

GENERAL TERMS OF DELIVERY B2B SMITS ASSEN B.V.

1. General

- 1.1. These General Terms of Sale and Delivery shall apply to all offers by Smits Assen B.V. (hereinafter referred to as "Smits Assen"), as well as the legal relationships between Smits Assen and its counterparty, hereinafter referred to as "the buyer", even after termination of a legal relationship.
- 1.2. In granting a commission or by agreeing to a purchase agreement, the client declares to have received these General Terms and Conditions, to have taken due note of its entire content and to have fully accepted these.
- 1.3. The provisions in these conditions may only be deviated from in writing, in which case the remaining provisions shall remain in full force. No rights or warranties can be derived with regards to any subsequent legal relationships.
- 1.4. Smits Assen is not bound to the Purchase Terms of other provisions declared applicable by the buyer, unless Smits Assen has explicitly accepted these conditions in writing. Such an acceptance may not be inferred in the event Smits Assen leaves a buyer's notification, in which it states that it does not accept Smits Assen's General Terms of Sale and Delivery and declares its own conditions applicable, unanswered.
- 1.5. The ineffectiveness of part of these General Terms of Sale and Delivery shall not affect the validity of the remaining provisions.
- 1.6. In case Smits Assen does not always request strict compliance to these General Terms of Sale and Delivery, it is not implied that these terms and conditions are not valid or that Smits Assen will lose the right to pursue these terms and conditions in the future cases, whether or not they are of similar nature.

2. Offer and agreement

- 2.1. All offers and quotations made by Smits Assen shall always be without engagement. Smits Assen shall not be bound until after it has accepted or confirmed a commission in writing. Verbal commitments shall only bind Smits Assen if these have been confirmed in writing.
- 2.2. Smits Assen's written confirmation of purchase shall serve as full proof of the agreement, unless the buyer has filed a written objection to its content with 24 hours of receipt.
- 2.3. All offers and quotations made by Smits Assen, both written and verbal, will automatically be lifted fourteen (14) days after the date of the relevant offer or quotation, save for a notification to the contrary from Smits Assen.
- 2.4. Where there is a difference between the content of the confirmation, which a representative, agent or other intermediary might have undertaken, regardless whether Smits Assen's confirmation was made before or after the representative, agent or other intermediary's confirmation, and the content of the Smits Assen's confirmation, Smits Assen's confirmation prevails.
- 2.5. The client does not have – save for the client's possible legal authority to dissolve and possibly in cases referred to in these General Terms and Conditions – the right to cancel a placed order.

- 2.6. Apparent mistakes or errors in Smits Assen's offers relieves it from the obligation to comply and/or any obligation to pay damages as a result thereof, even after the conclusion of the agreement.
- 2.7. A long-distance agreement concluded, for example via the Internet, shall be realised only after Smits Assen has unequivocally indicated in writing, via email for example, to accept the commission, order and/or purchase.
- 2.8. Smits Assen is entitled to refuse commissions, orders and/or purchases without having to state any reasons. Smits Assen is in that case not liable to pay compensation.
- 2.9. Smits Assen is not obligated to make changes requested by the client after the agreement has been concluded. In case Smits Assen agrees to make changes requested by the client, it can add the condition that it shall fully cooperate only after any costs related to making those changes have been paid for by the client.
- 2.10. Quotations and/or offers do not automatically apply to future orders or backorders.

3. Monitoring and commercials

- 3.1. The buyer should inspect the delivered goods upon actual delivery for conformity (correctness, quality, weight/amount and/or packaging). If the buyer is of the opinion that the delivered goods do not correspond to the written purchase confirmation, the buyer should notify Smits Assen of its concerns within fourteen (14) days of receipt accompanied by a clear description of the deficiencies found.
- 3.2. If, however, quality deficiencies cannot be observed through a thorough inspection within fourteen (14) days of receipts, the period of time described in 3.1 shall take effect the moment the buyer could have reasonably have detected the shortcoming.
- 3.3. Failing to notify in due time within the period of time described in Article 3.1 and 3.2, the goods will be considered to have been delivered in good condition, complete and without damages to the buyer in accordance with the purchase confirmation and will be accepted as such by the buyer. The buyer cannot invoke any rights whatsoever with respect to shortcomings of the delivered goods.
- 3.4. Without prejudice to Article 3.1, 3.2 and 3.3, all claims made by the buyer, based on the assumption that a delivered good by Smits Assen would have a defect as described in Article 3.1, shall be barred after two (2) months after the date of delivery to the buyer.
- 3.5. Minor deviations relating to specified amounts and other particulars such as colour, quality and weight, are not considered shortcomings. Features of any supplied specimen copies are merely by way of indication.
- 3.6. In case products are delivered that do not comply with the agreement, Smits Assen is not bound to do more or anything else but re-deliver proper products or credit the purchase price, such at Smits Assen's discretion. Smits Assen checks upon the returning of the delivered goods for conformity (correctness, quality, weight, amount and/or packaging). If the goods delivered by Smits Assen are/have been manipulated or handled in any way, or are/have been entirely or partially been damaged, are/have been (re)packaged, or are/have not been kept, transported, stored or processed in accordance with statutory regulations, Smits Assen's issued (storage,

transport, processing and other) regulations or other generally applicable practices or standards, or if the delivered goods are sold to a third party, the buyer loses the right to compensation or replacement of the delivered goods.

3.7. Commercials do not relieve the buyer from its obligations to pay the sums invoiced.

4. Delivery

4.1. Delivery takes place ex warehouse in Assen, the Netherlands (EX WORKS in accordance with the Incoterms 2010 or a more recent edition thereof), unless explicitly otherwise agreed in writing.

4.2. For the application of these conditions, the in 4.1 given moment of risk transfer counts as the moment of deliverance.

4.3. If on the day of delivery, the buyer has not arranged a means of transport or a cargo space, or does not submit its delivery instructions on time for Smits Assen to be able to deliver the goods within the agreed deadline, or makes delivery or timely delivery impossible, then all damages and costs incurred by such negligence are borne by the buyer.

4.4. If the buyer fails to issue the instructions on time, Smits Assen shall be entitled to invoice the goods as of the last delivery day resulting from the purchase and demand payment as if the same had been supplied on said day, providing that it keeps said goods available for the buyer at the latter's expense and risk. In such a case, Smits Assen is also entitled to consider the sale as having been dissolved and may claim damages, eight (8) days after summation. This summation may be omitted if the buyer has clearly indicated not to want to purchase the goods as well as if it clearly derives from the agreement that the delivery time in favour of Smits Assen will be a strict deadline. Upon fulfilment of this summation, Smits Assen remains entitled to compensation as a result of damages due to the delayed purchase.

4.5. If parties explicitly agree that Smits Assen should arrange for the transport of the goods, the costs as well as the risks of loss or damages during transportation are for the account of the client, unless explicitly otherwise agreed in writing.

4.6. The time of delivery or the period of time given by Smits Assen are an approximate, thus is not a strict deadline within the meaning of Article 6:83 sub a of the Dutch Civil Code. The delivery time does not start until after Smits Assen has confirmed the commission in writing, all details of the procedure have been laid down and the buyer has made the information any other essentials available to Smits Assen and the possibly agreed upon deposit has been received.

4.7. Exceeding the delivery time, such through whatever cause, shall never entitle the buyer to any kind of damages, to refuse the goods, to entirely or partially dissolve the agreement or not to meet any obligation under this or any other agreement entered into.

4.8. Smits Assen is entitled to deliver the goods in stages. In that case, Smits Assen has the right to invoice each partial delivery separately and demand payment thereof. If and as long as this invoice has not been paid by the client, Smits Assen is not obligated to deliver the other goods and it is entitled to suspend the delivery of the other goods. If Smits Assen delivers the goods in stages because particular goods are out of stock, this part of the delivery is processed in the Smits Assen system as a backorder. In such cases, the buyer shall be informed in writing in the

form of a packing slip or an order confirmation.

5. Price, payment

- 5.1. All prices, unless otherwise specifically agreed, are in euros and exclusive of VAT.
- 5.2. If after the reference date, i.e. the date of the written confirmation by Smits Assen as referred to in Article 2, one or more cost factors show an increase, even if this occurs as a result of foreseeable circumstances, Smits Assen shall be entitled to increase the agreed price accordingly. The buyer is not entitled to dissolve the agreement as a result of such price increases, provided that these are reasonable and fair. Cost factors include among other things: the purchase price (of, for example, ingredients or raw materials), exchange differences, government measures, import and export duties, transportation fees and insurance premiums.
- 5.3. All invoices shall be paid by the buyer within thirty (30) days after the invoice date, unless specific (other) payment conditions have been added to the invoice or the purchase confirmation. With respect to the invoice, the buyer is not entitled to settlement, suspension or compensation of debts. In case the buyer is of the opinion that an invoice does not correspond to the delivered goods, the buyer should notify Smits Assen this in writing no later than seven (7) days of the invoice date. In absence of this written submission, the invoice is deemed to have been definitively accepted and approved.
- 5.4. Payment shall be made in euros, unless otherwise specifically agreed.
- 5.5. Payments by the buyer shall primarily be used to pay any interest and costs that are due by him as well as the judicial and extrajudicial costs referred to in Article 5.6, and shall be subsequently used to pay the oldest outstanding invoice, even if the buyer states that the payment relates to a later invoice.
- 5.6. The buyer shall be in default by the mere expiry of the payment term, or if (extra)judicial moratorium of payment or if bankruptcy or financial reconstruction of debt petition has been requested or ordered with respect to the buyer, without needing any (further) summation or notice of default. In case the buyer is in default, the buyer owes Smits Assen a default interest of 3% per month, cumulatively, calculated on the principal amount. Parts of a month shall be counted as full months. Furthermore, the buyer shall owe any judicial and extrajudicial costs, including all full, actual fees charged for (trial) legal assistance and judicial advice, such as bailiff and legal fees and any third-party fees that relate to the collection of the payment of which the level is set to a minimum of 15% of the total outstanding amount (excluding VAT) with a minimum of € 500 (in words: five hundred euros).
- 5.7. In case Smits Assen has granted the buyer a discount on the delivered goods, then these discounts only apply provided that the invoice is paid no later than the expiration date. In the event the buyer fails to pay the amount due on the invoice on the due date of the invoice concerned, all granted discounts shall be null and void and the buyer will owe Smits Assen the regular price from the due date of the invoice.

6. Retention of ownership and lien

- 6.1. The buyer may only become owner of the Smits Assen delivered or still to be delivered goods under suspensory conditions. Pursuant to Article 3:92 of the Dutch Civil Code, Smits Assen remains owner of the delivered or still to be delivered goods as long as the buyer has not (fully) paid for the receivables from Smits Assen due to or in relation to the concluded agreement or similar agreement(s) with the buyer, including receivables regarding fines, interest and expenses.
- 6.2. The buyer may sell, process or transport the delivered goods only insofar this is deemed necessary for its normal business operation. As long as the buyer has not paid the abovementioned receivables, the buyer is not entitled to encumber goods delivered by Smits Assen with any rights of pledge or non-processor pledge, and undertakes, at Smits Assen's earliest request, to notify third parties wishing to attain such rights to the goods that it is not authorised to establish any such pledge.
- 6.3. In the event the buyer does not fulfil any obligation under the agreement towards Smits Assen in relation to the sold goods, Smits Assen is entitled, without any notice of default being required, to repossess such goods. The buyer is obligated to lend any assistance required therefor, such as but not limited to, disclosing the location where the goods are and granting access to the goods.
- 6.4. In the event goods are resold by the buyer, the buyer is obligated to pledge the consequential claims to Smits Assen. The amount of the claim and the names of the recipients must be shared with Smits Assen upon first request.

7. Dissolution

- 7.1. If the buyer fails in its performance of any obligation in any way towards Smits Assen, Smits Assen is entitled to immediately dissolve the agreement in full or in part without judicial intervention, without prejudice to Smits Assen's right to (instead) demand fulfilment and/or (instead thereof or in addition) damages and/or take other (judicial) measures. In the event of application for a moratorium, a provisional moratorium that has been granted, an application or claim of bankruptcy, a winding-up petition, actual bankruptcy or liquidation or discontinuation of all or part of the business of the buyer, Smits Assen is authorised, without prejudice to its further rights and without any obligation to pay damages, to dissolve all or part of the agreement with immediate effect or to suspend (further) compliance by Smits Assen of the agreement.
- 7.2. The buyer will merely be authorised to dissolve the agreement only in case of a substantial shortcoming and provided that Smits Assen, following a proper detailed and in writing notice of default within the determined period of time as described in Article 3.1 and 3.2 whereby a reasonable period of time is provided to remedy the substantial shortcoming, (still) accountably fails to fulfil essential obligations on account of the agreement. The reasonable period of time to comply, which is stipulated by the buyer, should take into account all circumstances of the specific case.
- 7.3. If proper compliance by Smits Assen permanently proves to be wholly or partially impossible due to one or more circumstances beyond the will and control of Smits Assen, including circumstances as described in Article 8.2, Smits Assen shall have the right to suspend the date of delivery as

well as dissolve the agreement with the buyer.

- 7.4. Smits Assen is entitled to partly or completely dissolve the agreement through written notification with immediate effect without having to provide proof of default or request the intervention of a court if the buyer is granted a moratorium, if the company is liquidated, terminated or discontinued, or if the buyer goes into administration (entirely or partially), or if a part or all of the buyer's properties are seized (an account preservation or under a warrant of execution), or if the buyer's business is sold or if there is a change in the buyer's management. Smits Assen shall in no circumstances be liable to pay damages due to said discontinuation.

8. Force majeure

- 8.1. In the event Smits Assen is not in the position to comply with its contractual obligations due to a situation of force majeure, even if these could have been anticipated at the time at which the agreement was concluded, Smits Assen is entitled, at his own discretion, to reschedule the date of delivery for as long as the force majeure situation remains in force, or to dissolve the agreement in part or as a whole without judicial intervention.
- 8.2. Force majeure includes, among other things, all events outside the control of Smits Assen, restricting normal manufacturing or the delivery of the goods, such as (civil) war, civil unrest, mobilisation, strike, workplace exclusion, sit-in, fire, frost, flooding or other company malfunctions, for both Smits Assen's company as well as companies from which Smits Assen procures resources and/or raw materials or has processed, not being able to deliver the resources, raw materials, fuel, etc. on time, transport difficulties, import and export restrictions, EU or governmental measures, all of which is to be taken in the broadest sense possible.
- 8.3. Any claim for damages in these cases is excluded, while Smits Assen retains the right to payment of the already delivered goods.

9. Liability

- 9.1. Smits Assen shall only be liable for damages, directly arising from culpable shortcomings and directly relating to (the execution of) the agreement. Smits Assen is not responsible in the event of non-observance by the buyer of lawful regulations and/or storage, transport, processing, usage and other regulations issued by Smits Assen, or generally applicable practices or standards in relation to Smits Assen's goods. Furthermore, Smits Assen is not liable for damage, of whatever nature, caused because Smits Assen relied on incorrect and/or incomplete data provided by or on behalf of the buyer.
- 9.2. Smits Assen is only liable for compensation of direct damages. Direct damages shall solely mean:
- (a) material damage to (the properties of) the buyer;
 - (b) reasonable costs the buyer has incurred to determine the liability for and the extent of the direct damage, and;
 - (c) reasonable costs the buyer in reasonableness incurred, and in reasonableness could and was permitted to incur, to prevent or minimise the direct damage, insofar the buyer can prove that these costs led to a limitation to the direct damage as referred to in this provision.

- 9.3. In no event will Smits Assen be held liable for or may be imposed on paying compensation for any indirect damage unless applicable mandatory legislation does not allow for this exclusion, at least a complete exclusion, of (a part of) this damage. Indirect damage includes among other things but not limited to: consequential damage, loss of turnover and/or profit, loss of goodwill, lost savings, made investments, damages due to business interruption i.e. stagnation and/or costs made to prevent, determine or limit indirect damage and/or the responsibility therefore, costs made to receive extrajudicial satisfaction of the indirect damage.
- 9.4. Smits Assen's liability as a consequence of a culpable deficiency in meeting an obligation or obligations under the agreement only arises when the buyer immediately and within the specified time as described in Article 3.1 and 3.2 notifies Smits Assen of the deficiencies in writing, whereby the buyer offers Smits Assen a reasonable period of time during which it can as yet fulfil his obligations under the agreement, and Smits Assen even after this period of time (still) fails to observe with the agreement. The reasonable period of time to comply, which is stipulated by the buyer, should take into account all circumstances of the specific case.
- 9.5. Insofar Smits Assen may be liable, that liability is, on any account whatsoever, always limited to a maximum of the net invoice value of the delivered goods, or, if the invoice value (ex. VAT) of the concerning performance cannot be determined, up to € 5,000 (five thousand euros) per damage case, at least up to the maximum amount for with the corporate liability insurance offers coverage.
- 9.6. The buyer indemnifies Smits Assen against all consequences, whatsoever, of the claims made by its clients or third parties relating to Smits Assen's delivered or to be delivered goods. If Smits Assen receives a third-party claim, then the buyer is obligated to assist Smits Assen both extrajudicially as well as judicially, and shall immediately do everything that may be expected from the buyer in that case. Should the buyer remain in default in taking adequate measures, then Smits Assen is entitled to proceed thereto itself without proof of default. All costs and damages incurred on the part of Smits Assen and third parties as a result thereof, will be for the account and risk of the buyer.
- 9.7. Concerning matters acquired by Smits Assen by third parties, (contracts, guarantees and/or liability-limited) provisions related to that relation shall also apply to the buyer, in the event and insofar Smits Assen wishes to appeal to such provisions.
- 9.8. By accepting a delivered batch of goods, the buyer undertakes not to reclaim from Smits Assen the possible financial damages caused by these goods, either for himself or for Smits Assen, as a result of non-payment or reimbursement of any relating subsidy, but respectively compensate Smits Assen.
- 9.9. In view of the possibility of the existence of different safety requirements and standards, the sale and supply of products outside the European Economic Area is not permitted in the absence of written permission from Smits Assen. The buyer indemnifies Smits Assen against any claims by third parties which may arise due to an infringement of the above prohibition.

10. Applicable law, translations

- 10.1. Dutch law applies to all agreements between Smits Assen and the buyer. Application of the Vienna Sales Convention is excluded.
- 10.2. In the event these General Terms of Delivery is translated and in the event of discrepancies between the two documents, the Dutch version shall prevail.

11. Disputes

- 11.1. All disputes that might arise between the buyer and Smits Assen in response to an agreement, to which these delivery conditions apply as well as later agreements, whatever the consequences might be thereof, shall be submitted to the competent court in the place of the registered office of Smits Assen, i.e. the Courthouse of Northern Netherlands (in Dutch: Rechtbank Noord-Nederland, RNN), located in Assen.
- 11.2. Without prejudice to the stipulations in 11.1, Smits Assen is entitled to resolve any disputes before the competent court of the buyer's place of residence. Furthermore, with that which has been specified in 11.1, the competence of the judiciary with respect to precautionary measures, as well as urgent measures and summary proceedings, remain unaffected.

12. Securing

- 12.1. The buyer is obligated at first request by Smits Assen to pay the products the buyer ordered in advance to Smits Assen or to furnish adequate security for the complete fulfilment of the buyer's obligations pertaining to the commissions that are to be carried out by Smits Assen, either partially or completely, in any form as desired by Smits Assen.
- 12.2. If the buyer does not comply with a Smits Assen request as referred to in Article 12.1, then, without prejudice to Smits Assen's other rights, all the buyer owes Smits Assen shall become immediately due and payable and Smits Assen is entitled to immediately suspend further execution of any commission.

13. Intellectual property rights

- 13.1. All intellectual property rights (including in any case copyrights, design rights, brand rights, patent laws, trade name rights, database rights and know-how) and the relevant accompanying materials such as (any) analyses, reports, designs, advice, outlines, drawings, documentation, user manuals, as well as preparatory materials thereof from Smits Assen (or its licensors/suppliers) shall explicitly continue to vest in Smits Assen (or its licensors/suppliers). This also applies to a developed or made available goods for the buyer under an (commission) agreement.
- 13.2. The buyer is not permitted, unless Smits Assen has given prior written authorisation thereof, to use the intellectual property rights, in particular Smits Assen brands or trade names, including but not limited to Jollein and Little Lemonade. Furthermore, the buyer is not permitted to remove or alter any indication with respect to intellectual property rights of Smits Assen's goods.

13.3. The client shall at all times take into account Smits Assen's good name and reputation and shall ensure that its adopted approach does under no circumstances harm the rights and/or reputation of Smits Assen or its products.

14. Personal data

14.1. As part of the provision of services, Smits Assen B.V. processes a number of data (of contact persons from) the buyer who are referred to as personal data within the meaning of the General Data Protection Regulation (GDPR). With respect to the processing of this data processing, Smits Assen is the so-called controller as referred to in the GDPR. This means that Smits Assen decides which personal data is processed, for what purpose and in which way this is executed. Smits Assen is responsible for the careful and proper processing of the personal data. More information is provided in the Jollein privacy and cookie statement about this data processing (<https://www.jollein.com/privacy>).

15. Conversion

15.1. If and as far as based on grounds of reasonability and fairness or if the unreasonable incriminating character on any article in the agreement cannot be appealed to, in any case an interpretation adhering to the article in question will be applied, identifying as much as possible as far as the contents and the purpose are concerned, thus ensuring that an appeal can be made.

16. Depot

16.1. These General Terms of Sale and Delivery are registered with the Chamber of Commerce under number 04043949.