



## GENERAL TERMS AND CONDITIONS OF DELIVERY

### **Article 1 Definitions**

#### Paragraph 1

In these General Terms and Conditions, the following concepts are defined as stated below:

Supplier: Diviande B.V., with its registered office in Veenendaal, including all its affiliated companies;

Buyer: the other party of the Supplier, who buys the goods and services set out in paragraph 2 of this article.

#### Paragraph 2

Wherever these General Terms and Conditions refer to goods, they include both the items and the services to be delivered by the Supplier.

#### Paragraph 3

Wherever these General Terms and Conditions refer to an internationally defined clause, such a clause shall be interpreted within the meaning of the INCOTERMS published most recently by the International Chamber of Commerce.

### **Article 2 Applicability**

#### Paragraph 1

Unless otherwise agreed in writing, these "General Terms and Conditions" apply to every agreement between the Supplier and the Buyer, including yet not limited to agreements in connection with the Supplier's delivery of meat, meat products and other related goods.

#### Paragraph 2

The provisions in the previous paragraph also apply to further or additional agreements between the Supplier and the Buyer, where applicability of these "General Terms and Conditions" is not explicitly invoked any further.

#### Paragraph 3

The applicability of any General Terms and Conditions of delivery used by the Buyer is explicitly dismissed, which dismissal is accepted by the Buyer together with these terms and conditions.

### **Article 3 Offers/conclusion of the agreement**

#### Paragraph 1

All offers, of whatever nature, do not bind the Supplier, can be accepted by the Buyer during a period of 48 hours and are based on delivery under normal circumstances and during normal working hours.

#### Paragraph 2

If a non-binding offer is accepted, the Supplier is entitled to revoke the offer within two days of receiving the acceptance.

#### Paragraph 3

An agreement is not concluded until the Supplier has confirmed the instruction issued by the Buyer in writing.

#### Paragraph 4

Arrangements with or promises by representatives or subordinates of the Supplier shall not bind the Supplier, unless these arrangements or promises are confirmed by the Supplier in writing, or if the Supplier has confirmed its acceptance by actually having started the execution of such arrangements or promises vis-à-vis the Buyer.

## **Article 4      Scope and nature of the agreement**

### Paragraph 1

With regard to the scope and nature of the agreement, the Supplier's order confirmation, and failing that, the Supplier's offer is binding.

### Paragraph 2

The agreement only relates to the delivery of the goods and services explicitly agreed on.

### Paragraph 3

The Supplier is not bound by any deviation from or addition to the scope and nature of the agreement as set out in the order confirmation, failing which, the Supplier's offer or as otherwise agreed on initially, unless explicitly agreed in writing between the parties, or if the Supplier has confirmed its acceptance of such a deviation or addition by actually starting the execution of such a change or addition vis-à-vis the Buyer.

If a deviation or addition to the scope and nature of the agreement has been agreed on, the Supplier is entitled to adjust the agreed price, delivery method and delivery time, as well as other elements of the agreement in accordance with the agreed changes.

If such an addition or deviation leads to a longer delivery period, the Supplier shall never be liable for penalties and/or losses caused by the delivery period being exceeded.

### Paragraph 4

Without prejudice to the other provisions in these General Terms and Conditions and except when explicitly otherwise agreed in writing, the Buyer cannot derive any rights and/or claims towards the Supplier on the basis of deviations from an agreed quantity or weight of 1% or less.

## **Article 5      Price**

### Paragraph 1

The prices given by the Supplier and agreed on are based on delivery free domicile (DDP) and are exclusive of turnover tax, unless explicitly stated or agreed otherwise.

The Supplier shall not acknowledge exemption from any tax or levy, unless the Buyer provides the Supplier with a recognized certificate of exemption from the tax in question.

### Paragraph 2

The price or prices stated with the offer, or the agreed price or prices are based on the then prevailing cost-determining factors.

If during the period between the date on which the agreement is concluded and the delivery date the prices of raw materials, materials, equipment, energy, wages, social security costs, taxes and/or other cost-determining factors, also including the prices passed on to the Supplier by other suppliers undergo any changes, the Supplier is entitled to adjust the prices offered and/or agreed accordingly.

### Paragraph 3

Unless otherwise agreed in writing, the prices of the Supplier are expressed in euros. The exchange rate risk is at the expense of the Buyer.

### Paragraph 4

With regard to costs related to an obligation by the Supplier to take back and/or process packaging materials, the Supplier is entitled to charge the Buyer separately, i.e. on top of the agreed price(s).

### Paragraph 5

Packaging materials that qualify for reuse, i.e., crates and similar, always remain the property of the Supplier and shall be returned to the Supplier by the Buyer. If the Buyer fails to do so, the Supplier is entitled to charge the Buyer for all the costs related to replacing the materials in question. For CBL crates, those costs comprise the original purchase price plus the additional costs paid by the Supplier since the delivery to the Buyer.

## **Article 6      Delivery time**

### Paragraph 1

The delivery time commences on the day on which the agreement is concluded, unless otherwise stated.

#### Paragraph 2

Delivery times given can never be regarded as deadlines.

The mere fact that the delivery time has been exceeded does not entitle the Buyer in any way to damages, dissolution or cancellation of (a part of) the agreement.

#### Paragraph 3

The Supplier is at all times entitled to make partial deliveries, and to send corresponding partial invoices.

#### Paragraph 4

If the Buyer has failed to take possession of the goods after the delivery period has lapsed, they shall be stored at the Buyer's expense and risk, but in that case the Supplier is also entitled to dissolve the agreement by means of a written statement and to claim full compensation, or to demand discharge from its obligation in court. In that case, the Supplier is also entitled to sell the goods to third parties within three days since the offer to the Buyer has lapsed. In the latter case, the proceeds of selling those goods replace those goods subject to a maximum of the agreed price, on the understanding that the Supplier is entitled to deduct all costs and losses it has suffered from those proceeds or to set them off against those proceeds, without prejudice to the Supplier's right to hold the Buyer otherwise liable for all costs and losses, all this without prejudice to all other relevant rights of the Supplier in dealings with the Buyer.

#### Paragraph 5

If in the case of an agreed delivery of fungible goods the Buyer has not taken possession of them after the delivery period has lapsed, the Supplier is entitled to allocate the goods intended for delivery, in which case the Supplier, after having notified the Buyer, is only obliged to deliver these goods, without prejudice to the Supplier's right to deliver other goods that comply with the commitment and without prejudice to the provisions in the previous paragraph.

### **Article 7 Force majeure**

#### Paragraph 1

Force majeure is taken to mean any independent event or circumstance beyond the control of the Supplier that temporarily or permanently obstructs fulfilment of the agreement.

#### Paragraph 2

In the event of force majeure, the Seller shall be exempted from all its obligations towards the Buyer, without being liable to pay the Buyer any type of compensation (explicitly including consequential losses). In the event of temporary force majeure, the mutual obligations of that part of the agreement not yet performed are suspended for a maximum of 30 days. After that period, both parties are entitled to dissolve the agreement, without being able to claim compensation from the other party.

### **Article 8 Delivery and acceptance**

Unless otherwise agreed, goods are delivered with carriage paid. (DDP).

If the Buyer collects the goods from the Supplier (or from a location stated by the Supplier), delivery is made ex works (EXW), in which case the goods are deemed to have been delivered by the Supplier and to have been accepted by the Buyer as soon as the goods have been presented to the Buyer.

### **Article 9 Transfer of risk**

The goods to be delivered are at the expense and risk of the Buyer from the moment of delivery as referred to in the previous article.

### **Article 10 Quality, inspection, shortcomings, complaints**

#### Paragraph 1

The goods delivered by the Supplier are deemed to be correct if they meet the statutory veterinary quality requirements that apply at the Supplier's branch office at the time the agreement is concluded or if they comply with the specifications otherwise explicitly agreed between the Supplier and the Buyer.

#### Paragraph 2

Weight loss as a result of refrigeration or freezing is not regarded as a shortcoming.

### Paragraph 3

Upon delivery, the Buyer shall inspect the delivered goods for completeness and correctness immediately.

### Paragraph 4

Complaints shall be made in writing - and the reasons shall be stated - within 24 hours after delivery if the complaint concerns physically noticeable shortcomings. This is an expiry period.

### Paragraph 5

Complaints concerning non-physically noticeable shortcomings shall be made in writing, while stating the reasons, within 10 days after delivery. This too is an expiry period.

### Paragraph 6

In derogation from the previous paragraphs, complaints in connection with the shelf-life of products with a best-before date can be made until that best-before date, provided the Buyer proves that it stored the products in question without interruption in accordance with the conditions attached to that shelf-life guarantee and the products in question are still in their original packaging.

### Paragraph 7

Within 8 days of the notifications referred to in paragraphs 4, 5 and 6, a study report prepared by a recognised and independent expert shall be submitted, demonstrating the correctness, scope and nature of the shortcomings, failing which the Buyer shall be unable to bring any claims against the Supplier in respect of that complaint or those complaints.

### Paragraph 8

If the Supplier accepts a complaint from the Buyer, the Supplier shall, at the Supplier's discretion, remedy the shortcoming free of charge by means of replenishment or replacement, or by crediting the Buyer for that part to which the shortcoming relates.

The Supplier is obliged to fulfil the obligations set out in the previous sentence only if and insofar as the Buyer demonstrates that the stated defects or shortcomings are the result of circumstances that can be attributed to the Supplier.

Optionally, the Supplier is entitled to conduct its own study into the scope, nature and cause of an alleged shortcoming, in which case the Buyer is obliged to cooperate as the Supplier requires, failing which the Buyer shall be unable to bring any claims against the Supplier with regard to the alleged shortcomings.

### Paragraph 9

In the case of a circumstance as referred to in this article, the Buyer shall be able to dissolve the agreement with the Supplier only if the Buyer demonstrates that the alleged shortcomings can be attributed to the Supplier and only after the Buyer has afforded the Supplier - given the circumstances - a reasonable amount time to remedy the alleged shortcomings in an acceptable manner, and also only if the Buyer cannot reasonably be expected to maintain the agreement.

### Paragraph 10

Complaints with regard to the amount of the invoices sent by the Supplier shall be submitted in writing within 8 days of the invoice date, which period shall be regarded as an expiry period.

### Paragraph 11

In dealings with the Buyer, the Supplier shall never be liable for any losses that exceed the purchase price of the goods or services delivered, also including any damage to goods other than the goods delivered, physical injury and consequential losses.

The Buyer shall indemnify the Supplier against all third-party claims on the grounds of defective goods. The Buyer shall take out adequate insurance against the usual risks, from the moment of delivery.

## **Article 11      Return shipments**

### Paragraph 1

The Supplier does not accept return shipments the dispatch costs of which have not been paid by the Buyer in advance.

The Supplier accepts return shipments the dispatch costs of which have been paid by the Buyer in advance only following the Supplier's prior written consent.

#### Paragraph 2

The fact that the Supplier accepts a return shipment does not mean that the Supplier accepts any alleged reason given by the Buyer for returning the goods.

### **Article 12      Retention of title**

#### Paragraph 1

The Supplier retains title to all the goods it has delivered to the Buyer, including those that have already been paid for, until the purchase price for all these goods has been paid in full.

#### Paragraph 2

If the Supplier has carried out activities for the Buyer within the framework of the agreement concluded with the Buyer, the retention of title also applies until the Buyer has paid this claim from the Supplier in full.

#### Paragraph 3

The retention of title also applies to claims which the Supplier may have against the Buyer due to the Buyer's failure to fulfil one or more of its obligations towards the Supplier.

#### Paragraph 4

As long as title to the goods delivered has not transferred to the Buyer, the Buyer is not permitted to pledge the goods or to grant any right thereto to a third party, subject to the provisions in the previous paragraph of this article.

#### Paragraph 5

The Buyer undertakes not to assign or pledge debts against its buyers to third parties without the prior written consent of the Supplier. The Buyer undertakes to pledge said claims to the Supplier as soon as the latter expresses its wish for that, in the manner set out in Book 3 Article 239 of the Dutch Civil Code, as additional security for all claims from the Supplier against the Buyer for whatever reason.

#### Paragraph 6

The Buyer is obliged to look after the goods delivered under retention of title with the necessary care and as the recognisable property of the Supplier.

#### Paragraph 7

For the term of the retention of title, the buyer is obliged to insure the goods against the risk of fire, explosion and flooding, as well as theft and to submit the policy documents of this insurance to the Supplier for inspection upon the latter's first request.

#### Paragraph 8

All claims of the Buyer against the insurers of the goods by virtue of the aforementioned insurance shall be pledged to the Supplier by the Buyer, as soon as the Supplier expresses its wish for that, in the manner set out in Book 3 Article 239 of the Dutch Civil Code, as additional security for all claims from the Supplier against the Buyer for whatever reason.

#### Paragraph 9

If the Buyer fails to fulfil its obligations towards the Supplier or if the Supplier has good reason to believe that the Buyer is likely to default on those obligations, the Supplier is entitled to take back the goods delivered under retention of title. After the goods have been taken back, the Buyer shall be credited for the market value, which shall never exceed the original purchase price, minus the costs for taking the goods back, and without prejudice to any other rights that accrue to the Supplier in that case, including the right to set-off with any losses suffered by the Supplier.

## **Article 13      Retention of title in Germany (Eigentumsvorbehalten in Deutschland)**

In derogation from the provisions in the previous article, the following applies to goods supplied by the Supplier to buyers in Germany:

(In Abweichung vom im vorgehenden Artikel Festgelegte, gilt bezüglich der vom Lieferanten an in Deutschland etablierte Abnehmer gelieferten Sachen folgendes:)

Das Eigentum an den gelieferten Waren bleibt zur Sicherung aller Ansprüche vorbehalten, die dem Lieferanten aus der gegenwärtigen und künftigen Geschäftsverbindung bis zum Ausgleich aller Salden gegen den Abnehmer zustehen.

Das Eigentum des Lieferanten streckt sich auch auf die durch Verarbeitung der Vorbehaltswaren entstehende neue Sache. Der Abnehmer stellt die neue Sache unter Ausschluss des eigenen Eigentumserwerbs für den Lieferanten her und verwahrt sie für ihn. Hieraus erwachsen ihm keine Ansprüche gegen den Lieferanten.

Bei Verarbeitung eines Werksvertrages wird die Werklohnforderung in Höhe des anteiligen Betrages unserer Rechnung für die mitverarbeitete Vorbehaltsware schon jetzt an uns abgetreten. Solange der Abnehmer seinen Verpflichtungen aus der Geschäftsverbindung an uns ordnungsgemäß nachkommt, darf er über die in unserem Eigentum stehende Ware im ordentlichen Geschäftsgang verfügen und die an uns abgetretenen Forderungen selbst einziehen. Bei Zahlungsverzug oder begründeten Zweifeln an der Zahlungsfähigkeit oder Kreditwürdigkeit des Abnehmers sind wir berechtigt, die abgetretenen Forderungen einzuziehen und die Vorbehaltsware zurückzunehmen. Scheck-/Wechselzahlungen gelten erst nach Einlösung der Wechsel durch den Abnehmer als Erfüllung.

Hinsichtlich der Vereinbarung von Eigentumsvorbehaltsrechten gilt ausschließlich deutsches Recht.

## **Article 14      Payment**

### Paragraph 1

Unless otherwise agreed in writing, and without prejudice to the provisions in the following paragraphs of this article, payments to the Supplier *must have been received by the Supplier* within 14 days of the invoice date. The Buyer is in default from the first day of the payment term lapsing, without a notice of default being required.

### Paragraph 2

The Buyer is not entitled to set-off.

### Paragraph 3

If the Buyer has issued an authorisation for direct debit, the Supplier is entitled to have those payments effected on the first working day after the expiry date of the invoice as mentioned in paragraph 1 of this article.

### Paragraph 4

The Supplier is at all times entitled to demand a full or partial advance payment for every delivery or partial delivery.

### Paragraph 5

If the Supplier allows for the principal sum or part thereof to be paid in instalments with regard to certain goods delivered or to be delivered, the turnover tax on the entire payment sum shall be payable with the first instalment, unless otherwise agreed in writing.

### Paragraph 6

The costs that are at the expense of the Supplier and which are advanced by the Buyer shall be set off against the final instalment.

### Paragraph 7

Before making or before continuing with a delivery, the Supplier is at all times entitled to demand sufficient security from the Buyer for the fulfilment of all or some of its payment obligations.

#### Paragraph 8

The Supplier is entitled to suspend further deliveries if the Buyer fails to fulfil its payment obligations, if it fails to fulfil its obligation to furnish security or if it otherwise fails to fulfil one or more of its obligations towards the Supplier, also if a fixed delivery time is agreed on, all this without prejudice to the Supplier's right to dissolve the agreement in that case and/or to claim full compensation, and without prejudice to the Supplier's other rights in such cases.

#### Paragraph 9

Unless explicitly agreed otherwise, all payments from the Buyer, howsoever named, shall first be used as a set-off against the costs, then as a set-off against interest due and finally as a set-off against the principal sum of the unpaid invoice, in the course of which, when multiple invoices have gone unpaid, the payments are first used as a set-off against the principal sum of the oldest invoice.

#### Paragraph 10

If the Buyer fails to pay within the agreed term, the Buyer is in default by operation of law, and owes the Supplier interest equal to the statutory interest rate, plus 2% on the outstanding amount, starting on the due date of the unpaid invoice(s), without notice of default being required.

#### Paragraph 11

If the Buyer defaults by virtue of the provisions in paragraph 10 of this article, all claims from the Supplier against the Buyer immediately become due and payable from that moment.

#### Paragraph 12

If payment is made by means of bills and cheques, the exchange rate and cheque costs are payable by the Buyer. This also applies to cash on delivery charges.

### **Article 15      Judicial and extrajudicial costs**

All judicial and extrajudicial costs to be incurred by the Supplier in connection with collecting the claims against the Buyer are payable by the Buyer, in the course of which the extrajudicial costs are calculated in proportion to the principal sum to be claimed or in proportion to the value of the performance otherwise to be demanded from the Buyer, in the manner set out below, on the understanding that it shall amount to at least €150.00, and also on the understanding that the Supplier shall at all times be entitled to claim the actual extrajudicial costs incurred, insofar as they exceed the sum calculated as explained below.

The extrajudicial costs amount to 15% of the principal sum(s) to be claimed plus interest, or on the value of the performance otherwise to be demanded from the Buyer.

If the Buyer does not proceed to place orders in good time, and the Supplier is therefore required to store items, the Buyer shall be charged storage fees in addition to the above-mentioned extrajudicial costs. Storage fees and financing fees amount to €0.02/kilo/day.

### **Article 16      Liability**

#### Paragraph 1

Without prejudice to the provisions in article 10 of these General Terms and Conditions, the Supplier can never be held liable for any type of loss, except in the case of intent or gross negligence and except if this violates the provisions of mandatory law.

#### Paragraph 2

Without prejudice to the provisions in the previous paragraph, any liability of the Supplier for trading loss or other indirect losses is explicitly excluded.

#### Paragraph 3

Without prejudice to the provisions in the previous paragraphs, any obligation by the Supplier to pay compensation by virtue of any liability is at all times limited to the price agreed in the agreement with the Buyer, excluding VAT, on the understanding that if the agreement relates to partial deliveries, or if the Supplier has exercised its right to make partial deliveries, any obligation of the Supplier to pay compensation in such cases is at all times limited to the price that relates to that part of the agreement which is most closely related to the loss, on the understanding that an obligation to pay compensation is at all times limited to €25,000.

#### Paragraph 4

When the Buyer identifies any damage, it shall notify the Supplier thereof in writing without delay, failing which the Buyer can no longer bring any claims against the Supplier in respect of that damage. Furthermore, the Buyer shall in that case fully cooperate in any investigation by the Supplier into the scope, nature and cause of the established damage, at the risk of forfeiting any claims from the Buyer against the Supplier in respect of that damage.

#### Paragraph 5

Without prejudice to the provisions in the previous paragraphs of this article, every right to claim of the Buyer against the Supplier lapses one year after the damage arose or started.

### **Article 17      General Food Law Regulation**

With regard to the goods delivered by the Supplier, the Buyer is obliged to strictly comply with all its obligations ensuing from EC Regulation 178/2002 of the European Parliament and the Council of 28 January 2002 (General Food Law) and the legislation based on that.

The Buyer shall indemnify the Supplier against all claims from third parties, including government agencies, if and insofar as the Buyer fails to comply strictly with said legislation.

### **Article 18      Proof of administration**

Subject to proof to the contrary, the information contained in the Supplier's accounting records are decisive with regard to the agreement.

### **Article 19      Suspension and dissolution**

#### Paragraph 1

Without prejudice to the provisions in the previous articles about suspension and dissolution, if the Buyer fails to fulfil its obligations by virtue of the agreement between the Supplier and the Buyer, if it fails to fulfil them properly or in time, if there is serious doubt as to whether the Buyer shall be able to fulfil its obligations under the aforementioned agreement, in the case of insolvency, suspension of payments, guardianship, cessation, liquidation of the Buyer, full or partial transfer or an (undisclosed) pledge of its business or a considerable part of the business assets or business claims, or in the case of an attachment against the Buyer, the Supplier is entitled to either suspend the agreement for no more than 6 months, without notice of default or judicial intervention, or to dissolve the agreement insofar as it has not yet been performed, without prejudice to the Supplier's right to compensation for any losses suffered or profits lost.

#### Paragraph 2

In the case of dissolution as referred to in the previous paragraph, the agreed price owed to the Supplier is immediately due and payable, minus anything that has already been paid and any costs not yet incurred by the Supplier.

#### Paragraph 3

In the cases referred to in the first paragraph, all outstanding claims which the Supplier may have against the Buyer at that time shall be immediately due and payable in full.

### **Article 20      Declaration of integrity**

#### Paragraph 1

The Buyer is not allowed to supply goods sourced from the Supplier to countries or persons sanctioned by the European Union.

#### Paragraph 2

The Buyer must not offer persons working for or on behalf of the Supplier money or goods worth more than €50, with the exception of when prior permission from the Supplier is obtained in writing.

### **Article 21      The Dutch text is binding**

If these General Terms and Conditions are or will also be made available in a foreign language, the Dutch text and interpretation of these General Terms and Conditions shall be decisive if there are any



differences with the Dutch text or if there are any differences of opinion about the meaning and/or interpretation of these General Terms and Conditions.

**Article 22 (Partial) nullity**

If and insofar as one of the provisions of these General Terms and Conditions is void or voidable, it shall be deemed to be replaced by the provision which is permitted by law and which best reflects the purport of the parties as demonstrated by the contents of the void or voidable provision, while the remaining provisions continue to apply in full, unaffected.

**Article 23 Disputes/applicable law**

Paragraph 1

All agreements that are fully or partially subject to these General Terms and Conditions are subject to Dutch law, with the exception of the Vienna Sales Convention, on the understanding that insofar as it concerns a delivery to a buyer in Germany, German law shall apply to the provisions in article 13 of these General Terms and Conditions.

Paragraph 2

All disputes are, to the exclusion of any other court, first settled by the competent judge of the district court of Midden-Nederland, without prejudice to the Supplier's right to take the Buyer to the competent court under the ordinary rules of law.