

## **GENERAL TERMS AND CONDITIONS of International Spirits Company N.V.**

VERSION MARCH 2021

These are the general terms and conditions of the public limited company International Spirits Company N.V., hereinafter referred to as 'FLS', with its registered office and office at (2908 KD) Capelle aan den IJssel, at Klaverbaan 142, Chamber of Commerce 758.823.29, to be regarded as the user of these conditions under Section 6:231 sub b of the Dutch Civil Code. E-mail: [info@flscompany.nl](mailto:info@flscompany.nl). Telephone number: +31 (0)10 590 11 20.

### **Article 1 Applicability**

- 1.1. These general terms and conditions apply to all quotations, offers and agreements of FLS. The acceptance and retention of an offer or confirmation of the assignment by the other party without comment, or other correspondence that refers to these general terms and conditions, constitutes consent to the application of these general terms and conditions of FLS.
- 1.2. If an agreement concluded between FLS and the other party contains provisions that deviate from these general terms and conditions, the provisions of the agreement will prevail, with the exception of the provisions of Articles 17 and 18 of these general terms and conditions, which always prevail over the provisions of the agreement.
- 1.3. FLS explicitly dismisses the applicability of any general terms and conditions or purchasing or delivery conditions applied by the other party.
- 1.4. These general terms and conditions can be deviated from only if the parties have explicitly agreed on this in writing in advance.
- 1.5. If FLS allows tacit deviation from these general terms and conditions, it will not affect its right to demand immediate and strict compliance with the terms and conditions. The other party can never exercise any rights based on the fact that FLS applies the general terms and conditions flexibly.
- 1.6. If any provision of these general terms and conditions is void or annulled, the other provisions will remain in full force and the void or annulled provision(s) of these general terms and conditions will be replaced with (a) new, legally permissible provision(s) whereby the purpose and purport of the void or annulled provision(s) are observed to the greatest possible extent.
- 1.7. Uncertainties about the content of the terms and conditions, or situations that are not regulated in these general terms and conditions, should be assessed in the spirit of these general terms and conditions.
- 1.8. In all cases not provided for by these general terms and conditions, FLS decides. This decision will be made in the spirit of these general terms and conditions.

## **Article 2 Quotations and offers**

- 2.1. Quotations and offers from FLS are without obligation. A quotation or an offer sent by FLS is valid for fourteen days after sending, unless otherwise agreed in writing. If the other party accepts a quotation or an offer, FLS reserves the right to revoke the quotation or offer within five working days of receiving the acceptance.
- 2.2. If the other party's acceptance deviates from the confirmation of the assignment, the quotation or offer included in the proposal, FLS will not be bound by it.
- 2.3. Quotations, offers, prices and/or rates do not automatically apply to new assignments, orders and/or agreements.
- 2.4. Samples, brochures and/or models, etc. are provided for indicative purposes only. No rights can be derived from them, unless explicitly agreed otherwise by the parties in writing before the provision thereof.
- 2.5. FLS cannot be obliged to abide by quotations and/or offers if the other party, according to current standards of reasonableness and fairness and generally accepted standards, could and/or should have understood that the quotation and/or the offer, or part thereof includes a manifest mistake and/or clerical error.

## **Article 3 Prices**

- 3.1. Quotes are valid as long as a quotation or offer made by FLS is valid and/or for the term of an agreement concluded previously, unless statutory measures, changes to the VAT rates, currency change and/or price changes by suppliers necessitate a price adjustment.
- 3.2. All prices are in euros and exclusive of VAT.
- 3.3. All prices are exclusive of shipping costs at all times.
- 3.4. If FLS intends to change rates and/or prices, it will notify the other party thereof as soon as possible. FLS will notify the other party of the extent of the increase and the date on which the change comes into effect.

## **Article 4 The agreement**

- 4.1. The agreement between FLS and the other party is concluded the moment the other party accepts the offer it has received from FLS in writing or by scanning, the other party has confirmed the confirmation of assignment it has received from FLS, or the moment FLS commences the implementation activities with the consent of the other party. The confirmation of assignment is deemed to reflect the agreement accurately and completely.

- 4.2. FLS reserves the right, within all legal frameworks and regulations in this regard, to inform itself of the payment behaviour or the creditworthiness of the other party to determine whether the other party can meet its payment obligations. FLS also reserves the right to check other facts and factors that are important for the responsible conclusion of an agreement with the other party. If, after carrying out the above check, FLS has valid reasons not to conclude an agreement with the other party, FLS is entitled to refuse an assignment, order and/or request from the other party or to attach special conditions to this.
- 4.3. FLS only concludes professional B2B agreements. The statutory right of withdrawal is thus excluded.
- 4.4. Agreements concluded by FLS can only be defined as a best-efforts obligation and can never contain an obligation to produce results.
- 4.5. FLS has the right to engage third parties for the implementation of what has been agreed on. However, FLS is not liable for any shortcoming of these third parties. The other party has authorised FLS to accept any liability limitations of third parties on behalf of the other party.
- 4.6. During the performance of the agreement, FLS bases itself on the information and data provided by the other party. The correctness of this information and data is therefore the responsibility of the other party. The other party is obliged to immediately notify FLS of facts and circumstances that have changed and that may be important for the performance of the agreement.
- 4.7. The other party is also obliged to promptly provide FLS with all information and data the latter believes it needs for the correct performance of the agreement. Any costs to obtain information or data are at the expense of the other party.
- 4.8. If the other party provides or has provided insufficient or incorrect information and data to FLS, FLS has the right to dissolve the agreement and to hold the other party liable for any damage resulting from this.
- 4.9. The agreement is exclusively executed by FLS for the benefit of the other party, third parties cannot derive any rights from the performance of the agreement by FLS.
- 4.10. All costs and expenses incurred by FLS as a result of a request from the other party are entirely at the expense of the other party, unless explicitly agreed otherwise in writing.

## **Article 5 Delivery and delivery terms**

- 5.1. Delivery does not take place carriage paid, unless explicitly agreed otherwise in writing by the parties.
- 5.2. An agreed (delivery) term by FLS is never regarded as a strict deadline, but only as a guideline, unless explicitly agreed otherwise in writing. An agreed

term starts the moment the other party has provided all information requested by FLS and has paid the invoice sent by FLS.

- 5.3. Delivery times stated by FLS are always based on the (working) circumstances as they applied on the date of the conclusion of the agreement and with due regard for timely deliveries by its suppliers.
- 5.4. In the event of late delivery, FLS must be given notice of default by e-mail. The e-mail must be sent to [info@flscompany.nl](mailto:info@flscompany.nl).
- 5.5. If it proves impossible for FLS to deliver goods to the other party due to a cause attributable to or in the sphere of the other party, FLS reserves the right to store the goods at the expense and risk of the other party. In that case, FLS will notify the other party of the storage, setting a reasonable period within which the other party must enable FLS to deliver the goods after all.
- 5.6. If the other party has not offered FLS an opportunity to deliver the goods within the reasonable period set by FLS, the other party will immediately be in default after the expiry of one month, counting from the first day of the storage referred to in the previous paragraph and FLS will have the right to dissolve the agreement with immediate effect without the need for a notice of default and without becoming liable for damages.
- 5.7. In a situation as described in the previous paragraph, FLS is entitled to recover the damage it has suffered/lost profits from the other party.
- 5.8. If delivery of non-tenable goods by FLS is not possible due to a cause attributable to or in the sphere of the other party, FLS reserves the right to destroy the goods; furthermore, FLS has the right to dissolve the agreement with immediate effect without the need for notice of default and without becoming liable for damages itself, without prejudice to the right of FLS to claim the damage it has suffered or lost profits.
- 5.9. If delivery cannot take place normally or without interruption due to causes through no fault of FLS, FLS is entitled to charge the resulting costs, including call-out costs, to the other party.
- 5.10. In the case of delivery in parts, each separate delivery or phase of delivery is regarded as a separate transaction.
- 5.11. All the provisions of this article do not affect the fact that FLS is at all times entitled to demand payment of the agreed price, as well as storage costs and/or other costs from the other party.
- 5.12. FLS is entitled to require fulfilment of financial obligations from the other party or advance payment before proceeding to deliver the goods.

## **Article 6 Transport**

- 6.1. All transport for deliveries by FLS is provided by a carrier to be designated by FLS.
- 6.2. The other party concludes a separate agreement for the transport with the carrier referred to in paragraph 1 and the general (delivery) conditions of the carrier apply to this agreement. FLS is not a party to this agreement.
- 6.3. The transport takes place at the expense and risk of the other party, unless the parties have explicitly agreed otherwise in writing.
- 6.4. FLS is not liable for any damage of any nature whatsoever suffered by the other party, that arose during transport, or is related to the transport, whether or not to goods.
- 6.5. The other party must take out adequate insurance against the aforesaid damage.
- 6.6. The other party ensures that the destination or unloading location is easily accessible and is responsible for handling the unloading of the goods.
- 6.7. Orders or deliveries refused by the other party will be stored or destroyed by FLS at the expense and risk of the other party. Article 5 applies accordingly.

## **Article 7 Transfer of risk**

- 7.1. All goods that are the subject of an agreement concluded between FLS and the other party are at the expense and risk of FLS until the moment the goods are made available to the other party.
- 7.2. The risk of loss, damage or depreciation of all goods that are the subject of an agreement concluded between FLS and the other party will transfer to the other party the moment they are available to the other party or a third party to be designated by the other party.
- 7.3. Furthermore, the risk of loss, damage or depreciation of all goods that are the subject of an agreement concluded between FLS and the other party, transfers to the other party when they are available and/or have been made available to the carrier referred to in Article 6 of these general terms and conditions.

## **Article 8 Payment**

- 8.1. The other party must pay the invoices in advance or within 30 days of the invoice date, in Euros, by means of a deposit or transfer to the bank account designated by FLS. Objections to the amount of the invoices sent do not suspend the other party's obligation or obligations to pay.
- 8.2. FLS reserves the right to withhold amounts owed by the other party from monies owed to the other party.

- 8.3. If the other party has not paid within the period referred to in paragraph 1, FLS is, after it has reminded the other party at least once to pay, without further notice of default being required from the due date of the invoice to the other party:
- A) To charge a late payment surcharge of 2% on the principal amount;
  - B) To charge the contractual default interest up to the day of full payment. This interest is 3% on a monthly basis;
  - C) To charge extrajudicial costs of 15% over the sum of the principal sum and the default interest, with a minimum amount of € 750.00;
  - D) To charge an amount of € 25.00 in administration costs for each payment reminder sent to the other party.
- 8.4. If the other party is in default or fails in the (timely) fulfilment of its payment obligations, all judicial and extrajudicial costs reasonably incurred to collect payment will be at the expense of the other party.
- 8.5. FLS has the right of retention on all goods it holds, until the moment the other party has paid all that it owes to FLS.
- 8.6. The payments made by the other party will at all times first be applied to settle all interest and costs owed and subsequently to pay the payable invoices that have been outstanding longest.
- 8.7. The other party waives the right to set off any claim against FLS for whatever reason.
- 8.8. In the event of liquidation, bankruptcy or moratorium of the other party, all claims of FLS against the other party and the obligations of the other party towards FLS are immediately due and payable.
- 8.9. FLS is entitled to invoice on a periodic basis.
- 8.10. FLS itself applies a payment term of 60 days towards its creditors.

#### **Article 9 Retention of title**

- 9.1. All goods delivered by FLS that have been and/or will be delivered within the framework of the agreement concluded between FLS and the other party, remain the property of FLS until the other party has properly complied with the agreement.
- 9.2. The proper compliance referred to in the previous paragraph also includes payment of costs, interest and claims for damages, including earlier and later deliveries and services, due to the other party's failure to perform.

- 9.3. As long as the ownership of a delivered good has not yet been transferred to the other party, the other party may not sell or resell, pledge or otherwise encumber that good (which is subject to retention of title).

## **Article 10 Packaging**

- 10.1. The packaging in which goods are delivered that is not intended for single use, remains the property of FLS and may not be used by the other party for purposes other than those for which it is intended.
- 10.2. FLS is entitled to charge a deposit to the other party for the packaging referred to in the previous paragraph. FLS is only obliged to take back the packaging referred to in the previous paragraph when it is returned carriage paid, only at the price charged to the other party and for a period after the delivery date indicated by FLS.
- 10.3. Damaged, lost, stolen and/or incomplete packaging is at the expense and risk of the other party. In that case, the other party will lose its right to a refund of the deposit.
- 10.4. If necessary, at the discretion of FLS, the packaging will be charged to the other party at cost price and will not be taken back.

## **Article 11 Suspension and termination**

- 11.1. FLS is entitled to suspend (further) performance of the agreement if the other party does not observe the payment conditions or otherwise fails to fulfil its obligations, all this without prejudice to the right of FLS to claim compensation.
- 11.2. If the other party has not paid all outstanding claims within 14 days of the suspension of the (further) performance of the agreement by FLS, FLS is entitled to unilaterally dissolve the agreement.  
In that case, the other party is still obliged to pay all outstanding claims to FLS.
- 11.3. Agreements can only be terminated prematurely by the other party with the consent of FLS and in accordance with the provisions of this article.
- 11.4. If the other party has terminated prematurely, FLS is entitled to compensation from the other party due to the loss of turnover that has arisen and which can be made plausible, unless the termination is based on facts and circumstances that can be attributed to FLS.
- 11.5. In the event of early termination, FLS reserves the right to payment of the invoices for deliveries made up to that time.
- 11.6. In the event of liquidation, (filing for) a moratorium, bankruptcy or attachment (if and insofar as the attachment has not been lifted within three months) against the other party, FLS will have the right to terminate the agreement with instantly and with immediate effect, without any obligation on its behalf to pay any compensation or damages. Legal intervention or notice of default is not

required for this. In that case, any claims FLS has against the other party will become immediately due and payable.

## **Article 12 Complaints, returns and warranty**

- 12.1. Immediately after receiving (non-perishable) goods, the other party is obliged to inspect them thoroughly for quantity.  
If the other party observes errors, discrepancies and/or faults, these must be noted on the consignment note or packing slip and the other party must notify FLS thereof by e-mail immediately, in any case within 24 hours.
- 12.2. Other complaints must be reported to FLS by e-mail within 8 days of receiving the goods.
- 12.3. The other party is obliged to check perishable goods immediately after receiving them. Any complaints, regardless of their nature, with regard to perishable goods must be submitted by the other party to FLS by e-mail within 48 hours of delivery.
- 12.4. If the aforementioned complaint(s) are not or have not been reported to FLS within the periods applicable for this on the basis of these general terms and conditions, the goods are deemed to have been received in good condition.
- 12.5. Goods ordered are delivered in wholesale trade packaging held in stock by FLS. Minor discrepancies in terms of quoted dimensions, weights, colour etc., will not be deemed as failures on the part of FLS.
- 12.6. Complaints do not suspend the other party's payment obligation.
- 12.7. FLS must be given the opportunity to investigate complaints.
- 12.8. If a return shipment of delivered goods proves necessary for the investigation, this return shipment will only be at the expense and risk of FLS if FLS has explicitly agreed with the costs for the return shipment in writing in advance.
- 12.9. In all cases, goods are returned in a manner to be determined by FLS, in the original packaging. With the exception of the provisions of the previous paragraph, goods are returned at the expense and risk of the other party, unless FLS declares the complaint to be well-founded.
- 12.10. If goods have changed in nature and/or composition after delivery, have been fully or partially treated or processed, damaged or repackaged, or if FLS is not given the opportunity by the other party to investigate the complaint, any right of complaint will lapse.
- 12.11. If the goods delivered show visible errors, discrepancies and/or faults and there are indications they must already have been present at the time of delivery, FLS will replace the relevant goods free of charge.
- 12.12. If a third party has issued a (durability) guarantee for goods delivered by FLS, this guarantee will apply equally between FLS and the other party.



### **Article 13 Changed circumstances**

- 13.1. If the circumstances that FLS and the other party assumed at the time of the conclusion of the agreement change to such an extent that compliance with the agreement or part thereof cannot reasonably be expected of (one of the) parties, the parties will consult about interim changes to the agreement. If the changed circumstances have arisen through the actions of the other party, any additional work resulting from this will be charged to the other party.
- 13.2. If the parties decide to change the approach, working method or scope of the agreement and the ensuing activities and obligations, the other party accepts that the time schedule of the agreement will be adjusted.

### **Article 14 Confidentiality**

- 14.1. The parties are not permitted to disclose information that is of a confidential nature and/or could be confidential to third parties who are not involved in the agreement or to use the information for a purpose other than that for which it was obtained. All parties are subject to a duty of confidentiality with respect to such information. Information is to be deemed confidential when it has been designated as such by either party or it ensues from the nature of the information. Information regarding turnover figures, sales figures and prices should always be regarded as confidential.
- 14.2. The parties will not disclose any part of the information to third parties without each other's prior written consent, except to:
  - the party's own employees, and then only those employees who need to know the information.
  - the party's accountants, the tax inspector, and third parties with a legitimate purpose or obligation to have access to the parties' affairs, albeit only if the information is needed to fulfil such a purpose or obligation.
- 14.3. The other party will impose its obligations under this article on the third parties engaged by it.

### **Article 15 Obligations of the other party**

- 15.1. All goods delivered by FLS will only be resold by the other party in the original packaging originating from (the supplier of) FLS. The other party is not permitted to make any changes to the original packaging and must prevent damage, unless the parties have explicitly agreed otherwise in writing.
- 15.2. The other party is obliged to charge the sales price or minimum sales price determined by FLS or the supplier of FLS to its customers. Deviation from the above prices is only permitted if permission has been obtained from FLS or its supplier in advance in writing or upon publication.

15.3. The other party will immediately owe FLS a fine that is not open to (judicial) mitigation, without further notice of default being required in advance, amounting to € 5,000.00 per violation and € 750.00 for each day the violation continues, when the other party does not strictly comply with or violates the obligations referred to in this article. This is without prejudice to the right of FLS to claim full compensation.

## **Article 16 Intellectual property**

16.1. FLS reserves all intellectual property rights with regard to products of the mind, which it uses or has used and/or develops in the context of the performance of the agreement.

16.2. The other party is explicitly forbidden to directly or indirectly reproduce, disclose and/or exploit products, including working methods, advice, models, production(s) and other products of the mind of FLS, in the broadest sense of the word.

Disclosure, in whatever way, can exclusively and only take place after obtaining the written consent of FLS. Naturally, the other party has the right to multiply documents and share information for use within its organisation, insofar as it such appropriate for the purpose of the agreement. In the event of premature termination of the agreement, the aforementioned applies by analogy.

16.3. The other party will not use or use, carry and/or register any brand and/or any trade name of FLS without the prior express written consent of FLS.

16.4. The other party will immediately owe FLS a fine that is not open to (judicial) mitigation, without further notice of default being required in advance, amounting to € 15,000.00 per violation and € 7500.00 for each day the violation continues, when the other party does not strictly comply with or violates the obligations referred to in this article. This is without prejudice to the right of FLS to claim full compensation.

## **Article 17 Force majeure**

17.1. FLS will not be obliged to fulfil any obligation, if prevented from doing so due to a circumstance not attributable to any wrongful act on its part, nor chargeable to FLS in accordance with the law, any juristic act or generally accepted practice.

17.2. During the time that the force majeure period continues, FLS will be entitled to suspend any obligations under the agreement. If this period exceeds a term of two months, either party is entitled to dissolve the agreement without further obligation to compensate the other party for any damage. If the aforementioned situation occurs when the agreement has been partially performed, the other party is obliged to fulfil its obligations towards FLS up to that time. In that case, FLS is entitled to separately invoice the part already fulfilled or the part to be fulfilled respectively.

The other party will be obliged to pay this invoice on the basis of an assumed separate agreement.

- 17.3. In these general terms and conditions, force majeure, in addition to the explanations in existing (case) law, is taken to mean force majeure in the broadest sense of the word, including all external causes, whether or not anticipated, beyond the control of FLS, as a result of which FLS is unable to fulfil its obligations.  
This includes but is not limited to fire, pandemics, (extreme) weather conditions, power failures, terrorist threats, traffic disruptions, restrictions imposed by the competent authorities, worldwide crises and strikes in the company of FLS, its supplier(s) and/or third parties. FLS is furthermore entitled to claim force majeure if the circumstance that prevents the (continued) performance of the agreement arises after FLS should have fulfilled its obligation.

## **Article 18 Liability and indemnifications**

- 18.1. FLS is only liable insofar as this ensues from this article. The same applies to third parties engaged by FLS for the performance of the agreement. The included limitations of liability of FLS do not apply if the damage suffered by the other party is due to intent or gross negligence on the part of FLS and/or its subordinate(s).
- 18.2. The liability of FLS is at all times limited to the amount that will be paid out under the liability insurance of FLS in the relevant case. If for whatever reason, no payment is made by the insurer, any liability is limited to an amount of € 25,000.00.
- 18.3. If an error is made because the other party has provided FLS with incorrect or incomplete information, FLS will not be liable for any damage arising from that.
- 18.4. FLS is not liable in the event of force majeure.
- 18.5. Liability of FLS for indirect damage, consequential damage, lost profits, missed savings and damage due to business interruption or legal costs incurred by the other party is excluded at all times.
- 18.6. FLS is not liable for damage resulting from improper use and/or use of goods that is contrary to instructions and/or advice issued by FLS.
- 18.7. FLS is not liable for damage resulting from improper safekeeping and/or storage of delivered goods by the other party.
- 18.8. The other party indemnifies FLS against all third-party claims related to or arising from the legal relationship between the other party and FLS. The other party also explicitly indemnifies FLS against third-party claims with regard to intellectual property rights on data provided by the other party to FLS, which is used for the performance of the agreement.

18.9. If the other party provides FLS with information carriers, electronic files or software, etc., the other party guarantees these materials are free of viruses and defects. Any damage caused by the use of these materials will be compensated by the other party to FLS.

18.10. Any liability claim against FLS expires after one year from the day on which the other party was aware of the damage-causing fact or omission and the occurrence of the damage, or the day on which the other party could reasonably have been aware of this.

### **Article 19 Privacy**

19.1. FLS processes personal data of the other party for optimal service and to comply with legal obligations. Data is processed in accordance with its privacy policy. This policy is in accordance with the GDPR. For more information, please consult the FLS privacy statement, which can be found at <https://flscompany.com>.

### **Article 20 Website(s)**

20.1. Information published by FLS on its website(s) has been compiled with great care. However, FLS cannot guarantee this information is complete and correct at all times.

20.2. Information on the website(s) is subject to change at the sole discretion and insight of FLS.

20.3. The FLS website(s) may contain links to third-party websites. FLS cannot guarantee the content and functioning of these third-party websites. For more information, see the FLS website disclaimer.

### **Article 21 Applicable law and competent court**

21.1. All agreements between FLS and the other party are governed by the laws of the Netherlands.

21.2. All disputes that may arise between FLS and the other party will be submitted exclusively to the competent court of the Rotterdam District Court.

### **Article 22 Changes**

22.1. FLS is entitled to unilaterally change these general terms and conditions. The latest version of these general terms and conditions is valid, even for agreements already concluded.