

# ESS-FOOD A/S' GENERAL CONDITIONS OF SALE AND DELIVERY

## 1. GENERAL TERMS

1.1 These general conditions of sale and delivery for ESS-FOOD A/S shall apply to the sale and delivery of any goods from ESS-FOOD A/S, unless otherwise expressly agreed in writing with ESS-FOOD A/S.

1.2 Buyer's purchasing terms specified in e.g. Buyer's general purchasing terms and in Buyer's purchase order do not apply, unless expressly accepted in writing by ESS-FOOD A/S.

## 2. CONCLUSION OF AGREEMENT

2.1 A final agreement of sale shall only be deemed valid after ESS-FOOD A/S has sent a written order confirmation to the Buyer ("Order Confirmation").

2.2 If the Buyer is of the opinion that the terms stipulated in ESS-FOOD A/S' Order Confirmation differ from the terms agreed upon, the Buyer shall within two (2) working days give ESS-FOOD A/S written notice hereof. If the Buyer does not object to the order hereof, the terms herein shall apply in any respect to the sale.

## 3. PRICES

3.1 Unless otherwise agreed, the price set out in the Order Confirmation includes packaging costs and the costs (if applicable) and expenses that will be incurred by ESS-FOOD A/S as a result of the applicable terms of delivery, cf. clause 4.1.

3.2 If transportation costs connected with the delivery on the agreed place of delivery increase after the date of Order Confirmation, the price shall automatically be adjusted accordingly.

## 4. TERMS OF DELIVERY

4.1 All agreed delivery clauses are interpreted according to the latest version of INCOTERMS published by the International Chamber of Commerce in Paris, France, at the time of ESS-FOOD A/S' Order Confirmation. The delivery clause for any delivery in question will be as set out in the Order Confirmation.

## 5. DELIVERY

5.1 The date of delivery set out in the Order Confirmation shall be approximate and thus not be considered a binding fixed time of delivery on ESS-FOOD A/S.

5.2 No other remedies shall be available to the Buyer, including claims for damages of any kind, including trading loss, etc., in consequence of such delay.

## 6. DEFECTS

6.1 The Buyer is obligated to examine the delivered goods immediately upon receipt for any defects.

6.2 ESS-FOOD A/S shall only be held liable for original defects and shall thus not be held liable for any defects caused by the Buyer (e.g. because the purchased goods are not handled and stored correctly). If the Buyer submits a claim for defects, the Buyer shall establish that the purchased goods have been handled and stored correctly.

6.3 The Buyer shall notify ESS-FOOD A/S of any visible defects or shortcomings immediately upon receipt, as any claims against ESS-FOOD A/S is otherwise forfeited.

6.4 For any hidden defects (i.e. defects which the Buyer could not and should not have discovered upon receipt), the Buyer shall submit written notice to ESS-FOOD A/S immediately after the Buyer has or should have discovered such hidden defects.

6.5 If the Buyer fails to submit written notification of any alleged defects on the later of (a) the deadlines set out above under clause 6.4 and 6.5 or (b) 3 months from delivery (cf. the applicable terms of delivery, cf. clause 6.4), the Buyer shall have forfeited any claims relating to defects. If any defects result from the transportation of the goods, and ESS-FOOD A/S pursuant to the agreed term of delivery (cf. clause 4.1) may be held liable for such defect, the Buyer shall forfeit any claims if written notice of the alleged defect is not received by ESS-FOOD A/S in such due time which allows ESS-FOOD A/S in a timely manner to submit written notification to the carrier within the applicable statutory deadline of complaints under the relevant transportation regulations.

6.6 If ESS-FOOD A/S enters into a discussion of points of fact with the Buyer regarding an alleged claim which has been put forward too late or for which ESS-FOOD A/S is not liable (e.g. defects caused by the transportation), this shall not mean that ESS-FOOD A/S waives its right to subsequently allege delay in the Buyer's putting forward the claim or any implied acknowledgment of any liability.

6.7 If the Buyer establishes that ESS-FOOD A/S can be held liable for any defects, ESS-FOOD A/S shall in its sole discretion and as its sole obligation replace the delivery, remedy the defect, or offer the Buyer a proportional price reduction, whereupon the defect shall be deemed to be fully remedied.

6.8 No other remedies shall be available to the Buyer, including claims for damages of any kind, including in relation to trading loss and loss of profit.

## 7. TERMS OF PAYMENT AND RETENTION OF TITLE

7.1 Terms of payment shall be as set out in the Order Confirmation.

7.2 If payment is not made on the due date at the latest, ESS-FOOD A/S may charge interest on the amount outstanding at the time in question at a rate of 1 % per commenced month from the date of invoice.

7.3 The Buyer shall not be entitled to retain any payment or set off any payment against any alleged outstanding claim on ESS-FOOD A/S that has not been approved by ESS-FOOD A/S.

7.4 ESS-FOOD A/S shall retain title to the goods until full and effective payment has been made.

## 8. LIMITATION OF LIABILITY

8.1 In no event shall ESS-FOOD A/S be held liable for any indirect or consequential losses such as loss of profits, loss of earnings, loss of goodwill, loss of anticipated savings, etc.

8.2 ESS-FOOD A/S's liability for any loss or damage shall be limited to the amount paid by the Buyer for the batch of goods, on which the claim is based.

## 9. FORCE MAJEURE

9.1 The following circumstances shall imply exemption from liability on the part of ESS-FOOD A/S when such circumstances occur after the agreement is made and obstruct, postpone or render the fulfilment of the agreement disproportionately costly:

9.1.1 War, riots, civil disorder, strikes, walk-outs, blockades or lock-outs (whether ESS-FOOD A/S is a party thereto or the cause of such conflicts or not), in case of fire, natural disasters, shortage of means of transport or transport accidents, currency restrictions, ban on imports or exports, operational failure or other shut-down of operations or a similar situation causing a disability for ESS-FOOD A/S.

9.2 In connection with said circumstances ESS-FOOD A/S shall be entitled to cancel the order or part of the order, without this being considered a breach of contract, or to deliver the goods when the obstacle no longer exist.

## 10. INTELLECTUAL PROPERTY RIGHTS

10.1 The sale of the goods hereunder does not convey any license whatsoever to any intellectual property right of ESS-FOOD A/S, including its trademarks and names.

## 11. PRODUCT LIABILITY

11.1 ESS-FOOD A/S product liability shall be limited to the widest extent possible under applicable law.

11.2 The Buyer shall inform ESS-FOOD A/S in writing without any unnecessary delay, if the Buyer learns of circumstances that may justify product liability on the part of ESS-FOOD A/S.

11.3 The Buyer shall be under an obligation to accept a legal action brought against him at the same forum, which may be hearing an action against ESS-FOOD A/S regarding product liability. ESS-FOOD A/S shall, however, be entitled to decide that the internal relationship between the Buyer and ESS-FOOD A/S shall be settled in accordance with clause 12.

## 12. JURISDICTION AND APPLICABLE LAW

12.1 Any dispute arising out of or relating to the parties' agreement, including these general conditions of sale and delivery and questions of product liability shall be settled in accordance with Danish law. This provision on applicable law shall, however, not include the international private law rules of Danish law, including CISG.

12.2 ESS-FOOD A/S' venue shall be the agreed venue. ESS-FOOD A/S shall nevertheless always be entitled in lieu hereof to bring an action against the Buyer at the Buyers' venue. Furthermore, ESS-FOOD A/S shall be entitled to request that a dispute be settled by arbitration arranged by Danish Arbitration in accordance with the rules of arbitration procedure adopted by Danish Arbitration and in force at the time when such proceedings are commenced. The arbitration tribunal shall be domiciled in Copenhagen and the proceeding be conducted in English. This clause 12.2 shall not, however, prevent either party from seeking interlocutory remedies such as the requesting of an injunction, attachment, etc.

## 13. SEVERABILITY

13.1 If any provision(s) of these terms is/are finally determined to be invalid or unenforceable, the balance of these conditions shall remain in effect. In this case the provision(s) must be replaced by such valid and enforceable provision(s) as will come as close to the purpose and legal position of the invalid or unenforceable provision(s) as possible.

## 14. WAIVER

14.1 Failure by ESS-FOOD A/S to exercise or enforce any rights hereunder shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement thereof at any time or times thereafter.