



## **General Terms of Delivery and Payment**

Deviations from these terms must be confirmed by us in writing. Purchasing terms of buyers and purchasers shall – in so far as they deviate from the terms hereafter – not be accepted, even if we have not expressly stated our rejection. We presuppose the acceptance of these terms upon awarding the order. The acceptance of the delivery confirms the recognition.

### **1. The prices are understood:**

For bottles/boxed wines per 0,187 l, 0,25 l, 0,5 l, 0,75 l, 1,0 l, 1,5 l bottle, 2,25 l bag-in-box, 3,0 l bag-in-box or 10 l bag-in-box, 20 l KEGs, including glass and light disposable packaging, including labelling, FCA.

For bulk-wines per 1,000 litres, without bulk, FCA, loaded free of charge.

The offer and confirmation of orders for wines of certified origin and quality are made subject to the awarding of the official test number ("Amtliche Prüfnummer"). The offer is subject to confirmation.

### **2. Payment**

Unless otherwise agreed, the following terms of payment are applicable:

Invoiced amounts become due and payable 30 days from the date of the invoice net cash. For payment which become overdue due to purchasers default, we shall charge bank interest amounting to 5 % in addition to the applicable interest rate of the European Central Bank starting from the 3<sup>rd</sup> day after the date on which the respective payment became due, or – if applicable – indemnification, if in excess to such interest.

Wine from the cask is payable immediately net cash upon receipt of invoice.

Cheques shall only be accepted upon our prior approval and as conditional payment only. Discounting and collection charges shall be borne by the purchaser. We assume no responsibility for presentation, protest, notification and return in due time, if cheques are not honoured. Protest shall be regarded as waived unless otherwise agreed.

All effected payments shall generally be credited against the oldest due claim. Indicated allocation for a different purpose can only be taken into account if there are no due claims on the day of the receipt of the payment.

The retention of payments or set-off due to any customer claims of the purchaser for whatever reason shall be permitted only against such claims, which are accepted by us in writing or confirmed by respective court decision.

Payments may only be effected to us only.

If purchaser becomes insolvent or if there is a credible suspect with regard to such insolvency, we are entitled, without previously issuing a warning or setting a deadline for due performance, to cancel supply agreements in whole or in part and to collect claims which have otherwise not fallen due.

If an accepted cheque is protested or if the purchaser's accepted cheques are considered non-discountable or no longer discountable at the Central bank, then the total outstanding debt shall fall due immediately. We reserve the right to demand cash before delivery or down payment.

Representatives or Agents are not entitled to effect collection.

### **3. Delivery**

All delivery obligations are expressly under the precondition of actual viability. We will use our best endeavours to meet delivery periods. A delivery period shall be binding only if accepted by us in writing.

The undertaking to effect delivery of wines is given subject to granting of the official bottling number ("Amtliche Prüfnummer"), if necessary.

We reserve the right, if an ordered wine is not available, to offer a wine of the same quality as a substitute. In the case of sale for later and successive acceptance we shall be entitled to effect the delivery from later arriving batches, in which respect slight quality deviations shall give no right to make a complaint. Specimens and samples only represent the average quality.

Orders shall be regarded as accepted if they are confirmed by us in writing or upon the issuing of the invoice. Unless confirmed in writing by us, Agreements concluded with our representatives are non-binding.

Call orders which – due to purchasers default - are not accepted within 2 month from the day of our confirmation and/or conclusion of the agreement, are payable immediately without deduction. If collection or payment is not effected within the stipulated period, after the first ineffective reminder, we shall be entitled, without sending a further reminder or giving notice of default, to withdraw from the agreement and/or to charge indemnification as well as interest and storage charges.

Unforeseeable events out of the reasonable control of us such as but not limited to changes in the economic and political circumstances, official measures, cases of force majeure, strikes, lock-outs, riots, transport disruptions, operational breakdowns, difficulties of our own suppliers, fire and suchlike shall release us at our option in whole or in part, under exclusion of any claims for damages, also in the cases indicated hereafter, from the delivery or from meeting the delivery period.

If after the conclusion of the agreement, cost increases of more than 5% of the order value, e.g. for levies, duty, tax or levy and / or difficulties in procurement of the product in the wine-growing areas, major price increases for imports, etc., occur, then we shall be entitled to withdraw from the agreement with regard to individual batches or the complete batch or to charge a corresponding surcharge in so far as we have not yet invoiced the goods.

The aforementioned shall apply mutatis mutandis in the case of the complete or partial blockage of the foreign exchange allocation, foreign exchange market, currency or exchange rate alterations.

Purchaser's offer shall be binding until accepted or rejected by us.

The seller assumes no guarantee for the due and orderly and lawful nature of the goods in accordance with the law of other countries than Germany.

### **4. Reservation of title**

The reservation of title serves to safeguard all claims which have raised from the business relations of our purchasers with us respectively those which will arise in future.

We shall retain title to the goods until the payment in full of all liabilities of the purchaser which have arisen from the business relations, including interest and charges and suchlike, in the case of the submission of cheques until their payment in full.

If the goods are mixed or processed, then we shall become owner or co-owner of the new good, if the value of the new good is higher or at least the same as of our product. The pledging or transfer by way of security of our goods shall be inadmissible before payment in full. In the case of the attachment of our goods by third parties or other impairment of our rights, the purchaser must inform us immediately and safeguard our rights against third parties.

The purchaser shall only be entitled to resell and dispose of the goods in the ordinary course of business. He hereby assigns to us from the outset all claims which it acquires from the resale or due to another cause in law regarding our goods with all ancillary rights including its profit in the amount of its liabilities; assignment is hereby accepted by us. On request, the purchaser shall be obliged to notify the assignment of the claim to its creditor, to issue us verbally or in writing with all necessary information for the assertion of our rights and to surrender the necessary documents to us.

Subject to express revocation at any time, the purchaser is authorised to collect claims in its own name as our agent and to dispose of the assigned rights within the ordinary course of business as long as it meets its obligations to us. If the assignment becomes ineffective, then we shall be regarded to be commissioned and authorised to collect the purchase price for the purchaser and to make the necessary legal declarations.

In the case of cash sales the proceeds received from the third party in the amount of its liabilities shall become our property immediately; they are therefore to be kept separately from other funds, recorded accordingly and administered for us until called. If extraordinary dispositions, e.g. clearance sale, transfers by way of security or pledges, are effected by the purchaser, if attachments on its assets are made, if it lets cheques be protested or ceases payment, then all our payment periods shall fall due immediately. In this case, the right to resell our goods and the power of disposition shall expire.

If the purchaser is in default with its obligations, then we can repossess any remaining goods without further notice without withdrawing from the agreement.

Assignment within the legal possibilities of German "Insolvenzordnung" is hereby agreed.

### **5. Shipment**

Delivery shall be FCA wine cellar Longuich or any other place agreed upon in writing. If we provide for the shipment of the goods, shipment shall be executed for the purchaser's account and risk. All damage in transit and all damage resulting from force majeure shall, in so far as such damage is not covered by transport insurance be borne by the purchaser. In particular we do not assume any liability with regard to the delivery of goods in due time.

If unforeseeably cold or hot weather occurs which could endanger the quality of the wine, then no obligation to ship the wine shall arise, even in the case of binding delivery dates. However, delivery shall be executed as soon as such circumstances have ceased. Breakages which have occurred during shipment must be confirmed upon the receipt of the shipment officially by the railway company or by the responsible carrier so that the loss can be asserted if applicable at the transport insurance company haulage contractor. Minimum number of bottles for each sort of wine is 60 bottles, minimum amount for shipment 840 bottles.

Shipments for which our customary cardboard box packaging cannot be used are packed in stronger cardboard boxes with sleeves etc., the resulting additional expenses shall be invoiced to the purchaser in accordance with our respectively valid list for special packaging.

Empties shall not be taken back.

Loaned casks are to be emptied as soon as possible, rinsed out, fumigated and sent back on a carriage-paid and cost-free basis.

### **6. Complaints**

The purchaser must examine the goods without delay after receipt and, if a defect is apparent, must notify this defect to the seller immediately in writing. Complaints of any nature may only be taken into account within 7 days in each case after receipt of the confirmation of order, invoice, good etc. in so far as they are not already excluded on the basis of this agreement.

A defect notified within the stipulated period shall oblige us at our option to supply a replacement in the form of contractual goods or to reimburse the purchase price or, in case bottles, boxes or labels are defect, to rectify the defect. Cancellation of the sale and indemnification is excluded.

Compensation for bottled wines which taste corked cannot be claimed. Crystal deposits are no reason for complaint. No guarantee for the storage life of wines purchased in the cask may be assumed.

Claims for damages arising from EAN (Bar) codes are excluded in all cases.

### **7. Substantive law, place of performance and place of jurisdiction**

Place of performance for delivery and payment is Longuich/Mosel for both parties, especially also for domiciled cheques.

German law shall be applicable in the case of foreign transactions under the exclusion of international purchasing law.

### **8. Alternative Dispute Resolution**

**Schmitt Söhne does not participate in the dispute resolution proceedings before any consumer conciliation body.**

### **9. Interpretation and adaptation**

If individual provisions of this agreement are null, void or ineffective, then the effectiveness of the remaining contractual provisions shall not be affected thereby. The contestable provision is to be interpreted in this case in such a manner that the original intention of the said provision is achieved.

The same shall apply to filling gaps in the agreement or to amendments to the agreement