

# **GENERAL CONDITIONS OF TRADE**

**of the personal limited company**

**J.P. Beemsterboer Food Traders B.V.**

**established at Warmenhuizen, Netherlands,**

**filed with the court of Noord Holland, location Alkmaar on 3 September 2013.**

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To all our offers and contracts of sale, commission and subsequent agreements, these general conditions of trade, to be called further these conditions of trade, c.q. our conditions of trade, apply, insofar as there is not deviated from these conditions explicitly in the contract in writing or in our written confirmation of the agreement.

## **SECTION I**

### **GENERAL**

#### Article 1

- 1.1 An agreement is reached with us only definitely by our written confirmation per letter, fax message or e-mail message or by the signing by the buyer or the seller of the contract, which we have offered him.
- 1.2 Our agents are not competent to bind us unconditionally. They are only allowed to buy and sell subject to our approval.
- 1.3 All our offers are completely non binding, unless it is mentioned otherwise in the offer.

#### Article 2

- 2.1 In case of force majeure we are entitled to suspend the performance of our contracts for the time the force majeure will continue. If the length or the seriousness of the force majeure makes such necessary – and such is solely at our discretion – we are entitled to rescind the contract of sale, to the extent that this contract has not yet been performed, without judicial intervention and without any obligation to pay

damage. In any case each party can rescind the agreement without the right to damages when the force majeure situation exists longer than one month or when the prospect exists that the force majeure situation will exist longer than one month. Of the calling upon force majeure and of the rescission, immediately notification must be given by registered letter to the other party.

- 2.2 As force majeure is considered any special circumstance, which makes the performance of our delivery duty and our purchase duty impossible or so burdensome, that this can not reasonably be expected of us, such as war, mobilisation, strike, labour disturbances, revolution, revolt, disturbance, gale, floating ice, flood, stagnation in the delivery of electricity or water, industrial fire, industrial stagnation caused by machinery failure or difficulties in the delivery of energy, obstructions in traffic, complete or partial crop failure, unusual dry spells, or continued rains, disease in the crop, plagues of vermin, the being in default of suppliers, etc.
- 2.3 Government measures which obstruct or make financially adverse the import, transit or export of sold or bought goods, give us the right to rescind the agreement, insofar as this agreement has not yet been performed, without any obligation on our side to pay damages, or the right to demand from the seller or the buyer to indemnify us for the costs of those measures, before we will deliver or receive the goods.

### Article 3

- 3.1 In case of deviations or differences between these conditions of trade and those of our contract parties, our conditions of trade will prevail and be paramount.
- 3.2 In case of contradiction between the Dutch text of these conditions of trade and the translations thereof, the Dutch text prevails and is paramount.
- 3.3 Insofar as there is deviated in the agreement from provisions of these conditions of trade, then the other provisions of these conditions of trade and the part from which is not deviated of the provisions from which there is deviated, remain applicable to the full extent.

- 3.4 If any provision of these conditions of trade will be annulled wholly or partly, then the other provisions and the part from which there has not been deviated of the partially annulled provision, remains applicable.

#### Article 4

- 4.1 Dutch law applies to all our agreements.
- 4.2 The provisions of the Vienna Sales Treaty, insofar as applicable, are excluded.
- 4.3 Any dispute, controversy, or claim arising out of or relating to our agreements, or the breach, termination, or invalidity thereof, shall be settled exclusively by arbitration in accordance with the UNCITRAL Arbitration Rules in effect on the date of the arbitration proceedings. The appointing authority of the arbitrator shall be the Secretary-General of the Permanent Court of Arbitration in The Hague. The international office of the Permanent Court of Arbitration will render administrative services.
- (a) The number of arbitrators shall be one.
  - (b) The place of arbitration shall be The Hague, Netherlands.
  - (c) The language to be used in the arbitral proceedings shall be English.
  - (d) The arbitral proceedings shall be subject to Dutch law.

Without prejudice to the provisions of the preceding paragraph we shall be at liberty to bring before the competent court in the place of business of our contractual party claims for sums of money due and payable, the indebtedness of which has not been disputed in writing by our contractual party within four weeks after the invoice date.

- 4.4 In case our contractual party is established in a country which is no party with the Convention regarding the recognition and enforcement of foreign arbitration awards, concluded in New York on 10 June 1958, we have the right to have a dispute, arisen between us and that contractual party, decided by a court which would be competent if there were no arbitration clause, in deviation of the arbitration which has been agreed upon in article 4.3.

## Article 5

- 5.1 We are not liable for any damage unless our contractual party will prove that the damage has been caused by fault or neglect of us or of our employees.
- 5.2 Our liability is in all cases limited to the net invoice amount, that is to say the product price excluding transport costs and tax, of the transaction regarding which the damage has occurred. We are never liable for loss of profit, consequential damage and/or nonmaterial damage.
- 5.3 Our contractual party holds us harmless against claims from third parties connected with the agreement entered into with that contractual party, unless our contractual party proves that these claims are the direct result of our own act or omission, occurred either with the intent to cause that damage, or recklessly and with the knowledge that that damage would probably result as a consequence thereof.

## Article 6

- 6.1 We expressly reserve possible rights of intellectual and/or industrial property (brands) in respect of products sold by us and delivered by us.
- 6.2 Products which have been delivered to us may not infringe any patent, license, copy right, registered drawing or design, commercial trade mark or trade name. The seller which has sold to us a product or products will indemnify and hold harmless us and our buyer which has purchased that product or those products from us for all claims of such nature and will pay for all the damage caused thereby.

## Article 7

- 7.1 If our contractual party is in default with a payment obligation towards us, our contractual party should pay to us all out of court costs with a minimum of EUR 50.00.

The out of court costs are calculated at a fixed lump sum on the basis of the following table:

on the first EUR 3,000.00	15%
over the exceedent till EUR 6,000.00	10%
over the exceedent till EUR 15,000.00	8%
over the exceedent till EUR 60,000.00	5%
over the exceedent above EUR 60,000.00	3%

If the actual out of court costs made are higher than follows from the abovementioned calculation, the actually made costs are indebted.

- 7.2 If we win an arbitral or court procedure, all costs which we have made in relation with this procedure come for the account of our contractual party.

## **SECTION II**

### CONTRACTS OF SALE IN WHICH WE ACT AS SELLER

#### Article 8

- 8.1 All our contracts of sale are deemed to have been concluded at our offices.
- 8.2 Unless explicitly stipulated otherwise our products will be sold ex works.
- 8.3 Unless explicitly stipulated otherwise, payment of the purchase amounts will be made at our offices.
- 8.4 All our prices are in Euro (unless stipulated otherwise) and are excluding VAT (unless explicitly stipulated otherwise in writing).
- 8.5 We are not held to perform a contract for a mentioned price which evidently is the result of a printing or writing error.

### Article 9

- 9.1 The buyer guarantees that the amount of products bought by him will be taken delivery of and as far as necessary will be called, at the agreed place and time.
- 9.2 If it has been agreed upon, that the sold amount will be delivered during a certain period, the buyer is held to take delivery on call and to take delivery of equal or nearly equal amounts during this whole period at regular intervals. The buyer must observe a notice period of minimal 3 days for each delivery and each delivery on call.
- 9.3 If the buyer will not perform these obligations to call and take delivery, we will be entitled to consider the agreement, insofar as this has not been carried out, as rescinded, without obligation on our side to send a notice.

### Article 10

- 10.1 The products to be delivered by us are perishable and the shelf life is largely dependent on the manner of keeping, on which we have no influence anymore after delivery. Therefore, the buyer must inspect or have the delivered products inspected on delivery to establish whether these in his view comply with the demands and quality agreed upon.
- 10.2 The buyer can claim only regarding the quality and quantum of the delivered goods at the time of delivery of the goods, that is to say prior to or during loading of the goods on the means of transport, made available by the buyer or by delivery free at works, prior to the discharge of the goods and in case of sale with delivery per ocean vessel or inland vessel prior to the moment of loading in the first carrying ship.
- 10.3 The buyer has waived his right to claim when he has received the goods, consequently when those have been loaded on his means of transport c.q. in case of delivery free works, have been discharged on the spot indicated by him. In case of sale with delivery per ocean vessel or inland vessel the buyer has waived his right to claim three working

days to be calculated as from the day of delivery in conformity with the agreed delivery conditions.

- 10.4 The buyer who refuses to receive our goods on the ground of alleged bad quality is obliged to notify us thereof immediately and anyhow within 6 hours after refusal per telefax or by pdf document sent by e-mail. If we reject the complaint of the buyer, he is held to have independent survey carried out and invite us for counter survey immediately, that is to say within 12 hours, failing which he will lose his rights.
- 10.5 Regarding feed products it is so that if we have sold and delivered the goods with a health and quality certificate (for instance the phytosanitary certificate and the Dutch KCB check certificate) issued by the competent authorities, instance or survey bureau, the contents of the health and quality certificate is decisive, except counter proof to be delivered by the buyer, for the question whether or not the agreed quality specifications have been met.
- 10.6 We are allowed to replace the goods which have been refused on good grounds, by other goods, but we are not bound thereto. In that case we can deduct the refused quantity from the sold quantity.
- 10.7 If the buyer refuses without good grounds to accept the goods, tendered for delivery, we are allowed, also in case of a part delivery, to rescind the agreement, to the extent that this has not been performed, whilst no notice is necessary.
- 10.8 If we rescind the agreement on one of the abovementioned grounds or refuse further delivery, we are bound to notify the buyer thereof by telefax, pdf document sent by e-mail or letter without the necessity of further formalities.
- 10.9 The damage, sustained by us and to be sustained later by the not or not completely taking delivery of the goods sold by us must be indemnified to us completely. Those damages amount in any case to the difference between the price, agreed with the buyer and the day price at the time of non performance.

- 10.10 The buyer who defaults is liable to pay damages on the ground of the mere fact of the not or not timely taking delivery.

#### Article 11

- 11.1 All products, delivered pursuant to this agreement, remain our property till the sales price together with all extra charges and costs falling thereon will have been paid completely and we do not have another claim against the buyer either in other respects.
- 11.2 If the goods, delivered by us are not available anymore in the original form and/or packing or if those have been processed into other products, there is established in favour of us regarding those goods a silent right of pledge which remains in force till everything will have been paid what we have to claim from the buyer on any ground.

#### Article 12

In case of not timely payment by the buyer, application for or granting of suspension of payment to the buyer or application to or pronouncing of bankruptcy of the buyer, we are entitled to take possession of our goods and to enter thereto the premises and buildings of the buyer.

#### Article 13

- 13.1 Unless agreed explicitly otherwise our invoices have to be paid within 14 days after invoice date in such way that the invoice amount should be received by us on our bank account without deduction of transfer costs on the due date. In case of non payment within this or within a time limit, agreed later, the buyer has to pay an interest to us of 1% per month to be calculated as from the due date, whereby a part of a month is deemed to be a whole month, without the necessity for us to send a notice.
- 13.2 The buyer may not set off any other claim which he has or alleges to have, unless and to the extent that we have sent a credit invoice to the buyer or we have been ordered by arbitration award or court judgment to pay an amount of money to the buyer.

- 13.3 Notwithstanding what there has been agreed between us and the buyer relating the payment times we are entitled to demand prior to the moment of delivery to the buyer that the buyer puts up sufficient security for the payment. If this security for the payment is not put up within the reasonable period of time, fixed by us, or is not put up in a proper way, to be judged by us in our sole discretion, we are allowed to suspend our obligations or remaining obligation pursuant to the agreement by a written notice. Then we are not liable in any way for the possible damage which may be caused by this suspension for the buyer.
- 13.4 We are entitled to rescind the sale agreement, to the extent that it has not yet been performed, if the buyer fails to pay the due sale price within 2 x 24 hours after he has been summoned by letter, telefax or e-mail to pay. In that case we have the right to demand indemnification of the complete damage, which flows from the non performance.

#### Article 14

All our sales agreements regarding agricultural products are made under harvest proviso. If due to a disappointing harvest regarding the quantity and/or quality of agricultural products, less products are available, which also includes the rejecting thereof by the competent authorities, than at the time of concluding the agreement could be expected reasonably by us on the basis of objective data, we have the right to decrease pro rata the amounts sold by us. By the delivery of the quantum, so decreased, we then comply completely with our obligations to deliver. Then we are not bound to deliver replacing agricultural products and we are then not liable for any damage at all.

### SECTION III

#### SALES AGREEMENTS WHEREBY WE ACT AS BUYER

##### Article 15

- 15.1 The following articles are applicable to all sale agreements whereby we act as buyer, also regarding all requests and orders by us, whereby an order from us is equal to an offer.
- 15.2 Seller includes in this section each person or company with which we have concluded an agreement c.q. wished to conclude an agreement and also their representatives, successors in right, heirs and people having power of attorney.
- 15.3 Those conditions are also applicable if we accept explicitly an offer of the seller, referring to those conditions. Thereby the possible sale conditions of the seller are rejected explicitly.
- 15.4 Deviations from those conditions have to be agreed each time in writing with the seller; the seller can not invoke deviations agreed upon earlier in a contractual relation with us.

##### Article 16

All our sale agreements are deemed to have been concluded in our office.

##### Article 17

- 17.1 The goods to be delivered have to satisfy at the moment of delivery the agreed quality demands. They must be of good quality, free of illness, damage, inward and outward visible and invisible defects.

- 17.2 Unless agreed otherwise, the delivery of the bought goods takes place on works, to be designated by us, to be called hereinafter also the receiving works, where inspection and if applicable taring takes place.
- 17.3 The ground and tare percentage should make possible the finalisation of the goods against generally accepted costs. If the tare percentage is higher than 15% we can refuse to take delivery, but we have also the right to take delivery of the goods against a price rebate to be fixed by us regarding the extra costs for finalising the goods.
- 17.4 The goods, to be delivered to us, should also satisfy the agreed quality norms during a reasonable period after delivery. In respect of the purchase of potatoes, vegetables and fruit a reasonable period means at least 48 hours after delivery. During the reasonable period we have the right to claim regarding the quality of the delivered goods.
- 17.5 In case of rejection and/or refusal of the goods, offered by us for delivery, we have the right to claim in our choice replacing delivery or to deduct the refused amount from the remaining part of the contract. In case of rejection or refusal of the goods we keep those available for the seller, what we will notify to the seller immediately in writing. The seller has to give us then immediately instructions regarding what has to be done with the goods, failing which we are entitled to sell for the account and risk of the seller the goods or to have destroyed those and to use the possible proceeds as partial or complete indemnification of the damage, sustained by us as a consequence of the non conformity of the goods.
- 17.6 In case of not timely delivery we have the right to claim rescission and/or damages.

### Article 18

- 18.1 Payment has to take place on invoice within 60 calendar days after receipt and complete acceptance of the goods. Payment does not change any guarantee and/or damages obligation of the seller to which the seller is held by the agreement or statute law.

- 18.2 We are at any time entitled to set off unsettled invoices of the seller with our own claims against the seller.

#### Article 19

- 19.1 If, by the presence of undesired residues or exceeding norms of goods (for instance: chemicals and minerals) regarding the product or because of the invoice by third parties of product liability regarding defective products, including unprocessed agricultural products, there arises damage with us as a consequence of imposed fines by the authorities or damage claims by third parties, the seller is liable vis-à-vis us for this damage.

#### Article 20

- 20.1 If after concluding the agreement the information regarding the financial position of the seller is such that his performing the delivery obligation must be considered as uncertain, we have the right to demand security from the seller regarding this performance of his obligations to deliver in the form demanded by us. If the seller does not put up this security timely, we have the right to rescind the agreement and/or claim damages.
- 20.2 If the seller is in arrear with the delivery of the goods and the sale price of the goods, which have been delivered already by the seller, we have the right to suspend payment of those goods delivered earlier, till the late deliveries have been performed by the seller.

So deposited with the registry of the court of Noord Holland, location Alkmaar court on 3 September 2013.