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 USA must always be given the opportunity to replace a Product free of charge when a demonstrable and proven loss of quality is the result of the processing thereof by TUBES USA.

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

1. Incoterms ExWorks are applicable to all orders.
2. In the event TUBES USA 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 the Co-Contractor unless expressly agreed upon otherwise by TUBES USA.

3. TUBES USA reserves the right to make part deliveries of orders.

4. If the period for delivery is exceeded by TUBES USA, 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 USA the amounts due under the Contract. If TUBES USA 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 USA 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 USA can only start Production if this information is available or when TUBES USA is accepted as a 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 USA is not in default for short of a number of tubes agreed upon when the Co-Contracting party falls short on delivery of required and agreed-upon content (liters of wines/spirits). In such an event, the Contract will be invoiced in full.

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

1. TUBES USA 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 USA cannot be considered to be in default before the Co-Contracting party has given notice in writing that TUBES USA is in default and that notice contains a reasonable period in which to replace or recover the default and that TUBES USA is still in default after that period has elapsed.

2. Should TUBES USA 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 USA has received this information.

3. TUBES USA 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 USA cannot be held liable for the extended period of delivery of the Products resulting thereof. TUBES USA 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 USA 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 USA 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 USA 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 USA's invoice on time.

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

1. The procedure of filling tubes with wines 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 USA do not constitute grounds for complaints
3. The Co-Contracting party has no right to return the Products. If there is a shortcoming and the Co-Contracting party has submitted a complaint to TUBES USA on time in accordance with article 8, TUBES USA 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 USA deems possible. The Co-Contracting party shall not be able to claim any damages and or loss of profit, whatsoever, from TUBES USA 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 USA 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 cooperation between the reseller and TUBES USA is never exclusive unless expressly stated otherwise. TUBES USA has the right to appoint several resellers without geographical limitation.
3. The Co-Contracting party that operates as a reseller of the Products is itself responsible for fulfilling its Contractual obligations towards its end consumers.

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

1. TUBES USA is not obliged to fulfill any obligation in the Contract in the event of a force majeure.
2. If the force majeure means that it is permanently impossible to fulfill the agreement, the parties have the right to terminate the agreement with immediate effect.
3. If at the start of the force majeure TUBES USA has partially fulfilled its supply obligations, or is only able to fulfill 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 USA informs Co-Contractor accordingly.

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

1. TUBES USA has the right to suspend or partially or completely terminate the Contract with immediate effect if the Co-Contracting party does not completely fulfill its obligations under the Contract on time or if TUBES USA becomes aware of circumstances that provide good grounds to fear that the Co-Contracting party will not be able to fulfill 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 USA 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 USA on the grounds of this article.
5. The Co-Contracting party is obliged to compensate TUBES USA for the damages and loss of profit, whatsoever, as a consequence of the suspension or termination of the Contract.
6. If TUBES USA 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 USA are offered in US Dollars 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 lockdown 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 the 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 USA, TUBES USA will not be obliged to continue to fulfill the Contract.
6. Payment must be made in the way or ways indicated by TUBES USA.
7. TUBES USA 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 USA from the Co-Contracting party, will be for the account of the co-Contracting party.
10. TUBES USA can uphold the delivery of the Products until full payment has been received for all outstanding invoices.

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

1. TUBES USA is not liable for defects to the supplied Products after the delivery thereof.
2. TUBES USA cannot be held liable for any damages and or loss of profit, whatsoever, suffered by the Co-Contractor resulting from non-compliance with 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 USA will replace the failing Products with new Products or reimburse to Co-Contractor the purchase price for said failing Products. TUBES USA 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 USA for any claims from third parties who suffer damages and or loss of profit, whatsoever, in connection with or resulting from the delivered Products.
5. The Co-Contracting party shall indemnify, defend, and hold harmless the TPC/TUBES USA's directors, officers, shareholders, trustees, partners, members, beneficial owners, agents, employees, attorneys, successors, and assigns from and against all claims, actions, damages, liens, fines, penalties, liabilities, losses, costs, and expenses (including reasonable attorney's fees) brought by any person arising out of or relating to: (i) any act or omission of the indemnifying party or its agents or employees; (ii) any actual or alleged violation of any federal, state or local statute, ordinance, administrative order, rule or regulation; and (iii) any material uncured breach by either party of any of its representations, warranties, duties or obligations under this Agreement.
6. Under no circumstances will TPC/TUBES USA be liable to the Co-Contracting party or any third party for any consequential, indirect, special, punitive, incidental, or similar damages, whether foreseeable or unforeseeable and regardless of the cause of action from which they arise, including, without limitation, claims for loss of goodwill or lost profits, even if advised or the possibility of such damages occurring and even if the essential purpose of a remedy fails. Except with regard to TPC/TUBES USA's gross negligence, intentional misconduct, or indemnity obligations herein.

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

1. All of the Products supplied to the Co-Contracting party remain the property of TUBES USA 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 USA.
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 this article's provisions, the purchase price will become immediately due and payable.
4. The Co-Contracting party gives TUBES USA or parties appointed by TUBES USA unconditional permission to enter all those places where there are Products on which title is retained. The Co-Contracting party must provide TUBES USA 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 USA's rights of ownership will be charged to the Co-Contracting party.
5. TUBES USA 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 USA has against the Co-Contracting party.

**ARTICLE 16. | GENERAL COMPLAINT POLICY**

1. In the event Co-Contractor has a complaint, TUBES USA 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 expense of the 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