

General Terms and Conditions (GTC)

A. General part

1 Introduction and definitions

- 1.1** These General Terms and Conditions (GTC) ("**GTC**") of Diwisa Distillerie Willisau SA, Menznauerstrasse 23, 6130 Willisau LU [Canton of Lucerne], Switzerland ("**Diwisa**") regulate the contractual relationship between you as a business (B2B) or retail (B2C) buyer / participant ("**Customer**") and Diwisa as the seller / organiser (the Customer and Diwisa each individually also a "**Party**" or jointly the "**Parties**").
- 1.2** The range offered by Diwisa ("**Products**") to its Customer include on the one hand goods, i.e. the manufacture of and trade in drinks of all types, including in particular alcoholic drinks, spirits or liqueurs, along with accessories or advertising material ("**Goods**"), and on the other hand the rendering of services in the form of the provision (loan or hire) of particular appliances or movable items (refrigerator, coffee bar, coffee machine, water heater, etc.) ("**Event Item(s)**") as well as the holding of events such as visits, guided tours, workshops etc. (list not exhaustive) ("**Event(s)**").
- 1.3** A contract shall be concluded between the Parties in relation to the purchase of Products through field representatives or sales staff, shops (e.g. the "Destithek"), external retail outlets, in writing, by telephone (Customer Service: 041 972 72 72), orally etc. ("**Traditional Sales Channels**"), as well as using modern technology or electronically (e-commerce), i.e. over the internet or using other forms of data transmission such as the web shop (online shop), the website (form), app etc. ("**Electronic Sales Channels**").
- 1.4** These GTC are sub-divided into an introductory general **part A**, which applies to all Diwisa Products, and three supplementary **special parts B1, B2 and B3**, which regulate separately the online shop (Goods), Events and Event Items of Diwisa. In the event of any discrepancy, the terms of each relevant special part shall take precedence over those of the general part (for the Product concerned).

2 Scope

- 2.1** These GTC apply for all Products from Traditional and Electronic Sales Channels, provided that the Parties have expressly or implicitly acknowledged the GTC in relation to the conclusion of a contract. In placing an order for Products with Diwisa, these GTC shall be deemed to have been accepted by the Customer. The GTC shall then constitute an integral part of the relevant contract between the Parties.
- 2.2** Should the Parties specifically agree to any supplementary terms in addition to these GTC or to any terms that depart from the GTC in relation to the purchase of Products (e.g. individually negotiated contract for particular Goods, Events or Event Items), this individual agreement shall prevail over these GTC in the event of any discrepancy.
- 2.3** Any amendments to or side agreements alongside these GTC or the related contract shall only be valid if confirmed by Diwisa in writing. If a contract is concluded and the Customer also submits its own general terms and conditions, the terms that coincide with these GTC shall apply. A written agreement shall be concluded in relation to any terms that are inconsistent with each other.
- 2.4** These GTC shall apply on an open-ended basis, unless they are amended or revoked by the Parties by a written agreement.

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2.5 Should any of the terms of these GTC or of the related contract be invalid or should the contract contain any gaps, this shall not affect the legal validity of the remaining terms. A valid term shall be deemed to have been agreed to from the outset that comes as close as possible to the economic outcome desired by the Parties in place of the invalid term. The same shall apply in the event of any gap in provision.

2.6 All questions or any objections relating to these GTC may be submitted in writing (address according to part A, section 1 of the GTC), by email (info@diwisa.ch) or to Diwisa Customer Service (041 972 72 72).

3 Prerequisites for the conclusion of a contract

3.1 Under the terms of applicable legislation on the protection of young persons in Switzerland and Liechtenstein, any Diwisa Products that consist in alcoholic drinks or spirits may only be sold or handed over to persons receiving them for the Customer who have reached the minimum age prescribed by law, i.e. specifically:

- sale or service of fermented alcoholic beverages such as beer, wine, cider, fermented fruit wine etc. only to persons over the age of 16 (exception: over 18 in the Canton of Ticino); and
- sale or service of distilled alcoholic beverages such as spirits, schnapps, fortified wines, alcopops (mixed drinks containing spirits) etc., or of beer and wine containing more than 15% alcohol or natural wine (made from fresh grapes) containing more than 18% alcohol only to persons over the age of 18.

3.2 Products may only be ordered through all types of sales channels by natural or legal persons with full legal capacity.

3.3 The (personal) data that are required to order Products, such as surname, first name, date of birth, address (e.g. delivery or invoice address), email address, telephone number etc. must be provided by the Customer in full and accurately under all circumstances. Diwisa expressly reserves the right to check any such data.

3.4 Alcoholic Products may only be ordered by Customers for persons who fall under part A, section 3.1 of the GTC. If an order includes *inter alia* also alcoholic products, in placing the order the Customer confirms that he/she has reached the minimum age required by law in order to make the purchase and to present to Diwisa a clearly legible colour copy of a valid official identity document (identity card, passport, driving licence etc.) promptly upon request in order to enable his/her exact age to be checked. The Customer undertakes to ensure that only he/she or a person authorised by him/her who complies with the requirements set forth in part A, section 3.1 of the GTC accepts the delivery.

4 Offer, prices, conclusion of a contract and order changes

4.1 The prices indicated by Diwisa within Traditional Sales Channels (rates, price lists, prospectuses, information provided over the telephone etc.) are net prices and constitute a non-binding invitation to the Customer to submit an offer (invitation to treat) and include the taxes and duties prescribed by law – although do not include value added tax and shipping (for exceptions, see part A, section 6 of the GTC). All documents and templates provided to the Customer following such a request shall remain the property of Diwisa. No third party shall be granted access to the documents mentioned without the approval of Diwisa.

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- 4.2** In placing an order for Goods, Events or Event Items through any type of sales channel and in accepting the GTC, the Customer shall be deemed to have submitted a legally binding **offer** to conclude a contract with Diwisa for the Products ordered.
- 4.3** Under all circumstances, i.e. in relation to all types of sales channel, a contract shall only be concluded upon **acceptance** or confirmation (of the contract) by Diwisa. In the event that a contract is accepted, the Customer shall receive an order confirmation from Diwisa at the address specified by the Customer in the form selected by Diwisa, whether orally, within a personal discussion, through specific action or implicitly (delivery), in writing or electronically (e.g. by email).
- 4.4** Possible grounds for a refusal by Diwisa to accept the Customer's offer may include in particular (list not exhaustive) that:
- it is not (or no longer) possible for the Product ordered to be manufactured or delivered by Diwisa, it is not (or no longer) available or it cannot (or can no longer) be ordered;
 - it is not (or no longer) permitted or possible for the Product ordered to be placed on the market by Diwisa due to legal or other objective reasons;
 - the residence or registered office of the Customer or the place of supply is situated outside Switzerland or Liechtenstein;
 - the Customer has failed to pass a credit or (minimum) age check;
 - customs duties or any other tax charges have increased;
 - tickets for the Event (if the number of participants is subject to an upper limit) have already sold out; or
 - the minimum number of participants required for an Event has not been reached.
- 4.5** Employees of Diwisa are not authorised to agree orally to any different terms or to provide any assurances over and above the terms of the contract or these GTC.
- 4.6** Should any information concerning a Product in the range prove to have been incorrect, Diwisa shall submit a counter offer to the Customer, which the Customer may thereafter be free to accept.
- 4.7** If the Customer requests any supplies, products or services that are not mentioned in the contractual confirmation, these shall be invoiced in addition.
- 4.8** Should the Customer wish to make any changes to the order confirmation, Diwisa shall inform him/her within a reasonable time whether the change is possible along with any implications that it will have for the provision of the services, deadlines and prices. Diwisa shall remain bound by an order to alter the service for a period of two weeks. The change shall not apply to Products that have already been supplied.

5 Right of cancellation (returns)

- 5.1** Even though Swiss law – aside from doorstep sales and similar contracts – does not recognise any statutory obligation to grant a right of cancellation after an order has been shipped, and without any requirement to state reasons, Diwisa grants its Customers a limited right of cancellation in relation to Goods supplied by Diwisa through online shops, Destithek sales (Diwisa's own retail outlets) and orders placed through Customer Service in accordance with the conditions set forth below. This right voluntarily granted to the Customer is different from the exchange or return of defective or false Goods under the warranty (see part A, section 9 of the GTC [Warranty]).

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5.2 Diwisa grants its Customers a right of withdraw for Goods purchased from Diwisa through the sales channels mentioned above (part A, section 5.1 of the GTC), upon condition that the Customer informs Diwisa concerning the cancellation in writing, by telephone or by email within 14 days of receipt of the Goods. This time limit shall start to run from the time notice of cancellation is sent (post mark or confirmation of dispatch) or from the time when the telephone call is received (day of call). Notice of cancellation must be sent to the following addresses:

Diwisa Distillerie Willisau SA

Returns

Menznauerstrasse 23

6130 Willisau

info@drinkdirect.ch

Tel. 041 972 72 72

- 5.3** In exercising the right of cancellation, the contract (of sale) between Diwisa and the Customer shall be rescinded, i.e. the performance effected under the terms of the contract shall be returned by both Parties. Goods may only be returned with the prior approval of Customer Service or the Diwisa Head of Regional Sales.
- 5.4** In the event of cancellation, the Customer shall send back the goods to Diwisa without undue delay in the original packaging, enclosing the order confirmation. The costs of the return shipment of the goods shall be borne by the Customer in the event of a return. After the Goods have been received and inspected (to establish the content, condition and batch), Diwisa shall issue a credit note to the Customer for the relevant value (e.g. future purchase of Diwisa Products). However, Diwisa expressly reserves the right to deduct any compensation for any potential damage or excessive wear and tear from the amount of the credit note that is to be reimbursed.
- 5.5** Any items marked as originating from consignment stock may be returned; any excess inventory from event or consignment orders must be returned to Diwisa within no later than 30 days of delivery by us.
- 5.6** The Goods must be in perfect condition, i.e. undamaged, clean and complete. The Customer shall not have any right of cancellation in particular under the circumstances mentioned below:
- in the event that bottle tops or caps have been pressed in or are defective (here there is a risk for instance of glass breakage);
 - if any tops or caps have been opened;
 - damaged or soiled bottles that cannot be resold;
 - for Goods that have been produced according to the Customer's specifications or that are unequivocally tailored to personal requirements (individual or special orders, special editions, etc.);
 - Products that are close to the best before date or for old Goods that have been stored for too long (the age of the Goods may be established with reference to the batch number).
- 5.7** For returns (cancellation) in relation to the online shop see below special part B1 of these GTC.
- 5.8** For cancellations (cancellation) in relation to Events see below part B2 of these GTC.
- 5.9** For returns (cancellation) in relation to Event Items see below special part B3 of these GTC.

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6 Delivery and performance (including default, shipping etc.)

- 6.1** The scope and execution of supply (Goods), performance (Events) or provision (Event Items) shall be determined in accordance with the relevant Diwisa contractual confirmation. Diwisa shall supply the Products in the configuration ordered and shall provide the services requested in accordance with the offer booked. Any additional services must be negotiated and agreed upon separately.
- 6.2** Unless any specific place of performance is agreed upon between the Parties or unless apparent from the nature of the transaction, the making available of the Products or the provision of the service at the registered office of Diwisa (in the Canton of Lucerne) shall be deemed to constitute supply.
- 6.3** The Customer shall cover the costs of transportation and the costs of inspecting the Goods, unless specified otherwise in the contract (individual agreement) or these GTC.
- 6.4** Diwisa shall only supply orders (Products) to Customers that are resident or have their registered office in Switzerland or Liechtenstein.
- 6.5** All Products shall be shipped by Diwisa or otherwise by a carrier instructed by it (shipping, freight or transport company, such as for instance Swiss Post or a private courier etc.) (“**Carrier**”) as quickly as possible, as soon as they are available in stock. In the event of shipping by heavy goods vehicle, shipment shall occur during the next delivery run that passes close to the desired place of delivery (which generally speaking occurs once each week).
- 6.6** In the area of Traditional Sales Channels, Diwisa undertakes to supply the agreed products to the Customer at the deadline specified in the order confirmation, whilst the Customer undertakes to accept and pay for these Products at the time specified in advance.
- 6.7** In the event that a Product is not available at short notice, Diwisa shall inform the Customer regarding the anticipated delivery time, provided that Diwisa has a suitable, accurate address for the Customer (postal address, email address, telephone number, etc.).
- 6.8** Deadlines shall be deferred by a reasonable period in the event of any impediments that were not intended by or that are beyond the control of Diwisa (e.g. acts of God, mobilisation, armed conflict, insurrection, epidemics, accidents, illness, significant operational disruption, industrial unrest, delayed or defective incoming supplies, governmental action, etc.).
- 6.9** In the event of any other delays the Customer may:
- decline any further supplies, in which case the Customer must inform Diwisa without undue delay;
 - request partial deliveries, where possible, which must be agreed to between the Parties without undue delay; or
 - set Diwisa a reasonable period (grace period) for subsequent performance; should Diwisa fail to act (also) before expiry of this grace period, the Customer shall be entitled to dispense with subsequent performance or withdraw from the contract, provided that notice thereof is given immediately.

Diwisa shall inform the Customer as quickly as possible concerning any “other delays”; any damages shall be calculated according to Article 191 of the Swiss Code of Obligations [CO].

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- 6.10** In the event of delayed delivery other than due to fault or of any fortuitous event, such as e.g. force majeure, traffic disruptions and acts of God or any other circumstances beyond the control of Diwisa (e.g. not possible to deliver to the Customer), no damages may be claimed owing to delayed performance (default damages).
- 6.11** Diwisa shall inform the Customer without undue delay in the event that any Product is unavailable or significantly delayed. If, in the event of such a delay, the Customer does not wish to accept any counteroffer from Diwisa (e.g. proposal of a replacement product) or does not wish to accept any delayed delivery announced by Diwisa, the Customer may withdraw from the contract. In such an eventuality, Diwisa shall reimburse to the Customer any payments previously made.
- 6.12** Unless expressly agreed or noted otherwise in the contract, delivery units through Traditional Sales Channels shall under all circumstances be complete original boxes. Other Products can (also) be ordered individually according to the Diwisa price list.
- 6.13** Supplies that cost more than CHF 1,000.00 (excluding value added tax) made through Traditional Sales Channels shall be shipped carriage paid (i.e. Diwisa shall bear the costs of transportation to the recipient of the Goods). A small quantity surcharge of CHF 40.00 per supply shall be applied to supplies that cost less than CHF 1,000 (excluding value added tax). Postage shall be charged for shipments sent by post (the relevant flat rate charge also includes packaging costs). The cut-off time for orders to qualify for delivery on the following working day (not including Saturdays) is 11:30 hours (not including Saturdays).

7 Payment (means of payment, payment terms and default) and offsetting

- 7.1** The payment terms applied by Diwisa for Traditional Sales Channels are '30 days net' after the date of the invoice (which constitutes a due date). In the event of non-payment, Diwisa shall be entitled to charge default interest to the Customer without any reminder of 5% per annum from the due date. Any unauthorised discounts or deductions shall be recharged. In addition, Diwisa reserves the right to request cash payment or payment in advance by new customers.
- 7.2** The general bank details of Diwisa for payments in relation to all types of sales channel are:
- Holder: Diwisa Distillerie Willisau SA, Menznauerstrasse 23, 6130 Willisau
Bank: Credit Suisse AG, Lucerne, PO box 2466, 6002 Lucerne
IBAN: CH31 0483 5028 8700 4100 0
BIC: CRESCHZZ80A
- 7.3** In the event that any payment terms are not complied with, Diwisa shall also be entitled:
- to demand immediate payment of any amounts due by the Customer;
 - to request collateral for all outstanding payments; and/or
 - to insist on advance payment for all outstanding supplies.
- 7.4** In the event that collateral is not provided or payment has not been made also upon expiry of a reasonable grace period, Diwisa may withdraw from the contract, even if all or part of the Products have already been supplied. If the Customer fails to comply with payment terms, Diwisa shall also be entitled to claim damages (default damages).
- 7.5** The Customer may offset against any counterclaims of Diwisa in the event that these have fallen due or that a legally binding judgment has been issued by a court of law.

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7.6 The means of payment in the online shop is governed by the special part B1 below of these GTC.

8 Transfer of risk

8.1 Unless expressly agreed otherwise by the Parties, benefit and risk shall pass to the Customer upon the departure of the Product from Diwisa (sender).

9 Warranty ('guarantee') in the event of defective supply

9.1 Diwisa undertakes to act with all due care and warrants that the materials and workmanship of each Product are compliant with the specifications set out in the contractual confirmation and are of exemplary quality.

9.2 Diwisa further undertakes to ensure that the staff deployed by it are carefully selected, are trained and work in a professional manner and also to ensure that they are monitored.

9.3 The Customer shall inspect the Products itself at its own cost and report any defects in accordance with section 9 of this part (A) (objection to defects).

9.4 The Customer shall be obliged to inspect the Products supplied without undue delay in order to ensure that they are complete, correct and sound (no damage) and otherwise free from defects. Any claims (**objections to defects**) relating to incomplete, incorrect or defective supplies as well as evident defects shall be reported to Diwisa with reasons promptly following receipt of the Products along with substantiation (i.e. full description of the defect) in writing (address according to part A, section of the 1 GTC), by email (info@diwisa.ch) or by telephone (Customer Service: 041 972 72 72).

9.5 Unless a substantiated objection to a defect is received within ten working days, the supply shall be deemed to have been approved by the Customer and the Products or supply shall be deemed to be free of any faults. The Customer shall then be obliged to make payment by the applicable deadline.

9.6 The Parties agree that any warranty claims such as:

- exchange (**substitute performance** free of charge);
- returns in the event of major defects that render the Product unusable or significantly impair its usage (**rescission** or cancellation of the contract with reimbursement of the price plus postage costs); or
- any price discount commensurate with value in relation to less significant – i.e. minor – defects (**reduction of the price**)

shall only be available in relation to defects within the Product that have been objected to properly and on time and with the prior agreement of Diwisa Customer Service (info@diwisa.ch / 041 972 72 72) or the field representative responsible for the Customer. Unless required otherwise by law, no further or other warranty is provided by Diwisa to the Customer (in particular covering damages) as a result of quality defects. This shall apply in particular for all indirect losses or consequential losses, loss of profit, business or turnover or impairment of goodwill.

9.7 Unless required otherwise by law, Products that are close to the best before date shall not be exchanged or taken back.

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- 9.8** Consignment Goods may only be exchanged or returned (under warranty) unopened and in their original packaging and must be in exemplary condition, unless a mandatory statutory warranty duty applies. The foregoing does not apply to the online shop.
- 9.9** The deposit shall not be reimbursed for any empty containers returned that were not supplied by Diwisa.
- 9.10** The warranty does not include any defects for which Diwisa is not at fault, such as e.g. improper handling by the Customer or a third party, intervention by the Customer or a third party, excessive overloading, unsuitable or extreme environmental influences, improper storage etc.
- 9.11** If the Customer sells on the Products to any third party (B2B), the Customer alone shall be responsible for compliance with national and foreign regulations (small trader licensing, applicable age limits, advertising rules, prohibitions on trade, export regulations, taxes, etc.). If the Customer alters the Products sold on, it alone shall be liable to Diwisa, the buyer or any third party for any resulting losses (subject to any mandatory provisions under product liability legislation).

10 Duty of disclosure

- 10.1** The Parties shall inform each other in good time concerning any special requirements or conditions as well as any statutory, administrative or other provisions (at federal, cantonal or municipal level) at the place of destination or delivery, where these are significant for the supply and usage of the Products.
- 10.2** In addition, the Parties shall inform each other in good time concerning any impediments that could call into question the proper performance of the contract or result in impractical solutions.

11 Liability and disclaimer

- 11.1** Aside from any claims of the Customer under warranty (part A, section 9 of the GTC), Diwisa shall bear sole liability for any losses resulting from wilful action or gross negligence. In situations involving minor negligence Diwisa shall bear liability for physical injury (loss of life and damage to health) as well as personal injury and damage to property in accordance with the mandatory provisions of product liability legislation.

12 Reservation of title

- 12.1** The Goods supplied to the Customer shall remain the property of Diwisa until the price has been paid in full and shall be marked, stored and kept safely by the Customer on its own premises or with third parties in such a manner that the ownership rights of Diwisa are clearly visible or recognisable for third parties. Diwisa shall be entitled at any time to arrange for the reservation of title to be entered into the competent public register and, especially in the event of non-payment, to require the surrender of any Goods delivered that are still available, without thereby withdrawing from the contract. The Customer shall be prohibited from pledging the Goods supplied by Diwisa or from establishing a chattel mortgage over such Goods before payment.
- 12.2** If possession of the Product has transferred to the Customer prior to payment of the price, Diwisa expressly reserves the right to withdraw from the contract and to claim back the Product handed over in the event of non-payment by the Customer.

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13 Data protection

The Customer's personal data shall be processed and the personal data collected by Diwisa or by its third party appointees (e.g. credit check) shall be used in accordance with the Diwisa Privacy Policy (available at: diwisa.ch/en/data-protection).

14 Right of amendment, choice of law and jurisdiction

- 14.1** Diwisa reserves the right to amend these GTC at any time without stating reasons. Any such changes shall not apply for orders that have already been placed.
- 14.2** All contracts concluded through all types of sales channels and these GTC **shall be governed exclusively by Swiss law**; any rules of private international law on the conflict of laws and the United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply.
- 14.3** The Parties shall endeavour to resolve amicably any disputes arising in relation to the implementation of the contract or these GTC. If this does not occur, the Parties agree that **jurisdiction** shall lie at the **registered office of Diwisa (in the Canton of Lucerne)**, unless the Customer is able to benefit from any jurisdiction for consumers that is mandatory or non-waivable according to law. However, Diwisa may take action before the courts at the registered office of the Customer.