

# ESS-FOOD A/S' GENERAL PURCHASE TERMS

## 1. GENERAL TERMS

1.1 Any purchase order placed by ESS-FOOD A/S is subject to the below general purchasing terms, unless otherwise expressly agreed in writing with ESS-FOOD A/S. Any purchase order submitted by phone will be accompanied by a written purchase confirmation (together referred to as "Purchase Order").

1.2 The Seller's terms of sale and delivery specified in e.g. The Seller's general terms of sale and delivery and in the Seller's order confirmation do not apply, unless expressly accepted in writing by ESS-FOOD A/S.

## 2. PURCHASE ORDER

2.1 The Seller shall sign and return a copy of ESS-FOOD A/S' purchase order, within two (2) working days upon receipt hereof. If the Seller does not return a signed copy within two (2) working days, ESS-FOOD A/S' order will nevertheless be considered accepted by the Seller in full and on the terms stipulated therein, including delivery time and price.

## 3. PRICES

3.1 The agreed prices are set out in the Purchase Order. The price includes packaging costs (if applicable) and the costs and expenses that will be incurred by the Seller as a result of the applicable term of delivery, cf. clause 4.1.

## 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 submission by ESS-FOOD of the purchase order. The delivery clause for any purchase of goods will be as set out in the Purchase Order.

## 5. SHIPPING INSTRUCTIONS

5.1 All shipments shall be properly packed so that the goods are fit for transportation and human consumption. The labelling of the purchased goods shall comply with ESS-FOOD A/S' instructions, if any, and applicable laws and regulations in the jurisdiction which the products are destined for.

## 6. DELIVERY NOTES ETC

6.1 All deliveries shall be accompanied by a delivery note in a form and format requested by ESS-FOOD A/S from time to time.

6.2 Where the delivered quantity is not specified, the counting/weighting conducted upon receipt of the goods shall serve as proof thereof. Drip loss is only accepted to the extent provided for in the Purchase Order.

## 7. DELIVERY

7.1 The date of delivery set out in the Purchase Order means the time when the purchased goods shall be delivered at the delivery address set out in the Purchase Order. The delivery time is fixed and may not be deviated from, unless otherwise agreed.

7.2 The ordered quantity shall be strictly observed. Part delivery is subject to prior agreement; otherwise the delivery may be rejected as incomplete.

7.3 In case of early delivery, ESS-FOOD A/S or the purchaser to which ESS-FOOD A/S has sold the goods reserve the right to refuse acceptance of the purchased goods. If ESS-FOOD A/S chooses to accept the purchased goods, the credit shall run from the agreed time of delivery.

7.4 The Seller shall inform ESS-FOOD A/S immediately of any delay. If the time of delivery is exceeded, ESS-FOOD A/S may cancel the Purchase Order. ESS-FOOD A/S shall give written notice of cancellation within 5 working days after having received information of the delay. A cancellation shall exempt ESS-FOOD A/S from any obligation to pay in whole or in part any consideration, compensation etc. for the cancelled order. ESS-FOOD A/S reserves the right to claim damages for any direct or indirect loss suffered by ESS-FOOD A/S due to late delivery, including any expenses for agreed penalties paid by ESS-FOOD A/S to its customer.

## 8. QUALITY AND SHELF LIFE

8.1 The Seller warrants that the goods at delivery will (i) be of general, good merchantable quality, fit for human consumption (ii) comply with and be processed under compliance with the applicable industrial norms/standards (including any applicable health food and safety regulations), (iii) comply strictly with ESS-FOOD A/S' requirements and specifications of the purchased goods, including minimum shelf life, and (iv) be free from any defects and errors in workmanship.

8.2 The Seller further warrants that the Seller holds and during transportation continuous to hold any applicable authorisations required to import the goods into the end jurisdiction and that any certificates required to such effect are issued.

## 9. DEFECTS

9.1 It is agreed and understood by the Seller that goods sold and delivered to ESS-FOOD A/S will be resold by ESS-FOOD A/S to the effect that it will not be practically possible for ESS-FOOD A/S to inspect the goods at delivery or upon receipt of the goods. Consequently, it is therefore agreed and understood that any written notice of defects received by ESS-FOOD A/S from the end-customer shall be deemed a notice of complaint vis-à-vis the Seller and be forwarded by ESS-FOOD A/S to the Seller. Such notice of defect shall be considered timely submitted by ESS-FOOD A/S if ESS-FOOD A/S has forwarded the complaint to the Seller no later than 10 working days after having received it from the end-customer. However, if no notice of defect has been submitted no later than 12 months from receipt of the goods, any claims for defects shall be considered forfeited.

9.2 ESS-FOOD A/S may, apart from claiming remedies for breach of contract under the general rules of Danish law, cancel the order in whole or in part and/or claim damages for any direct or indirect loss suffered by ESS-FOOD A/S as a result of the fault or defect, notwithstanding the cause thereof.

9.3 Seller shall allow any dispute between the Seller and ESS-FOOD A/S and/or between the Seller and ESS-FOOD A/S' customers to be settled before the same forum as disputes between ESS-FOOD A/S and ESS-FOOD A/S' customers are settled.

## 10. TERMS OF PAYMENT

10.1 Terms of payment shall be as set out in the Purchase Order.

10.2 ESS-FOOD A/S shall be entitled to retain any payment or set off any payment against any alleged outstanding claim against the Seller.

## 11. FORCE MAJEURE

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

11.1.1 War, riots, civil disorder, in case of fire, natural disasters, shortage of means of transport or transport accidents, currency restrictions, general applying 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 or the Seller.

11.2 In connection with said circumstances ESS-FOOD A/S and the Seller shall be entitled to cancel the order or part of the order, without this being considered a breach of contract.

## 12. PRODUCT LIABILITY

12.1 To the extent that a third party advances a claim for product liability against ESS-FOOD A/S, which is attributable to the goods delivered by the Seller, ESS-FOOD A/S shall have full right of recourse against the Seller.

12.2 The Seller shall accept to join as a party before the same forum which tries a claim for product liability against ESS-FOOD A/S.

## 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.

## 15. JURISDICTION AND APPLICABLE LAW

15.1 Any dispute arising out of the parties' agreement, including the present purchase terms 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.

15.2 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 15.2 shall not, however, prevent either party from seeking interlocutory remedies such as the requesting of an injunction, attachment, etc.

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