

GENERAL DELIVERY TERMS AND CONDITIONS of the  
COV – Dutch Meat Association

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**1. Applicability**

1.1 These terms and conditions are applicable to any and all offers, agreements and legal acts of the Supplier and the Buyer. These terms and conditions shall also apply to potential further agreements and/or other agreements between the Supplier and the Buyer, unless expressly stipulated otherwise in writing. These terms and conditions are in particular (and therefore not exclusively) applicable to the delivery of meat, meat products ('goods') and related goods and to the performance of thereto-pertaining services. "Supplier" refers to the legal person that delivers goods and/or performs services and "Buyer" refers to the other party of the Supplier.

1.2 These terms and conditions can also be relied on by the directors, subordinates, agents and (sub-) contractors of the Supplier. These terms and conditions are also applicable to non-contractual claims.

1.3 The parties agree that other terms and conditions shall not be applicable, unless stipulated otherwise in writing.

1.4 If one or more provisions of these terms and conditions appear to be invalid or unenforceable then the invalid or unenforceable provision(s) shall as much as possible be interpreted in accordance with applicable rules of law in order to best approach the original intention of the said provision(s) and all other provisions of these terms and conditions shall moreover remain in full force and effect.

**2. Offer, acceptance and adjustment of the agreement**

*Offer and acceptance*

2.1 Any and all offers of the Supplier, regardless of their form, are subject to contract and only form an invitation to place a request for an order.

2.2 An agreement is only concluded upon written acceptance or actual implementation of the request for an order by the Supplier.

2.3 Each and every communication or act of the Buyer, implied or express, in the course of which a request for an order is made or an agreement for the delivery by the Supplier of goods or services is confirmed, implies unconditional acceptance of these terms and conditions by the Buyer.

*Adjustment*

2.4 A change of and/or an addition to an agreement shall only have binding effect on the Supplier when it expressly agreed with the same in writing. The actual implementation of the said change and/or addition by the Supplier is also qualified as consent.

If a change of and/or an addition to an agreement is agreed on then the Supplier is entitled to adjust the stipulated price, the delivery method and the delivery time, as well as other components of the agreement, to the stipulated changes.

2.5 Without prejudice to the provisions otherwise set forth in these terms and conditions and barring if expressly stipulated otherwise in writing, the Buyer cannot derive any rights from and/or file any claims vis-à-vis the Supplier on account of differences in a stipulated quantity or weight of 1% or less (natural weight loss between shipment and receipt).

**3. Prices**

3.1 The prices of the Supplier are in euros, unless stipulated otherwise, excluding VAT and other taxes. The costs associated with transport, import and export duties, excise duties and other levies or taxes are at the expense of the Buyer, unless stipulated otherwise in writing.

3.2 To the extent not indicated and/or stipulated otherwise in writing, a price that is mentioned in a proposal / offer / order confirmation by the Supplier or that was stipulated or established otherwise by and between the parties applies.

3.3 Unless the Supplier indicated that the prices are fixed, the Supplier is entitled to pass adjustments in factors that may affect the cost price and the additional costs as intended in articles 3.1 and 3.2 on to the Buyer.

3.4 The Supplier can charge costs that the Supplier incurred in connection with the potential return and/or processing of packaging material to the Buyer.

3.5 Packaging material that qualifies for reuse (e.g. crates) always remains the property of the Supplier and must be returned to the Supplier by the Buyer. If the Buyer fails to do so then any and all costs associated with the replacement of the said material shall be charged to the Buyer.

#### **4. Payment**

4.1 The Buyer must pay the Supplier, which payment must have been received by the Supplier within twenty (20) days after the date of the invoice, unless stipulated otherwise in writing.

4.2 A complaint with regard to the invoice must be submitted to the Supplier within eight (8) days after the date of the invoice in writing, i.e. by registered post or by email. After that the Buyer is deemed to have agreed with the invoice.

4.3 In case of an overstepping of the payment or credit term the Buyer shall be in default, without any further notice of default being required. In case of an overstepping of the payment or credit term the Supplier is entitled to charge the statutory commercial interest in conformity with section 119a of Book 6 of the Dutch Civil Code on the outstanding amount. The Supplier is entitled to suspend compliance with all its obligations on account of the agreement until payment of the payable amount was received in full. If payment in full of the payable amount neither materialises within a further time limit imposed by the Supplier then the Supplier is authorised to fully or partly rescind the agreement(s) with the Buyer, all without prejudice to potential other rights of the Supplier, including in particular the right to claim damages.

4.4 Any and all taxes, levies and other costs in connection with payments are at the expense of the Buyer.

4.5 The submission of a claim on account of inferior quality or another complaint does not suspend the payment obligation and other obligations on the part of the Buyer and does not change or cancel the same, regardless of the fact whether the claim is accepted by the Supplier or not.

4.6 The Buyer is not entitled to (i) apply a discount of any nature whatsoever without the prior written consent of the Supplier, (ii) settle a claim and/or (iii) deduct payment obligations from other payable amounts between the parties.

4.7 If an attachment is imposed at the expense of the Buyer, if the Buyer is granted suspension of payment or is declared bankrupt or if the Buyer fully or partly discontinues or transfers its business then any and all claims of the Supplier vis-à-vis the Buyer immediately fall due in full and the Supplier is entitled to take back the relevant products. The Buyer must give the Supplier the opportunity to effectuate its rights.

#### *Extrajudicial costs*

4.8 Any and all extrajudicial costs, expressly also including the costs incurred for the preparation and despatch of demands, carrying on (having carried on) negotiations and acts for the preparation of potential legal proceedings, are at the expense of the Buyer. The Buyer shall on demand compensate the Supplier for these costs.

Without prejudice to the right of the Supplier to claim full compensation for the costs as intended in this paragraph of this article and the interest as intended in article 4.3 and without prejudice to the other rights of the Supplier pursuant to the agreement, these terms and conditions and the law, the Supplier is, in case of default of the Buyer, in any case entitled to the relevant collection amounts in conformity with the Graduated Scale Extrajudicial Collection Costs (BIK) of the Decree of 27 March 2012 comprising rules to standardise the compensation for costs to obtain satisfaction out of court (Dutch Extrajudicial Collection Costs (Fees) Decree).

#### **5. Delivery**

##### *Incoterms*

5.1 Unless the Supplier expressly declared otherwise in writing, any and all deliveries take place *Free Carrier* (FCA) at the location where the Supplier is established or at a different location specified by the Supplier. The term *Free Carrier* (FCA) has the meaning ascribed to the same in the latest version of the INCOTERMS, as published by

the International Chamber of Commerce in Paris, France, at the time of conclusion of the relevant agreement, as described in article 2 above.

5.2 Specified delivery times are indicative and do not have binding effect on the Supplier. The Supplier must respect these times as much as possible.

5.3 A mere overstepping of the delivery time shall not entitle the Buyer to compensation, rescission or termination of (a part of) the agreement.

5.4 The Supplier can deliver the goods in instalments if the goods are not sufficiently in stock or cannot be produced to a sufficient degree. The Supplier forthwith informs the Buyer accordingly in writing.

5.5 The Buyer is subject to a purchase obligation. If the Buyer does not take receipt of the goods (or late) then the Buyer is in default without any further notice being required. As the occasion arises the Supplier is entitled to, at the risk and expense of the Buyer, store or sell the goods to a third party. By way of compensation the Buyer is liable to pay the purchase price plus interest and costs. This does not affect potential other rights of the Supplier vis-à-vis the Buyer.

5.6 Defects of the delivered goods, or a part thereof, do not entitle the Buyer to reject the entire delivery of goods or other (future or partial) deliveries of goods.

5.7 The Supplier only organises that the goods are insured during transport and/or storage if this was expressly stipulated in writing in advance.

## **6. Title and reservation of title**

6.1 Any and all goods delivered and to be delivered by the Supplier remain the property of the Supplier until the Buyer complied fully with all its obligations in connection with all goods delivered or to be delivered in pursuance of the agreement as also in pursuance of each and every other agreement concluded by and between the Supplier and the Buyer, expressly including the obligations of the Buyer on account of a failure to comply with these kinds of obligations. The property-law effect and implications of the aforementioned reservation of title for goods that are meant to be exported from the Netherlands are governed by the law of the country of destination.

6.2 Goods delivered subject to reservation of title cannot be sold, pledged or encumbered by the Buyer. The Buyer is held to keep the goods of which the title is by law still vested in the Supplier in a manner clearly separated from other goods and otherwise with due care. In case of attachment, (provisional) suspension of payment, bankruptcy or liquidation the Buyer must immediately inform the attaching bailiff, the administrator or the receiver of the (ownership) rights of the Supplier and forthwith inform the Supplier accordingly in writing.

6.3 If the Buyer does not comply with an obligation on account of or in connection with an agreement for the delivery of goods and/or the performance of services concluded with the Supplier then the Supplier is entitled to take back the goods of which the title is still vested in the same, without the Supplier being liable to pay any compensation. The Buyer is held to lend any and all required cooperation in the same subject to an immediately claimable penalty of EUR 1,000.00 per day that the Buyer remains in default. Any and all costs associated with taking back the goods are at the expense of the Buyer. The Supplier may also decide to charge the difference between the contract value and the market value at the moment that the goods are taken back to the Buyer.

## **7. Food safety, inspection and complaints**

### *Food safety*

7.1 The Buyer is held and guarantees vis-à-vis the Supplier that with regard to the goods delivered by the Supplier the Buyer shall always comply strictly with any and all rules, instructions and obligations that (primarily) derive from the specification pertaining to the goods and/or (conservation, processing, storage and temperature) instructions on the condition that the Buyer shall in any case at least need to comply with the obligations deriving from the applicable (national and international) legislation and regulations as well as guidelines or instructions from national authorities in the area of food safety, applicable at the time of delivery (inter alia the General Food Law Regulation (EC) no. 178/2002 and European and national rules and regulations deriving from the same (including Regulation (EC) no. 852/2004 on the hygiene of foodstuffs as well as Regulation (EC) no. 2073/2005 on microbiological criteria for foodstuffs and the technical documents based on the same that serve as a guideline for operators of ready-to-eat food (*Guidance document on Listeria monocytogenes shelf-life studies for ready-to-eat foods, under Regulation (EC) No. 2073/2005 of*

15 November 2005 on microbiological criteria for foodstuffs en *Technical guidance document on shelf-life studies for Listeria monocytogenes in ready-to-eat foods, EU-RL for L. monocytogenes, version 2 November 2008*), as well as the applicable statutory veterinary quality requirements).

#### *Inspection and complaints*

7.2 The Buyer is held to inspect (have inspected) the delivered goods and the packaging immediately upon delivery on potential shortcomings and visible damage as also on quality and temperature (entry inspection). In case of sampling the Buyer must also keep an additional sealed copy of every sample (which gives cause to complain) for the Supplier and forthwith inform the Supplier of a defect or a difference (in quantity, quality or otherwise).

7.3 In case of deficits or visible defects (also including an incorrect temperature of the delivered goods) the Buyer must complain in writing immediately after delivery of the goods, failing which the Buyer forfeits all its rights regarding the said deficits and/or defects. Without prejudice to the above, complaints about the quality of delivered goods must always have reached the Supplier at the latest within 24 hours after delivery and/or presentation for delivery, failing which the Buyer can no longer enforce any claim vis-à-vis the Supplier in connection with the quality of the relevant goods.

7.4 If defects are not visible during or following delivery (also including invisible defects of frozen goods) then the Buyer must complain in writing immediately after discovery of the said defects, all subject to specification of the reason(s) why the defect was not visible during or following delivery. Without prejudice to the provisions set forth in the previous sentence, the Buyer is no longer entitled to complain if the Buyer did not complain in writing within 24 hours after the moment that the Buyer could reasonably have discovered the defects.

7.5 The complaint as intended in paragraphs 3 and 4 must be accompanied by an inspection report drawn up by a recognised and independent expert from which the specification, nature and scope of the defects become apparent. Goods in respect of which the Buyer reported a defect or difference must at a suitable location be kept available for inspection by or on behalf of the Supplier, without the same having been used, mixed or processed. If so requested the Supplier, its insurer or a designated representative on behalf of the Supplier or its insurer must be provided immediate access to the goods and any and all cooperation required to examine the alleged defect.

7.6 Without prejudice to the provisions set forth in articles 7.3 and 7.4, the Buyer can by no means enforce a claim after the Buyer has fully or partly put delivered goods into use, treated or processed the said goods or delivered the same to third parties or surrendered use thereof to third parties or accepted the goods implicitly or expressly.

7.7 Also if the Buyer complained in a timely fashion, its obligation to pay the invoice(s) related to the goods and receipt and payment of other potentially ordered goods (also of the same type) shall remain in full force and effect.

7.8 Weight loss due to cooling or freezing is not qualified as a shortcoming if the weight loss amounts to less than one (1) per cent (natural weight loss).

In this respect weight loss can only be demonstrated by the Buyer on the basis of an official weighing slip from which it becomes apparent that weighing upon or immediately following delivery took place on scales calibrated for that purpose.

If the Buyer picks up the goods to be delivered to the same at the Supplier then the Supplier shall, if so requested, give the Buyer the opportunity to weigh the said goods at the Supplier or in its presence. In these instances complaints regarding weight loss are only accepted by the Supplier to the extent that weighing took place at the Supplier prior to delivery.

7.9 If the complaint was filed correctly and it was demonstrated appropriately that the goods are inferior then the Supplier shall, where reasonable, replace the goods free of charge upon return of the inferior goods, agree on a price discount or, at the discretion of the Supplier, credit.

The Supplier is, however, only held to proceed with free replacement if the Buyer demonstrates that the shortcoming is the direct result of a circumstance that can be blamed on the Supplier. The Supplier is entitled to conduct its own inspection of the nature, scope and cause of an alleged shortcoming. In this respect the Buyer is held to lend any and all required cooperation, subject to forfeiture of all its rights in connection with the shortcoming. The Supplier is not held to take back inferior goods, but if so requested the Buyer shall immediately make the replaced goods available to the Supplier.

## **8. Liability**

8.1 If and to the extent that the buyer complains in a timely and rightful manner, as intended in articles 7.3 and 7.4, the liability of the Supplier (for alleged imputable failures to comply with its obligations, non-conformity or an unlawful act vis-à-vis the Buyer, or on any account whatsoever) per event or series of related events shall be limited to the net invoice value of the relevant delivery, with a maximum of EUR 25,000.00 or the equivalent of it in a different currency on the date of payment. Multiple events with one and the same cause are in this respect qualified as a series of related events and moreover as one event.

8.2 The Supplier is by no means liable vis-à-vis the Buyer or any other person for special, additional or indirect damages, consequential damages or punitive damages, costs or expenses, including but not limited to damages in the form of loss of goodwill, lost turnover, lost profit, disruption of production, unspecified or lump-sum claims judicially imposed penalties, fines, damages to other goods or otherwise, regardless of the fact whether the relevant damages originate from or are connected with a violation of a warranty, breach of contract, an incorrect representation of facts, negligence or otherwise.

8.3 Every right to claim vis-à-vis the Supplier expires after a period of one year after the (proposed) date of delivery has lapsed.

8.4 The Supplier shall by no means be liable for damages incurred by third parties (not being the Buyer or its employees) in connection with the goods delivered by the Supplier, the use of the same or otherwise. The Buyer shall indemnify the Supplier against these kinds of claims and on written demand compensate the Supplier.

8.5 The Buyer must supply complete and correct data, in particular with regard to the levy of VAT in connection with intra-Community transactions. If the Buyer fails to do so then the Buyer must indemnify the Supplier against any and all related claims and the Buyer forfeits the right to file a claim vis-à-vis the Supplier in connection therewith.

## **9. Force majeure**

9.1 There is question of force majeure on the part of the Supplier if the Supplier cannot comply with its obligations properly and in a timely fashion as a result of a foreseeable or unforeseeable circumstance that occurs beyond its control, including but not limited to: (a) natural disasters, war, threat of war, terror attacks, riots, serious disturbances; (b) stagnation in the supply of raw materials or the shipment of a final product, also including veterinary diseases and epidemics; (c) sickness of such number of employees that compliance is reasonably not possible; (d) industrial actions, industrial disputes, lock-out or comparable actions within or against the Supplier, its suppliers or non-subordinates; (e) other problems in production or supply at the Supplier or its suppliers and/or problems with in-house transport or transport carried out by third parties; (f) damages to the production as a result of fire, storm or other extreme unforeseen circumstances; (g) every measure taken by or on behalf of a national or international authority.

9.2 The Supplier must forthwith inform the Buyer of (potential) situations of force majeure.

9.3 In case of force majeure within the meaning of article 9.1 above the Supplier is entitled to terminate an agreement (agreements) affected by the situation of force majeure with immediate effect by giving written notice, without being liable to pay any compensation.

## **10. Applicable law and competent court**

10.1 Dutch law is exclusively applicable to any and all agreements to which these terms and conditions are applicable, with exclusion of the UN Convention of 1980 on Contracts for the International Sale of Goods (Vienna Sales Convention).

10.2 Exclusively the competent court in the district where the Supplier is established shall take cognisance of any and all disputes, regardless of the fact whether they originate from an agreement or otherwise, barring the right of the Supplier to bring a dispute to the cognisance of a different competent Dutch court.

10.3

a) Without prejudice to article 10.2 any and all disputes between the Supplier and the Buyer that may arise as a result of or in connection with an agreement, or further agreements that may be the result thereof, can, if the Buyer is not established in a Member State of the European Union, also be settled in accordance with the Arbitration Regulations of the Dutch Arbitration Institute.

b) The place of arbitration shall be Amsterdam.

- c) The proceedings shall be conducted in the Dutch language.
- d) The arbitration tribunal shall rule based on reasonableness and fairness.

10.4 The Dutch version of these terms and conditions prevails over translations.