



## GENERAL TERMS & CONDITIONS OF PURCHASE version 2020

### 1. General

- 1.1 These General Terms and Conditions apply to all offers to and agreements with Topbrands Europe B.V. and its legal successors, as well as companies associated with Topbrands Europe B.V. or with said successors (hereinafter: 'Purchaser'), relating to the delivery of goods and services (together: 'Products') by the offerer or the other party concerned (hereinafter: 'Seller').
- 1.2 The applicability of the Supplier's general terms and conditions is hereby explicitly rejected.
- 1.3 Any changes, additions, expansions and/or deviations from these General Terms and Conditions shall only apply in the event that and insofar as they have been accepted by Purchaser in writing and shall only be valid in respect of the specific purchase agreement in which they have been agreed upon.
- 1.4 Any reference to the territory 'Europe' shall include the territories of the European Union ('EU'), the European Economic Area ('EEA') and the United Kingdom ('UK').

### 2. Orders, Delivery

- 2.1 All offers, quotations or proposals issued by Seller shall be binding for Seller, unless stated otherwise in writing.
- 2.2 Documentation materials in or accompanying any offer, quotation, proposal or contract in any form, are binding to Seller. Seller will observe the utmost care in providing statements of prices, numbers, weights, materials, ingredients, colors, pictures, performance and/or other (technical) specifications of Products. Delivered Products will not deviate from any information, documentation, samples, drawings or models shown or provided.
- 2.3 Purchaser shall give orders by electronic transfer or mail to Seller, mentioning the desired Products, the desired quantity, the desired delivery date and other relevant features. The price for a Product mentioned in an order confirmed by Seller, is set and cannot be adjusted.
- 2.4 A Purchase Agreement is concluded at the moment Purchaser gives an order for the delivery of Products.
- 2.5 Seller will deliver Products, hand over any documents relating to Products and transfer the ownership of Products as required by the Purchase Agreement. Seller will not hold any rights of retention. Title of the goods will always pass according to the agreed Incoterms. Purchaser bears the risk of the sold products from delivery onwards, as per the applicable Incoterms.

- 2.6 Seller will deliver Products free from any right or claim of a third party, unless Purchaser agreed in writing to take Products subject to that right or claim.
- 2.7 The terms and conditions of the Supplier Manual Topbrands Europe B.V. are applicable to all deliveries to the premise(s) of Purchaser.
- 2.8 Seller is required to deliver the sold Products within the agreed delivery period. Seller is entitled to deliver the sold Products by means of partial deliveries after written approval of Purchaser, provided that any extra costs for such partial delivery remain at Seller. If Seller does not deliver the sold products to Purchaser within the agreed delivery period, Purchaser must give Seller written notice of default immediately upon becoming available of such information, and grant a further period of no less than fourteen days to deliver the sold Products. If Seller has still not supplied the sold products upon the expiry of additional period of fourteen days, Seller will owe a penalty equal to 25% of the sales price (excluding VAT) of the sold products that have not been supplied, unless Seller can invoke force majeure, a right of suspension accruing to it or full or partial termination or annulment of the contract of purchase. Purchaser is also entitled to enforce its rights to claim damages from Seller by reason of a late and tardily rectified delivery from the agreed delivery period, including the granted additional period of 14 days and/or in addition to the aforementioned penalty.
- 2.9 Purchase orders transported by truck deliveries will be delivered on a specific date and time, as agreed on with Purchasers logistics/purchase planning department. A time-frame of one hour before or after this agreed delivery time is handled. A truck driver will always inform Purchaser if the agreed delivery time deviates from the time of arrival. If the actual delivery date and time exceeds the time frame, the penalty system of clause 1.7 in the Topbrands Packaging instructions & delivery conditions will apply, regardless of the applicability of such document.
- 2.10 Unless agreed otherwise, delivery is made "DDP (Delivered Duty Paid)" for truck deliveries, or "FOB port of departure" for sea deliveries, Incoterms 2010 as agreed in writing.
- 2.11 Purchaser will appoint and enable the forwarder in case of FOB deliveries. The delivery dates will be without delay as agreed, taken into account the information, communication and ETD of the shipping company and/or forwarder. Seller will load containers based on FCL stacked boxes, palletization is only possible after written approval of Purchaser. Truck deliveries will always be palletized and FTL (fully loaded with 33 pallets or maximum weight). The pallets will be good quality Euro pallets, up to 180cm high



or otherwise if specified in writing. Purchaser will rely on the CBM information of the Seller. LCL container loads are only accepted when specifically requested and accepted by Purchaser. Costs or other consequences of non-FCL (Non Fully Loaded Container) or inefficient loading of trucks will be for Seller, unless specifically requested and/or agreed on by Purchaser.

- 2.12 The Seller should provide the following documents/information to every delivery:
- Commercial Invoice – original;
  - International motor waybill (original): CMR, Bill of lading or others (telex release);
  - Packing list – original;
  - Certificate of origin (Form A, A.TR, T2L or otherwise) – original (if necessary);
  - Declaration of Conformity – original (if necessary);
  - (Long-term) Declaration of (preferential) origin – original (if necessary);
  - Export Declaration (copy – if required);
  - Other documents if those are necessary for delivery of concrete kinds of Products to the Customs of territory of the Netherlands or Europe and process of Customs clearance required for free realization of Products on the territory;
  - MSDS in English or Dutch language and/or ADR, transport and storage information necessary for Purchaser to comply with European Union (EU) and local regulations, if necessary according to the EU/local legislation applicable on the Products.

The copies of indicated documents should be sent by Seller to Purchaser by e-mail for checking before shipment of Products. Originals of documents for sea deliveries should be delivered by Seller to Purchaser or to broker, nominated by Purchaser, by express-mail, or by telex-release only after approval by Purchaser, not later than 3 working days before Products arrival to the port of destination. The check-up of the said documents by the Purchaser does not release the Seller from its liabilities for the incorrect execution of the shipping documents and to reimburse to the Purchaser its damages, losses and expenses. In respect to the correct execution of the shipping documents the Seller shall reimburse to the Purchaser all damages, losses and/or expenses incurred and borne due to nonperformance of the terms of the Agreement, including, but not limited to, the expenses incurred due to customs representative services, Shipping Agent's services, delays in the Products transfer, formalization in the port of destination, exportation from the port, demurrage and detention (excess of period of free use of container). Seller will provide Purchaser with all necessary supporting documents needed for the

transport and customs clearance, as requested by Purchaser, which may reasonably be expected, handled with most possible urgency. The Parties agreed that the Senders of the Products may be the third Party on behalf of the Seller. The Seller is authorized to provide certificates and shipping documents on its behalf, and they will have the same power as certificates and shipping documents supplied by the Seller.

- 2.13 Seller will suitably pack and label Products, according to European and local and/or national laws. Packagings will comply with the essential requirements on the composition and the reusable and recoverable, including recyclable, nature of packagings, as specified in Annex 2 of Directive 94/62/EC and the Dutch 'Besluit beheer verpakkingen 2014'. Products will be fit for purpose and the product quality will be as may be reasonably expected in the common market. Any deviations are prohibited, unless specified and agreed in writing between Parties. In addition to this requirements the Topbrands Private label requirements may apply.
- 2.14 At Seller's first request, Purchaser is required to take receipt of Products purchased in the agreed delivery period. If Purchaser does not take receipt of purchased Products at Seller's first request, Seller will hold sold Products for the account and risk of Purchaser.
- 2.15 Purchaser is not obliged to exchange pallets or any payment for delivered pallets without a specific written agreement on this subject.

### **3. Price, Invoicing and Payment**

- 3.1 Purchaser is required to pay the purchase price stated in the Purchase Agreement by payment of the amount owed to the bank account indicated by Seller, stating the payment references indicated by Seller.
- 3.2 For these purposes, Seller will prepare an invoice for every (partial) delivery and will send it to Purchaser. Seller may send the invoices to Purchaser both by post and by email.
- 3.3 Purchaser must send complaints regarding the correctness of the invoice in writing to Seller within 30 days of the date/arrival of the receiving goods. If Purchaser complains within the aforementioned timeframe and with good reason, Seller will credit the incorrect invoice and send a new invoice to Purchaser.
- 3.4 Unless agreed otherwise, Purchaser must pay the amount owed within thirty (30) days after the date of arrival of the goods at our warehouse for DDP deliveries. In case of FOB deliveries there will be a 20% prepayment as deposit on pro forma invoice and 80% balance payment on original invoice and copy Bill of Lading.
- 3.5 Purchaser is entitled to suspend its payment obligation or rely on setoff, without Seller's prior written consent.



3.6 If Seller does not receive the purchase price within the agreed terms in clause 3.4, Purchaser will be in default by operation of law. In that case, the following rights accrue to Seller, without Seller having to send a prior notice of default to Purchaser:

- a. From the date of default to the date of full payment, Seller can claim payment of interest equal to the statutory commercial interest applicable at that time;
- b. In addition to payment of the principal sum owed and the default interest, Seller has the right to reimbursement of the extrajudicial costs incurred by it.

#### **4. Conformity, Inspection, Product Warranty**

4.1 The Products delivered must conform with the Purchase Agreement. The Products delivered conform with the Purchase Agreement if the goods supplied conform with the agreed specifications/characteristics.

4.2 Seller declares that the products purchased are suitable for the use intended by Purchaser, the sale and delivery of the Products throughout Europe.

4.3 Purchaser shall inspect Products delivered (or cause Products to be inspected) carefully upon delivery, taking into consideration the nature of Products.

4.4 Seller shall be informed in writing of any complaints concerning Products, specifying (i) Products concerned, (ii) the date of purchase and (iii) the nature of the defect (FIR). In case of visible deficiencies in Products and/or failing quantities of Products, Purchaser must submit a FIR to Seller within 30 days after delivery of Products and record these deficiencies and/or shortfalls. If the defect or failure was not in reasonableness and fairness detectable during the inspection, a FIR must be send to Seller within 30 days after the date on which the shortcomings and/or shortfalls became known or might reasonably have been expected to become known to Purchaser.

4.5 Any failure by Purchaser to inspect the delivered Products in conformity with Clause 4.3 and/or to declare default within the time specified above in conformity with Clause 4.4, shall not result in the loss of any claims whatsoever in this respect.

4.6 Seller warrants that:

- a. The Products and it's (transport-) packaging's are (i) in conformity with the agreed specifications, (ii) free from defects in materials and workmanship and (iii) in conformity with the applicable laws and regulations within Europe and good manufacturing practices of the Product provided that Products have been treated, processed, preserved and stored properly, taking into consideration the nature of

Products and the applicable instructions for storage.

- b. The Products, supplied under the Purchase Agreement are free for sales within Europe, and don't violate third parties' rights for any objects of intellectual property, and the Products are free from third parties' claims.

In case of breach of this warranty the Seller must repay the Purchaser's losses that are caused by this breach, including but not limited to Products' value, transport charges, utilization charges, compensation and/or fines for third parties' rights violation, court costs and other similar losses of Purchaser.

4.7 Seller is explicitly prohibited to deliver any products to Purchaser that consist of any ingredients or other specifications or properties as prohibited by European or local/national legislations. Seller is deemed and obliged to be informed about such information, without any restriction. This also includes any future changes in legal product requirements which may affect Purchaser's abilities to lawfully distribute and sell its Products. Seller is obliged to inform Purchaser before shipment of the Products of any information regarding this subject.

4.8 In the event of a justified warranty claim during the warranty period and a timely notification thereof, Seller shall on request of Purchaser remedy this claim (i) by replacing the non-conforming Products with conforming Products free of charge delivered Delivered Duty Paid ('DDP') of the ICC Incoterms 2010 premises of Purchaser in Kolham, the Netherlands or (ii) by sending a credit invoice and repaying the paid purchase price. For any justified claims for additional damages / costs a credit invoice will be issued.

4.9 Products which not comply to this clause 4 are not accepted by Purchaser. Any circumstances such as very low pricings will never pass any responsibility to Purchaser or will never cause Purchaser to be deemed to be informed. Seller is sole responsible for any costs, damages, or other Purchaser's losses that are caused by this breach, including, but not limited to Products' value, transport charges, utilization charges, compensation and/or fines for third parties, court costs and other similar losses of Purchaser.

#### **5. Intellectual Property rights**

5.1 Seller guarantees that (the use of) the delivered Products does not infringe any and all (logotype) trademark rights, copyrights or any other industrial or intellectual property rights of third parties (IP right holders) or any other rights of third parties.

5.2 Seller guarantees that the delivered Products:



- a. have the consent of the IP right holder to bring to the market in Europe for the first time; or
  - b. have been brought to market by the IP right holder itself, or with its permission, in Europe, even if the Supplier has not bought the Products from the IP right holder directly.
- 5.3 Seller indemnifies Purchaser and its customer(s) against all claims related to circumstances of which the Seller guaranteed the presence or absence in this clause 5, and will compensate Purchaser or its customer(s) for any loss as well as the costs ensuing from such claims. If requested by Purchaser, Seller will furnish the names and other details of its own suppliers if Purchaser in its turn needs to furnish those details to a claimant.
- 5.4 Seller indemnifies Purchaser against all claims by third parties in respect of industrial and intellectual property rights relating to the delivered Products to which Purchaser has title, and will compensate Purchaser for any loss as well as the costs ensuing from such claims.

## **6. Subcontracting - transfer**

- 6.1 Without explicit prior consent of Purchaser, Seller shall not subcontract the agreement or any part thereof to third parties nor transfer his obligations arising from the agreement or a part thereof to third parties, nor use any other employees than his own staff (for instance employees made available (hired out) for the execution of the agreement).
- 6.2 Purchaser shall have the right to attach conditions to any consent to be given by Purchaser. Consent given by Purchaser shall not release the Seller from any obligation arising from the agreement concluded between the parties.
- 6.3 Seller shall compensate any and all damage and costs caused by non-observance of the provisions of the previous paragraph of this clause to Purchaser and shall hold harmless and indemnify Purchaser against any claims by third parties in this respect.

## **7. Confidentiality**

- 7.1 Both Seller and Purchaser are required to (cause to) keep secret and not to use any and all (i) information which is qualified/marked by the providing party, or should have been reasonably understood by the receiving party as secret/confidential and (ii) Know How received from the other party, in so far as such data were provided in confidence or are of an evidently confidential nature. Know How means a package of non-patented practical information, resulting from experience and testing by the party, which is secret, substantial and identified: in this context, 'secret' means that the information is not generally known or easily accessible;

'substantial' means that the information is significant and useful to the other party for the use, sale or resale of the contract goods or services; 'identified' means that the information is described in a sufficiently comprehensive manner so as to make it possible to verify that it fulfils the criteria of secrecy and substantiality;

- 7.2 The obligation of confidentiality does not apply to information and data:
- a. that are in the public domain, other than through the actions of the party concerned (directly or indirectly);
  - b. that are disclosed pursuant to a statutory obligation or a final and conclusive judgment;
  - c. regarding which a written release from the obligation of confidentiality has been granted.

## **8. Social responsibility**

- 8.1 Purchaser has implemented the Amfori "The Business Social Compliance Initiative" to improve working conditions in their global supply chain. Seller hereby acknowledges that it has been made aware of, and fully adhere to, the contents and requirements of the Amfori BSCI Code of Conduct and related "Terms of Implementation" and that such documents will be deemed to form an integral part of these General terms & conditions of purchase.

## **9. Force majeure**

- 9.1 Any non-performance by Purchaser shall be excused to the extent that performance is rendered impossible or commercially impracticable by fire, flood, hurricane, typhoon, earthquake, war, acts of terrorism, riots, governmental acts or orders or restrictions, strikes, lockouts, pandemics or any other reason where failure to perform is beyond the reasonable control of, and is not caused by the acts, decisions, negligence or willful misconduct of Purchaser.
- 9.2 In the event of temporary force majeure the reciprocal obligations of that part of the purchase agreement, affected by the situation of force majeure, shall be suspended.
- 9.3 In a situation of lasting force majeure the parties shall deliberate over an amendment to the purchase agreement to such an extent that further fulfilment thereof is still useful to both parties. If it appears that within reason such an adjustment is not advisable, each of the parties shall have the right to, totally or partially, dissolve the purchase agreement insofar as affected by the force majeure, through a written statement.



## 10. Applicable law, Dispute resolution

- 10.1 These Terms and Conditions of Purchase, any individual Purchase agreement and any other issue between Seller and Purchaser in connection with the sale of Products, shall be governed by the laws of the Netherlands.
- 10.2 The relations of the parties not governed by these Terms and Conditions of Purchase shall be subject to the rules of the United Nations Convention on Contracts for International Sale of Goods executed in Vienna on April 11, 1980, Rules of INCOTERMS 2010, and with regard to the extent not governed by international acts specified in the present clause – to Dutch law.
- 10.3 District Court of Rotterdam, the Netherlands, ('Designated Court') shall, on an exclusive basis, settle all disputes arising in connection with Terms and Conditions of Purchase, Purchase Agreements or and other issues resulting therefrom, without prejudice to Purchaser's right to lodge claims to which it is entitled with (i) the Netherlands Arbitration Institute ('NAI') in accordance with the then current Arbitration Rules, for the rendering of a decision by arbitration or (ii) the court of the country in which Seller has its registered office or place of business (the 'Alternative Fora'), instead of via the Designated Court.
- 10.4 In the event that Purchaser submits its claims to the NAI, the arbitral tribunal shall be composed of one arbitrator. The place of arbitration shall be Rotterdam. The arbitral procedure shall be conducted in the English language.
- 10.5 In the event that Purchaser submits its claims to one of the Alternative Fora referred to, Seller will acquire, by operation of law, the right to lodge a counterclaim with the Alternative Fora selected by Purchaser.
- 10.6 If a case is brought before the Designated Court than any other court/court seized at an earlier stage will stay its judgment until the Designated Court declares that it does not derive any jurisdiction.
- 10.7 Provisional or protective measures may only be requested at the Designated Court, without prejudice to Purchaser's right to request provisional or protective measures at the District Court that has jurisdiction in the country in which Seller has its registered office or place of business.

## 11. Miscellaneous

- 11.1 In the event that particular provisions or requirements of these Terms and Conditions of Purchase are in violation of Dutch law or mandatory rules of the law of the country in which Purchaser is domiciled, the validity of other provisions or requirements shall not be affected thereby and shall be enforced and remain in full force and effect. In the place of

the null or invalid provisions a suitable regulation shall apply which approximates as closely as possible with the intention of the parties and the economic result aimed for by them in a legally effective way.

- 11.2 The failure of either party to enforce at any time one or more of the Terms and Conditions of Purchase shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions.
- 11.3 These Terms and Conditions of Purchase are in the English language only, which language shall be controlling in all respects, and all versions in any other language shall be for accommodation only and shall not be binding upon the parties.

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