

# **GENERAL TERMS AND CONDITIONS OF THE WHISKY TALKER**

## ***Article 1: Definitions***

The following terms in these General Terms and Conditions (hereinafter: Conditions) have the following meanings:

- TWT: the sole trader named "The Whisky Talker", maintaining an office in Lisse (trade register number 28089150);
- WWS: the foundation under the Law of the Netherlands named "Stichting World Whisky Storage", with its registered office in Lisse (trade register number 28115702);
- The Client: the (legal) person with whom TWT has concluded an Agreement;
- The Agreement: the agreement (including these Conditions) between TWT and the Client, pursuant to which TWT provides services to the Client (including thereunder, yet not exclusively so: placing whiskies of the Client in storage with WWS, advising and/or assisting the Client during Transactions) and/or TWT sells and delivers whiskies to the Client;
- WWI: World Whisky Index, a globally accessible internet platform managed by TWT, enabling the Client to trade whiskies;
- Transaction: an agreement, effected between mutual Clients of TWT, or between a Client and a third party, by way of placing bids on the WWI;
- whiskies: whisky bottle(s) (both singular and plural).

## ***Article 2: Applicability***

1. These Conditions apply to each and any offer, bid and Agreement between TWT and a Client, with respect to which TWT has declared these Conditions to be applicable, and with the exclusion of other general terms and conditions, if any, in so far as these Conditions have not been explicitly deviated from in writing by parties.
2. These Conditions likewise apply to agreements with TWT, the performance whereof necessitates the involvement of third parties.
3. These Conditions do not apply to a Transaction concluded mutually between Clients by way of the WWI, or concluded between Clients and a third party by way of the WWI.

**Article 3: Interpretation of the Conditions**

1. In the event of lack of clarity concerning the interpretation of one or more of the provisions of these Conditions, these must be interpreted in the spirit of these provisions.
2. In the event of a situation occurring between parties not provided for in these Conditions, this situation must be assessed in the spirit of these Conditions.
3. If one or more of the provisions of these Conditions, or any other agreement with TWT should be contrary to any applicable provision by law, the provision concerned will cease to exist and it will be replaced by a similar, new provision that is admissible by law, to be determined by TWT.
4. In the event of TWT having been allowing deviations of these Conditions, whether tacitly or not, for a short or longer period of time, this shall nonetheless leave unimpaired the right of TWT to demand immediate and strict compliance with these Conditions. Not at any time whatsoever shall the Client assert any right on grounds of the circumstance of TWT applying these Conditions leniently.

**Article 4: General**

1. Only if this has been agreed between TWT and the Client, TWT will advise and/or assist the Client during Transactions. The Client trades on the WWI for its own risk and expense at all times.
2. Only if this has been agreed between TWT and the Client, TWT will arrange the shipment and/or packing of whiskies of the Client placed in storage with WWS, and in accordance with the mode of shipment and packing as recommended by TWT. If the law of the country of destination of the shipment does not allow this, TWT shall have the right to refuse shipment.
3. Only if this has been agreed between TWT and the Client, TWT will arrange for whiskies of the Client to be given in storage with WWS. With the permission of the Client, TWT will release (or arrange for the release of) the whiskies of the Client given in storage. TWT has taken out insurance providing sufficient cover with regard to the whiskies of the Client placed in storage with WWS. The Client will be allowed the choice between insuring whiskies against their purchase value or against their market value, at a premium to be agreed on, and to be announced to TWT on concluding the Agreement.

4. Only if this has been agreed between TWT and the Client will TWT sell and deliver whiskies to the Client. Ownership of the whiskies purchased by the Client shall not transfer until the full purchasing amount having been paid to TWT. On receipt of delivery, the Client is obliged to check the whiskies for any shortcomings and the Client must report any shortcomings with TWT in writing within 2 days after receipt.
5. The Client must refuse whiskies sent by TWT to the Client if the exterior of the packing gives visible proof of damage or, for that matter, leakage. If the Client refrains from doing so, TWT will not accept any liability whatsoever in this respect. Nor will TWT accept any liability whatsoever if the Client has signed for the orderly receipt of the shipment.
6. Whiskies purchased from TWT by the Client can be verified for authenticity at the request of the Client, on payment.
7. Whiskies purchased by TWT from private persons and delivered to TWT by these private persons will not receive a quality mark on the WWI. Such whiskies will be verified for authenticity before being put on offer on the WWI, at the request of, and on payment by, the Client.

***Article 5: Performance of the Agreement***

1. If and in so far as this is required for the proper performance of the Agreement, TWT shall have the right to order certain operations to be performed by third parties.
2. The Client shall ensure that all details indicated necessary by TWT, or details that the Client should in reason appreciate to be necessary for the proper performance of the Agreement, are passed on to TWT in time. If the details necessary to enable performance of the Agreement have not been passed on to TWT in time, TWT shall have the right to suspend the performance of the Agreement and/or to put the extra costs as a result of the delay at the expense of the Client, according to the usual rates.
3. TWT shall not be liable for damage of any nature whatsoever on grounds of TWT having started from incorrect and/or incomplete details passed on by the Client, unless TNT should have been aware of this incorrectness or incompleteness.

***Article 6: Term of the Agreement***

1. The Agreement between TWT and the Client is concluded by the Client accepting the offer or, for that matter, the bid of TWT within the term as set in this offer or bid. All offers or bids of TWT are free of obligation.

2. The Agreement is entered into for the term stated in the Agreement. The Agreement is then tacitly renewed by the same term, unless this should appear to be contrary to the nature of the Agreement. Termination by the Client must be effected in writing and not later than 1 month before the expiry of the Agreement, unless agreed otherwise in writing between parties.
3. TWT has the right to dissolve the Agreement without judicial intervention in the event of the death of the Client or the Client being placed under guardianship, the Client being declared bankrupt or insolvent, the Client applying for a moratorium of payment or (part) of the property of the Client being attached.

#### **Article 7: Prices**

1. All prices stated are exclusive of Dutch VAT. Prices of sales to private persons are inclusive of Dutch VAT.
2. TWT has the right to change its tariffs. Changes are announced in writing or by e-mail and become effective 7 days following notification, or at any other date specified in the notification. This paragraph of the article also applies with respect to an Agreement already concluded with the Client.
3. All packing and shipment costs, including thereunder any import duties and other (unforeseen) costs are at the expense of the Client.

#### **Article 8: Terms of Payment**

1. Payment by the Client must be effected within 14 days following invoice date in a manner to be indicated by TWT and in the currency of the invoice, unless the invoice or the offer agreed by the Client states otherwise.
2. The Client is in default after expiry of the term of payment stated in paragraph 1. The Client shall be due for interest on the amount due as of the effective date of the default. The interest percentage is 2% per (part) of a calendar month. Collection costs in the event of default of payment are fully at the expense of the Client.
3. In the event of a default of payment continuing after a reminder having been sent, TWT has the right to (temporarily) refuse the Client's access to the activities agreed on. In that case the payment obligation of the Client shall remain in full force.
4. In the case of a winding-up, bankruptcy or insolvency or a moratorium of payment on the part of the Client, the claims of TWT on the Client and the obligations on the part of the Client vis-à-vis TWT shall become immediately due and payable.

5. Payments made by the Client shall concern in the first place the settlement of all interest and costs due and in the second place they shall concern the settlement of the invoices that have been due and payable the longest.
6. Any payment arrangements in deviation hereof shall only bind parties when having been agreed in writing.
7. By accepting these Conditions, the Client agrees and hereby promises to TWT that as of the date of default within the meaning of par 2 it shall sell the whiskies that have been placed in storage with WWS and use the proceeds of the sale in the first place for the settlement of the invoices of TWT that are due and payable.

**Article 9: Collection Costs**

1. If the Client is in default complying with one or more of its obligations, all reasonable costs incurred in acquiring settlement thereof either in or out of court shall be at the expense of the Client.
2. If TWT demonstrates that it has incurred higher costs to acquire settlement either in or out of court, which costs were nonetheless reasonably necessary, also these costs shall qualify for settlement.

**Article 10: Suspension**

1. If and in so far as the Client does not pay an invoice due, and in so far as this is due and payable, TWT shall have the right to suspend complying with its obligations and, for that matter, to suspend its performance of the Agreement.

**Article 11: Access to WWI**

1. TWT shall at all times have access to the account of the Client on the WWI for the purposes of management and configuration and for the financial and/or logistic settlement of a Transaction. The Client agrees to the above by accepting these Conditions.
2. TWT will not trade the whiskies it possesses via the WWI.

**Article 12: Use of the WWI**

1. The Client is itself responsible for the careful storage and management of the user names and passwords given to it by TWT for access to the WWI. TWT does not accept any liability whatsoever as a result of the use of these data (either negligent or not).
2. The Client is not allowed to use the WWI for unlawful, immoral and punishable conduct.
3. TWT cannot guarantee that the information on the WWI is correct and reliable at all times. TWT cannot be made liable for damage, either direct or indirect, as a result of the use of the information of the WWI.

**Article 13: Privacy Statement**

1. TWT will invariably treat the data of the Client and the data of the WWI-account of the Client with utmost care and it will not at any time divulge these data to third parties without the permission of the Client.

**Article 14: Liability**

1. TWT is in charge of the hosting and accessibility of the WWI. TWT shall not be liable for damage as a result of a system breakdown, connection breakdown or another defect or failure of the WWI. TWT will remedy breakdowns as soon as possible.
2. TWT shall not be liable for damage as a result of third parties acquiring unauthorised access to (hacking) the WWI-account of the Client.
3. TWT shall not be liable for damage as a result of the use of the WWI by the Client or by third parties.
4. The Client is itself responsible for its data. TWT shall not be liable for damage as a result of the loss of (part of) these data.
5. TWT does not accept liability for damage as a result of currency fluctuations for whiskies on the WWI.
6. TWT does not accept liability for shortcomings in the shipment of whiskies forwarded to it by third parties.
8. TWT shall not be liable for damage as a result of an agreed term of delivery having been exceeded.
9. TWT does not accept liability in the event of lack of authenticity of the whiskies purchased by the Client or by a third party.

10. The liability of TWT, in so far as this is covered by its liability insurance, shall be restricted to the amount of the payment made to it by its insurer.

**Article 15: Indemnification**

1. The Client indemnifies TWT against possible claims by third parties suffering damage with regard to the performance of the Agreement, the cause of which can be attributed to parties other than TWT.
2. In the event of TWT being sued on these grounds by third parties, the Client is obliged to assist TWT both in and out of court and to proceed instantly to doing what may be expected from it in that case. If the Client should remain in default taking adequate measures, TWT has the right, without any notice of default being required, to proceed to doing so out of its own accord. All costs and damage on the part of TWT and third parties as a result of this shall in this case be integrally at the expense and risk of the Client.

**Article 16: Force Majeure**

1. Without prejudice to the other rights as accrue to TWT, TWT shall, at its own discretion, have the right to suspend the performance of the Agreement or to dissolve the Agreement without judicial intervention in the case of force majeure, such by informing the Client hereof in writing and such without TWT being obliged to pay any compensation for damage, unless this were unacceptable in the given circumstances on grounds of reasonableness and fairness.
2. Force Majeure shall be taken to mean: each shortcoming not attributable to TWT as the fault does not lie with it and TWT cannot be made accountable for it either by law, legal act or commonly accepted standards.

**Article 17: Applicable Law and Choice of Forum**

1. All legal relationships TWT is party to, including thereunder each Agreement concluded between TWT and the Client, are exclusively governed by the Law of the Netherlands, even if an obligation, either in full or in part, is performed abroad, or if the party involved in the legal relationship has its domicile or place of business abroad. The applicability of the Vienna Sales Convention is excluded.
2. The court in the place of business of TWT has exclusive jurisdiction to hear disputes. TWT shall nonetheless have the right to bring the dispute before the legally competent court.
3. Parties shall not appeal to the court until having put in a maximum effort to settle a dispute by mutual consultation.

**Article 18: Source and Amendment of the Conditions**

1. These Conditions are filed at the office of the Chamber of Commerce of Rijnland under registration number \_\_\_\_\_. These Conditions can also be consulted via the Internet; to this end, see:  
[www.thewhiskytalker.nl](http://www.thewhiskytalker.nl); [www.Duirwhisky.nl](http://www.Duirwhisky.nl); [www.Whiskeyevenementen.nl](http://www.Whiskeyevenementen.nl);  
[www.Whiskeyevents.nl](http://www.Whiskeyevents.nl); [www.Worldwhiskyindex.com](http://www.Worldwhiskyindex.com) en [www.Whiskysmaakprofiel.nl](http://www.Whiskysmaakprofiel.nl)
2. TWT shall at all times have the right to amend these Conditions. Amendments shall also apply with respect to an Agreement already concluded with the Client. Amendments will become effective as per the date given in the notification. Notification is done by way of a written announcement to the Client, or by way of an announcement on the WWI.
3. The last-filed version of these Conditions shall invariably apply to all legal relationships TWT is party to, including thereunder each Agreement concluded between TWT and the Client.
4. The Dutch wording of these Conditions shall invariably prevail with regard to their interpretation.