



## **GENERAL TERMS AND CONDITIONS OF SALE**

### **Article 1 Definitions**

**HAF:** Holland Agri Foods B.V., having its offices in Emmeloord, the Netherlands

**Customer:** the (possible) counterparty of HAF

**Foodstuffs legislation:** All Dutch or foreign legislation on food safety and food hygiene pertaining to the Goods

**Agreement:** the agreement concluded by HAF and the Customer

**GT&C:** these general terms and conditions of sale of HAF

**Goods:** the foodstuffs delivered or to be delivered by HAF

**CET:** central European time, i.e. Greenwich mean time plus one hour

### **Article 2 General**

**2.1.** The GT&C apply to all offers, Agreements and other legal relationships in which HAF acts as (possible) seller or supplier of the Goods.

**2.2.** These GT&C and the Agreement can only be validly modified or deviated from by an explicit written and duly signed agreement.

**2.3.** In case of discrepancy between the English version of these GT&C and a translation of these GT&C, the English text prevails.

**2.4.** For the purpose of these GT&C “in writing” and “written” include messages sent per fax, e-mail or any other electronic means.

### **Article 3 Offers and conclusion of the Agreement**

**3.1.** All offers by HAF are non-binding, unless HAF explicitly stipulates otherwise explicitly and in writing. An Agreement is only validly concluded when HAF acknowledges the Agreement or order in writing or when HAF executes the order.

**3.2.** Any deviation in the acceptance of an offer cannot be considered to be accepted by HAF, unless HAF acknowledges the deviation in writing.

**3.3.** All offers made by HAF are based on the fulfilment in normal office hours (the time zone being CET) and under normal working conditions. If the Agreement cannot be executed within normal office hours and/or normal working conditions, the costs connected thereto can be invoiced by HAF to the Customer.

### **Article 4 Delivery**

**4.1.** Unless it is explicitly agreed upon otherwise in writing, all deliveries take place Ex Works HAF in accordance with the Incoterms 2010.

**4.2.** The Customer is obliged to accept delivery of the Goods at the moment these are offered to the Customer. At that moment the risk for the Goods passes to the Customer.



**4.3.** If the Customer refuses acceptance of the Goods, HAF is entitled (but not obliged) to store the Goods or part thereof at the Customer's expense. If the Goods reach their expiration date, HAF is entitled to have the Goods destroyed at the Customer's costs. Such destruction does not affect the Customer's duty to pay for the Goods.

**4.4.** If an Agreement contains a composed (price) list, HAF is not obliged to deliver only part of the Goods mentioned in the Agreement at the corresponding part of the price.

**4.5.** At all times, HAF is entitled to execute the deliveries in part and to invoice the partial deliveries separately.

**4.6.** At all times, HAF is entitled to instruct third parties to make the deliveries.

**4.7.** HAF is not liable for third party costs, including (but not limited to) demurrage costs, unless HAF and the Customer have explicitly and in writing agreed upon otherwise.

### **Article 5 Delivery terms**

The delivery terms given by HAF are indicative only and do not constitute fatal terms. HAF shall not be in default until HAF is given a notice of default in which a reasonable term for fulfilment is given and its notice period has lapsed unused.

### **Article 6 Prices**

**6.1.** Unless it is explicitly agreed upon otherwise in writing, all prices are in euro and are increased by VAT, import and export levies and other government taxes and levies.

**6.2.** HAF is entitled to wholly or partially invoice to the Customer any increase in import prices, tools, labour costs, insurances, exchange rates and other relevant cost price factors that occur after conclusion of the Agreement.

**6.3.** Any additional cost as a result of changes in the Agreement (including a change in the Goods to be supplied or the delivery terms) shall be invoiced to the Customer, regardless if such extra costs are known to the Customer or are made known to the Customer when the implementation of the change occurs.

**6.4.** In case of a reorder of Goods equal to the Goods delivered (or to be delivered) by virtue of an earlier Agreement, the Customer is not automatically entitled to delivery of the Goods at prices used in earlier Agreements, unless it is explicitly and in writing agreed upon otherwise.

### **Article 7 Payment**

**7.1.** Unless it is explicitly and in writing agreed upon otherwise, payment by the Customer has to take place within 8 days from the date of the invoice on (one of) the bank account number(s) mentioned on the invoice.

**7.2.** Payment by the Customer has to take place in the currency in which the prices are given and suspension of payment, set-off or reduction are not allowed.

**7.3.** Upon expiration of the term mentioned in article 7.1. the Customer is automatically in default, a notice not being necessary. At that moment the Customer is due a compound interest of 8% per year



until the date of full payment, notwithstanding the rights to which HAF is entitled by virtue of the Agreement, these GT&C and the law.

**7.4.** All costs connected to the payment (including furnishing security interests for payment) are borne by the Customer.

**7.5.** HAF is entitled to ask the Customer to furnish security for payment.

**7.6.** In case of insolvency of the Customer (including the opening of bankruptcy proceedings or a moratorium), winding-up of the Customer's company or the lapse of a payment term of any of HAF's invoices, all claims of HAF on the Customer become due and immediately payable by the Customer.

**7.7.** Any payment by the Customer firstly shall serve to pay the collection costs, then to pay any other costs, subsequently to pay the interest and finally to pay the principal amount of the outstanding invoices as so appointed by HAF, regardless of any other instruction by or on behalf of the Customer.

**7.8.** If the Customer does not fulfil any payment obligation in time, HAF is entitled to wholly or partially suspend or even cancel any of its obligations to the Customer, both pertaining to the same agreement or to other agreements. HAF shall not be liable for such suspension or cancellation and the Customer shall be liable to pay all the damages that HAF suffers as a result of the suspension or cancellation.

#### **Article 8 Retention of title**

**8.1.** All Goods delivered and to be delivered by HAF shall remain HAF's property until the Customer has paid all his obligations with respect to Goods delivered under the Agreement or other agreements, including the Customer's obligations pursuant to a breach of such agreement. The property law consequences of the retention of title on the Goods destined to be exported shall be controlled by the law of the country of destination, unless HAF explicitly and in writing stipulates otherwise.

**8.2.** The Customer is not allowed to pledge or otherwise encumber the Goods to which the retention of title applies. The Customer is obliged to keep the Goods as recognizable property of HAF for the duration of the retention of title. Only sale of the Goods within the Customer's normal business is allowed. The Customer shall immediately notify HAF of any rights exercised or alleged by third parties with respect to the Goods (including a seizure).

**8.3.** The Customer is obliged to insure the Goods for any possible risk and to keep the Goods insured and to supply the insurance policy at HAF's first request to HAF.

#### **Article 9 Inspection and complaints**

**9.1.** The Customer is obliged to inspect the Goods (or: to have the Goods inspected) and the packaging immediately upon delivery (including the notification that the Goods have been offered for delivery) for possible shortcomings or visible damages and quality and temperature (entry inspection). In case of shortcomings or visible defects (including defects caused by wrong temperature during transportation) the Customer is obliged to file a written complaint immediately



after delivery. Notwithstanding the above, any complaints on the quality of the Goods have to be filed in writing within 72 hours from delivery. In case of non-visible defects, not pertaining to quality, the written complaint has to be filed within 24 hours from the moment of discovery of such defect. Failure to comply with any of the above terms shall result in a loss of all legal remedies.

**9.2.** At all times, HAF is entitled to request proof of the defects in the form of photographs, movies or independent expert surveys. HAF is also entitled to instruct a third party to inspect the Goods. The Customer is obliged to co-operate with such inspection.

**9.3.** Notwithstanding the other provisions of this article 9, the Customer forfeits his rights to complain about the quality of the Goods, if he wholly or partially uses the Goods, if he wholly or partially processes the Goods, if he supplies or delivers the Goods to third parties or if he implicitly or explicitly accepts the Goods.

**9.4.** Even if the Customer has complained in time, this does not influence his duty to pay the invoices for the Goods and to accept delivery of the other Goods (including Goods of the same kind).

**9.5.** Minor deviations in weight, size, number, color and/or composition of the Goods do not justify a complaint, nor a compensation of damages or price adjustment. The measuring, inspections, counting and judgment by HAF shall be decisive.

**9.6.** If a complaint is found correct, HAF is only obliged, at HAF's costs, to deliver the missing Goods, to replace the defective Goods or the monetarily compensate the Customer, minus the costs. The Customer is obliged to comply with HAF's instructions on the storage, destruction, supply or return of the Goods.

**9.7.** Upon the unused lapse of the terms of article 9.1. all legal remedies have expired. If HAF deals with a complaint after this term, this is a courtesy and no rights can be derived from this courtesy, nor can any waiver be construed.

#### **Article 10 Foodstuffs legislation**

**10.1.** The Customer warrants to HAF that he shall comply with the Foodstuffs legislation applicable to the Goods at all times.

**10.2.** Notwithstanding the provision of article 10.1, the Customer shall label the Goods before supply, distribution, sale or handing over to third parties or before they leave the Customer's influence otherwise, using labels that comply with the Foodstuffs legislation applicable to the Goods. This includes the rule that the labels cannot be misleading.

**10.3.** Notwithstanding the provision of article 10.1, from the moment of delivery (including the moment the Goods were made available for delivery) the Customer shall warrant that Goods are stored in accordance with Foodstuffs legislation, including (but not limited to) the storage temperature and storage term. The Customer shall ensure an uninterrupted and timely written registration of the storage and temperature data using equipment that is fit for purpose and that has been calibrated. The data shall be supplied to HAF at HAF's first request.

**10.4.** Notwithstanding the provision of article 10.1, the Customer shall ensure that the Goods are traceable at all times from the moment they have been delivered to the Customer (including the

moment the Goods were made available for delivery).

**10.5.** The Customer shall ensure that he has all the permits necessary to handle (the delivery of) the Goods. If and insofar the competent authorities have to give permission for the delivery of Goods to the Customer, the Customer warrants to HAF that the competent authorities have given such permission or are going to give such permission.

**10.6.** The Customer shall indemnify HAF for all damages and claims that result from the non-fulfilment of any provision in this article 10.

#### **Article 11 Liability**

**11.1.** If and insofar the Customer has filed a valid complaint in accordance with article 9, HAF's liability is at all times limited to the amount of the invoice connected to the Goods that have given rise to the liability.

**11.2.** HAF is never liable for any material or immaterial damage outside of the scope of article 9 and article 11.1., including among other things: consequential damages, company damages, loss, loss of profit, costs made, orders missed, savings missed and the suspension of marketing and other promotional activities. This rule shall not apply in case of a deliberate act or grave negligence on HAF's part.

**11.3.** HAF is entitled to call upon all its legal and contractual defenses and remedies for all people who are involved in the execution of the Agreement.

#### **Article 12 Force majeure**

**12.1.** If fulfilment of the Agreement by HAF is wholly or partially definitely made impossible by a force majeure event, HAF is entitled to wholly or partially terminate the Agreement. In that case, the Customer is not entitled to compensation of damages or costs, nor is he entitled to terminate the Agreement. If partial termination leads to commercially unreasonable costs, HAF is entitled to wholly terminate the Agreement.

**12.2.** If the fulfilment of the Agreement is only temporarily made (wholly or partially) impossible, the Agreement cannot be terminated unless fulfilment has been impossible for an uninterrupted term of six months.

**12.3.** A force majeure event shall include: shortage of raw materials for the production of the Goods, strike, shortage of labour force, non-fulfilment of the obligations by HAF's suppliers (directly or indirectly), all circumstances that interrupt HAF's and/or its suppliers' work flow, transportation issues, import and export restraints and all circumstances that qualify as a force majeure event under Dutch law, even if the circumstance was foreseeable at the moment of the conclusion of the Agreement.

**12.4.** If HAF has fulfilled part of its obligations at the moment the force majeure event occurs or is able to fulfill part of its obligations at the moment the force majeure event occurs, HAF is entitled to payment for the part of the obligations that have been fulfilled and HAF is entitled to require performance of the obligations it is able to fulfill and to demand payment, as if these obligations



qualify as a separate agreement. If partial termination leads to commercially unreasonable costs, HAF is entitled to wholly terminate the Agreement.

**Article 13 Applicable law and jurisdiction**

**13.1.** All legal relationships between HAF and the Customer are governed exclusively by Dutch law, excluding the Vienna 1980 Convention on the International Sale of Goods (CISG).

**13.2.** The District Court of Midden-Nederland, the Netherlands, has exclusive jurisdiction.

**13.3.** If the Customer is domiciled outside of the EU, Norway, Iceland, Liechtenstein, Switzerland or Surinam, all disputes shall be settled by the Netherlands Arbitration Institute (NAI) in accordance with the arbitration rules set by NAI.