

**TROPICANA EUROPE NV TERMS AND CONDITIONS**  
**GOVERNING THE PURCHASE OF SUPPLIES, MATERIALS, AND SERVICES**

**1. General**

In the present terms and conditions, "TENV" shall be understood to mean Tropicana Europe NV, Sint-Truidersteenweg 301, 3840 Borgloon, Belgium (company number: 0433.279.402).

**2. Scope**

- 2.1. The present terms and conditions shall govern any legal relationship in which TENV acts as (potential) purchaser of supplies and materials and/or services.
- 2.2. These terms and conditions can only be deviated from in writing, by e-mail included.
- 2.3. Deviating terms and conditions of the counterparty shall not be accepted.

**3. Conclusion of the agreement**

TENV shall only be bound by orders which it has placed in writing and which the supplier in question has signed for confirmation within 8 days of the order date. Offers, issued free of engagement or otherwise, cannot be revoked once TENV has accepted them.

**4. Delivery**

- 4.1. Deliveries shall be performed "Delivered Duty Paid" (Incoterms)
- 4.2. Save in the cases provided for under paragraph 6 of the present article, ownership of the supplies and materials and the accompanying risks shall transfer to TENV at the time of delivery.
- 4.3. The delivery of supplies and materials that need to be assembled shall not be deemed to have been performed until such time as they have been assembled in accordance with the specifications. Assembly shall invariably be performed by and at the risk of the counterparty, even if TENV puts tools and/or manpower at the latter's disposal.
- 4.4. The counterparty shall only be entitled to pass on any additional labour costs if TENV has given its prior consent in writing.
- 4.5. If delivery is delayed for whatever reason - save in the case of cancellation as referred to under paragraph 6 of the present article - TENV shall nonetheless acquire ownership of the supplies and materials on the pre-agreed delivery date on the understanding that the counterparty shall, as of that date, be obliged to separately store all the supplies and materials as recognizable property of TENV, to clearly mark them as being the property of TENV and to, on request, furnish TENV with the relevant proofs of ownership. The counterparty shall continue to bear full liability for the supplies and materials until such time as they have been delivered to TENV.
- 4.6. If, for whatever reason, the full or partial consignment of the supplies and materials ordered is delivered late, TENV shall be entitled to cancel the order without being under any obligation to issue the counterparty with formal notice. This shall also apply to any supplies and materials that were not delivered and to any supplies and materials that were already delivered on the basis of the agreement but which, according to TENV, can no longer be effectively used due to the fact that the consignment as a whole was delivered late.  
If the order is cancelled on these grounds, TENV shall be entitled to:
  - a. return the supplies and materials that were already delivered to the counterparty at the latter's expense and risk, in which case the counterparty shall immediately refund any payments TENV issued already; and
  - b. demand that the counterparty reimburses any extra costs TENV was forced to incur for any reasonably necessary alternative purchases; and
  - c. if TENV issued one or several advance payments, compel the counterparty to immediately refund the amounts in question to TENV.
- 4.7. Early deliveries shall invariably require the prior written consent of TENV. Early performance shall not in any way affect the pre-agreed payment term.

**5. Prices and payment**

- 5.1. The pre-agreed price is a fixed price and cannot be increased without the written consent of TENV.
- 5.2. Invoices shall be sent out on the day of delivery or immediately thereafter. Payment shall be issued once delivery has been performed in accordance with the specification and with due regard for the pre-agreed terms and this within 60 days of the invoice date. TENV is authorized to offset any credit notes, irrespective of the currency they have been issued in.

**6. Warranty**

- 6.1. The supplies and materials (be it machinery or parts, raw materials, or any other items) and/or services shall:
  - a. in every respect be in conformity with the specifications featuring in the order
  - b. in every respect be suited to the purpose for which they were ordered unless the counterparty proves that it could not reasonably have anticipated the purpose in question.
- 6.2. The counterparty shall ensure that the supplies and materials are devoid of any properties that may cause injury to people or damage to the property of TENV, unless expressly stated otherwise.
- 6.3. The counterparty shall ensure that the supplies and materials and/or services satisfy the prevailing legislation, regulations and standards in every respect.
- 6.4. The counterparty shall bear full responsibility for the importation and exportation including the transit formalities to the final place of destination.

**7. Non-acceptance**

- 7.1. If it transpires that the supplies and materials and/or services are not or are not fully in conformity with the order, TENV shall, within 7 calendar days, issue the counterparty with notice of non-acceptance in writing in which case the counterparty shall bear the full cost of returning the supplies and materials to the seller including the risk associated with the supplies and materials as of the moment the notice of non-acceptance is received.
- 7.2. To ensure that the consignment is as yet brought in conformity with the order, TENV and the counterparty shall confer on how the non-accepted supplies and materials and/or services shall be replaced or improved at the seller's expense and risk within a period of 1 month - unless expressly agreed otherwise. If the parties fail to reach an agreement, the counterparty shall be obliged to reimburse TENV for any extra expenses over and above the order price TENV will reasonably be forced to incur to obtain replacement supplies and materials and/or services shall be replaced or improved at the seller's expense and risk within a period of 1 month - unless expressly agreed otherwise. TENV reserves the right:
  - a. to claim damages for any further damage/losses it may sustain as a result of defective items and/or services;
  - b. to fully or partially terminate the agreement by means of a notice in writing and without any judicial intervention;
  - c. to demand a reduction in the sales price.

**8. Safety requirements**

- 8.1. The counterparty shall ensure that its appointees know all safety requirements and other regulations governing work at the TENV site.
- 8.2. TENV shall not be held liable for any injuries caused to the persons referred to under paragraph 1 on the TENV site, save in the event of malicious intent or serious misconduct on the part of TENV.
- 8.3. On no account shall TENV ever be obliged to compensate any damage other than personal injuries or material damage.

**9. Insurance**

- 9.1. The counterparty hereby confirms that it and its appointees are adequately insured against any liability ensuing from the legislation or the performance of the present agreement, and shall furnish TENV with proof to that effect on request.
- 9.2. Said insurance obligation shall in any event cover product and or service liability, even after delivery (including damage caused by fire and explosion(s)). The counterparty shall in any event comprehensively insure all the goods it has received or shall receive from the principal against any damage that may occur during the period that the goods are in its care.

**10. Confidentiality**

- 10.1. On no account shall the counterparty disclose any confidential information it receives from TENV to a third party. It shall only use the information in question within the framework of the contract it was awarded.
- 10.2. Information shall be deemed to be confidential if it has been marked as such by TENV or if, given the nature of the information, the counterparty ought to reasonably understand that the information is confidential.
- 10.3. The counterparty is also obliged to impose the confidentiality obligation on any subordinates and third parties who necessarily take cognizance of said confidential information and it shall ensure that the aforementioned parties also comply with these obligations.
- 10.4. In the event of non-compliance with any obligation ensuing from the present article, the counterparty shall incur a fine of €25,000 per individual infringement, without prejudice to TENV's right to damages.

**11. Tools, intellectual property and know-how**

- 11.1. Any models, samples, drawings, descriptions and/or other tools TENV may furnish the counterparty with within the framework of the agreement shall remain the property of TENV and the counterparty shall be obliged to return them to TENV at the time of delivery.
- 11.2. The counterparty recognizes that the intellectual property rights in these models, samples, drawings, descriptions or other tools are vested in TENV and shall refrain from disclosing or reproducing them.
- 11.3. The counterparty shall only be entitled to use the tools, information and know-how TENV puts at its disposal within the framework of the agreement during the performance of the agreement and shall refrain from disclosing them to third parties.
- 11.4. If, within the framework of the agreement, the counterparty itself were to develop or acquire said tools or know-how, the counterparty shall be obliged to transfer ownership of these tools to TENV at the time of delivery and to grant TENV a royalty-free licence with regard to any intellectual property rights to these tools.
- 11.5. The counterparty shall safeguard TENV against any costs, damage and interests TENV may incur as a result of the counterparty having violated the intellectual property rights of third parties.

**12. Assignment and subcontracting**

The counterparty shall not subcontract or assign the order or any part thereof to a third party without having received the consent of TENV in writing.

**13. Termination**

- 13.1. TENV shall be entitled to fully or partially terminate the agreement in writing, without further formal notice, without judicial intervention or without being liable for damages, if:
  - a. the counterparty fails to perform its obligations ensuing from the agreement;
  - b. the counterparty has formed the object of judicial reorganisation or bankruptcy proceedings;
  - c. the counterparty goes into receivership or administration;
  - d. the counterparty ceases trading or is wound up;
  - e. the counterparty's company is sold or closes;
  - f. the counterparty merges or is taken over;
  - g. the counterparty is unable to pay due to an event of force majeure.Any claims TENV may in the aforementioned cases have or acquire against the counterparty shall become immediately payable in full.
- 13.2. In the event of rescission, the risk with regard to the supplies and materials that were delivered already shall continue to be borne by the counterparty. The counterparty shall forthwith refund any sums TENV paid it already in performance of the rescinded agreement.
- 13.3. Without prejudice to the provisions of paragraph 1, TENV shall be entitled to, aside from rescinding the agreement, seek damages.
- 13.4. The rights bestowed on TENV under paragraph 1 of the present article shall be conferred on the counterparty if TENV goes bankrupt, is unable to pay due to an event of force majeure or is wound up.
- 13.5. TENV does reserve the right however to unilaterally terminate the agreement subject to issuing the counterparty with 6 months' notice.

**14. Supplier Code of Conduct and Anti-Bribery**

- 14.1. The counterparty shall adhere to PepsiCo, Inc.'s Global Supplier Code of Conduct, available at [www.pepsico.com/SupplierCodeofConduct](http://www.pepsico.com/SupplierCodeofConduct), as amended from time to time.
- 14.2. The counterparty shall:
  - a. comply with all applicable laws, statutes, regulations relating to anti-bribery and anti-corruption;
  - b. have and maintain in place its own policies and procedures to ensure compliance with the relevant requirements and will enforce them where appropriate;
  - c. promptly report to TENV any request or demand for any undue financial or other advantage of any kind received by the counterparty in connection with the supplies and materials and/or services.

**15. Applicable law**

- 15.1. The legal relationship between TENV and the counterparty shall be exclusively governed by Belgian law.
- 15.2. Disputes between TENV and the counterparty shall be exclusively settled by the competent court in Brussels, unless TENV as plaintiff or requesting party were to opt for the competent judge of the place where the counterparty's registered office is located.