

**GENERAL CONDITIONS OF SALE**  
**of**  
**HAP FOODS HOLLAND BV**

**Article 1 - General -**

- 1.1 The name “Hap Foods” means Hap Foods Holland BV, registered with the Chamber of Commerce under number 23075765, and with its registered office in Hendrik Ido Ambacht, the Netherlands.
- 1.2 The term “conditions” means the general conditions of sale of Hap Foods.
- 1.3 The term “Buyer” means the Buyer or a legal entity/natural person on behalf of the Buyer.
- 1.4 The term “agreement” means the agreement and/or further or subsequent agreements between Hap Foods and the Buyer.
- 1.5 The term “cost-determining components” means, amongst other things, prices of materials, raw materials, consumables, parts, exchange rates, import duties or import taxes, energy prices, freight and carriage prices, insurance premiums, wages and salaries, social insurance costs, turnover tax, other levies, etc.
- 1.6 The term “consequential loss” means, amongst other things, trading loss, loss due to business interruption, loss of profits or loss of revenue.
- 1.7 The term “force majeure” means, amongst other things, circumstances not attributable to Hap Foods which prevent the fulfilment of an obligation. This will also be deemed to include (if and insofar as these circumstances make performance impossible or unreasonably difficult): Hap Foods employee strikes or sickness, strikes by customs or other third parties involved in the agreement's performance, breach of contract or a case of force majeure or unlawful action on the part of its suppliers, carriers or other third parties involved in the agreement's performance, traffic hold-ups, natural forces, war or mobilisation, impeding measures of any authority, fire and other accidents in the Hap Foods business, as well as other circumstances which result in it not being reasonable to demand performance/further performance by Hap Foods of all or part of the agreement.

**Article 2 - Applicability -**

- 2.1 These general conditions of sale apply in all cases in which Hap Foods concludes an agreement with its customers, hereinafter referred to as the “buyer”, regardless of the nature of the activities to be performed by Hap Foods, as well as to the statements (including offers and offer requests) which the parties make within the scope of this.

- 2.2 The provisions of these general conditions do not affect the right of Hap Foods to also exercise rights assigned by legislation or a treaty which are not described here.
- 2.3 Departures from these conditions only apply if explicitly agreed in writing. Such departures have no effect on other existing/future agreements.
- 2.4 These general conditions may be invoked by any person engaged by Hap Foods within the scope of the agreement's performance.
- 2.5 The applicability between the parties of any general terms and conditions adopted by the Buyer is explicitly excluded.
- 2.6 Hap Foods is entitled to amend these conditions at any time.

**Article 3 - Offers -**

- 3.1 Unless stated otherwise, all tenders, offers and price quotations are provided by Hap Foods subject to contract. An offer provided subject to contract may be withdrawn by Hap Foods within three working days of receipt of the acceptance.

**Article 4 - The agreement's establishment, amendment and supplementation -**

- 4.1 The agreement is established as soon as Hap Foods has received the acceptance of the offer. The acceptance must indicate that the buyer agrees to the statement on the applicability of these general conditions and, insofar as applicable, waives any statement of the applicability on the party's own general conditions.
- 4.2 Contrary to the provisions of the previous paragraph, if the acceptance includes conditions or amendments concerning the offer, the agreement will only be established if Hap Foods notifies the buyer that it agrees to the departures from the offer.
- 4.3 In the case of confirmation of an order, if the buyer fails to notify Hap Foods in writing within 48 hours of receiving the confirmation of an order that it does not accept the order or these general conditions, the order and these general conditions will be deemed to have been accepted.

- 4.4 The buyer/prospective buyer bears the risk of incorrect transfer of data in the event of the transfer taking place orally.
- 4.5 Any change or addition to an agreement is only if valid explicitly agreed in writing between Hap Foods and the Buyer.

**Article 5 - Prices -**

- 5.1 Unless agreed otherwise, all prices stated in an offer or agreement are in euros.
- 5.2 All prices apply for CFR (Cost and Freight) delivery in accordance with the Incoterms of the I.C.C applicable at the time of the translation (currently those of 2010), unless stipulated otherwise in the Hap Foods confirmation of the order.
- 5.3 The prices are exclusive of taxes and other levies.
- 5.4 In the event of an increase of more than 5% in cost-determining components, Hap Foods will be entitled to raise the agreed price in accordance with the increase.
- 5.5 Extra costs as a result of changes to the order following confirmation of the order are payable by the buyer. The delivery date may also be changed in such cases.

**Article 6 - Payment -**

- 6.1 The Buyer must pay the agreed price, the taxes and other levies within the period stipulated by Hap Foods. If no period is stipulated, payment must be made within fourteen days of the invoice date. Payment must be made by transfer into a bank/giro account indicated by Hap Foods.
- 6.2 The date of payment is the date of receipt in cash or the date of the deposit into one of the bank or giro accounts of Hap Foods.
- 6.3 Unless otherwise agreed, payment must be made in the Netherlands.
- 6.4 In no case will the Buyer be entitled to any discount or set-off or deferment. If Hap Foods sends the buyer an itemised statement of amounts the party owes Hap Foods and amounts that Hap Foods owes the buyer, the statement should also be deemed to be a declaration of set-off.

- 6.5 In the event of failing to pay the invoice within the period stipulated by Hap Foods, being declared insolvent or requesting a moratorium, the Buyer will be in default, without any notice of default being required, and all the Party's payment obligations will consequently become immediately due and payable.
- 6.6 In the aforementioned case referred to in subsection 6.5, without an further notice of default and without detriment to its other rights, from the due date Hap Foods will also be entitled to charge the buyer statutory commercial interest, as referred to in article 6:119a of the Netherlands Civil Code, plus 1%, up to the date of payment in full, whereby part of a month will count as a whole month. Hap Foods is also entitled to deem the agreement terminated, without judicial intervention being required. In such a case, the buyer will be liable for the losses suffered by Hap Foods, comprising amongst others, loss of profits and further costs, including those referred to in subsection 6.7. The amount on which interest is charged will be increased following the expiry of each year with the amount due in interest for that year.
- 6.7 The buyer will be liable for all reasonably incurred judicial and extrajudicial collection costs, including the costs of proceedings as well as the costs of lawyers and third parties engaged by them, which Hap Foods incurs as a result of the party's failure to fulfil its payment obligations. In any case, the buyer will owe 15% of the amount still outstanding, whereby the minimum amount will be € 500.
- 6.8 In the event of having reasonable doubts about whether the Buyer is capable of meeting its payment obligations and other obligations, which will in any case apply if the buyer fails to meet any of its payment obligations after having been served notice of default, Hap Foods will be entitled to require the Buyer to pay at least half of the agreed amount in advance or to provide proper security. Until the Buyer has done so, Hap Foods will be entitled to suspend performance of the agreement. The amount of the advance payment or the amount of security will be assessed by Hap Foods.
- 6.9 Payments made by the buyer first serve as payment of any interests and costs owed, and secondly as payment of the oldest due and payable invoices, even if the buyer states that the payment concerns a later invoice.

#### **Article 7 - Retention of title -**

- 7.1 Hap Foods retains the title to all the goods it has delivered until the Buyer:
- a. has paid in full the price of all the goods, plus any due interests and costs
- and,

b. has paid all amounts due in connection with work performed by Hap Foods on behalf of the Buyer or is scheduled to perform within the scope of the agreements concerned and,  
c. has paid the amounts due to Hap Foods in the event of any failure by the Buyer to fulfil the aforementioned obligations.

- 7.2 During the period in which Hap Foods holds the title to the goods, the Buyer will be obliged to store all the goods delivered subject to retention of title carefully and to mark them as the recognisable property of Hap Foods, will not be permitted to transfer the goods as security to a third party or encumber them with security rights, and will be obliged to notify Hap Foods of any event that harms or could harm the interests of Hap Foods as the owner.
- 7.3 In the event of the Buyer failing to fulfil its obligations to Hap Foods, or Hap Foods having reasonable grounds for fearing that the Buyer will fail to fulfil its obligations, Hap Foods will be entitled to repossess the delivered goods without prior notice and without affecting Hap Foods' right to compensation. The Buyer will cooperate fully in this and grant access to its storage place to Hap Foods at any time.
- 7.4 Hap Foods will not be bound to provide any indemnity to the buyer for its liability as holder of the goods. On the other hand, the buyer will indemnify Hap Foods against any claims which third parties could substantiate in connection with the retention of title.
- 7.5 For the duration of the retention of title, the Buyer will be obliged to insure the goods and maintain the insurance against third-party and comprehensive risks. The Buyer hereby irrevocably authorises Hap Foods to take receipt of payments made on the Party's behalf on the basis of the insured comprehensive risk.
- 7.6 As security for claims Hap Foods has against the buyer for whatever reason, a right of pledge on behalf of Hap Foods will be established on movable goods not subject to registration which Hap Foods acquires custody of from the buyer. The right of pledge will also apply in respect of any adequately determinable future claims which Hap Foods may later have against the buyer. The right of pledge will be established without further formalities upon Hap Foods acquiring custody of the goods concerned.

- 7.7 If any third party alleges having a right to goods subject to retention of title or goods on which the right of pledge referred to in the preceding subsection has been established, the buyer will be obliged to notify the third party concerned of Hap Foods' right and to inform Hap Foods immediately.
- 7.8 In the event a third party having possession on the party's behalf of any goods which are subject to retention of title, and the buyer failing to perform its obligations to Hap Foods, the buyer will be obliged on request to inform Hap Foods of the name and address of the third party concerned, and Hap Foods will be entitled to inform the third party concerned that it must thereafter keep the goods for Hap Foods.

#### **Article 8 - Risk and delivery -**

- 8.1 Unless explicitly agreed to the contrary, delivery will always be CFR (Cost and Freight), at the agreed delivery location. Export and freight costs to the destination port are therefore payable by Hap Foods and any other costs are payable by the buyer. All risks relating to the goods will be transferred to the Buyer when the goods pass the ship's railing at the port of shipment.
- 8.2 Unless explicitly agreed to the contrary, agreed delivery periods apply as estimates and not as deadlines, even when a specific final date or specific period has been agreed. A failure by Hap Foods to deliver on time can therefore never provide the buyer with grounds for terminating the agreement with Hap Foods, unless a delivery period has been explicitly agreed and has been exceeded by more than 30%. Even after the expiry of this extended period, the buyer must serve Hap Foods with notice of the failure in which Hap Foods is granted a period of at least 14 days to comply before being deemed to be in default.
- 8.3 Hap Foods will be permitted to make partial deliveries. Hap Foods will be entitled to submit invoices in such cases and the Buyer will be obliged to pay them as invoices for separate agreements.

#### **Article 9 - Transport documents -**

- 9.1 Hap Foods' copy of the carrier's transport document, signed without comment in acknowledgement of receipt, serves as conclusive evidence of the dispatch of the quantities stated on the transport document and of the good external condition of the goods.

#### **Article 10 - Taking delivery -**

- 10.1 From the agreed delivery date, the Buyer will be obliged to take receipt of the goods presented by Hap Foods.
- 10.2 Any goods the buyer fails to take receipt of will be deemed to have been delivered on the date they were presented by Hap Foods and will thereafter remain in Hap Foods' custody at the party's expense and risk. In such cases, from the date on which the goods are presented, Hap Foods will be entitled to charge a custody fee in accordance with the rate applicable in its company or at the location, or to place the goods in third-party storage at the party's expense and risk. Moreover, in such cases, Hap Foods will also be entitled to invoice the buyer.

**Article 11 - Obligation to inspect and complaints -**

- 11.1 In the event of collecting or arranging for the collection of the purchased goods, the buyer will be obliged to check the quantities and external condition of the purchased goods or to arrange for this to be done.
- 11.2 The buyer must perform a complete inspection of the purchased goods within 48 hours of delivery, on penalty of forfeiture of claims in the event of failing to do so. However, if delivery is subject to the conditions CIF, CFR, CIP or CPT (Incoterms), the buyer need not perform a complete inspection within 48 hours of their arrival at the agreed destination.
- 11.3 If the Buyer changes the destination of the goods in transit or redispaches them without having had a reasonable opportunity to inspect them, and Hap Foods was aware of the possibility of the change or redispaching, the inspection may be postponed until after the arrival of the goods at their new destination.
- 11.4 Following the inspection, in the event of being of the opinion that the purchased goods do not conform to the agreement, the party must provide Hap Foods with substantive written notice within 48 hours of the period referred to in subsection 11.2. Moreover, as soon as possible but no later than within 24 hours of the expiry of the period referred to in subsection 11.2, the buyer will be obliged to report the complaint to Hap Foods by fax or e-mail. The buyer will be obliged to cooperate in enabling Hap Foods to conduct or arrange for an inspection of the goods which are the subject of the complaint, at the time designated by Hap Foods and at the expense of the buyer if the complaint proves to be unfounded. In the event of a complaint being made, Hap Foods will also be entitled to require the buyer to arrange for a report to be compiled immediately by an independent expert, at the expense of the buyer, if the complaint proves to be unfounded, and will also be entitled to require the

buyer to return the purchased goods to Hap Foods immediately, in which case the buyer may keep a representative sample and will be liable for the costs if the complaint proves to be unfounded.

11.5 In the event of wishing to return goods the buyer must first obtain permission to do so from Hap Foods. Unless agreed otherwise, the goods will be transported at the risk and expense of the buyer.

11.6 The buyer will always bear the burden of proving that the defects which are the subject of the complaint were present at the time the risk was transferred.

11.7 Hap Foods will not be obliged to process complaints presented after the periods stated in this article and will not bear corporate liability as a result of them. However, unless agreed otherwise, in the event of Hap Foods processing any such complaints, its efforts must be deemed to be a gesture of goodwill, without any acceptance of liability.

#### **Article 12 - Liability -**

12.1 Subject to compliance with the rules set out in the preceding article, legal proceedings on account of an attributable breach may only be brought against Hap Foods during a period not exceeding three months from the date of delivery, taking into account the stipulations of these conditions. In any such case, the buyer must first issue Hap Foods with written notice of the breach and grant a period of at least one month for Hap Foods to comply, before Hap Foods may be deemed to be in default.

12.2 Any liability of Hap Foods will be limited to the repair or replacement of the defective goods concerned or components of the goods, as Hap Foods sees fit.

12.3 Except in the case of intent or gross negligence of Hap Foods or its management employees, Hap Foods will not be liable to the buyer for losses of any description, including all direct and indirect losses, such as consequential losses, trading losses, losses caused by delays (other than statutory interest), losses on account of loss of value, loss of use, loss of profits, or losses incurred, losses in connection with the cost of replacement transport or rental and lease costs, damage to third-parties/third-party goods, cargo damage and personal or nonmaterial losses, caused to the buyer or third parties during the agreement's performance by Hap Foods or another party that has performed work within the scope of this at the request of, or in cooperation with Hap Foods.

12.4 If and insofar as Hap Foods might be held liable for any reason, the liability will always be limited to the amount paid under the business liability insurance in the case concerned and, insofar as the claim



is not paid by the insurer, to the amount of the purchase price (exclusive of turnover tax) of the delivered goods and/or other levies but in any case subject to a sum not exceeding € 100,000.

12.5 For the purposes of this article, an attributable breach also includes unlawful acts.

12.6 The Buyer indemnifies Hap Foods against any third-party claims, unless Hap Foods is liable according to this article.

### **Article 13 - Numbers, sizes, weights and further data -**

13.1 Unless and insofar as the parties have explicitly agreed to the contrary, any documentation, image, sample or model that Hap Foods provides the buyer will only serve as an indication without the item concerned having to conform to it.

13.2 The item to be delivered will be deemed to conform to the agreement, if it corresponds to the specifications Hap Foods agrees on with its buyer. If no specifications have been agreed, the item to be delivered must conform to the business standards that usually apply for the item; this will in any case apply if the item meets the statutory quality requirements applicable in the country of production on the date the agreement was established. Hap Foods will be entitled to deliver an item which originated in a different country, if the quality equals or surpasses the agreed quality.

13.3 Minor variations in measurements, weights, figures, colours and other similar details are not deemed to be nonconformities. Normal business practice determine whether a case of a minor variation applies.

13.4 Any loss of weight not exceeding five (5) percent which results from cooling or freezing will not be regarded as a nonconformity. Unless agreed otherwise, the buyer will only be able to demonstrate loss of weight on the basis of an official weighing slip indicating that weighing took place on a proper, public weighbridge at the time of or immediately following delivery.

### **Article 14 - Force majeure -**

14.1 If Hap Foods is unable to fulfil its obligations to the Buyer, performance of the obligations will be suspended for the duration of the case of force majeure.

14.2 Hap Foods will inform the Buyer as soon as possible of a case of force majeure.

14.3 If the case of force majeure lasts three months or longer, both Hap Foods and the Buyer will be entitled to terminate the agreement entirely or partially by written notice and without any judicial intervention being required, insofar as the goods have not yet been delivered, and without any obligation to pay compensation or any other payment, apart from payment on the grounds of an unduly made payment.

14.4 If Hap Foods has already partially fulfilled its obligations upon commencement of the case of force majeure, or is only able to fulfil its obligations partially, it will be entitled to submit an invoice separately for the part already fulfilled or to be fulfilled and the buyer will be obliged to pay the invoice as if it concerned a separate contract.

#### **Article 15 - Termination and suspension -**

15.1 In the event of the Buyer failing to fulfil completely, properly and on time any obligation arising from the agreement or these conditions, the Buyer will be in default, without any notice of default being required, and Hap Foods will be entitled, without being obliged to pay compensation of any kind and without detriment to its further rights, to suspend, with immediate effect and without judicial intervention, the performance of all its obligations and/or entirely or partially terminate or cancel the agreement concerned. In such a case, Hap Foods will also be entitled to demand from the buyer payment at once of any amounts which the buyer owes Hap Foods and/or to make further deliveries subject to payment in advance.

15.2 In the event of termination by Hap Foods, at its discretion Hap Foods may opt for compensation in the form of:

- a. any adverse difference between the contract price and the market value of the goods concerned on the date of non-performance, or;
  - b. the difference between the contract price and the price of the covering sale;
- without this affecting the right of Hap Foods to additional or alternative compensation.

15.3 Moreover, without being obliged to pay compensation of any kind and without detriment to its further rights, Hap Foods will be entitled, with immediate effect and without judicial intervention, to terminate the agreement with the Buyer, if:

- a. the Buyer has been granted a moratorium or is insolvent, or this is impending, or if any part of its assets is subject to attachment;
- b. the Buyer ceases its operations, decides to go into liquidation, otherwise loses its legal personality or transfers or merges its business;

without this affecting the right of Hap Foods to additional or alternative compensation. In such cases all claims of Hap Foods against the buyer will be immediately due and payable.

**Article 16 - Auxiliary persons -**

16.1 Insofar as Hap Foods makes use of the services or products of auxiliary persons for the performance of its obligations arising from these conditions or the agreement, these conditions will likewise apply as far as possible on their behalf vis-à-vis the Buyer.

**Article 17 - Other provisions -**

17.1 Any provision of these conditions which lacks legal validity or is null and void will not affect the legal validity of the other provisions of these conditions. In such cases the conditions will be interpreted as if they do not include the provision which lacks legal validity or is null and void.

**Article 18 - Language -**

18.1 These conditions have been drafted in Dutch and translated into German, English and French. The Dutch text will prevail in any dispute concerning the interpretation of these conditions.

**Article 19 - Prescription -**

19.1 All claims against Hap Foods will in any case become prescribed one year after the date of the agreement.

**Article 20 - Applicable law -**

20.1 All agreements Hap Foods concludes are subject exclusively to Dutch law, or in the event of it otherwise being applicable, Regulation (EC) 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) and the United Nations Convention on Contracts for the International Sale of Goods (CISG), concluded in Vienna on 11 April 1980, as well as national implementation acts based on them.

**Article 21 - Jurisdiction -**

21.1 Unless prevented by mandatory law, any disputes arising between Hap Foods and the buyer which are subject to these general conditions will be settled by the court with jurisdiction in the region in which Hap Foods is registered, without detriment to the right of Hap Foods to institute legal proceedings against the buyer in a court which has jurisdiction in other respects.

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