

GENERAL TERMS AND CONDITIONS OF SALE, DELIVERY AND PAYMENT OF CFG Poultry B.V., established and with registered offices at Wattstraat 5-7, 3861 NM Nijkerk Holland

hereinafter referred to as: “the User”

Deposited with the Chamber of Trade and Industry Gooi- en Eemland, number 32116082.

Article 1 - definitions

In present General Terms and Conditions, the definitions below will be used with the following meaning, unless expressly otherwise specified:

User: the user of the General Terms and Conditions;
Purchaser: the counterparty to the User, operating in the exercise of his profession or business;
Agreement: agreement between the User and Purchaser.

Article 2 –Applicability of present Terms and Conditions.

1. Present Terms and Conditions shall apply for every offer and every agreement between CFG Poultry B.V. hereinafter referred to as ‘CFG’, and a counterparty upon whom CFG has declared present Terms and Conditions to be applicable, in as much as present Terms and Conditions have not been expressly deviated from by the parties.

Once present Terms and Conditions have been applicable to an agreement with a specific contract-issuing party on one occasion, said Terms and Conditions shall at all times be applicable to the subsequent agreements with any offers for that contract-issuing party, unless eventually otherwise agreed in a special case.

2. If any stipulation in present Terms and Conditions should be null and void, the agreement of which present Terms and Conditions form part shall for the remainder, as much as possible, remain in place, and the stipulation in question shall be replaced by a stipulation which as far as possible approaches the intention of the original stipulation.

Article 3 – Offers and quotations

1. All offers shall be non-binding, unless a period for acceptance is specified in the offer.

2. Quotations issued by the User shall be non-binding; they shall be valid for a period of thirty days, unless otherwise indicated. The User is only bound by the quotations if the acceptance hereof is confirmed by the Purchaser, in writing, within thirty days.

3. Delivery times in quotations from the User shall be indicative and, in the event of violation thereof, shall grant the Purchaser no entitlement to dissolution or compensation, unless expressly otherwise agreed.

4. The prices in the specified offers and quotations shall be excluding VAT and other government charges and delivery and any transport and packaging costs, unless expressly otherwise agreed.

5. If the acceptance deviates (on subordinate points) from the offer contained in the quotation, the User shall not be bound thereby. The agreement shall then not be established in accordance with said deviated acceptance, unless otherwise indicated by the User.

6. A compiled price indication shall not oblige the User to deliver part of the goods included in the offer or quotation at an equivalent part of the specified price.

7. Offers or quotations shall not automatically apply to follow-up orders.

8. In the event of unforeseen circumstances of such a nature that the Purchaser, according to the standards of reasonableness and fairness may not expect unaltered upholding of the agreement, the User shall be entitled to alter the prices and activities and/or to fully or partially dissolve the agreement with the contract-issuing party, without judicial intervention, and without being required to pay compensation.”

Article 4 - Delivery

1. Delivery shall take place ex factory of the User, unless otherwise agreed in writing between the parties.
2. If delivery takes place on the basis of "Incoterms", the "Incoterms" valid at the moment of entering into the agreement shall apply.
3. The Purchaser is required to accept the goods at the moment that the User delivers said goods to him, or has them delivered, or at the moment at which the goods are made available to him, according to the agreement.
4. If the Purchaser refuses acceptance or fails to issue information or instructions necessary for the delivery, the User shall be entitled to store the goods for the account and risk of the Purchaser.
5. If the goods are delivered, the User shall be entitled to charge any delivery costs. These shall then be separately invoiced.
6. If the User requires information from the Purchaser in the framework of implementation of the agreement, the delivery time shall commence once the Purchaser has made this information available to the User.
7. If the User has specified a time for delivery, this shall be by way of indication. A specified delivery time shall therefore never be a deadline. In the event of exceeding of a delivery date, the Purchaser must place the User in default, in writing.
8. The User shall be entitled to deliver the goods in parts, unless deviated herefrom in the agreement, or if no independent value can be attributed to part delivery. The User shall be entitled to separately invoice goods delivered in parts.
9. If it is agreed that the agreement shall be implemented in phases, the User may suspend implementation of those components which form part of a subsequent phase, until the Purchaser has approved in writing the results of the previous phase.

Article 5 – Suspension and dissolution

1. The User shall be authorised to suspend compliance with the obligations or to dissolve the agreement, if:
 - the Purchaser fails or fails fully to comply with the obligations arising from the agreement;
 - after entering into the agreement, circumstances are brought to the attention of the User which give the User sound reason to fear that the Purchaser will not comply with the obligations. In the event that sound reasons exist to fear that the Purchaser will only partially or will not fully comply, suspension shall only be permitted in as much as justified by the shortcoming.
 - the User comes into a position whereby completion of the order by him cannot reasonably be demanded.
 - the Purchaser disposes of his company, or loses direct authority thereover.
 - the Purchaser requests a moratorium on payment or if moratorium on payment is passed, if the bankruptcy of the Purchaser is requested, or if the Purchaser is declared bankrupt.
 - upon entering into the agreement, the Purchaser is requested to stand surety for compliance with his obligations from the agreement, and this surety is not forthcoming or is insufficient. As soon as surety is stood, the authority to suspend shall expire, unless compliance is unreasonably delayed as a result.

2. The User shall further be authorised to dissolve the agreement or have it dissolved, without judicial intervention if:
 - the Purchaser is in default of payment or in some other way attributably falls short in complying with his obligations, including obligations from previous agreements.
 - circumstances arise of such a nature that compliance with the agreement cannot possibly be further demanded, or can no longer be demanded according to the standards of reasonableness and fairness, or if other circumstances arise which are of such a nature that unaltered upholding of the agreement may not reasonably be expected.
3. The User shall be authorised to dissolve the agreement with immediate effect, and to demand return of the goods which are the property of the User, and which are in the possession of the Purchaser.
4. If the agreement is dissolved, the claims from the User upon the Purchaser shall be immediately demandable. The Purchaser is required to repay the costs to the User, relating to termination of the agreement. If the User suspends compliance with the obligations, he retains his entitlements according to law and the agreement.
5. The User shall not be liable for damage to the other party, possibly arising from the working method of or on behalf of the User, as a consequence of shortcomings on the part of the Purchaser.

Article 6 Reservation of ownership.

1. The goods delivered by CFG shall remain the property of CFG until the counterparty has complied with all the following obligations arising from all purchase agreements entered into with CFG:
 - the consideration(s) relating to the good/goods themselves to be delivered or already delivered;
 - any claims for non-compliance by the counterparty of (any) purchase agreement(s).
2. The goods delivered by CFG which according to paragraph 1 are subject to the reservation of ownership may only be sold on in the framework of normal exercise of business. The counterparty is also not authorised to pledge the goods or to apply any other right to those goods.
3. Should the counterparty fail to meet his obligations, or if there are sound reasons to fear that he will not comply, CFG shall be authorised to collect or have collected the goods delivered subject to the reservation of ownership as intended in paragraph 1 from the counterparty or third parties keeping the goods for the counterparty. The counterparty shall be required to provide full cooperation thereby, on pain of a penalty of 10% of the amount payable by him, per day.
4. The Purchaser shall not be authorised to pledge the goods subject to the reservation of ownership, or to encumber those goods in any other way.
5. The counterparty undertakes to:
 - insure and to keep insured the goods delivered subject to reservation of ownership, against fire, explosion and water damage, and against theft and to issue for inspection the relevant insurance policy;
 - to pledge all claims from the counterparty against insurers in respect of the goods delivered subject to reservation of ownership, to CFG, in the manner specified in article 3:239 of the Dutch Civil Code;
 - to pledge to CFG all claims from the counterparty against the government in connection with export reimbursements relating to the goods delivered subject to reservation of ownership, in the manner specified in article 3:239 of the Dutch Civil Code;
 - to pledge to CFG the claims of the counterparty against his customers upon the selling on of goods delivered subject to reservation of ownership by CFG, in the manner specified in article 3:239 of the Dutch Civil Code;
 - to mark the goods delivered subject to reservation of ownership as the property of CFG;
 - in all other ways, to cooperate with all reasonable measures which CFG wishes to take in protection of its ownership right in respect of the good, and which will not unreasonably hinder the counterparty in the normal exercising of its business.

Article 7 Shortcomings: complaint periods

1. Upon delivery, the counterparty must inspect the purchased goods (or have them inspected). The counterparty must thereby determine whether the delivery complies with the agreement, namely:
 - whether the correct goods have been delivered
 - whether the delivered goods comply with the agreement in terms of quality (for example the number and quantity);
 - whether the delivered goods comply with the agreed quality requirements or, if such requirements are absent, normal trading quality.
2. The counterparty is required to notify CFG within 24 hours following delivery of visible faults or shortcomings, and to confirm these reports in writing, on that same day.
3. In the case of non externally-visible shortcomings, the counterparty shall be required to report such shortcomings to CFG within 24 hours following the moment at which the counterparty could have discovered the shortcomings in question following a thorough inspection, which must then be confirmed in writing that same day.
4. Even if the counterparty complains in time, his obligation to pay and accept the order issued shall continue to exist. Goods may only be returned to CFG following prior written permission. Without prior written permission, the counterparty shall have no right of return.
5. If the counterparty complains in time, and on justified grounds, the obligation upon CFG in that matter shall not go further than if not the correct goods were delivered or not the agreed quantity, within a reasonable period, to still deliver the correct or missing goods, and at his discretion either to deliver replacement goods at the agreed price within a reasonable period, or to reimburse any amount already paid by the counterparty.
6. Any right to complaint shall expire if the delivered goods have been sold on by the counterparty, or if the goods have already undergone processing.

Article 8 Packaging.

CFG shall charge for packaging, unless otherwise specified in the order confirmation; this amount shall be reimbursed to the counterparty if that same packaging is returned empty, clean (in accordance with the veterinary requirements and/or the requirements of the product board for poultry and eggs) and undamaged. The packaging shall remain the property of CFG.

Article 9 Prices.

If following the date of establishment of the agreement but prior to the delivery of goods, one or more of these costs price determining factors is subject to change, even if such occurs as a consequence of foreseeable circumstances, CFG shall be entitled to alter the price agreed upon acceptance of the order, and to charge to the counterparty an equivalent increase in the purchase price, without the counterparty being authorised to dissolve the agreement.

Article 10 Retention right and pledging right.

1. For so long as the Purchaser has not fully complied with all his obligations in respect of the user, the Purchaser shall be entitled to maintain possession of all goods, documents and monies which the User has or shall have in his possession, for the Purchaser, until the Purchaser, to the satisfaction of the User has fulfilled all his obligations in respect of the commissioner.
2. As well as a retention right, as the situation arises, the commissionee shall also be entitled to a pledging right in respect of the goods, documents and monies in question, which the commissionee has or will retain in his possession, for the contract-issuing party.

Article 11 Payment and collection

1. All amounts payable by the Purchaser to the User must have been received by the User within 30 days following invoice date unless another period is agreed in writing, in a manner to be specified by the User or in cash or through deposit on an account (whether or not specified), in default of which all payment obligations of the Purchaser, irrespective of whether the User has already issued an invoice in that connection, shall become immediately demandable in default of which the Purchaser shall, without further reminder, be in a situation of attributable shortcoming, and the Purchaser shall owe contractual interest equivalent to 2% above the statutory interest rate, from the due date, and the Purchaser shall be also liable for all extrajudicial and the judicial collection costs, with a minimum of 15% of the amount owed by the Purchaser to the User, or at least of 250 euro.
2. Payments by the Purchaser shall first be deducted from the extrajudicial (collection) costs payable by the Purchaser, the judicial costs, interest (in that order) and subsequently from the principal amount, whereby older claims shall precede new claims irrespective of any other attribution of the payment by the contract-issuing party in the event of (partial) payment to the contractee.
3. In the event of winding up, bankruptcy or moratorium on payment of the counterparty, the obligations of the Purchaser shall be immediately demandable.
4. The Purchaser is only able to issue an objection to the invoice in writing, and with supporting arguments, within the payment period. In the absence of a written, argued or insufficiently argued dispute of the invoice, the invoice shall be binding upon the Purchaser. The payment obligation shall not be suspended by any such dispute.
5. All payments shall take place without any set-off or discount. The Purchaser shall under no circumstances be authorised to settle an obligation, whether or not demandable, against an obligation of the User.
6. On each occasion whereby the Purchaser remains in default of making a payment, or otherwise demonstrates an attributable shortcoming, the User reserves the right to dissolve the agreement with immediate effect, and thereby to take back the goods of the User, in the possession of the Purchaser.
7. In as much as VAT levying is required, the VAT shall be included with the prices, or the VAT shall be separately specified. If the VAT rate is raised in the period between establishment of the agreement and the implementation thereof, the increase shall be for the account of the Purchaser.
8. If the User accepts foreign means of payment, the market rate valid at the moment of payment shall apply. For administration costs, the User may charge an amount which equates to not more than 10% of the amount offered in foreign currency. The User may achieve this by adjusting the valid market rate by not more than 10%.
9. All costs which in its judgement, CFG will be required to accrue in order to maintain or the exercise its rights in respect of the contract-issuing party, both judicial and extrajudicial, shall be charged to the contract-issuing party.

Article 12 Guarantee

1. The User guarantees that the goods to be delivered comply with the normal requirements and standards which may be imposed upon those goods, and that the goods are free from any faults whatsoever.
2. The guarantee specified sub paragraph 1 shall also apply if the goods to be delivered are intended for use abroad, and the Purchaser has expressly notified this fact to the User, in writing, at the moment of entering into the agreement.

3. The guarantee specified sub paragraph 1 shall apply up to the maximum shelf life date specified on the goods. For goods without a maximum shelf life date, a guarantee period of six months following delivery shall apply.
4. If the goods to be delivered do not comply with these guarantees, within a reasonable period following receipt thereof, or if return is not reasonably possible, following written notice in respect of the fault by the Purchaser, at the discretion of the User, the User shall replace the goods, or ensure repair thereof. In the event of replacement, at this time, the Purchaser already undertakes to return the replaced good to the user, and to transfer ownership thereof to the User.
5. The guarantee specified herein shall not apply if the fault is caused as a consequence of inexpert or incorrect use or, if without written permission from the User, the Purchaser or third parties have made changes or attempted to make changes to the good, or have used the good for purposes for which it is not intended.
6. If the guarantee issued by the User relates to a good which was produced by a third party, the guarantee shall be restricted to the guarantee issued for the good, by the manufacturer of that good.

Article 13 Liability

1. If the goods delivered by the User are faulty, the liability of the User in respect of the Purchaser shall be restricted to the matters settled in present Terms and Conditions under the heading 'Guarantees'.
2. If the User is liable for direct damage, that liability shall under all circumstances be restricted to the invoice value of the delivered goods, or at least that proportion of the invoice value to which the liability relates, at least up to not more than 50,000 euro (in words: fifty thousand euro).
3. Direct damage shall exclusively be taken to mean:
 - the reasonable costs for identifying the cause and scale of the damage, in as much as the determination relates to damage as intended in present Terms and Conditions;
 - any reasonable costs accrued in ensuring that the faulty service from the User equates to the agreement, unless this fault cannot be attributed to the User;
 - reasonable costs accrued in preventing or limiting damage, in as much as the Purchaser demonstrates that these costs did result in a limitation of direct damage as intended in present General Terms and Conditions.
4. The User shall under no circumstances be liable for indirect damage, including consequential damage, loss of profits, loss of savings and damage due to business interruption.
5. The limitations on liability for direct damage specified in present Terms and Conditions shall not apply if the damage is attributable to deliberate action or conscious recklessness of the management of the User.

Article 14 Force majeure.

1. Force majeure shall be taken to mean circumstances which hinder compliance with the undertaking, and which cannot be attributed to CFG. (If and in as much as these circumstances make compliance impossible or unreasonably difficult), this shall include: strikes in other companies than that of CFG; wildcat strikes or political strikes in the company of CFG; a general shortage of the necessary raw materials and other goods or services required for the provision of the agreed service; unforeseeable stagnation amongst suppliers or other third parties upon whom CFG is dependent; general transport problems; unforeseen government measures; natural disasters; state of war; riots and nuclear disasters.
2. CFG shall also be entitled to appeal to force majeure if the circumstance which hinders (further) compliance occurs after CFG should have fulfilled the undertaking.

3. During force majeure, the delivery and other obligations upon CFG shall be suspended. If the period during which as a result of force majeure compliance with the obligation by CFG is not possible, lasts longer than 1 month, both parties shall be authorised to dissolve the agreement without judicial intervention, by registered letter, without in that case any obligation to pay compensation arising.

4. If upon the occurrence of force majeure, CFG has already in part fulfilled its obligations, or is only partially able to fulfil its obligations, CFG shall be authorised to invoice the already delivered and/or deliverable part, separately, and the counterparty shall be required to pay this invoice as if it referred to a separate contract. This shall however not apply if the already delivered or deliverable part represents no independent value.

Article 15 Set-off within a group of companies.

If the counterparty has a claim against CFG and the counterparty already has a debt payable to another company which belongs to the group of companies of which CFG forms part, CFG shall be authorised to make the payment to its associated company, as a consequence of which CFG shall be discharged of its payment obligation in respect of the counterparty, up to the same amount of this payment.

The company to whom this payment is made shall deduct the debt from the counterparty up to the same amount of payment, from the outstanding debt, and reimburse to the counterparty any amount received.

Article 16 Set-off Statement

CFG declares within the framework of the agreement(s) concluded by CFG with the purchaser that it is entitled to set off all claims that the purchaser has on CFG against the claims that CFG has on the purchaser. The right of set-off also applies to claims that CFG has by virtue of any other agreements between the parties.

Article 17 Packaging with Trade name.

The counterparty shall not be permitted to deliver or to make available to third parties packaging bearing the brand and/or trade name 'CFG Poultry' or other registered trade names or marks, whether or not free of charge, unless CFG has duly issued written permission. Violation of this article shall take place on pain of compensation in the amount of 15,000 euro per violation, unless full compensation is demanded.

Article 18 Applicable law and competent court

1. All agreements of which present Terms and Conditions form part shall be subject to Dutch law.
2. Any disputes which may arise as a result of agreements on which present Terms and Conditions have been fully or partially declared applicable, or any resultant agreements shall, in as much as they fall under the competence of the district court, in the first instance be judged by the district court, or the court authorised according to ordinary law, exclusively at the discretion of CFG.

Article 19 Changes to the Terms and Conditions.

CFG is authorised to make changes to present Terms and Conditions.

These changes shall become effective at the announced moment of introduction.

CFG shall send the altered Terms and Conditions to the counterparty, in good time. If no date of introduction is specified, changes shall become effective in respect of the counterparty as soon as changes have been notified to the counterparty.