

GENERAL TERMS AND CONDITIONS OF SALE

VitaFarm

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Definitions

- Seller:** VitaFarm, P.O. Box 45, 5830 AA, Boxmeer, The Netherlands (CoC NL87146185).
- Buyer:** The party that enters into a purchase agreement with the Seller for the purchase of Products and/or services from the Seller.
- Products:** The products specified in the purchase agreement.
- 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.

Article 1 - Applicability

These General Terms and Conditions of Sale apply to, and are incorporated into, all purchase agreements agreed with the Seller, to all the Seller's offers and quotations and to deliveries and services provided by the Seller. No variation to these terms and conditions may be agreed other than in writing and signed by authorised representatives of the parties and any variations to particular purchase agreements shall not apply to other purchase agreements unless expressly confirmed in writing.

Article 2 - Offers and contracts

1. A quotation issued by the Seller shall not constitute a binding offer.
2. An order submitted by the Buyer constitutes an offer to enter into a purchase agreement with the Seller pursuant to these General Terms and Conditions of Sale and the terms of any relevant quotation from the Seller.
3. Such offer may be accepted by the Seller by written acceptance of the order, oral acceptance of the order, or by the Seller beginning to perform its obligations consistent with the existence of a purchase agreement.

Article 3 - Delivery and logistics

1. Stated delivery dates should be regarded as approximate only. Delivery after the stated delivery date shall not be a breach of contract by the Seller and shall not entitle the Buyer to any remedy. The Products delivered may differ from the description in the purchase agreement in respect of packaging, volumes/dimensions and composition and, provided that it does not negatively affect the normal use of the Products, such difference shall not be a breach of contract by the Seller and shall not entitle the Buyer to any remedy.

2. Products shall be delivered as set out in the purchase agreement or, in absence of such delivery conditions, "Free Carrier" (FCA) to the Seller's premises, always in accordance with the provisions of the latest version of the Incoterms in effect at the time the purchase agreement was entered into. The Seller may deliver the Products by instalments.
3. The Buyer may request that the Seller organizes the transport of the Products on the Buyer's behalf, in which case the Buyer shall be responsible for all costs and risk associated with such transport.
4. The Buyer is required to accept delivery of the Products by the Seller. The Seller may store the Products if the Buyer fails to accept such delivery and the Buyer shall reimburse the Seller for all related costs and expenses incurred and shall remain liable to pay the purchase price for the Products. In such event, the Seller may resell the relevant Products at any time to a third party, in which case the Buyer shall reimburse the Seller for any shortfall below the purchase price agreed in the purchase agreement with the Buyer, and for all costs and expenses incurred by the Seller in relation to storage.
5. If the parties agree any variation to the description of the Products contained in the purchase agreement, the Seller may at its discretion amend the delivery date stated in the purchase agreement by providing notice to the Buyer, such notice to be effective immediately on receipt.

Article 4 - Complaints, inspection obligation and compliance

1. Prior to delivery of the Products, the Seller may provide for samples to be taken, at its own expense and may keep such samples for a period of its choosing.
2. The Buyer is required to inspect Products delivered by the Seller immediately on receipt. The Buyer must submit complaints concerning visible defects in the Products (including, without limitation, complaints concerning quantity, dimensions, weight, the 'use by' dates and quality) in writing as soon as possible and not later than within 30 (thirty) days of delivery, and any failure to do so shall mean that the Buyer has no remedy in respect of such defects and the Seller is deemed to have met its obligations in full.
3. The Buyer must submit complaints concerning invisible defects concerning the Products in writing within as soon as possible and not later than within 8 (eight) days of the date on which the Buyer becomes aware, or should have become aware, of the defects, and no later than within 8 (eight) days of the recommended 'use by' date or, in the absence thereof, within three months of the delivery of the Products, and any failure to do so shall mean that the Buyer has no remedy in respect of such defects and the Seller is deemed to have met its obligations in full.
4. If the Buyer makes a complaint about the Products purchased (in accordance with this Article 4), it shall give the Seller an opportunity to take one or more samples of the Products, if requested by the Seller. An independent institute, selected by the Seller at its discretion, shall then be instructed to test the samples taken by the Seller (either under Article 4(1) or this Article 4(4), at the Seller's discretion), at the Buyer's expense, in order to establish whether the defects in the Products claimed by the Buyer exist. The independent institute shall be instructed by the Seller on the testing method to be followed which shall be in accordance with the sampling and testing procedures customary in the industry. The independent institute's factual conclusions in respect of the defects alleged by the Buyer shall be accepted by and binding on the parties as conclusive evidence of the quality of the Products.

5. Without the Seller's written consent, the Buyer shall not return Products to the Seller. The costs of return dispatches shall be borne by the Buyer unless otherwise agreed in writing.
6. The Buyer must submit any complaint concerning an invoice to the Seller in writing, within 14 (fourteen) days of the receipt of the invoice, and any failure to do so shall mean that the invoice will be deemed to be accurate.

Article 5 - Prices

1. Unless explicitly stated otherwise in the purchase agreement, all prices agreed are denominated in the statutory currency of the Seller and are exclusive of VAT and any other government levies imposed which shall be paid by the Buyer.
2. Prices are fixed in accordance with the Seller's price lists in effect on the date of the order from the Buyer to the extent that the Products are included in the price list, or as otherwise stated in the purchase agreement.
3. Prices agreed are based on the market conditions at the time the Seller accepts the Buyer's order. The Seller has the right at any time by giving notice to the Buyer to adjust the agreed price if cost factors that (co)determine the price (including, but not limited to, the market prices of Products, ingredients, raw materials, transportation, personnel costs, insurance, exchange rates, taxes and other financial charges) are increased between the date of the purchase agreement and the delivery date. If the price increase amounts to more than 10% of the original price, the Buyer may terminate the purchase agreement by written notice to the Seller, provided that such notice is received within 3 (three) days of the Seller's notice to increase the price.

Article 6 - Payment

1. The Buyer shall pay all invoices in accordance with the payment conditions shown in the invoice. In the absence of such conditions, payment will be due within 14 days of the invoice date. The Buyer shall pay all amounts due under the purchase agreement in full and the Buyer shall not assert any credit, set-off or counterclaim on any grounds whatsoever and such amounts shall be paid in full through a transfer to the Seller's bank account.
2. The Seller shall be entitled to suspend performance of all its obligations to the Buyer, including those arising from other agreements, until the Buyer has paid all overdue amounts.
3. In the event of failure by the Buyer to pay any amount due to the Seller by the date such amount is due, the Buyer shall pay interest on the overdue amount at the rate of EURIBOR (30 days deposits) plus 2% per annum and such interest will accrue daily from the due date until the date of payment of the overdue amount.
4. Compliance with the Buyer's obligations can be claimed on demand if the Buyer is liquidated, declared bankrupt or is granted a moratorium on payments.
5. The Seller may at its discretion at any time: require partial or full advance payment of the amounts payable to the Seller by the Buyer; or require the Buyer to procure a third party guarantee in respect of those amounts, to the Seller's satisfaction; or require that payment is made by an irrevocable letter of credit confirmed by a bank acceptable to the Seller, and the Buyer's failure in each case will entitle the Seller to suspend delivery of the Products.

6. In case of a credit limit Seller is allowed to cover this by a credit insurance. If Buyer is rejected by the credit insurance company (Atradius, but not limited to), all orders need to be paid in advance. Overdue payments need to be declared to the credit insurance company. Buyer agrees that all costs arising from this are at Buyer's expense.

Article 7 - Reservation of ownership

1. The Seller retains title in the Products that it delivers under the purchase agreement until the Buyer has paid in full (in cleared funds):
 - a. the price of the Products;
 - b. the price of any work performed or to be performed pursuant to such purchase agreement;
 - c. the price of any Products delivered or to be delivered and the price of any work performed or to be performed under any other purchase agreement;
 - d. the amounts payable under any claims in respect of the Buyer's breach of any purchase agreement.
2. Until ownership of the Products transfers to the Buyer, the Buyer does not have the right to pledge the Products or to otherwise encumber and/or to dispose of them without the Seller's prior written consent. Resale as part of the Buyer's normal business operations is permitted unless the Seller has notified the Buyer in writing that it wishes to exercise its rights arising from the reservation of ownership.
3. The Buyer is required to keep separate and identifiable the Products delivered under each purchase agreement and to treat such Products with reasonable care.
4. The Buyer hereby irrevocably authorizes the Seller to access areas in use by the Buyer in order to recover the delivered Products in the event that the Seller's rights of title are exercised and the Buyer shall provide all assistance requested by the Seller in this regard.

Article 8 - Liability and indemnification

1. Nothing in the purchase agreement shall limit or exclude the Seller's liability for fraud or any liability to the extent that it cannot be limited or excluded under applicable law.
2. The Seller's aggregate liability in respect of all claims arising out of or in connection with the purchase agreement, whether in contract or tort (including negligence) or otherwise, shall not exceed an amount equal to the price paid or payable by the Buyer under the purchase agreement.
3. The Seller's aggregate liability in respect of all claims arising out of or in connection with each delivery of Products agreed under a purchase agreement, whether in contract or tort (including negligence) or otherwise, shall not exceed an amount equal to the price paid or payable by the Buyer for that delivery of Products under the purchase agreement.
4. The Seller's aggregate liability in respect of all claims arising out of or in connection with each provision of a service agreed under a purchase agreement, whether in contract or tort (including negligence) or otherwise, shall not exceed an amount equal to the price paid or payable by the Buyer for that service under the purchase agreement.
5. The Seller shall not be liable, whether in contract or tort (including negligence) or otherwise for any: loss of profit or anticipated profit; loss of revenue or income; diminution of goodwill; or any indirect or consequential loss of whatever nature.

6. The Buyer shall indemnify the Seller and its affiliates, employees and agents against all liabilities, costs and expenses incurred in relation to any claims from third parties arising out of or in connection with any onward supply or processing of the Products by the Buyer. The Buyer is required to purchase and maintain adequate insurance in respect of third-party claims arising out of or in connection with any such onward supply or processing.
7. The Buyer shall not be entitled to bring a claim against the Seller arising out of or in connection with the purchase agreement, whether in contract or tort (including negligence) or otherwise, more than 12 (twelve) months after the date on which the relevant circumstances giving rise to a claim arose or, if later, on which the Buyer ought reasonably to have become aware of the circumstances giving rise to a claim.

Article 9 - Advice, reports, opinions, etc.

If the Seller provides the Buyer with any advice and/or with technical support the Buyer shall not rely on, and the Seller does not warrant, the accuracy and completeness of such advice and support, and all liability of the Seller arising out of or in connection with such advice and support is excluded to the fullest extent permitted by law.

Article 10 - Content and Warranties

1. Subject to the caveats in this Article 10, the Seller warrants that at the time of production until the 'use by' date shown, provided that they are stored in appropriate conditions, the composition of the Products it delivers was as shown on the packaging or, as the case may be, the specifications agreed in the purchase agreement. If no 'use by' date is shown, the 'use by' date shall be 3 (three) months from the delivery date. This is the only warranty given. The Buyer is aware and the parties agree that the composition of the Products may change as a result of the passage of time, temperature, humidity and other environmental factors.
2. Except as set out in the purchase agreement, all warranties, conditions and other terms implied by applicable law are, to the fullest extent permitted by law, excluded from the purchase agreement.
3. The specifications agreed are average values, unless otherwise notified to the Buyer, and any analytical tolerations in force at the time of delivery will apply to the average values. Test data are only acquired under specific circumstances, so that the results can differ per product and per circumstance. The images, drawings and test results and/or samples, sizes, weight, chemical stability and other technical specifications apply as an indication and give a general impression of the product.
4. The Seller warrants to the Buyer that any services agreed under a purchase agreement shall be provided with reasonable care and skill.

Article 11 - Force majeure

1. The Seller shall not be liable for any default or delay in the performance of its obligations under the purchase agreement to the extent such performance is prevented, hindered or delayed as a consequence of any force majeure; where 'force majeure' means a fact or circumstance beyond the Seller's direct control, including (without limitation) any flood, fire, explosion, lightning, terrorism, transport restrictions, contamination, risk of contamination, disruption of business operations, defects in or damage to means of production, strikes or similar actions, defaults by third parties, government measures and lack of raw materials or stagnation in supplies of raw materials or semi-manufactures.

2. In the event that a force majeure continues for a period of more than four consecutive weeks, either party may terminate the purchase agreement by providing written notice to the other party, such notice to take effect immediately on receipt.
3. If the Seller has partially complied with its obligation when the purchase agreement is terminated under this Article, the Buyer shall pay a proportional share of the agreed price on the basis of the work already performed.

Article 12 - Technical and statutory requirements

The Seller shall ensure that delivered Products comply with the specific technical and statutory requirements or standards set by the laws and regulations of the country in which they are produced. The Buyer shall not import the Products into any country, without ensuring that they comply with the local technical and statutory requirements in effect in the country of import. The Buyer shall indemnify the Seller against all liabilities, costs and expenses incurred because of the Buyer's breach of this Article.

Article 13 - Confidentiality

Neither party shall disclose the other's confidential information to any third party without the prior written consent of that other party and shall not use such confidential information other than for the purposes of the purchase agreement.

Article 14 - Governing law/jurisdiction

1. If the Seller is incorporated in a state, province or other administrative area of a country which has a system of laws capable of governing commercial contracts then the purchase agreement shall be governed by and construed in accordance with the laws of such administrative area. Otherwise, the purchase agreement shall be governed by and construed in accordance with the laws of the country in which the Seller is incorporated. The application of the United Nations Convention on Contracts for the International Sale of Goods, signed in Vienna on 11 April 1980 (Treaty Series 1981, 184 and 1986, 61), is excluded.
2. In relation to any matter arising under or in connection with the purchase agreement, the parties irrevocably agree to submit to the exclusive jurisdiction of the courts of the state, province or other administrative area in which the Seller is incorporated (if applicable) or otherwise to the exclusive jurisdiction of the courts of the country in which the Seller is incorporated.

Article 15 - Final provisions

1. If any provision of the purchase agreement is held by a court of competent jurisdiction to be invalid, illegal or unenforceable for any reason such provision shall be severed from the other provisions of the purchase agreement and the remainder shall continue in full force and effect.
2. The English language version of these General Terms and Conditions of Sale takes precedence over any translation.