



# GENERAL TERMS AND CONDITIONS

of sale of Gourmet B.V. (version 3.0 dated ... January 2019)

## ARTICLE 1 - GENERAL

- 1.1 These general terms and conditions of sale, payment and delivery apply to all our quotations, offers and all agreements entered into by us, regardless of name.
- 1.2 We expressly exclude the applicability of general terms and conditions used by future contracting parties, including purchasing terms and conditions. We do not accept any reference by our contracting party to its general terms and conditions.
- 1.3 By accepting our quotations or offers, or entering into an agreement with us, the prospective contracting party expressly waives its terms and conditions and accepts our terms and conditions as described here.
- 1.4 A deviation from our general terms and conditions shall only apply if this deviation has been explicitly and in so many words confirmed in writing by our management and shall only apply to the agreement for which this explicit deviation has been agreed.
- 1.5 A contracting party which has once contracted with us under these general terms and conditions will be deemed to have tacitly agreed to the application of these terms and conditions in any agreement it subsequently concludes with us orally, by telephone or any other means.

## ARTICLE 2 - OFFERS AND TENDERS

- 2.1 All our offers are without obligation.
- 2.2 If our contracting party has not objected to the content of our order confirmation by e-mail or registered letter within 24 hours of receipt, our order confirmation shall be deemed to reflect the agreement correctly and considered binding on the parties.
- 2.3 Any additional agreements or changes made later, as well as verbal or other agreements and/or promises made by our staff or made on our behalf by our sellers, agents, representatives or other intermediaries, are only binding on us if these have been explicitly confirmed or carried out by us.
- 2.4 For activities and deliveries for which, due to their nature and scope, no quotation or order confirmation has been sent by us, the invoice/delivery note shall also be regarded as an order confirmation, which shall also be deemed to accurately and fully reflect the agreement.
- 2.5 Digital or telephone orders are accepted by us exclusively at the risk of the client. Any resulting inaccuracies shall be for the account and risk of our client.

## ARTICLE 3 - DELIVERY TERMS

- 3.1 The delivery time is given by us as an approximation only. We will, as far as possible,

observe the delivery time stated by and/or agreed with us, but we are not liable for the consequences of exceeding the delivery time, except in the event of intent or gross negligence on our part.

- 3.2 We have the right to deliver in parts, which part deliveries we will invoice separately.
- 3.3 Exceeding the delivery period does not oblige us to pay compensation for damage of any nature whatsoever.
- 3.4 After the expiry of our specified delivery period, the buyer has the right to send a registered letter demanding delivery within 14 days. If in that case no delivery takes place, the buyer has the right to cancel the agreement without judicial intervention, but without being able to claim any compensation for damage whatsoever.

## ARTICLE 4 - DELIVERY AND ACCEPTANCE

- 4.1 All our deliveries are made ex warehouse, unless otherwise agreed with our management.
- 4.2 Our contracting party is obliged to inspect the delivered goods and the packaging immediately upon delivery and unloading for any defects, visible damage or quality, or to have this inspection carried out, or to carry out this inspection immediately after we have notified the contracting party that the goods are at our disposal.
- 4.3 Any shortages or damage to the delivered goods and/or packaging present at the time of delivery must be noted in writing by our contracting party immediately, i.e. not later than two hours after the goods have been made available, on the delivery note, the invoice and the transport documents, and we must be notified by e-mail within 24 hours after the goods have been made available; failing which, our contracting party shall be deemed to have approved the delivered goods, its right to complain shall have lapsed and it shall be established between us and our contracting party that the delivered goods comply with the agreement. Afterwards, complaints relating to delivery will no longer be dealt with.
- 4.4 The quantity delivered shall be deemed to be in accordance with what has been agreed in terms of number, weight and quality and to comply with applicable laws and regulations, subject to proof to the contrary to be provided by our contracting party.
- 4.5 If the goods are not collected by our contracting party after the expiry of the delivery period, they shall be stored at its disposal, expense and risk. After expiry of 1 week (7 days) after delivery date, we are entitled to sell to a third party, whereby our possible loss of profit and the costs incurred are for the account of our other party.
- 4.6 Unless expressly agreed otherwise in writing with



our management, all goods are sold at the expense and risk of our contracting party from the time of delivery.

- 4.7 Complaints about invoices must be submitted to us by our contracting party within 8 days of dispatch, failing which our contracting party will be deemed to have accepted the invoices.

#### **ARTICLE 5 - COMPLAINTS**

- 5.1 Without prejudice to the provisions of Article 4, complaints must be made no later than the day following the day of delivery. Complaints will only be considered if submitted to us by registered letter, electronic mail and/or fax within the aforementioned period.
- 5.2 In the case of complaints which our contracting party was unable to discover on delivery under careful examination (hidden defects), our contracting party must inform us of the complaint by telephone, electronic mail or fax immediately after discovery and confirm it immediately in writing if it was made by telephone. After delivery, we no longer have any influence on the condition and handling of goods. Therefore, any right to complain – even about hidden defects in the delivery – expires 24 hours after delivery.
- 5.3 In the event of a timely complaint, we have the right to inspect the delivered goods (or have them inspected) immediately and, in consultation with our contracting party, to appoint a Lloyd's surveyor who will give binding advice for the parties.
- 5.4 If the complaint is judged to be well-founded, we will consult with our contracting party in order to reach a settlement, taking particular note of Article 11 of these terms and conditions.
- 5.5 In the event that we are unable, through no fault of our own, to appoint the expert referred to in paragraph 3, our contracting party – acting on our instructions – must do so. We must be informed immediately by fax or digitally of any such assignment.
- 5.6 If the complaint is determined to be groundless, our contracting party is obliged to reimburse all costs incurred by us, including the costs of the expert.

#### **ARTICLE 6 - FORCE MAJEURE**

- We are without obligation to pay any damages whatsoever, but are entitled at our discretion either to suspend the execution of the agreement or to dissolve the agreement in whole or in part, in the following cases:
- In the event of [interruptions] malfunctions in our company as a result of government regulations or measures, riots, mobilisation, war, frost, flooding, strikes or similar actions, as well as all other operational disturbances.
- In the event of non-delivery, late delivery or

improper delivery of goods by our suppliers, raw materials, fuels, electricity and all other consumables and/or supplies for the manufacture and packaging of our goods, total or partial crop failure, abnormal drought or rain, crop disease, pest infestations.

- In the event of impediments to the normal means of transport which we customarily use in the performance of our contracts.
- All other cases of force majeure, which is defined by us explicitly as circumstances under which we cannot reasonably be expected to comply with our delivery obligations.

#### **ARTICLE 7 - HARVEST RESERVATION**

All our agreements regarding agricultural products are subject to harvesting and storage conditions. If, as a result of crop failure or storage deterioration, or rejection by inspection authorities, the quantity and/or quality of agricultural produce is so far diminished from that which could reasonably have been expected at the time the contract was made, we have the right to reduce the amounts sold by us accordingly. In delivering this reduced quantity, we would then have fully met our delivery obligations. We would not then be obliged to supply replacement agricultural produce, nor would we be liable for any loss whatsoever.

#### **ARTICLE 8 - PRICES**

- 8.1 Unless otherwise stated, all our quotations are subject to price changes.
- 8.2 Unless otherwise stated, the prices given by us are:
- based on the current daily prices;
  - based on delivery ex warehouse;
  - exclusive of VAT;
  - denominated in euros.
- 8.3 If, after the date of our offer or the date the agreement was concluded with us, circumstances arise that affect the price we have agreed (such circumstances may include increases in the price of raw materials, auxiliary and packaging materials or, the final production in itself, energy costs, wages, social security charges, VAT, excise duties, fuel costs, currencies), we are entitled to pass these increases on in the price at the time of delivery to our contracting party.

#### **ARTICLE 9 - PAYMENT**

- 9.1 Our invoices must be paid in full, without any discount or setoff, either upon delivery, or within 14 days of the invoice date, by means of deposit or transfer to a bank or giro account designated by us, unless explicitly agreed otherwise in writing with our management.
- 9.2 As soon as payment becomes due, our contracting party shall owe interest of 1% on the total invoice amount for each month or part of a month that the invoice remains unpaid.
- 9.3 Our contracting party shall be responsible for all



extrajudicial collection costs, which are set at 15% of the amount to be collected, plus the VAT due thereon, with a minimum of €500, without prejudice to our right to charge our contracting party for any additional extrajudicial costs actually incurred.

- 9.4 We are entitled to suspend delivery at any time if our contracting party has not provided sufficient security to fulfil all its obligations under its agreement(s) with us.
- 9.5 If our contracting party is declared bankrupt, files a petition for a moratorium, becomes deceased, fails to fulfil any of its obligations under this agreement, or if all or part of its property is seized, the mere occurrence of one of these circumstances shall entitle us either to regard the agreement as dissolved without any judicial intervention being required, or to claim immediate payment in full of any amount owed by our contracting party for deliveries made by us, without any warning or notice of default being required, and/or to reclaim the delivered goods as our property, all without prejudice to our other rights to compensation for costs, damages and interest.

#### **ARTICLE 10 - RESERVATION OF TITLE**

- 10.1 All goods delivered by us shall remain our property until full payment is received of all amounts owed to us by our contracting party, on any account whatsoever, including our future claims against our contracting party, including interest and costs (and, in the event of current account delivery, until settlement of any balance payable by our contracting party).
- 10.2 The goods may be resold or used by our contracting party in the normal course of its business, but may not and cannot be given as security or serve as security for a claim from a third party.
- 10.3 Our contracting party is obliged to store the delivered goods properly and demonstrably and is obliged, if we reclaim the goods in accordance with the provisions of article 9 paragraph 5, to make them immediately available to us, regardless of where the goods are located. In all cases referred to in this article, the risk for the goods, including any loss of profit and costs incurred, shall be borne by our contracting party.
- 10.4 If the products cooked and supplied by the contracting party are brought within the jurisdiction of German law, the following conditions of assignment shall apply and, by way of derogation from Article 14, shall be deemed to have been excluded from the provisions of this Article, German right of assignment and German law. Contrary to the choice of law stipulated in Article 14, German law shall apply to this retention of title.  
a. Gourmet B.V. retains title to the delivered goods until full payment of all claims arising from the business relationship. Gourmet B.V. is entitled to reclaim the purchased goods if the contract partner

behaves in a manner contrary to the contract  
b. The contractual partner is obliged to treat the purchased goods with care as long as the ownership has not yet been transferred. As long as ownership has not yet passed to Gourmet B.V., the contractual partner must immediately notify Gourmet B.V. in writing if the delivered goods are seized or subjected to other interventions by third parties. If the third party is not in a position to reimburse Gourmet B.V. for the judicial and extrajudicial costs of an action, the contracting party shall be liable for the loss incurred by Gourmet B.V.

c. The contract partner is entitled to resell the reserved goods in the normal course of business. The contract partner hereby assigns to Gourmet B.V. the claims of the customer arising from the resale of the reserved goods in the amount of the final invoice amount agreed with Gourmet B.V. (including value added tax). This assignment shall apply irrespective of whether the purchased item has been resold without or after processing. The contractual partner remains authorised to collect the claim even after the assignment. The authority of Gourmet B.V. The right to collect the claim ourselves shall remain unaffected thereby. However, Gourmet B.V. will not collect the claim as long as the contract partner fulfils his payment obligations from the collected proceeds, is not in default of payment and, in particular, no petition for the opening of insolvency proceedings has been filed or payments have been suspended.

d. The treatment and processing or transformation of the delivered goods by the contract partner always takes place in the name of and on behalf of Gourmet B.V. In this case, the contract partner's expectant right to the object of sale continues in the transformed object. If the purchased goods are processed with other items not belonging to Gourmet B.V., Gourmet B.V. acquires co-ownership of the new item in proportion to the objective value of the purchased goods of Gourmet B.V. to the other processed items at the time of processing. The same shall apply in the event of mixing. If the mixing is carried out in such a way that the goods of the contracting party are to be regarded as the main product, it is agreed that the contracting party transfers proportionate co-ownership to Gourmet B.V. and keeps the resulting sole ownership or co-ownership for Gourmet B.V. In order to secure the claims of Gourmet B.V. against the contracting party, the contracting party also assigns to Gourmet B.V. such claims which accrue to it against a third party through the connection of the reserved goods with a piece of land; Gourmet B.V. accepts this assignment with immediate effect.  
e. Gourmet B.V. undertakes to release the securities to which it is entitled at the request of the contract partner, insofar as their value exceeds the claims to be secured by more than 20%.



f. The assertion of the retention of title and its exercise does not constitute a withdrawal from the contract.

#### **ARTICLE 11 - CONTAINER AND LOAD CARRIERS**

- 11.1 Our contracting party is obliged to pay a deposit for the case/load carriers provided by us. We retain ownership of the case/load carriers made available by us to our contracting party.
- 11.2 Our contracting party shall be obliged to return the case/load carriers we provide as soon as possible, and we are obliged to accept return of the case/load carriers in question, subject to repayment or settlement of the deposits paid.
- 11.3 We are not obliged to take back damaged and/or contaminated case/load carriers, or we may accept them at a reduced amount to be determined by us.
- 11.4 Our contracting party indemnifies us against improper use by the contracting party and/or third parties of the cask/load carriers we make available to the contracting party, and indemnifies us against all damage suffered and/or to be suffered by third parties as a result of such improper use.

#### **ARTICLE 12 - LIABILITY**

- 12.1 Any liability of Gourmet B.V. and persons employed by and for Gourmet B.V. (including its managing directors) towards its contracting parties, whether in breach of contract or in tort, is excluded, except in the event of intent or gross negligence on the part of the managing directors of Gourmet B.V.
- 12.2 In the event of a timely and well-founded complaint by our contracting party, our obligations are limited to replacing the faulty goods delivered or, at our discretion, refunding the price paid by our contracting party.
- 12.3 Without prejudice to the foregoing, we are not liable on the basis of the delivery of products resulting from the agreement for any damage whatsoever caused to the person and/or property of our contracting party or to the person and/or property of third parties, unless the damage was caused by intent or gross negligence on the part of the board of Gourmet B.V.
- 12.4 Our contracting party explicitly indemnifies us against claims of third parties arising from any damage of whatever nature caused by the delivered goods to persons and/or goods of third parties, and indemnifies us against all damage and costs arising from a claim as referred to in this paragraph.
- 12.5 All claims on Gourmet B.V. are subject to a limitation period of one (1) year after the date on which the claim arose.

#### **ARTICLE 13 - TRANSPORT CONDITIONS**

- 13.1 The General Transport Conditions (AVC 2000) apply to domestic transports to be carried out by or on behalf of our contracting party.
- 13.2 CMR conditions apply to cross-border transport. Container transport is subject to the conditions

specified on the Bill of Lading, or otherwise on the General Transport Conditions (AVC 2000).

#### **ARTICLE 14 - DISPUTES AND APPLICABLE LAW**

- 14.1 All agreements concluded with us are deemed to have been concluded in Lutjebroek, the Netherlands.
- 14.2 All agreements concluded with Gourmet B.V. are governed by Dutch law. The Vienna Sales Convention does not apply.
- 14.3 All disputes arising from or in connection with these general terms and conditions or the agreements between Gourmet B.V. and the contracting party shall be settled exclusively by arbitration in accordance with the Arbitration Rules of the Stichting Geschillen in de landbouw (Agricultural Disputes Foundation). The arbitration will take place in the Netherlands.
- 14.4 The right to involve Gourmet B.V. in proceedings shall lapse six months after the dispute with Gourmet B.V. arose.
- 14.5 International trade terms shall be interpreted in accordance with "Incoterms 2000", as established by the International Chamber of Commerce (I.C.C.) in Paris. The Dutch text of these conditions is authentic and binding.