



## GENERAL TERMS AND CONDITIONS OF SALE

### 1 SCOPE

- 1.1 These general terms and conditions of sale ("GT&C") apply 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 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 deemed binding on WHATS unless and until WHATS issues a written acceptance of such order. WHATS, at its discretion, may cancel 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 cancel 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 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. In case the date of delivery is more than 30 days from the date of order confirmation, prices cannot be guaranteed at the date of order confirmation. In such case, the price listed in WHATS's price list applicable at the date of delivery will apply. 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 (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 (including negligence), breach of statutory duty or any other matter whatsoever in order to justify withholding payment of any such amount in whole or in part.
- 3.5 If WHATS has legitimate doubt 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.
- 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, terminate all outstanding offers, orders and/or agreement in accordance with Article 8 below and/or to withhold any further deliveries to the buyer until all payment obligations have been fulfilled and/or to claim damages from the buyer.
- 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 at a rate of 10% per annum or, where applicable and if higher, at the rate provided for in the local implementation of the EU Late Payments Directive 2011/7 in 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 and (ii) a lump sum compensation equal to 15 % of the amount due, and this without prejudice to WHATS's right to full reimbursement of legal collection costs. WHATS explicitly reserves the right to prove additional damages and collection costs and to claim reimbursement therefor. Non-correct payment of any invoice, renders all other outstanding invoices immediately payable.
- 3.8 WHATS hereby declares it is a large enterprise, as defined in Commission Regulation (EU) No 651/2014 of 17 June 2014 (as amended), and therefore has the status of a large entrepreneur within the meaning of the National Act on preventing excessive delays in commercial transactions.

### 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. Deliveries will be performed subject to the availability of the Products or parts thereof. Delivery dates or lead times estimates only and shall not be of the essence. Exceeding the indicated delivery date(s) shall neither result in WHATS's liability for any (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. In any case, damages for late delivery (if applicable) shall not exceed 10% of the invoice amount for the relevant Products.

### 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.

### 6 WARRANTIES AND LIABILITY

- 6.1 Except as expressly stated in these GT&C, WHATS does not give any representations, warranties, conditions, terms or undertakings in relation to the Products or in relation to the performance of its obligations under these GT&C. Any representation, condition or warranty which might be implied or incorporated into these GT&C by reason of statute, common law or otherwise is excluded to the fullest extent permitted by law.
- 6.2 Without prejudice to any other provision of these GT&C, WHATS warrants that the Products comply with WHATS's specifications and that they will be free from visible or hidden defects. The buyer shall inspect the Products for any defects or non-conformity upon delivery. Any warranties, conditions or terms with respect to fitness for a particular purpose will only be binding upon express written confirmation of an authorized representative of WHATS. Any other warranties, conditions or terms are explicitly excluded. The use of the Products, their treatment and storage 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.

In order to be admissible, any claims with respect to differences regarding the ordered and the delivered quantities must be notified to WHATS in writing within two (2) working days as from delivery. Complaints with respect to the quality of and/or any hidden defects in the Products must be duly motivated and sent by registered mail not later than (i) the expiry of a period of eight (8) calendar days as from the date on which the buyer could reasonably have discovered the defect and (ii) the best-before-date of the Products in question, whichever is earlier, failing which any and all claims in this respect are forfeited. For Products delivered to French customers, it is to be noted that pursuant to Article L. 133-3 of the French Commercial Code, the acceptance of the transported goods shall extinguish any claim against the carrier for damage or partial loss if the recipient has not notified the carrier of his justified protest by extrajudicial document or by registered letter within three days, not including public holidays, following the date of acceptance.

- 6.3 WHATS shall not be liable to the buyer under or in connection with these GT&C, or any agreement or order, for any, in each case whether direct or indirect:
  - 6.3.1 loss of income;
  - 6.3.2 loss of actual or anticipated profits;
  - 6.3.3 loss of business;
  - 6.3.4 loss of contracts;
  - 6.3.5 loss of goodwill or reputation;
  - 6.3.6 loss of anticipated savings;
  - 6.3.7 loss of marketing commitments;
  - 6.3.8 loss of data;
  - 6.3.9 use of money, or use of Products;
  - 6.3.10 interruption in use or availability of data;
  - 6.3.11 stoppage of other work or impairment of other assets or any type of lucrum cessans; or
  - 6.3.12 any consequential, indirect, special, punitive, or incidental damages, whether foreseeable or unforeseeable,

based on claims in contract, tort or otherwise arising out of or in connection with these GT&C or any separate contracts thereunder, the sale of Products, or performance of the deliverables resulting therefrom.

- 6.4 In no event shall the aggregate liability to buyer or any other person which WHATS may incur, whether foreseeable or unforeseeable, based on claims in contract, tort or otherwise arising out of or in connection with these GT&C, the sale of Products or the use of the Products, exceed, as applicable, (i) in case of Product defects or damages caused by defective Products, the total amount actually paid to WHATS by buyer for the applicable Product that caused the damage, or (ii) for any other type of damages, the total amount paid to WHATS by Buyer pursuant to these GT&C in the six (6) months prior to the event(s) giving rise to any claim for damages.
- 6.5 Nothing in these GT&C shall restrict or exclude WHATS's liability for death or personal injury caused by WHATS's negligence or the negligence of its employees or sub-contractors or any other liability which may not be lawfully excluded or limited.
- 6.6 The parties confirm that the provisions on liability as set out in this Article 6 are indivisibly connected to the pricing and remuneration provisions in their agreement. Parties expressly acknowledge that without these provisions they would not have entered into an agreement under these GT&C with the same pricing and remuneration provisions.
- 6.7 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.



## 7 FORCE MAJEURE AND HARDSHIP

- 7.1 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 or rendered more difficult, more costly or unprofitable by reason of circumstances or events beyond WHATS's reasonable control or inevitable 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, difficulty or increased expense in obtaining workmen, materials or transport or other circumstances affecting the supply of Products or of raw materials by WHATS's normal source of supply or the manufacture of Products by normal means or the delivery of Products by WHATS's normal route or means of delivery.
- 7.2 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 an agreement 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.

## 8 DEFAULT, INSOLVENCY AND TERMINATION

- 8.1 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.
- 8.2 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.

## 9 MISCELLANEOUS

- 9.1 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.
- 9.2 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).
- 9.3 No party shall be deemed to have waived any rights or remedies arising out of these GT&C, agreement 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.
- 9.4 Without prejudice to any other provision(s) of these GT&C, any and all claims whatsoever by the buyer arising out of or in connection with present GT&C or any offer, order or agreement will in any event become time-barred after expiration of one (1) year as from the date of delivery of the relevant Products.
- 9.5 A person who is not a party to these GT&C cannot enforce any of its terms.