

GENERAL SALES AND DELIVERY CONDITIONS

of the private limited liability company

VERSTEGEN SPICES & SAUCES

with its registered office in Rotterdam,

dated 1 June 2017

filed at the Registry of the District Court in Rotterdam under number AL 35/2017

**GENERAL SALES AND DELIVERY CONDITIONS
VERSTEGEN SPICES & SAUCES B.V.**

Article 1: Applicability

- 1.1 These general terms and conditions form part of every offer and agreement for the sale and purchase and the delivery of services by Verstegen Spices & Sauces B.V. and its affiliates (hereinafter also referred to as “we/us”) and each counterparty or purchaser (hereinafter referred to as “Purchaser”, not being a natural person, not acting as a company or professional (consumer).
- 1.2 We are at all times entitled to amend these terms and conditions.
- 1.3 We will inform the Purchaser in writing of any amendment as referred to in the previous paragraph no later than 14 days before the intended effective date of the amendment.
- 1.4 If the Purchaser fails to inform us in writing that he does not accept the proposed amendments within 14 days after the date of the notice referred to in the above paragraph, the Purchaser is deemed to have accepted these amendments, after which the amendments will form a full and integral part of the agreement concluded with the Purchaser.
- 1.5 If the Purchaser informs us in writing that he does not accept the proposed amendments within the above period, we are entitled to terminate the agreement with immediate effect, without the Purchaser being entitled to any form of compensation.
- 1.6 Deviating conditions only form part of the agreement if those conditions have been explicitly agreed upon in writing. Deviating conditions apply only in respect of the relevant agreement or order. General and/or purchase conditions of the Purchaser do not bind us.

Article 2: Conclusion of the agreement

- 2.1 All our quotations are non-binding, even if a validity period is specified.
- 2.2 We reserve the right to withdraw a quotation within three business days after we are informed of acceptance thereof, and, to the extent a purchase agreement would have been concluded based on the acceptance, terminate the purchase.
- 2.3 An agreement will be deemed to be concluded when we have accepted an order in writing or have started with the implementation thereof.
- 2.4 Our implementation will be based on what has been stipulated in the Agreement with the Purchaser.
- 2.5 Without prejudice to the provisions of the previous paragraphs, weight, size and price quotations, pictures, drawings, etc. provided by us in brochures, catalogues, folders, etc., as well as in ads placed by us, models, samples or other examples provided, or in any other way made public by or on behalf of us, will never be binding to us but only serve to give the Purchaser a general idea of goods and services (to be) delivered by us.
- 2.6 Changes to the implementation of the agreement may take place only after our prior express written permission.

Article 3: General obligations of the Purchaser

- 3.1 The Purchaser will act like a good and careful counterparty.
- 3.2 The Purchaser will ensure that we timely have a complete overview of all wishes of the Purchaser, as well as of all information required by us in connection with the implementation of the agreement.
- 3.3 The Purchaser will provide us with all information required for the implementation of the agreement.

Article 4: Price

- 4.1 All prices exclude VAT.
- 4.2 If after the quotation or the conclusion of the agreement there are changes in cost-determining factors such as raw materials, items that concern a sale of a third party, wages, governmental fees and/or freight costs, we will be entitled to adjust the price accordingly. We will inform the Purchaser of this as soon as possible.
- 4.3 Because of deliveries from abroad, the rate of the Euro is also a cost-determining factor and the same applies to the rate of the USD where appropriate.
- 4.4 If there is a price increase as referred to in this Article of more than 10%, the Purchaser will be entitled to negotiate about the price increase, provided he informs us about his intention within 8 days after he has received a notice of this price increase, failing which the agreement including the price increase will continue to be in force.
- 4.5 The above does not release the Purchaser of the purchase obligation for specific purchased raw materials, packaging and remaining stock of a finished product.

Article 5: Resale

- 5.1 We will inform the Purchaser of our proposed positioning and image of the goods and the related brands. The Purchaser will not sell the goods in a manner which may affect the brands or the image. The Purchaser may not sell goods purchased from us with other goods at a joint price without our prior written permission.
- 5.2 The Purchaser is allowed to resell the goods delivered by us provided that
 - a. the goods are resold in the original, unchanged packaging intended for the consumer/end user.
 - b. the Purchaser concludes a chain clause with his customers to ensure the obligations arising from the provisions of these general terms and conditions also bind this customer and must be listed with any other resale/delivery.

Article 6: Delivery

- 6.1 The delivery of the goods takes place duty paid to the agreed delivery address. If the invoice value of goods to be delivered is lower than EUR 100 (excluding VAT and packaging), or if delivery ex-warehouse has been agreed on, the delivery will be at the risk and account of the Purchaser.
- 6.2 We may deviate from the agreed quantities with a margin of 10% with corresponding settlement of the agreed purchase price.

- 6.3 The delivery address must be reasonably accessible for our used transport means. The Purchaser must provide sufficient loading and unloading facilities at the delivery address. The Purchaser will make sufficient staff and (mechanical) tools available for the unloading of the goods and the loading of the returned goods. The Purchaser will take all reasonable measures to limit the time between the arrival at the delivery address and the moment on which the unloading of the goods commences to no more than 15 minutes.
- 6.4 Promised delivery times are estimates unless expressly confirmed otherwise by us in writing.
- 6.5 Exceeding the agreed delivery time will not result in a default. The Purchaser will, in that case, be entitled to demand that delivery takes place within a reasonable period, failing which, subject to the provisions of Articles 4.5 and 16, the Purchaser has the right to unilaterally terminate the not yet implemented part of the agreement by means of registered letter without any obligation on our part to compensate any resulting damages.
- 6.6 We are at all times entitled to demand and receive advance payment or a security.
- 6.7 Returns are only allowed if we have granted our written and express advance permission.
- 6.8 We are entitled to deliver and invoice partial deliveries unless expressly agreed otherwise in writing.
- 6.9 Except in the event of a specific agreement, we are always entitled to suspend delivery of orders if and to the extent:
- a. the corresponding delivery, for each distinctive good, is greater than the average delivery per month in the last 12 months;
 - b. the corresponding delivery, for each distinctive good, in combination with the deliveries of the five preceding weeks, is greater than the average delivery per successive period of 3 months in the last year;
 - c. the Purchaser fails to meet the agreed delivery period(s) of (a) successive delivery/deliveries.
- 6.10 If the Purchaser fails to accept the good delivered under the agreement or to pick it up at the agreed location and/or time, we are free, without prejudice to Article 4.5, to:
- a. store the product at the expense of the Purchaser;
 - b. privately or publicly sell the product at the expense of the Purchaser at a price we consider suitable in the situation and to settle the proceeds with what the Purchaser owes us according to the invoice and, to the extent the invoice amount exceeds the proceeds, charge the difference to the Purchaser separately;
 - c. declare the purchase to be dissolved without judicial intervention and charge the Purchaser 15% of the purchase price as compensation;

The product will be for the risk of the Purchaser from the moment the Purchaser is in default as specified above.

Article 7: Compliance, Complaints

- 7.1 If our delivered good visibly fail to comply with the agreement, the Purchaser is held to immediately file a complaint upon the delivery and record the found defects on the (shipping) documents signed upon delivery. Complaints concerning defects which are not visible upon delivery must be reported immediately after the Purchaser found them or could have found them, but no later than four weeks after delivery or within 1 week after the expiry of the last day of the shelf life.

- 7.2 To the extent our delivery includes instructions for use or a specification of the shelf life, the Purchaser is responsible for demonstrating that the corresponding product was used according to these instructions or the indicated shelf life in relation to the use was not exceeded.
- 7.3 In the absence of a timely complaint, all claims based on non-compliance of the delivered goods of the Purchaser on us expire and the delivery will be considered to have been accepted unconditionally.
- 7.4 Valid complaints only lead to either the obligation to deliver new goods in the same condition and quantity when it can be reasonably requested from us in the situation or to refund the price, at our discretion. If a defect only concerns a part of a delivery, the above obligations are limited to this part of the delivery.
- 7.5 In case of a complaint, the Purchaser will never be entitled to claim any additional form of compensation, warranty or damages than we can claim from our supplier and/or our insurer.
- 7.6 In case of a valid complaint as referred to in Article 7.4, the Purchaser will indemnify us against any complaints by third parties resulting from this complaint.

Article 8: Consultancy

- 8.1 If we must deliver a service or services under the Agreement, for example in the form of consultancy, including preparing and providing recipes, instructions or a declaration opinion, we will have a duty to perform. However, we are not held to guarantee that the use of the opinion will provide a certain result or that the Purchaser by following the opinion meets his (legal) obligations and we do not guarantee this. The Purchaser has in all cases a duty to examine the provided opinions. The Purchaser is considered to be an expert in this regard.

Article 9: Payment

- 9.1 The Purchaser must pay the invoice within the agreed payment term without any discount or compensation in a form which ensures that we have disposal over this sum within this term.
- 9.2 Exceeding the agreed payment term will place the Purchaser in default without further notice being required. The Purchaser will then, on the invoiced amount (including VAT) and on any collection costs incurred under the general terms and conditions, owe an immediately payable fine of 1% per month on each month that the payment is late, for which a part of a month will be considered a full month.
- 9.3 If there is a dispute between the Purchaser and ourselves about the quality or about other complaints filed by the Purchaser, the Purchaser is not entitled to fully or partially suspend the payment.
- 9.4 Exceeding the payment terms requires the Purchaser to pay the statutory interest plus two percentage points, calculated from the expiration date of the invoice in question.
- 9.5 All costs related to the collection of any amounts owed by the Purchaser not paid on time, including all judicial and extra-judicial costs and costs for legal aid, will be for the account of the Purchaser. In the event of failure of timely payment, we are entitled to charge the extra-judicial collection costs of at least fifteen percent (15%) of the total amount due with a minimum of EUR 500 without prejudice to our right to claim compensation for our actual damages if these are greater.

- 9.6 Payments are always supposed to first cover any claims not covered by collateral or other securities; then to cover any other outstanding claims, where payments will first cover the owed collection costs, then non-interest-bearing claims, then on interest and finally on interest-bearing claims; everything in the order on which these arose, starting with the oldest claims.-

Article 10: Settlement

In relation to what the Purchaser owes to us, the Purchaser cannot rely on any compensation with any claim which the Purchaser believes he has on us. Neither can the Purchaser rely on any right of retention in relation to any good held by him which must be returned to us.

Article 11: Transfer of risk; retention of ownership

- 11.1 The risk in respect of damage and/or loss of the delivered goods and/or resulting damage will pass on to the Purchaser immediately after delivery.
- 11.2 Delivered goods remain our property until the corresponding invoice has been paid like any other full or partial due claim with interest and possible collection costs. If we suspect or are informed that the Purchaser will fail to fulfil his obligations, we are entitled to immediately reclaim the delivered goods. The Purchaser is required to immediately return the good at our first request thereto; the costs of returning the goods are for the account of the Purchaser. The Purchaser will allow us to retrieve the delivered goods at our first request.
- 11.3 The Purchaser undertakes to establish a lien for our benefit on the claims of third parties which arise from the (re)sale of the delivered goods. If the Purchaser does not cooperate, we are entitled to dissolve the agreement between the parties as set out in Article 17.
- 11.4 We are entitled to reclaim goods when the payment term is exceeded by 5 days or more, without prior notice being required. The Purchaser is required to immediately return the goods at our first request, the costs of which will be borne by the Purchaser. The Purchaser will allow us to retrieve the delivered goods at our first request.
- 11.5 Until the moment the Purchaser has acquired the ownership of the delivered goods, he will not be entitled to pledge the goods to third parties or use the goods in any other manner than the normal processing of his company.

Article 12: Duty of care, Intellectual Property Rights, Confidentiality

- 12.1 The Purchaser will treat the delivered goods with the required care and not take any actions which may affect the quality and/or the safety of the goods, including the packaging, or the reputation of our brands.
- 12.2 We hold the copyright and the other intellectual property rights in our written opinion, recipes and fragrances, mouth feel and the like. Third parties, including clients and the Purchaser are not entitled to copy and/or disclose the topics of intellectual property rights without our prior written approval.
- 12.3 The Purchaser guarantees that towards third parties he will observe confidentiality with respect to all information, approaches and other matters classified as confidential and any information, approaches and other matters of which the confidentiality has not been explicitly indicated but of which the Purchaser should reasonably understand that it is confidential and which is disclosed to his staff or engaged third parties in the conclusion and/or the implementation of any agreement with us.

12.4 In case of violation of the provisions of paragraph 3, the Purchaser owes us an immediately payable fine without judicial intervention being required which is not eligible for moderation and/or settlement of EUR 100,000 per violation. This fine can be claimed in addition to full compensation pursuant to the law and does not affect other related rights.

12.5 The Purchaser is always held to observe the confidentiality as referred to in paragraph 3 in relation to the goods and works referred to in paragraph 2 of this article.

Article 13: EAN symbol

We are never liable in relation to the use of the EAN symbol unless we have not followed the requirements of the EAN.

Article 14: Discounts and bonuses

If a (payment) discount or bonus scheme, under whatever name, has been agreed, this will first be due and payable if the Purchaser has fully and timely met all his (payment) obligations towards us under any agreement.

Article 15: Liability

15.1 We are only liable towards the Purchaser on grounds of an attributable failure for direct damage which is the immediate result of the attributable failure. Liability for consequential damage is excluded.

15.2 The Purchaser indemnifies us against all claims of third parties under unlawful actions of third parties which are in any way involved in the implementation of the agreement.

15.3 Our liability will always be limited to the amount paid out by our liability insurance in that case, plus the amount of the excess which under the policy conditions is not borne by the insurer in this case. A certificate of the insurance policy will be provided to the Purchaser upon the first request.

15.4 Without prejudice to the provisions of paragraphs 1 and 2 of this article, our liability will be limited to the relevant invoice amount charged by us in case the insurer fails to pay out.

Article 16: Force majeure

16.1 If we fail to fulfil our obligations due to force majeure, we will not be liable. To the extent the circumstance which prevents us from fulfilling our obligations is not permanent, our obligations will be suspended. If the period during which we cannot meet our obligations due to force majeure lasts longer than three (3) months or is expected to last longer than three (3) months, both parties have, subject to the provisions of Article 4.5, the right to terminate the agreement for the not yet implemented part, without any obligation to pay compensation for any consequential damage.

16.2 Force majeure within the meaning of this article includes a shortage of raw materials, strikes or industrial actions, transport difficulties, fire, severe weather conditions, terrorism, riot, molest, company occupation, defect machinery, disruptions in the delivery of electricity, government measures and business interruptions, everything concerning our company or one of our suppliers or other involved third parties, as well as a default committed by our suppliers towards us due to which we cannot or no longer fulfil our obligations.

Article 17: Dissolution

- 17.1 Without prejudice to our other rights, we are entitled to, without owing any compensation to the Purchaser, dissolve the agreement and resulting obligations and all other existing agreements between the parties unilaterally and without judicial intervention, wholly or partially, and take back the delivered goods, if:
- a. the Purchaser does not fulfil his payment obligations on time for whatever reason and does not proceed to meet his obligations within 5 days after receiving a notice requesting payment;
 - b. the Purchaser requests suspension of payment or is declared bankrupt.
 - c. the Purchaser refuses to cooperate with the establishment of a lien as defined in Article 11.3.
- 17.2 In case of termination of the agreement as referred to in paragraph 17.1, each claim we have on the Purchaser for whatever reason will become immediately due and claimable.

Article 18: Packaging

Packaging for which no deposit was charged will not be taken back. Packaging for which a deposit was charged will be taken back and credited if it is complete and we decide that it is in good condition and is returned to us free of charge within three months after delivery.

Article 19: Miscellaneous

- 19.1 We are entitled to appoint a replacement for concluded agreements and their implementation.
- 19.2 All offers, agreements and resulting legal relationships are governed by Dutch law.
- 19.3 Any disputes, directly or indirectly arising from an agreement concluded with the Purchaser, will exclusively be heard by the competent Court of Rotterdam, unless the law prescribes another Court as mandatory. The parties may also decide to choose for another competent Dutch Court within which jurisprudence the Purchaser is established.
- 19.4 The provisions of the Vienna Sales Convention (CISG) expressly do not apply to these general terms and conditions.
- 19.5 To the extent a provision of these conditions is now or at any moment in violation of any statutory requirement of mandatory law, the remaining provisions of these general terms and conditions remain in full force and effect, to the extent not expressly declared not applicable by us.
- 19.6 The titles of the articles in these general terms and conditions do not have an independent meaning and the parties cannot derive any rights from them.