

# General Terms and Conditions of Sale

of Blefa Kegs, Inc. (“BLEFA” or “we”)

## I. Scope, and conclusion of a Contract

- General.** You (“Buyer” or “Customer”) agree to purchase from BLEFA, and BLEFA agrees to sell to Customer, the goods, including components, spare, or replacement parts thereof, with the specifications set forth in the applicable purchase order, schedule, or other ancillary written agreement (“Contract”).
- Scope.** These General Terms and Conditions (“GTC”), together with all Contract(s) and any other documents explicitly incorporated herein by reference, constitute the sole and entire agreement of the parties with respect to the goods, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral, with respect to the subject matter of these GTC and the goods. All of our deliveries and services related to the goods shall be subject exclusively to these GTC and the Contract. The terms of these GTC and all Contract(s) shall prevail over any terms or conditions contained in any other documentation, and expressly exclude any general terms and conditions or other contract terms of sale of the Buyer/Customer (“Buyer Terms of Sale”), unless BLEFA has expressly consented in writing to the applicability of such Buyer Terms of Sale.
- Conclusion of a Contract.** A Contract shall only be deemed concluded upon written confirmation of a Customer’s order by us. Any amendments to the GTC or a Contract concluded must be made in writing.

## II. Offer, offer documentation, copyright

- Offers Subject to Change.** Our offerings are subject to change without notice. Illustrations, drawings and indications of dimensions, weights and specifications stated in offers, brochures, price lists and catalogues of BLEFA are only intended as approximate figures and shall in particular not constitute any warranty as to characteristics unless expressly designated as binding in writing.
- Confidentiality.** Drawings/layouts and other confidential documentation (“Information”) shall remain the property of BLEFA and contain copyright of BLEFA, even if this is not expressly stipulated. Such Information or offers/quotes/cost estimates and prices may not be disclosed to third parties without the written consent of BLEFA. All Information must be returned to BLEFA upon first demand. If an order is not placed, this Information must be returned promptly and unsolicited and may not be used otherwise.

## III. Prices, payment terms

- Prices and Payment.** Unless agreed otherwise, the prices of BLEFA are valid and understood ex works BLEFA (FCA according to the Incoterms 2020); value added tax at the statutory rate, packaging, transport, the flat-rate environmental levy and freight insurance will be charged in addition. Payment shall be made in the currency stated in the invoice without deduction and such that it may be disposed of by us on the due date. The Buyer shall not be entitled to offset against a claim unless such a claim is undisputed or has been recognised by a declaratory judgment having the force of law; rights of retention may only be vested in it in accordance with the same contractual relationship.
- Payment Default.** In the event of payment default, interest shall be charged at a rate of 1.5 per cent per month. In the event of payment default, BLEFA shall be entitled to render the processing of all orders for the Customer conditional upon advance payment or the provision of a guarantee, to retain supplied goods or to take back unpaid goods, and where appropriate to enter the premises of the Buyer in order to collect such goods. The taking back of goods shall not be construed as withdrawal from the Contract.
- Statutory Provisions.** The foregoing shall be without prejudice to statutory provisions applicable to payment default.

## IV. Title to Goods; Purchase-Money Security Interest.

- Purchase-Money Security Interest.** This provision 9. shall apply to customers located within the United States: As collateral security for the payment of the purchase price of the goods and performance in full of all the obligations of the Customer under these GTC [and the contract], the Customer hereby grants to the BLEFA, a lien on and security interest in and to all of the right, title, and interest of the Buyer in, to, and under the goods, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under the Tennessee Uniform Commercial Code.
- Retention of Title.** This provision 10. shall apply only to customers located outside the United States: The goods delivered shall remain the property of BLEFA until Customer’s full compliance with all claims under the business relationship. No pledges or assignments as security by the Customer are permitted and the Customer shall inform BLEFA promptly in writing in the event of any third party intervention with respect to the goods. The Customer shall be obliged to treat BLEFA’s reserved goods with care, to insure them sufficiently against damage or destruction, to mark them as the property of BLEFA and to store them separately so as to enable them to be separated at any time. The Customer hereby assigns to BLEFA any claims vested in it against insurers following an occurrence of loss or damage, insofar as they relate to the property of BLEFA. The Customer shall be entitled to sell the goods in the ordinary course of business in the event that payment has been made in full to BLEFA or if Customer has expressly informed the third party buyer of the goods in writing of the fact that BLEFA has retained title over the goods in question. The Customer hereby assigns to BLEFA in full as collateral the claims relating to the goods that arise out of the resale or on any other legal basis (insurance, tort, accession to a land). If insolvency proceedings are brought against the Customer, it shall not be entitled to sell on or to surrender possession of the goods that are still owned by BLEFA until it has settled in full all amounts owed by it to BLEFA. In the event of a breach of contract, including in particular payment default notwithstanding a reminder, and if so requested by BLEFA, the Customer shall be obliged to return the goods DDP (Incoterms 2020) to the facility of BLEFA (including unloading at the risk and cost of the Customer).
- Limitation of Retention of Title.** In the event that the law of the country in which the goods are located does not permit the

retention of title provided for in provision 10., or only permits such retention of title in limited form, BLEFA may secure other rights over the goods. The Customer shall be obliged to cooperate in all necessary action (e.g. registration) in order to give effect to the retention of title or the rights established in place thereof and in order to protect these rights.

## V. Delivery periods, delivery dates

- Delivery Periods.** Unless agreed otherwise in writing, delivery periods and delivery dates shall be non-binding. Information is provided to the best of our knowledge, although without any warranty, and is conditional upon timely delivery by suppliers to BLEFA and timely performance by the Customer. The delivery period shall be extended by the duration of the period during which the Customer fails to comply with its contractual duties. BLEFA shall be entitled to make partial deliveries and to effect partial supplies.
- Delivery Dates.** The delivery dates confirmed shall be deemed to have been met upon timely delivery - i.e. upon delivery to the forwarding agent, carrier, or other third party commissioned with the dispatch - or shipment. They shall also be deemed to have been met at the time notice of readiness for shipment is intimated, in the event that the goods cannot be shipped in good time due to circumstances that are beyond our control. We do not accept any obligation in respect of timely transportation.
- Force Majeure.** In the event of force majeure or any other unforeseeable, extraordinary circumstances not arising through fault - including without limitation problems relating to the procurement of materials, failure to supply, incorrect supply or late supply to us by our suppliers (supplies to us), disruptions to operations of any type, failure of telecommunications and IT systems, fire, strikes, lockouts, a lack of means of transport, transport disruptions, governmental acts, breakdown of machinery, export and import prohibitions, energy supply difficulties, mobilisation, war, blockades, etc. including where such events occur for our own suppliers - we shall be unable to comply with our duties and shall be released from our obligations under the Contract for the duration of the impediment. The Customer shall have no entitlement to bring damages claims. In the event that the impediment continues for more than two months, each party shall be entitled to withdraw from the Contract in full or in part to the extent that it has not been performed.
- Notice.** We shall be entitled to refer to the above-mentioned circumstances only if we notify the Customer immediately of the start and conclusion of such impediments.

## VI. Cancellation of orders / return shipment

- Subject to exercising rights relating to defects in accordance with these GTC, orders may be cancelled and goods may be returned by Customer only with the written approval of BLEFA. BLEFA reserves the right to charge appropriate cancellation fees in the amount of the costs incurred by BLEFA. Return shipment to BLEFA must occur promptly after approval, citing the Return Merchandise Authorization number provided by BLEFA (“RMA no.”).

## VII. Shipment, packaging and interim storage

- If loading or transportation of goods is delayed due to reasons for which Buyer is responsible, we shall be entitled, at Buyer’s cost and risk, to store the goods at our reasonable discretion, to take all measures considered appropriate to preserve the goods, and to invoice as if delivered. The same shall apply if goods designated by notification to Buyer as ready for shipment are not called off within four days. The foregoing shall be without prejudice to statutory provisions applicable to late acceptance. We shall deliver the goods packaged and protected against rust to the extent customary in commercial practice; the cost shall be borne by the Buyer, in no packaging or other materials used for protection and transportation will be taken back.

## VIII. Warranty, Liability for defects

- No Warranty.** All goods are sold “as is”. To the extent permitted by law, and except as expressly represented in these GTC or the Contract arising from a binding offer accepted by Customer in writing or Customer’s order accepted by BLEFA in writing, BLEFA makes no warranties, express or implied, and hereby disclaims all implied warranties, whatsoever with respect to the goods, including any (a) warranty of merchantability; (b) warranty of fitness for a particular purpose; (c) warranty of title; or (d) warranty against infringement of intellectual property rights of a third party; whether express or implied by law, course of dealing, course of performance, usage of trade, or otherwise. The following provisions 18-25, consequently apply to the extent these GTC or the individual Contract provide an express warranty or a statutory guarantee applies which cannot be contractually excluded or limited as foreseen by these GTC.
- Buyer Inspection.** The Buyer shall inspect the goods immediately after receipt for defects arising during transit, deviations from the agreed quantity, or delivery of merchandise other than that stipulated, which it shall report on the delivery note. Any shipment that is not received either in full or in part shall be reported to us by the Buyer promptly after discovery.
- Defective Goods.** In the event that we are responsible for any defective goods or services, we shall be entitled, at our option, to rectify the defect or to supply a replacement. Defects shall be reported promptly in writing, and in any event within 5 (five) working days of their discovery.
- Defect Remedies.** If we are unable to rectify a defect, the Customer shall be entitled, at its option, to cancel the respective Contract or to claim abatement (reduction of the purchase price). Immaterial defects shall not give rise to a right of cancellation. If the right to cancel the Contract is exercised after our failure to rectify the defect, the Customer shall be entitled to claim only direct damages for the defect.
- Defect Liability.** Liability for defects shall be excluded for defects caused by unsuitable or improper use, incorrect assembly and/or commissioning by Buyer or third parties instructed by the Buyer, natural wear and tear, or incorrect or negligent handling.
- Time Period for Claims.** The time barring period for claims arising from defects shall be twelve months after the transfer of risk. No new warranty periods shall arise for rights and claims relating to defects as a result of the exchange or repair of individual parts or any item.
- Forwarded Goods.** In the event that the Customer has forwarded the goods on account of supposed warranty rights for the purpose of rectifying the defect and it transpires following an examination that there was not in fact any defect, the Customer

- shall reimburse BLEFA for the costs of the examination of the goods, including any shipping and packaging costs arising.
- Manufacturers’ Guarantees.** Product-related manufacturer guarantees constitute additional promises of performance and are subject to the relevant terms and conditions of the respective manufacturer’s guarantee.

## IX. General limitation of liability

- No Consequential or Indirect Damages.** EXCEPT AS OTHERWISE PROVIDED IN PROVISION 28, IN NO EVENT SHALL BLEFA OR ANY OF ITS REPRESENTATIVES BE LIABLE UNDER THESE GTC OR ANY CONTRACT TO CUSTOMER OR ANY THIRD PARTY FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR ENHANCED DAMAGES, LOST PROFITS OR REVENUES, OR DIMINUTION IN VALUE, ARISING OUT OF, RELATING TO, OR IN CONNECTION WITH ANY BREACH OF THESE GTC OR ANY CONTRACT, REGARDLESS OF (A) WHETHER SUCH DAMAGES WERE FORESEEABLE, (B) WHETHER OR NOT BLEFA WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND (C) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT, OR OTHERWISE) UPON WHICH THE CLAIM IS BASED.
- Maximum Liability.** EXCEPT AS OTHERWISE PROVIDED IN PROVISION 28, IN NO EVENT SHALL BLEFA’S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THESE GTC OR ANY CONTRACT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID AND AMOUNTS ACCRUED BUT NOT YET PAID TO BLEFA PURSUANT TO THESE GTC OR ANY CONTRACT IN THE 6-MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM.
- Exceptions.** THE LIMITATIONS SET FORTH IN THIS PROVISION IX SHALL NOT APPLY TO DAMAGES OR LIABILITIES ARISING FROM THE GROSSLY NEGLIGENT ACTS OR OMISSIONS OR WILFUL MISCONDUCT OF BLEFA IN PERFORMING ITS OBLIGATIONS UNDER THESE GTC OR ANY CONTRACT.
- If Remedy Fails for Essential Purpose.** THE LIMITATION OF LIABILITY PROVISIONS SET FORTH IN THIS PROVISION IX SHALL APPLY EVEN IF CUSTOMER’S REMEDIES UNDER THESE GTC FAIL OF THEIR ESSENTIAL PURPOSE.

Customer acknowledges and agrees that the parties entered into these GTC in reliance upon the limitations of liability set forth in this provision IX, that the same reflect an allocation of risk between the parties (including the risk that a contract remedy may fail of its essential purpose and cause consequential loss), and that the same form an essential basis of the bargain between the parties.

- Insofar as the liability of BLEFA is limited or excluded in accordance with the foregoing provisions, this limitation shall also apply to the liability of employees, representatives and other agents.
- Damages claims of the Customer for which liability is limited in accordance with this provision are time-barred after one year.

## X. Intellectual property rights

- All intellectual property rights pertaining to the goods or the product documentation related to the goods are held by and shall remain with BLEFA or its respective licensor(s). Any usage, copying or modification shall require our approval.

## XI. Data protection and Processing

- We collect and process personal information in accordance with [our privacy policy](#), [hyperlink to privacy policy published on Blefa Kegs US website](#)

## XII. Proof of exportation

- If a Buyer residing outside the USA (extra-territorial customer) or its agent collects and transports or ships goods abroad, the Buyer shall provide us with the proof of exportation necessary for tax purposes. If such proof is not provided, the Buyer shall be responsible for payment of value added tax on the invoice amount due for deliveries within the USA.

## XIII. Anti-corruption

- The Buyer undertakes towards BLEFA to comply with the applicable legislation under the relevant legal system on the combating of corruption and bribery within business in addition to our guidelines as set forth in the BLEFA Code of Conduct.
- Resale.** In the event of resale, the Buyer shall ensure the application of its own guidelines and processes that guarantee compliance with the aforementioned rules on the combating of corruption and shall further ensure that third party undertakings that effect supplies or provide services in relation to the implementation of this Contract are subject to a written requirement to comply with the principles specified. The Buyer shall be responsible for compliance with these principles by third party undertakings and shall bear liability in the event of non-compliance.
- Termination for Convenience.** BLEFA shall be entitled to terminate these GTC and any Contract without notice in the event of any breach by Customer of the principles set forth above. The foregoing shall be without prejudice to damages claims available according to law.

## XIV. Applicable law, place of performance and jurisdiction

- Applicable Law.** The laws of Tennessee shall apply with the exclusion of the UN Convention of contracts for the International Sale of Goods (CISG).
- Performance.** The place of performance for all claims arising out of contracts concluded with BLEFA shall be the registered office of BLEFA. Exclusive jurisdiction over all disputes arising directly or indirectly out of or in relation to the business relationship shall be at La Vergne, TN. BLEFA shall however be entitled to initiate action before any other competent court.

## XV. Severability

- Each provision of these GTC and each Contract shall be interpreted in such manner as to be effective and valid under applicable law; however, in the event that any individual term of these GTC or Contract concluded with the Buyer is or becomes invalid in full or in part, such provision shall be ineffective only to

the extent of such unenforceability or invalidity in such jurisdiction and shall be replaced by such valid and enforceable provision which the parties consider, in good faith, to match as closely as possible the invalid or unenforceable provision and attaining the same or a similar economic effect, and such invalidity of such provision shall not affect the validity of the remaining provisions of the GTC and Contract(s).

**XVI. Modification: Amendment**

41. No waiver, alteration, modification, or amendment of any of the provisions of these GTC or any Contract shall be binding upon either party unless set forth in a subsequent writing signed by the duly authorized representative of the party intended to be bound thereby.

**XVII. Assignment.**

42. Customer may not assign these GTC or any Contract, or any part thereof, without the prior written consent of BLEFA. No assignment or delegation shall relieve Customer of any of its obligations hereunder. BLEFA may at any time assign, transfer, or subcontract any of or all of its rights or obligations under these GTC or any Contract without Customer's prior written consent.

**XVIII. Notice.**

43. Any notice, request, instruction or other document deemed by either party to be necessary or desirable to be given to the other party shall be in English and shall be by overnight courier to the address as set forth in these GTC or applicable Contract or as communicated in writing from time to time.