



**EUROFOODS**

International Food Distribution

# GENERAL TERMS AND CONDITIONS OF DELIVERY AND PAYMENT OF EUROFOODS B.V.

These general terms and conditions are filed as number 24494855 at the Chamber of Commerce in Rotterdam, NL.

## Article 1: Definitions

1.1 In these General Terms and Conditions the following terms (in both singular and plural) have the following meanings:

*Delivery Address:* The residential address, warehouse or other storage location to which Eurofoods is to deliver the Products to be supplied under the agreement.

*Delivery Date:* The day (and time) on which the Products are delivered to the Delivery Address. Delivery occurs at the time when Eurofoods transfers the actual control of the Products to the Customer. This is also defined as the time at which the Products leave the means of transport on which they have been transported to the Customer. The circumstance that the Products are still in packaging that belongs to Eurofoods is not relevant in determining whether delivery has taken place.

*Delivery Slip:* The document that is provided to the Customer on the Delivery Date

*Customer:* The other party to an agreement with Eurofoods.

*Eurofoods:* Eurofoods BV, with its registered office in Rotterdam and its place of business at Heemraadssingel 276B, 3021 NA, Rotterdam.

*Contract:* The written record of the agreement entered into between Eurofoods and the Customer, understood as (in the following sequence): the signed Quotation, failing which: the Invoice, failing which: the Delivery Slip.

*Invoice:* The document that is sent to the Customer once the agreement with the Customer has been concluded, showing such details as the Products supplied, their price and the payment period.

*Means of Identification:* All designations (such as barcodes, tags or labels) that are attached on or to the Products or their packaging and that enable Eurofoods to identify Products supplied by it.

*Quotation:* A written offer to conclude an agreement submitted by Eurofoods to the Customer.

*Products:* The Products manufactured or bought in by Eurofoods that are intended for sale to the Customer.

*Transport Materials:* Items that are intended to be used repeatedly for the transport of Products, such as pallets, trays, crates, racks etc.

## Article 2: Applicability

2.1 These General Terms and Conditions apply – to the exclusion of other terms – to all offers, all Quotations or agreements and all forms of communication between Eurofoods and the Customer.

2.2 Any variation to these General Terms and Conditions must be recorded in writing. With the exception of mandatory legal provisions, all legal provisions contrary to these General Terms and Conditions shall not apply. Eurofoods may change these General Terms and Conditions at all times and such changes shall also apply in respect of the Customer once they have been notified to the Customer.

## Article 3: Offers, prices and orders

3.1 All offers and Quotations made by Eurofoods are without obligation.

3.2 All prices quoted by Eurofoods are stated subject to changes in price. Eurofoods has the right to change the agreed prices up to three days before a delivery. The Customer will be notified of any price change in writing. Where Eurofoods has made a change to the price the Customer has the right to cancel the agreement in writing. A cancellation is not effective unless it has reached Eurofoods before the date of the Delivery Date. A cancellation as defined in this article shall not result in either party being liable for damages.

3.3 Unless otherwise indicated, the prices quoted by Eurofoods are:

- (a) In Euros;
- (b) Based on the current prices of the Products to be supplied;
- (c) Based on delivery to the Delivery Address, provided that the Delivery Address in question can be reached without additional costs for Eurofoods;
- (d) Exclusive of VAT and any other officially imposed levies.



## **Article 4: Formation and content of an agreement**

- 4.1 An agreement between Eurofoods and a Customer is formed when:
- (a) Quotation supplied by Eurofoods has been signed by the Customer and received back by Eurofoods within the period for which the Quotation is valid;
  - (b) Agreement has been reached orally or by e-mail.
- 4.2 The content of an agreement is shown by the Contract.
- 4.3 Orders must be submitted in the manner and at the times to be specified by Eurofoods. Eurofoods has the right to make a handling charge in the event of a change to an order.
- 4.4 If a signed Quotation does not reach Eurofoods until after the expiry of its period of validity Eurofoods nevertheless has the right to proceed to implement the Quotation at that stage and an agreement is then formed as a result.
- 4.5 All delivery periods quoted by Eurofoods are for guidance only and failure to deliver within these periods shall not constitute a ground for terminating the agreement.
- 4.6 If the quantity of the Products supplied by Eurofoods differs to a minor extent from the quantity of Products ordered or if the supplied Products differ from the ordered Products in minor details Eurofoods shall nevertheless be deemed to have complied with the agreement.

## **Article 5: Payment**

- 5.1 If the Customer has not made any complaint about an Invoice sent to the Customer within eight days after having received the Invoice, the Invoice in question is deemed to be owed.
- 5.2 Payment must be made within 14 days of date of Invoice unless a different payment period is specified in the Contract. The date on which the payment has been made is deemed to be the value date on which the due payment was credited to the Eurofoods account.
- 5.3 If a payment has not been received within the period specified in article 5.2 interest at the rate of 1% per month will be due on the outstanding amount from the date on which the Invoice should have been paid to the date on which payment is credited to the Eurofoods account.
- 5.4 If there are mutual payment obligations, Eurofoods alone has the right to make any set-off.
- 5.5 The Customer is in default by operation of law once the agreed payment period has elapsed. Eurofoods has the right to charge collection costs of 15% of the outstanding amount (plus the statutory interest) without prejudice to the right of Eurofoods to recover the collection costs actually incurred (including court costs) from the Customer.
- 5.6 Eurofoods has the right to deliver Products on a cash on delivery basis.

## **Article 6: Delivery, passing of risk**

- 6.1 Eurofoods determines the way in which the Products are to be transported to the Customer. The Products are for the Customer's risk from the Delivery Date, even where title to them has not yet passed to the Customer.

## **Article 7: Transport Materials**

- 7.1 The Transport Materials remain the property of Eurofoods.
- 7.2 Eurofoods makes a charge to the Customer for the use of the Transport Materials; that charge is refunded once the Transport Materials have been returned to Eurofoods in a clean and undamaged condition.
- 7.3 The Customer may not use the Transport Materials for transporting Products to third parties, nor for any other purpose.

## **Article 8: Warranty and complaints**

- 8.1 Eurofoods warrants that its Products comply with all the legal requirements applicable to the Products. Where Eurofoods has attributed specific features or properties to supplied Products it warrants those features or properties. No rights may be derived from sample products or advertising materials supplied by Eurofoods or from general information provided by Eurofoods that does not relate to a specific delivery.
- 8.2 If the Customer finds on the Delivery Date that the wrong Products have been delivered, that the packaging in which the Products were transported has been damaged or that other visible defects have been discovered, the Customer should make an entry to that effect on the Delivery Slip. If the Products are at the incorrect temperature on the Delivery Date this is also considered to be a visible defect. If there is no statement regarding defects on delivery as specified in this article on the copy of the Delivery Slip supplied to Eurofoods, Eurofoods shall be deemed to have supplied the correct Products in an intact condition.



- 8.3 All other defects and/or shortcomings discovered by the Customer must be reported in writing by the Customer to Eurofoods within 24 hours after the Delivery Date giving precise details of the defects and/or shortcomings found, failing which it will be assumed that Eurofoods has complied with the agreement correctly and in full and that the Products supplied by Eurofoods comply with all the agreed specifications applying to them.
- 8.4 If the Customer has complained to Eurofoods pursuant to articles 8.2 or 8.3 the Customer must hold the Products that the Customer considers to be non-compliant with the agreement available for inspection by Eurofoods for a period of 36 hours in such a way that the quality of the Products does not deteriorate. If, following inspection by Eurofoods, the Customer's complaints prove to be well-founded Eurofoods will take back free of charge the Products that do not comply with the agreement. Eurofoods will then at the Customer's choice either supply replacement Products or credit the Customer for the value of the goods taken back.
- 8.5 Contrary to what is provided in article 8.4 it may be agreed that the Customer will return the Products to Eurofoods. If Eurofoods determines that the Products do not comply with the agreement Eurofoods will reimburse the Customer for the costs of the return consignment and will send the Customer a credit note. If the complaints made by the Customer prove to be unfounded in the opinion of Eurofoods, the costs of the return consignment will be for the Customer's account. In that case the Customer has the choice of either purchasing the Products from Eurofoods again or having them destroyed by Eurofoods. In both cases the Customer remains obliged to pay the agreed purchase price for the Products in full plus any expenses incurred by Eurofoods.

## **Article 9: Reservation of title**

- 9.1 Eurofoods reserves its title to all Products supplied by it to the Customer for as long as the Customer has not yet paid in full the consideration for Products supplied or to be supplied to the Customer by Eurofoods pursuant to agreement, the consideration for work performed or to be performed pursuant to such an agreement, or the claim resulting from the Customer's failure to perform one of the above obligations.
- 9.2 Where Products are exported outside the Netherlands, Eurofoods has the right to stipulate in respect of the reservation of title specified in article 9.1 that the property law consequences of the reservation of title shall be governed by the law of the state to which the Products are being exported where that law grants Eurofoods more extensive rights in respect of the reservation of title than are available under Dutch law.
- 9.3 Products supplied by Eurofoods subject to reservation of title may be resold by the Customer solely in the context of the Customer's normal activities. The Customer is not authorised to create a lien on Products supplied by Eurofoods or encumber those Products in any other way.
- 9.4 Eurofoods reserves a lien in respect of all claims from Eurofoods of whatever nature against the Customer on Products supplied by Eurofoods which have passed into the Customer's ownership through payment. The Customer is obliged at all times to comply on first request with all the formalities necessary for the creation of a lien.
- 9.5 The Customer is obliged to treat the Products supplied by Eurofoods carefully and to insure them against loss, damage or theft.
- 9.6 The Customer must ensure that the Means of Identification applied by Eurofoods to Products remain in place for as long as the Products supplied by Eurofoods are stored on the Customer's premises. Where the above is not possible the Customer must provide a system by which any system for the identification of the Products that is used by the Customer contains references to the Means of Identification applied by Eurofoods. The Customer has the right to remove the Means of Identification at the point when the Customer proceeds to dispose of the Products in the context of the normal conduct of business or at the point when the Customer uses the Products for the Customer's own use, all insofar as the removal of these Means of Identification is necessary for the intended use and except in cases where the designations have been applied to comply with a legal obligation.
- 9.7 The Customer is obliged to cooperate on first request in the creation of liens on:
- (a) all claims that the Customer has on insurers under the insurance cover referred to in article 9.5;
  - (b) claims that the Customer acquires on third parties who purchase Products supplied by Eurofoods from the Customer.
- 9.8 If Eurofoods is of the opinion that the Customer has failed to meet one or more of the obligations specified in article 8 Eurofoods may demand that the Customer should hand over into the custody of Eurofoods all the Products supplied by Eurofoods that are still held by the Customer, subject to a penalty of 10% of the total amount owed by the Customer for each day after the request referred to in this article has been made to the Customer that the Customer fails to comply with that request.



## **Article 10: Dissolution of agreements**

- 10.1 All amounts receivable from the Customer become immediately due and payable in the event that:
- (a) The Customer is declared bankrupt or in a state of liquidation, a (provisional) suspension of payment is ordered in respect of the Customer, or the Debt Rescheduling Act (Natural Persons) [Wet schuldsanering natuurlijke personen] is applied to the Customer;
  - (b) Eurofoods has become aware of facts or circumstances such that there is justified reason to fear that the Customer will no longer be able to meet its obligations;
  - (c) The Customer fails to comply with any stipulation in article 8 or 9.
- 10.2 In the cases referred to in article 10.1 Eurofoods has the right to suspend its own performance or to dissolve the agreement, all without prejudice to its right to claim damages.
- 10.3 Equally, Eurofoods has the right to terminate the agreement if circumstances occur that make it impossible for Eurofoods to comply with the agreement or that make it so difficult and/or expensive to do so that Eurofoods can no longer be reasonably expected to continue with the agreement. In that case, Eurofoods is obliged to reimburse to the Customer those payments made by the Customer to Eurofoods under the agreement for which the Customer has not enjoyed the corresponding benefit. If Products have already been supplied by Eurofoods the Customer must pay the amount due for that delivery or part-delivery in full within the set payment period.
- 10.4 The Customer has the right to dissolve an agreement if Eurofoods fails to comply with its obligations within a promised period and still fails to comply after the expiry of that period and of a further period of at least 14 days specified in writing by the Customer as a period within which Eurofoods must meet its obligations.

## **Article 11: Limitation of liability**

- 11.1 Except in those cases in which there is an obligation to compensate for loss under mandatory legal provisions, Eurofoods shall not be liable for any loss or damage whatsoever suffered by the Customer as a result of a shortcoming attributable to Eurofoods.
- 11.2 The limitation of liability contained in article 11.1 shall not apply if the loss or damage is caused by wilful misconduct or deliberate recklessness on the part of Eurofoods.
- 11.3 The extent of the liability is in any case limited to the amount to which Eurofoods is entitled under its possible liability insurance cover plus the own risk to be borne by Eurofoods as stated in that insurance policy. In those cases in which the loss or damage is not indemnified by the insurer of Eurofoods the liability is deemed to be limited to €10,000 (ten thousand euros).
- 11.4 The Customer indemnifies Eurofoods against all claims that third parties may assert or attempt to assert against Eurofoods.

## **Article 12: Force Majeure**

- 12.1 Force Majeure includes any circumstance that prevents Eurofoods complying with an agreement provided that the circumstance in question has not arisen through the agency of Eurofoods and/or is beyond the control of Eurofoods. Circumstances not attributable to Eurofoods include, but are not limited to, strike, lack of the raw materials required for the manufacture of the Products, and shortcomings by third parties on which Eurofoods depends.
- 12.2 The Customer has the right to dissolve the agreement if the state of Force Majeure continues for longer than three months. Eurofoods may still invoke Force Majeure even if the state of Force Majeure has only arisen after Eurofoods was already in default.
- 12.3 As a result of the state of Force Majeure all the periods and dates agreed between the parties or set by the Customer and the consequences attached to a failure to meet those dates are suspended for at least the period stated in article 12.2.

## **Article 13: Applicable law, competent court, language versions of the General Terms and Conditions**

- 13.1 The legal relationship between Eurofoods and the Customer shall be governed by Dutch law except in those cases where Eurofoods has stipulated the applicability of other law. The United Nations Convention on Contracts for the International Sale of Goods is not applicable.
- 13.2 All disputes will be submitted to the competent court in Rotterdam, subject to appeal to the Supreme Court. Eurofoods has the right to submit disputes to another competent court.
- 13.3 If these General Terms and Conditions are made available in a language other than Dutch the Dutch version shall prevail in those cases where there is a difference between the Dutch text and the foreign text.