

GENERAL TERMS & CONDITIONS

CORNY BAKERS FIRST MEXICAN – & LATIN AMERICAN FOODS B.V.

CLAUSE 1 - DEFINITIONS AND APPLICATION

- 1.1 The following definitions are used in these General Terms & Conditions:
 - General Terms & Conditions:** these general terms & conditions (for sale and supply);
 - Corny Bakers:** Corny Bakers First Mexican – & Latin American Foods B.V. (trade register number: 66717035) and all of its affiliated businesses.
 - Affiliated Business:** every business that is classed as a group company (in Dutch: “*groepsmaatschappij*”) within the meaning of Article 2:24b Dutch Civil Code (“DCC”).
 - Purchaser:** every person or legal person who places an order with Corny Bakers or to whom Corny Bakers submits a quotation or with whom Corny Bakers concludes or has concluded a contract in any form;
 - Order:** every request by a Purchaser to Corny Bakers to supply a quantity of products to that Purchaser, or a request by a Purchaser for Corny Bakers to keep a stock of a specific product (continuously) at Corny Bakers' offices for that Purchaser.
- 1.2 These General Terms & Conditions apply to all quotations by Corny Bakers as well as to all (future) Orders to and (future) contracts with Corny Bakers.
- 1.3 The acceptance of the quotation, submitting an Order and/or or concluding a contract with Corny Bakers means that the Purchaser accepts the application of these General Terms & Conditions and also operates to exclude the application of any general terms and conditions used by that Purchaser.
- 1.4 Any deviations from these General Terms & Conditions are only valid if they are agreed explicitly and in writing by Corny Bakers.

CLAUSE 2. QUOTATIONS, ORDERS AND REALIZATION OF A CONTRACT

- 2.1 All quotations and all prices specified by Corny Bakers are without obligation or commitment. Corny Bakers is entitled at any time to reject a quotation accepted by a Purchaser or an Order submitted by a Purchaser, without providing reasons.
- 2.2 A contract shall only be realized and come into effect after an Order by a Purchaser is accepted by Corny Bakers, including when such an Order has been made in response to an already issued quotation (without obligation).
- 2.3 As soon as Corny Bakers accepts an Order placed by a Purchaser or starts to deal with an Order, such an Order may no longer be cancelled and the Purchaser shall be obliged to purchase the Order. If the Purchaser nevertheless does not proceed with the purchase, this will not absolve the Purchaser of its obligations to pay for the products that have been ordered.

CLAUSE 3. PRICES, INVOICING AND PAYMENT TERMS

- 3.1 Unless otherwise explicitly agreed upon, all prices specified by Corny Bakers are in euros, exclude VAT and exclude handling, packaging, dispatch and transportation costs, any taxes and/or other levies and charges.
- 3.2 Stated prices are without obligation and may therefore be altered at any time by Corny Bakers. In such cases, the Purchaser shall be entitled to cancel the Order within five (5) days after notification of the price increase.
- 3.3 Agreed prices (in contracts already concluded) are in principle binding – subject to obvious (printing) errors or mistakes – unless any one of the factors determining the cost price of the product (or materials required for it) should change in the period between the finalisation of the contract and the time of delivery, and provided that Corny Bakers has little or no influence on the ensuing price increase. In such cases, Corny Bakers is entitled to adjust the agreed price accordingly, whether or not the cost price increase was predictable at the point of quotation, all this being subject to the appropriate and relevant statutory provisions. If the price increase exceeds ten (10) percent in such cases, the Purchaser shall be entitled to dissolve (in Dutch: “*ontbinden*”) the contract within five (5) days after notification of the price increase, without cost, albeit also without any right to compensation. If the products have already been delivered, they will be taken back as quickly as possible after such a dissolution (in Dutch: “*ontbinding*”) of contract, at the expense of Corny Bakers. The Purchaser will remain fully liable and responsible for reductions in quality, damage, theft, etcetera until the point when the products are taken back.
- 3.4 Unless otherwise agreed, invoices must be paid within twenty-eight (28) days after the invoice date. This and any alternative payment period agreed with a Purchaser are always deemed to be deadlines, even if Corny Bakers agrees to later payment as a matter of courtesy.
- 3.5 If the time limit for payment is exceeded, statutory trading interest in terms of Article 6:119a DCC, will be due on the invoice amount (and any administration charges due), plus a four (4) percent surcharge.
 - (a) A **first** payment reminder will be sent out on the twenty-ninth (29th) day, charging EUR 7.50 of administration charges and setting a new payment deadline of seven (7) days.
 - (b) A **second** payment reminder will be sent out on the thirty-seventh (37th) day after the original invoice date, charging EUR 15.00 of administration charges and setting a new payment deadline of five (5) days.
 - (c) A **third** payment reminder will be sent out on the forty-third (43rd) day after the original invoice date, charging EUR 22.50 of administration charges and setting a final payment deadline of three (3) days.

- (d) A **fourth** payment reminder will be sent out on the forty-seventh (47th) day after the original invoice date, charging EUR 30.00 of administration charges and setting a final payment deadline of one (1) day.
- 3.6 If the Purchaser continues to default in payment after the fourth formal warning mentioned above, Corny Bakers will pass the invoice to an (outside) collection agency and – in addition to the administration charges already mentioned – the Purchaser will also be obliged to pay all (extrajudicial, judicial and potentially legal) costs actually incurred, subject to a minimum of either EUR 250.00 excluding VAT or – at the option of Corny Bakers – fifteen (15) percent of the outstanding invoice amount.
- 3.7 If a Purchaser pays invoices by direct debit (European transfer – SEPA Credit Transfer), and if that debit is refused, cancelled or reversed (hereinafter a "**countermand**"), the Purchaser will be charged a sum of EUR 22.50 of administration charges on any second countermand of the same invoice and a sum of EUR 30.00 on any third countermand of the same invoice. On the third countermand of the same invoice, the Purchaser is obliged to arrange for payment of the invoice by return (within 48 hours), failing which Clause 3.6 shall apply, *mutatis mutandis*.
- 3.8 Suspension and/or offset of payment of the invoices is not permitted and is expressly excluded.
- 3.9 Every payment by the Purchaser is applied first of all to settling any interest due and then to settling any costs associated with collection, except for judicial expenses. Only after payment of these amounts will any payment made by the Purchaser be applied to reduction of the principal sum of the outstanding claim, with the oldest outstanding claim or longest outstanding invoice being settled first of all, irrespective of any description that the Purchaser may apply to the payment.

CLAUSE 4. SUPPLY

- 4.1 Supply times indicated by Corny Bakers are indicative only. If the supply time is exceeded, the Purchaser gains no right to compensation, far less any right to cancel the Order or dissolve (in Dutch: "*ontbinden*") the contract, unless and to the extent that the delay is such that it would be unacceptable to uphold the contract according to standards of reasonableness and fairness.
- 4.2 Information concerning the products sold by Corny Bakers (characteristics, quality, colour, etcetera) is issued in line with best knowledge and belief and with the greatest of care, but may never be regarded as binding.
- 4.3 If Corny Bakers has reason to doubt the creditworthiness of a Purchaser (a matter to be determined exclusively by Corny Bakers), Corny Bakers is entitled to demand security to be lodged by the Purchaser for the fulfilment of its obligations, specifically including once the contract has been finalised. If the security demanded by Corny Bakers is not lodged, Corny Bakers may suspend the supply.

CLAUSE 5. RETENTION OF OWNERSHIP AND TRANSFER OF RISK

- 5.1 The products supplied by Corny Bakers remain the property of Corny Bakers until the point of full payment of all sums due by the Purchaser to Corny Bakers, including any interest and charges. The products supplied by Corny Bakers to the Purchaser are supplied on the condition precedent of full payment by the Purchaser of the purchase price and also any interest and charges that may be due.
- 5.2 The Purchaser hereby grants to Corny Bakers the right, now for the future, to enter all places in appropriate cases where the products supplied by Corny Bakers are located, in order to allow Corny Bakers to exercise its ownership rights and repossess any products not paid for. Any such repossession of its goods is without prejudice to the right of Corny Bakers to demand payment by the Purchaser for any loss sustained or costs incurred as a result of the Purchaser's failure to comply.
- 5.3 The risk for the products passes to the Purchaser at the point of delivery of the products, i.e. as soon as the products are actually removed from the means of transport.

CLAUSE 6. DUTY OF EXAMINATION, COMPLAINTS, LIABILITY

- 6.1 The Purchaser must check the products when they are received (duty of examination) for whether the supply coincides with the Order that has been made and whether there is/are any patently observable damage or defects (including shortfalls and whether applicable hygiene and temperature standards have been observed).
- (a) Complaints regarding visible or otherwise externally observable damage or defects (including shortfalls and whether the applicable hygiene and temperature standards have been observed) must be reported by the Purchaser immediately following receipt of the relevant delivery or supply on the transportation and freight documents, or else immediately by email (with proper specification) to Corny Bakers, failing which the Purchaser will not be permitted to rely on any reservation and/or defect and it will be established between the Parties that the Purchaser has received the supplied products in sound and undamaged condition, in accordance with the quantities and weights stated on the transportation and freight documents. The Purchaser is not permitted to accept or take receipt of a supply or delivery of products "subject to reservation" (of rights) in any kind of way.
- (b) In so far as involving fresh, chilled or deep frozen products, the Purchaser has to examine (check) the products immediately after delivery and has to report any complaints as quickly as possible but in any event no later than four (4) hours after delivery to Corny Bakers by email (and with proper specification), failing which the Purchaser will not be entitled to rely upon any reservation and/or defect.
- (c) If the product are other than fresh, chilled or deep frozen products, complaints in relation to the delivery must be reported to Corny Bakers by email (with proper specification) no later than forty-eight (48) hours after delivery, failing which the Purchaser will not be entitled to rely upon any reservation and/or defect

- 6.2 The time limit for filing complaints in respect of invoices sent out by Corny Bakers is a maximum of forty-eight (48) hours after the date of receipt. If the Purchaser has not objected about the invoice within that time limit (in writing and with reasons), the invoice will be deemed to reflect the underlying transaction(s) with Corny Bakers accurately and to have been approved by the Purchaser.
- 6.3 Any right (including a right to claim) on the part of the Purchaser against Corny Bakers, relating to errors in the supply or defects in products supplied by Corny Bakers shall lapse irrevocably as soon as the above-mentioned time limits for complaints have expired, and also in situations where the Purchaser has not provided sufficient cooperation to Corny Bakers for an investigation into whether the complaint is properly founded. The products that are the subject of complaints must remain available for Corny Bakers to examine, in the same condition as at the time when the defects were established. The right to complain (including all related rights to claim) lapses as soon as the Purchaser has started to use, process or consume the goods supplied, whether directly or indirectly, or has transferred them to third parties, unless Corny Bakers has given explicit permission to do so or the goods in question are permanent user resources that are covered by a manufacturing guarantee.
- 6.4 If it is demonstrated that the products do not coincide with the contract (non-conformity), Corny Bakers will always have the choice of replacing the products in question by new products – after the originals are returned – or of refunding the invoice value. In such situations, the Purchaser may never demand any compensation from Corny Bakers; the liability of Corny Bakers is therefore always restricted to the value of the supplied products in respect of which the complaint is made.
- 6.5 Corny Bakers is only obliged to pay compensation if and to the extent that the Purchaser proves that the damage was caused by gross fault or serious negligence on the part of Corny Bakers. Any consequent liability for damage is at all times restricted to the amount of the order which gave rise to the damage.
- 6.6 All further liability, including but not confined to liability for employees and ancillary staff, is hereby excluded, no matter how it may arise, including (but not restricted to) all direct and indirect loss, such as consequential loss or commercial loss. The Purchaser also indemnifies Corny Bakers against all claims by third parties in relation to any damage sustained or to be sustained by such third parties, with due observance of the provisions in this Clause.
- 6.7 When transporting (internally) and storing products supplied by Corny Bakers, the Purchaser must act in accordance with the applicable legislation and regulations, including the HACCP (Hazard Analysis and Critical Control Point) standards and applicable provisions for custody of the products in question, failing which Corny Bakers will not be liable for defects to the products or damage arising therefrom.
- 6.8 For products supplied with a final shelf life date (UBD and/or BBD codes), Corny Bakers is not liable if those products are consumed or used after that final shelf life date. The Purchaser must warrant that the products on which a final shelf life date is noted will no longer be processed or sold after that date has passed. The Purchaser explicitly indemnifies Corny Bakers in relation to claims by third parties arising from loss consequent upon consuming or using products supplied by Corny Bakers if they are processed, used or consumed or sold by the Purchaser after the final shelf life date.

CLAUSE 7. GUARANTEE

- 7.1 Corny Bakers is never obliged under a guarantee to a Purchaser, in respect of the purchaser, that extends beyond the claims that Corny Bakers can enforce against its own suppliers.

CLAUSE 8. TRANSFER AND THE LAPSE OF RIGHTS

- 8.1 Corny Bakers is entitled to transfer its rights under contracts with the Purchaser, either in full or in part, to third parties; the Purchaser hereby irrevocably agrees to this, now in advance, and will lend its unconditional cooperation within the meaning of Article 6:159 DCC.
- 8.2 Any claim or right to make a claim on the part of the Purchaser against Corny Bakers lapses if and as soon as the Purchaser raises court action against Corny Bakers later than six (6) months after the Purchaser became (or reasonably ought to have become) aware of the existence of that claim or damage.

CLAUSE 9. APPLICABLE LAW AND COMPETENT JUDGE

- 9.1 All contracts between Corny Bakers and a Purchaser, these General Terms & Conditions and any and all disputes or non-contractual obligations stemming from or associated with them are exclusively subject to the law of the Netherlands. The application of the United Nations Convention on International purchase contracts for movable property – otherwise the 1980 Vienna Sales Convention (CISG) – is hereby explicitly excluded.
- 9.2 All disputes between Corny Bakers and a Purchaser arising from a contract and/or these General Terms & Conditions will be submitted in the first instance exclusively – i.e. excluding any other court – to the competent Judge at the District Court in Amsterdam.

CLAUSE 10. DATE AND LOCATION OF GENERAL TERMS & CONDITIONS

- 10.1 These General Terms & Conditions are adopted on November 9th 2018 and can be consulted via: <https://www.cornybakers.nl/general-terms&conditions/>