



General conditions sale Food

AS FILED ON 24 DECEMBER 2010 AT THE COURT REGISTRY OF THE DISTRICT COURT IN ROTTERDAM
UNDER NUMBER 91/2010

ARTICLE 1

Definitions

In these general conditions of sale the following terms shall have the following meanings:

Buyer: the party to which Vion supplies goods and/or to which Vion renders services or which has agreed on this with Vion, and also the party that has given Vion an order of another nature;

Vion: the Vion entity that uses these general conditions and has declared them applicable and/or enterprises associated with it;

Agreement: all agreements between Vion and the Buyer concerning the purchase of goods and/or services by the Buyer from Vion, and also any other order that the Buyer gives to Vion, and also all (legal) acts that are related to this.

ARTICLE 2

Applicability

1. These general conditions of sale shall apply to all offers of Vion, to the Agreement and to all the other legal acts between Vion and the Buyer.
2. Deviation from and/or addition to these general conditions of sale may only be agreed in writing and explicitly.
3. General conditions, by any name whatsoever, of the Buyer shall explicitly not apply.
4. In the event that the contents of the Agreement deviate from the contents of these general conditions of sale, the contents of the Agreement shall prevail.
5. The legal relationship between Vion and the Buyer shall also be governed (apart from the provisions from the Agreement and these general conditions of sale) by the latest version of the Incoterms at the time when the Agreement was concluded. Where the provisions of the Agreement and/or these general conditions of sale deviate in contents unequivocally from the provisions of the latest version of the Incoterms at the time of the conclusion of the Agreement, the provisions of the Agreement and/or these general conditions of sale shall prevail.

ARTICLE 3

Offer; conclusion of the Agreement

1. Any offers and quotations of Vion shall always be without engagement and may always be revoked or altered by it.
2. The Agreement shall only be concluded when Vion has acknowledged an order or instruction from the Buyer in writing and explicitly or has started its performance.

ARTICLE 4

Prices

1. Unless expressly agreed otherwise in writing, the prices shall be exclusive of VAT and other government levies.
2. Unless expressly agreed otherwise in writing, the Buyer shall charge prices as included in the price list/offer most recently issued at the time of the conclusion of the Agreement.

3. Vion shall be entitled to adjust the prices or parts thereof for goods or services not yet delivered and/or paid to possible changes in price-determining factors such as raw material prices, wages, currency exchange rates, if after the conclusion of the Agreement three months have passed. Any rise in VAT or other government levy may always be passed on.
4. Unless expressly agreed otherwise in writing, the prices shall be "ex works" as referred to in the Incoterms 2010 or at any rate the latest version of the Incoterms at the time of the conclusion of the Agreement.
5. Unless expressly agreed otherwise in writing, the prices of Vion shall be indicated in euros. The foreign exchange risk shall be for account of the Buyer.
6. If the price has been determined in another currency than euros, the amount in euros corresponding with this price at the time of payment shall not be lower than the price would have been in euros at the time of the conclusion of the Agreement.

ARTICLE 5

Payment; security

1. Unless expressly agreed otherwise in writing or otherwise determined by the court, all Vion's invoices must have been paid at the latest within seven (7) days after the invoice date, without any discount or set-off, which period shall be a final deadline. In the event of late payment the Buyer shall be in default by operation of law, from which time all Vion's outstanding claims on the Buyer shall be immediately payable.
2. Vion shall always be entitled to desire whole or partial payment in advance for every delivery or partial delivery.
3. If with regard to certain goods delivered or to be delivered or services performed or to be performed payment of the principal amount or part thereof in instalments is permitted by Vion, the turnover tax on the total amount of the payment shall be payable simultaneously with the first instalment, unless otherwise agreed in writing.
4. Vion shall be entitled to charge statutory commercial interest (as referred to in Section 6:119a of the Dutch Civil Code), in the event that the Buyer has not paid (fully) within seven (7) days after the invoice date.
5. The Buyer shall be obliged to pay all (extra)judicial expenses that Vion has had to make in connection with the fact that the Buyer has failed to fulfil its obligations in time and properly. The extrajudicial expenses concern an amount that is equal to 10% on the principal amount to be claimed or on the value of the performance otherwise to be claimed from the Buyer.
6. On Vion's demand the Buyer shall provide, whether or not supplementary, security for the Buyer's payment of the considerations due to Vion, for instance in the form of a bank guarantee. If Vion has good grounds for fearing that the Buyer will not be able to fulfil its financial obligations and the Buyer refuses to provide (supplementary) security, Vion shall be entitled to suspend the performance of the order, this subject to its statutory rights of suspension.

7. Vion shall be entitled to add up all payable claims within the Vion Food Group on the Buyer and set them off against claim(s) payable by the Buyer to an enterprise that is part of the Vion Food Group, if and as soon as the Buyer is in default.
8. With regard to goods delivered or services rendered the Buyer shall not be entitled to suspend its obligations(s) of payment.
9. The Buyer shall not be entitled to set off its debt to Vion with a counterclaim on Vion.
10. In the event of payment by means of bills of exchange and cheques, the charges for the bills of exchange and cheques shall be for account of the Buyer. The same shall apply to cash on delivery charges.
11. In consultation with the Buyer Vion can decide to make invoices (only) available electronically. If Vion thus decides to make invoices (only) available electronically, the Buyer shall cooperate in making its realization possible, and any expenses on the part of the Buyer in connection with this form of invoicing shall be at the Buyer's own expense and risk.

ARTICLE 6

Delivery: risk transfer

1. Vion shall be entitled to make partial deliveries and in conjunction with this to send partial invoices.
2. Vion shall be entitled to deliver 10% more or less than the agreed quantity.
3. The agreed or stated delivery periods can never be regarded as final deadlines, unless expressly agreed otherwise. A mere transgression of the delivery period therefore shall not constitute default on the part of Vion and consequently cannot result in any liability for compensation on the part of Vion. The Agreement cannot be dissolved on account of transgression of the delivery period, unless Vion does not deliver within a reasonable period after the end of the delivery period notified in writing by the Buyer. A reasonable period as referred to in the previous sentence amounts to at least two weeks.
4. Unless expressly agreed otherwise in writing, Vion shall deliver the goods "ex works" as referred to in the Incoterms 2010 or at any rate the latest version of the Incoterms at the time of the conclusion of the Agreement.
5. Subject to other written arrangements, the time of delivery shall in all cases be the time that the goods are made available for transport for the benefit of the Buyer. The goods shall in all cases be dispatched and transported at the expense and risk of the Buyer only.
6. Regardless of the agreed Incoterms the risk of damage to or loss of the goods to be transported or transported or other things than the goods to be transported or transported shall lie with the Buyer during loading and/or unloading. Transport insurance shall only be provided at the explicit request of the Buyer; all the costs involved in this shall be charged to the Buyer.
7. The Buyer shall be subject to a purchase commitment.
8. Risk transfer shall be effected at the time that Vion offers the goods for delivery in accordance with the Agreement, also if the Buyer does not take delivery of them for any reason whatsoever.
9. If for any reason whatsoever the Buyer does not take delivery (in time) of the goods that are offered in accordance with the Agreement, all the costs incurred in vain by Vion in connection with the offering and any further costs of transport, safekeeping and storage shall be for account of the Buyer. In that case Vion shall also be entitled to sell the goods to third parties after three days have passed after the offering to the Buyer. In the last-mentioned case the proceeds of the goods shall replace those goods at no more than the agreed price, on the understanding that Vion shall be entitled to deduct all the

- expenses and damage incurred by it from these proceeds respectively to settle with these proceeds, without prejudice to Vion's right to hold the Buyer otherwise responsible for all the costs and damage and everything without prejudice to all other rights to which Vion is entitled in respect of the Buyer in that case.
10. If in the event of an agreed delivery of fungibles these are not taken delivery of by the Buyer after the end of a delivery period, Vion shall be entitled to designate the goods intended for delivery, in which case Vion, after notification to the Buyer, shall only be obliged to deliver these goods, without prejudice to Vion's power to deliver other goods that comply with the Agreement.
 11. Return consignments shall only be accepted after prior written permission by Vion and are regardless of the agreed Incoterms at the expense and risk of the Buyer. The acceptance of any return consignments does not constitute approval by Vion.

ARTICLE 7

Quality

1. The goods delivered by Vion shall be considered sound, if they meet the Dutch statutory veterinary quality requirements that are applicable on-site of Vion's business location at the time of the conclusion of the Agreement, and also otherwise meet the explicitly agreed specifications between Vion and the Buyer.
2. The goods delivered by Vion are expected not to be packed or labelled for the end user in accordance with the applicable labelling laws or regulations in the broadest sense of the word.
3. Loss of weight due to cooling or freezing shall not be regarded as a shortcoming. If the Buyer himself collects the goods to be delivered at Vion, Vion shall give the Buyer, if required, the opportunity to weigh the goods at Vion or to have them weighed in its presence. Complaints about loss of weight shall only be handled by Vion in so far as a weighing has been effected under the supervision of Vion.

ARTICLE 8

Retention of title

1. All the goods delivered by Vion shall remain its property until the Buyer has fully paid all the amounts due to Vion on account of the Agreement, and also on account of any breach of the Agreement, including any interest and costs.
2. In deviation from the matters provided above in Article 8(1), the Buyer shall be entitled to alienate and deliver the goods delivered under retention of title in the ordinary pursuit of his business.
3. Where applicable, the Buyer shall inform third parties about Vion's retention of title.
4. The Buyer shall be obliged to keep the goods delivered under retention of title with due care and as recognizable property of Vion.
5. The Buyer shall be obliged to insure the goods sufficiently against fire, explosion and water damage and also against theft for the duration of the retention of title and to make the policies of this insurance available for inspection to Vion on demand.
6. In the event of any overdue payment by the Buyer, Vion shall be entitled to take back the goods belonging to it on its own authority at the expense of the Buyer, regardless of where they are located. The Buyer shall be obliged to provide all cooperation for this purpose.
7. If the Buyer fails to meet his obligations in respect of Vion or Vion has good cause to fear that the Buyer will fail to meet his obligations, Vion shall be entitled to take back the goods delivered under retention of title. The Buyer shall be obliged to provide all cooperation for this purpose. After the goods are taken back, the Buyer shall be credited for the

market value, which shall at any rate not be higher than the original purchase price, reduced by the expenses incurred in the taking back of the goods and without prejudice to all the other rights to which the supplier is entitled in that case, including the right of set-off with any damage suffered by the supplier. Possible costs that the Buyer has incurred in connection with the goods that were delivered by Vion under retention of title and which are taken back by Vion shall be at the expense and risk of the Buyer and (therefore) cannot be passed to Vion.

ARTICLE 9

Retention of title in Germany (Eigentumsvorbehalten in Deutschland)

1. In deviation from the provisions in the previous article the following applies in connection with the goods delivered by Vion to Buyers established in Germany:
Abweichend von den Vorgaben im vorstehenden Artikel gilt im Zusammenhang mit den von der Vion an Abnehmer mit Sitz in Deutschland gelieferten Waren Folgendes:
Das Eigentum an den gelieferten Waren bleibt zur Sicherung aller Ansprüche vorbehalten, die dem Lieferanten aus der gegenwärtigen und künftigen Geschäftsverbindung bis zum Ausgleich aller Salden gegen den Abnehmer zustehen.
Das Eigentumsrecht des Lieferanten erstreckt sich auch auf die durch Verarbeitung der Vorbehaltsware entstehende Neuware. Der Abnehmer stellt die neue Ware unter Ausschluss des eigenen Eigentumserwerbs für den Lieferanten her und verwahrt sie für ihn. Hieraus erwachsen ihm keine Ansprüche gegen den Lieferanten. Bei einer Verarbeitung der Vorbehaltsware des Lieferanten mit Waren anderer Lieferanten, deren Eigentumsrechte sich ebenfalls an der neuen Ware fortsetzen, erwirbt der Lieferant zusammen mit diesen anderen Lieferanten – unter Ausschluss eines Miteigentumserwerbs des Abnehmers – das Miteigentum an der neuen Ware zu deren vollem Wert (einschließlich der Wertschöpfung) wie folgt:
 - a. Der Miteigentumsanteil des Lieferanten entspricht dem Verhältnis des Rechnungswertes der Vorbehaltsware des Lieferanten zum Gesamtrechnungswert aller mitverarbeiteten Vorbehaltswaren.
 - b. Verbleibt ein von Miteigentumsvorbehalten zunächst nicht erfasster Restanteil, weil andere Lieferanten den Eigentumsvorbehalt nicht auf die Wertschöpfung durch den Abnehmer erstreckt haben, so erhöht sich der Miteigentumsanteil des Lieferanten um diesen Restanteil. Haben jedoch andere Lieferanten ihren Eigentumsvorbehalt ebenfalls auf diesen Restanteil ausgedehnt, so steht dem Lieferanten nur der Anteil zu, der sich aus dem Verhältnis des Rechnungswertes der Vorbehaltsware des Lieferanten zu den Rechnungswerten der mitverarbeiteten Waren dieser anderen Lieferanten ergibt.
Der Abnehmer tritt bereits jetzt seine Forderungen aus der Veräußerung von Vorbehaltsware aus den gegenwärtigen und künftigen Warenlieferungen des Lieferanten zusammen mit sämtlichen Nebenrechten im Umfang des Eigentumsanteils des Lieferanten zur Sicherung an den Lieferanten ab. Bei Verarbeitung im Rahmen eines Werkvertrags wird die Werklohnforderung in Höhe des anteiligen Betrags der Rechnung des Lieferanten für die mitverarbeitete Vorbehaltsware schon jetzt an den Lieferanten abgetreten.
 - c. Solange der Abnehmer seinen Verpflichtungen im Zusammenhang mit der Geschäftsverbindung mit dem Lieferanten ordnungsgemäß nachkommt, darf er über die in Eigentum des Lieferanten befindliche Ware im ordentlichen Geschäftsgang verfügen und die an ihn abgetretenen Forderungen des Lieferanten selbst einziehen. Bei Zahlungsverzug oder begründetem Zweifel an der

Zahlungsfähigkeit oder Kreditwürdigkeit des Abnehmers ist der Lieferant berechtigt, die abgetretenen Forderungen einzuziehen und die Vorbehaltsware zurückzunehmen; jedoch liegt ein Rücktritt vom Vertrag nur dann vor, wenn der Lieferant dies ausdrücklich schriftlich erklärt.
Übersteigt der Wert der eingeräumten Sicherheiten die Forderungen des Lieferanten um mehr als 10 Prozent, so gibt der Lieferant auf Verlangen des Abnehmers insoweit Sicherheiten nach seiner Wahl frei.
Scheck-/Wechsel-Zahlungen gelten erst nach Einlösung der Wechsel durch den Abnehmer als getätigt.

ARTICLE 10

Complaints

1. The Buyer must inspect the goods delivered for completeness and soundness as soon as possible after delivery.
2. Any complaints of the Buyer about an incorrect or incomplete execution of an order must be submitted in writing to Vion at the latest on the day following the day on which the goods (should) have been delivered or the services (should) have been performed, everything at the risk of forfeiting any rights relating to a shortcoming. In the event of hidden defects or frozen meat any complaints in this respect must be reported in writing at the latest on the day following the day on which the defect has been discovered or could have been discovered, but at the latest within two (2) weeks after delivery, which period shall be regarded as expiry period.
3. A notification by telephone shall never be regarded as a complaint. A (written) notification to agents, intermediaries, brokers or traders of Vion shall not be regarded as a complaint either.
4. The complaint must give a clear and accurate description of the shortcoming stated by the Buyer. The submission of a complaint does not release the Buyer from his payment obligation.
5. A complaint in relation to the quantity delivered, weight, packing or labelling must be mentioned on the delivery note, release note or delivery form of the relevant storage company, failing which the complaint shall be invalid and not be handled.
6. The Buyer shall be obliged to store frozen meat at minus 22 degrees Celsius or colder, at the risk of forfeiting any right relating to a shortcoming in the absence of proof thereof.
7. Complaints in respect of the amount of the invoices sent by Vion must be notified in writing within seven (7) days after the invoice date, which period shall be regarded as expiry period.
8. Vion shall be entitled to carry out an investigation into the nature and cause of an alleged shortcoming, in which case the Buyer shall be obliged to provide all cooperation, failing which the Buyer shall not be able to enforce any claims in respect of the alleged shortcoming against Vion.
9. If a complaint is regarded well-founded by Vion, Vion, at its discretion, may either repair or replace the goods delivered (or the services performed), or credit the purchase price paid by the Buyer in connection with the goods delivered (or the services performed) and take back the goods delivered in the process.

ARTICLE 11

Packaging and packing material

1. (Durable) packaging or packing material that qualifies for recycling, such as crates and the like, shall at all times remain Vion's property or shall at any rate never -become the property of the Buyer and must immediately be returned to Vion by the Buyer, or at any rate within thirty (30) days after having been made available. The Buyer shall monthly provide a balance statement to Vion. If the

Buyer fails to do so, Vion shall be entitled to charge all the expenses connected to the replacement of the relevant material to the Buyer.

2. The Buyer shall be obliged to return to Vion (durable) packaging or packing material qualifying for recycling in a clean condition in accordance with the applicable hygienic regulations and prescriptions.

ARTICLE 12

Liability for damage; indemnity

1. Vion shall not be liable for any damage on the part of the Buyer, unless the damage is the result of intent or wilful recklessness on the part of Vion's managerial staff only. This restriction of liability shall also apply to representatives, agents or enterprises associated with or engaged by Vion.
2. If Vion should be liable pursuant to this Article 12(1), the Buyer must report the damage suffered by him in writing to Vion as soon as possible within two (2) weeks after the damage has arisen or has become known. Any damage that is not reported within this period shall not qualify for compensation. All legal claims of the Buyer in respect of Vion shall at any rate expire after twelve (12) months, to be calculated with effect from the day on which the relevant obligation from the order became payable or the loss-causing event occurred.
3. The Buyer shall indemnify Vion against all claims for whatever reason from third parties in connection with goods delivered by Vion to the Buyer or in connection with services rendered by Vion to the Buyer, except in so far as the Buyer demonstrates that a claim of a third party is not related in any way whatsoever with any circumstance that lies within the control of the Buyer.

ARTICLE 13

Intellectual property

1. All rights of intellectual property in respect of goods and services delivered shall rest with Vion. Without Vion's prior written permission the Buyer shall not be permitted to multiply, publish or copy the goods in full or in part.
2. The Buyer may only trade the goods originating from Vion under the (pictorial) trademark, trade name and the specifications on which the goods have been delivered to him. The Buyer shall not be entitled to alter the nature of the goods purchased by him from Vion, also including labelling, printing and instructions.
3. The Agreement does not contain any transfer or licensing of any intellectual property rights within the framework of the goods delivered to the Buyer or the services rendered to the Buyer and the related documents.

ARTICLE 14

General Food Law Regulation and Regulation on Claims

1. With respect to goods delivered by Vion the Buyer shall be obliged to comply strictly with all the obligations for the Buyer ensuing from (EC) Regulation number 178/2002 of the European Parliament and the Council of 28 January 2002 (General Food Law) and regulations based thereon and also to all obligations ensuing for the Buyer from (EC) Regulation number 1924/2006 of the European Parliament and the Council of 20 December 2006 (Nutrition and Health Claims Regulation). The Buyer shall indemnify Vion against all claims of third parties, including government agencies, if and in so far as the Buyer does not strictly observe the above-mentioned regulations.

ARTICLE 15

Confidentiality

1. The Buyer shall be obliged to observe absolute confidentiality of all the information originating from Vion (including ideas, know-how, trade secrets, data, procedures, substances, samples and the like) which become known to the Buyer within the framework of (the performance of the) Agreement and which is designated as confidential by Vion or of which the Buyer can reasonably assume the confidential nature ("Confidential Information"). The Buyer shall restrict the access to Confidential Information to the persons who need this for the (performance of) the Agreement. Subject to Vion's prior written permission the Buyer shall not make known or make public any confidential Information of any part thereof to any person, firm, company or other entity and the Buyer shall not use the Confidential Information or any part thereof otherwise than for the (performance of) the Agreement.
2. The obligation of confidentiality referred to in Article 15.1 shall not apply to information of which the Buyer can demonstrate with the aid of written proof that this:
 - was entirely in his possession prior to the publication by Vion, without the Buyer being bound by any obligation of confidentiality in respect of Vion or a third party; or
 - at the time of publication by Vion was already generally known or available or has become known or available after that otherwise than due to actions or omissions of the Buyer; or
 - was acquired by the Buyer from a third party, who was not bound by an obligation of confidentiality in relation to that information; or
 - was developed by the Buyer independently without using the information made public by Vion; or
 - must be made public by the Buyer pursuant to the law, any prescription or regulation from a body recognized by the authorities, or a binding judgment not open to appeal from a court or another public authority. In that case the Buyer shall inform Vion in good time in writing, so that the extent of the publication by the Buyer, in consultation with Vion, can be restricted to the strictly necessary.
3. The Buyer shall be obliged to impose the same obligation as referred to in Article 15.1 to his employees or third parties, who have been engaged by him in the performance of the Agreement. The Buyer guarantees that these employees/third parties will not act in violation of the obligation of confidentiality.

ARTICLE 16

Force Majeure

1. In the event of force majeure on the part of a party the performance of the Agreement shall be suspended in full or in part for the duration of the force majeure period, without the parties being mutually obliged to pay any compensation in this respect. If it is reasonably expected that the force majeure situation will take longer than three (3) months or has already taken three (3) months, the other party shall be entitled to dissolve the Agreement by means of a registered letter with immediate effect and without judicial intervention, without any right to compensation being created in the process. Force Majeure on the part of Vion shall at any rate mean:
 - a. circumstances in relation to persons and/or material, which Vion uses or is accustomed to use in the performance of the Agreement, which are of such a nature that the performance of the Agreement becomes impossible as a result or becomes onerous or disproportionately costly for Vion to such an extent that performance of the Agreement by Vion can no longer or not immediately be required from Vion;

- b. strikes;
- c. (suspicion of) animal diseases;
- d. trade restrictions imposed or advised by local, central or international authorities;
- e. the circumstance that Vion does not receive, or does not receive in time or properly a delivery of goods or services which is of importance in connection with the goods or services to be delivered by itself;
- f. war, riots and the like.

ARTICLE 17

Suspension; dissolution

1. Only Vion shall be entitled, at its discretion, to suspend the performance of the Agreement in full or in part or to dissolve the Agreement in full or in part by a written statement without judicial intervention and with immediate effect, without Vion being obliged to pay any compensation, in the event of:
 - failure of the Buyer in the performance of (one of his) obligations pursuant to
 - the Agreement and/or these general conditions of sale;
 - (an application for) suspension of payment or bankruptcy order of the Buyer;
 - A guardianship order or administration order of the Buyer;
 - sale, pledge or termination of the enterprise of the Buyer;
 - cancellation of licenses of the Buyer which are necessary for the performance of the Agreement; or
 - attachment of a major part of the business assets of the Buyer.
2. All the claims that Vion might have or acquire on the Buyer in the cases mentioned above in Article 17.1 shall be immediately and fully payable.

ARTICLE 18

Transfer; outsourcing

1. The Buyer shall not be permitted to transfer the rights and obligations ensuing for him from the Agreement and these general conditions of sale in full or in part to third parties without Vion's prior written permission.
2. The Buyer shall not be permitted to outsource his obligations from the Agreement and these general conditions of sale in full or in part to third parties without Vion's prior written permission.

ARTICLE 19

Invalidity of one or more provisions

1. The invalidity of a provision from the Agreement and/or from these general conditions of sale shall have no consequences for the validity of the other provisions of the Agreement and these general conditions of sale.
2. If and in so far as a provision of the Agreement and/or from these general conditions of sales should be invalid, or under the given circumstances according to criteria of reasonableness and fairness should be unacceptable, a provision shall be applicable between the parties that is acceptable taking all circumstances into consideration.

ARTICLE 20

Applicable law and competent court

1. The legal relationship between Vion and the Buyer shall only be governed by Dutch law, this with exclusion of the Vienna Sales Convention. In so far as Vion delivers goods or performs services to a Buyer who is established in Germany, German law shall be applicable only in so far as Article 9 of these general conditions is applicable, this again with exclusion of the Vienna Sales Convention.
2. All disputes between Vion and the Buyer shall be resolved by the competent Court in Rotterdam.

ARTICLE 21

Final provision

1. The Dutch text of these general conditions of sale shall form the only authentic text. In the event of deviation between the Dutch text and a translation into a foreign language the Dutch text shall prevail.