

**GENERAL PURCHASE CONDITIONS OF ENS International B.V.**

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**1. Definitions**

Definitions for the purpose of these general purchase conditions (the "Conditions"):

- "ENS": the limited liability company (*besloten vennootschap met beperkte aansprakelijkheid*) incorporated under the laws of the Netherlands, with corporate seat and registered offices in (1703 WE) Heerhugowaard situated at Stationsplein 63, listed in the trade registry (*Handelsregister*) of the Chamber of Commerce under number 37141955 and its subsidiaries each individually hereinafter referred to as "ENS";
- "Supplier": any natural person or legal entity that supplies goods or provides services to ENS;
- "Agreement": any agreement between ENS and the Supplier, including these Conditions, for the purchase of goods or services by ENS from the Supplier, or any other order or assignment placed by ENS with the Supplier, or any related acts or legal acts.

**2. Applicability**

2.1 These Conditions apply to all offers, assignments, order confirmations and Agreements between ENS in relation to the Supplier.

2.2 Any variations from these Conditions or any party thereof must be accepted expressly in writing by ENS. ENS expressly rejects applicability of any standard or specific Conditions invoked or used by the Supplier.

2.3 The Supplier may only invoke deviations from the Conditions if and so far as these are approved in writing by ENS.

2.4 These Conditions may be invoked also by ENS's directors, employees, agents and subcontractors. These Conditions apply also to non-contractual claims.

2.5 If any or several provisions of these terms prove(s) invalid or unenforceable, the invalid or unenforceable provision(s) will be interpreted as much as possible in accordance with the applicable rules of law to approximate the original purport of the provision(s) as closely as possible and the other provisions of these Conditions will remain fully effective.

**3. Formation of the Agreement**

3.1 All offers made by the Supplier, regardless of their form, are irrevocable, unless it is unequivocally clear from the offer that the offer is without obligation.

3.2 Any Agreement is formed no sooner than ENS has expressly accepted an offer from the Supplier in writing or has sent a written confirmation.

3.3 Verbal undertakings or agreements by or with ENS's personnel or representatives are not binding until and provided these have been confirmed in writing.

3.4 Additional work is permitted and billable provided that ENS has placed a separate written specified order for such additional work.

3.5 Any costs incurred with respect to the drafting of offers are born by the Supplier.

**4. Prices, invoices and payment**

4.1 Unless otherwise agreed in writing, all prices are fixed. The Supplier is not entitled to increase prices without ENS's prior written consent.

4.2 Prices are exclusive of value added tax but including sound packing material and any other costs incurred by the Supplier with respect to the fulfillment of its obligations, unless it has been agreed otherwise in writing.

4.3 ENS shall pay for the goods or services provided within 60 days after the invoice date, unless otherwise agreed in writing and on condition that the goods or services provided have been approved and after receipt of all relating documentation including the correctly addressed complete specified invoice.

4.4 Payment by ENS does not imply a waiver of any right under the Agreement, the Conditions, or the law. Payment shall, even when the goods have been approved, not be regarded as an acknowledgement by ENS of the soundness of the delivered goods or services rendered and does not release the Supplier from any liability in that regard.

4.5 If full or partial payment in advance has been agreed, ENS is entitled to require the Supplier to provide adequate security for the fulfillment of its obligations to supply or its obligations to repay in the event of cancellation of the order or termination of the Agreement. If the Supplier does not provide adequate security within the period set by ENS, ENS is entitled to terminate the Agreement and to recover its losses, including

damages, from the Supplier. An adequate security will in any case be a payable bank guarantee of 100% of the advanced sums. The Supplier shall bear the costs for the provision of the security.

4.6 Each payment by ENS constitutes ENS's meeting of the debt indicated with that payment.

4.7 Payment releases ENS from all obligations arising from the relevant Agreement and cannot be regarded by the Supplier as payment of any other alleged claim of the Supplier on ENS.

**5. Delivery, packaging**

5.1 The delivery of the goods and the provisions for the delivery costs and the transfer of risk shall take effect in compliance with the provisions of the INCOTERMS, latest version, as published by the International Chamber of Commerce in Paris, France, at the time of conclusion of the Agreement in question, as referred to in Article 2) as agreed between ENS and the Supplier. If no conditions have been agreed between ENS and the Supplier, delivery shall take place Delivery Duty Paid (DDP) at the location designated by ENS.

5.2 Delivery of the Products and services should take place in the manner and the place and time set out in the Agreement.

5.3 Unless otherwise agreed, delivery will be made in accordance with the First In, First Out principle.

5.4 The delivery term commences as soon as the Agreement is formed. Exceeding the delivery term places the Supplier in default without any notice of default being required.

5.5 The Supplier is obliged to give ENS timely and adequate advance notice of delivery and the possibility of late delivery.

5.6 Unless otherwise agreed in writing, the Supplier is not entitled to make partial deliveries. If the execution of partial deliveries has been agreed, then delivery is, for the purpose of these Conditions, also deemed to mean a partial delivery.

5.7 The delivery is completed at the moment when the goods have been received by or on behalf of ENS and ENS has signed for delivery. ENS's signature for delivery does not affect the fact that the goods delivered can be rejected later under the terms of Clause 7 of these Conditions. Signing does not prevent ENS exercising any rights, such as its rights arising from default on the part of the Supplier.

5.8 The Supplier is not entitled to suspend its delivery obligation if ENS fails to perform any of its obligations.

5.9 In case of late delivery or short delivery of the goods, ENS reserves the right (i) to refuse the goods, and (ii) to impose a fixed penalty of EUR 500 (five hundred euro) and (iii) to impose an additional penalty of 5 percent of the order value for each day that the delay continues, to a maximum of 30 percent of the order value. If a late or short delivery causes ENS to be fined by a customer, and such fine exceeds the amount of the penalty imposed by ENS on the Supplier, ENS is entitled to impose a penalty on the Supplier equal to the amount of the fine imposed by the customer on ENS. Any penalty imposed shall be without prejudice to the Supplier's liability to compensate any damages and losses suffered by ENS due to the late delivery if those losses exceed the amount of the penalty.

5.10 Unless otherwise agreed in writing, the packaging of the goods shall be provided with the brands and wording legally required in the country in which the goods will be placed on the market by ENS. The packaging shall also feature the brands and wording as agreed upon by the parties in the Agreement.

**6. Execution of services**

6.1 The execution of services must be effected in the manner and at the time as set out in the Agreement.

6.2 Exceeding the time set for the provision of services by the Supplier results in the Supplier being in default without any notice being required.

6.3 The provision of services is completed when ENS has confirmed in writing that the services provided have been performed or that the services provided have been approved. The Supplier cannot derive any rights from such confirmation or approval and the confirmation or approval therefore do not prevent ENS from exercising (amongst others) its rights on the grounds of a default on the part of the Supplier.

6.4 The Supplier may only instruct third parties to carry out services with prior written consent from ENS.

6.5 The Supplier is not entitled to suspend the execution of services if ENS should fail to meet one or more of its obligations.

**7. Inspection**

7.1 ENS reserves the right to inspect, check, or test the goods or services delivered or to be delivered to ENS during normal working hours and upon reasonable notice, or to have a third party carry out such inspection, check or test, irrespective of where the goods in question are located. The Supplier is obliged to give its full cooperation to the inspection or investigation. The inspection cost shall be borne by the Supplier if the inspected goods fail to meet the inspections or general requirements within the meaning of clause 9.1.

7.2 ENS shall not be deemed to have accepted the goods until it has had a reasonable period to inspect the goods following delivery, having regard to the perishability and shelf life of the goods in question. ENS shall also have the right to reject the goods as

though they had not been accepted, for 14 days after any latent defect in the goods has become apparent.

7.3 In the event of a rejection ENS shall inform the Supplier of the rejection. ENS will consult with the Supplier to either, at the Supplier's risk and expense, return the rejected goods to the Supplier or store or have the rejected goods stored. If the Supplier has not collected the rejected goods within 3 days after being notified by ENS of the rejection, ENS shall be granted an irrevocable authority by the Supplier to sell or destroy the goods. The costs incurred shall be at the Supplier's risk and expense.

7.4 If the goods are rejected in full or in part by ENS or a competent authority during production or during or following delivery, or if it is otherwise established that the goods do not meet the relevant product specifications or requirements, the Supplier shall at ENS's sole discretion (i) supply ENS with goods which comply with the product specifications and requirements within reasonable time, or (ii) reimburse the amount already paid by ENS, or (iii) forfeit a penalty of EUR 500, or (iv) ENS shall have the sole discretion to enter into and carry out a covering purchase in the sense of Article 7:37 Dutch Civil Code (*dekkingskoop*). The possible proceeds ensuing from this transaction shall be for the benefit of ENS. In all four cases ENS is entitled to compensation for any loss (direct or indirect damages) that is suffered by ENS and any subsequent purchasers or users, including – eventually – the consumer of the goods delivered (whether or not processed) due to a failure of the Supplier to meet its obligations.

**8. Ownership and risk**

8.1 Ownership and risk of the goods are transferred to ENS at the moment of delivery, unless (i) it has been agreed otherwise in writing; or (ii) the goods are rejected by ENS upon or after delivery (under clause 7 of the Conditions).

8.2 The Supplier guarantees that unencumbered ownership of the goods is acquired by ENS.

8.3 The Supplier waives any retention rights and rights of recovery it may have.

8.4 The Supplier is obliged to sufficiently insure the goods against transit damage, at its own risk and expense.

**9. Warranty**

9.1 The Supplier warrants that:

- (i) the goods fully comply with the Agreement and any further specifications stipulated by ENS or, if no agreements have been concluded in that regard, the product technical specifications and requirements that are customary for the trading of the goods and in accordance with the applicable national or international standards such as the Good Manufacturing Practice principles;
- (ii) it will not change the specifications of the products, the manufacturing process, raw materials, components and packaging used to produce the goods without providing advance notification and obtaining prior written consent of ENS. The Supplier acknowledges that such changes may alter the goods in such a way that it is not acceptable to ENS even if it is still within the relevant specification;
- (iii) the goods meet the highest quality standards, are fit for the intended purpose, are new, have no defects and are free of any third party rights;
- (iv) the goods are compliant with any requirements set by or by virtue of the law, the applicable rules of self-regulation, and requirements set by ENS (including requirements on quality, health, safety, environment and advertising) and meet all of the governmental regulations in the country of destination;
- (v) it has and maintains all externally audited accreditation, including a GFSI-recognized certification programme which includes (but is not limited to) HACCP principles, and all other certifications required by ENS;
- (vi) the goods that are ordered by ENS as an organic product fully comply with all European and national legislation on the production and labeling of organic goods;
- (vii) the goods are manufactured without using any genetically modified organisms and that under the applicable legislation, no obligations arise to refer to the use of genetically modified organisms in the labeling of the goods;
- (viii) the goods are packaged and preserved in such a way that protection against external forces is guaranteed and instructions given by ENS are followed;
- (ix) the goods are complete with and accompanied with all documentation required by ENS.

- (x) it ensures full traceability, keeps appropriate records of the products and all ingredients and components used in the products until title to the products passes to ENS.

9.2 If it turns out that – irrespective of the results of any preceding inspections – any goods provided do not meet the provisions of section 9.1, then the

9.3 Supplier shall at its own expense and upon ENS's first request and at ENS's discretion repair and/or replace the goods, or supply what is missing, unless ENS prefers to terminate the Agreement in conformity with Clause 15 of the Conditions and without prejudice of any other rights of ENS arising from a failure of Supplier to perform (including the right to damage compensation). Any costs related to this (including cost of repair and disassembly) shall be borne by the Supplier.

9.4 In cases where it has to be assumed in all reasonableness after consultation with the Supplier that the Supplier will fail to meet its warranty obligations, ENS is entitled to effect repair or replacement itself at the expense of the Supplier or have a third party effect such repair or replacement, without the Supplier being discharged from its obligations under the Agreement.

#### 10. Liability

10.1 Any failure of the Supplier to meet its obligations entitles ENS to oblige the Supplier to immediately undo partially or fully the failure and its consequences at the risk and expense of the Supplier.

10.2 The Supplier is liable for any loss that is suffered by ENS and any subsequent purchasers or users, including – eventually – the consumer of the goods delivered (whether or not processed) due to a failure of the Supplier to meet its obligations and due to any act or failure to act by the Supplier or by the Supplier's staff or any third parties engaged by the Supplier. The Supplier shall be liable for both direct and indirect losses.

10.3 The Supplier shall indemnify ENS against any possible claims by third parties in relation to the Agreement.

10.4 ENS is not liable for any losses suffered on the part of the Supplier, unless the loss has been caused by deliberate intent or willful recklessness on the part of ENS itself.

10.5 The Supplier shall adequately insure itself against the losses referred to in Clause 10. This insurance obligation also applies to any means (including transport) which are in any way used in the execution of the Agreement. ENS reserves the right to request evidence of such insurance or to require a statement in the policy to the effect that insurance payments will be made directly to ENS if ENS is required to compensate the loss in the first instance.

#### 11. Recall

11.1 If any defect in the goods (including packaging), becomes known to one of the parties, the party is obliged to inform the other party immediately of such defect, stating:

- a. the type of defect;
- b. the goods affected;
- c. any other information that may be relevant.

11.2 The parties shall then in consultation with each other take any measures necessary given the circumstances. The measures to be taken may mean discontinuation of deliveries, discontinuation of the manufacturing of goods, blocking of stocks of goods (whether or not at customers or ENS) or a recall. ENS is entitled to decide whether any measures and, if so, which of the aforementioned measures will be taken and how the execution thereof shall take place. Insofar as applicable, ENS shall take into account, when taking such decision, that it markets goods, including high-quality food goods and therefore has to protect its reputation. The Supplier should participate in any reasonable way in the execution of such measures. The Supplier will bear all the costs of the measures, without prejudice to the Supplier's obligations following from sections 9 (Warranty) and 10 (Liability), except when the defect has been caused by ENS.

11.3 The Supplier is obliged to keep any information relating to measures pursuant to section 11.2 that may or will be taken confidential. Failure of complying with this obligation will result in a penalty payment in the amount of EUR 25,000.

#### 12. Intellectual property

12.1 The Supplier grants to ENS a non-exclusive, eternal, irrevocable, global and transferable right to use any intellectual property rights regarding the goods or services provided by the Supplier. This right of use includes the rights to grant such right of use to (possible) purchasers or other third parties with whom ENS has relations in respect of the running of its business.

12.2 The Supplier guarantees that the use (including resale) of the goods supplied or services provided by the Supplier will not infringe on any intellectual property rights or other (property) rights of third parties.

12.3 The Supplier indemnifies ENS against any claims by third parties arising from any infringement on the rights set out in section 12.2 of these Conditions and the Supplier shall compensate ENS for any ensuing losses.

12.4 Insofar as ENS makes available to the Supplier any means of which ENS possesses an intellectual property right, the Supplier acknowledges that ENS is and shall at all times remain the owner of such means and that the Supplier shall not obtain any intellectual property rights or title as regards such means. The Supplier shall manage all means referred to in this paragraph at its own risk and expenses and keep them in good repair. The Supplier shall not use the means for or have the means used by third parties unless the Supplier has been authorised in writing by ENS to do so. Section 14 applies mutatis mutandis to any means referred to in this section 12.4.

12.5 If the Supplier, within the scope of the Agreement, develops goods for ENS, then any intellectual property rights arising from such development shall accrue exclusively to ENS. Any fee for this shall be deemed to be included in the agreed price of the goods. Insofar as necessary the Supplier shall render full assistance in the creation or the transfer of such rights to ENS.

#### 13. Force majeure

In the event of force majeure on the part of one of the parties, the fulfilment of the Agreement shall be suspended for the duration of the force majeure period, without any of the parties being liable for compensation as regards the other party. If the situation of force majeure should last longer than fourteen (14) days, the other party shall have the right to terminate the Agreement with immediate effect and without court intervention by giving notice in writing, without any right to damages arising. Force majeure on the part of the Supplier shall in no event be understood to mean: staff shortage, strikes, nonperformance by any third party engaged by the Supplier, transport problems on the part of the Supplier or any third parties engaged by the Supplier, failure of equipment, liquidity or solvency problems at the Supplier or government measures affecting the Supplier.

#### 14. Termination

14.1 ENS is entitled to partially or fully suspend the execution of any Agreement or to terminate or rescind any Agreement without prior notice of default or court intervention with immediate effect, without being liable for any damage compensation in the event:

- (i) the Supplier fails to perform one of more obligations under the Agreement or agreements relating thereto;
- (ii) ENS has good grounds to suspect that the Supplier is or will not be able to meet its obligations under the Agreement;
- (iii) that, to ENS's opinion, major changes are made to direct or indirect ownership or control ratios at the Supplier's business, or if the Supplier's business is terminated or sold.

14.2 In the event of termination or rescission, ENS cannot under any circumstances be held liable for any compensation for damages. The Supplier is obliged to indemnify ENS against claims of third parties made through or in relation to the termination or rescission of the Agreement.

#### 15. Transfer of rights and obligations

15.1 The Supplier shall not transfer, assign, or subcontract its rights and obligations arising from an Agreement to a third party, without prior written consent from ENS.

15.2 ENS shall have the right to transfer its rights and obligations arising from an Agreement to another group company of the ENS group, for which transfer the Supplier herewith renders its cooperation in advance.

#### 16. Governing law and disputes

16.1 Agreements between ENS and the Supplier shall be exclusively governed and construed by the laws of the Netherlands with the exclusion of the 1980 UN Convention on the International Sale of Goods (CISG).

16.2 The Court of Rotterdam, the Netherlands, shall have jurisdiction in respect of any and all disputes arising between ENS and the Supplier, notwithstanding any party's right to appeal.

16.3 Alternatively, disputes arising between ENS and the Supplier may, upon ENS's wish, be settled in accordance with the Arbitration Rules of the Netherlands Arbitration Institute. The place of arbitration shall be Rotterdam, the Netherlands, or any other place if agreed upon between ENS and the Supplier. The proceedings shall be conducted in the English language unless ENS and the Supplier agree for the proceedings to be conducted in the Dutch language.