

## **PURCHASING TERMS AND CONDITIONS**

**of the private limited companies Duca Frozen Food B.V. and Le Duc Fine Food B.V., both having their registered office in Stellendam, municipality of Goeree-Overflakkee (The Netherlands)**

### **Clause 1**

1.1 All our offers and the contracts made with us are subject to these Purchasing Terms and Conditions, insofar as there has been no explicit deviation herefrom in the written contract or in our written confirmation of the contract.

1.2 “We”, “us/our”, etc. means Duca Frozen Food B.V. and Le Duc Fine Food B.V. “Other contracting party” means the party to which we have made an offer and/or which enters into a contract with us.

1.3 In the event of a dispute on the meaning of the translation or of the terms and conditions set out below, the Dutch text shall be decisive.

1.4 If there is a conflict between these Purchasing Terms and Conditions and/or the trading terms and conditions of the other contracting party, the text of these Purchasing Terms and Conditions shall prevail.

1.5 If one of the provisions of these Purchasing Terms and Conditions or any part thereof, or any part of the underlying contract, were to be void or is voided, this shall not affect the content of the provision and the Purchasing Terms and Conditions for the rest, i.e. the underlying contract shall remain in effect as much as possible. The parties shall in such case make an arrangement for the void or voided passage which most closely approximates the intention of the parties with the underlying contract or the Purchasing Terms and Conditions, unless such provision or this part of the contract is of such importance for us that it cannot reasonably be demanded of us to maintain the contract.

### **Clause 2**

2.1 All our offers are fully without commitment, unless the offer states otherwise.

2.2 A contract with us is formed no sooner than we have expressly accepted an offer from the Other contracting party in writing (e.g. by written confirmation by letter, telefax or email or by signing or acceptance of the contract offered by us).

2.3 Our agents are not authorised to unconditionally bind us. They may only make purchases subject to our approval.

2.4 The other contracting party cannot and may not, without our written consent, transfer and/or pledge its claims on us and contracts with us to third parties.

### **Clause 3**

3.1 In case of force majeure we are entitled to suspend the performance of our obligations for the duration of the force majeure. If the duration or the seriousness of the force majeure necessitates such – which is exclusively at our discretion – we are entitled to deem the contract as terminated insofar as it has not yet been performed, without judicial intervention and without an obligation to pay compensation. In any event we can terminate the contract without any entitlement to payment of compensation by us whatsoever.

3.2 Unless otherwise stipulated hereinafter, force majeure on our part is deemed any special circumstance which makes the performance of our purchase obligation impossible or so cumbersome, that performance cannot reasonably be demanded of us, such as war, pandemic, whole or partial factory shut-down and/or mobilisation, strike, labour unrest, revolution, riot, affray, storm,

ice conditions, flooding, power or water outages, company fire, defects in the cooling, business standstill due to machine breakdown or difficulties in the power supply, traffic obstructions, whole or partial crop failure, abnormal drought or continuing rain, diseases in the crop, vermin plagues, default of suppliers, etc. Force majeure of our customers is deemed force majeure on our part.

3.3 Government measures which impede import, through shipment or export of sold or purchased goods or make them financially disadvantageous, give us the right to terminate the contract, insofar as it has not yet been performed, without our being bound to pay compensation, or to demand of the other contracting party that it compensate us for the disadvantage caused by these measures before we proceed to take delivery or receipt.

#### **Clause 4**

4.1 Our liability for damage or loss, however such arose, is explicitly excluded, except and insofar as such damage or loss is due to intent or gross negligence of our directors.

#### **Clause 5**

5.1 We have the right to set off all our claims (whether or not due and payable) on anyone who has entered into a contract with us, against our payment obligations. We also have the right to set off claims (whether or not due and payable) of one of our group companies on the other contracting party against the debts that another group company owes to the same contracting party. We furthermore have the right to set off our claims (whether or not due and payable) and those of our group companies on the other contracting party and undertakings and persons affiliated with the other contracting party against everything we and our group companies owe them. We therefore have the right to set off claims which are part of separate finances (Article 6:127(2) and (3) Dutch Civil Code do not apply).

5.2 Unless otherwise agreed in writing, we shall not pay for deliveries until 60 days after receipt of the invoice and the goods. All prices which have been agreed with the other contracting party shall remain unchanged. The other contracting party may not increase those prices for any reason whatsoever.

5.3 Payment by us does not in any way encompass a waiver of rights.

5.4 We shall only be in default after we have received the goods in good condition and the other contracting party gives us notice of default after the expiry of the term of 60 days referred to in Clause 5.2, by registered mail or bailiff's writ, subject to an additional term of 30 days. As of that time we shall owe the lower of the following two interest rates: the 1-week euribor rate or the ordinary statutory (non-commercial) interest rate. We shall never owe extrajudicial costs. Article 6:96 Dutch Civil Code is excluded.

#### **Clause 6**

6.1 All our contracts are governed by Dutch law.

6.2 Insofar as applicable, the provisions of the Vienna Sales Convention are excluded. All our contracts are deemed to have been concluded in the Netherlands. Unless otherwise stipulated in the contract, the other contracting party must deliver free of charge to our works or to an address stipulated by us, i.e. "Delivered Duty Paid", in accordance with Incoterms, edition 2020.

6.3 The other contracting party must deliver upon our first request. If the purchase contract and/or the confirmation states that delivery shall not be delivery paid, but on buyer's truck or ex the other contracting party's works, this only means that the transport costs are at our expense. The legal and de facto delivery shall always and only be effected at our works or at the works of the receiving company to be designated by us.

6.4 All claims on us shall be time-barred due to the passing of one year after they have arisen. The right to bring legal action against us shall lapse after the passing of one year after this right has arisen.

6.5 All disputes arising from our contracts shall be brought before the District Court of Rotterdam at first instance. In deviation from the above we have the right to have the matter presented to the courts of the area where the other contracting party is based.

#### **Clause 7**

7.1 The goods to be delivered must satisfy the agreed quality requirements upon arrival at our works or at the works of the agreed receiving company. They must be suitable for normal (machine) product treatment. They must be of good quality, healthy, free of components alien to the product, free of allergenic substances, free of disease, free of moulds and harmful bacteria, damage, frost and hail damage, soil, internal and external visible and invisible defects. The goods must have the requisite temperature and satisfy all legal standards, including the residue standards for pesticides. They must also satisfy the residue standards of our customers. In case of organic products they must be free of (residues of) pesticides and other chemical substances. Chilled products must have a temperature of 4°C.

7.2 We produce foodstuffs for human consumption. The ingredients must satisfy the highest standards. The other contracting party must be GFSI-certified.

#### **Clause 8**

8.1 The goods to be delivered to us must continue to comply with the agreed quality standards for a reasonable period of time after delivery. During a period of at least 5 working days after we have discovered the defect, we have the right to complain about the quality of the delivered goods. Complaints can be lodged verbally or in writing. If the other contracting party has not accepted our complaint in writing within two hours (for chilled products) or twenty-four hours (for deep freeze products and ambient products), we shall instruct an independent expert to investigate the complaint. The outcome of this investigation shall bind the other contracting party and us. The costs of the investigation shall be at the expense of the party held to be in the wrong.

8.2 The weighing costs are at the expense of the other contracting party.

8.3 If the goods do not satisfy the agreed quality requirements, we have the right to refuse the goods and to terminate the contract in whole or in part. In the event of rejection and/or refusal of the goods presented for delivery, we have the right at our election to demand replacement delivery or to deduct the rejected quantity from the remaining part of the contract; in all cases with full compensation.

8.3 In the event of non-delivery or late delivery and/or improper delivery, we have the right to terminate the contract without further notice of default, or, at our election, we have the right to demand performance; and in all cases we are entitled to full compensation.

8.4 The other contracting party shall indemnify us against all claims of third parties connected with the contract made between us and the other contracting party.

8.5 The other contracting party must take out proper insurance against the risks connected with the purchase contract with us and is obliged to furnish the insurance policy to us upon first request. If the other contracting party grows the products that are sold itself, it must insure them against cultivation risks such as hail, water and storm damage. In case of storage the other contracting party must insure the purchased product against fire and water damage. This obligation is without prejudice to the fact that the other contracting party, in case of whole or partial failure of the crops, is obliged to deliver the contracted quantity of product to us and is bound to procure the shortfall elsewhere. In the event of hail, fire and water damage the other contracting party cannot claim force majeure.

**Clause 9**

9.1 If after entering into the contract the information on the other contracting party's financial position is such that performance of the delivery obligation must be deemed uncertain, we have the right to demand that the other contracting party give security for the performance of its delivery obligations in the form stipulated by us. If the other contracting party does not give that security in time, we have the right to terminate the contract and/or claim compensation.

9.2 If the other contracting party fails in the performance of its obligations and the price of goods/services already delivered by the other contracting party has already become due and payable, we have the right to suspend the payment of those previously delivered goods and/or services, until the other contracting party has properly effected performance.

**Clause 10**

10.1 The Purchasing Terms and Conditions can be consulted, downloaded and saved on our website. The most recent version of the Purchasing Terms and Conditions can be consulted, downloaded and saved from the address: <https://www.leduc-food.nl/contact/>.

10.2 Contracts with us are always subject to the most recent version of the Purchasing Terms and Conditions. We have the right to unilaterally modify the Purchasing Terms and Conditions. Modifications also apply to existing contracts. The other contracting party shall be notified of modifications in writing or by email. The modification shall come into effect 30 days after said notification.