

## **GENERAL TERMS AND CONDITIONS OF SALE**

OF: CHOCOLADEFABRIEK DE BEEMSTER B.V.

### **Article 1 Definitions**

The Seller : Chocoladefabriek De Beemster B.V., the user of these General Terms and Conditions, the manufacturer;  
The Buyer : the Seller counterparty, the buyer, the client;  
The Agreement : the agreement between the Seller and the Buyer.  
Products : products processed in chocolate and similar.

### **Article 2 General**

- 2.1 These General Terms and Conditions will apply to all offers and Agreements between the Seller and the Buyer, to the extent that these Terms and Conditions have not expressly been deviated from by the parties in writing.
- 2.2 The current General Terms and Conditions will also apply to all Agreements with the Seller for the performance of which the Seller uses the services of third parties.
- 2.3 The applicability of the Buyer's general terms and conditions is hereby explicitly excluded, unless the parties have agreed otherwise in writing.
- 2.4 In the event that the Seller concludes Agreements with the Buyer more than once, the present General Terms and Conditions will apply to all subsequent Agreements, irrespective of whether or not same have been explicitly declared applicable.
- 2.5 In the event that one or more provisions of these General Terms and Conditions are null and void or are nullified, the remaining provisions of these General Terms and Conditions will continue to apply.

### **Article 3 Offers/quotations/prices**

- 3.1 All offers, of whatever form, will be free of obligation, unless a term for acceptance is stated in the offer.
- 3.2 Agreements to which the Seller is a party will only be considered to have been concluded:
  - a) after an Agreement drafted for that purpose has been signed by both parties; or
  - b) following written confirmation by the Seller of an order placed by the Buyer; or
  - c) pursuant to the delivery and acceptance of the purchased Products.
- 3.3 In the event of an oral Agreement, the invoice will be considered to contain a correct and complete representation of the Agreement, unless a complaint is lodged within 30 days of the invoice date.
- 3.4 In the event that a natural person concludes an Agreement on behalf or for the account of another natural person, he/she will be deemed to declare – by signing the Agreement – that

he/she is authorised to do so. This person, in addition to the other natural person, will be jointly and severally liable for all obligations ensuing from the Agreement.

- 3.5 In the event that the acceptance deviates from the offer laid down in the quotation, the Seller will not be bound to same. In that event, the Agreement will not be concluded in accordance with that deviating acceptance, unless the Seller indicates the contrary.
- 3.6 A composite quotation will not oblige the Seller to supply a part of the Products included in the offer or quotation for a corresponding part of the price stated.
- 3.7 The prices stated in the Agreements will apply for delivery ex works, in euros, exclusive of Dutch VAT, government levies, export charges and transport costs, unless provisions to the contrary have been explicitly agreed.
- 3.8 Because the Products are subject to price fluctuations, the Seller may pass on price rises exceeding 5% in the event that, between the time of acceptance and the time of the delivery, price changes have occurred with respect to, for instance, exchange rates, wages, raw materials or packaging materials.
- 3.9 The Buyer may request the Seller to qualify a delivery as an intra-Community delivery exempted from Dutch VAT. The Seller will be able to assign a shipment such a qualification if the following conditions have been met:
  - the Buyer is an enterprise within the meaning of the Dutch Turnover Tax Act [*Wet op de omzetbelasting*] established within the European Union and is acquiring the purchased Products in the context of this enterprise;
  - the international VAT number stated by the Buyer is listed in the Dutch Tax Authorities' register of valid international VAT numbers and the name with which the number corresponds is the same as the name stated by the Buyer to the Seller;
  - it has been established that the sold Products will actually be transported to another EU Member State and will be taken delivery of in that Member State by or on behalf of the Buyer;
  - all other requirements ensuing from the Dutch Turnover Tax Act regarding exemption of intra-Community deliveries have been met.

However, the Seller will remain authorised to charge the Buyer VAT on the purchase price for each supply of Products, without stating its reasons, also in cases where the Buyer has submitted a request as referred to above. If the Products are destined for another Member State, the Seller will charge the Buyer the costs of the Products' transport, shipment, packaging and insurance without VAT, unless the Buyer fulfils the rules governing exemption from Dutch VAT for purposes of intra-Community supplies.

The Buyer will indemnify the Seller against any additional VAT assessments by the Dutch Tax Authorities, as well as against any costs related to such additional VAT assessments, including interest on overdue tax, interest on overdue payments, administrative penalties and litigation costs, with respect to invoices pertaining to the supply of Products as well as costs of transport, packaging and insurance of those Products, in which context the Buyer will not be charged any VAT, including any costs incurred for legal and/or tax-law assistance engaged by the Seller in accordance with the rates of the Netherlands Bar Association [*Nederlandse Orde van Advocaten*].

#### **Article 4 Performance of the Agreement**

- 4.1 The Seller will perform the Agreement to the best of its knowledge and ability and in accordance with the requirements of good workmanship. Such performance will be in compliance with the provisions agreed between the parties.
- 4.2 The Seller will determine the manner in which the Agreement is to be performed, to the extent that no provisions to the contrary have been explicitly agreed upon by the parties.
- 4.3 The Seller may supply the Products based on the Buyer's specifications. This means that the Buyer will provide specifications. These will be decisive specifications. If the specifications are changed, the Buyer will be responsible for implementing the change and adjustment in good time, in default of which the Buyer must bear any ensuing damage itself.
- 4.4 The Seller will not be liable for any damage, of whatever nature, caused by the Seller operating on the basis of incorrect or incomplete data and specifications provided by the Buyer.
- 4.5 In the event and to the extent necessary for a satisfactory performance, the Seller will be entitled to have certain work performed by third parties.
- 4.6 The Buyer shall ensure that all information and permits which the Seller indicates are necessary or which the Buyer should reasonably understand are necessary for the performance of the Agreement are provided to the Seller in good time. If the information and permits necessary for the performance of the Agreement are not provided to the Seller on time, the Seller will be entitled to suspend performance of the Agreement and/or to charge the Buyer the additional costs arising from the delay in accordance with its usual rates.
- 4.7 In the event that the commencement or the progress of the work is delayed due to factors for which the Buyer is responsible, the Seller will be compensated by the Buyer for any damage and costs ensuing from the delay.
- 4.8 The Buyer shall indemnify the Seller against any claims of third parties that may incur damage in connection with the performance of the Agreement and which is attributable to the Buyer.

#### **Article 5 Delivery**

- 5.1 The Buyer will be obliged to take delivery of the Products at the time that the Seller delivers same to it or has same delivered to it by third parties, or at the time at which the Products are made available to it pursuant to the Agreement.
- 5.2 In the event that the Buyer refuses to take delivery or fails to provide information or instructions necessary to effect the delivery, the Seller will be entitled to store the Products at the Buyer's expense and risk.
- 5.3 In the event that the Buyer does not take delivery of the Products within 14 days, the Seller will be entitled to sell the Products to another party. If it is unable to do so, the Seller will be entitled to destroy the Products. Any damage incurred by the Seller by selling the Products to another party or by destroying the Products will be borne by the Buyer. This damage will be assessed at at least the Products' market value plus the storage costs.

- 5.4 In the event of small orders and/or small shipments, the Seller will be entitled to apply an extra surcharge to cover handling and/or transport costs.
- 5.5 The Seller will be entitled to deliver the Products C.O.D. (cash on delivery).
- 5.6 In the event that the Seller has stated a delivery period, same must be deemed to be indicative. A stated delivery time may therefore never be deemed to be a firm deadline. In the event that a term is exceeded, the Buyer must give the Seller written notice of default.
- 5.7 In the event that the Seller requires information from the Buyer within the context of the Agreement's performance, the delivery period will commence after the Buyer has made such information available to the Seller.
- 5.8 On-call orders must be taken delivery of within the agreed periods of time, in default of which the Seller will be entitled to deliver the undelivered part of the order in one go and charge the Buyer the ensuing costs.
- 5.9 The Buyer will be obliged to provide the Seller with the documents required in order to meet customs and other formalities necessary for the delivery of the Products, and to provide the Seller with all necessary information.
- 5.10 The Seller will be entitled to deliver the Products in parts. The Seller will be entitled to invoice partial deliveries separately.

#### **Article 6 Delivery and undeliverable Products**

- 6.1 Products cannot be delivered to post office boxes or post codes. The Products will be delivered to the address of the recipient submitted by the Buyer, but will not necessarily be delivered personally to the recipient mentioned by name.
- 6.2 Shipments addressed to destinations with a central delivery area will be handed over in that area. If the recipient refuses to take delivery of the Products or refuses to pay for the Products, or if the recipient finds the Products unacceptable, or if the Products have been undervalued for customs purposes, or if the recipient cannot be reasonably identified or located, the Seller will deliver the Products to the Buyer or take the Products back and will charge the Buyer any ensuing costs. In the event of undeliverable Products, the Buyer will remain obliged to pay the entire purchase price for the Products bought.

#### **Article 7 Delivering cash on delivery**

- 7.1 The carrier will collect the amounts payable C.O.D. from the recipient/Buyer upon the delivery of the Products and, if agreed, will subsequently pay such amounts to the Seller.
- 7.2 If the recipient/Buyer is aware at the time of the delivery that a C.O.D. amount is payable on the Products, it will be obliged to pay the carrier the amount it owes the Seller.
- 7.3 In the event that the recipient/Buyer refuses to take delivery of a shipment offered subject to C.O.D., or refuses to pay the amount due for the Products, the carrier will return the shipment to the Seller at the Buyer's expense, unless the Seller stipulates otherwise.

#### **Article 8 Export**

- 8.1 Unless provisions to the contrary have been agreed upon, payment for export transactions must be effected by means of a confirmed and irrevocable letter of credit issued by a Dutch bank. Based on this letter of credit, both transshipment and partial shipments will be allowed. The letter of credit may be transferred by the Seller.
- 8.2 The Buyer guarantees that, if an import certificate or licence is required for the import of the Products into the country of destination, such an import certificate or licence has been or will have been obtained before dispatch.

### **Article 9 Inspections, complaints**

- 9.1 The Buyer will be obliged to inspect the Products supplied, or have third parties inspect same, at the time of delivery/transfer, though in any event within 24 hours. In doing so, the Buyer must inspect whether the quality and quantity of the Products supplied are in accordance with the Agreements made.
- 9.2 The Buyer must check the packing list/consignment note and the quantity delivered immediately. If the quantity supplied is not in accordance with the quantity stated in the packing list/consignment note, the Buyer must immediately make a note of that fact on the packing list/consignment note in the carrier's presence, in default of which the Seller will be deemed to have effected proper delivery.
- 9.3 In the event that the Buyer has been shown a sample, that sample must be presumed to have been shown as an indication only, without the Product having to correspond to same, unless it has been expressly agreed that the Product will correspond to same.
- 9.4 The parties will observe a maximum tolerance of 8% with respect to the quantity supplied. In the event that the quantity supplied deviates from what was agreed by more than 8%, the parties will be entitled to demand an increase or decrease of the price, as appropriate.
- 9.5 The Buyer will be obliged to carefully inspect any tests and/or samples made available by the Seller, at the Buyer's request or otherwise, for faults and defects and to notify the Seller with due speed whether the Products inspected are in accordance with the order. The Buyer's approval of the tests will be considered equivalent to acknowledgement that the Seller has performed the work preceding the tests properly.
- 9.6 All tests performed at the Buyer's request will be charged to the Buyer in addition to the price agreed upon, unless the parties have explicitly agreed that the costs of such tests will be included in the price.
- 9.7 Any printer's or typographical errors in the catalogue or on the website will under no circumstances constitute grounds to lodge a complaint.
- 9.8 No complaints can be lodged after confusion, packaging, treatment or use of the Products supplied.
- 9.9 Any visible shortfalls must be reported to the Seller in writing, by fax, within 24 hours of delivery. The notice of default must specify the shortfall in as much detail as possible, so that the Seller is able to respond adequately.

- 9.10 In the event that a timely complaint is submitted pursuant to the preceding paragraph, the Buyer will remain obliged to take delivery of and pay for the purchased Products. In the event that the Buyer wishes to return defective Products, it may only do so after obtaining the Seller's written permission, in the manner indicated by the Seller, at the Buyer's expense and in the original packaging.
- 9.11 The Buyer must enable the Seller at first request to inspect the Products sold in order to verify whether the complaint is well-founded.
- 9.12 In the event that a complaint is well-founded, the Seller will replace the supplied Products, unless this has become demonstrably pointless to the Buyer by that time. If this is the case, the Buyer must so inform the Seller in writing. The Seller will in all events only be liable within the limits of the Articles 'Warranty' and 'Liability'.

### **Article 10 Payment**

- 10.1 Payment must be made in cash on delivery, or within 30 days following the invoice date in the manner designated by the Seller, in euros, unless the parties have agreed on another term in writing. Objections to the amounts stated in the invoices will not suspend the payment obligation.
- 10.2 The Seller will be entitled to charge the Buyer an advance. Following payment of the advance, the Seller will commence production of the order.
- 10.3 In the event that the Buyer fails to pay within the period of time agreed upon, the Buyer will be in default by operation of law. In that event, the Buyer will owe the Seller 1.5% in interest per month or part of a month, unless the statutory interest rate or the statutory commercial interest rate is higher, in which case the highest interest rate will apply. The interest with respect to the exigible amount will be calculated from the time that the Buyer is in default until the time of full payment.
- 10.4 The Buyer may only effect set-off after obtaining the Seller's explicit permission.
- 10.5 In the event that the Buyer is wound up, is declared bankrupt or files for bankruptcy, is admitted to statutory composition pursuant to the Dutch Natural Persons Composition Act [*Wet schuldsanering natuurlijke personen*], is placed under guardianship, attachment is levied against it or it is granted a suspension of payments – provisional or otherwise –, the Seller's claims vis-à-vis the Buyer will become exigible forthwith.
- 10.6 Payments will first be used to cover the costs, then to cover any interest due and finally to cover the principal sum and the accrued interest.

### **Article 11 Collection costs**

- 11.1 In the event that the Buyer is in breach of contract or in default of performance or timely performance of its obligations, all reasonable costs incurred in obtaining extra-judicial payment will be borne by the Buyer. The collection costs will be calculated in accordance with the collection rate recommended by the Netherlands Bar Association [*Nederlandse Orde van Advocaten*] in collection cases, subject to a minimum of EUR 350.

11.2 In the event that the Seller has incurred higher costs which were reasonably necessary, such costs will also qualify for reimbursement. Any reasonable court costs and enforcement costs will also be borne by the Buyer.

### **Article 12 Retention of title**

12.1 All Products supplied by the Seller will remain the Seller's property until the Buyer has fulfilled all its obligations ensuing from the Agreements concluded with the Seller.

12.2 In the event that third parties levy attachment on the supplied Products covered by the retention of title or wish to create or enforce rights with respect to same, the Buyer will be obliged to inform the Seller thereof as soon as possible.

12.3 Any Products supplied by the Seller that are covered by the retention of title pursuant to paragraph 1 of this Article may only be sold on within the context of normal business operations and may never be used as a means of payment.

12.4 The Buyer must insure the Products covered by the retention of title at market value. Any insurance payments made by the insurer will replace the aforementioned Products and will accrue to the Seller.

12.5 Any supplied Products which have been paid for by the Buyer will be encumbered by a non-possessory pledge until payment has been made for all supplies effected by the Seller.

12.6 Should the Seller wish to exercise its rights of retention of title as laid down in this Article, the Buyer hereby grants unconditional and irrevocable permission to the Seller or any third parties to be designated by the Seller to enter those places where the Seller's property is located and to recover the Products.

### **Article 13 Warranty**

13.1 The Products supplied by the Seller meet the technical requirements and specifications agreed by the parties.

13.2 This warranty will be limited to deliveries to Buyers within the EU.

13.3 This warranty will lapse:

- in the event of resale of the Products supplied, unless the parties have explicitly agreed otherwise;
- in the event of injudicious or improper use, storage or transport;
- in the event that the Products are used, stored or transported at temperatures that are too high or too low;
- if the Products have been processed, confused or treated by the Buyer or by third parties; and
- after the packaging has been removed.

13.4 As long as the Buyer fails to perform its obligations arising from the Agreements concluded between the parties, it cannot invoke this warranty provision.

13.5 The Products purchased will only be suitable for consumption prior to the best-before date.

- 13.6 The Buyer will be responsible for selling the Products purchased before the best-before date. The best-before date and the batch number will be written on the packaging.
- 13.7 The parties will apply an 8% tolerance regarding the quality of the Products to be supplied. In the event that the consistency or any specification deviates by more than 8%, the Seller, in consultation with the Buyer, will supply new Products or adjust the price accordingly.
- 13.8 In performance of its warranty obligation, the Seller will be obliged to do no more than supply the relevant Products anew.

#### **Article 14 Suspension and dissolution**

- 14.1 The Seller will be entitled to suspend performance of its obligations or to dissolve the Agreement in the following events:
- in the event that the Buyer fails to perform the obligations arising from the Agreement or fails to perform them in good time or in full;
  - in the event of circumstances of which the Seller has learned following the Agreement's conclusion that provide good reason for fearing that the Buyer will not perform its obligations, or will not perform such in good time or in full; in the event that there is good reason to fear that the Buyer will only perform its obligations in part or will not perform such properly, suspension will only be permitted to the extent that such is justified by the relevant failure; and
  - in the event that the Buyer was requested to provide security upon the Agreement's conclusion for the performance of its obligations arising from same Agreement and such security has not been provided or is insufficient. As soon as security has been provided, the right to suspend performance will lapse, unless the performance has been unreasonably delayed as a result.
- 14.2 In addition, the Seller will be entitled to dissolve the Agreement or have it dissolved if circumstances arise of such a nature that performance of the Agreement is impossible or can no longer be required pursuant to standards of fairness and reasonableness, or if any other circumstances arise of such a nature that continued unamended maintenance of the Agreement can no longer reasonably be expected.
- 14.3 In the event that the Agreement is dissolved, the Seller's claims vis-à-vis the Buyer will become immediately due and payable. In the event that the Seller suspends performance of its obligations, it will retain its claim ensuing from the law and the Agreement.
- 14.4 The Seller will at all times retain the right to claim damages.

#### **Article 15 Cancellation**

- 15.1 In the event that the Buyer wishes to cancel an Agreement after same has been concluded with the Seller and before the Seller has commenced the production of the order, the Buyer will be charged 10% of the agreed order price, excluding Dutch VAT, in cancellation costs, without prejudice to the Seller's right to full damages, including loss of profit.
- 15.2 The Buyer must purchase any goods purchased especially for the Buyer, in default of which the Buyer will be obliged to pay the Seller all ensuing costs.



15.3 Notice of cancellation must be given in writing.

#### **Article 16 Liability and indemnification**

- 16.1 In the event that Products supplied by the Seller are defective, the Seller's liability vis-à-vis the Buyer will be limited to the provisions laid down in these Terms and Conditions under the heading 'Warranty'.
- 16.2 In the event that the Seller is liable for direct damage, that liability will be limited to the amount paid out by its insurer, or in any event to the invoice amount, or in any event to that part of the Agreement to which the liability pertains.
- 16.3 The Seller will under no circumstances be liable for indirect damage, including consequential damage, loss of turnover and profit, loss of savings and any damage due to an interruption in business operations.
- 16.4 Under no circumstances will the Seller be liable for the decay of, melting of or damage to the Products resulting from the Buyer's improper storage of same.
- 16.5 In the event that the Seller is held liable by a third party for damage for which it is not liable pursuant to the Agreement with the Buyer or pursuant to these Terms and Conditions, the Buyer will fully indemnify it in that respect.
- 16.6 The Buyer must ascertain whether the purchased Products are suitable for their intended use.
- 16.7 The Seller will under no circumstances be liable for damage ensuing from any advice given. Advice will always be given on the basis of the facts and circumstances known to the Seller and of mutual consultations, in which respect the Seller will always use the Buyer's intention as a guideline and starting point.
- 16.8 The limitations of liability with respect to direct damage laid down in these Terms and Conditions will not apply in the event that the damage is attributable to an intentional act or omission or gross negligence on the part of the Seller or its employees.

#### **Article 17 Passing of risk/transport**

- 17.1 The risk with respect to the decay, melting or loss of or damage to the Products that are the subject of the Agreement will pass to the Buyer at the point in time at which the Products are legally and/or factually delivered to the Buyer and therefore come under the Buyer's control or under the control of a third party designated by the Buyer.
- 17.2 In the event that the Seller is to provide for the transport or storage of the Products that are the subject of the Agreement, this will be fully at the Buyer's expense and risk, unless the parties have agreed otherwise.
- 17.3 In the event and to the extent that the Seller assumes responsibility for the transport, storage, dispatch, packaging, etc., and if no further instructions have been issued in this respect to the Seller by the Buyer, the manner in which the above is arranged will be determined by the Seller.

17.4 Any specific wishes of the Buyer regarding the transport, dispatch, storage and/or packaging will be performed only if the Buyer has declared that it will bear the corresponding additional costs.

### **Article 18 Force majeure**

18.1 A party will not be obliged to fulfil any obligation if it is prevented from doing so due to a circumstance which cannot be attributed to gross negligence or an intentional act or omission on its part, nor be for its account pursuant to the law, a juristic act or generally prevailing opinion.

18.2 In these General Terms and Conditions, the term '*force majeure*' must be understood to mean, in addition to its meaning according to the law and in case law, all external causes, foreseen or unforeseen, which the Seller cannot influence, such as tailbacks, computer failures, power failures, import and export impediments, standstill orders, decay, illness among staff and delays in supplies by suppliers, as a result of which the Seller is unable to perform its obligations. This will include strikes at the Seller's company.

18.3 The Seller will also be entitled to invoke *force majeure* if the circumstance preventing performance or further performance arises after the Seller should have performed its obligations.

18.4 To the extent that the Seller has partly performed its obligations arising from the Agreement or is able to partly perform same at the time that the situation of *force majeure* first occurs, and that part performed or to be performed has independent value, the Seller will be entitled to invoice the part performed or to be performed separately. The Buyer will be obliged to pay that invoice as if it pertained to a separate Agreement.

### **Article 19 Packaging**

19.1 In the event that the Seller provides sustainable packaging, the Buyer should return the packaging empty, cleaned and undamaged within 28 days. All costs of repairing, replacing and cleaning packaging materials will be charged to the Buyer.

19.2 The Seller will charge the Buyer an amount of EUR 25 for every week that the Buyer returns the packaging too late.

19.3 The parties may also agree on a deposit which will be returned to the Buyer upon its return of the packaging materials. The Buyer will be charged the returnable deposit upon delivery. After the Seller has established that the packaging was returned on time and that the returned packaging is in good condition, the Buyer will receive a credit note from the Seller. The Buyer will not be permitted to settle the returnable deposit with outstanding invoices.

### **Article 20 Insurance**

20.1 Unless the parties have agreed on provisions to the contrary, the Buyer will be responsible for taking out proper transport, storage and cooling insurance.

## **Article 21 Intellectual property**

- 21.1 Without prejudice to the provisions in these General Terms and Conditions, the Seller reserves the rights and powers vested in it pursuant to the Dutch Copyright Act [*Auteurswet*] and intellectual property law.
- 21.2 Any documents, Products, product specifications and other materials or electronic or other files created by the Seller in the context of the Agreement will remain the Seller's property, irrespective of whether those have been made available to the Buyer or any third party, unless agreed otherwise.
- 21.3 The Buyer will not be permitted to remove the Seller's name or trademark from the Products supplied, unless the parties have agreed otherwise.

## **Article 22 Translations of these Terms and Conditions**

The Dutch-language version of these Terms and Conditions is the only authentic version. In the event of any discrepancy between the Dutch text and a translation, the Dutch text will prevail.

## **Article 23 Disputes**

The competent Dutch court in the city or town where the Seller has its registered office will have exclusive jurisdiction to take cognisance of any disputes. Nevertheless, the Seller will be entitled to submit any disputes to the competent court according to the law.

## **Article 24 Applicable law**

All Agreements between the Seller and the Buyer will be governed by Dutch law. Applicability of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is explicitly excluded.

## **Article 25 Filing of these Terms and Conditions**

These Terms and Conditions have been filed at the offices of the Chamber of Commerce and Industry for NoordWest Holland under number 37109862 on januari 2007.