

**General terms and conditions of sale of Protaste Drinks B.V.****1. Definitions**

In these general conditions of sale the terms below are to be understood as follows:

- a. Customer: Protaste Drinks bv' (intended) contract partner;
- b. Delivery: the putting at disposal of Products, by Protaste Drinks bv, to Customer or a third party assigned by Customer;
- c. Protaste Drinks B.V Contract filling,.
- d. Notice of Delivery: any message, in writing or verbal, by which Protaste Drinks B.V. informs Customer that the Products are at Customer's disposal;
- e. Parties: Protaste Drinks B.V. and Customer together;
- f. Products: any and all beverages processed and/or filled, and any other (material) products delivered by Protaste Drinks B.V.;
- g. Services: all services provided by Protaste Drinks B.V. to Customer, such as but not limited to processing and/or filling of beverages, purchasing raw materials and packaging materials, packaging and temporarily storing Products;
- h. Specifications: the specifications, provided by Customer, the Products should conform to.

**2. Scope of application**

1. These general conditions of sale govern the offering, sale of all Products and all (other) Services from or on behalf of Protaste Drinks B.V. to Customer, and apply to all similar dealings between Parties.
2. Protaste Drinks B.V. will only be bound by stipulations varying from these general conditions of sale if and insofar as Protaste Drinks B.V. has explicitly agreed in writing to such varying stipulations.
3. In the event that special provisions in an agreement (entered into by Protaste Drinks B.V.) are in conflict with these general conditions of sale, the special provisions will prevail.

**3. Quotations, orders, forecasting, (sub) contracting**

1. Quotations, made by Protaste Drinks B.V. in whatever form, are not binding upon Protaste Drinks B.V. and merely constitute an invitation to Customer to place an order. All quotations issued by Protaste Drinks B.V. are revocable and subject to change without notice. Orders are not binding until accepted by Protaste Drinks B.V. in writing. It shall be at Protaste Drinks B.V.' sole discretion to accept an order or not.
2. Price quotations based on estimated or projected quantities are subject to increase in the event that actual quantities purchased during the specified period are less than the estimated or projected quantities.
3. Samples supplied to Customer will only serve information purposes and in no way imply any express or implied conditions or warranties of any kind, including as to quality, description, merchantability, suitability or fitness for any purpose and Customer shall be deemed to have satisfied itself as to such matters prior to ordering the Products.
4. All Products shall be ordered by Customer by placing an order with Protaste Drinks B.V.. Each order shall always include in writing the quantity, the preferred date of Delivery, the Specifications and any other relevant information. Page **2 of 7**
5. Parties shall develop and keep up-to-date a 3 (three) months' rolling forecast. In case Customer does not cooperate with keeping up-to-date a 3 (three) months' rolling forecast, Protaste Drinks B.V. may extract such forecast from any (historical) data available. All volumes over the first 4 (four) (rolling) weeks of such 3 (three) months' rolling forecast shall always be considered ordered and accepted.
6. Protaste Drinks B.V. will engage such (sub)contractors as it deems appropriate in connection with the rendering of the Services. Protaste Drinks B.V. shall ensure that selected (sub)contractors are adequately equipped in respect of the required performance. Customer acknowledges that (sub)contractors are to be considered independent third parties with exclusive control over their employees, and not agents, employees, or authorized representatives of Protaste Drinks B.V..

7. All Products are "Ex Works" at the (designated) production site(s). Customer shall collect the Products from the production site(s) within 5 (five) days after having received Notice of Delivery. Delay in the Delivery of any Products shall not relieve Customer of its obligation to accept Delivery thereof. Deviations from the agreed quantities of Products shall not entitle Customer not to accept Delivery of Products. In the event Customer does not collect any Products within 5 (five) days after having received Notice of Delivery, Protaste Drinks B.V. will be entitled to charge Customer with all costs and expenses related to the storage of the Products. In the event Customer does not collect any Products within 14 (fourteen) days after having received Notice of Delivery, and has not paid all amounts that are outstanding in respect of the Products (inclusive of storage costs as referred to in the previous sentence), Protaste Drinks B.V. shall be entitled to sell such Products to any party at any price, and to use the (net) proceeds to pay all amounts which Customer owes to Protaste Drinks B.V., before refunding the balance, if any, to Customer. Customer (upfront) irrevocably authorizes ("onherroepelijke volmacht") Protaste Drinks B.V. to act, on its behalf, in the manner as described in the previous sentence.

**4. Compliance with laws, quality control, information required for rendering the Services and (re)selling Products in the name of Protaste Drinks B.V.**

1. Protaste Drinks B.V. will comply with all laws, regulations (and other rules) applicable to the Services it performs. Customer will not ask Protaste Drinks B.V. to render any Services in a manner that would violate any law or regulation.
2. Customer shall be entitled to have the quality of the Products/Services monitored at the production site(s) by independent audit experts. At the request of Customer, Protaste Drinks B.V. will provide Customer with copies of processing procedures and production/quality (control) reports as well as with samples of the (components of the) Products and packaging material.
3. Customer shall timely provide Protaste Drinks B.V. with all information required for rendering the Services, such as but not limited to the composition and/or ingredients of the Products. Customer is responsible for final approval of the labelling of the Products. Input in this respect, by Protaste Drinks B.V., shall be considered as free advice without any engagement.
4. Customer shall examine the Products on Delivery and during the processing, storage and transportation in such frequency and on such parameters, so as to detect any possible Products not meeting the Specifications as early as possible. In case of non-conformity, Customer shall immediately inform Protaste Drinks B.V. thereof in writing. Products not meeting the Specifications shall be made available to Protaste Drinks B.V. for inspection.
5. Customer shall not be entitled to resell Products in the name or on behalf of Protaste Drinks B.V. without prior written authorisation of Protaste Drinks B.V..

**5. Transfer of risk and property, right of retention and pledge, default of Customer**

1. The risk of the Products shall pass to Customer on Delivery.
2. Products for which Delivery is suspended pending payment by Customer, as well as Products of which Delivery is wrongfully rejected or not accepted by Customer, shall be held and stored by Protaste Drinks B.V. at the risk and expense of Customer.
3. The ownership of the Products shall not pass to Customer and full legal and beneficial ownership of the Products shall remain with Protaste Drinks B.V. unless and until Protaste Drinks B.V. has received payment in full for the Products, including all secondary costs such as interest, charges, expenses etc..
4. Until payment for the Products has been completed, Customer is entitled to use the Products solely to the extent required in its ordinary course of business, and, to the extent possible, shall: (a) keep the Products separate and in a clearly identifiable manner, (b) notify Protaste Drinks B.V. immediately of any claims by third parties which may affect the Products, and (c) adequately insure the Products.
5. As security for payment of all Customer owes or will owe to Protaste Drinks B.V., Protaste Drinks B.V. is entitled to exercise a right of retention on any Products which are entrusted to and/or under control of Protaste Drinks B.V..
6. All Products, documents and funds which Protaste Drinks B.V. has or will get under its control in the course of performing the Services shall, as of the moment of control by Protaste Drinks B.V., be subject to a right of pledge as provided in articles 3:236 and 3:237 Dutch Civil Code ("DCC"), granted

by Customer. Should the Products, documents or funds be or become under control of a (sub)contractor, such (sub)contractor shall be regarded a third party as referred to in article 3:236 paragraph 1 DCC.

7. If Customer is in default of performance of its obligations (towards Protaste Drinks B.V.), or if Protaste Drinks B.V. has reasonable doubts with respect to Customer's performance of its (Customer's) obligations towards Protaste Drinks B.V. and Customer fails to provide to Protaste Drinks B.V. adequate assurance of its performance before the date of scheduled Delivery, or if Customer becomes insolvent or otherwise unable to pay its debts as they mature, or goes into liquidation (otherwise than for the purposes of a reconstruction or amalgamation), or any bankruptcy or insolvency proceedings are instituted by or against Customer, then, without prejudice to any other of its rights, Protaste Drinks B.V. may forthwith: (i) demand re-delivery and take repossession of any delivered Products which have not been paid for, for which purpose Customer irrevocably authorizes Protaste Drinks B.V. to enter upon all or any of the premises where the Products are or may be located, all costs relating to the recovery of the Products being for Customer's account, and/or (ii) suspend its performance without any intervention of courts being required and without any liability for Protaste Drinks B.V. resulting from or in connection with such suspension or termination.

## **6. Intellectual property**

1. Customer guarantees and warrants that it has the full right to apply or cause to apply all trademarks, trade names, copyrights, patents, designs, concepts, recipes and/or other rights of intellectual property and all further relevant rights, relevant for the performance of the Services, and that the aforementioned rights vest in Customer or a third party from whom Customer has acquired the right to make such rights available to Protaste Drinks B.V..

2. Protaste Drinks B.V. shall not be responsible for any infringements of any trademarks, trade names, copyrights, patents, designs, concepts, recipes and/or other rights of any third party, including but not limited to intellectual property rights, or breach of confidentiality by Customer.

## **7. Payments**

1. All amounts owed by Customer to Protaste Drinks B.V. shall be paid on the basis of net cash, to be received by Protaste Drinks B.V. within any specifically agreed payment term or, in the absence of such agreed term, within 30 (thirty) days following the date of Protaste Drinks B.V.' invoice, by means of transfer into the bank account mentioned on the invoice.
2. All rates, amounts and prices are exclusive of VAT and all other taxes that compulsorily apply (e.g. sugar excise and eco tax). Customer shall provide Protaste Drinks B.V. with its VAT identification number and other relevant information in order to qualify Customer for any applicable VAT exemptions.
3. In case Customer fails to timely pay amounts which are outstanding and due, interest at a rate of 1,5% per month will become due and payable as of the day that payments were payable and due up to and including the date of payment in full.
4. In case of non-fulfilment by Customer of any of its obligations (inclusive of its obligation to timely pay any amounts which are outstanding and due), Customer will be liable for any and all reasonable costs reasonably incurred by Protaste Drinks B.V. in order to achieve that Customer performs its obligations. Extrajudicial costs will be deemed to minimally amount to 15% of the total claim amount exclusive of extrajudicial costs.
5. Every payment by Customer shall in the first place serve to pay the judicial and extra-judicial costs and interests owed by it, if any, and subsequently shall always be applied to settle Protaste Drinks B.V.' oldest outstanding invoice or claim first.
6. Any complaint with respect to an invoice must be notified to Protaste Drinks B.V. in writing within 14 (fourteen) days after the date of invoice. Thereafter, Customer shall be deemed to have approved the invoice.
7. Amounts which Customer owes to or can claim from Protaste Drinks B.V., cannot be set-off by Customer against amounts which Customer can claim from respectively owes to Protaste Drinks B.V.

## **8. Complaints and claims**

1. Complaints regarding the Services shall be made in writing and must reach Protaste Drinks B.V. not later than 7 (seven) days from the date of Delivery or – in other cases – the date the Services were rendered in respect of any shortage, defect or default, which would be apparent from a reasonable inspection, and 7 (seven) days from the date on which any other claim was or ought to have been apparent, but in no event later than 6 (six) months from the date the Services in question were completed. Use or processing by Customer of the Products shall be deemed to be an unconditional acceptance of the Products and a waiver of all claims in respect of the Products.
2. When determining whether or not the Products conform to the Specifications, starting point shall be an analysis of the samples or records retained by Protaste Drinks B.V. and taken from the batches or production runs in which the Products were processed. Products that Protaste Drinks B.V. consents or directs in writing to be returned shall be returned at the risk of Customer, to the destination directed by Protaste Drinks B.V..
3. Complaints, if any, do not affect Customer's financial obligations pursuant to article 7. Upon receipt of a complaint, Protaste Drinks B.V. is entitled to suspend all further Deliveries or Services until the complaints are established to be unfounded and/or refuted or until the defect has been totally cured.
4. Customer shall never admit its and/or Protaste Drinks B.V. ' liability and/or responsibility for any non-conformity towards any third party, without Protaste Drinks B.V.' prior written approval.
5. Each claim must contain all information necessary to identify the Products/Services affected, the basis for liability and the amount of the alleged damage or loss, as well as all appropriate supporting documentation. Customer will cooperate with Protaste Drinks B.V. and its insurers in their investigation of any (potential) claim by Customer. **Page 4 of 6**

6. Any claim against Protaste Drinks B.V. resulting from or in connection with Services rendered will lapse after a period of 12 (twelve) months as of the date of the completion of the Services or, as the case may be, of the date when the Services should have been completed. Expiration can not be interrupted within the meaning of article 3:317 DCC.

#### **9. Liability and indemnification**

1. Protaste Drinks B.V. warrants that the Products shall conform to the Specifications, to the extent Protaste Drinks B.V. has agreed, upfront and in writing, these Specifications. If and to the extent Products fail to meet such warranty, as shall be determined in accordance with the provisions of article 8, Protaste Drinks B.V. may at its own option within a reasonable time either repair or replace the Products at no charge to Customer, or issue a credit for any such Products in the amount of the historical cost price of such Products. Accordingly, Protaste Drinks B.V.' obligation shall be limited solely to repair or replacement of the Products or for credit of the Products.

2. Protaste Drinks B.V.' obligation to repair, replace, or credit shall be subject to receipt by Protaste Drinks B.V. of timely written notice of any alleged non-conformance of Products and, if applicable, the return of the Products, in accordance with article 8.

3. Protaste Drinks B.V. shall not be liable for whatever damage or loss, and in respect of whatever claim, resulting from any potential negative characteristics that the (semi-finished) Products might have although meeting the Specifications.

4. Protaste Drinks B.V.' liability for any and all claims for damage or loss, is limited to and shall in no event exceed the amount paid by Customer to Protaste Drinks B.V. in respect of the Services regarding to which the claim is made. Under no circumstances shall Protaste Drinks B.V. be liable to Customer or any other person for any kind of indirect, consequential or punitive damage or loss, such as but not limited to business interruption or loss of profits.

5. Notwithstanding the other provisions of this article 9, Protaste Drinks B.V. shall not be liable for damage (or loss) which was caused by force majeure within the meaning of article 6:75 DCC.

6. Protaste Drinks B.V. shall not be entitled to avail itself of the provisions of these general conditions of sale which exclude or limit its liability, if the damage was caused by the wilful misconduct or gross recklessness of the management of Protaste Drinks B.V..

7. Customer shall be liable for all damage resulting from (i) not having provided Protaste Drinks B.V. timely with all information required for rendering the Services, or (ii) the materializing of risks connected to any possible hazardous characteristics of the Products, except in as far as the damage was caused by a fault of Protaste Drinks B.V., its employees or agents.

8. Customer shall be liable for all costs, damage and expenses whatsoever resulting from not (timely) clearing customs documents, also in case the not (timely) clearing customs documents was caused by a fault of Protaste Drinks B.V., its employees or agents.

9. Customer shall safeguard, hold harmless and indemnify Protaste Drinks B.V. from and against any and all claims submitted by third parties, to the extent such claims arise from damage or loss that, pursuant to these general conditions of sale, would have been for Customer's account.

10. Protaste Drinks B.V. may also rely on all provisions of these general conditions of sale in the event Customer starts a tort action ("onrechtmatige daadsactie") (against Protaste Drinks B.V.) in respect of damage or loss somehow related to the Services.

#### **10. Insurance**

1. Both Parties shall maintain a comprehensive commercial general liability insurance at least covering their liability under these general conditions of sale, with a limit of at least EUR 5,000,000.00 per claim.

2. In addition to the comprehensive general liability insurance as referred to in article 10.1, Customer shall also maintain, both for its own benefit and for the benefit of Protaste Drinks B.V., a product liability insurance inter alia covering any possible recall, which product liability insurance shall have precedence over any other liability insurance of the Parties.

3. Both Parties shall ensure that all insurances required will be underwritten by insurance

companies authorized to transact business in all jurisdictions in which the Products will be delivered/the Services will be rendered. Upon request of a Party, the other Party shall furnish proof of insurance existence evidencing the foregoing coverage.

**11. Excused performance of Protaste Drinks B.V.**

1. Protaste Drinks B.V. will not be responsible for any failure to meet its obligations towards Customer and will not be subject to any remedy by Customer hereunder, including any right to suspend performance of its (Customer's) (financial) obligations or terminate any agreement for breach, to the extent such failure is actually due to: (i) force majeure within the meaning of article 6:75 DCC or (ii) failure of Customer to perform its obligations towards Protaste Drinks B.V..

**12. Excess stock**

1. Upon termination of the Services, Customer shall reimburse to Protaste Drinks B.V. the historical cost price of all (at the time of the termination) existing stock of raw materials and/or packaging materials which are specifically meant for rendering the Services to Customer, plus the costs of destruction of the respective raw materials and/or packaging materials that Customer does not collect within 14 (fourteen) days after the date of termination, provided that Protaste Drinks B.V. is not able to use such materials for other products.

2. In case the Specifications are changed in the course of Protaste Drinks B.V. rendering Services, as a result of which certain stock of raw materials and/or packaging materials becomes useless, the provisions of article 12.1 apply correspondingly.

**13. No waiver, repugnancy**

1. Failure by Protaste Drinks B.V. to enforce at any time any provision of these general conditions of sale shall not be construed as a waiver of Protaste Drinks B.V.' right to act or to enforce any such term or condition and Protaste Drinks B.V.' rights shall not be affected by any delay, failure or omission to enforce any such provision. No waiver by Protaste Drinks B.V. of any breach of Customer's obligations shall constitute a waiver of any other prior or subsequent breach.

2. In the event that any (part of a) provision of these general conditions of sale shall be held to be invalid or unenforceable, the same shall not affect in any respect whatsoever, the validity or enforceability of the remaining provisions and shall be severed therefrom. The provisions held to be invalid or unenforceable shall be reformed to provisions satisfying the legal and economic intent of the original provisions to the maximum extent permitted by law.

**14. Governing law and dispute resolution**

1. All agreements to which these general conditions of sale apply are governed by and subject to Netherlands law.

2. All disputes arising from or in connection with agreements to which these general conditions of sale apply which cannot be settled amicably shall exclusively be brought before the competent court in Amsterdam, the Netherlands, unless (an)other court(s), according to provisions of international conventions, laws and statutory regulations which mandatorily apply, would be exclusively competent.

3. These general conditions of sale have been filed at the court in 's Hertogenbosch, under file number 54/2009. These general conditions of sale are applicable with effect from 1 August 2009 and are subject to change at any time without notice.

**15. Reservations and errors by purchasing through the web-shop**

Our web-shop is professionally updated weekly. The content and prices are checked carefully. Because of the technology it is possible that content and prices showed wrong. Protaste is allowed to cancel the order in case of an obvious mistake.