

**TERMS AND CONDITIONS OF SALE****1. GOVERNING TERMS AND CONDITIONS**

Unless another document related to terms and conditions is issued by the seller, these standard terms and conditions of sale shall apply to all orders for product (hereinafter "Product" or "Products") between the purchaser (hereinafter "Buyer") and the seller of the Products (hereinafter "Seller"). In the event that Seller and Buyer agree on the sale of Products in writing (signed order form = "Contract") then any order shall be governed by the terms and conditions referenced in the proposal or quotation. Buyer shall be deemed to have accepted these Terms & Conditions through (i) delivering a purchase order or a purchase order number to Seller or (ii) receipt and acceptance of Products or (iii) payment of Seller's invoice for the Products. Any terms and conditions contained in any purchase order, correspondence or accompanying payment for delivery of the Products, which are different from or in addition to these Terms & Conditions, shall not be binding on Seller, whether or not they would materially alter the order, and Seller hereby objects thereto. Any of Seller's quotations are valid for 30 days from the date when the Buyer received the quotation, unless otherwise notified by Seller in writing. The quotation shall be void if Buyer does not accept the quotation unconditionally by placing a written order within 30 days. The Seller is only bound to an order if he accepts it in writing or delivers the Products ordered to the Buyer or one of his agents

**2. CONFIDENTIALITY**

All information, including quotations, pricing data or information submitted by Seller to Buyer related to any order for Products are the confidential and proprietary information of Seller; and Buyer and its employees, agents or other parties for whom Buyer is responsible may not disclose Seller's confidential and proprietary information to any third parties, or use Seller's confidential and proprietary information for its own account or that of any third party, except in the performance of the order.

**3. PRICE; PAYMENT TERMS**

Prices exclude taxes and duties as well as any loading and delivery costs that the Buyer must pay. All prices include the Seller's standard packaging, but not pallets or crating for export goods.

Any Price is based on present material, production, storage and freight costs. In the event of an increase of more than five per cent (5 %) in the aforementioned factors within the period between the conclusion of the Contract and the time of actual delivery, the Seller reserves the right to adjust the prices to directly reflect such changes.

Unless otherwise notified by Seller, payments are due to Seller from Buyer no later than 10 days upon Buyer's receipt of an invoice from Seller. Payments that are outstanding more than ten (10) days from their respective due date shall bear an interest rate of one and one-half percent (1½%) per month (eighteen percent [18%] annually) until fully paid, including any interest payments thereon. If the rate of interest stated in the preceding sentence exceeds the maximum rate of interest that the applicable state law allows, then the rate of interest that will be assessed is the state maximum. In the event Buyer does not pay within the terms of the order, all collection costs incurred by Seller, including attorneys' fees will be paid by Buyer. Buyer shall indemnify Seller for all costs and expenses that the Seller incurs in collecting overdue amounts.

Payment for the sale of Products shall not be subject to offset, deduction or back charges by Buyer, unless such offset, deduction or back charge is expressly accepted in writing by an authorized representative of Seller. Any sums that have been deducted by Buyer in violation of this paragraph shall be considered overdue and are subject to the above interest charge. The price set forth in the order and all payments due to Seller from Buyer shall be in Euro currency.

**4. CHANGES**

Changes to the order regarding, specifications, scope of supply, delivery schedule may only be made upon execution by Buyer and Seller in writing ("Change Order"). Such Change Order shall state the parties' agreement on (i) change, (ii) an adjustment to the purchase price, and (iii) an adjustment in the date of shipment of the equipment and/or the period of performance. Both parties agree and acknowledge that unless a Change Order is agreed upon in writing by both parties, the Contract shall not be modified in any manner.

In the event Buyer has communicated proposed changes to Seller, Seller, at its sole discretion, shall either (a) accept the Change Order; (b) reject the Change Order and continue performance under the existing Contract; or (c) cancel the Contract. In the event that Seller elects (b) above Buyer shall either (i) agree to continue performance (of Seller) pursuant to the Contract or (ii) cancel the Contract.

**NEFT Beverages GmbH; Donaustrasse 37/6, 1020 Vienna, Austria**

Bank account: Erste Bank, BIC (SWIFT): GIBAAWXXXX

IBAN EUR: AT52 2011 1827 5147 2900

UID (VAT Nr): ATU70394316



## 5. DEFAULT; CANCELLATION

If Buyer fails to perform any of its obligations hereunder, including without limitation, failure to make payments as provided herein or otherwise, or if Buyer fails to promptly give reasonable assurances of future performance when requested by Seller, then Seller may, upon five (5) days' written notice to Buyer, declare Buyer to be in default and Seller may suspend performance of its obligations hereunder without liability and retain all rights and remedies Seller may possess at law, in equity and/or as provided in these Terms & Conditions. Furthermore Seller shall have the right to terminate the Contract if Buyer is in default under any other contract between the Buyer and the Seller.

In addition to the remedies above, to the extent that (i) Seller declares a default under this Section 5 or (ii) if the order is cancelled for any reason, other than (a) default by Seller or (b) Force Majeure, Buyer will make payment to Seller of reasonable cancellation charges which shall include all incurred costs plus twenty-five percent (25%) of the order price.

## 6. TAXES, PERMITS, FEES, LAWS

It is the Buyer's exclusive responsibility to obtain all licenses, exchange control documents, and any other consents needed for the export and import and use of the Products. The Buyer shall not be discharged from his obligations under these Terms & Conditions if he fails to obtain any license or other consent.

It is Buyer's duty to ascertain that the Products proposed by Seller and their subsequent import, sale and use is in accordance with applicable local laws, statutes, ordinances and building codes. Seller shall not be responsible for any of such compliance of the Products with any of the above mentioned regulations.

## 7. SHIPPING DATES; DELIVERY TERMS; TITLE; RISK OF LOSS

The Products are delivered "Ex Works" (Incoterms 2010) at the place named by the Seller in the Contract.

The scheduled dates for delivery of the Products are estimates based on production loading and/or third-party manufacturer's estimates at the time of order. Seller is not responsible for any actual, incidental or consequential damages arising by reason of any delay in delivery. Upon notification from Seller that Product is ready for delivery, Buyer must meet all obligations hereunder, including but not limited to payment, providing for delivery of the Product at the designated location, site preparation and all other obligations noted herein.

At the handover of the Product to Buyer or Buyer's representative's (delivery), Buyer or Buyer's representative shall inspect the Products. Such acceptance shall be considered a qualified acceptance and shall also constitute a waiver of any defect which any reasonable inspection would have revealed.

## 8. DELAYS, FORCE MAJEURE

If Seller is delayed at any time by the acts or omissions of Buyer, its agents, subcontractors or material suppliers, Change Orders, or by any Force Majeure defined below then the period of performance shall automatically be extended to accommodate Seller's revised production schedules, material purchases and/or labour remobilization. "Force Majeure" means circumstances beyond the respective parties reasonable control, including without limitation, acts of God, acts of public enemies, wars, other hostilities, blockades, insurrections, riots, epidemics, quarantine restrictions, floods, unavailability of components or supplies, lightning, fire, storms, earthquakes, washouts, arrests, restraints of rulers and people, civil disturbances, acts of any governmental or local authority, and any other acts and causes, not within the control of the party claiming excuse from performance, which by the exercise of due diligence and reasonable commercial effort, that party shall not have been able to foresee, avoid or overcome.

If Seller fails to deliver on the agreed date (other than the reasons mentioned herein, including Force Majeure), the Buyer shall be entitled to cancel the whole order, respectively the part which has not been delivered in time. The Buyer accepts such right to cancel as his only remedy and expressly waives any other rights and claims against the Seller.

## 9. SOURCE OF PRODUCTS

Seller reserves the right to obtain and/or manufacture the Products from or at any of its facilities or from any third-party manufacturer and the price of the equipment shall not be affected by the source of the equipment.



#### **10. PASSING OF RISK AND TITLE AND RETURNS**

The Seller's liability for the Products passes from the Seller to the Buyer at the earlier of the following to events:

- when the Products are handed over / delivered to the Buyer, the Buyer's agent, or any authorized person, or
- the agreed date of delivery, if the Buyer fails to make delivery as required under the Contract.

The Seller shall remain the legal owner of the Products until he receives full payment for all Products, whether the Products have been or have not been delivered to the Buyer.

In the event that the Buyer has not paid the full purchase price or if insolvency proceedings are under way against the Buyer, the Seller and any of his representatives is entitled to repossess or resale the Products and to enter the premises where the Products are stored at any time.

#### **11. LIMITATION OF LIABILITY**

The Seller warrants that the Products are produced in strict compliance with all regulations and applicable laws of the country of production.

The parties expressly agree, that the Seller's liability to the Buyer shall not exceed the invoiced price for the products in any case.

The Seller shall not be liable for any infringement of a third party's intellectual property rights, caused the Buyer's use of the Products.

BUYER UNDERSTANDS AND ACKNOWLEDGES THAT SELLER SHALL NOT BE LIABLE FOR ANY SPECIAL, DIRECT, INDIRECT, CONSEQUENTIAL, PUNITIVE OR INCIDENTAL DAMAGES OF ANY KIND, OR LABOR, EXPENSES, LOST PROFITS LOST OPPORTUNITIES, OR SIMILAR DAMAGES OF ANY KIND; AND REGARDLESS OF THE LEGAL THEORY OR CAUSES OF ACTION BY WHICH CLAIMS FOR ANY SUCH DAMAGES AS SET FORTH IN THE ENTIRETY OF THE ABOVE SECTION ARE ADVANCED, WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF ANY SUCH DAMAGES.

Buyer agrees to indemnify and hold harmless Seller and its vendors from any and all claims or liabilities asserted against Seller or its vendors in connection with the sale, delivery, re-sale, storage, or use of the Product arising in whole or in part out of or by reason of the failure of Buyer, its agents, servants, employees or customers to follow directions, instructions, warnings or recommendations furnished by Seller, manufacturer or its vendors in connection with the Product, or by reason of the failure of Buyer, its agents, servants, employees or customers to comply with all laws and regulations applicable.

#### **12. MISCELLANEOUS**

These Terms & Conditions supersede and replace any and all prior or contemporaneous agreements, understandings, arrangements or representations, whether oral or written heretofore made between the parties and relating to the subject matter hereof, and constitutes the entire understanding of the parties with respect to the sale of Products by Seller to Buyer. If either party, at its option, agrees to a waiver of any of the terms and conditions recited herein, such waiver shall not for any purpose be construed as a waiver of any succeeding breach of the same or any other terms and conditions; nor shall such a waiver be deemed as a course of conduct. If any provision or clause, or portion thereof, of these Terms & Conditions, or application thereof to any person or circumstances is held invalid or unconscionable, such invalidity or unconscionability shall not affect other provisions, or portions thereof, or applications of these Terms & Conditions which can be given effect without the invalid or unconscionable provision, or portion thereof, or application, and to this end the provisions of these terms and conditions are declared to be severable. Captions and heading in these Terms & Conditions are strictly for the purpose of convenience and general reference only, and shall not affect the meaning or interpretation of any of the provisions herein. Except as required to obtain necessary licenses or governmental approvals, each party shall obtain the written approval (which approval shall not be unreasonably withheld) of the other in advance of the disclosure of any news releases, articles, brochures, advertisements, prepared speeches and other information releases, relating to the subject matter hereof or the work performed or to be performed hereunder.



**13. GOVERNING LAW AND JURISDICTION**

The Contract and these Terms & Conditions shall be ruled under the laws of Austria. The competent court in Vienna shall have sole jurisdiction.

Neither the Uniform law of the International Sales of Goods, the Uniform Law on the Formation of Contracts for the International Sale of Goods nor the Convention on Contracts for the Sale of International Goods applies to the Contract. Incoterms 2010 are to be considered an integral part of these Terms & Conditions unless they are inconsistent with the above terms.

The Buyer agrees that he has no other rights of recourse against the Seller other than expressly stated in these Terms & Conditions.