

GENERAL CONDITIONS
of
PROSUPPLY BV
December 2018

1. General

- 1.1. These general sales and delivery conditions are applicable to all legal relationships between PROSUPPLY BV, in the following referred to as "PROSUPPLY" and the counterparty, in the following referred to as "the buyer", also after termination of a legal relationship.
- 1.2. Any possible deviations from these conditions can only be expressly established in writing. From such deviations, no rights can be derived with regard to legal relationships entered into later on.
- 1.3. Purchasing and other conditions which the buyer declares applicable do not bind PROSUPPLY, unless these have been accepted emphatically in writing by PROSUPPLY. Such acceptance may not be deduced from the circumstance that PROSUPPLY leaves uncontradicted an announcement by the buyer stating that he does not accept our sales and delivery conditions and applies his own conditions.
- 1.4. A part of these sales and delivery conditions not being binding does not affect the validity of the remainder.
- 1.5. If PROSUPPLY does not always demand the strict observance of these sales and delivery conditions does not entail that these conditions would not be applicable or that PROSUPPLY would lose the right to demand strict observance of these conditions in future, whether or not similar, cases.

2. Offer and agreement

- 2.1. The offer of PROSUPPLY is always non-committal. It is only bound after it has emphatically accepted an order in writing. Verbal commitments are only binding to PROSUPPLY after these have been emphatically confirmed in writing.
- 2.2. The written sales confirmations of PROSUPPLY count as full proof of the agreement, unless the buyer has objected in writing against its contents within 3 business days after receipt.
- 2.3. In case there were to be a difference between the content of the confirmation which a representative, agent, or other intermediary may have made, regardless of whether the confirmation of PROSUPPLY takes place before or after the confirmation of the representative, agent, or other intermediary, and the content of the confirmation of PROSUPPLY, the confirmation of PROSUPPLY prevails.

3. Control and complaint

- 3.1. The buyer must immediately upon actual delivery control the delivered matters for conformity (correctness, quality, weight/quantity and/or packaging). If the delivered matters according to the buyer were not to correspond with the written sales confirmation, the buyer must inform PROSUPPLY accordingly in writing within 14 days after receipt of the matters, thereby including a clear description of the identified defects.
- 3.2. If, however, quality defects cannot be identified upon a sound arrival check within 14 days after receipt, the term intended in 3.1 only commences at the moment that the buyer could reasonably have detected the defect.
- 3.3. In the absence of a timely report within the term mentioned in article 3.1 and 3.2, the matters are considered to have been delivered to the buyer in good order, completely, and without any defects, and to have been accepted as such by the buyer. After this term, the buyer can no longer invoke any right with regard to any shortcoming concerning the delivered matters. Without prejudice to article 3.1, 3.2, and 3.3 all claims of the buyer, based on the contention that a product delivered by PROSUPPLY has a defect as intended in article 3.1, lapse after expiry of two months after the date of delivery to the buyer.
- 3.4. Minor deviations with regard to stated quantities and other specifics do not count as shortcomings. By a minor deviation is intended any deviation of less than 5% of the total stated quantity.
- 3.5. In case of the delivery of products not corresponding with the agreement, PROSUPPLY is not bound to more or otherwise than the re-delivery of sound products, or the crediting of the purchase price, such as at the free discretion of PROSUPPLY. If the products delivered by PROSUPPLY are processed or transformed in any manner, or are completely or partially damaged, are re-packaged, or not stored, transported, kept or processed in accordance with legal requirements, the instructions (for storage, transport, processing and other) issued by PROSUPPLY, or with generally applicable customs and/or standards, or if the delivered matters are resold to a third party, the right of the buyer to compensation or replacement of the delivered products lapses.
- 3.6. Complaint does not relieve the buyer of his obligation to pay the invoice amounts.

4. Delivery

- 4.1. Delivery takes place in accordance with the Incoterm referred to in the quotation or sales confirmation by PROSUPPLY (in conformity with the Incoterms 2010 or a more recent version thereof), unless it is emphatically established otherwise.
- 4.2. For the application of these conditions, the moment of risk transfer to the buyer as established in 4.1 counts as the moment of delivery.
- 4.3. If buyer on the day of delivery has not established a means of transport, has not provided loading space, does not provide his instructions for delivery in such a timely manner that PROSUPPLY is able to deliver within the established term, or otherwise renders impossible delivery and/or timely delivery, all damage and costs resulting from such negligence are borne by the buyer.
- 4.4. If the buyer does not provide his instructions for delivery on time, PROSUPPLY has the right to invoice the matters as of the last day of delivery resulting from the purchase and to demand payment as if they were delivered on that day, on condition that PROSUPPLY keeps these matters available for the buyer, at the latter's cost and risk, or PROSUPPLY declares itself willing to deliver upon a new calling notice of 8 days. In such case, PROSUPPLY is also authorised, however, to consider the sale as rescinded and to demand compensation of damages, after summation with an 8-day notice. This summation can be omitted if the buyer has clearly indicated that he does not wish to take the goods, as well as in the event that it clearly flows from contact that the delivery term for the benefit of PROSUPPLY will be a fatal time limit. In case of compliance with this summation, PROSUPPLY retains its right to compensation for damage resulting from the delayed acceptance.
- 4.5. The time of delivery or the term indicated by PROSUPPLY is valid by approximation. The delivery term does not commence before PROSUPPLY has confirmed the order in writing, all details of the implementation have been established and the buyer has provided the information and other requisites to PROSUPPLY and such down payment as may have been established has been received.
- 4.6. The overrunning of the delivery time, for any reason whatsoever, will never confer the right to compensation for damages to buyer, nor to refuse the matters, to the total or partial rescission of the agreement or non-compliance with any obligation, which may result for him from this or any other agreement related with this agreement.

5. Price, payment

- 5.1. All prices, unless emphatically established otherwise, are listed in Euros and exclusive of VAT.
- 5.2. If after the reference date, that is, the date of the written purchase confirmation by PROSUPPLY, one or more cost-factors undergo(es) an increase, even if this occurs as a result of foreseeable circumstances, PROSUPPLY has the right to increase the established price accordingly. The buyer does not have the right to rescind the agreement as a consequence of such price increases, on condition these are reasonable and fair. By cost-factors are intended, amongst other things: the purchase price (for example of ingredients or raw material), exchange differences, government measures, import and export duties, transport costs, and insurance fees.
- 5.3. All invoices will be settled by the buyer within fourteen (14) days after the invoice date, unless on the invoice or in the sale confirmation specific (differing) payment conditions are stated. The buyer is not authorised in the matter of the invoices for set-offs, suspension, or compensation of debt. In case the buyer holds that an invoice does not correspond with the delivered matters, then the buyer must report this no later than within seven (7) days after invoice date in writing, including substantiation, to PROSUPPLY, failing which the invoice is considered to have been accepted and approved by the buyer.
- 5.4. Payment takes place in euros, unless it is emphatically established otherwise.
- 5.5. Payments of the buyer primarily serve to settle the interest owed by him, as well as the judicial and extrajudicial costs intended in article 5.6. and are subsequently deducted from the oldest outstanding invoice, even if the buyer states that the settlement regards a later invoice.
- 5.6. The buyer will through the simple expiry of the payment term, or otherwise if (extra-)judicial suspension of payments or bankruptcy or a debt restructuring plan has been applied for or pronounced with regard to the buyer, fall into default, without requiring any (further) summation of default notice. In case the buyer is in default, then the buyer owes PROSUPPLY default interest in the amount of 3% per month, to be calculated cumulatively over the principal. Parts of a month are considered as full months in this matter. Furthermore, the buyer will be bound to fully compensate the extrajudicial and judicial costs, including all complete actual costs calculated for legal (proceedings) assistance and legal advice, such as all bailiffs and lawyer's costs and possibly costs of other third parties, which are related with the collection of the claim, the amount of which is set at a minimum of 15% of the total outstanding amount (exclusive of VAT), with a minimum of € 500 (in words: five hundred euros).
- 5.7. In case a discount has been granted by PROSUPPLY to the buyer on the matters to

be delivered, then these discounts only apply under the condition that the invoice is paid no later than on the expiry date. In case payment is not settled within the expiry term of the invoice, then any discount as may have been granted lapses and the buyer owes as of the expiry date of the invoice the regular price to PROSUPPLY.

6. Retention of property and lien

- 6.1. The buyer only becomes the owner of the matters delivered or yet to be delivered by PROSUPPLY under suspensory conditions. PROSUPPLY remains the owner of the matters which have been or are to be delivered for as long as the buyer has not (completely) settled the claims of PROSUPPLY on account of or related to the agreement concluded with the buyer or similar agreement(s), thereby also included claims in the matter of (penalty) interest and costs.
- 6.2. The buyer can only sell, deliver or process the delivered matters to the extent this is necessary in the context of his regular business operations. The buyer does not have the right, for as long as he has not settled the above claims, to establish a lien or non-possessory lien on the matters delivered by PROSUPPLY and commits himself to declare to third parties wishing to establish such a right thereon, upon first request of PROSUPPLY, that he is not authorised to establish a lien.
- 6.3. In case the buyer does not comply with any obligation from the agreement regarding sold matters towards PROSUPPLY, the latter has the right, without default notice, to take back the matters, both the matters originally delivered and the newly formed matters. The buyer commits himself to provide any necessary assistance to this effect, such as, though not limited to, disclosing the location of the matters and the granting of access to those matters.
- 6.4. In case of re-delivery of the matters by the buyer, the buyer commits himself to pledge all resulting claims to PROSUPPLY. The amount of the claims and the names of the acquirers must be communicated to PROSUPPLY upon the latter's first request.

7. Rescission

- 7.1. If the buyer falls short in any manner towards PROSUPPLY in complying with any obligation, PROSUPPLY is authorised to completely or partially rescind the agreement, without judicial intervention and with immediate effect, without prejudice to the right of PROSUPPLY to demand (in its stead) compliance and/or (in its stead or in addition) compensation of damage and/or to take other (legal) measures, as well as in case of an application for or obtained suspension of payment, of an application, filing or declaration of bankruptcy, of liquidation or suspension of (a part of) the business of the buyer, PROSUPPLY is authorised, without prejudice to the other rights falling to it and without any obligation to compensate damages, or to suspend (further) compliance with the agreement by PROSUPPLY.
- 7.2. To the buyer, the power to rescind the agreement falls exclusively in case of a substantial shortcoming and on condition that PROSUPPLY, after an adequate written default notice is given within the term set for this in article 9.1, with the greatest possible detail in which a reasonable term is granted to provide remedy for the substantial shortcoming, (still) falls short culpably in fulfilling material obligations under the agreement. The reasonable term for compliance which is set by the buyer must take into account all circumstances of the concrete case.
- 7.3. If the adequate fulfillment by PROSUPPLY has become completely or partially impossible as a result of one or more circumstances which are not the responsibility of PROSUPPLY, including the circumstances mentioned in article 8.2, PROSUPPLY has the right to suspend the delivery date or to rescind the agreement with the buyer.
- 7.4. PROSUPPLY can furthermore terminate the agreement completely or partially without any default notice and without judicial intervention, through written notification with immediate effect if bankruptcy is applied for and/or pronounced with regard to the buyer, if his business is liquidated, terminated or suspended, or if the buyer proceeds with (full or partial) cession of property, or if a (preservation or executorial) attachment is placed on the entire or on parts of the property of the buyer, or if the business of the buyer is sold or a change occurs in the board of the buyer. PROSUPPLY will never be held to pay any compensation for such termination.

8. Force majeure

- 8.1. In case PROSUPPLY is not able to comply with its obligations from the agreement as a result of a situation of force majeure, - even if it could be considered as foreseen at the time of conclusion of the agreement - PROSUPPLY has the right, at its discretion, to either shift the delivery date for as long as the relevant situation of force majeure remains effective, or otherwise to completely or partially rescind the agreement without any judicial intervention.
- 8.2. By force majeure is intended, among other things, all events outside the control of PROSUPPLY, as a result of which the regular manufacturing or delivery of the matters is impeded, such as (civil) war, rioting, mobilization, strikes, exclusion, company occupation, fire, frost, flooding, or other operational disturbance, both at the company of PROSUPPLY and at companies from which PROSUPPLY acquires materials and/or raw material or has such processed, the not getting timely delivered of materials, raw material, fuels, etc., transport difficulties, lack of fuels and/or raw material and/or materials and/or workers, import and export restrictions, EU or government measures, and all matters in the widest sense of the term.
- 8.3. Any appeal to compensation of damages is excluded in all of these cases, while PROSUPPLY retains the right to payment of such matters as may have been delivered already.

9. Liability

- 9.1. PROSUPPLY will only be liable for damage flowing directly from attributable shortcomings, directly related to the implementation of the agreement. PROSUPPLY is not liable in case of inadequate compliance by the buyer of legal requirements and/or such requirements regarding conservation, transportation, processing, usage, and otherwise as PROSUPPLY may have given, or with generally applicable customs and/or standards concerning the matters of PROSUPPLY. Furthermore, PROSUPPLY is not liable either for damage, of whatever nature, which has occurred because PROSUPPLY based itself on incorrect and/or incomplete information provided by or on behalf of the buyer.
- 9.2. PROSUPPLY is exclusively liable for the compensation of direct damage. By direct damage must be exclusively understood:
 - (a) material damage to (the property of) the buyer;
 - (b) reasonable costs which the buyer has incurred to determine the liability for and the extent of the direct damage; and
 - (c) reasonable costs which the buyer has reasonably incurred and reasonably could and was permitted to incur, to prevent the direct damage, to the extent the buyer demonstrates that these costs have led to the mitigation of the direct costs as intended in these conditions.
- 9.3. PROSUPPLY can under no circumstance be held accountable for and/or be forced to provide compensation of any possible indirect damage, unless applicable legislation of a mandatory nature does not permit this exclusion, or at least the entire exclusion, of (a part of) this damage. By indirect damage is intended among other things (and not exclusively): consequential damage, loss of turnover and/or profit, loss of goodwill, missed savings, investments made, damage due to operational stagnation and/or standstill and/or costs incurred to prevent, determine, or mitigate indirect damage and/or the liability for such, costs incurred to obtain satisfaction for the indirect damage extrajudicially.
- 9.4. Liability of PROSUPPLY on account of an attributable shortcoming in complying with an obligation or with obligations pursuant to the agreement, only arises after the buyer forthwith declares the default of PROSUPPLY, within the term set for this in article 3.1 and 3.2, in writing, whereby the buyer grants PROSUPPLY a reasonable term to still comply with its obligations from the agreement and PROSUPPLY also after this term (still) falls culpably short in complying with the agreement. The reasonable term for compliance which is set by the buyer must take into account all circumstances of the concrete case.
- 9.5. To the extent PROSUPPLY were to be liable, then such liability, on any account whatsoever, is limited at all times to a maximum of the invoice value of the delivered matters, or, if the invoice value (excl. VAT) of the performance in case cannot be established, to € 5,000 (five thousand euros) per damage case.
- 9.6. The buyer safeguards PROSUPPLY against any consequence, of whatever kind, of the claims by his purchasers or third parties in the matter of the products delivered or still to be delivered by PROSUPPLY. If PROSUPPLY were to be addressed on such account by third parties, then the buyer is obligated to assist PROSUPPLY both judicially and extrajudicially, and to forthwith take all such actions as may be expected of him in that event. Were the buyer to fall short in the taking of adequate measures, then PROSUPPLY has the right, without any default notice, to proceed with such actions itself. All costs and damage occurring on the part of PROSUPPLY and third parties as a result are at the integral expense and risk of the buyer.
- 9.7. With regard to matters which have been obtained by PROSUPPLY from third parties, the provisions (contractual, regarding warranty and/or limiting liability) regarding that relationship will also apply vis-à-vis the buyer, if and to the extent PROSUPPLY wishes to appeal to such provisions.
- 9.8. Through the acceptance of a delivered batch of goods, the buyer commits himself not to claim any financial damage as may have resulted from these matters, either for him or for PROSUPPLY, as a consequence of non-payment or the recovery of any subsidy with regard to it, back from PROSUPPLY or respectively to compensate such to PROSUPPLY.

10. Applicable law, translations

- 10.1. To all agreements between PROSUPPLY and the buyer, Netherlands legislation is applicable.
 - 10.2. In case translation of these general delivery terms are made and a dispute were to arise regarding the text thereof, the Dutch text will be decisive.
- 11. Disputes**
- 11.1. All disputes which may arise between the buyer and PROSUPPLY in connection with an agreement to which are applicable these delivery terms, as well as with further agreements which may result from it, will be submitted to the competent court of the place of establishment of PROSUPPLY, being the court of law in Noord-Nederland, location Assen.
 - 11.2. Without prejudice to what is stipulated in 11.1, PROSUPPLY has the right to submit any dispute to the court of the place of residence of the buyer. Also unaffected by what is stipulated in 11.1 remains the authority of the judicial authorities with regard to conservation measures as well as their confirmation, and to urgent measures and preliminary injunction proceedings.
- 12. Security**
- 12.1. The buyer is obligated upon first request of PROSUPPLY to pay in advance the products ordered by him to PROSUPPLY or to provide satisfactory security for full compliance with all obligations of the buyer regarding assignments carried out or not completely or partially to be carried out by PROSUPPLY in any form desired by PROSUPPLY.
 - 12.2. If the buyer does not follow up on a request made by PROSUPPLY as intended in article 12.1, everything the buyer owes PROSUPPLY, without prejudice to the other rights of PROSUPPLY, on whatever account, becomes instantly exigible and PROSUPPLY will have the right to immediately suspend the further implementation of any assignment.
- 13. Intellectual property rights**
- 13.1. All rights of intellectual property (including in any case copyrights, model rights brand rights, patent rights, trade name rights, databank rights, and know-how) and the associated material such as (possible) analyses, reports, designs, advice, sketches, drawings, documentation, user manuals, as well as preparatory material thereof of PROSUPPLY (or of its possible licensors/suppliers) will emphatically remain with PROSUPPLY (or its licensors/suppliers). This also applies with regard to matters developed or provided pursuant to an (assignment) agreement for Purchaser.
 - 13.2. It is not permitted to the buyer, unless with the prior written consent of PROSUPPLY, to use the intellectual property rights, especially the brand- or trade names of PROSUPPLY. Nor is it permitted to the buyer to remove or modify any indication regarding intellectual property rights of the matters of PROSUPPLY.
- 14. Conversion**
- 14.1. If and to the extent on grounds of reason and fairness or the unreasonably encumbering character any provision of these conditions cannot be invoked, the provision in case will acquire, as to content and tenor, a meaning which is corresponding as much as possible, so that it will be possible to invoke it.
- 15. Registration**
- 15.1. These general sales and delivery conditions have been registered at the Chamber of Commerce in the Netherlands.