

Article 1 Definitions

In these terms and conditions of sale and delivery (hereinafter also to be referred to as “general terms and conditions”) the following terms shall have the following meaning:

1.1 Smit: A. Smit en Zoon B.V., having its registered office in Weesp, the other party of the Buyer and user of the present terms and conditions of sale and delivery as meant in Article 1.2.

1.2 Buyer: the (legal) entity that is concluding, has concluded or is negotiating the conclusion of an Agreement with Smit, if this Agreement or these negotiations (*inter alia*) have as their subject, are aimed at or connected with the sale and/or delivery of goods, in which Smit is trading and/or the performance of services.

1.3 Agreement: any Agreement between Smit and the Buyer to perform one of the Activities mentioned in Article 1.4.

1.4 Activities:

The production of tannins, leather greasing agents and leather tools for the leather industry;
the production, processing and sale of oil products;
the supplying of oil or fish oil for the benefit of the mixed feed industry and aquaculture;
the supplying of oil or fish oil for the benefit of the food and pharmaceutical industry;
any other service or activity coming within Smit's business operations.

1.5 Order Amount: the amount charged by Smit for the performance of the Agreement, inclusive of the costs of (to the extent applicable): packaging, insurance, transport and costs that are involved in the delivery on the location designated by the Buyer and amounts charged to Smit by third parties and/or other third-party claims (including, but not limited to import duties) and exclusive of turnover tax.

1.6 Delivery: the moment on which the products to be purchased by the Buyer are ready for shipment to and/or collection by the Buyer, regardless of whether pursuant to the Agreement Smit and/or the Buyer are/is responsible for the transport of the products.

1.7 If in Agreements Smit refers to one of the Incoterms, the interpretation of the Incoterm used must be made on the basis of the most recent version of the Incoterms of the International Chamber of Commerce (ICC).

Article 2 Applicability of the Terms and Conditions

2.1 These general terms and conditions shall apply to each request made by the Buyer to Smit to make an offer, to the offer to be made by Smit, to orders of the Buyer and to all Agreements to be concluded and concluded by Smit with the Buyer or acts or legal acts to be performed or performed by Smit for the benefit of the Buyer. Agreements shall also mean the Agreements concluded by Smit in this regard with third parties.

2.2 Unless the Buyer rejects the applicability of Smit's general terms and conditions in writing within five days after Smit declared these applicable, and unless this rejection reaches Smit (within the same five days), the Buyer shall be deemed to have accepted the applicability of Smit's general terms and conditions. Also when already within five days after the terms and conditions having been declared applicable by Smit the performance of the Agreement is commenced, the Buyer shall be deemed to have accepted the applicability of Smit's general terms and conditions. Smit expressly dismisses any reliance on and/or applicability of any general terms and conditions with contents different from its own general terms and conditions.

2.3 Any stipulations deviating from Smit's general terms and conditions (or additional stipulations) shall only apply if and to the extent that these have been accepted expressly in writing by an authorised representative of Smit.

2.4 If any provision of the present general terms and conditions (and/or any deviating/additional stipulation agreed upon later) appears to be null and void or is declared void, this shall not affect the validity of the other provisions of the present general terms and conditions (and any stipulations agreed upon later). In that case, the void provision or provision that is declared void, respectively, in the present general terms and conditions (and any Agreements still to be agreed upon) shall be superseded by a provision that shall be in line with the intention of the parties as much as possible.

2.5 These general terms and conditions are available in a Dutch and an English-language version. In the event of any discrepancy between the Dutch and the English version or a version in another language of these terms and conditions, the Dutch text shall prevail

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Article 3 Disputes

3.1 In the event of disputes between Smit and the Buyer, the Court of Amsterdam shall have exclusive jurisdiction to take cognizance thereof.

3.2 The (legal) relationship between Smit and the Buyer, at any rate all acts performed by Smit, including the Agreements concluded by Smit, shall be governed by Dutch law.

Article 4 Quotation, Order and Assignment

4.1 All offers, estimates, and the like, of Smit, made in whatever way, are completely without engagement and may be revoked by Smit.

4.2 Even after the Buyer's acceptance of an offer made by Smit, Smit reserves the right to revoke this offer without observance of any rules of form. Such a revocation shall be made promptly after Smit's receipt of the acceptance.

4.3 Information mentioned in quotations, offers, and the like, which means, amongst other things, but not only, delivery periods, applies approximately and is not binding for Smit, unless where determined explicitly and in writing in the quotation, offer, and the like.

4.4 Smit is not bound by obvious errors in writing and/or calculating errors in these quotations.

4.5 The period of validity of an offer is indicated by Smit in the quotation. If no period of validity is determined in the quotation, the quotation, if not followed by a written order or an order by e-mail of the Buyer within 14 days and a confirmation by Smit, shall be annulled.

4.6 If the Delivery is based on a sample, the Delivery shall be approximately of the same quality as the sample. Only if the Delivery deviates from the sample to such an extent that this may be of essential influence on the essential characteristics of the Delivery, the Buyer may file a complaint in this respect.

Article 5 Delivery

5.1 Smit shall have the right to deliver the products in parts. If the Delivery is made in parts, each (partial) delivery shall be regarded as a separate Delivery, to which the provisions in these general terms and conditions apply. Smit is therefore authorized to seek and claim payment per (partial) delivery.

5.2 If products are delivered to a foreign country from the Netherlands, the Buyer shall be responsible for obtaining any required licences for, amongst other things, but not limited to the export of the products.

Article 6 Transport

The transport of the products to be delivered shall take place under responsibility of the Buyer. Delivery shall take place ex Works, unless expressly determined otherwise in writing.

Article 7 Price, Invoicing and Payment

7.1 All amounts mentioned by Smit in its offers and quotations shall be expressed in Euros and shall be exclusive of VAT and the costs of (to the extent applicable): packaging, insurance, transport and costs that are involved in the delivery on the location designated by the Buyer and amounts to be charged to Smit by third parties and/or other third-party claims, unless otherwise stated. Price increases may be charged on by Smit in the final invoice amount.

7.2 The measurements and weighing performed by Smit shall be decisive for the amount to be invoiced.

7.3 Unless expressly determined otherwise in writing, in the event of deliveries in bulk Smit has the right to deliver to and charge the Buyer 5 percent more or less than the agreed-upon amount or the agreed-upon weight.

7.4 The Order Amount must be paid by the Buyer within the term indicated in the sales contract or the order confirmation.

7.5 If the Buyer does not pay the Order Amount within the term indicated in the sales contract or the order confirmation, the Buyer shall be in default by operation of law. Smit shall have the right to charge the statutory interest and extrajudicial collection costs as of the date on which the default occurred. The extrajudicial collection costs shall be deemed to amount to at least 15 percent of the amount to be claimed by Smit from the Buyer.

7.6 Unless agreed otherwise in writing, the Buyer shall not have the right to offset the invoice amount with possible claims against Smit.

7.7 If the Buyer fails to pay on time, Smit may suspend the (further) performance or Delivery of the agreed-upon matters, without prejudice to the Buyer's obligation to pay the invoice amount.

7.8 If the Buyer fails to, does not properly or not timely meet any obligation arising from the Agreement concluded between Smit and the Buyer, Smit shall have the right to dissolve the Agreement, without prejudice to Smit's right to compensation of the damage suffered and to be suffered by Smit as a consequence of the dissolution.

Article 8 Responsibility of the Buyer

8.1 On delivery by Smit the Buyer must examine the delivered goods by means of an incoming inspection. The Buyer must in any case check the quantity, the kind and the quality of the delivered goods, to the extent externally perceptible. The incoming inspection by the Buyer shall have no consequences for the evidentiary position of the Buyer in the event of alleged non-conformity. The Buyer must immediately report possible defects to Smit, failing which the right to complaint shall lapse in that respect. Complaints about the weight and/or directly perceptible defects of the delivered products must be made in writing within 72 hours after Delivery, failing which the right to complaint shall have lapsed. If the Delivery as meant in Article 1.6 does not coincide with the moment on which the Buyer actually has the delivered products at its disposal, it applies that the complaints referred to above about the weight and/or directly perceptible defects must be made in writing within 72 hours after the moment on which the Buyer reasonably actually had or could have the delivered products at its disposal. Complaints about defects that are not externally perceptible must be made in writing to Smit within 24 hours after discovery thereof, failing which the right to complaint shall have lapsed.

8.2 In the absence of a proper and timely incoming inspection as described in Article 8.1, Smit shall in any case not be liable.

8.3 The Buyer shall indemnify Smit against all third-party claims with regard to damage suffered by third parties during or in connection with the performance of the Agreement, unless (and to the extent that) this damage is the exclusive result of intent or gross negligence on the part of Smit or its executives.

Article 9 Responsibility of Smit

9.1 Smit shall have the right to engage third parties in the performance of the Agreement.

9.2 Notwithstanding the further limitations of liability set out in Articles 9.3 up to and including 9.7 below, Smit shall not be liable for any failure in the performance of any offer and/or Agreement, nor for any unlawful act, unless (and to the extent that) this is the result of intent or gross negligence on the part of Smit and/or its managers.

9.3 Smit shall never be liable for indirect damage, consequential damage and trading loss.

9.4 Smit shall never be liable for damage caused by (a failure or unlawful act/omission of) executive service providers and/or suppliers, including the staff of such service providers and/or suppliers, which Smit has engaged in connection with or for purposes of the performance of the Agreement or any part thereof.

9.5. If there is a ground for liability, the total liability shall in any case be limited up to a maximum of 50 percent of the Order Amount with respect to the product to which the claim of the Buyer relates, with a maximum of EUR50,000.

9.6 Notwithstanding and without prejudice to the provisions contained in Articles 9.2 up to and including 9.5, the possible liability of Smit shall in all cases be limited to the amount for which the liability insurance taken out by Smit provides coverage for the relevant damage (and only to the extent that the insurer proceeds to pay out). Smit can in any case not be held responsible for more and/or other damage than for the damage for which the liability insurer of Smit provides coverage.

9.7 The limitations and exclusions of liability contained in Articles 9.2 up to and including 9.6 shall also be applicable to employees of Smit and/or third parties engaged by Smit.

Article 10 Complaints

Without prejudice to the stipulations of Articles 8 and 9, all complaints must be made, on penalty of dissolution of rights, in writing (which also includes by e-mail) within one month after:

delivery of the products;

the moment when the defect with regard to the products delivered by Smit could reasonably have been discovered.

Complaints concerning invoices must also be submitted in writing within one month after the invoice date.

Samples taken by the Buyer must be properly certified. The burden of proof to prove that the sample taken originates from the products delivered by Smit shall lie with the Buyer.

Article 11 Limitation/Lapse

Each claim with regard to the contractual relationship between Smit and the Buyer, regardless of whether it is based on a contractual or non-contractual ground, shall become time-barred after the expiry of the period of six months after the date of Delivery.

Article 12 Force Majeure

12.1 Any circumstances beyond the will and/or doing of Smit that are of such nature that performance of the Agreement in all fairness cannot in full extent be required of Smit anymore, shall give Smit the right to dissolve and/or suspend performance of the Agreement in full or in part without any obligation to pay compensation (and while retaining the Buyer's payment obligations as stipulated below in Article 13.3). Force majeure of Smit shall mean any circumstance independent of the will of Smit, as a result of which the performance of its obligations (or the relevant part thereof) towards the Buyer is prevented, delayed or made uneconomic, and/or as a result of which the performance of these obligations cannot be required of Smit.

12.2 Circumstances justifying a reliance on force majeure as referred to in Article 12.1 shall be the following, *inter alia*: abnormal weather conditions; no supply, no full supply and/or delayed supply from suppliers and/or force majeure of the suppliers; war and threat of war; terrorism or threat of terrorism, riots and/or sabotage, measures from Dutch and/or foreign government authorities rendering the performance of the Agreement more cumbersome and/or costly than was foreseeable at the time when the Agreement was concluded; failure to obtain the necessary licences; strikes and/or sit-ins; epidemics; traffic disturbances; loss or damage in transit; fire, theft; energy supply failures; defects to machines, all the above both in Smit's company and with third parties from which Smit fully or partially has to buy the necessary materials, raw materials or semi-finished products, and all other causes that arise beyond the will and/or doing of Smit. Furthermore, the following shall be circumstances as referred to in Article 12.1: force majeure, illness and/or occupational disability and/or bankruptcy of third parties engaged by Smit for the performance of the Agreement.

12.3 The parties shall notify each other as soon as possible of any (potential) situation of force majeure.

Article 13 Termination and Dissolution

13.1 Without prejudice to the other rights belonging to Smit, Smit shall have the right to dissolve the Agreement in whole or in part without further notice of default being required through a written statement if: - the Buyer is in default of performance of one or more obligations under the Agreement; - The Buyer has been declared bankrupt, has applied for a (provisional) suspension of payments, has become subject to the application of the Wet Schuldsanering Natuurlijke Personen (Natural Persons Debt Rescheduling Act), has discontinued or liquidated his business, a considerable part of the Buyer's capital has been attached, or the Buyer transfers his business to third parties.

13.2 In the event of dissolution, the risk of goods that have already been delivered shall remain with the Buyer. In that event the goods shall be at the disposal of Smit and must be picked up by Smit.

13.3 If Smit (or any third parties engaged by it) at the moment of dissolution (which in this connection also includes dissolution and suspension as referred to in Article 12.1 above) has already performed activities in order to execute the Agreement, these activities and the related payment obligations of the Buyer towards Smit cannot be cancelled. Amounts that Smit has invoiced before the dissolution or amounts that Smit will still invoice after dissolution in connection with all that Smit has already performed or delivered prior to the dissolution in order to execute the Agreement shall therefore remain payable in full and shall become immediately due and payable at the moment of dissolution.

Article 14 Retention of Title and Right of Retention

14.1 As security for payment of all amounts to which Smit shall be entitled, Smit shall remain the owner of the goods that it has delivered until full payment is made by the Buyer of all Smit's claims. Claims shall also mean claims in connection with the performance of the Agreement and claims of Smit against the Buyer relating to interest, penalties and debt collection charges.

14.2 The Buyer shall not have the right to pledge or to encumber in any other way any goods coming under the retention of title.

14.3 If third parties attach the goods supplied under retention of title, or wish to establish or enforce rights on these goods, the Buyer shall be obliged to inform Smit thereof immediately.

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14.4 The Buyer undertakes to insure and keep insured the goods supplied under retention of title against fire, damage from explosion, damage by water as well as against theft, and to provide Smit with the policy of these insurances at Smit's request.

14.5 Goods supplied by Smit coming under the retention of title may only be resold in the ordinary course of business and may never be used as a means of payment.

14.6 Smit shall have the right to suspend the surrender of all goods in its possession in the performance of an Agreement until all its claims have been paid, or until the Buyer has provided security for payment of the claims.

Article 15 Intellectual Property Rights

15.1 The Buyer shall at all times respect all existing or future intellectual property rights and related rights of Smit or its licensors, including but not limited to all copyrights, patent rights, trademark rights and data base rights relating to, amongst other things, including but not limited to, the goods and products to be supplied by Smit, the website of Smit, or any other products and materials belonging to or originating from Smit.

15.2 The Buyer acknowledges that, unless agreed otherwise in writing, Smit is and/or will be the holder of all existing and future rights of intellectual property and related rights (insofar as these do not belong to third parties), including but not limited to copyrights, patent rights, trademark rights, data base rights and neighbouring rights vested in or connected with all products, objects, materials, works, constructions etc. that Smit develops, has developed and/or makes available in the scope of the Agreement or the performance of the Agreement. The same applies to the rights to all ideas, proposals, drafts, methods, etc. elaborated by Smit in the scope of the Agreement.

15.3 All documents provided by Smit, including but not limited to methods of preparation, reports, advice, agreements, designs, sketches, drawings, are exclusively destined for use in the scope of the Agreement or the performance of the Agreement by the Buyer and may not be multiplied, made public, or communicated to third parties by the Buyer without the prior permission of Smit, unless the nature of such documents implies otherwise.

15.4 The Buyer shall indemnify Smit against any third-party claims of whatever nature, connected to any (alleged) infringement by the Buyer, its employees or any third parties engaged by the Buyer of the rights (of third parties) specified in Articles 1 and 2 above.

15.5 Without the prior written permission of Smit the Buyer shall not register or have registered any intellectual property rights or domain names that are in any way connected with the Agreement or the performance of the Agreement or with the products or services supplied under the Agreement, materials, trade names, trademarks or activities or future activities of Smit or companies affiliated with Smit.

Article 16 Confidentiality

16.1 The Buyer shall keep all commercial information of Smit that comes to the Buyer's knowledge secret from third parties.

16.2 The Buyer is obliged to impose a confidentiality obligation on its personnel and anyone else for whom he may be deemed responsible with respect to all matters that may be brought to the Buyer's attention as a result of the goods supplied by Smit.