



# GENERAL CONDITIONS OF SALE AND DELIVERY

## DUTCH PROTEIN & SERVICES B.V. dated 26 November 2013

Deposited at the court registry of the Gelderland District Court, Arnhem location, under file number 2013/38.

### ARTICLE 1 - DUTCH PROTEIN & SERVICES (DP&S)

In these conditions, DP&S means Dutch Protein & Services B.V., a private company with limited liability, having its registered office and actual place of business at Sir Rowland Hillstraat 3 in (4004 JT) Tiel, the Netherlands, listed in the Commercial Register of the Chamber of Commerce under number 11022521. This company's VAT number is NL001074416.B01.

### ARTICLE 2 - DEFINITIONS

In these conditions, the following terms have the meanings given.

- a. Acceptance: the customer's confirmation that he, she or it is purchasing these products and/or services from DP&S;
- b. Contract: the entirety of the goods to be delivered and/or services to be provided by DP&S as agreed between the customer and DP&S;
- c. Customer: a customer that is a non-consumer;
- d. Day: a calendar day;
- e. Distance contract: a contract under which, in the context of a system for the distance selling of products and/or services organised by DP&S and up to and including the conclusion of the contract, exclusive use is made of one or more technologies for distance communication;
- f. Non-consumer: the legal entity or natural person that concludes a sales contract, whether or not a distance contract, with DP&S in the context of exercising his or her profession or conducting his, her or its business;
- g. Offer: an offer of DP&S to deliver products and/or provide services;
- h. Parties: DP&S and the customer or customers jointly.
- i. Technology for distance communication: a means that can be used to conclude a contract without the customer and DP&S having to meet in the same physical space;

### ARTICLE 3 - APPLICABILITY OF THESE CONDITIONS

- 3.1 These conditions apply to all legal relationships between DP&S and customers on the basis of which DP&S is a seller and/or supplier of products or a service provider.
- 3.2 The applicability of general terms and conditions used by the customer is hereby expressly excluded.
- 3.3 Derogations from these general conditions may only be agreed between the parties in writing.
- 3.4 DP&S may change these general conditions provided that the customer is informed of the changes in writing 14 days before their intended effective date.
- 3.5 If the customer does not inform DP&S within 14 days following the date of the notice referred to in the preceding paragraph and in writing that he, she or it does not accept the intended changes, the customer shall be deemed to have accepted these changes, after which they shall constitute a full an integral part of the contract concluded with the customer.
- 3.6 If the customer informs DP&S within the term referred to in the preceding paragraph and in writing that he, she or it does not accept the intended changes, DP&S shall be entitled to terminate the contract with immediate effect and without the customer being entitled to any kind of compensation whatsoever.

### ARTICLE 4 - OFFER

- 4.1 The customer may invite DP&S to make an offer.
- 4.2 An offer shall be made in writing or in electronic form unless urgent circumstances make doing do impossible.
- 4.3 All offers made by DP&S are subject to contract unless they include a term for acceptance.
- 4.4 DP&S reserves the right to withdraw an offer without delay after a message indicating acceptance of the offer is received by DP&S and, insofar as such acceptance constitutes the conclusion of a contract, terminate this contract.
- 4.5 DP&S may not be bound by its offer if the customer can reasonably understand or should reasonably have understood that the offer concerned or a part thereof contains an obvious mistake or clerical error.

### ARTICLE 5 - CONCLUSION OF A CONTRACT

- 5.1 A contract shall be concluded by the customer's acceptance of the offer.
- 5.2 The customer shall preferably indicate acceptance in writing or in electronic form.
- 5.3 If the customer's acceptance deviates from the offer of DP&S, also with respect to points of secondary importance, a contract shall be deemed not to have been concluded. This stipulation shall not apply if DP&S accepts the deviation.
- 5.4 If the customer indicates acceptance in writing or in electronic form, DP&S shall confirm receipt of this message in writing or in electronic form. DP&S shall also confirm the contract in writing or in electronic form if the customer accepts the offer orally.
- 5.5 The risks associated with all of the information, assumptions, estimates and all other factors on which the customer's decision to conclude a contract with DP&S is based shall be borne by the customer.

### ARTICLE 6 - GENERAL OBLIGATIONS OF THE CUSTOMER

The customer shall ensure that all information and details required by DP&S in connection with the performance of the contract are made available to DP&S in time.

### ARTICLE 7 - PRICE

- 7.1 Unless otherwise indicated by DP&S, all prices are exclusive of VAT.
- 7.2 If a change occurs in factors that determine cost in terms of, for example, raw materials, products sold by third parties, wages, government levies and shipping and transport costs and/or if changes occur as a result of exchange rates after an offer has been made or a contract has been concluded, DP&S shall be entitled to change the price accordingly. DP&S shall inform the customer of such a change in price without delay.
- 7.3 If the total price agreed between the parties increases by more than 10% as a result of price changes, the customer shall be entitled to terminate the part of the contract not yet performed. If the customer does not make this termination known in writing within eight days after the notice concerning the price increase was sent by DP&S, the contract, including the price increase, shall remain in effect.
- 7.4 The provisions of Article 7.3 shall not release the customer from the obligation to purchase products developed or raw materials held in stock specifically for the customer.

### ARTICLE 8 - RESALE

DP&S shall inform the customer about the positioning supported by DP&S and the image of its products and the brands related to these products. DP&S shall advise the customer to offer and sell these products at the recommended retail price made known by DP&S. The customer may not offer or sell DP&S products to a third party without the written permission of DP&S.

### ARTICLE 9 - DELIVERY AND RISK

- 9.1 If transport of the products to be delivered has been agreed, this transport shall take place at the risk and expense of the customer unless delivery carriage paid has been agreed.
- 9.2 In the case of delivery carriage paid, the products to be delivered by DP&S shall be deemed to have been delivered as soon as they have been delivered to the address specified by the customer.
- 9.3 The time at which DP&S must deliver the products shall always apply as a target date. This time shall therefore never apply as a final deadline or date unless otherwise expressly agreed in writing. If DP&S does not deliver within the agreed term or on the agreed date, DP&S shall only be in default after it has been given notice of default in writing and has been given a reasonable term to perform and again fails to deliver within this term.
- 9.4 In the case of delivery carriage paid, all of the risks associated with the products to be delivered by DP&S shall pass to the customer at the time at which the aforesaid products have been delivered in accordance with the second paragraph of this article.
- 9.5 In the case of delivery carriage paid, the address specified by the customer must be accessible for the means of transport used. The customer must ensure that there are adequate loading and unloading facilities at this address. The customer shall bear the costs of making personnel and mechanical and other resources available for unloading the products and loading return products. The customer shall take all measures that he, she or it can reasonably be required to take to ensure that the time that elapses between the report of arrival at the delivery address and the moment at which the unloading of the products to be delivered commences is as short as possible.
- 9.6 DP&S is at all times entitled to deliver the products or have them delivered on the basis of cash on delivery or request advance payment.
- 9.7 Return consignments are only permitted with the prior express permission, in writing or in electronic form, of DP&S.
- 9.8 DP&S shall be entitled to make partial deliveries and/or invoice for partial deliveries unless otherwise expressly agreed by the parties in writing or in electronic form.
- 9.9 Unless otherwise expressly agreed by the parties in writing or in electronic form, DP&S shall be entitled to suspend delivery if the customer fails to comply with a payment agreement governing a previous delivery or payment agreements governing previous deliveries.
- 9.10 If the customer, after having been given notice of default by DP&S, does not receive or pick up the products offered on the basis of the contract at DP&S, DP&S shall be entitled to:
  - a. store the products at the expense of the customer;
  - b. charge the customer for the full invoice amount.

### ARTICLE 10 - COMPLAINTS

- 10.1 If, based on a visual inspection, the products delivered by DP&S do not comply with the contract, the customer must immediately complain upon delivery and specify the alleged defects or have the

alleged defects specified in the document that must be signed upon receipt. Defects that are not observable upon delivery must be reported to DP&S by the customer immediately after they have been observed or should reasonably have been observed and in any case no later than two weeks following delivery.

- 10.2 To the extent that the products are accompanied by operating instructions or a shelf life is specified on the products, the customer bears the burden of proving that the products were used in accordance with these operating instructions or that the shelf life was not exceeded.
- 10.3 If the customer does not report the defects in time, the customer shall have no claims against DP&S and the delivery shall be deemed to have been accepted unconditionally.
- 10.4 If the customer relies on a claim in a legally valid manner, DP&S shall have the option of delivering that which was agreed again or crediting the invoice or invoices.

#### ARTICLE 11 - ADVICE

- 11.1 If DP&S must advise the customer pursuant to the contract, the requirement shall constitute a best efforts obligation. DP&S shall never be obliged, however, to guarantee the achievement of a certain result if the advice is followed.
- 11.2 The customer may not reproduce the advice of DP&S and/or make it known to third parties unless express permission to do so has been given in writing or in electronic form.

#### ARTICLE 12 - PAYMENT

- 12.1 Payment of the agreed price must be made within 30 days following the invoice date or within the payment term agreed by the parties in the contract in the manner specified by DP&S in the offer or invoice.
- 12.2 If the customer fails to pay any amount that he, she or it owes within the term referred to in the preceding paragraph, he, she or it shall be in default without notice of default being required. As soon as the customer is in default with respect to any payment, all amounts owed to DP&S by the customer shall immediately become due and payable and the customer shall immediately be in default with respect to these amounts owed without notice of default being required. The customer shall owe statutory interest plus two percent as from the date on which the customer is in default.
- 12.3 The customer waives any right of set-off with respect to amounts that the parties owe each other.
- 12.4 A dispute between DP&S and the customer concerning quality or based on a complaint or complaints lodged by the customer shall not entitle the customer to suspend payment either wholly or in part.
- 12.5 Payments made by the customer shall always first be applied to settle all interest and costs payable and subsequently to settle due and payable invoices that have been outstanding for the longest period of time, even if the customer states that the payment relates to a later invoice.
- 12.6 Should DP&S so demand based on the customer's creditworthiness, the customer must immediately provide security for the amount that he, she or it owes pursuant to the contract within a term set for the purpose by DP&S. The preceding provision shall also apply if the customer has already paid part of the amount owed.
- 12.7 If the customer fails to pay any amount that he, she or it owes within the term referred to in paragraph 1, the customer shall owe extrajudicial collection costs. These costs shall amount to 15 percent of the principal, with a minimum of EUR 250.

#### ARTICLE 13 - RETENTION OF TITLE

Goods delivered shall remain the property of DP&S until the invoice concerned and any other wholly or partly outstanding invoice, including interest and possible collection costs, have been paid. Furthermore, in the event of a suspicion or a notice from the customer that the customer shall fail to perform his, her or its obligations, DP&S shall be authorised to immediately reclaim the products delivered. Should DP&S so demand, the customer must return the products to DP&S without delay. The costs of returning the products shall be borne by the customer. Should DP&S so demand, the customer must immediately make it possible for DP&S to take back the products from the customer.

#### ARTICLE 14 - DUTY OF CARE

The customer shall handle the products delivered with the care required and shall not perform acts that could adversely affect the quality and/or safety of the products, the packaging and the reputation of the DP&S brands.

#### ARTICLE 15 - DISCOUNTS AND BONUSES

If the parties have agreed a payment discount and/or a bonus scheme, the customer may only rely on the payment discount and/or bonus scheme if he, she or it performs all of his, her or its payment and other obligations towards DP&S under any contract fully and promptly.

#### ARTICLE 16 - LIABILITY AND INDEMNITY

- 16.1 DP&S is solely liable for direct damage as a result of an attributable failure to perform its obligations under the contract concluded between the parties. Such damage expressly excludes consequential damage, loss of profits and sales, trading loss and/or loss due to delay.

- 16.2 The customer shall indemnify DP&S, its employees and auxiliary persons engaged by DP&S for the performance of the contract against any claim of third parties in connection with the performance of the contract.
- 16.3 The liability of DP&S shall be excluded in the event of force majeure.
- 16.4 The limitations of liability for direct damage included in this article shall not apply if the damage is attributable to intent or gross negligence on the part of managers or subordinates of DP&S.
- 16.5 In all cases, any liability of DP&S shall be limited to the invoice amount that it has charged in the case concerned.
- 16.6 DP&S shall never be liable for advice concerning the nature or composition of a product. DP&S shall likewise never be liable for the possible presence and consequences of allergens in the products delivered by DP&S.

#### ARTICLE 17 - FORCE MAJEURE

- 17.1 DP&S shall not be bound to perform any obligation towards the customer if it is prevented from doing so by a circumstance that is beyond its control and for which it cannot be held responsible in terms of the law, legal acts or generally accepted standards.
- 17.2 In the event of force majeure on the part of DP&S, the obligations of DP&S shall be suspended. If the period of time in which DP&S is prevented by force majeure from performing its obligations exceeds two months, both parties shall be authorised to terminate the contract without DP&S being obliged to pay compensation.

#### ARTICLE 18 - TERMINATION

- 18.1 The parties shall be entitled to terminate the contract with immediate effect and without judicial intervention being required, and in the context of which termination the other party shall immediately be deemed to be in default and all outstanding amounts owed shall immediately become due and payable, if:
  - a. the other party, having been given notice of default, fails to perform its obligations under the contract within a reasonable term following the date of notice of default;
  - b. the other party has been declared bankrupt or has been granted a moratorium;
  - c. the other party has applied for a moratorium or has filed for bankruptcy, or wishes to come to a settlement with his, her or its creditors to avert a moratorium or bankruptcy;
  - d. the other party's company is liquidated;
  - e. business operations are de facto discontinued.
- 18.2 Termination of the contract by a party shall not release the other party from his, her or its obligations under the contract. These obligations shall continue to apply according to their nature after the date of termination.
- 18.3 If the contract is terminated by a party, all claims of this party shall become immediately due and payable.

#### ARTICLE 19 - INTELLECTUAL PROPERTY

- 19.1 The customer expressly acknowledges that all intellectual property rights with respect to information represented, images, notices and/or other communications concerning products and services of DP&S are held by DP&S.
- 19.2 Intellectual property rights include patent rights, copyrights, trademark rights, rights to designs and models and/or other intellectual property and other rights, including non patentable technical and/or commercial know-how, methods, prescriptions and concepts.
- 19.3 The customer may not use the intellectual property rights as described in this article, including in terms of making changes.

#### ARTICLE 20 - PACKAGING

With the exception of packing material, packaging for which a returnable deposit is not charged shall be taken back. Packaging for which a returnable deposit is charged shall be taken back and credited if it is complete, in a good state in the opinion of DP&S and returned within three months following delivery.

#### ARTICLE 21 - APPLICABLE LAW

- 21.1 Dutch law shall apply exclusively to all legal relationships entered into by DP&S with the customer.
- 21.2 All disputes which may arise from contracts concluded by DP&S shall be settled exclusively by the competent court in the Gelderland district, Arnhem location.

#### ARTICLE 22 - OTHER PROVISIONS

- 22.1 The Dutch text shall always be decisive when interpreting the content and purport of these general conditions.
- 22.2 The provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG, the Vienna Convention) expressly do not apply to these general conditions.
- 22.3 If a provision that forms part of these conditions is or becomes contrary to any legal provision of mandatory law or is annulled in a legally valid manner, the other provisions of these conditions shall remain in force.