

General Terms and Conditions VAN DER KROON FOOD PRODUCTS B.V. / N.W. van Ruiten B.V.

ARTICLE 1 | DEFINITIONS

In these General Terms and Conditions, the following terms, which are always capitalised, have the following meanings.

1. User: Van der Kroon Food Products B.V. or N.W. van Ruiten B.V., the user of these General Terms and Conditions, with its official place of business at Van Konijnenburgweg 139, 4612 PL in Bergen op Zoom [the Netherlands].
2. Buyer: the juristic or natural person pursuing professional or commercial activities with whom the User has entered or intends to enter into an Agreement.
3. Parties: the User and the Buyer jointly.
4. Agreement: any agreement concluded between the User and the Buyer by which the User undertakes to sell and deliver Products to the Buyer.
5. Products: all goods to be supplied to the Buyer by the User within the framework of the Agreement, which may include, but is not limited to, vegetables packaged in plastic, glass, or tin, produced as a private label or otherwise.
6. Written/In Writing: communication in writing, communication by email, or any other form of communication which, in view of the latest technological developments and generally accepted standards, is deemed to be an equivalent.

ARTICLE 2 | GENERAL PROVISIONS

1. These General Terms and Conditions apply to any offer from the User and to any Agreement.
2. The applicability of any purchase conditions or any other general terms and conditions of the Buyer is explicitly rejected.
3. The provisions of these General Terms and Conditions may be derogated from only explicitly and In Writing, such as by means of an offer or quotation issued by the User and accepted by the Buyer. If and insofar as any agreement made explicitly and In Writing between the Parties is contrary to the provisions of these General Terms and Conditions, that which the Parties have explicitly agreed In Writing applies.
4. If any provision in these General Terms and Conditions or the Agreement as such is void or voidable, this will not affect the validity of the remaining provisions. If such an occasion should arise, the Parties are obliged to consult with each other in order to agree on an alternative arrangement with regard to the affected clause. The object and purport of the original provision will be taken into account as much as possible.

ARTICLE 3 | OFFER AND CONCLUSION OF AGREEMENTS

1. Each offer made to the Buyer by the User (including the User's quotations and price lists) are without obligation and subject to sufficient availability of the offered Products, including packaging materials. The availability of the Products depends, among other things, on the harvest realised and the availability of the raw materials for the packaging materials.
2. If the Products are available, but there is a rise in cost-determining factors after the offer was made by the User, the User may adjust the offer. If, however, the offer accepted by the Buyer shows that the Buyer accepts a possible increase in price in advance, the offer will stand provided that the actual price increase remains within the limits of the offer.
3. The Buyer cannot derive any rights from an offer made by the User that contains an obvious error or mistake.
4. The Buyer cannot derive any rights either from an offer made by the User which is based on incorrect or incomplete information provided by the Buyer.
5. Any Agreement does not come into effect until the User has confirmed the Buyer's acceptance of the User's offer to the Buyer In Writing. If the User rejects the Buyer's acceptance, for example due to unavailability or insufficient availability of the Products, the User will notify the Buyer of this, stating reasons.
6. If the Buyer enters into the Agreement on behalf of another natural or juristic person, the Buyer, by entering into the Agreement, declares that the Buyer is authorised to do so. The Buyer and this other natural or juristic person are jointly and severally liable for performance of the obligations under that Agreement.

ARTICLE 4 | CUSTOMISED ORDERS

1. If and insofar as the Agreement relates to the supply of Products produced or processed according to specifications given by the Buyer, which may include packaging materials for private labelling or the Buyer's own recipe (hereafter referred to as "Customised Orders"), the Buyer undertakes to provide the User with all the information reasonably relevant for the execution of the Customised Order as soon as possible as required for its execution, complete and provided to the User in any manner stipulated by the User.

2. Customised Orders are based on the specifications provided by the Buyer and approved by the User. The Buyer guarantees the correctness of the specifications provided for execution of the Customised Orders. The User will never be liable for any damage or loss resulting from the execution of a Customised Order by the User on the basis of incorrect or incomplete specifications supplied by the Buyer.

ARTICLE 5 | TOLERANCES

The characteristics of the Products to be supplied, as stated and/or described by the User in the offer, in the Agreement as such, on the User's website, or otherwise stated and/or described by the User, may differ slightly from what is actually supplied. Slight deviations are considered to include all deviations in the properties of the Products that the Buyer should reasonably tolerate, such as minor deviations in taste, colour, size, and weight. Such slight deviations will not give the Buyer any grounds for complaint, nor any grounds to suspend its obligations under the Agreement, to terminate the Agreement, or to claim damages or any other form of compensation. Deviations which, taking all circumstances into account, are inherent to the nature of the Products and/or which, in accordance with standards of reasonableness, will not or only slightly affect the value of the Products for the Buyer, are still considered to be slight deviations.

ARTICLE 6 | DELIVERY OF THE PRODUCTS

1. Unless explicitly agreed otherwise In Writing, delivery of the Products will be Ex Works, at the User's place of business, in accordance with the latest version of the Incoterms, provided that the destination is located outside the EU. If the destination is located within the EU, unless explicitly agreed otherwise In Writing, delivery will be FCA (Free Carrier), in accordance with the latest version of the Incoterms.
2. The Buyer is obliged to take possession of the Products when they are made available or delivered. If the Buyer, for whatever reason, refuses to take possession or fails to provide the information or instructions required for the delivery, the Products will be stored at the risk and expense of the Buyer. In that case, in addition to the agreed purchase price, the Buyer will owe a fair price for the storage and possible removal/destruction of the Products.

ARTICLE 7 | DELIVERY PERIODS

1. The User will make an effort to meet the delivery dates agreed between Parties, however, these dates are never strict deadlines. Exceeding the delivery period will not entitle the Buyer to any compensation or termination of the Agreement.
2. If performance of the Agreement by the User depends on information to be provided by the Buyer, the delivery period will not become effective until the User has received these details.

ARTICLE 8 | CONFORMITY, INSPECTION, AND COMPLAINTS

1. The User guarantees that the Products conform to the Agreement, that they are suitable for the purpose for which they are intended based on the information supplied by the User, and guarantees that the Products conform to any statutory obligations and other government regulations which apply to the intended use.
2. On delivery, or immediately afterwards, the Buyer must check that the nature and quantity of the Products conform to the Agreement. If the Buyer or the appointed carrier finds that the nature and/or quantity of the Products is/are not in conformity with the Agreement, the User must be notified of this at the time of delivery and without delay.
3. In the event of any defects that were not reasonably visible or otherwise recognisable at the time of delivery, the Buyer must provide the User with a Written and substantiated notification thereof within ten days after the Buyer became aware or reasonably could have become aware of the defect(s).
4. If the Buyer fails to submit the complaint in time, such a complaint from the Buyer will not result in any obligation on the part of the User.
5. If the Buyer submits the complaint in time, the Buyer still remains obliged to pay the User in time.
6. Goods may be returned only with the prior Written consent of the User and only on the grounds of a defect on the part of the User, or, in other words, if a delivery is not in accordance with the provisions of paragraph 1. Return shipments are at the expense of the Buyer. If it unmistakably concerns a shortcoming as referred to in the first sentence, the Buyer is entitled to a reimbursement of the costs for the return shipment, provided the Buyer chose the least expensive shipment method.
7. Any defects or shortcomings to the Products which are due to external causes after delivery or which are otherwise not attributable to the User or its suppliers do not constitute grounds for a complaint or claim for a shortcoming by the User. These include, but are not limited to, defects caused by damage, natural decay, incorrect or incompetent handling, incorrect or incompetent use, and use contrary to the instructions from or on behalf of the User.
8. If a complaint is justified, the User will decide, at its discretion, to repair or replace the Products or to terminate the Agreement and credit the amount payable by the Buyer.

ARTICLE 9 | SPECIAL TERMS FOR RESELLERS

1. If the Products are intended for resale by the Buyer, the resale to the Buyer's customers will be at the risk and expense of the Buyer. The User guarantees that the Products supplied to the Buyer are of a constant and agreed quality. A Buyer acting as a reseller of the Products is responsible for compliance with the statutory obligations in respect of its final customers.
2. Any collaboration between the reseller and the User, unless explicitly agreed otherwise and confirmed In Writing, will never be exclusive; the User accepts no geographical limitations with regard to appointing multiple resellers for its Products. The above paragraph does not apply to Products containing an exclusive private label of the Buyer.

ARTICLE 10 | FORCE MAJEURE

1. The User is not obliged to perform any obligation under the Agreement in the event and for the duration of any hindrance thereof caused by a situation that cannot be attributed to the User by law, a legal act, or according to generally accepted standards.
2. If the situation of force majeure renders performance of the Agreement permanently impossible, Parties are entitled to terminate the Agreement with immediate effect.
3. If, when the situation of force majeure arises, the User has already fulfilled part of its obligation to deliver, or will be able to fulfil the obligation to deliver only in part, the User is entitled to charge the Buyer for the already delivered or still deliverable part as if it were a separate Agreement.
4. Damage or loss caused by force majeure, without prejudice to the previous paragraph, will never qualify for compensation.

ARTICLE 11 | SUSPENSION AND TERMINATION

1. If the circumstances of the case reasonably justify it, the User is entitled to suspend performance of the Agreement or to terminate the Agreement in whole or in part, if and to the extent that the Buyer fails to meet its obligations under the Agreement in time and in full, or if, after conclusion of the Agreement, the User becomes aware of circumstances that give good reason to fear that the Buyer will not fulfil its obligations. If performance of the obligations which the Buyer is failing or will likely fail to meet, is not permanently impossible, the right to terminate the Agreement will only arise after the Buyer has been given Written notice of default by the User, setting a reasonable period within which the Buyer may still fulfil its obligations, and the Buyer remains in default after expiry of the latter period.
2. If the Buyer has been declared bankrupt, has applied for (provisional or definitive) suspension of payments [*surseance van betaling*], if the statutory debt restructuring scheme has been declared applicable to the Buyer, if any attachment has been imposed on the Buyer's property, or if the Buyer is otherwise unable to dispose of its assets freely, the User has the right to terminate the Agreement with immediate effect, unless the Buyer has already provided adequate security for the payment owed to the User under the Agreement.
3. The Buyer will never be entitled to any form of compensation or damages in connection with the User exercising the right of suspension or termination of the Agreement pursuant to this article.
4. The Buyer is obliged to compensate the User for any damage or loss suffered as a result of the suspension or termination of the Agreement.
5. If the User terminates the Agreement, all claims on the Buyer will be immediately payable.

ARTICLE 12 | PRICES AND PAYMENTS

1. If there are any changes in tax rates, other levies imposed by the authorities, or shipping rates or insurance premiums after conclusion of the Agreement, the User is entitled to adjust the amount owed by the Buyer accordingly.
2. Unless explicitly agreed otherwise In Writing, the User is entitled to demand a full or partial advance payment from the Buyer. Furthermore, the User is always entitled to demand a full or partial advance payment if, after conclusion of the Agreement, the User has good reason to doubt that the Buyer will or will be able to fulfil its payment obligations.
3. As long as the Buyer fails to fulfil any due payment obligation towards the User, the User is not obliged to execute or continue to execute the Agreement.
4. Payment must be made by bank transfer within the payment period stated on the invoice by the User. The User is entitled to make the invoice available to the Buyer by electronic means only.
5. Payment must be made without any without any suspension or setoff.
6. If the Buyer has been declared bankrupt, has applied for (provisional or definitive) suspension of payments, if the statutory debt restructuring scheme has been declared applicable to the Buyer, if any attachment has been imposed on the Buyer's property, or if the Buyer is otherwise unable to dispose of its assets freely, all claims of the User on the Buyer are immediately payable.
7. If payment is not made in time, the Buyer will be in default by operation of law. From the day that the Buyer is in default, the Buyer will owe 2% interest per month on the outstanding amount, with part of a month counting as a full month.
8. All reasonable costs incurred by the User to obtain the amounts owed by the Buyer, such as judicial, extrajudicial and enforcement costs, are at the expense of the Buyer.

ARTICLE 13 | LIABILITY AND INDEMNITY

1. Without prejudice to the provisions of article 8, the User accepts no liability for any defects after delivery of the Products.
2. The User will never be liable for damage or loss caused by incorrect or incomplete information provided by the Buyer, any other shortcoming in the fulfilment of the Buyer's obligations under the law or the Agreement, or any other circumstance that cannot be attributed to the User. In particular, the User accepts no liability for damage or loss caused by a situation or circumstance as referred to in article 8.7, under which the Buyer has no claim for a shortcoming by the User.
3. The User will never be liable for consequential damage or loss, which include loss of profit, other incurred loss and damage as a result of business interruption. Without prejudice to the other provisions of these General Terms and Conditions, and in particular to the provisions of paragraph 4, the User may be held liable only for direct damage incurred by the Buyer as a result of an attributable failure by the User in the performance of the User's obligations under the Agreement. Direct damage includes only:
 - reasonable costs incurred to assess the cause and scope of the damage, insofar as the assessment is related to the damage that qualifies for compensation within the meaning of these General Terms and Conditions;

- any reasonable costs incurred to bring the inadequate performance by the User in conformity with the Agreement, to the extent in which they can be attributed to the User;
- reasonable costs made to prevent or limit damage or loss, insofar as the Buyer can demonstrate that these costs have resulted in limiting the direct damage within the meaning of these General Terms and Conditions.

4. The liability of the User is limited to no more than the invoice amount of the Agreement, or at least the part of the Agreement to which the liability of the User applies, with the proviso that the liability of the User will never exceed the amount that is actually paid out in the relevant situation by the corporate liability insurance taken out by the User, plus any excess payable by the User under that insurance.

5. Any entitlement of the Buyer to compensation of damage or loss only arises if the Buyer informed the User of the damage or loss in Writing and stating reasons as soon as reasonably possible after the damage or loss arose.

6. Contrary to the statutory limitation periods, the limitation period of all legal claims and defences against the User is one year.

7. The Buyer indemnifies the User against any claims by third parties that incur damage in connection with the execution of the Agreement of which the cause can be attributed to a party/parties other than the User. In the event of the User being held responsible by third parties, the Buyer is obliged to provide both judicial and extrajudicial assistance to the User and to do everything that can reasonably be expected of the Buyer without delay. If the Buyer fails to take adequate measures, the User will be entitled to take such measures without the need for any notice of default. All ensuing costs and damage incurred by the User and third parties will be fully at the risk and expense of the Buyer.

ARTICLE 14 | RETENTION OF TITLE

1. All Products supplied to the Buyer will remain the property of the User until the Buyer has fulfilled all its payment obligations under the Agreement.

2. Except to the extent considered permissible as part of its normal business operations, the Buyer is not permitted to sell, pledge, or otherwise encumber the Products that are subject to retention of title.

3. The Buyer is obliged to keep the supplied Products which are subject to retention of title with due care and recognisable as the property of the User.

4. In the event that the Buyer sells and/or delivers the Products to third parties as part of its normal business operations, as well as in the event of a breach of the other provisions of this article, the amounts owed by the Buyer become immediately payable in full.

5. If any third party levies attachment or otherwise intends to establish or exercise rights on supplied Products which are subject to retention of title, the Buyer must inform the User of this as soon as possible.

6. The Buyer gives its unconditional consent to the User or to third parties appointed by the User to access all locations where the Products that are subject to retention of title can be found. Immediately on request, the Buyer will provide the User with all the information required to exercise its rights of ownership, subject to forfeiture of an immediately payable fine of €500 for each day that the Buyer is in default and without the need for the User to issue a notice of default. All reasonable costs related to the exercise of the rights of ownership of the User will be at the expense of the Buyer.

7. If the Buyer, after the User delivered the Products, has fulfilled its obligations, the retention of title on these Products will become effective again if the Buyer fails to fulfil its obligations under an Agreement concluded at a later time.

ARTICLE 15 | FINAL PROVISIONS

1. All Agreements and subsequent legal relationships between the Parties are exclusively governed by Dutch law. The applicability of the Vienna Sales Convention is excluded.

2. The Parties will not appeal to the courts until they have made every effort to settle the dispute in mutual consultation.

3. Any legal disputes between the Parties may be brought only before the competent court in the district in which the User is has its official place of business.

4. If these General Terms and Conditions are available in multiple languages, the Dutch version will always prevail with regard to the interpretation of the provisions contained therein.