

GENERAL TERMS AND CONDITIONS OF PURCHASE

VitaFarm

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Definitions

- Seller:** The person, firm or company who signed the Contract.
- Buyer:** VitaFarm, P.O. Box 45, 5830 AA, Boxmeer, The Netherlands (CoC NL87146185).
- Products:** The goods or any of them described in the Order and/or services to be provided by the Seller for Buyer including any of them described in the Order.
- Specifications:** The product specification or service specification developed and/or agreed with Buyer and forming part of the Contract.
- Conditions:** The General Terms and Conditions of Sale set out in this document
- Order:** Buyer's purchase order(s), if issued, and including, without limitation, any Buyer's purchase orders placed by electronic, voice or paper means.
- Contract:** The purchase contract between Buyer and the Seller consisting of the Agreement, these Conditions and any other document or part thereof specified in the Agreement and shall incorporate all terms and conditions implied by law.

Article 1 - Applicability

1. These Conditions apply to all requests for Offers made by Buyer, Offers made by Seller, all Orders placed by Buyer and all Agreements for the purchase of Products.
2. Buyer's agreement to purchase Products is expressly conditioned upon Seller's acceptance of these Conditions. Any terms and conditions proposed or stipulated by Seller shall not apply, not even in addition to these Conditions, and any applicability is expressly excluded and rejected unless otherwise expressly agreed in writing.
3. These Conditions cancel and replace any previous General Terms and Conditions, unless otherwise explicitly agreed in writing.
4. The commencement of any work by Seller or delivery by Seller in response to an Agreement or Order by Buyer, is conclusive evidence of Seller's acceptance of these Conditions.
5. If there is any conflict between the terms specified in the Agreement and any of these Conditions, the terms specified in the Agreement shall prevail.

6. Any deviation from and/or addition to and/or variation of the Contract shall not be deemed accepted by the Parties, unless explicitly agreed beforehand in writing by both parties.
7. The headings in these Conditions are for convenience only and shall not affect their interpretation.

Article 2 - Orders and Offers

1. Orders are only valid and have legal force when they are made and confirmed by Seller in writing.
2. Any deviation from and/or addition to and/or variation of an Order shall not be deemed accepted by Buyer, unless expressly agreed beforehand in writing.
3. Seller will not be reimbursed for costs made to prepare and issue an offer, not resulting in a Contract.

Article 3 - Prices, Delivery and Payment

1. Unless otherwise expressly agreed in the Agreement, the prices shall be inclusive of all taxes and other governmental charges due in any country, including but not limited to social premiums and wage taxes related to persons used by Seller in performing its activities under the Contract and inclusive of all charges for packaging, packing, transport, insurance, delivery and commissioning of the Products to the place of delivery, but exclusive of any applicable value added tax.
2. Agreed prices are fixed and irrevocable. A price accepted by Buyer may not be increased without Buyer's written prior consent.
3. Delivery of the Products shall be made in accordance with the date and location specified in the Agreement or, if issued, the Order. In this respect, time shall be of the essence, and Buyer reserves the right to cancel without notice the whole or any unexecuted part of the Agreement or, if issued, the Order in the event of Seller failing to comply with these Conditions for whatever reason. Seller shall promptly inform Buyer if Seller has serious reasons to expect that he will fail to comply.
4. Seller shall adequately pack and protect the Products against damage and deterioration and shall be responsible for ascertaining any special delivery requirements.
5. Property and risk of the Products shall pass to Buyer when the Products are delivered in accordance with this article 4 and article 5.
6. Seller shall be entitled to invoice Buyer on or at any time after delivery or completion of the Products and each invoice shall quote the number of the Order.
7. The Seller guarantees that all invoices are fully compliant with and according to the applicable (tax) legislation. Any extra tax, penalty or other costs as a result of wrong invoices will be for the account of the Seller.
8. Unless otherwise stated in the Agreement, Buyer shall pay the price of the Products within 90 days after the end of the month of receipt by Buyer of a proper invoice as mentioned in article 4.6 or, if later, after acceptance of the Products by Buyer.

9. The issuing of any receipt or other acknowledgement by Buyer for Products shall not constitute a waiver by Buyer of any of its rights or obligations of Seller under these Conditions or any other terms and conditions implied by law.
10. Buyer shall not be deemed to have accepted any Products until Buyer has had a reasonable time to inspect them following delivery / performance or, if later, within a reasonable time after any latent defect has become apparent.
11. Buyer shall be entitled to set off against the price of the Products any sums owed to Buyer by Seller now or in the future whether under the Contract or otherwise, after Buyer has issued a written statement to this effect.

Article 4 - Indication of FN-number

1. If Seller signed additional Quality Agreement (F-05-03/F-05-04/F-05-03) Buyer is obliged to provide Buyer's FN-number. The FN-number is provided by each order and is required to guarantee the traceability of goods. It is mandatory for Seller to mention the FN-number on the invoice and delivery/batch papers. If this number is not mentioned on the requested documents Seller reserves the right to reject Seller's invoice.

Article 5 - Import / export

2. In the Contract "INCOTERMS" means the most recent rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is signed. Unless the content otherwise requires, any terms or expressions which are defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in the Contract, but if there is any conflict between the provisions of Incoterms and the Contract, the latter shall prevail.
3. Unless otherwise agreed in writing between Buyer and Seller, Seller shall be responsible for complying with any legislation or regulations for both the export of the Products from the country of origin and the import of the Products into the country of destination and for the payment of any duties thereon.

Article 6 - Specifications

1. Any specifications referred to in the Agreement by Buyer are deemed to be an integral part of the Contract and, if issued, Orders under the Contract.
2. All the Products must comply with the Specifications where indicated.
3. Any Products in accordance with the Specifications shall not be disclosed or quoted to a third party unless legally required.

Article 7 - Alterations

Seller shall consult with Buyer in advance on any alteration in the quantity, quality, composition, properties or production method of the Products to be delivered (incl. their packaging) or performed. If no consultation takes place or Buyer does not agree to the alteration, Buyer will be entitled to fully or partially cancel the Contract or, if issued, Orders at no costs to Buyer without prejudice to Seller's liability for all damage caused to Buyer and third parties as a result of the alteration, dissolution or cancellation. If Buyer has agreed to the alteration, this merely means that, as regards the alteration, the Products need not conform to the specifications in the Contract, whereas this shall not affect the Seller's obligations to fulfill the obligations under articles 8 and 9 of these Conditions.

Article 8 - Inspection / test / shortcomings

1. Buyer may inspect / test all Products at any time prior to or upon delivery/performance by Seller or in case of raw materials/semi-products also after delivery but before use. Buyer may reject Products which do not comply with the terms of the Contract.
Neither Buyer's inspection / testing nor failure to inspect / test the Products shall relieve Seller of any obligation or liability.
2. If the Products delivered or performed by Seller do not conform to the Contract, Buyer shall be entitled to require, at its discretion, that the Products delivered or performed be repaired or replaced or that the missing component be supplied within a reasonable term to be set by Buyer, without prejudice to its other rights by law or by virtue of these Conditions.
3. In the event that the Products do not conform to the Contract, Buyer is entitled to return these Products to Seller at Seller's expense or to keep them in its custody until Seller has given further instructions as to how these Products are to be dealt with. Any costs incurred by Buyer in this respect shall be for Seller's account. Buyer shall in no event be responsible for keeping the Products in good condition.
4. Acceptance or payment of all or part of the Products shall not be deemed a waiver of any claim based on delay of delivery or other failure to perform in accordance with these Conditions or the Contract and nothing herein shall exclude or limit any warranties.
5. Any advice or notice given by Buyer with regard to the Products to be delivered or performed shall not release Seller in any way whatsoever from its own responsibility or liability with respect to the proper fulfillment of its obligations.

Article 9 – Warranties

In addition to any other warranties, express or implied, Seller explicitly represents and warrants as follows:

1. Seller warrants, without any verification by Buyer being required, that it has all necessary permits and licenses or any other needed authorisation to perform its obligations under the Contract and that all Products delivered or performed conform to the Contract shall be in all respects of sound materials and workmanship. This means that the Products (including their packaging) are fit, safe and suitable for use intended by Buyer. In so far as the use intended by Buyer is unknown to Seller, Seller shall obtain such information from Buyer in writing beforehand. In addition Seller warrants the merchantability of the Products and that the Products conform to the agreed specifications and approved samples or analyses, if any, and that they are free from defects - including but not limited to faults in design, material and manufacturing - and, furthermore, that they comply with all applicable statutory requirements and all relevant environmental, health and (food) safety guidelines and relevant industry standards, including the statutory rules and regulations of the country of delivery and, in so far as known to Seller, the country of destination.
2. Buyer shall be entitled to reject any Products that do not comply with condition 9.1.
3. Seller warrants that the Products delivered or performed do not constitute an infringement of intellectual property rights, including but not limited to patents, copyrights or trademarks, in the country of manufacture, the country of delivery, or the country of destination/use (the latter if and in so far as known to Seller), and that they do not infringe on any other third party's industrial rights. Seller undertakes vis-à-vis

Buyer and its customers that it shall fully indemnify Buyer and its customers from third parties and fully reimburse any damage suffered by Buyer and its customers as a result of such an infringement.

4. Buyer may participate in the defense of any claim or suit arising hereunder without relieving Seller of any obligation or liability hereunder and Seller shall not enter into a settlement or other agreement that includes or imputes an admission of liability by Buyer without Buyer's prior written consent.

Article 10 - Force Majeure

Either party may, for the duration of the event, postpone the carrying out of its performance of the obligations under the Contract on account of an event occurring which the party could not reasonably anticipate or control and which prevents the performance of the obligation. Such event could be, but is not limited to war, riots, fire, floods, sabotage, import and export restrictions, government regulations and shortage of energy.

However, for the sake of clarity, failures shall be attributed to Seller if they are caused by transport problems, illness of personnel, strikes and stagnation in Seller's business or in the business of any of its suppliers.

A party shall as soon as possible, after the event constituting force majeure is considered to exist, inform the other party in an appropriate manner. The party claiming the benefit of this article 10 shall use all diligence to fulfil the obligations assumed under the Contract with the shortest delay possible.

Buyer is entitled to cancel the Contract in the event the force majeure. Cancellation should be notified to the Seller in writing.

Article 11 - Liability and Indemnification

1. Seller shall be liable for every claim for damage resulting directly or indirectly from or related to Seller's non-performance of the Contract, its failure to perform timely or properly or its breach of any contractual or non-contractual obligation vis-à-vis Buyer or third parties or of any applicable rules and regulations. In addition, Seller indemnifies Buyer against any claims from third parties in respect of damage resulting directly or indirectly from or related to Seller's non-performance of the Contract, its failure to perform timely or properly or its breach of any contractual or non-contractual obligation vis-à-vis Buyer or third parties or of any applicable rules and regulations.
2. Seller guarantees the fulfillment of obligations by third parties on Seller's part (such as employees of Seller or third parties or their employees hired directly or indirectly by Seller) in the same way as it guarantees the fulfillment of its own obligations.
3. Seller shall be liable for all work done and Products supplied by all subcontractors and shall furnish Buyer with copies of all subcontracts upon Buyer's request at any time.
4. In no event shall Buyer be liable for any lost revenues, lost profits, incidental losses, indirect or consequential losses and special or punitive damages.

Article 12 - Confidentiality

1. Seller shall keep in strict confidence all business information, technical or commercial knowhow, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to Seller by Buyer or its agents and any other confidential information concerning Buyer's business or its products which Seller may obtain and Seller shall restrict disclosure of such material to such of its employees, agents or sub-contractors as need to know the same purpose of discharging Seller's obligations to Buyer and shall ensure that such employees, agents or sub-contractors are subject to like obligations of confidentiality as bind Seller.
2. The obligations of confidentiality in this Contract will survive termination of this Contract and will continue for a period of five (5) years after termination.

Article 13 - Intellectual Property rights

1. Buyer is entitled to all documents, drawings, specifications, calculations and other information carriers with respect to the performance of the activities of Seller under the Contract.
2. Buyer shall be solely entitled to all intellectual property rights (including patents) created during the performance of the obligations under the Contract. In case the intellectual property rights are with both Seller and Buyer, Seller shall assure and guarantee that Buyer has a full license to use these without any conditions for an indefinite period of time.

Article 14 - Judicial and Extra-Judicial Costs

Should Seller fail to fulfill any of its obligations, all costs incurred by Buyer in obtaining settlement out of court shall be for Seller's account. Seller shall also reimburse Buyer for all costs reasonably incurred in connection with legal proceedings where judgment is fully or substantially awarded against Seller. These costs shall in any case include the fees of outside experts, bailiffs and lawyers, even if these costs exceed the amount awarded by the court.

Article 15 - Assignment

Seller shall not assign the Contract in whole or in part nor shall Seller subcontract any part of the Contract without Buyer's prior written consent, which shall not be unreasonably withheld.

Seller may, however, assign the Contract to a successor in ownership of all or substantially all its business assets, provided that such successor shall expressly assume in writing the obligation to perform in accordance with the terms and conditions of the Contract.

Buyer may assign the Contract in whole or in part or subcontract a part of the Contract to any person, firm or company.

Article 16 - Insurance

Seller shall be at all times adequately insured with reputable insurers against the insurable risks under the Contract, amongst others but not limited to general / employers and products liability and property damage / business interruption. Upon request Seller shall provide certificates signed by the insurers as proof of insurance.

Article 17 - Termination

1. If Seller defaults in any of its obligations under the Contract, or becomes insolvent, or has a receiver appointed of its business, or is compulsorily or voluntarily wound up, or if Buyer in good faith believes that any of such events may occur, Buyer shall be entitled at its discretion, and without prejudice to any other remedy, to suspend the performance of or terminate the Contract and in the event of termination to keep or take possession of any Products or of any items belonging to Buyer and to enter any premises of Seller for that purpose.
2. If Buyer terminates the Contract Seller shall return to Buyer, all payments made and if Buyer rejects any Products Seller shall return all payments made for the rejected Products. Where upon termination Buyer elects to keep or take any Products, it shall account to Seller for them at a proportion of their price or their value to Buyer, whichever is less, but otherwise no compensation shall be payable to Seller on termination or rejection.

Article 18 - Governing Law and Competent Court

The Contract and all ensuing agreements are governed by the laws of the country where the relevant Buyer company has its registered office. Applicability of the United Nations Convention on contracts for the International Sale of Goods (CISG) is explicitly excluded. Any dispute arising from the Contract or from any ensuing further agreements shall be settled by the competent court of the place where the relevant Buyer company has its registered office. The aforesaid does not affect Buyer's right to submit the dispute to a court of law of a jurisdiction which would have been competent by law or under an international convention had this provision not been included, and to accord preference, if it elects, to application of the law in force in that jurisdiction.

Article 19 - Code of Ethical Conduct

1. The Seller declares to be familiar with the content of Buyer's Code of Ethical Conduct and will execute this Contract in accordance with this Code.
2. In case the Seller is acting against this Code, Buyer is entitled to cancel the Contract after having notified the Seller in writing about his actions against the Code and having given the Seller reasonable time to adjust his actions.

Article 20 - General

1. These Conditions shall continue in full force and effect notwithstanding any termination or completion of the Contract.
2. If one or more provisions of these Conditions for some unknown reason cannot be put into force or become invalid, the other provisions shall remain in full force and effect. The closest possible interpretation of the intention of the provision involved shall then be used.
3. Nothing in these Conditions shall prejudice any other conditions or warranty (express or implied) to which Buyer may be entitled.
4. No failure or delay on the part of Buyer to exercise any of its rights in respect of any default under the Contract by Seller, shall prejudice Buyer's rights in connection with the same or any subsequent default.