

GENERAL TERMS AND CONDITIONS OF BUSINESS AND DELIVERY OF GEMELLII DRINKS GMBH – B2B

§ 1 Scope of Application

(1) The General Terms and Conditions of Business and Delivery ("**GTC**") of GEMELLii Drinks GmbH shall apply exclusively and also to all future business transactions between the respective contractual partner ("**Customer**") and GEMELLii Drinks GmbH. GEMELLii Drinks GmbH does not accept any conflicting or deviating terms and conditions of the Customer unless they are explicitly agreed to in writing.

(2) The present GTC shall also apply if GEMELLii Drinks GmbH, being aware of conflicting or deviating general terms and conditions of the Customer, carries out the delivery to the respective Customer without reservation.

(3) All agreements made between GEMELLii Drinks GmbH and the Customer for the execution of this contract are recorded in writing in this contract.

(4) The GTC of GEMELLii Drinks GmbH shall apply vis-à-vis entrepreneurs, legal entities under public law or special funds under public law within the meaning of Section 310 para. 1 of the German Civil Code (*Bürgerliches Gesetzbuch*). Entrepreneur within the meaning of these GTC is any Customer acting in the exercise of its commercial or self-employed professional activity when concluding the contract.

§ 2 Conclusion of Contract; Establishment of the Business Relationship

(1) The product presentations on the website and in brochures are at all times non-binding. By placing an order, the Customer submits to GEMELLii Drinks GmbH a binding offer to purchase the relevant product.

(2) GEMELLii Drinks GmbH is entitled to accept the offer within a period of two (2) weeks. The contract is being effectively concluded upon receipt of the declaration of acceptance (*Annahmeerklärung*). The dispatch of the ordered goods and the confirmation of the dispatch to the Customer are equivalent to

an explicit declaration of acceptance by GEMELLii Drinks GmbH; this does not apply if "advance payment" has been agreed as method of payment. In respective cases, GEMELLii Drinks GmbH already declares acceptance by confirming the order and requesting payment by email. If the Customer already triggers a payment to GEMELLii Drinks GmbH in the course of the ordering process, the offer of the Customer is being bindingly accepted upon approval of the payment process.

(3) The minimum order quantity is one (1) pallet.

(4) After the order has been placed GEMELLii Drinks GmbH will send the Customer a confirmation, the invoice and these GTC by email. However, above that GEMELLii Drinks GmbH does not store any separate contract text that would be accessible to the Customer over the internet.

(5) Individual agreements made in individual cases with the Customer (including collateral agreements, supplements and amendments) shall in any case prevail over these GTC. Subject to proof to the contrary, with regard to the content of respective agreements a written contract or written confirmation by GEMELLii Drinks GmbH shall be decisive.

(6) Legally relevant declarations and notifications of the Customer with regard to the contract with GEMELLii Drinks GmbH (e.g. setting of a deadline, notification of defects, rescission or reduction) must be made in writing, i.e. in written or text form (e.g. by letter, email, fax). Legal formal requirements and further evidence, in particular in case of doubt regarding the legitimacy of the declarant, remain unaffected.

§ 3 Transfer of Risk

(1) The risk of accidental loss or accidental deterioration of the goods transfers to the Customer upon handover of the goods.

(2) If the Customer wishes the goods to be delivered, the risk of accidental loss or accidental deterioration of the goods transfers to the Customer upon handover to the assigned transport company. This also applies in case GEMELLii Drinks GmbH has assumed the transport costs. If the Customer has not given instructions to the contrary, the choice of packaging, transfer route and means of dispatch is incumbent upon GEMELLii Drinks GmbH, without being responsible for having chosen the fastest and/or cheapest option.

(3) In case of damage or loss of the goods during transport, the Customer must immediately arrange for the carrier to record the facts.

(4) In the event of default in acceptance or other breaches of obligations to cooperate by of the Customer, the risk of accidental loss or accidental deterioration shall transfer to the Customer upon occurrence of the default in acceptance or other breaches of obligations to cooperate.

§ 4 Acceptance; Delivery; Delivery Times

(1) The Customer is obliged to accept the goods. In cases of default in acceptance or other culpable violation of obligations to cooperate by the Customer, GEMELLI Drinks GmbH is entitled to compensation of the damage resulting therefrom. The costs for deliveries which acceptance is refused or for deliveries not collected contrary to respective agreement are being charged to the Customer.

(2) Unless otherwise agreed, delivery exclusively takes place within the Federal Republic of Germany. Delivery to Customers outside the Federal Republic of Germany is only possible on individual request and after prior inspection.

(3) The goods are dispatched to the business address of the Customer or to another delivery address specified by him. The delivery may only be accepted by the Customer personally or by a person named by the Customer or being authorized to represent the Customer.

(4) Unless otherwise agreed, GEMELLI Drinks GmbH shall deliver ordered goods, provided that the goods are in stock regularly, (i) in case of deliveries to the Federal Republic of Germany within 15 business days after receipt of the order, (ii) in case of deliveries to other European countries within 25 business days after receipt of the order and (iii) in case of deliveries to a country outside the EU within three (3) months after receipt of the order. If there is a change in the expected delivery date after the order or if the goods are not available, GEMELLI Drinks GmbH will promptly inform the Customer hereof by email. In the latter case, any consideration already received will be refunded.

(5) Information on delivery times is non-binding unless the delivery date has been bindingly confirmed. In case of orders via telephone, confirmations

regarding deliveries and delivery dates are only binding if not revoked within the next business day or within 48 hours.

(6) If advance payment has been agreed, the beginning of the delivery period requires receipt of the purchase price payment by GEMELLii Drinks GmbH.

(7) GEMELLii Drinks GmbH generally delivers an order consisting of several goods uniformly. In case of partial delivery at specific request of the Customer, the delivery costs pursuant to section 5 para. 1 below apply for each individual partial delivery.

(8) If GEMELLii Drinks GmbH is responsible for exceeding a reasonable delivery period, it shall only be in delay if the Customer has set a reasonable grace period in writing which has expired unsuccessfully.

(9) Labour disputes, partial or total failure of means of production, delays in its supply, transport obstructions or other events of force majeure entitle GEMELLii Drinks GmbH to delay delivery by the duration of the obstruction or delay plus a reasonable start-up period. This also applies to seasonal excess demand.

(10) GEMELLii Drinks GmbH reserves its correct and timely self-delivery as well as the plea of non-performance of the contract.

§ 5 Delivery; Delivery Costs

(1) Delivery within the Federal Republic of Germany as well as to the Austrian Republic and the Italian Republic is free for the Customer, unless otherwise individually agreed.

(2) Delivery is effected by a shipping provider or forwarding agency. If the ordered goods are delivered by a forwarding agent, the delivery takes place up to the curb. Further transport services may be agreed with the carrier; additional costs incurred thereby shall be paid by the Customer directly to the carrier.

§ 6 Warranty

(1) GEMELLii Drinks GmbH guarantees that its products are manufactured in accordance with the statutory provisions and that the quality of its goods is impeccable. Complaints regarding the quantities or prices stated on the delivery notes and/or invoices – also in case of delivery of pallets – must be made upon

receipt of the goods, but within two (2) business days at the latest. In case of a delayed complaint, the Customer loses the right to subsequent delivery or credit note.

(2) The Customer is obliged to inspect the goods and give notice of defects in accordance with Section 377 of the German Commercial Code (*Handelsgesetzbuch*). This includes, but is not limited to, the examination of defects with regard to the quantity and quality of delivered and returned containers (full and empty containers) and means of transportation (beverage components; other deposit containers), including the time until the expiration date of the delivered goods is reached guaranteed by GEMELLii Drinks GmbH. If the Customer omits the notification, the goods are deemed to have been approved, unless the defect was not apparent during the inspection.

(3) All defects are to be reported to GEMELLii Drinks GmbH immediately in writing, i.e. within two (2) business days. In order to meet the deadline it is sufficient to send the notification in due time.

(4) Warranty claims may be asserted up to twelve (12) months after transfer of risk. The statutory limitation periods for recourse claims (Section 445a of the German Civil Code) remain unaffected by this.

(5) If the goods are defective, the Customer is entitled to subsequent performance in the form of elimination of the defect or delivery of a defect-free item. In the event of failure of subsequent performance, the Customer is entitled to reduce the purchase price or rescind the contract.

(6) The Customer is obliged to check balance confirmations, empties balances and other statements for correctness and completeness. Complaints regarding these confirmations, balances or invoices must be made immediately, at the latest within five (5) business days after receipt of statement. Thereafter respective complaints are excluded.

§ 7 Quality Assurance

To ensure that the final consumer receives impeccable GEMELLii products, the Customer is obligated to ensure storage and transport under appropriate conditions, in particular cool, dry, odourless and dark. Moreover, the Customer must ensure that the expiration dates are taken into account in a legally compliant and appropriate manner. Goods, which have already reached its

expiration date, must not be resold or otherwise placed on the market by the Customer.

§ 8 Liability

(1) Claims for damages due to breach of duty and tort as well as claims for compensation of futile expenditures and other pecuniary losses are excluded against GEMELLii Drinks GmbH as well as its agents in performance and vicarious agents.

(2) This limitation of liability does not apply if the damage has been caused intentionally or grossly negligent, as well as in case of breach of material contractual duties. Furthermore, it shall not apply to damages resulting from culpable injury to life, body or health or to damages caused due to absence of a guaranteed characteristic or for which liability is stipulated pursuant to the Product Liability Act (*Produkthaftungsgesetz*).

(3) In case of a slightly negligent breach of material contractual duties, liability is limited to the foreseeable, typically occurring damage.

§ 9 Rescission

(1) Rescission by the Customer due to an omitted service or a service not provided in accordance with the contract requires that GEMELLii Drinks GmbH is responsible for the breach of duty.

(2) This does not apply if something else has been specially otherwise agreed (e.g. fixed date transaction). Furthermore, this shall not apply in case of a defect in the purchased good; in this case the statutory provisions of the German sales law apply unless otherwise stipulated.

§ 10 Prices; Terms of Payment

(1) Delivery is made at the list prices valid for the Customer on the day of delivery, unless deviating sales prices are agreed separately. The prices are quoted ex works, plus the respective statutory value added tax, unless expressly otherwise agreed. Reasonable price changes come into effect upon notification to the Customer. When updated price lists come into effect, all other lists and any other price agreement become void. The prices are absolute net

prices; they do not include value added tax, any applicable customs duties or other taxes.

(2) Unless otherwise agreed, the purchase price is due for payment immediately upon invoicing. If advance payment has not been agreed, the purchase price becomes due for payment within 14 days after receipt of the goods and receipt of the invoice. GEMELLii Drinks GmbH reserves the right to carry out a credit assessment of the Customer and declares respective reservation when confirming the order at the latest.

§ 11 Default in Payment; Set-off; Right of Retention

(1) The Customer gets in default of payment after 14 days subsequent to receipt of the goods and receipt of the invoice, if not otherwise agreed. Default in acceptance by the Customer shall be deemed equivalent to receipt of the goods.

(2) As from the due date default interest will be charged at a rate of 9% above the respective base interest rate p.a. GEMELLii Drinks GmbH reserves the right to assert further claims for damages caused by default. This is not excluded by maturity of the default interest.

(3) The Customer shall be entitled to set-off and retention with similar claims only on the basis of those claims which are undisputed or have been legally determined. For dissimilar claims a right of retention is limited to claims of the Customer from the same contractual relationship.

§ 12 Retention of Title

(1) The respective goods remain the property of GEMELLii Drinks GmbH until all claims having arisen at the time of conclusion of the contract, including all claims from follow-up contracts and repeat orders, have been fulfilled.

(2) The Customer is obligated to treat the goods with care (also see section 7 of these GTC in this regard) and to insure them appropriately, if applicable.

(3) The Customer is entitled to resell the reserved goods in the ordinary course of business, unless he is in default of payment or has suspended payment. In case of resale, the Customer assigns to GEMELLii Drinks GmbH already in advance in full by way of security all claims arising from such resale,

regardless of whether it takes place before or after any processing, mixing or other utilization or use of the goods delivered under retention of title. As long as and insofar as the Customer fulfills its payment obligations, no application for the opening of insolvency or similar proceedings has been filed and payments have not been ceased, GEMELLii Drinks GmbH undertakes not to collect the respective claims. GEMELLii Drinks GmbH must be informed immediately as soon as the goods are encumbered with rights of third parties or exposed to other intervention rights of third parties.

(4) GEMELLii Drinks GmbH is obligated to release the existing securities at the Customer's request insofar as their value exceeds the total claim by more than 20%. The selection of the securities to be released is at the discretion of GEMELLii Drinks GmbH.

§ 13 Empties; Deposit

(1) The empties intended for reuse (e.g. boxes, returnable bottles, pallets etc.) are only provided to the Customer for intended use and shall be returned to GEMELLii Drinks GmbH or to a third party designated by it immediately in perfect condition. They remain inalienable property of GEMELLii Drinks GmbH or the producing bottler. Additional inscriptions in any case require the express consent of GEMELLii Drinks GmbH.

(2) GEMELLii Drinks GmbH is entitled to charge a returnable deposit in the customary amount. A corresponding deposit credit shall be issued for empties returned in the proper manner. If the Customer does not comply with its obligation to return, GEMELLii Drinks GmbH is entitled to retain the deposit as compensation for the unreturned empties, provided that no lower or higher damage is proven.

(3) GEMELLii Drinks GmbH is only obligated to take back boxes and pallets with the respectively intended and delivered bottles and boxes (so-called "sorted returnable empties").

§ 14 Transport; Cargo Securing

(1) If the Customer picks up the goods himself, it is obligated to ensure that all legal road traffic and transport safety requirements, in particular with regard to cargo securing, are complied with. If it is supported in this by staff or affiliated

companies of GEMELLii Drinks GmbH, it shall indemnify these companies and its staff insofar from any damages and third-party claims.

(2) Furthermore, the Customer undertakes to indemnify GEMELLii Drinks GmbH from any damages caused by the Customer breaching its aforementioned obligation.

§ 15 Data Protection; Confidentiality

(1) In accordance with the data protection declaration attached as Exhibit, the Customer is informed that GEMELLii Drinks GmbH collects, stores, processes all data from the business relationship and may use it anonymized and/or pseudonymized for its own marketing towards third parties and may insofar pass it on to affiliated third companies and third parties used for the performance of the contract, in particular transport companies. The Customer agrees to this. The preceding consent also includes the transfer of data to industry-specific credit agencies in the course of the payment processing. The consent may be revoked at any time.

(2) The Customer will treat all business transactions that come to its knowledge strictly confidential. It is expressly prohibited for the Customer to use the name or company name "GEMELLii" or "GEMELLii Drinks GmbH" in any way for advertising, in particular to include them in reference lists or otherwise name them. Sentence 2 shall not apply insofar as GEMELLii Drinks GmbH has granted its prior written consent to the Customer for the specific individual case.

§ 16 Use of the Internet Portal

(1) By links on its internet pages GEMELLii Drinks GmbH refers to other pages on the internet. GEMELLii Drinks GmbH has no influence whatsoever on the design and content of the linked pages and expressly accepts no liability for this.

(2) The contents of the GEMELLii Drinks GmbH website are intended solely for the Customer's own information requirements with regard to the business relationship with GEMELLii Drinks GmbH and the purchase of its goods. Any use of the contents beyond that or linking to the contents for commercial purposes is not permitted. This particularly applies to watermarks and other marks of GEMELLii Drinks GmbH for images, product descriptions, product

data and other product information. The Customer acknowledges the aforementioned restrictions on the use of the contents.

§ 17 Final Provisions

- (1) Deviations from these GTC must be made in writing.
- (2) The contract is exclusively governed by the laws of the Federal Republic of Germany. The application of the UN sales law is expressly excluded.
- (3) Place of performance is the company seat of GEMELLii Drinks GmbH.
- (4) The exclusive place of jurisdiction for all disputes arising from or in connection with this contract is Frankfurt am Main, Federal Republic of Germany.
- (5) This English language version of the GTC of GEMELLii Drinks GmbH is just a translation of the original German language version for the convenience of the Customer. In any case of discrepancy between both versions the German language version as well as any references to German law terms shall prevail.

§ 18 Severability Clause

Should one or more provisions of these GTC be or become ineffective or should a loophole exist, the contract between GEMELLii Drinks GmbH and the Customer as well as the remaining terms and conditions remain effective. Instead of the invalid provision such valid provision shall be deemed to have been agreed that comes closest to the meaning and purpose of the invalid provision.

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