

GENERAL CONDITIONS OF SALE

of

Centrale Organisatie voor de Vleesgroothandel (COV) *(Central Organisation for the Wholesale Meat Trade)*

1. Applicability

- 1.1 The following conditions apply in particular (i.e. not exclusively) to the supply of meat, meat products and other related products and to the rendering of related services. In the following "Supplier" means the party supplying goods or rendering services and "Buyer" the other party to the agreement with the Supplier.
- 1.2 The Supplier makes offers, accepts orders and more generally concludes agreements exclusively subject to the following conditions, unless it is expressly stated otherwise in writing by the Supplier. The present conditions shall also apply to any additional or subsequent agreements between Supplier and Buyer.

2. Conclusion and modification of agreements

- 2.1 No agreement shall be binding on the Supplier, not even when an offer has been made by him and accepted by the Buyer, until the Supplier has confirmed Buyer's order in writing. When Supplier's behaviour towards the Buyer indicates that the performance of the agreement is actually being taken in hand, this shall also have the force of an order confirmation.
- 2.2 No modification of and/or addition to an agreement shall be binding on the Supplier until he has expressly agreed to such modification or addition in writing. When Supplier's behaviour towards the Buyer indicates that the performance of a modification or addition is actually being taken in hand, this shall also have the force of an agreement to such modification or addition.

3. Prices

- 3.1 Unless it is expressly otherwise stated or agreed, all prices quoted in offers or agreed between the parties shall be free agreed place of delivery. VAT and any other levies imposed by the authorities shall be charged separately according to the rate applying to the delivery or service in question.
- 3.2 All prices quoted by the Supplier are subject to the proviso that the Supplier shall have the right to increase the quoted price by the additional expenses arising for him from the fact that after he made the offer but prior to the conclusion of the agreement there is a rise in the price of price-determining elements such as the official market quotations of the goods to be delivered or of the base materials therefor, purchase prices, the cost of transport and storage, packing charges, wages, taxes and social insurance contributions, insurance premiums and the like.
In addition, the Supplier shall have the right to increase an agreed price by the additional expenses arising for him from the fact that in the period lying between the thirtieth calendar day after the conclusion of the agreement and the day of delivery there is a rise in the price of price-determining elements such as purchase price, the cost of transport and storage, packing charges, wages, taxes and social insurance contributions, insurance premiums and the like.
- 3.3 Expenses arising for the Supplier from an obligation to take back and/or process packing material may be charged by the Supplier to the Buyer.
- 3.4 Reusable packing material (crates for instance) shall remain the property of the Supplier at all times and must be returned to the Supplier by the Buyer. If the Buyer fails to do so all costs entailed by the replacement of such material shall be charged to the Buyer.

4. Payments

- 4.1 The following provisions shall apply in respect of payments unless a different arrangement has been expressly agreed. On or after delivery the Supplier shall give or send the Buyer an invoice stating the price owing for the delivery or partial delivery. The Buyer must pay this price without any deductions and in Netherlands guilders unless it has been otherwise agreed, within twenty (20) calendar days of the invoice date and must do so either in cash at Supplier's offices or by causing the amount of the price to

be credited to a bank account designated by the Supplier. Complaints about invoices received must be lodged with the Supplier in writing within fourteen (14) calendar days of the invoice date on pain of forfeiture of the right to bring a claim. In deviation from the provision of the second and third sentence the Supplier has the right to require that the Buyer pay the price owing in full or in part before or on delivery, if he sees reason to do so. Besides, the Supplier also has the right to require that before or on delivery adequate security, in his judgment, be given for the payment of the price due. If the advance payment or the security, as the case may be, is not received within the period stated by the Supplier, the Supplier shall have the right either to suspend the performance of all his obligations under the agreement or to cancel the agreement in whole or in part with immediate effect, without prejudice to his right to damages.

- 4.2 If an attachment is made of to the detriment of Buyer, if the Buyer is granted a moratorium or declared bankrupt or if the Buyer discontinues his business or part of his business, all moneys owing by the Buyer to the Supplier shall become immediately due and payable in full.
- 4.3 If the price owing is not paid in time, the Buyer shall, through the mere fact of his exceeding the term of payment, owe interest on such part of the price as is due but unpaid at a rate equal to the legal interest plus two (2) per cent from the due date until the day of payment in full. The Supplier shall have the right to suspend performance of all his obligations under the agreement until full payment of the amount due has been received. If the amount due is not paid in full within an additional term stated by the Supplier, the Supplier shall have the right to cancel the agreement in whole or in part, all the above without prejudice to any other rights of the Supplier, including in particular his right to damages.
- 4.4 All judicial or extrajudicial costs incurred by the Supplier in connection with any failure on the part of the Buyer to fulfil his obligations properly shall be entirely for the Buyer's account. The compensation for extrajudicial costs incurred by the Supplier shall be fifteen (15) per cent of the amount due, with a minimum of NLG 1,000.
- 4.5 The Buyer may not set off any debts due to him from the Supplier against his debts owing to the Supplier, with the exception of debts that have been expressly acknowledged by the Supplier in writing or judgment debts.
- 4.6 The Buyer is not authorized to suspend his liability to pay for goods delivered or services rendered, unless the Supplier has expressly agreed to such suspension.

5. Deliveries

- 5.1 Delivery periods shall commence each time on the day after the conclusion of the agreement, with the proviso that if the Supplier has demanded prepayment of the price owing therefor or security for the payment of such price within fourteen (14) calendar days after the conclusion of the agreement, the delivery period shall not commence until such prepayment or security has been received in full.
- 5.2 The mere fact that the agreed delivery period is exceeded shall not cause the Supplier to be in default. This shall be the case only if the Supplier still fails to deliver within an additional, reasonable period stated to him in writing after the expiry of the agreed delivery period due to reasons that are imputable to the Supplier.
- 5.3 The Buyer may cancel the agreement on account of a failure to deliver in time that is imputable to the Supplier and causes him to be in default pursuant to the provisions of article 5.2 only to the extent that the agreement has not been performed yet and to the extent that the Buyer cannot in reason be expected to let the unperformed part of the agreement stand.
- 5.4 The Supplier is authorized to make partial deliveries and to send partial invoices with respect to same.
- 5.5 Except where it has been or afterwards is expressly otherwise agreed, goods to be delivered shall be delivered at the Buyer's warehouse or factory.
- 5.6 The Buyer has a duty to take delivery of the goods. If the Buyer fails to take delivery of goods destined for and presented to him or fails to do so in time due to reasons not imputable to the Supplier, the Supplier shall be authorized to sell same seven (7) calendars after their presentation for delivery. The proceeds shall take the place of the goods up to a maximum equal to the agreed purchase price. All costs and any deficiency in the proceeds shall be for the Buyer's account. All the above shall not prejudice all and any other rights of the Supplier vis-à-vis the Buyer.

6. Transfer of ownership

- 6.1 The ownership of goods delivered shall not pass to the Buyer until the Buyer has fully paid all amounts owing by him to the Supplier on account of or in connection with any agreement for the delivery of goods and/or the rendering of services concluded with the Supplier.

- 6.2 The Buyer is obliged to keep goods that are still the property of the Supplier properly stored and clearly marked off from other goods.
- 6.3 The Buyer may not dispose of goods which are still the property of the Supplier in any way except as is customary in the normal conduct of his trade or business; this does not include the use of such goods for the purpose of giving security.
- 6.4 If the Buyer fails to comply fully with any obligation under or in connection with any agreement concluded with the Supplier for the delivery of goods and/or the rendering of services, the Supplier shall be authorized to recover, on his own authority, any goods that are still his property without being bound to make any compensation. The Buyer shall be bound to give full assistance in this as requested under penalty of damages in the amount of NLG 2,000 per day which shall be immediately due and payable. All revendication expenses shall be for the Buyer's account.

7. Passing of risk

- 7.1 The Buyer shall bear and continue to bear the risk of damage to or total or partial loss of goods to be delivered already from the moment of arrival of such goods at the place of delivery. If the Supplier presents goods to the Buyer for delivery but the Buyer does not take delivery of same for reasons not imputable to the Supplier, any damage to or total or partial loss of such goods shall also be and remain at the Buyer's risk from the moment of presentation for delivery.

8. Quality; inspection; Defects

- 8.1 Goods delivered shall be deemed to be sound if they meet the statutory veterinary quality standards applying at the time of concluding the agreement and if moreover they meet the expressly agreed specifications and are suitable for the use expressly stated by the Buyer before or at the time of concluding the agreement.
- 8.2 Loss of weight through refrigeration or freezing shall not be considered a defect if the loss of weight does not exceed one (1) per cent. For the purpose of this provision loss of weight can be proved exclusively by means of an official weigh certificate showing that the goods were weighed on a sound, public weighbridge on or immediately after delivery.
If the goods to be supplied to the Buyer are collected by the Buyer himself at Supplier's business, the Supplier shall enable the Buyer, on request, to weigh these goods or cause them to be weighed in his presence on Supplier's premises. In the cases referred to in the preceding sentence complaints about weight will be accepted by the Supplier only if the goods were in fact weighed at Supplier's business.
- 8.3 The Buyer is bound to subject the goods delivered to a thorough and expert inspection as to completeness and soundness immediately after their delivery. Any defects detected on such inspection must be notified to the Supplier either in writing or verbally immediately followed by written confirmation, in the case of nonfrozen meat within twenty-four (24) hours and in case of frozen meat within seventy-two (72) hours and in case of other goods within ten (10) calendar days of delivery. When notifying a complaint the Buyer must submit an inspection report drawn up by an authorized and independent expert which confirms the complaint. Non-compliance with these duties of inspection and notification shall result in the extinction of all rights in connection with defects which could have been detected upon a thorough and expert inspection.
- 8.4 On demand and as far as this will still be reasonably possible, the Supplier shall remedy, free of charge and by supplementation or replacement, any defects which have been notified within the time stated therefor and in the proper manner in accordance with articles 8.2 and 8.3; and also any defects of which the Buyer proves that they could not have been detected by him within the terms stated in 8.3 in spite of a thorough and expert inspection and which moreover he notifies as yet to the Supplier in writing within thirty (30) days after delivery of the goods while submitting an inspection report from an independent expert, in the case of non-frozen meat within twenty-four (24) hours of detection, in the case of frozen meat within seventy-two (72) hours and in the case of other goods within ten (10) calendar days of detection. If no supplementation or replacement is demanded or if supplementation or replacement is not reasonably possible, the Buyer shall merely be credited for the part of the delivery that is defective. However, the Supplier shall only be bound to remedy a defect free of charge or to credit the Buyer, as the case may be, if the Buyer proves that the defect resulted directly from a fact or circumstance that is imputable to the Supplier. The Supplier shall be authorized to make an investigation of his own into the nature, extent and cause of any alleged defect. The Buyer shall be obliged to provide full cooperation as requested in this connection, on pain of forfeiting all his rights in connection with the defect. The Supplier is not obliged to take back defective goods, but if so requested the Buyer shall immediately put any goods that have been replaced at the Supplier's disposal.

- 8.5 Defects that are imputable to the Supplier shall not constitute valid ground for the Buyer to cancel the agreement unless the Supplier, even after receiving a written demand to such effect, still fails to remedy the defects in an acceptable manner within a term that is reasonable considering all the circumstances while the Buyer cannot in fairness be expected to maintain the agreement.

9. Liability in damages

- 9.1 The Supplier shall compensate the Buyer exclusively for damage which the Buyer proves to be a direct result of an event for which the Supplier is liable in law towards the Buyer, subject however to the following provisions:
- a. The maximum total compensation for damage to goods other than goods delivered and for injury, including consequential damage from damage to goods and injury, shall be NLG 2,5 million (say: two million five hundred thousand Netherlands guilders) per event or complex of events resulting from one and the same cause;
 - b. The total compensation for damage other than the damage referred to in paragraph a. shall be an amount equal to fifty (50) per cent of the net price (agreed gross price less VAT and any other levies) of the agreement in question, or in the event of an agreement for partial deliveries, of the net price of the part of the agreement that is most closely connected with the damage, with a maximum however of NLG 50,000 (say: fifty thousand Netherlands guilders);
 - c. Damage must be notified in writing to the Supplier with the minimum of delay but in any case within twenty (20) calendar days of its detection and the Supplier must be given full cooperation in any investigation on his part into the nature, extent and cause of the damage, on pain of the extinction of the right to damages and without prejudice to the provision of paragraph d. below;
 - d. No compensation shall be paid for any damage that is detected more than six (6) months after the delivery of the goods or the termination of the service with which the damage is directly connected.
- 9.2 Any claim for damages which the Buyer may have shall become extinct upon the expiry of a period of twelve (12) months after the delivery of the goods or the termination of the services with which the damage is directly connected.
- 9.3 The Buyer indemnifies and holds the Supplier harmless from all and any claims for damages from third parties in connection with goods delivered and/or services rendered by the Supplier to the Buyer, at any rate to the extent that such damages are not payable by the Supplier's pursuant to the agreement, given the relationship with the Buyer.

10. Imputability or otherwise of any failure to perform an obligation

- 10.1 If the Supplier fails in the proper performance of any obligation towards the Buyer this shall not be imputable to the Supplier, i.e. this shall not constitute breach of contract if such failure results from a circumstance which is unusual for or unforeseen by the Supplier. Such circumstance shall in any case include the following, at any rate to the extent that the Supplier is not to blame therefor: war or a similar situation, riot, sabotage, fire, lightning stroke, explosion, discharge of hazardous substances or gases, power failure, serious operational breakdown, illness of employees on an unusual scale, strike, sit-down strike, blockade, boycott, shortage of raw materials, transportation impediments, government measures including bans on imports, exports, transits, production of deliveries, non-performance or late performance by a third party involved by the Supplier in the performance of the agreement, including any of his suppliers, the occurrence of animal diseases.
- 10.2 If the Supplier is temporarily unable to perform the agreement or to perform it properly due to circumstances not imputable to him, the mutual obligations in connection with such part of the agreement as has not been performed yet shall be suspended. Temporary inability to perform or perform properly is defined as the inability to perform during thirty (30) more or less consecutive calendar days. After this period either party may cancel the agreement with due observance of the provision of paragraph 10.3.
- 10.3 If part of the agreement cannot be performed or not be properly performed by the Supplier due to circumstances not imputable to the Supplier, the agreement may be cancelled with respect to such part only.
- 10.4 If the Supplier has concluded agreements relating to like or similar goods with more than one Buyer and the Supplier is unable to give full performance to all the agreements due to circumstances not imputable to him, the Supplier shall be authorized to use his own discretion in deciding which parts of which agreements he will perform.

11. Applicable law, Incoterms 1990 and court of competent jurisdiction

- 11.1 The agreement including its conclusion is governed exclusively by the law of the Netherlands. The United Nations Convention on the International Sale of Goods of 11 April 1980 shall not apply.
- 11.2 With respect to agreements involving the transportation of goods outside the territory of the Netherlands, the "INCOTERMS 1990" adopted by the International Chamber of Commerce at Paris shall have supplementary application to the effect that any trade terms used by the parties shall be interpreted in accordance with the "INCOTERMS 1990" as far as this will be compatible with the present conditions.
- 11.3 Disputes about or in connection with the agreement including its conclusion shall be submitted exclusively to the jurisdiction of the court of competent jurisdiction within the District in which the Supplier is established. The Supplier is authorized, however, to submit disputes to another competent Dutch or foreign court.
- 11.4 The Dutch version of the general conditions is the authentic and valid text of the general conditions and shall prevail in case of discrepancy with the present text.