

**General Terms and Conditions of Supply Fonterra (Europe) Coöperatie U.A.**

**1. Application of these Terms**

- 1.1 These Terms apply to all agreements concluded with you and any follow-up agreements. By placing an order, you accept the applicability of these Terms.
- 1.2 Where applicable, "goods" will be understood to include "services" in these Terms.

**2. Offers**

- 2.1 Any of our quotations constitute an offer (capable of acceptance) to supply the goods to you if so indicated in the quotation. If no validity is indicated, the offer is valid for 5 calendar days. Each request for supply placed by you is an offer to purchase the relevant goods subject to these Terms. We may in our discretion accept or reject any request for supply made by you.
- 2.2 If a price list, brochure or other information is available and provided with an offer, it is as accurate as possible but serve only as an indication.

**3. Agreements**

- 3.1 After we have received your order, an agreement with you is concluded if it is confirmed by us to you with a so called Contract Confirmation, or if we have begun to execute the order.
- 3.2 Messages sent electronically are only considered to have reached us after we have taken cognisance of their contents. Orders placed electronically are binding on you without confirmation from us being required.
- 3.3 Changes or additions are only binding on us if they are confirmed by us in writing.
- 3.4 We may increase or decrease any quantities agreed upon in connection (i) with standard packaging, (ii) minimum quantities or (iii) damages during loading, and you must buy and pay the quantity as delivered.
- 3.5 Once an agreement has been formed under this article, we are entitled to invoice you for all the goods in accordance with article 8, irrespective of whether you subsequently submit shipping/delivery requests, purchase orders or similar requests in respect of those goods.

**4. Delivery and risk**

- 4.1 Unless otherwise indicated in the Contract Confirmation, deliveries will be duty paid (Delivery Duty Paid, Incoterms 2010).
- 4.2 The delivery period starts on the date of conclusion of the agreement. In the event that payment in advance or a down payment was agreed upon, the delivery period starts upon receipt of the full (down) payment.
- 4.3 We may make deliveries in instalments.
- 4.4 Unless explicitly agreed otherwise, delivery times quoted can never be regarded as deadlines. In the event of overdue delivery, we will be in default only after receipt of your written notice of default.
- 4.5 You are under an obligation to buy. If you have not bought the goods after expiry of the contract validity period, the goods are stored at your expense and risk. After four weeks, we will then be authorized to sell these goods. Without prejudice to any of our other rights, all lesser proceeds and costs shall be payable by you in which case the contract shall be regarded as dissolved as far as the defective performance is concerned.

**5. Defects and Acceptance**

- 5.1 You must promptly check all goods and packagings supplied for deficiencies or visible defects, or perform such check after having received notification that the goods are at your disposal. You must promptly specify or have specified any defects on the invoice and/or shipping documents, and report such defects to us by return of post. In the absence of such report, complaints regarding such defects will not be dealt with anymore.
- 5.2 Complaints regarding defects not visible upon delivery and other defects are subject to a deadline of 3 months after delivery, and such defects must be reported to us within 8 calendar days after they have been discovered or should have been discovered.
- 5.3 Upon expiry of the periods specified in this Article, you are considered to have approved the delivered items and/or invoice, and all your rights in that respect have lapsed.
- 5.4 Pending the investigation to be held, you must either keep the goods in your possession or, if we so requests, return the goods to us. The goods will be transported at your risk. The costs of the investigation, including transportation costs, shall be payable by you, unless culpable default on the part of us is established.

**6. Retention of title**

- 6.1 We retain the ownership of all goods delivered and to be delivered to you until the price for these goods is paid in full. In the event that we perform any work for you in the scope of this purchasing agreement, the ownership is also retained until you have fully paid the relevant receivables. In addition, ownership is retained for any claim we could get against you on grounds of your failure to perform one or more of your obligations vis-à-vis us.
- 6.2 In the event that you fail to perform your obligations to pay, or if we have valid grounds to fear that you will fail to meet your obligations and are not able to provide proper security, we may retake, sell or otherwise deal with or dispose of all or part of the goods in which title remains vested with us. After the goods have been taken back, you will be credited for their market value. For the purpose specified above, we or our agent or authorised representative may at any time and without notice enter upon any premises in which the goods are stored or kept, or is reasonably believed so to be. We may further seek a court injunction to prevent you from selling, transferring or otherwise disposing of the goods under retention. The taking back does not affect our other rights in connection with your failure to perform.
- 6.3 Notwithstanding the foregoing, risk in the goods shall pass on delivery of the same to you and, until such time as title in the agreement goods has passed to you, you shall insure such goods to its replacement value.

**7. Prices**

- 7.1 Unless stated otherwise, the total amount payable for the goods pursuant to each shipment will be the aggregate of: (a) the price for the goods, as set out in the Contract Confirmation and/or Shipment Schedule for that shipment, as increased or decrease pursuant to article 3.4; plus (b) any additional amounts for incidental services which you have requested from us, as set out in your Contract Confirmation and/or Shipment Schedule; plus (c) VAT.

## 8. Invoicing and Payment

- 8.1 Unless specific credit terms have been agreed with you, this clause will only apply to you only to the extent that matters are not covered by those agreed credit terms. Payment must be made within 15 days from the date of invoice. In the event that you grants us a direct debit mandate, a term of 30 days will apply.
- 8.2 We have the right, before starting or continuing our performance, to demand security from you at all times for your fulfilment of obligations. All rights to suspend performance and to set off by you are hereby excluded.

## 9. Interest and costs

- 9.1 In the event that no payment was made within the term specified in the previous article, you will be in default by operation of law, and will owe interest over the outstanding amount as of the due date. The interest payable is equal to the refinancing interest established by the European Central Bank for its most recent main refinancing operation that has taken place before the first calendar day of the half-year concerned, increased by 7%.
- 9.2 All extrajudicial and judicial collection costs are payable by you, and are to be set at least at 15% of the amount payable by you. In the event that a court rules wholly or partially in favour of us in legal proceedings against you, you will further be obliged to pay the amounts not awarded by the court to us.

## 10. Liability

- 10.1 Our obligations as a result of culpable default or on any other legal basis is limited, at our discretion, to the repair of the defect (free of charge), replacement of the defective good, and/or renewed performance of the services provided, or repayment of the amounts received from you in connection with the defective performance, in which case the agreement shall be regarded as dissolved as far as the defective performance is concerned.
- 10.2 Under no circumstance are we liable for damage of any kind (including, but not limited to, loss of profits, savings, investments, goodwill, business or business opportunity, loss of use or interruption of business) incurred by you except for any freight, clearance, duty and storage charges within the first country of release by us and/or disposal costs directly incurred by you in relation to defective goods and up to a maximum of 10% of the net price you have paid for these goods.
- 10.3 We cannot invoke the limitations of our liability contained in this article if and to the extent that the damage is caused by wilful intent or deliberate recklessness of us or our executive staff.

## 11. Force majeure

- 11.1 Each party shall be relieved and excused from any delay(s) in performing or any failure(s) to perform, other than payment of monies, to the extent that any such delay(s) or failure(s) result from causes beyond the reasonable control of such party, its suppliers and auxiliary persons that make or will make performance without default impossible, provided that, in order to avail itself of such excuse, such party must act reasonably and diligently to remedy the cause of the delay, or to mitigate or overcome such delay(s) or failure(s), and provided that, such party gives the other party written notice of such cause promptly after discovery thereof. The delayed party's time for performance or cure shall be extended for a period equal to the duration of the cause of such delay. Causes beyond the reasonable of a party include but are not limited to fire, flood, earthquake, windstorm or other natural disaster; act of government, act of any sovereign including but not limited to war, invasion, act of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, nationalisation, requisition, destruction or damage to property by or under the order of any government or public or local authority or imposition of government sanction embargo or similar action; law, judgment, order, decree, embargo, blockade, labor or material shortage of dispute including but not limited to strike, lockout or boycott; interruption or failure of utility service including but not limited to electric power, gas, water or communications service; transportation delay or stoppage; breach of contract by any essential personnel.
- 11.2 In case of permanent force majeure, which is in any case a force majeure situation exceeding 60 calendar days, either party may dissolve the relevant agreement as far as it is affected by force majeure, without being obliged to pay any compensation.

## 12. Applicable law and dispute resolution

All offers, agreements and performance of agreements shall be subject to the laws of the Netherlands. The United Nations Convention on Contracts for the International Sale of Goods does not apply. The court in Amsterdam shall be competent to take cognizance of any disputes, without prejudice to our right to bring a dispute before any other competent court.