

## GENERAL TERMS AND CONDITIONS OF SALE

### 1. GENERAL, SCOPE OF APPLICATION

- 1.1 COMPAGNIA DEI CARAIBI Deutschland GmbH imports, promotes, distributes, trades and sells products under the brand name "Compagnia dei Caraibi" with reference to its spirits catalogue and complementary products.
- 1.2 These General Terms and Conditions of Sale (General Terms) shall apply exclusively to all supplies, works and services and quotations (Supplies) of COMPAGNIA DEI CARAIBI Deutschland GmbH (Supplier). Terms and conditions of the Customer which complement, deviate from or are in contradiction to these General Terms are not accepted by the Supplier, unless the Supplier explicitly consents in writing. They shall not become part of the agreement with the Customer (Agreement) even if the Supplier fails to object to them in a single instance or provides Supplies while aware of such terms or if the Supplier refers to a letter which contains or refers to such terms.
- 1.3 Agreements, amendments or addenda to agreements, as well as individual agreements, are read and construed as fixed in writing or as confirmed in writing by the Supplier.
- 1.4 Addenda or amendments to Agreements, declarations of intent by the Customer after conclusion of the Agreement or deviations from these General Terms shall be made in writing. Only managing directors or procurists ("*Prokuristen*") of the Supplier have power to make oral agreements deviating from these General Terms. Writing in the meaning of this paragraph shall include, but not be limited, to transmission by way of telecommunication and declaration by way of e-mail.
- 1.5 These General Terms also apply to all future Agreements with the Customer, even if the Supplier does not refer to them again.
- 1.6 These General Terms shall apply only towards entrepreneurs, public law entities and public law separate estates (*öffentlich-rechtliche Sondervermögen*) as defined by § 310 Abs. 1 of the German Civil Code ("*Bürgerliches Gesetzbuch*" - BGB).

### 2. OFFERS, QUOTATIONS

- 2.1 All quotations by the Supplier shall be without a legal obligation unless they have expressly been labelled binding or they set a specific deadline for acceptance.
- 2.2 The Supplier may accept orders and offers within 14 days following receipt of such order. Unless agreed otherwise, the price list in force on the date of receipt of the order will apply.
- 2.3 Statements by the Supplier regarding the Supplies, namely to measures, use or tolerances, as well as their representation, shall be approximate only, unless the use expressly provided in the Agreement requires

#### Compagnia dei Caraibi Deutschland GmbH



Lorscher Str. 14 - 68519 Viernheim, Germany

Ust.-IdNr. DE 354 875 105

Amtsgericht Darmstadt • HRB: 103912

Lucid DE4481082634035

Geschäftsführer: Emanuele Serratore

Ein Unternehmen Der

Compagnia Dei Caraibi S.p.A. Società Benefit

Via Ribes, 3 - 10010 Colleretto Giacosa (To) - Italien

[compagnideicaraibi.de](https://compagnideicaraibi.de)



E-mail: [info@compagnideicaraibi.de](mailto:info@compagnideicaraibi.de)



(+49) 0 62 04 - 78 98 175

precise compliance with such statements. Deviations which are customary in the industry, are technical improvements or are required under the law or for product safety are reserved, unless they affect use of the object for the purpose expressly provided in the Agreement.

2.4 The Supplier reserves all and any copyrights and property in pictures, drawings, calculations, drafts and calculations, as well as in tools, dies and other equipment designed by the Supplier or by third parties upon instruction by the Supplier. Such objects and documents, as well as those marked as „confidential“, may be disclosed to third parties only upon prior written consent of the Supplier. The Customer shall return objects and documents in the meaning of this paragraph to the Supplier upon request and shall destroy all copies when they are no longer needed in due course of business or when negotiations do not result in conclusion of an Agreement.

2.5 The Customer may neither alter nor repackage products of the Supplier.

### 3. PRICES, PAYMENT TERMS

3.1 Prices of the Supplier shall be EX WORKS (EXW, INCOTERMS 2020) Olching, and exclusive of packaging and applicable value-added tax. The price list of Supplier, as amended from time to time, in force on the date of acceptance of the order by Supplier, shall apply.

3.2 The Customer may purchase products and other Supplies according to the payment terms and methods specified below for the relevant channel, assigned during registration of the customer data in CDC's management systems and updated from time to time if the Customer engages in a different channel:

#### 3.2.1 GASTRONOMY (HORECA), RETAIL, and WHOLESALE channels:

- 5% discount with advance payment of the order by **bank transfer** to be applied on the value of the product less the value of the packaging, taxes, government charges, excise duties and ancillary costs.
- 2% discount for payments made by any means, made within 7 days of the invoice date to be applied on the value of the product less the value of the packaging, taxes, government charges, excise duties and ancillary costs.
- There is no discount for payments made more than 7 days after the invoice date.

3.2.2 **E-COMMERCE, MODERN RETAIL and CASH & CARRY** channels: There is no discount for these channels.

3.3 The Supplier may charge ancillary services to the Customer as follows:

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ANCILLARY SERVICES	PRESENT UNDER CONTRACT
DELIVERY BY APPOINTMENT WITH ON-LINE BOOKING	EUR 5.00/shipment
DELIVERY BY APPOINTMENT BOOKED BY DRIVER	EUR 5.5/shipment
PICK UP COSTS IN CASE OF EXTERNAL CARRIER	EUR 15/shipment
MANDATORY DELIVERY DATE	15% (minimum € 15) - understood as "delivery only on ..."
Storage due to impossibility of delivery/redelivery:	charges Euro 10.00 including the first 7 days of storage
	additional storage Euro 0.80/100 kg/day cost starting the eight day
	redelivery 60% of the shipping fee (minimum Euro 6.00)
	maximum storage time In the case of no response from the buyer within 30 days of notification, the goods will be returned at the outward fee plus 30%

- 3.4 If prices have been agreed on the basis of list prices of the Supplier and supply is due more than four months after conclusion of the Agreement, the price according to the price list which is in effect at the time of the supply shall apply, taking into account discounts or rebates agreed with the Customer.
- 3.5 Payments shall be due upon delivery of the relevant Supplies and receipt of the invoice. If the Customer fails to pay within 30 days after receipt of the invoice, it shall be in delay of payment even without a reminder. For timeliness of payments to the Supplier, receipt of clear funds on the bank account of the Supplier shall be decisive.
- 3.6 If the Customer is in delay of payment, the consequences of delay under statutory law shall apply. The lump-sum under § 288 Abs. 5 of the German Civil Code (*Bürgerliches Gesetzbuch*, BGB) shall not be credited to damages for legal costs incurred.
- 3.7 The Customer may only set off with counterclaims which are undisputed, have been established by a judgment which can no longer be appealed or which are ready for decision in a lawsuit. The same shall apply for asserting withholding rights.
- 3.8 The Customer has withholding rights only because of counterclaims arising under the same Agreement. In an ongoing business relationship, every order shall give rise to a new Agreement.
- 3.9 The Supplier shall be entitled to provide outstanding Supplies only against prepayment or collateral if, after conclusion of the Agreement, it becomes aware of circumstances which cause reasonable doubt that the Customer is still creditworthy and thereby payment of outstanding sums is endangered.



4. **TIME OF SUPPLY AND PERFORMANCE, DELAY**

- 4.1 Delivery times stated by the Supplier shall not be binding unless the Supplier has expressly agreed a fix time period for delivery or a fixed date.
- 4.2 To the extent that it is acceptable for the Customer, namely if the Customer can make use of partial deliveries and is not caused substantial additional expenses, the Supplier is entitled to deliver Supplies in instalments and before agreed delivery dates. Deliveries under this paragraph shall be considered as distinct purchases and be invoiced immediately.
- 4.3 If the Customer and the Supplier have agreed advance payment, the Supplier will keep the goods in stock for 5 working days from the issue of the order confirmation. In the event of advance payment by bank transfer, the customer is recommended to send verification of the payment to the e-mail address [vorauskasse@compagnideicaraibi.de](mailto:vorauskasse@compagnideicaraibi.de). Upon expiry of the aforementioned period, stock of Products reserved for the Customer upon the order confirmation may be sold to other customers and the Customer may be supplied when new or additional stock is available, unless the Supplier has committed to a binding delivery date.
- 4.4 The Supplier shall only be obliged to Supplies as far as the Customer has fulfilled its own obligations timely and correctly, namely confirmed specifications or made advance payments, if agreed with the Supplier.
- 4.5 All Supplies by the Supplier are subject to the Supplier's being supplied itself in a correct and timely manner.
- 4.6 In the event and for the duration of force majeure or other events for which the Supplier is not responsible and which make impossible or unacceptably onerous the Supplies, the Supplier shall not be obliged to provide such, even if the Supplier has been in delay of performance when the force majeure event began. Force majeure shall comprise, but not be limited to lawful industrial action, acts of government, natural disasters, war, pandemic events, and general lack of energy or raw material supply. If force majeure persists for at least two months, the Supplier may rescind the Agreement without further obligations in relation to the Customer.
- 4.7 The Customer may remind the Supplier and set a grace period only when the time for delivery as agreed has expired. The grace period shall be no shorter than four weeks. Claims for damages for delay of the Customer shall be subject to § 8 below.

5. **TRANSFER OF RISK, DISPATCH**

- 5.1 Supplies by the Supplier shall be made EXW Olching (INCOTERMS 2020).
- 5.2 Risk of loss and damage shall transfer to the Customer EX WORKS (EXW, INCOTERMS 2020) Olching, even if the Supplier organizes dispatch and/or bears the costs of shipping. In such cases, the Supplier may choose



the way of shipping and select the carrier. The Supplier shall take out insurance for damage in transport or other risks only upon express instruction in writing and at the expense of the Customer.

5.3 At the Customer's request, a delivery service can be organized, at the terms as follows within the territory of the Federal Republic of Germany:

5.3.1 For orders of up to 18 bottles, a freight charge of Euro 12.00 + VAT is required

5.3.2 For orders of 19 to 30 bottles, a freight charge Euro 16.00 + VAT is required

5.3.3 For orders of 31 to 42 bottles, a freight charge of Euro 19.00 + VAT is required

5.3.4 For orders of 43 to 59 bottles for the GASTRONOMY and RETAIL channels or for orders of 43 to 119 bottles for the WHOLESALE, E-COMMERCE, MODERN RETAIL and CASH & CARRY channels, a freight charge of Euro 24.00 + VAT is required.

5.3.5 For orders of at least 60 bottles for the GASTRONOMY and RETAIL channels or for orders of at least 120 bottles for the WHOLESALE, E-COMMERCE, MODERN RETAIL and CASH & CARRY channels, delivery is free of charge. Consequently, for such orders, the freight charge is paid by Compagnia dei Caraibi.

For destinations outside Germany, the Supplier will quote freight charges to the Customer upon request. The risk of loss or deterioration shall still transfer to the Customer when the Supplies are handed over to the carrier.

5.4 If the Customer fails to collect Supplies within eight calendar days of an agreed date or within a reasonable time period after notice by the Supplier, the Supplier may have dispatched the Supplies by a carrier of its own choice at the expense of the Customer. Other and further rights of the Supplier because of Customer's default ("*Annahmeverzug*") or delay of performance shall not be affected.

The Supplier may charge the charges for ancillary services (§ 3.3) as lump-sum amounts if the Customer fails to collect Supplies in the meaning of this paragraph, without prejudice to its right to prove higher expenses or damages. The right of the Customer to prove that lower expenses have accrued for the Supplier shall not be affected.

5.5 If acceptance ("*Abnahme*") of Supplies, namely of a work, is required under the law or under the Agreement, risk of damage or loss of the Supplies shall pass by such acceptance. Supplies shall be deemed accepted when they are ready for acceptance and the Supplier has summoned the Customer to declare acceptance within a period of 14 calendar days, or when the Customer starts using the Supplies. This shall also apply if the Customer refuses to accept the Supplies, unless for a defect which affects use of the Supplies seriously.

6. RETENTION OF TITLE

- 6.1 The Supplier retains title to Supplies and all movable items supplied under the Agreement (items under retention of title) until it has received in full all sums due from the Customer on any account in the business relation.
- 6.2 The Customer shall store items under retention of title for the Supplier without charge, handle them with care and keep them separate from its own property or property of third parties. It shall mark them property of the Supplier upon request. The Customer shall furthermore take out at own cost insurance coverage for such items at least for the amount of the Supplier's invoice against damages arising from fire, water, theft and natural hazard.
- 6.3 If a third party seizes items under retention of title or interferes with property of the Supplier in any other way, the Customer shall inform the Supplier in writing without undue delay and support the Supplier in proceedings to protect its property, namely under § 771 of the German Code of Civil Procedure („Zivilprozessordnung“, ZPO) or equivalent other remedies. As far as the third party does not reimburse the court fees and out-of-court costs for such remedies to the Supplier as due, the Customer shall be liable to the Supplier for such unpaid costs.
- 6.4 The Customer shall be entitled to resell items under retention of title in the course of ordinary business, unless it is in default. Default shall be breach of the Agreement, namely delay in payment, so the Supplier therefore validly rescinds the Agreement or would be entitled to do so. The Customer assigns all claims against its own customers from the resale of items under retention of title as a collateral now already. The Supplier accepts this assignment. The Customer may still collect its claims, unless it is in default.
- 6.5 Any processing or alteration of items under retention of title by the Customer is conducted on behalf of the Supplier. If the items are processed in combination with other items to which the Supplier does not have title, the Supplier will acquire joint property of the finished product or any other product in a proportion equaling the value of the item of the Supplier in relation to the value of the finished or other product. The product resulting from such processing or the Supplier's share in such a product shall in turn be treated like items under retention of title.
- 6.6 In a case of default, the Supplier shall be entitled to recover the items under retention of title. Such recovery shall not as such be deemed rescission of the Agreement.
- 6.7 The Supplier shall release items under retention, rights in products of the Customer or claims assigned by the Customer of its choice if the aggregate value of such items, rights and claims which can typically be collected exceeds 110% of the secured receivables.



7. **WARRANTY FOR DEFECTS**

- 7.1 The Supplier does not give any warranty but that Supplies comply upon delivery with the specifications as provided under the Agreement. Statements in advertising, brochures or given orally shall give rise to warranty rights only if expressly made part of the Agreement. The Supplier does not warrant fitness of Supplies for a particular purpose or merchantability of its products.
- 7.2 The Customer shall give notice of defects which can be detected by way of an examination required under § 377 of the German Commercial Code („*Handelsgesetzbuch*“, HGB) in writing without undue delay, however, no later than three bank working days after delivery. It shall give notice of other defects in the same way, at the latest three bank working days after detection. The Customer is recommended to document irregularities by photographs or videos.
- 7.3 Defective Supplies shall be rectified at the Supplier's choice by repair or by supply of replacement. The costs of rectification shall be borne by the Supplier, unless these costs are increased because the item supplied has been moved to a place different from the place where the item has to be used as contemplated under the Agreement. The Customer shall support the Supplier in searching the defects and rectifying them, namely allow sufficient time and provide objects for inspection. The Supplier may refuse rectification to the extent it is only possible at disproportional cost. §§ 478, 479 BGB shall not be affected. The Customer shall have rights under §§ 445a and 445b BGB only as far as the warranty granted by the Customer does not exceed the warranty under par. 1 above.
- 7.4 If rectification fails or is delayed inappropriately, the Customer shall be entitled to rescind the Agreement or to claim reduction of the price as provided by statutory law. A failure to rectify may only be assumed after two attempts have failed. Rescission of the Agreement may not be claimed if the defect is immaterial.
- 7.5 Warranty for defects shall be excluded as far as defects have been caused by statements, calculations or requirements provided or imposed by the Customer. It shall also be excluded to the extent the Customer or a third party inappropriately alter, use or store Supplies and thereby impede rectification.
- 7.6 Claims of the Customer arising out of this Clause 7 other than under §§ 438 par. 1 No. 2, 634a par. 1 No. 2 BGB shall be time-barred one year beginning by the transfer of risk, unless defects have been fraudulently concealed. The right for the Customer to claim damages for defects is subject to Clause 8.

8. **GENERAL LIMITATION OF LIABILITY OF CLAIMS AND INDEMNIFICATION**

- 8.1 The Supplier shall be liable for intentional and grossly negligent acts as provided under statutory law.
- 8.2 In cases of simple negligence, the Supplier shall be liable, under any legal theory, only as far as it has violated an obligation which to honour is essential for the purpose of the Agreement and which the Customer may typically rely upon that it is fulfilled. In such cases, the Supplier shall only be liable for typical damages which





were foreseeable when it concluded the Agreement. Such damages shall be time-barred one year after limitations have started according to statutory law.

- 8.3 Limitations of liability according to par. 2 above shall not apply to damages to life, body or health, to damages according to the German Product Liability Act or for breach of a guarantee.

## 9. INTELLECTUAL PROPERTY RIGHTS

- 9.1 If the Supplier produces or supplies items, works or services according to statements, drawings, models, samples or other requirements set by the Customer, the Customer warrants that such requirements do not infringe intellectual property rights of third parties, unless such infringement is known to the Supplier upon conclusion of the Agreement. The Customer shall indemnify and hold harmless the Supplier on first demand against any claims of third parties, including but not limited to reasonable expenses for legal defense, and shall be liable to the Supplier for harm caused by the infringement.

- 9.2 The Customer shall indemnify and hold harmless the Supplier on first demand against any claims of third parties caused by any other breaches of the Agreement which the Customer has committed by intent or negligence, including but not limited to reasonable expenses for legal defense, and pay damages.

## 10. MISCELLANEOUS

- 10.1 Place of performance for all obligations arising out of the business relation shall be the place of business of the Supplier.
- 10.2 The Customer is not entitled to assign its claims arising under the business relation with the Supplier. In view of claims for money, the Supplier may still pay funds to the Customer and thereby fulfil its obligation irrespective of assignment.
- 10.3 If any clause in these General Terms is unenforceable, the validity of the other clauses shall not be affected.
- 10.4 If the Customer is a merchant in the meaning of the HGB, an entity under public law or special assets under public law, or if it does not have a general venue in Germany, exclusive court of venue for all controversies arising under or in the context of the business relation shall be Frankfurt/Main. The Supplier may file suit against the Customer at any other court which has jurisdiction, too.
- 10.5 German law shall apply exclusively. The application of the UN Convention of the International Sales of Goods shall be excluded.

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