

## **GENERAL PURCHASING CONDITIONS**

**of**

**Hap Foods Holland B.V.**

### **Article 1 - General**

- 1.1. Hap Foods Holland B.V. (hereinafter called: "Buyer"), is registered with the Chamber of Commerce under no. 23075765 and is established in Ridderkerk and has its office at Pruimendijk 354, 2989 AR in Ridderkerk, the Netherlands.
- 1.2. "Conditions" means these general purchasing conditions of the Buyer.
- 1.3. "Seller" means the Buyer's other party, being the (potential) seller/supplier or a (legal) person on behalf of the (potential) seller/supplier.
- 1.4. "Agreement" means the agreement and/or further follow-up agreements between the Buyer and the Seller.
- 1.5. "Goods" means all goods to be sold and/or to be delivered by the Seller to the Buyer pursuant to Article 3:2 of the Dutch Civil Code ("DCC").

### **Article 2 - Applicability**

- 2.1. These Conditions apply to all legal relations in which the Buyer acts as a (potential) buyer and/or client. This also includes a continuing performance agreement (whether or not implicitly) in force between the Buyer and the Seller, following from a series of separate agreements and/or a durable trading relationship between the Buyer and the Seller.
- 2.2. Deviations from these Conditions will only be made in writing. Such deviation will have no effect in respect of any other (future) agreements.
- 2.3. Applicability of general conditions (of sale) used by the Seller is explicitly rejected.
- 2.4. If in a particular case the Buyer does not rely on the provisions in these Conditions, this will not mean that the Buyer has thereby waived the right to rely on the provisions in these Conditions in other cases.

### **Article 3 - Agreement**

- 3.1. Every offer of the Seller is irrevocable and unless the opposite appears explicitly from the offer.
- 3.2. An Agreement between the Buyer and the Seller will be concluded after the Buyer has acknowledged an offer or quotation from the Seller in writing by means of a confirmation of purchase/order, or after the Buyer has paid (part of) the purchase price. As long as the Agreement has not been concluded yet, the Seller cannot derive any rights from the relationship with the Buyer.
- 3.3. If at the Buyer's request the order placed by it is amended or supplemented, the Seller will inform the Buyer within 48 hours in writing about the possible consequences for the agreed price and time of delivery before honouring this request.
- 3.4. The Seller can only amend or supplement the Agreement if this amendment or supplementation has been agreed in writing between the Buyer and the Seller.
- 3.5. The contents of an Agreement will only be proven by the confirmation of purchase/order and any amendment or supplementation thereof by the Buyer.

### **Article 4 - Price**

- 4.1. The agreed price comprises all costs that are made in connection with the Goods up to and including the delivery. The agreed price includes but is not limited to (if applicable) costs of storage and packing, taxes (including clearing costs), other levies, costs of transport and transport insurance, unless otherwise agreed upon explicitly.

### **Article 5 - Payment**

- 5.1. Payments will be made in euros, unless something else has been agreed.
- 5.2. If the Buyer does not pay the purchase price for any reason whatsoever, the Seller will grant the Buyer a further term for payment newly to be agreed upon. Only after the Buyer does not pay the purchase price within this new term, the Buyer will be in default, except for force majeure and only after written notice of default subject to a period of notice of fourteen days.

- 5.3. If the Buyer is in default, the Buyer will only be obliged to pay the statutory interest on the invoice amount excluding transport costs, VAT and other levies of any nature whatsoever.
- 5.4. The Buyer is entitled to set off debts to the Seller with any claim that the Buyer has on the Seller, for any reason whatsoever.

**Article 6 - Advance**

- 6.1. If it has been agreed that the Buyer will pay an advance on the price, each time when part of the price has become due and payable, a corresponding part of the advance will be set off with that, irrespective of whether the claim on payment of the price has been transferred to a third party.
- 6.2. If the Goods have not been delivered within the agreed period and/or in the agreed place, and/or the Goods do not comply with the Agreement, the Seller will owe statutory commercial interest in the sense of Article 6:119a DCC increased by 1% interest per calendar month - in which connection part of a month will be counted as a full month - for the period that the shortcoming continues, irrespective of whether the shortcoming can be imputed to the Seller.
- 6.3. If the Buyer or the Seller sets aside the Agreement, the Seller must return the advance to the Buyer within seven days after setting aside the Agreement, failing which the Seller will owe statutory commercial interest pursuant to Article 6:119a DCC increased by 1% interest per calendar month - in which connection part of a month will be counted as a full month - on the advance.

**Article 7 - Delivery and risk**

- 7.1. Delivery will be made at the time that the Buyer takes receipt of the Goods in the agreed place.
- 7.2. Until receipt of the Goods has been taken by the Buyer, the Goods will remain at the Seller's expense and risk, irrespective of whether the Buyer has taken care of transport. The Seller will see to take out insurance of the Goods during transport and storage until the time that the Buyer takes receipt of them, unless otherwise agreed upon.
- 7.3. The risk will remain with the Seller if it fails to fulfil any obligation following from the Agreement or from these Conditions.
- 7.4. The terms of delivery mentioned in the confirmation of purchase/order are binding. If the Goods have not been delivered within the agreed time and in the agreed place, the Seller will be in default without notice of default and - without prejudice to any other rights or claims due to the Buyer - owe an immediately due and payable fine of 1% of the agreed price for every day that the shortcoming continues, increased by any turnover tax applicable, to a maximum of 50% of the agreed price. If delivery has remained permanently impossible, the fine will be payable in total at once.

**Article 8 - Transfer of ownership**

- 8.1. The ownership and risk of the Goods will pass to the Buyer at the time of delivery by the Seller.
- 8.2. The Seller waives all rights and powers that would be due to it on the basis of the right of retention or the right of complaint.

**Article 9 - Transport documents and other documents**

- 9.1. The Seller's copy of the transport document signed for receipt by the Carrier without remarks will only serve as proof of shipments of the quantities mentioned in the transport document, and also the externally visible condition of the Goods.
- 9.2. The Seller is obliged to provide the Buyer in good time with all the documents applicable to the transaction and/or the Goods with observance of the prescribed periods and formalities, in the absence of which the Seller will be fully liable to the Buyer for the damage following therefrom. This will also apply with regard to compliance with regulations of the European Union or other national and/or international authorities and governments, such as - but not limited to - (EC) Regulation No. 178/2002 and the regulations related thereto.
- 9.3. At the time of delivery the Seller will be obliged to provide the Buyer with the required documents and certificates of the authorities, including customs and health and inspection authorities, showing that the Codes can be imported, traded or processed by the Buyer within the European Union without any impediment and without the need to comply with further formalities of the authorities.

- 9.4. All the costs that are caused by or are the result of the preparation and delivery of the required documents will be for the Seller's account, unless the opposite has been agreed upon explicitly.

**Article 10 - Obligations of the Seller**

- 10.1. The Seller will be obliged to see to it that the Goods delivered have been packed carefully and properly, if required provided with a THT date and all statutory designations required by law, free of foreign objects, contaminations and substances are harmful to health, also in conformity with all legal requirements, i.e. EU regulations and regulations of the country of delivery and (final) destination, and comply with the temperature requirements prescribed by law.
- 10.2. The Seller will see to it that the purchased Goods are stored and, if applicable, are transported under at least the temperatures and conditions prescribed by law and, in so far as applicable, that the refrigeration chains are not interrupted needlessly. Moreover the Seller will comply with the general prescriptions on the subject that apply to the relevant product. If the Seller takes care of transport, the Seller will check and record the temperatures of the cold store and freezer and the course of temperatures during transport. Immediately on request the Seller will supply the Buyer with a copy of all records kept on the subject.
- 10.3. For all Goods the Seller is obliged to use an HACCP- and/or GMP+ system or an applicable hygiene code or quality system that is attuned to the operations, the volume and the nature of the Goods of the Seller. With regard to preparation, handling, storage or distribution of Goods, materials or equipment that come into contact with the Goods the Seller is obliged to comply with the legislation and regulations in force in the place of delivery and the place of destination of the Goods and to prove this, if necessary, on the Buyer's first request.
- 10.4. The Buyer is entitled (if it requires) to inspect the Goods. The Seller must render all cooperation to this to be expected of it in reason.

**Article 11 - Sampling and analysis**

- 11.1. At the time and place of delivery the Buyer may have samples drawn, sealed in triplicate, in the customary manner. If desired, the Seller and the Buyer may check the sampling.
- 11.2. The examination of the quality and/or composition will be conducted in accordance with the method(s) used at the time of examination if no other method has been agreed.
- 11.3. If at the time of delivery no samples have been taken, this may be done at a later time. In that case the assessment and analysis may only produce a presumption with regard to the quality at the time and at the place of delivery. The paragraphs 1 and 2 of this article apply accordingly to this sampling.
- 11.4. In case of a dispute about quality and/or composition, one of the samples mentioned in paragraph 1 will be subjected as soon as possible, but at the latest within seven days, to an examination by a laboratory to be designated by the Buyer.
- 11.5. The result of the examination will be binding, subject to the right of each of the parties to order a counter-examination within ten working days after the examination result has been made known, consisting of an examination of another sample mentioned in paragraph 1, by a different or the same laboratory. If the result of the counter-examination agrees with the results of the first examination, the result of the counter-examination will be binding on both parties. If the result of the counter-examination of the second sample should be contrary to that of the first sample with regard to (non-) conformity of the Goods, the examination of the third (final) sample by a laboratory to be designated by the Buyer will not only be binding but also decisive.
- 11.6. The costs of the examination will be borne by the party that is held to be wrong according to the ultimate outcome of the said examinations.

**Article 12 - Guarantee**

- 12.1. The Seller guarantees that the Goods to be delivered comply with the Agreement. This guarantee at least includes that:
- a. the Goods have the properties that have been promised;
  - b. the Goods meet the highest quality standards;
  - c. the Goods are free of rights of third parties and are also freely marketable;

- d. the Goods are suitable for the purpose for which the order has been placed or the agreement has been concluded;
  - e. the Goods comply with the rules of or by virtue of the law and/or otherwise applicable rules and/or requirements made by the Buyer among other things in the fields of quality, health, safety and environment, both in the country of delivery and in the country of final destination;
  - f. the Goods are marketable freely and without any restriction(s) in the country of delivery and also in the country of the final destination (including the destination that the Buyer has agreed upon with any third party by separate agreement);
  - g. the Goods are provided with and accompanied by all data and instructions that are necessary for correct and safe handling;
  - h. the Goods are suitable for consumption until the designated sell-by date; and
  - i. the Goods are provided with and accompanied by all the documentation requested by the Buyer and otherwise necessary.
- 12.2. The guarantee included in article 12.1 applies irrespective of any transfer of the risk of the Goods to the Buyer, following from the applicable version of the Incoterms drawn up by the International Chamber of Commerce in Paris.
- 12.3. If the Seller fails in the fulfilment of the obligation(s) following from article 12.1, the Seller will replace the Goods or make up any shortfall at its expense and at the Buyer's choice on the Buyer's first request, unless the Buyer prefers termination of, or setting aside, the Agreement and all this without prejudice to the Buyer's other rights on the basis of Seller's breach/shortcoming, including but not limited to the right to compensation.

#### **Article 13 - Non-conformity**

- 13.1. If the Goods are not in accordance with the Agreement and/or the specifications set by the Buyer, the Buyer will be entitled to reject the Goods. Also if it only emerges after onward shipment and/or processing or treatment of the Goods that the Goods are not in accordance with the Agreement and/or the specifications set by the Buyer, the Buyer will be entitled to reject the Goods. The Buyer will (have others) store the rejected Goods at the Seller's expense and risk. The costs of the inspection will be borne by the Seller.
- 13.2. The Buyer will never be bound by any period set by the Seller within the Buyer must make it known that the Goods delivered are rejected or within the Buyer must complain.
- 13.3. The Seller must immediately collect the rejected Goods from the Buyer or at the location indicated by the Buyer upon first request and at its own expense, failing which the Buyer can return these Goods to the Seller at the Seller's expense and risk without its permission. If the Seller refuses to accept the Goods, the Buyer may store these Goods at the Seller's expense and risk, or sell or destroy them.
- 13.4. The preceding provisions 13.1-13.3 leave intact Buyer's right to supplementary or alternative compensation.

#### **Article 14 - Liability, indemnity and insurance**

- 14.1. The Seller is liable for all damage of any nature whatsoever and without any limitation that is suffered by the Buyer and/or by later customers or users as a result of a failing in the fulfilment of the obligations of the Seller and/or as a result of a negligent acts or omissions of the Seller or of its personnel or third parties engaged by it or any acts contrary to a contractual or statutory obligation. The Seller's liability extends among other things to damage caused by death or injury, damage to goods of the Buyer and of third parties, business interruption and loss of profit or income.
- 14.2. The Seller is obliged to indemnify the Buyer for all claims of third parties in connection with the Agreement and/or in connection with the Goods delivered by the Seller or through its intermediary and/or in connection with negligent acts or omissions of the Seller or of its servants or any acts contrary to a contractual or statutory obligation. The Seller will also be obliged to indemnify the Buyer for all costs involved in a judicial or arbitral action, including the integrated costs of legal assistance and extrajudicial costs.
- 14.3. The Seller is obliged to insure its liability for such amounts as is customary in the European food industry. The insurance cover will amount at least to €5,000,000.00. The Seller will enable the Buyer

immediately on request to inspect the relevant insurance policies and hand over an insurance certificate proving this insurance cover.

- 14.4. Any liability of the Buyer for damage of any nature whatsoever will be excluded, except in so far as this damage has been caused by an act or omission of the managing director(s) and/or executive(s) of the Buyer, either with the intention to cause damage or recklessly and with the knowledge that this damage would probably result therefrom.

#### **Article 15 - Force majeure**

- 15.1. In the event of force majeure pursuant to Article 6:75 DCC the performance of the Agreement will be suspended in full or in part for the duration of the force majeure, without the Buyer and the Seller being obliged to make any compensation in the matter. If the force majeure situation lasts for more than thirty (30) days, the other party will be entitled to set aside the Agreement by means of a registered letter with immediate effect and without judicial interposition, without any right to compensation being created on that occasion.
- 15.2. Force majeure on the part of the Seller will at any rate not mean lack of personnel, strikes, non-performance of third parties engaged by the Seller, failure of auxiliary materials, and liquidity or solvency problems on the part of the Seller.

#### **Article 16 - Performance, suspension, setting aside the Agreement and/or compensation**

- 16.1 Irrespective of the other powers on the part of the Buyer to terminate/set aside the Agreement and apart from the right to claim performance and/or compensation, the Buyer will be entitled to suspend the fulfilment of its obligations or to set aside the Agreement in full or in part with immediate effect (without being obliged to make any compensation for that reason) if one or more of the following situations occurs:
- a. if the Seller does not, not properly or not in time fulfil any obligation following from the Agreement or from these Conditions;
  - b. if the Buyer has informed the Seller of a failing in writing and with a statement of the nature of the failing and the Seller subsequently fails in a comparable manner in the performance of the Agreement;
  - c. if the Seller acts contrary to a statutory obligation or otherwise acts improperly;
  - d. if the Seller is subject to or under the threat of becoming subject to a suspension of payment or bankruptcy or any part of its property has been attached;
  - e. if the Seller deceases, ceases its activities resolves on liquidation or otherwise loses its legal personality;
  - f. in case of withdrawal of permits required for the performance of the Agreement;
  - g. if a third party attachment is levied under the Buyer at the expense of the Seller.
- 16.2 In case the Buyer sets aside the Agreement the Buyer will be entitled at its choice by way of compensation to:
- a. any price difference disadvantageous to the Buyer between the contract price and the market value of the relevant Goods and/or services on the day of non-fulfilment, or;
  - b. the price difference between the contract price and the price of the substitute transaction, without prejudice to the Buyer's right to supplementary or alternative compensation.
- 16.3 If the Buyer sets aside the Agreement, the Seller must, if requested to do so by the Buyer, refund any purchase price already paid and, on first request, immediately collect the already delivered Goods in full or in part from the Buyer or from a location to be designated by the Buyer, without prejudice to the Buyer's right to supplementary or alternative compensation.
- 16.4 The Seller waives all rights and powers that would be due to it on the basis of the right of suspension.

#### **Article 17 - Transfer of rights and obligations**

- 17.1 Unless otherwise agreed, the Seller may only transfer to third parties rights and/or obligations on the strength of the Agreement with the Buyer's prior written permission. The Buyer may attach conditions to this permission.

#### **Article 18 - Recall**

- 18.1 If one of the parties becomes aware of a defect in the Goods delivered (including packaging), this party must immediately inform the other party of this, stating:
- a) the type of defect;
  - b) the goods affected;
  - c) any other information that may be relevant.
- 18.2 The parties will subsequently in consultation take all measures necessary in view of the circumstances. The measures to be taken may *inter alia* entail that deliveries are stopped, that the production of products is stopped, that the stocks of products (whether or not at the premises of customers of the Buyer) are blocked and/or that recall will be made. Only the Buyer will be entitled to make the decision whether and which of these measures will be taken and how they will be performed. The Seller must render all reasonable cooperation to the performance of these measures and, in so far as the occasion and/or cause thereof is to be imputed to it, bear the costs thereof, subject to the provisions in the articles 12, 13 and 15.
- 18.3 The Seller is obliged to keep secret all information concerning measures actually taken or possibly to be taken.

#### **Article 19 – Compliance and sanction rules**

- 19.1 The Seller accepts that on the basis of applicable regulations to prevent money-laundering and financing of terrorism the Buyer will report unusual transactions to the competent authorities.
- 19.2 The Seller accepts that on the basis of applicable regulations the Buyer may be obliged to identify the Seller and verify the identification. The Seller shall fully cooperate in this respect. The Buyer will record and keep the required data in accordance with applicable regulations..
- 19.3 The Seller accepts that the said duty to provide information prevails over the applicable privacy rules.
- 19.4 The Seller guarantees the observance of all applicable sanctions and limitations laid down in and following from all American, UN or EU sanctions and export control regulations in force at the time of conclusion of the Agreement and during its performance.
- 19.5 The Buyer is entitled to terminate the Agreement immediately, if it supposes in reason that the Goods are directly or indirectly intended for any country for which in pursuance of American, UN or EU regulations a sanction is in force for the relevant Goods, without an exemption or permit having been obtained for the purpose from a competent agency.
- 19.6 In pursuance of the termination of the Agreement on the strength of one of the above-mentioned articles any obligations of the Buyer under the Agreement will immediately lapse. The Seller will indemnify the Buyer against any claim, fine or other damage of third parties that follows from or is related to such a termination or transgression.

#### **Article 20 - Privacy**

- 20.1 The Buyer may or may not receive the data during the performance of the Agreement, process, store and share them with anyone inside the Buyer's organization concerned in the performance of the Agreement and relationship management. The Buyer will not process the data on the Seller's instruction, unless this is required in view of the services to be rendered. The Buyer will only process the data in so far as compatible with the objective for which the data have been collected. The Buyer will take the necessary measures, both technical and organizational, to protect the personal data from loss, modification and unauthorized access, whether or not by third parties.
- 20.2 The parties will confidentially process the data collected during the performance of the Agreement. The parties will not share the received personal data with third parties, unless the parties have given prior permission or if necessary to comply with applicable regulations. All this in so far as it does not concern information accessible to the public or the data cannot harm the parties in any way.

#### **Article 21 - Limitation period**

- 21.1 All claims against the Buyer become time-barred on expiry of one (1) year after the date of the Agreement.

**Article 22 - Continuing performance agreement**

- 22.1 In accordance with the provisions in article 2.1, these Conditions also apply to a continuing performance agreement in force between the Buyer and the Seller (whether or not implicitly), following from a series of incidental agreements and/or a durable trading relationship between the Buyer and the Seller.
- 22.2 A continuing performance agreement in force between the Buyer and the Seller may always be terminated by the Buyer by written notice of termination, with observance of a two (2) months' period of notice.
- 22.3 A continuing performance agreement in force between the Buyer and the Seller may always be terminated by the Seller by written notice of termination, with observance of a six (6) months' period of notice.
- 22.4 The Seller waives the right to compensation that would (possibly) be due to it, if the Seller terminates the continuing performance agreement.

**Article 23 - Language**

- 23.1 The Dutch text of these Conditions forms the only authentic text. In the event of deviation between the Dutch text and a translation into a foreign language the Dutch text will prevail.

**Article 24 - Applicable law**

- 24.1 All legal relationships following from or relating to these Conditions or the Agreement(s) will be governed exclusively by Dutch law. Applicability of the Vienna Convention (United Nations Convention on Contracts for the International Sale of Goods) is excluded explicitly.

**Article 25 - Competent court**

- 25.1 Any disputes following from or relating to these Conditions or the Agreement(s) between the Buyer and the Seller will be settled exclusively by the District Court of Rotterdam if the Seller's registered office is situated in the European Economic Area (EEA) and by means of UNUM Arbitration (<https://unum.world/>) in Rotterdam if the Seller's registered office is not situated in the EEA.

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