

#### **M.A. SILVA CORKS USA TERMS AND CONDITIONS OF SALE**

**ART. 1.** The following terms and conditions constitute the sole terms and conditions upon which the products set forth on the face hereof will be sold and shall become the exclusive and binding agreement between the Purchaser and M. A. Silva Corks USA ("M. A. Silva Corks USA").

**ART. 2.** The terms and conditions of this [order acknowledgment] [invoice] shall govern all sales to the exclusion of any additional or different terms on Purchaser's purchase order. Any such additional or different terms and conditions are hereby objected to and shall not be binding on M. A. Silva Corks USA, unless expressly accepted in writing by M. A. Silva Corks USA

**ART. 3.** Any information provided in catalogues of M. A. Silva Corks USA is for informational purposes only and is subject to the terms and conditions of sale herein.

#### **CONTRACT TERMS AND WARRANTIES**

**ART. 4.** M. A. Silva Corks USA has not agreed to any order until M. A. Silva Corks USA has acknowledged such order in writing.

**ART. 5.** The written acknowledgment by M. A. Silva Corks USA will represent the entire agreement between the Purchaser and M. A. Silva Corks USA with respect to the material to be supplied and the services to be rendered, and all prior negotiations, understandings, representations, and agreements relating thereto are superseded by the written confirmation by M. A. Silva Corks USA

**ART. 6.** Purchaser acknowledges that natural cork is subject to imperfections and variations in shape, color, weight and other characteristics. Purchaser further acknowledges that corks of a particular grade sold to Purchaser are a combination of corks. An industry standard for grading of corks is accomplished by visual inspection of only the outside of the cork. Therefore, each grade will contain a percentage of corks of other grades.

**ART. 7.** Use. Seller warrants that the corks have been coated with a compound that is appropriate for the use in bottling liquid. Purchaser acknowledges that it is solely responsible for selection of the grade of cork and proper bottling procedure, and as such Seller makes no warranty regarding the ability of the corks to prevent leakage or the effect of the corks used on the taste and/or aroma of Purchasers' products. Purchaser acknowledges that the use of natural cork may result in changes to the taste and/or aroma of Purchasers' Products.

**ART. 8.** SELLER DOES NOT REPRESENT OR WARRANT THAT THE PRODUCTS WILL MEET YOUR REQUIREMENTS. THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. SELLER SHALL NOT BE RESPONSIBLE TO PURCHASER FOR ANY LOSS-OF-PROFIT, INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF PRODUCTS PROVIDED BY SELLER. The maximum liability of Seller to any person, firm or corporation arising out of or in the connection with Seller's sale of products hereunder shall in no case exceed the price paid to Seller by Purchaser for such Product(s).

#### **PRICE & TAXES**

**ART. 9.** The purchase price to Purchaser for each item sold to Purchaser hereunder shall be based on the prices in effect on the date of the order. Any discounts or rebates will be given at the discretion of M. A. Silva Corks USA taking into consideration the quantities ordered. Prices do not include any taxes. Prices for products are F.O.B. M. A. Silva Corks USA's plant or warehouse in California.

**ART. 10.** Unless Purchaser pays applicable sales, use, excise, gross receipts, transaction privilege, retailers' occupation or any similar tax on the purchase of Products, Purchaser represents and warrants this it is purchasing such Products for resale and that Purchaser possesses a currently valid resale permit or other tax exemption permit.

Liability for any sales, use, gross receipts, transaction privilege, retailers' occupation or any similar tax levied in connection with sales arising pursuant to this contract or, any penalty or interest charge due on these taxes will be the sole responsibility of and be payable by Purchaser even if not collected originally by Seller. Any withholding, value added or similar tax of any foreign government levied in the connection with any sale arising out of this contract will be the responsibility of and will be paid by the Purchaser. In the event Seller pays any such tax, Purchaser shall immediately reimburse Seller of such amount.

#### **PAYMENT TERMS**

**ART. 11.** Terms of payment to M. A. Silva Corks USA for the purchase price of the products (including freight, taxes, and other costs to be paid by Purchaser) shall

be net thirty (30) days after shipment by M. A. Silva Corks USA, payable in U.S. dollars for products, unless otherwise specified during acknowledgment process.

. M. A. Silva Corks USA in its discretion can allow for a discount in the event that Purchaser pays before the payment date agreed upon.

. Accounts past due shall be subject to a monthly charge at the rate of one and one half percent (1-1/2%) per month, to cover the costs of servicing these accounts.

. Failure to pay on the due date shall constitute a default under this agreement and, if such default continues and is not cured within thirty days after written notice thereof by M. A. Silva Corks USA, then M. A. Silva Corks USA may terminate the agreement and all rights granted hereunder. Such termination is in addition to and not in limitation of, any other right or remedies available to M. A. Silva Corks USA

#### **DELIVERY**

**ART. 12.** Delivery for products shall be F.O.B. M. A. Silva Corks USA's plant or warehouse in California. Transportation from the F.O.B. point, handling, insurance, and all other expenses from the F.O.B. point are at Purchaser's cost. In the absence of specific written instructions from Purchaser, M. A. Silva Corks USA will select the carrier from the F.O.B. point to Purchaser, but M. A. Silva Corks USA shall not thereby assume any liability in connection with the shipment.

. Risk of loss or damage, from any cause, shall pass to purchaser at the F.O.B. point. The risk of loss or damage shall not be altered by conduct of either party that may constitute a default or breach hereunder.

**ART. 13.** In the event that delivery is postponed at Purchaser's request and upon written acceptance by M. A. Silva Corks USA, M. A. Silva Corks USA will store the products and insure them at Purchaser's expense. M. A. Silva Corks USA's acceptance of a postponement of delivery shall not change the due date for payment under Article 13 hereunder.

**ART. 14.** M. A. Silva Corks USA has no liability for any delay to meet specified delivery dates including without limitation, any delay caused by the product being held for clearance by any export or import authority, or force major, such as fire, flood, strikes, or other unforeseen events causing a reduction or stoppage of production by M. A. Silva Corks USA may allocate production and deliveries among its customers.

All claims for defects, shortages, or delays in delivery shall be waived unless presented in writing within 90 days from the date of receipt of the Products from the Purchaser.

#### **SECURITY INTEREST**

**ART. 15.** M. A. Silva Corks USA hereby reserves a purchase money security interest in the products sold and the proceeds thereof, in the amount of its purchase price. In the event of default by Purchaser of any of its obligations to M. A. Silva Corks USA, M. A. Silva Corks USA shall have the right to repossess the products sold hereunder and without liability to M. A. Silva Corks USA

. The creation of a security interest in the foregoing paragraph shall in no way alter the transfer of risk of loss to Purchaser under Article 14 hereunder. Purchaser therefore agrees to insure the products against all risks for an amount equal to their purchase price.

#### **MISCELLANEOUS PROVISIONS**

**ART. 16.** Except as may be prohibited by applicable law, M. A. Silva Corks USA may cancel any unfilled order or obligation hereunder if (i) Purchaser becomes insolvent or unable to pay its debts as they mature, (ii) bankruptcy proceedings are instituted by or against Purchaser, (iii) a receiver or trustee is appointed, or an assignment is made, for the benefit of Purchaser's creditors, or (iv) Purchaser fails to provide an adequate written response within ten days to a demand by M. A. Silva Corks USA for assurance of Purchaser's intention and ability to perform.

**ART. 17.** Products may not be returned and may not be canceled without Seller's consent, which consent may be withheld for any reason whatsoever.

**ART. 18.** This document shall be governed by, and construed in accordance with, the laws of the state of California.

Purchaser represents that it has complied with all local, state and federal laws and regulations, including the Trade Practice applicable to transactions involving the Products. Any import or export license or permit required with respect to the Products shall be Purchaser's responsibility.

**ART. 19.** Any legal suit, action, or proceeding against the Purchaser arising out of or relating to the sale of the products, may be instituted in any federal or state court in Sonoma County, California. In the event any legal proceeding or arbitration proceeding is brought to interpret or to enforce any of the terms of this agreement, the prevailing party in such proceeding shall be entitled to an award of reasonable attorney's fees for prosecuting or defending such proceeding, in addition to any other costs or damages that may be awarded.