

# GENERAL CONDITIONS OF SALE

## 1 SCOPE AND PRINCIPLES

The present general terms and conditions of sale and delivery (the “**General Conditions**”) apply to all present and future offerings, sales and delivery (an “**Agreement**”) by NUTRITION & SANTE BENELUX NV (company number 0861.510.745) (“**N&S**”) of products or services (as mentioned on the order confirmation) to a customer (the “**Customer**”). N&S and the Customer are hereinafter individually referred to as a “party” and collectively as the “parties”.

Any derogation from the General Conditions is only valid to the extent explicitly agreed in writing between the parties. The application of any general or specific conditions of the Customer is hereby explicitly excluded, notwithstanding any referral thereto on any document of the Customer.

## 2 ORDERS

An order shall only bind N&S upon its acceptance, i.e. (i) when it is accepted in writing by a duly authorized officer or employee of N&S; (ii) if N&S has not explicitly rejected the order within 5 (five) business days from the date of receipt thereof; or (iii) upon delivery of the order by N&S.

Any accepted order is binding upon the Customer. The Customer shall not have the right to increase, decrease or cancel an accepted order, unless upon prior written consent of N&S. Any request from N&S to clarify the order shall be promptly answered by the Customer.

With respect to each order, the Customer's responsibilities include: (i) ensuring the accuracy of the order; (ii) providing N&S with any information which is necessary in order to enable N&S to fulfil the order and, as the case may be, to comply with all labelling and other applicable legal requirements; and (iii) as the case may be, obtaining any necessary import licences, certificates of origin or other requisite documents, and paying all applicable customs, duties and taxes in respect of the importation of the products.

## 3 PACKAGING

The ordered products will be delivered in the packaging of N&S's choosing. N&S reserves the right to request a deposit for certain types of packaging, which will be invoiced together with the purchased products. This invoicing does not imply a transfer of ownership. The Customer is responsible for returning the secured packaging in good condition at the Customer's cost to N&S.

## 4 SHIPMENT AND DELIVERY

Unless otherwise agreed, N&S shall deliver the products Ex-Works (Incoterms 2020) at the warehouse or facility of N&S. Delivery is completed and risk and storage burden transfers when N&S places the products at the Customer's disposal at the aforementioned location, irrespective of whether N&S loads the products onto the truck. The Customer does not have the right to change the delivery date, unless mutually agreed in writing between the parties.

Unless otherwise agreed, delivery dates shall be estimates only.

N&S shall promptly inform the Customer of a delay in delivery and the parties shall consult on the most practical manner to remedy any adverse consequences of such delay. A delay, whatever the cause, shall not constitute a ground for cancellation of the order by the Customer, penalties, damages or compensation.

## 5 PRICES, INVOICING AND PAYMENT

The products shall be invoiced at the prices indicated on the order confirmation. Unless indicated otherwise, the prices are excluding VAT. Prices may be amended by N&S from time to time on the basis of objective reasons, such as an increase in the cost of goods or services related to the manufacturing and/or distribution of the products (including, without limitation, labor and energy costs, taxes and duties, costs of raw materials and packaging) upon 2 (two) months' prior written notice to the Customer. Notwithstanding the foregoing, N&S reserves the right to use a shorter prior written notice period if any changes in the labor or energy costs, taxes or duties, or costs of raw materials or packaging occur which N&S cannot reasonably avoid. Orders received and confirmed by N&S before the price change will be invoiced at the price that applied before the change. The parties explicitly waive their right under any statutory provision to claim the renegotiation or revision of this Agreement in the event of unforeseen circumstances (“*imprevisie*”).

Invoices are payable within 21 (twenty-one) calendar days following the invoice date on such bank account of N&S as indicated on the invoice and without any reduction, discount or set-off. Any cost, tax, duty or other levy concerning the invoice payment shall be for the account of the Customer.

For administrative purposes, the Customer is only entitled to offset a debt to N&S against any claim against N&S if the Customer has received a credit note from N&S, in which case the Customer may offset the relevant amount on the due date of this credit note.

The exchange rate will be determined in the terms and conditions, as stated on the front of the invoice.

Any complaint in relation to an invoice shall only be considered valid if notified in writing within 5 (five) business days following the invoice date. Upon expiration of such term, the relevant invoice shall be considered accepted by the Customer and no complaint shall be accepted. A request for correction of an invoice shall not give the right to the Customer to delay the payment thereof. In no event shall any complaint regarding the products justify the (partial) non-payment of any invoice.

By operation of law and without any notice, an interest shall be due and payable to N&S on all amounts that have not been fully paid by the Customer on the relevant invoice expiration date at the statutory interest rate applicable for commercial transactions (as amended from time to time) increased by 8 (eight) percentage points and rounded up to the upper half of a percentage point. Such interests shall be calculated on a daily basis until full payment of the amounts due. In addition to the aforementioned interest, the Customer shall pay to N&S a compensation equal to 15% (fifteen per cent) of the outstanding unpaid and overdue invoice amounts as well as all other applicable legal and extralegal recovery expenses and costs, with a minimum of EUR 125 (one hundred and twenty-five) and without prejudice to the right of EMPWR to claim higher damages providing proof of higher actually incurred damages.

Any delay in payment of an invoice gives N&S the right to (i) suspend all pending orders with immediate effect; (ii) request a cash prepayment or another guarantee for any subsequent order; and/or (iii) refuse any subsequent orders, notwithstanding any other right which N&S may have under the Agreement or otherwise.

N&S cannot be held liable for any (direct or indirect) damage resulting from the application of the payment provisions under the Agreement.

## 6 RETENTION OF TITLE

N&S retains the title of the products until the latest moment of (i) full payment of all amounts due under the Agreement by the Customer, or, as the case may be, (ii) settlement of any claims arising out of any agreement with the Customer. Until the title has been transferred, the Customer is not allowed to resell, encumber or otherwise dispose of the products. Failure to pay any of the amounts due on the respective due dates may lead to reclaiming the products.

Retention of title does not affect the transfer of risk to the Customer in accordance with clause 4.

## 7 WARRANTY AND CONFORMITY

N&S warrants towards the Customer that the products at the time of delivery shall correspond to its order and comply with the applicable mandatory EU regulations and the applicable regulations in the Netherlands, Luxembourg and the Dutch and French-speaking regions of Belgium. The Customer shall indemnify and hold N&S harmless for all costs, claims, damages, losses, expenses and liabilities incurred by N&S arising out of or in connection with the sale of the products in other countries and/or the German-speaking region of Belgium. N&S does not explicitly or implicitly warrant anything else related to the products, their merchantability, fitness for use or for a particular purpose or otherwise.

Upon delivery by N&S in accordance with clause 4, the Customer shall examine the products' conformity with its order. If the Customer considers that the products do not comply with its order, it must send a detailed written notice of rejection to N&S, including samples of the products concerned, within a period of 8 (eight) business days following the date on which (i) the products were delivered in accordance with clause 4, in case of a visible defect; and (ii) the Customer (should reasonably have) discovered the defect, in case of a hidden defect. Nevertheless, all complaints regarding the products targeted by legislation on narcotics must be notified immediately to N&S, and no later than 24 (twenty-four) hours following the date on which the products were delivered in accordance with clause 4. The Customer will preserve the relevant products (or ensure that they

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are preserved, as the case may be), as well as any relevant material or documents thereto, and make them available for inspection and review by N&S or a third party appointed by N&S.

Products that are not rejected in accordance with this clause 7 are deemed accepted by the Customer and cannot be rejected by the Customer afterwards.

If and to the extent that N&S accepts that the products are defective, N&S' liability shall be limited to either a replacement, a reimbursement or an additional delivery, at N&S' sole discretion. No product may be returned or destroyed without N&S' prior written consent. A written consent, however, does not imply any acknowledgement of responsibility on the part of N&S.

Except for its willful misconduct or gross negligence, N&S is not liable if a product does not meet the order of a Client as a result of (i) N&S following any oral or written instruction provided by the Customer; (ii) the Customer (or any third party to which the products have been provided or sold) failing to follow N&S' oral or written instructions (including with regard to the storage, transport or use of the products) or any (other) misuse or improper storage or transport of the products by the Customer; (iii) the Customer's (or any third party to which the products have been provided or sold) negligence, fraud or willful misconduct; or (iv) changes made by N&S to ensure that the products comply with applicable statutory or regulatory requirements.

### 8 LIABILITY

N&S (including its appointees, representatives and/or employees) is not liable for incidental, indirect or consequential damages, including but not limited to loss of profits, lost savings, or damage to third parties.

The extra-contractual liability, related to the formation, performance, and termination of the Agreement, of N&S, its affiliates and the directors, employees, shareholders, and direct or indirect auxiliary persons of N&S and its affiliates, is excluded to the fullest extent permitted by law.

N&S' liability under the Agreement (whether such liability arises due to breach of contract, negligence, breach of statutory duty or for any other reason) shall be limited to the lower of (i) the amount paid for the products to which the claim pertains; or (ii) the sum for which N&S is insured.

The aforementioned exclusions and limitations of liability shall not apply to N&S' liability (i) which cannot be excluded or limited under mandatory applicable laws; and (ii) resulting from its or its appointees, representatives and/or employees' willful misconduct or fraud. The Customer is exclusively liable for using the products.

### 9 INTELLECTUAL PROPERTY RIGHTS

Unless otherwise agreed in writing, all intellectual property rights arising out of this Agreement shall vest in N&S. Nothing in the Agreement shall be construed as a transfer or assignment of any intellectual property rights to the Customer.

The Customer shall notify EMPWR of (i) any actual, threatened or suspected infringement of N&S' intellectual property rights of which the Customer becomes aware, and (ii) any claim by any third party of which it becomes aware that the import or sale of the products infringes any rights of any third party.

### 10 FORCE MAJEURE

The Customer bears the risk of force majeure. Moreover should the performance of the Agreement be temporarily or permanently hindered or burdened due to an external, unforeseeable and/or unavoidable circumstance ("**Force Majeure**"), including but not limited to explosion, fire or flood, pandemics, epidemic or other viral outbreaks, protest, riot, civil commotion, acts of terrorism, government action, lock-outs, traffic problems, strikes or other industrial actions, import and export restrictions, embargoes, damage of equipment, late delivery of the products by N&S' supplier to N&S and each incident that results in the products not being able to be delivered in the normal manner, as well as similar circumstances that affect subcontractors or suppliers of N&S, the obligations of N&S are suspended for the period of the Force Majeure. If the Force Majeure lasts for more than six (6) months, either party may terminate the suspended part of the Agreement with immediate effect, without any compensation being due. Force Majeure on the part of the Customer is explicitly excluded.

### 11 TERMINATION

Notwithstanding any other termination right available to it under the Agreement,

N&S may terminate the Agreement with immediate effect, without judicial intervention and without the Customer having any entitlement to compensation, by giving written notice, in the event that the Customer (i) is in breach of the Agreement and has failed to remedy such breach within 30 (thirty) days of having been provided by written notice that the breach be remedied; a remedy period does not apply to payment terms, (ii) is not able to pay its debts, is in suspension of payment or (the application for) bankruptcy, liquidation or cessation of activities of the Customer or in the event that the Customer has ceased to trade (in whole or in part), (iii) engages in an act of fraud; (iv) in the event of a change of control in the Customer or the acquisition of control by the Customer over a direct competitor of N&S; and (v) in the event the Customer refuses to provide N&S with the prepayment or other guarantee as stipulated in clause 5.

In case of termination and without prejudice to any other remedies it may be entitled, (i) N&S reserves the right to claim compensation for all costs, interest and damages N&S would incur, (ii) all claims of N&S against the Customer are immediately due and payable, and (iii) N&S may suspend or to postpone its obligations relating to other running agreements between parties.

### 12 MISCELLANEOUS

The rights of each party under the Agreement (i) may be exercised as often as necessary; (ii) are cumulative and not exclusive of rights and remedies provided by law unless specifically excluded; and (iii) may be waived only in writing and specifically.

If (part of) a provision of the Agreement is null and void or unenforceable, the remainder of the Agreement shall continue to be effective to the extent that, in view of the Agreement's substance and purpose, such remainder is not inextricably related to and therefore inseparable from the null and void or unenforceable (part of the) provision. The affected (part of such) provision shall be deemed automatically replaced by such valid and enforceable provision(s) which come(s) closest to the original intention of the parties.

The Agreement constitutes the entire understanding between the parties with respect to the subject matter thereof and shall only be modified by writing executed by a duly authorized representative of each party, and by referring to the Agreement.

### 13 GOVERNING LAW AND DISPUTE SETTLEMENT

The Agreement shall be interpreted in accordance with, and governed by, the laws of Belgium. The 1980 United Nations Convention on Contracts for the International Sale of Goods and its related instruments will not apply.

Any disputes arising out of or in connection with the Agreement, which would not be settled in an amicable manner, shall be finally settled by the competent Dutch-speaking courts of Brussels, Belgium, which shall have exclusive jurisdiction.