

## **TERMS AND CONDITIONS of SALE and DELIVERY of AVH DAIRY TRADE B.V. (Chamber of Commerce no. 37141955)**

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### **1. Applicability**

1.1 These terms and conditions apply to all offers, acts and contracts of sale between AVH Dairy Trade B.V. ("the Seller") in relation to its buyer and other party as buyer ("the Buyer"). Any variations from these terms and conditions or any party thereof must be accepted expressly in writing by the Seller. The Seller expressly rejects applicability of any standard terms and conditions invoked or used by the Buyer.

1.2 These terms and conditions may be invoked also by the Seller's directors, employees, agents and subcontractors. These terms and conditions apply also to non-contractual claims.

1.3 If any or several provisions of these terms prove(s) invalid or unenforceable, the invalid or unenforceable provision(s) will be interpreted as much as possible in accordance with the applicable rules of law to approximate the original purport of the provision(s) as closely as possible and the other provisions of these terms and conditions will remain fully effective.

1.4 These terms and conditions were drawn up in Dutch and have been translated into English. The Dutch text will prevail.

### **2. Offer and Acceptance**

2.1 All offers by the Seller, regardless of their form, will be without obligation and merely constitute an invitation to the Buyer to request an order.

2.2 A contract will take effect only upon written acceptance or upon actual execution by the Seller of the Buyer's request for an order.

2.3 Any statement or act by the Buyer, implicit or explicit, confirming a contract for the supply of goods, will constitute unconditional acceptance by the Buyer of these terms and conditions.

### **3. Prices**

3.1 The Seller's prices will be in Euros exclusive of VAT and other taxes, duties or levies. The costs of packaging, transportation, import and export duties, excise duties and other levies or taxes will be paid by the Buyer unless otherwise agreed in writing.

3.2 Unless the Seller has stated that the prices are fixed, the Seller may pass on to the Buyer changes in factors affect the cost price and the additional costs referred to in Article 3.1.

3.3 Complaints about invoices must be filed with the Seller in writing, which shall mean either by registered letter or by email only, within eight (8) days of invoice. After that period the Buyer will be deemed to have consented to the invoice.

### **4. Delivery**

4.1 Unless the Seller has expressly stated otherwise in writing, all deliveries of goods are *Free Carrier*. The Seller's production or storage facility. The term FCA has the meaning defined in the latest version of the INCOTERMS, as published by the International Chamber of Commerce in Paris, France, at the time of conclusion of the contract in question, as referred to in Article 2.

4.2 The place of delivery is the delivery location as per the contract.

4.3 The delivery times are estimates and are not binding on the Seller. The Seller will respect these times as much as possible.

4.4 Non-compliance with delivery times does not entitle the Buyer to compensation, dissolution or termination of (part of) the contract.

4.5 The Seller may deliver the goods in installments.

4.6 If the Buyer does not take delivery of the goods (in time) the Buyer will be in default without any further notice being required. In that event the Seller has the right to store the goods at the risk and expense of the Buyer or to sell the same to a third party. The Buyer will then owe the purchase price increased by interest and costs by way of compensation.

4.7 Any defects in the goods supplied or part thereof do not entitle the Buyer to refuse the entire delivery of goods or other deliveries of goods.

4.8 The Seller will arrange for insurance of the goods during transportation and/or storage only if expressly agreed in writing in advance.

### **5. Quality Standards**

5.1 The Seller bears no responsibility whatsoever for the goods meeting quality standards other than those explicitly specified in the contract provided by the Seller. The Buyer assumes all risks and liability in connection with all further handling and processing after transfer of risk in respect of the

goods as per the delivery terms set out in the contract and when using the delivered material, irrespective whether the material was used independently or in combination with other products.

5.2 The Seller does not guarantee or represent the goods being suitable for any processing purpose and/or use, of whatever nature, by the Buyer unless explicitly agreed by the Seller in writing.

### **6. Force Majeure**

6.1 Force majeure on the part of the Seller means that the Seller cannot comply with its obligations adequately and in time due to a foreseeable or unforeseeable circumstance beyond the Seller's control, including but not limited to: (a) acts of God, war, war risk, terror attacks, riots, disturbances; (b) delays in the supply of raw materials or dispatch of a finished product; (c) sickness of a number of employees such that compliance is reasonably not possible; (d) strikes, industrial conflicts, lockout or similar actions within or against the Seller, its suppliers or non-employees; (e) other problems with production or supply on the part of the Seller or its suppliers and/or problems with transport by the Seller or by third parties, such as, but not limited to operational breakdowns, delayed deliveries/shipments on the part of the Seller's suppliers (including intra-group suppliers), shortages of energy supplies or raw materials, and traffic disruptions to the extent that the events were unforeseeable, as well as strikes, legal blockades/seizures/arrests, government orders, default of supplies or inability to obtain raw materials and all instances of force majeure; (f) damage to the production due to fire, storm or any other extreme unforeseen cause; (g) any action taken by a national or international person in authority.

6.2 The Seller shall notify the Buyer as soon as reasonably possible of (potential) force majeure situations.

6.3 In the event of force majeure as defined in Article 6.1 the Seller will be released from its obligation to deliver goods for the duration of such force majeure situation and to the extent of its effects. If making or taking delivery is thus delayed by more than thirty calendar days, the Buyer's sole remedy shall be to withdraw from the contract in respect of the quantity affected without being entitled to any other remedies and/or claims against the Seller.

6.4 Further, in the event of force majeure as defined in Article 6.1 the Seller will have the right to terminate the contract(s) affected by the force majeure situation with immediate effect by written notice without any compensation being due.

### **7. Terms of Payment**

7.1 The Buyer shall pay the Seller, which payment shall be received by the Seller within eight (8) days of invoice, unless agreed otherwise by the Seller in writing.

7.2 Payments shall be made to the Seller directly; payments to representatives or agents will never discharge the Buyer from its payment obligations.

7.3 All taxes, levies and other costs related to payments shall be paid by the Buyer.

7.4 The place of performance for payment is Bergen, the Netherlands.

### **8. Default of Payment, set-off, liens**

8.1 In the event of excess of payment or credit terms the Buyer will be in default without any further notice being required.

8.2 In the event of any reasonable grounds for doubt as to the Buyer's solvency or creditworthiness, the Seller shall be entitled to demand payment in advance for outstanding deliveries and to call for immediate payment of all other claims arising from any other contracts between the Seller and the Buyer.

8.3 All of the Seller's obligations, including but not limited to obligations to deliver or ship any goods ordered shall be suspended as long as the Buyer is in default of payment of any amount due to the Seller.

8.4 In the event of excess of payment or credit terms the Seller will have the right to charge interest at the statutory rate in accordance with Article 6:119a Dutch Civil Code.

8.5 The filing of a claim on account of defective quality or other complaints will not suspend the Buyer's payment obligation and other obligations on the part of the Buyer and does not alter or annul such obligations, regardless whether the claim or complaint will be honored.

8.6 The Seller is entitled to pursue further claims for damages due to delayed payment.

8.7 In the event of judicial or extrajudicial collection because of delayed payment the amount of the claim will be increased by 10% handling fee while the judicial and extrajudicial costs will be charged to the Buyer up to the amount paid or owed by the Seller, with a minimum of EUR 250 plus VAT.

8.8 The Buyer is not entitled to set off any claims it may have against the Seller with any payments or other obligations due by the Buyer to the Seller.

8.9 The Seller shall at all times be entitled to set off all of its claims against the Buyer with any payments and/or obligations due to the Buyer.

8.10 The Buyer is not entitled to exercise any liens and/or similar rights on any goods, funds documents and/or other goods or monies to be provided by the Buyer to the Seller.

### **9. Termination**

9.1 The Buyer may not terminate the contract extra judicially.

9.2 In the event of (provisional) suspension of payments or (petition for) bankruptcy or winding-up of the Buyer or its business the Seller will not be required to fulfil any obligations it may have under any contract with the Buyer, unless the corresponding payment has been made in advance or appropriate security has been provided.

9.3 If the Buyer is in default, has been granted suspension of payments, is bankrupt, has been wound up (or a petition has been filed to that effect) all of the Seller's claims against the Buyer will become fully payable forthwith and the Seller will have the right to take back the products in question. The Buyer shall enable the Seller to exercise its rights.

### **10. Complaints**

10.1 Upon delivery the Buyer must inspect the goods immediately and retain an additional sealed copy of each sample for the Seller and notify the Seller in writing of any defect or discrepancy (in terms of quantity, quality or otherwise) immediately but at any rate within twenty (20) business days of delivery.

10.2 If a defect only becomes apparent sometime after delivery the Buyer may only invoke non-compliance of the item with the standards set out in the contract if he notifies the Seller thereof within two (2) business days after he has detected or reasonably should have detected the said defect; in assessing whether and when the Buyer reasonably should have detected a defect, the Buyer's obligations to observe the standards of supervision care dictated by practice and statutory regulations in respect of the storage of the goods shall be taken into account.

10.3 Notwithstanding Article 10.1, hidden defects shall be deemed accepted unless the Seller is immediately notified in writing of such defects upon discovery of same, but not later than sixty (60) calendar days from the date of delivery of the goods at the latest, failing which the Seller shall not be liable for such defects and/or their consequences.

10.4 All complaints must be made to the Seller's place of business. Complaints shall be accompanied by the corresponding documents and samples as well as, if necessary, photographs, surveyors' reports and/or any other relevant documents and complaints, failing which the Seller shall not be obliged to consider incomplete complaints.

10.5 Any goods in respect of which the Buyer gave notice of a defect or discrepancy must be kept for the Seller in an appropriate location without being used, mixed or processed. Upon request the Seller, its insurer, or a designated representative of the Seller or its insurer, must be granted immediate access to the goods as well as any assistance required to inspect the reported defect.

10.6 In the event of non-compliance with the provisions contained in Articles 10.1 to 10.5 the Buyer will irrevocably forfeit the right to complain about the goods delivered.

10.7 The Buyer may not file any complaints about the goods delivered as long as he has failed to comply with any obligation towards the Seller in connection with the delivery.

10.8 If the complaint has been filed correctly and the defect or discrepancy in respect of the goods has been properly demonstrated the Seller shall replace the goods free of charge against return of the defective or discrepant goods or agree a discount; any further compensation is precluded.

10.9 Notwithstanding Article 14.1, all disputes regarding the quality of a product shall be settled through analysis of a representative sample, taken by an independent, professional third party. Samples shall only be taken from sealed packages. Samples shall be analysed by an independent expert laboratory, being e.g. Qlip, SGS, Bureau Veritas and Intertek, conducted in accordance with the methods prescribed by the COKZ at the time of the inspection, unless agreed otherwise. The costs incurred with respect to sampling and analysis shall be borne by the party found to be in the wrong.

### **11. Liability**

11.1 The Seller shall never be liable for loss sustained by third parties (not being the Buyer or its employees) in connection with the goods delivered by the Seller, their use or otherwise. The Buyer will indemnify, defend and hold harmless the Seller and its affiliates, and their respective officers, directors, employees, shareholders, agents and authorized contractors from and against such claims and/or demands, damages, liabilities, costs and expenses.

11.2 Under no circumstances shall the Seller be liable towards the Buyer or any other person for special, additional or consequential damage or punitive damages, costs or expenses including but not limited to loss or damage in the form of loss of goodwill, loss of sales, loss of profits, work interruption, disruption to production, unspecified lump sum claims, penalties, fines, damage to other goods or otherwise, regardless whether the loss or damage in question arises from

or is related to a violation of a warranty, breach of contract, misrepresentation, negligence or otherwise.

11.3 The Seller's liability per incident or series of related incidents, as long as they result from one and the same cause, shall at all times, regardless of the cause of action (whether in contract, negligence, tort or otherwise), be limited to the net invoice amount of the delivery in question up to EUR 5,000 maximum, or its equivalent in another currency as per the date of payment.

11.4 Any right of action towards the Seller will expire one year after the (intended) date of delivery.

11.5 The Buyer must provide complete and correct information in particular with regard to the collection of VAT in connection with intra-Community transactions. In the event of non-compliance by the Buyer shall indemnify, defend and hold harmless the Seller against any related claims and shall forfeit the right to file a claim or complaint against the Seller in that respect.

#### **12. Retention of title**

12.1 Any and all goods delivered by the Seller to the Buyer remain the exclusive property of the Seller – even after and despite processing or treatment – until all the Seller's receivables relating to goods delivered (under the contract) or activities performed or to be performed for the Buyer (under such contract) have been fully settled and until any receivables due to non-fulfillment of such a contract (including expenses and interest) have been full settled.

12.2 By way of security of all claims to which the Seller is entitled vis-a-vis the Buyer by reason of the present and any future business relations, title to the goods shall pass to the Buyer only when the Buyer shall have met all his obligations arising from all of his contracts with and/or other obligations to the Seller, including incidental claims, claims for damages and the honouring of cheques and bills. The retention of title shall continue to exist even if individual claims of the Seller have been included in the current account and the balance has been acknowledged.

12.3 The Seller's title shall also extend to cover the new products created when the Seller's goods are processed. Such processing shall be done on the Seller's behalf by the manufacturer. In the event products supplied by the Seller are processed, linked or mixed with other goods not belonging to the Seller, the Seller shall acquire co-ownership therein, in the ratio of the invoiced value of the goods subject to reservation of title in proportion to the invoiced value of the other materials. If goods subject to reservation of title are sold along with other items for an overall price, such assignment shall be limited to the proportionate amount of our invoice (including sales tax) for the goods subject to reservation of title included in such sale. If, under the statutory regulations applicable in the Buyer's country, retention of title is not admissible or only admissible to a given extent, then the scope of the aforementioned rights shall be restricted to that which is legally permissible.

12.4 When the Buyer fails to meet any of his obligations towards the Seller, he is in default. the Seller shall be authorized, without notification of default, and without allowing an extension of time and without declaring its withdrawal from the contract, to demand the return of any goods to which it retains title. The taking back of such goods shall not constitute a withdrawal from the contract, unless this is expressly declared by the Seller in writing.

12.5 The Buyer shall be obliged to take good care of the goods to which the Seller has retained title and to have them insured to a due and proper extent against loss and damage at his own expense. He assigns herewith to the Seller any claims arising from insurance policies.

12.6 The Buyer shall not be entitled to pledge such goods or to assign them as security or to encumber them in any other way. When reselling the goods, the Buyer shall stipulate that the transfer of ownership be subjected to full payment for the goods by his customers.

12.7 In the event of attachment, (provisional) suspension of payments, bankruptcy or winding-up the Buyer must inform the process server executing the attachment, the administrator or liquidator immediately of the Seller's (ownership) rights and notify the Seller immediately in writing.

#### **13. Assignment**

Without the prior written consent of the Seller the Buyer may not transfer its rights and/or obligations arising from a contract with the Seller – from warranties given by the Seller or otherwise – not even if the third party acquires the goods delivered by the Seller from the Buyer by particular title.

#### **14. Governing Law and Disputes**

14.1 Contracts between the Seller and the Buyer shall be exclusively governed and construed by the laws of the Netherlands with the exclusion of the 1980 UN Convention on the International Sale of Goods (CISG).

14.2 The Court of Rotterdam, the Netherlands, shall have jurisdiction in respect of any and all disputes arising between the Seller and the Buyer, notwithstanding any party's right to appeal.

14.3 Alternatively, disputes arising between the Seller and the Buyer may, upon either the Seller's or the Buyer's wish, be settled in accordance with the Arbitration Rules of the Netherlands Arbitration Institute. The place of arbitration shall be Rotterdam or any other place if agreed upon between the Seller and the Buyer. The proceedings shall be conducted in the English language unless the Seller and the Buyer agree for the proceedings to be conducted in the Dutch language.

#### **15. Severability**

If any provisions of the Terms and Conditions of Sale are or will become invalid this shall not affect the validity of any other provisions.

#### **16. Miscellaneous**

16.1 All orders are subject to acceptance by the Seller and satisfaction by the Buyer of the Seller's credit requirements.

16.2 Stenographical, typographical and clerical errors are subject to unilateral correction by the Seller.