

**GENERAL PURCHASE CONDITIONS**  
**of**  
**Mondial Foods B.V.**

**Artikel 1 - General**

- 1.1. Mondial Foods B.V. (hereinafter referred to as: "Purchaser") is registered at the Chamber of Commerce under no. 38016404 and has its registered office in Bathmen and principal place of business at Smeenkhof 12d in (7429AX) Colmschate, The Netherlands.
- 1.2. 'Conditions' means these general purchase conditions of the Purchaser.
- 1.3. 'Seller' means the other party of the Purchaser, 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 subsequent agreements between the Purchaser and the Seller.
- 1.5. 'Goods' means all the Goods to be sold and/or supplied by the Seller to the Purchaser within the meaning of article 3:2 Dutch Civil Code (hereinafter referred to as: "DCC").

**Artikel 2 - Applicability**

- 2.1. These Conditions apply to all legal relationships under which the Purchaser acts as (potential) purchaser and/or client. Legal relationships also means all obligations between the Purchaser and the Seller arising from written or unwritten law. This also includes any continuing performance agreement applicable between the Purchaser and the Seller (arisen implicitly or otherwise), arising from a series of isolated agreements and/or a consistent commercial relationship between the Purchaser and the Seller.
- 2.2. Derogations from these Conditions are valid only if in writing. Such a derogation has no effect with respect to any other (future) agreements.
- 2.3. The applicability of the general conditions (of sale) used by the Seller is expressly rejected.
- 2.4. If the Purchaser does not invoke the provisions of these Conditions in a particular case, this does not mean that the Purchaser has waived the right to invoke the provisions of these Conditions in other cases.

**Artikel 3 - Agreement**

- 3.1. Each offer and/or proposal of the Seller is irrevocable, unless the opposite is expressly clear from the offer and/or proposal.
- 3.2. An Agreement between the Purchaser and the Seller is concluded after the Purchaser has confirmed a proposal, offer or quotation of the Seller by means of a written purchase/order confirmation. As long as the Agreement has not been concluded, the Seller cannot derive any rights from the relationship with the Purchaser.
- 3.3. If at the request of the Purchaser the order placed by it is to be changed or supplemented, the Seller shall, before complying with this request, inform the Purchaser in writing within 48 hours about the possible consequences for the agreed price and delivery time.
- 3.4. The Seller can change or supplement the Agreement only if this change or supplement has been agreed in writing between the Purchaser and the Seller.
- 3.5. The content of an Agreement is proven only by the purchase/order confirmation and any possible change therein or supplement thereto by the Purchaser.

**Artikel 4 - Price**

- 4.1. The agreed price includes all costs made in connection with the Goods up to and including the delivery. The agreed price includes but is not limited to (if applicable) the costs of storage and packaging, taxes (including clearance charges), other charges, costs of transport and transport insurance, unless expressly agreed otherwise.

#### **Artikel 5 - Payment**

- 5.1. Payments will take place in the agreed currency.
- 5.2. If the Purchaser does not pay the purchase price for any reason, the Seller will give the Purchaser the opportunity to agree a new payment term. Only after the Purchaser has failed to pay the purchase price within the new payment term will it be in default, unless in the event of force majeure and after a written notice of default.
- 5.3. If the Purchaser is in default, the Purchaser will only be obliged to pay the statutory interest on the invoiced amount, excluding the costs of transport, VAT and other charges of any kind.
- 5.4. The Purchaser is entitled to offset debts to the Seller against any claim that the Purchaser has against the Seller, on whatever basis.

#### **Artikel 6 - Delivery and risk**

- 6.1. Delivery takes place at the moment when the Purchaser takes receipt of the Goods at the agreed place.
- 6.2. Until the Purchaser has taken receipt of the Goods, the Goods remain for the account and risk of the Seller, regardless whether the Purchaser has arranged for transport. The Seller shall arrange for insurance of the Goods during transport and storage until the moment when the Purchaser takes receipt of them, unless agreed otherwise.
- 6.3. The terms of delivery stated in the purchase/order confirmation are binding. If the Goods have not been delivered within the agreed term and at the agreed place, the Seller will be in default without notice of default being required.

#### **Artikel 7 - Transfer of ownership**

- 7.1. The ownership and the risk of the Goods pass from the Seller to the Purchaser at the moment of delivery.
- 7.2. The Seller waives all rights and powers that would accrue to it on the basis of the right of retention or the right to reclaim unpaid goods.

#### **Artikel 8 - Transport documents and other documents**

- 8.1. The Seller's copy of the transport document signed without observations by the Carrier is only proof of shipment of the numbers stated on the transport document, as well as of the externally visible state of the Goods.
- 8.2. The Seller is obliged to provide the Purchaser in a timely manner with all documents applicable to the transaction and/or the Goods, with due observance of the prescribed terms and formal requirements, failing which the Seller will be fully liable to the Purchaser for the damage resulting therefrom. This also applies with respect to compliance with the regulations of the European Union or other national and/or international authorities and governments, such as - but not limited to - Regulation (EC) No 178/2002 and the related laws.
- 8.3. The Seller is obliged to provide on delivery the required documents and certificates of the authorities, including customs and health and inspection authorities, evidencing that the Goods may be imported, marketed or processed within the European Union by the Purchaser without any obstacle and without having to satisfy any further formal requirements of the government.
- 8.4. All costs that are caused by or result from drawing up and providing the required documents are for the account of the Seller, unless expressly agreed otherwise.

#### **Artikel 9 - Obligations of the Seller**

- 9.1. The Seller is obliged to ensure that the delivered Goods are carefully and soundly packaged, bear a best before date and all marks required by law, are free of foreign objects, contaminants and substances injurious to health, as well as comply with all statutory requirements and EU regulations, and meet the statutory temperature requirements.

- 9.2. The Seller shall ensure that the purchased Goods are kept, and if applicable transported, at least at the temperatures and under the conditions required by law and, in so far as applicable, that the cooling chains are not unnecessarily interrupted. In addition the Seller shall comply with the general rules in this respect that apply to the product concerned. If the Seller arranges for the transport, the Seller shall regularly monitor and register the temperature of the cold and freezer store and the temperature fluctuations during the transport. Immediately on request, the Seller shall provide the Purchaser with a copy of all registrations made in this respect.
- 9.3. The Seller is obliged to have an HACCP and/or GMP system or an applicable hygiene code or quality system in place for all Goods, geared to the activities, the volume and the nature of the Goods of the Seller. The Seller is obliged to comply in all aspects of the preparation, processing, storage and/or distribution of Goods, materials or equipment that come/comes into contact with the Goods at the place of delivery and the place of destination of the Goods with the applicable laws and regulations and, if necessary, prove this compliance immediately on request of the Purchaser.
- 9.4. If it so desires, the Purchaser is authorised to inspect the Goods. The Seller shall then reasonably give all cooperation that can be expected of it.

#### **Artikel 10 - Specifications, testing and complaints**

- 10.1. If the Goods do not conform to the Agreement and/or the specifications set by the Purchaser, the Purchaser is entitled to reject the Goods. Also if it is found after forwarding and/or processing or working of the Goods that the Goods do not conform to the Agreement and/or the specifications set by the Purchaser, the Purchaser is entitled to reject the Goods. The Purchaser will store the rejected Goods for the account and risk of the Seller.
- 10.2. The Purchaser is never bound to any period set by the Seller within which the Purchaser is to make known that the delivered Goods are rejected, or within which the Purchaser is to complain.
- 10.3. The Seller shall immediately on request and for its own account collect the rejected Goods from the Purchaser or from the location designated by the Purchaser, failing which the Purchaser may return the Goods concerned without permission of the Seller for the Seller's account and risk. If the Seller refuses to take receipt of the Goods, the Purchaser may store or sell or destroy the Goods concerned for the account and risk of the Seller.
- 10.4. The above provisions 10.1-10.3 do not prejudice the Purchaser's right to claim additional or replacement damages.

#### **Artikel 11 - Sampling and analysis**

- 11.1. The Purchaser can have samples taken at the time and at the location of the delivery, sealed in triplo, in the usual manner. The Seller and the Purchaser may, if they desire so, monitor the sampling.
- 11.2. The investigation of the quality and/or composition takes place using the method prevailing at the time of the investigation if no other method has been agreed.
- 11.3. If no sampling has taken place at the time of the delivery, this may still be done at a later time. The assessment and analysis can in that event only result in a suspicion regarding the quality at the time and at the location of the delivery. The paragraphs 1 and 2 of this article apply by analogy to this sampling.
- 11.4. If there is a dispute about the quality and/or composition, one of the samples referred to in paragraph 1 shall as soon as possible, but no later than within seven days, be subjected to an investigation by a laboratory designated by the Purchaser.
- 11.5. The outcome of the investigation is binding, provided that either party has the right to order, within ten working days after the outcome of the investigation has been made known, a counter-investigation of another sample referred to in paragraph 1 by another or the same laboratory. If the outcome of the counter-investigation corresponds to the outcome of the first investigation, then the outcome of the counter-investigation will be binding for both parties. If the outcome of the counter-investigation of the second sample contradicts that of the first sample as regards the conformity or non-conformity of the Goods, then the investigation of the third (last) sample by a laboratory designated by the Purchaser will be binding as well as decisive.

- 11.6. The costs of the investigation will be borne by the party that according to the ultimate outcome of the aforementioned investigations is the unsuccessful party.

#### **Artikel 12 - Guarantee**

- 12.1. The Seller guarantees that the Goods to be delivered conform to the Agreement. This guarantee includes as a minimum that:
- a. The Goods have the properties that were promised;
  - b. The Goods meet the highest quality standards;
  - c. The Goods are free of rights of third parties, as well as freely marketable;
  - d. The Goods are suitable for the purpose for which the order was placed or the Agreement was concluded;
  - e. The Goods comply with rules applicable by or pursuant to the law and/or otherwise and/or requirements set by the Purchaser, *inter alia* in the fields of quality, health and safety and the environment, both in the country of delivery and in the country of destination;
  - f. The Goods are provided with and accompanied by all information and instructions that are necessary for a correct and safe handling;
  - g. The Goods are suitable for consumption until the specified best before date; and
  - h. The Goods are provided with and accompanied by all documentation requested by the Purchaser and otherwise necessary.
- 12.2. The guarantee set out in article 12.1. remains in effect regardless of a possible passing of the risk of the Goods to the Purchaser, arising 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) arising from article 12.1, the Seller shall for its own account replace the Goods or supplement what is missing, such at the discretion of the Purchaser, immediately on request of the Purchaser, unless the Purchaser prefers termination or dissolution of the Agreement, and everything without prejudice to the other rights of the Purchaser on the basis of the failure, including but not limited to the right to damages.

#### **Artikel 13 - Liability, indemnification and insurance**

- 13.1. The Seller is liable for all damage of any nature and without any limitation that is suffered by the Purchaser and/or by subsequent customers or users as a result of a failure in the fulfilment of the obligations of the Seller and/or as a result of the acts or omissions of the Seller, or its personnel or third parties engaged by it, in violation of a contractual or statutory duty or otherwise improperly. The liability of the Seller extends to, *inter alia*, damage caused by death or injury, damage to properties of the Purchaser and of third parties, business interruption and loss of profit or revenues.
- 13.2. The Seller is obliged to indemnify the Purchaser against all claims from third parties in connection with the Agreement and/or in connection with the Goods delivered by the Seller or through its intermediation and/or in connection with the acts or omissions of the Seller or its auxiliary persons in violation of a contractual or statutory duty or otherwise improperly. The Seller is also obliged to indemnify the Purchaser fully against all costs associated with such judicial or arbitral proceedings, including the full costs of legal assistance and extrajudicial costs.
- 13.3. The Seller is obliged to insure its liability for such amounts as are usual in the European food industry. The insurance cover shall be at least € 5,000,000. Immediately on request, the Seller shall give the Purchaser access to the relevant policies and submit an insurance certificate evidencing this insurance cover.
- 13.4. Any liability of the Purchaser for damage of any nature is excluded, except in so far as the damage results from an act or omission of the partners or management of the Purchaser, committed or refrained from either intentionally or recklessly and with the knowledge that the damage would probably occur.

#### **Artikel 14 - Force majeure**

- 14.1. In the event of force majeure, within the meaning of article 6:75 DCC, the performance of the Agreement will be fully or partially suspended for the duration of the force majeure period, without the Purchaser and the Seller becoming liable for damages in this respect. If the force majeure situation lasts longer than thirty (30) days, the other party will have the right to dissolve the Agreement by means of a registered letter, with immediate effect and without judicial intervention being required and without this giving rise to any right to damages.
- 14.2. Force majeure on the side of the Seller does in any event not mean a lack of personnel, strikes, default of third parties engaged by the Seller, loss of auxiliary materials, or liquidity or solvency problems of the Seller.

#### **Article 15 - Performance, suspension, dissolution and/or damages**

- 15.1 Notwithstanding the other powers on the side of the Purchaser to terminate / dissolve the Agreement and in addition to the right to claim performance and/or damages, the Purchaser is entitled to suspend the fulfilment of its obligations or dissolve the Agreement in whole or in part with immediate effect, ( without becoming liable for any damages on that basis) if one or more of the following situations occurs:
- a. If the Seller does not, not properly or not in a timely manner fulfil any obligation arising from the Agreement or these Conditions;
  - b. if the Purchaser has given the Seller written notice of a failure, specifying the nature of the failure, and the Seller subsequently again fails in a similar manner in the performance of the Agreement;
  - c. if the Seller acts in violation of a statutory duty or otherwise acts improperly;
  - d. if the Seller is granted a suspension of payments or is bankrupt, or applies for a suspension or threatens to go bankrupt, or if attachment is levied of any part of its assets;
  - e. If the Seller dies, ceases its activities, decides to enter into liquidation or otherwise loses its legal personality;
  - f. in the event of withdrawal of licenses that are necessary for the performance of the Agreement;
  - g. if garnishment is levied against the Purchaser at the expense of the Seller.
- 15.2 In the event of dissolution by the Purchaser, the Purchaser is, by way of damages, entitled to:
- a. the possible negative price difference for the Purchaser between the contract price and the market value of the Goods and/or services concerned on the day of the non-fulfilment; or
  - b. the price difference between the contract price and the price of the substitute purchase, without prejudice to the Purchaser's right to additional or replacement damages.
- 15.3 If the Purchaser dissolves the Agreement, the Seller shall, if so requested by the Purchaser, refund any already paid purchase price and, immediately on request of the Purchaser, collect all or part of the Goods already delivered from the Purchaser or from a location designated by the Purchaser, without prejudice to the Purchaser's right to additional or replacement damages.
- 15.4 The Seller waives all rights and powers that would accrue to it on the basis of the right of suspension.

#### **Article 16 - Transfer of rights and obligations**

- 16.1 Unless otherwise agreed, the Seller may transfer rights and/or obligations pursuant to the Agreement to third parties only with the prior written consent of the Purchaser. The Purchaser may attach conditions to this consent.

#### **Article 17 - Recall**

- 17.1 If one of the parties becomes aware of a defect in the Goods delivered (including the packaging), then this party shall immediately inform the other party, stating:
- a) the nature of the defect;
  - b) the affected goods;
  - c) any other information that may be relevant.

- 17.2 The Parties will subsequently enter into consultations and take all steps necessary in view of the circumstances. The measures to be taken can include that deliveries are discontinued, that the production of products is discontinued, that the stocks of products (whether or not at customers of the Purchaser) are blocked and/or that a recall takes place. Only the Purchaser is authorised to take the decision on whether and which of these measures are to be taken and how this is to be implemented. The Seller shall give all reasonable cooperation in the implementation of these measures, and in so far as the reason and/or cause is attributable to it, bear the costs thereof, without prejudice to the provisions of articles 12, 13 and 15.
- 17.3 The Seller is obliged to keep all information about actual or possible measures confidential.

**Article 18 - Period of limitation**

- 18.1 All claims against the Purchaser expire by the lapse of one (1) year after the date of the Agreement.

**Article 19 - Continuing performance agreement**

- 19.1 In accordance with the provisions of article 2.1, these Conditions also apply to any applicable continuing performance agreement between the Purchaser and the Seller (implicitly or otherwise arisen), arising from a series of isolated agreements and/or a consistent commercial relationship between the Purchaser and the Seller.
- 19.2 A continuing performance agreement applicable between the Purchaser and the Seller can at all times be terminated in writing by the Purchaser, with due observance of a notice period of two (2) months.
- 19.3 A continuing performance agreement applicable between the Purchaser and the Seller can at all times be terminated in writing by the Seller, with due observance of a notice period of six (6) months.
- 19.4 The Seller waives the right to damages that would (possibly) accrue to it if the Purchaser terminates the continuing performance agreement.

**Article 20 - Language**

- 18.1 The Dutch text of these Conditions is the only authentic text. In the event of conflict between the Dutch-Language text and a translation in a foreign language, the Dutch text prevails.

**Article 21 - Governing law**

- 21.1 All legal relationships arising from or relating to these Conditions or the Agreement(s) are governed exclusively by Dutch law. Applicability of the Vienna Sales Convention (United Nations Convention on Contracts for the International Sale of Goods) is expressly excluded.

**Article 22 - Competent court**

- 22.1 All disputes arising from or relating to these Conditions or the Agreement(s) between the Purchaser and the Seller will be settled exclusively by the Rotterdam District Court if the Seller has its registered office in the European Economic Area (EEA) and if the Seller does not have its registered office in the EEA by means of TAMARA-Arbitration ([www.tamara-arbitration.nl](http://www.tamara-arbitration.nl)) in Rotterdam.

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