



## 1) General

These general purchasing conditions ("**General Purchasing Conditions**") apply to all purchases of goods and the associated services by N.V. De Brandt Dairy International ("**De Brandt**") from third parties, unless the specific conditions of the Call-off Order or the Contract stipulate otherwise.

Any general terms and conditions of sale and purchasing conditions of the Seller or other contractual parties are hereby excluded. This will be the case even if (i) these have been communicated to De Brandt before the communication of these General Purchasing Conditions to the contractual party concerned and/or if (ii) such conditions expressly exclude the applicability of conflicting terms and conditions.

Stipulations varying from these General Purchasing Conditions are valid only if they have been agreed in writing and accepted by a person who is authorised to represent De Brandt, and if such variations have been precisely included in the agreement concerned. A varying stipulation cannot in any case be deduced from the failure of De Brandt to respond or make an objection.

## 2) Definitions

The following terms have the stated meaning in these General Purchasing Conditions:

- "**Buyer**" means De Brandt.
- "**Seller**" means the person that sells the goods or the associated services to the Buyer, as well as the person that is responsible for supplying the goods or services.
- "**Goods**" mean all goods including Packaging or the associated services that fall under the scope of a Contract.
- "**Packaging**" includes bags, boxes, barrels, pallets, tankers, containers, and other packaging methods.
- "**Call-off Order**" means a written call-off or order of a duly authorised representative of the Buyer in the performance of a Contract, where this call-off or order contains the Buyer's instructions to the Seller.
- "**Purchase Agreement**" means the agreement drawn up by De Brandt for its purchase of Goods;
- "**Contract**" means the Purchase Agreement accepted by the Seller (framework contract or otherwise). Such an acceptance may be implicit and does not require any formal confirmation of the Purchase Agreement by the Seller. In this regard, a Purchase Agreement that is not objected to or refused by the Seller within 7 (seven) business days of its receipt is regarded as accepted.

## 3) Prices

The purchase price that is specified in the Contract is fixed and not subject to review or indexation. Unless agreed otherwise in the Contract, the purchase price includes all additional costs such as transport, insurance, administrative costs, and packaging.

Unless specifically agreed otherwise, all prices exclude VAT and cannot be unilaterally altered by the Seller during the term of the Contract. Price alterations are valid only if the proposed price alteration was communicated to the Buyer in writing prior to the delivery of the relevant Goods, and the Buyer consented in writing to these price alterations.

## 4) Payment method

The price for the Goods is due only insofar as (i) the Buyer has received the Goods, (ii) the Goods are free from defects, (iii) the Goods are marketable and free from liens and securities, and (iv) the Goods comply with all requirements that are included in the Call-off Order and the Contract.

Provided that the Goods have been received by the Buyer and comply with all the above requirements, the price of the Goods will be paid, unless agreed otherwise, 30 calendar days after the delivery date.

Each payment is made subject to the reservation of all of the Buyer's rights, in case the Goods do not comply with or are not in accordance with the Call-off Order or the Contract. If the Goods are not paid on the above due date, and such failure to pay is not justified by one of the reasons set out in Article 4, paragraph 1 of these General Purchasing Conditions, the Buyer will be considered to be in default only if it has not proceeded to make payment within two weeks of receipt of a notice of default given to it by registered letter. If the Buyer remains in default, it must pay the Seller interest at the rate applied on the invoice date by the European Central Bank for its most recent basic refinancing transaction plus 4 (four) per cent. This interest constitutes the only compensation for the Seller. Unless the Buyer expressly authorises early delivery, Goods that are delivered prior to the delivery date in the Contract or the Call-off Order will not be paid earlier than 30 calendar days after the date on which they should have been delivered under the Contract or Call-off Order.

If the Seller is declared insolvent, is given an extension on the payment of debts, is closed, liquidated, or there is any other change or deterioration in the Seller's financial situation, the Buyer will be entitled to suspend or terminate the Contract, at no charge, and without any prior notice of default. Such suspension or termination of the Contract does not affect the Buyer's other rights.

## 5) Documents

The Seller must send an original invoice marked "original" and a copy marked as "copy" to the Buyer with every shipment of Goods. The product name, order and contract number, CMR number, quantity, weight, production date, production shipment number, factory code and delivery period (if applicable) must be stated on all shipment documents, invoices, quality certificates and packing lists (if applicable). All invoices must be addressed to N.V. De Brandt Dairy International, Industrieterrein Hoogveld 89, B-9200 Dendermonde, Belgium, with the stated VAT number, C.R.D. 4288. Each delivery must be accompanied by a waybill (if applicable) stating the order number. The Seller must deliver all documents to the Buyer that are necessary in connection with the sale, transport, and delivery of the Goods for the performance of the Contract or Call-off Order.

## 6) Quality & Packaging

All Goods purchased by the Buyer must comply with the product specifications stated in the Call-off Order and the Contract, as well as with the necessary conditions for the normal designated use of the Goods and the necessary conditions for the specific designated use of the Goods, as indicated by the Buyer in the Call-off Order or the Contract. The supplied Goods must moreover comply with the quality and composition requirements that are customary in the sector, including the applicable European and national legislation on food safety and quality. The Seller must provide the required quality certificates to the Buyer on delivery of the Goods.

The Goods must be packaged and the Packaging of the Goods must be suitable for use as packaging material in accordance with European and national legislation. The Packaging must contain the trademarks and wording that are prescribed by law in the country of origin. The Packaging must also contain the trademarks and wording that the Buyer has communicated following the Call-off Order or conclusion of the Contract. Packaging materials must state the product name, production name, production shipment number, factory code, weight and quantity. Any information relating to the handling and storage of the Goods on receipt must be clearly indicated on the accompanying documents.

Unless indicated otherwise in the Contract, the Seller is responsible for and must pay any costs for collecting and removing all returnable packaging materials.

## 7) Delivery

Every delivery must result from a Call-off Order that is placed by a person authorised to bind the Buyer, whose name and capacity is stated in the Call-off Order.

All supplied Goods must be protected under the responsibility and at the expense of the Seller against damage and spoilage during transshipment and transport. The description of the INCO terms that apply at the time of entering into the agreement are decisive for determining the meaning of the transport and delivery terms in the Call-off Orders and Contracts, insofar as there are no varying stipulations. The following principles also apply in case of bulk deliveries:

- a) In case of EXW/FCA delivery, the weight as indicated on the government-calibrated weighbridge designated by the supplier is decisive.
- b) In case of CIP/CPT/DDP delivery, the weight as indicated on the government-calibrated weighbridge designated by the recipient is decisive.
- c) The quantity agreed on in the Call-off Order or the Contract is decisive.

Delivery will take place (the following periods commence on the day on which the Seller gives the Call-off Order):

- a) if "immediately" has been agreed, within five business days;
- b) if "promptly" has been agreed, or if no period is specified, within fourteen calendar days;
- c) if delivery in a specific month has been agreed, on or before the last business day of that month;
- d) if delivery over several months has been agreed, in approximately equal quantities, on or before the last business days of those months;
- e) if "up to and including" a specific date has been agreed, by no later than that date;
- f) if "staggered delivery" has been agreed for a specific period, approximately the same quantity each week, on or before the last business day of each week;
- g) if delivery in a specific month with added "call-off" has been agreed, no later than five business days after call-off, on the understanding that this period only commences on the first day of the month in which the delivery must be made;
- h) if a specific delivery date has been agreed: on that date.

Unless the Buyer agrees otherwise in writing, ownership of and risk in the Goods passes to the Buyer at the moment when (i) the Buyer physically takes possession of the Goods at the place stipulated in the Call-off Order and insofar as (ii) the Goods are accepted by the Buyer. If the Goods are rejected, risk and ownership remain with the Seller.

The Seller must give at least two business days' notice of each delivery. If the Seller's actions cause a change to the agreed place for collection of the Goods, all costs for collecting the Goods elsewhere will be payable by the Seller. The specified time of collection is binding on the Seller. If the Buyer collects the Goods later, this will not be regarded as a breach of contract by the Buyer and the Seller will not be entitled to compensation as a result. If the Buyer incurs a delay of more than two hours because of the loading of the Goods (or unloading, as the case may be) in relation to the stated time for collection, additional costs for any extra delay will be charged to the Seller.

Punctual shipment or delivery constitutes an essential term of the Contract. The Goods are to be shipped or delivered within the period stated in the Contract or Call-off Order. If the shipment or delivery is delayed by any cause beyond the Seller's control, and the Seller sends the Buyer written notice of the reasons for this delay before the period for shipment or delivery expires, the Buyer will be entitled, at its own discretion (i) to extend the delivery period in favour of the Seller, without being obliged to do so; or (ii) to cancel the Call-off Order and/or the Contract without being liable for any compensation. If the Seller does not deliver within the period for shipment or delivery as stipulated in the Contract or Call-off Order, or within the extended period that is granted by the Buyer, this constitutes a breach by the Seller of an essential term of the Contract (without prejudice to any other rights of the Buyer), which entitles the Buyer to terminate the Contract with immediate effect

and at no cost, without prejudice to the Buyer's right to claim compensation.

## 8) Visible defects

If the Seller has delivered goods that do not comply with the Contract and/or Call-off Order in a clearly visible way, either because they visibly do not meet the required quality or quantity, or because they are visibly unfit for the required specific purpose or the normal designated use, or if delivery is delayed, the Buyer will be entitled to reject such Goods within 14 calendar days of the delivery.

The Buyer is to notify the Seller in writing of all visible defects to the Goods (e.g. by letter, fax or e-mail).

## 9) Hidden defects

If the Seller has delivered Goods that are impaired by hidden defects, the Buyer must report these hidden defects within a reasonable period of establishing them. For this purpose, a period of three months after the Buyer has established the hidden defects will always be regarded as a reasonable period.

The Buyer is to notify the Seller in writing of all hidden defects to the Goods (e.g. by letter, fax or e-mail).

## 10) Warranty

The Seller recognises its liability for all proven damage that is suffered by the Buyer or third parties, and which is caused in whole or in part by defects to the Goods or another failure of the Seller to perform its obligations under the Contract. The Seller must fully indemnify the Buyer and third parties that suffer damage in this regard.

The Buyer has sole discretion to decide how any damage suffered is to be remedied. In this regard, the Buyer is entitled, *inter alia*, to purchase equivalents elsewhere under its own chosen terms and conditions, notwithstanding any other right that it may have in relation to the Seller. The resultant costs and the price difference will be charged to the Seller. Goods that are rejected will be returned at the risk and expense of the Seller.

## 11) Product liability insurance

The Seller is obliged to insure itself adequately at all times against the risk of product liability for the Goods that it has sold and/or delivered. The Seller must also insure itself adequately against the risk of the costs relating to a recall of the Goods it has delivered. The Seller must immediately on request of the Buyer provide sufficient proof to the Buyer of the insurance that it has taken out to cover the aforementioned risks.

## 12) Sampling

The Buyer may arrange for accompanying samples to be taken in the standard manner by an accredited sampler at the time and place of delivery. The Buyer and Seller may monitor the sampling, if required. If the Buyer and Seller are unable to reach consensus on the designation of an accredited sampler, the Buyer will be entitled to have the sampling done by one of the following institutions/laboratories:

- Qlip;
- SGS: Société Générale de Surveillance;
- LUFA;
- MUVA

The quality/composition will be inspected according to the methods prescribed at the time of the inspection if no other method has been agreed.

If no sampling is done at the time of delivery, it may still be done later. In that case, the assessment and analysis can only give rise to an assumption of the quality at the time and place of delivery. Paragraphs 1 and 2 of this article apply *mutatis mutandis* to this sampling.

If there is any dispute about quality and/or composition, one of the samples referred to in paragraph 1 or 3 will be submitted to an inspection by one of the above institutions/laboratories as soon as possible.

The result of the inspection is binding, subject to the right of each party to order a counter-inspection by a neutral laboratory, which can be the same laboratory as the one referred to above, within ten business days of the announcement of the inspection results.

The result of the counter-inspection will be binding on both parties.

The costs of the inspection will be payable by the losing party based on the final outcome of the above inspections.

### **13) Invalidity**

If one of the provisions of these General Purchasing Conditions is or becomes void or invalid, this will not affect the validity of the other provisions of these General Purchasing Conditions. The invalid provision will be replaced by a provision that approximates the economical intention of the invalid provision as closely as possible.

### **14) Termination (“ontbinding”)**

If the Seller fails or continues to fail to perform any of its obligations towards the Buyer, or if the Seller is declared insolvent, dies, is put into liquidation or if there is another concurrence of creditors, the Buyer will be entitled to terminate the Contract, in whole or in part, without any notice of default or judicial intervention, by means of a written notice, notwithstanding its right to compensation.

If the Goods are not in accordance with public health legislation (including the applicable EU regulations), the entire Contract will be regarded as terminated, notwithstanding the right to compensation.

### **15) Priority of the Dutch text**

If there is any discrepancy between the texts of these General Purchasing Conditions, the Dutch text will take priority.

### **16) Transfer of the Contract - Change of control**

The Seller may not transfer the Contract, unless the Buyer gives it express and written consent. The Seller may not entrust the performance of the Contract, in whole or in part, to one or more subcontractors without the Buyer's express and written consent. If the Seller entrusts all or part of the performance to a subcontractor with the Buyer's consent, the Seller will remain totally responsible for the due performance of the Contract.

If control over the Seller (if the Seller is a company) changes during the term of the Contract, the Buyer will be entitled to terminate the Contract with immediate effect and without any having to pay compensation in lieu of notice. The Seller must immediately notify the Buyer if its shareholding structure changes during the term of the Contract.

### **17) Amendments to the General Purchasing Conditions**

The Buyer reserves the right to amend the General Purchasing Conditions at all times and without prior notice. Amendments take effect in the month after their communication by written notice. If the Seller does not wish to accept the amendments to the General Purchasing Conditions, the Seller will be entitled, until the date on which those amendments come into effect, to terminate the Contract by registered letter. Once the amendments have entered into effect, the Seller will be deemed to have - tacitly - accepted them.

### **18) Applicable law and competent courts.**

Any disputes between the Seller and the Buyer in relation to the Contract and the Goods will be governed exclusively by Belgian law with the exclusion of the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (the “Vienna Convention”).

The Dendermonde Commercial Court has exclusive jurisdiction to hear all disputes related to the Contract or these General Purchasing Conditions.