

## GENERAL TERMS AND CONDITIONS OF SALE

### 1 SCOPE

- 1.1 These general terms and conditions of sale ("GT&C") apply exclusively to any and all offers, orders and agreements with respect to the sale and delivery of products ("Products") by What's Cooking Group NV/SA or any of its affiliates as identified in the relevant purchase order and invoice ("WHATS") to the buyer.
- 1.2 These GT&C exclude and will prevail over any other terms and conditions, including any terms and conditions of the buyer or its representatives contained in or referred to in order(s), in correspondence or elsewhere, even if WHATS does not expressly object to them, and this notwithstanding any provisions to the contrary in such other terms and conditions. Any deviations to the present GT&C require prior written consent by WHATS in order to be effective.

### 2 ORDERS

- 2.1 Any orders placed by the buyer (via EDI, fax, order form, by email, telephone, etc.) will be subject to these GT&C, and to the particular sales contract explicitly agreed between the parties (if any), and can only be annulled or amended by the buyer, upon WHATS's prior written consent.
- 2.2 No order will be binding on WHATS unless and until WHATS issues a written acceptance of such order. WHATS, at its discretion, may rescind from an accepted order by serving written notice to buyer in the event that buyer fails to properly fulfil any of its obligations hereunder, which failure is not cured within fifteen (15) days of WHATS's written notice thereof (if capable of being cured). WHATS's right to rescind from an accepted order on buyer's default is without prejudice to WHATS's right to claim additional damages, or any other rights WHATS may have (including the right to suspend its own obligations towards buyer).
- 2.3 WHATS reserves the right to request an amendment to the order placed by the buyer before acceptance of the buyer's order or to request further clarifications before commencing performance of the buyer's order.

### 3 PRICE AND PAYMENT

- 3.1 The price for the Products is exclusive of any taxes, import duties and/or other government levies (including VAT, taxes, excise taxes, and sales and use taxes) that may be assessed by any jurisdiction whether based on gross revenue, the delivery, possession or use of the Products, unless otherwise agreed between the parties. Any costs regarding the return of delivered Products shall be borne by WHATS if the reason for return can reasonably be attributed to WHATS.
- 3.2 The prices that will be invoiced by WHATS are the prices as stipulated in the applicable price agreement (if any) or as shown on the applicable price list on the date of WHATS's order confirmation. Without prejudice to any of the foregoing, if, after conclusion of a price agreement (if any), or after issuance of an order confirmation, WHATS has incurred unforeseeable cost increases with regard to the Products for which WHATS is not responsible (e.g. due to an increase in the cost of raw materials, production costs, packaging or transportation), WHATS shall be entitled, at its reasonable discretion, to pass on such higher costs by increasing the agreed price on a pro rata basis.
- 3.3 Unless agreed otherwise in writing, WHATS's invoices shall be paid within thirty (30) calendar days from the date of invoice.
- 3.4 All amounts due to WHATS shall be paid in full and the buyer shall not be entitled to assert any set-off or counterclaim against WHATS, whether arising from a breach of the agreement, tort, breach of statutory duty or any other matter whatsoever in order to justify withholding payment of any such amount in whole or in part, unless such claim is uncontested, ready for decision or has been confirmed by a final legal decision. The buyer's right to set-off with any rights in case of defects shall remain unaffected.
- 3.5 If WHATS has legitimate doubt regarding the buyer's impossibility to perform after conclusion of the contract, such as regarding the creditworthiness and solvency of the buyer prior to delivery or collection (as the case may be) of the Products, WHATS shall be entitled to require full or partial payment of the price prior to delivery or collection (as the case may be) or any provision of security for payment by the buyer in a form acceptable to WHATS. If such prepayments or security have not been rendered even after the expiry of a reasonable grace period, WHATS may partially or totally rescind from individual or all of the affected contracts. WHATS shall remain entitled to assert further rights.
- 3.6 If the buyer fails to pay any sum due to WHATS on the due date for any reason whatsoever, WHATS shall be entitled to, at its sole discretion, (i) rescind from the contract after a reasonable deadline set by WHATS has lapsed to no avail, (ii) withhold any further deliveries to the buyer until all payment obligations have been fulfilled and/or (iii) claim damages from the buyer in accordance with the statutory provisions.
- 3.7 Any amount owed by the buyer to WHATS that is not paid when due shall automatically and without prior notice give rise to the payment of (i) default interest in the applicable statutory amount (ii) a lump sum compensation in the amount of 40 euros, which shall be set off against the damages owed insofar as the damage consists in costs of legal prosecution. WHATS explicitly reserves the right to prove additional damages and collection costs and to claim reimbursement therefor.

### 4 DELIVERY

- 4.1 The Products will be delivered DDP (Delivered Duty Paid - Incoterms 2020) at the buyer's warehouse unless agreed otherwise between the parties in writing. Products sold to buyer outside EU or for UK Products sold to buyer outside UK, will always be delivered DAP (Delivered At Place - Incoterms 2020) unless agreed otherwise between the parties in writing. Delivery dates or lead times are estimates only and shall not be of the essence. Exceeding the indicated delivery date(s) shall neither result in WHATS's liability for direct or indirect loss, damage or expense (including loss of profits and liability to third parties) or a price reduction, nor shall it result in termination of the agreement, unless expressly agreed otherwise in writing.

### 5 RISK AND TITLE

- 5.1 Risk of loss, damage and theft of the Products transfers to the buyer upon delivery.
- 5.2 Pallets or other packaging materials which have not been invoiced by WHATS will at all times remain WHATS's property and must be returned to WHATS in good condition within thirty (30) days from delivery. In case the buyer does not return

such pallets or other packaging materials in good condition within this term, WHATS shall be entitled to invoice the cost price thereof to the buyer.

- 5.3 The Products remain the property of WHATS until complete and final payment of the price including any transportation charges, taxes and default interest and lump sum compensation as referenced in Clause 3.7 by the buyer. In case the buyer resells or performs any other disposal acts with respect to Products that are subject to retention of title, the buyer will notify the third party that the Products are subject to retention of title from WHATS.
- 5.4 The buyer shall only be allowed to sell the Products subject to retention of title ("Products subject to Retention of Title") within normal and proper business transactions. The buyer is not entitled to pledge the Products subject to Retention of Title, grant chattel mortgages on them or make other dispositions endangering WHATS's title to such products. The buyer hereby assigns its receivables arising from the resale of the Products subject to Retention of Title to WHATS, and WHATS hereby accepts such assignment. The buyer is granted the revocable authorization to collect in trust the claims assigned to WHATS in its own name. WHATS may revoke such authorization and the right to resell the Products subject to retention of Title if the buyer is in default of the performance of material obligations such as making payment to WHATS.
- 5.5 The buyer shall provide WHATS at all times with all desired information concerning the Products subject to Retention of Title or receivables assigned to WHATS under the agreement. The buyer shall immediately notify WHATS of any attachments of or claims to the Products subject to Retention of Title by third parties and shall provide the necessary documents in this regard. The buyer shall at the same time advise the third party of WHATS's retention of title. The costs of a defense against attachments and claims shall be borne by the buyer.
- 5.6 Should the realizable value of the securities exceed all of WHATS's claims that are to be secured by more than 10 %, the buyer shall be entitled to demand a release to such extent.
- 5.7 Should buyer be in default of material obligations such as payment to WHATS, and should WHATS rescind from the contract, WHATS may, notwithstanding any other rights, request surrender of the Products subject to Retention of Title and may make use of them otherwise for the purpose of satisfying its matured claims against the buyer. In such case, the buyer shall grant WHATS or WHATS's agents immediate access to the Products subject to Retention of Title and surrender the same.

### 6 CONTRACTUAL CONFORMITY OF THE PRODUCTS, BUYER'S RIGHTS IN CASE OF DEFECTS, DUTY TO INSPECT THE PRODUCTS, AND LIMITATION PERIOD

- 6.1 The buyer's rights in case of defects in the Products shall be governed by the statutory provisions, unless otherwise stipulated below.
- 6.2 The Products shall be free of defects if, at the time of the passing of risk, they comply with the agreements of the parties regarding the quality (i.e. the specific agreements made in writing regarding type, quantity, quality, functionality, compatibility, interoperability), are suitable for the use contractually presumed by the parties and contain the agreed scope of delivery (including accessories and instructions), if any. There are no further requirements for the Products. Only if the parties have not agreed on any requirements for the Products, the existence of a defect shall be assessed according to the objective requirements pursuant to Section 434 (3) German Civil Code (*Bürgerliches Gesetzbuch*, "BGB").
- 6.3 Information in catalogues, price lists and other information material provided to the buyer by WHATS as well as information describing the Products shall under no circumstances be construed as guarantees for a particular quality or durability of the products; such quality or durability guarantees must be expressly agreed in writing.
- 6.4 The buyer's rights in case of defective Products require that the buyer inspects the Products without undue delay after delivery and notifies WHATS of any defects in writing without undue delay, however, no later than two working days after delivery; hidden defects must be notified to WHATS in writing without undue delay after their discovery.
- 6.5 The use of the Products, their treatment, storage and transport need to comply with certain requirements (taking into account WHATS's instructions in this respect and applicable food safety legislation) which fall under the responsibility of the buyer.
- 6.6 The limitation period for the buyer's rights in case of defects shall be twelve (12) months beginning with the handover of the Products to the buyer. The provisions on the statute of limitations of Section 445b BGB shall remain unaffected. The statutory limitation periods shall remain applicable
  - (i) for the buyer's right in case of defects fraudulently concealed or intentionally caused by WHATS;
  - (ii) if and to the extent WHATS has assumed a guarantee;
  - (iii) for claims for damages of the buyer based on injury to life, body or health culpably caused by WHATS;
  - (iv) for claims of the buyer for damages caused by WHATS intentionally or by gross negligence; and
    - a. for claims under the Product Liability Act or other mandatory statutory liability provisions.

### 7 LIMITATION OF LIABILITY, RECALL

- 7.1 WHATS's obligation to pay damages shall be limited as follows:
  - (i) For damages caused by a breach of a material contractual obligation, WHATS shall only be liable up to the amount of the typically foreseeable damage at the time of entering into the contract; WHATS shall not be liable for damages caused by a breach of a non-material contractual obligation.
  - (ii) The limitation of liability as set out above shall not apply to damages caused intentionally or by gross negligence, culpably caused personal injuries nor to any liability under the German Product Liability Act and in case of any further mandatory liability. Furthermore, it shall not apply if and to the extent WHATS has assumed a guaranty.
- 7.2 The buyer shall take all reasonable measures necessary to avert and reduce damages.



- 7.3 The buyer agrees to cooperate and assist WHATS in a reasonable manner in any recall actions in respect of Products and to follow any reasonable guidelines or instructions issued by WHATS in connection therewith.

## **8 FORCE MAJEURE AND HARDSHIP**

- 8.1 Notwithstanding anything to the contrary in these GT&C, WHATS shall not be liable to the buyer if the performance of its obligations is being prevented, hindered, delayed by reason of circumstances or events beyond WHATS's reasonable control and which have been unforeseeable and unavoidable for WHATS including (but not limited to) Acts of God, war, riot, strike, lock-out, trade dispute or labour disturbance, accident, government imposed restrictions on use of energy, water or other resources, epidemics, pandemics, break-down of plant or machinery, fire, flood, storm, or other circumstances affecting the supply or the manufacture of Products.
- 8.2 If changes in economic and/or business conditions beyond the control of a party and which could not have been reasonably foreseen and/or assumed by that party at the time of conclusion of the contract hereunder occur, thereby placing an excessive burden on such party in the performance of its contractual obligations (other than the buyer's payment obligations), then upon the written request of such party the parties shall promptly meet to consider whether hardship exists and, if so, what modifications, if any, to the terms of the contract are necessary to provide a fair and equitable method of mitigating, removing or avoiding any such hardship; such method to recognize the interests of both parties. Orders accepted during this period are executed on an 'ad hoc' basis, without any commitment for any future delivery and subject to a new agreement at short term between parties.

## **9 DEFAULT, INSOLVENCY AND TERMINATION**

- 9.1 WHATS shall be entitled, without prejudice to any other rights, to terminate any offer, order and/or agreement hereunder with immediate effect in case the buyer fails to properly fulfill any of its obligations thereunder as well as in case of bankruptcy, liquidation, insolvency or suspension of payments of or by the buyer. In such case, all sums due to WHATS by the buyer shall immediately become due and payable and the buyer will be obliged to return any Products supplied by WHATS within forty-eight (48) hours from receipt of written notice by WHATS, failing which, WHATS or its designated agents shall be entitled to enter the premises where the Products are located in order to re-take possession of the Products.
- 9.2 Parties acknowledge and agree that in case of any bankruptcy or other insolvency proceedings of the Buyer, WHATS shall be entitled, without formal notice or judicial ruling, to set off all claims they have against the Buyer (whether due or not and without regard to their origin), notwithstanding any transfer, seizure or any other act of alienation or disposition of the rights with regard to the set-off.

## **10 MISCELLANEOUS**

- 10.1 All issues, questions and disputes concerning the validity, interpretation, enforcement, performance or termination of these GT&C (and any separate contract thereunder), or concerning any matters of extra-contractual and/or tort liability, if any, arising out of or in relation the these GT&C (and any separate contract thereunder) shall be governed by and construed in accordance with the law of the country where the relevant WHATS entity that acts as the seller for the relevant transaction as identified in the relevant purchase order and invoice has its registered office, without giving effect to any other choice-of-law or conflict-of-laws rules or provisions (whether of such country or any other jurisdiction) that would cause the laws of any jurisdiction other than such country to be applicable. The application of the United Nations Convention on Contracts for the International Sale of Goods is expressly excluded from these GT&C and any transaction that may be implemented in connection with these GT&C. Any dispute, controversy or claim arising out of or relating to these GT&C (and any separate contract thereunder), including its interpretation, validity, enforcement, performance or termination, or to a breach hereof, or concerning any matters of extra-contractual and/or tort liability, if any, arising out of or in relation to these GT&C (and any separate contract thereunder), which cannot be resolved amicably, shall be submitted to the exclusive jurisdiction of the courts of the judicial district of the country where the relevant WHATS entity that acts as the seller for the relevant transaction as identified in the relevant purchase order and invoice has its registered office, without prejudice to the right of WHATS to initiate proceedings before the courts of the place where the buyer has its registered office.
- 10.2 A term or part of a term of these GT&C that is found to be illegal, invalid or unenforceable shall not affect the remaining terms or enforceable parts of the term in question, subject, however, to the operation of this clause not negating the essential commercial and other aspects of these GT&C (and any separate contract thereunder). Moreover, in this case, the parties shall amend the invalid, illegal or unenforceable provision(s) or any part thereof and/or agree on a new provision which embodies as closely as possible the purpose of the invalid, illegal or unenforceable provision(s).
- 10.3 No party shall be deemed to have waived any rights or remedies arising out of these GT&C (and any separate contract thereunder) or out of any default or breach hereunder unless such party executes the waiver in writing. Such waiver shall not be construed to constitute a waiver of any other rights or remedies.