



## GENERAL CONDITIONS FUDIUM NV

### 1. VALIDITY

- 1.1 The general conditions apply to all offers and contracts between FUDIUM NV (hereafter FUDIUM) and the other party, oral or written. The other party acknowledges to have taken knowledge of these general conditions. These general conditions prevail to possible general or special conditions of the other party.
- 1.2. Potential deviations of these general conditions whenever applied or granted by FUDIUM to the other party, do not give the latter the right to later invoke such right or deviation.
- 1.3 Any deviation by FUDIUM from some of the (sub)articles of the general conditions is without prejudice to the other (sub)articles which remain applicable. Should FUDIUM not claim strict application of any of these general conditions, this does not affect FUDIUM's rights. A waiver of right or claim which originated in a default by the other party, can never be considered a waiver of any other right, even if both cases show large similarities.
- 1.4 Should one or more provisions of these general conditions be declared null, void or not executable, this will not affect the validity or executable character of the other provisions which will remain in force. A waiver of rights or claims originating in these general conditions or relating to a default by the other party is only binding upon explicit confirmation and written communication.

### 2. CONTRACT

- 2.1 FUDIUM's offers are optional. There is only a contract upon written and unconditional confirmation of the order by FUDIUM or, in absence of such written confirmation, upon commencement by FUDIUM of the execution of such contract.
- 2.2 Any annulment of the order by the other party must be done in writing utterly five working days after date of order. In case of such annulment, a fixed indemnity of 20 % of the contracted price, exclusive VAT with a minimum of 125 EUR is due by the other party, without the need for FUDIUM to send a prior formal notice and without prejudice to the right of FUDIUM to claim full indemnity, including loss of product.
- 2.3 The content of the contract is assumed to be equal to the one in the written confirmation of the order by FUDIUM. FUDIUM has the right to adjust the description of the products (its described features) in order to respect applicable legal obligations. Each agreement with regard to quantity or quality, which deviates from normal specifications of products, is not binding unless explicitly confirmed by FUDIUM in writing. This also applies to specifications given by suppliers and FUDIUM's employees. Estimations of cost and transport specifications are not binding until FUDIUM has confirmed these explicitly in writing.
- 2.4 Warranties can only be granted by FUDIUM explicitly in writing in the framework of the specific sales contract. A description of features of specifications of a product in the catalogues and others, cannot be considered as an indirect or implicit (extended) warranty.
- 2.5 Possible deviations and/or supplements to the abovementioned contracts only bind FUDIUM when and in so far explicitly accepted and confirmed by FUDIUM in writing.
- 2.6 Unless explicitly agreed otherwise in writing, FUDIUM always has the right to have the agreement completely or partially executed by a third party, in which case these general conditions also apply to the favor of such third parties.
- 2.7 Only the business manager and possibly him/her who received an explicit mandate by such business manager can and may contract on behalf of FUDIUM.

### 3. PRICES

- 3.1 As a result of the nature of the products delivered by FUDIUM, prices are subject to fluctuations under numerous external circumstances, including for example an increase of the cost of the commodities or cost of transport. In case the cost price of FUDIUM's products is influenced by an increase of costs independently from FUDIUM's will (example: increase in price commodities, social contributions, ...) FUDIUM has the right to increase the agreed price, if delivery of the concerned sold product will only take place two months after date of contract. Tax/VAT increases are always for the account of the other party and will at all times be invoiced to the other party.

- 3.2 All prices mentioned in offers are optional unless explicitly stipulated otherwise. Prices, data and or specifications referred to catalogues or other documentations of FUDIUM are subject to changes and do not bind FUDIUM unless these prices, data and or specifications have been agreed explicitly in writing between the parties.
- 3.3 FUDIUM has the right to claim down payments or securities (bank guarantee).

#### **4. DELIVERY TIME AND DELIVERY**

- 4.1 Delivery times are only indicative and optional and will be respected by FUDIUM as much as possible.
- 4.2 Delays in the delivery do not give the other party the right to annul the order (completely or partially) or to rescind/end the contract; it cannot lead to a discount or to payment of any indemnity by FUDIUM.
- 4.3 FUDIUM has the right to partial deliveries, execution in parts and partial invoicing. FUDIUM reserves the right to suspend the delivery of products and services until payment of a previous delivery. The other party does not have the right to annul the rest of the order.
- 4.4 All deliveries are ex Work (Incoterms) unless explicitly stated otherwise in the sales contract.
- 4.5 The risk to the product transfers from FUDIUM to the other party at time of delivery. In case the other party is in default with regard to its tasks in the framework of the delivery, FUDIUM can consider the product as being delivered and store and insure it during a reasonable time, for the account and risk for the other party. In case such default lasts for more than 45 days, FUDIUM has the right to end the agreement, without being held to any indemnity to the other party and without prejudice to all other rights of FUDIUM.
- 4.6 Any dispute by the other party of the delivered or executed services does not result in the right to suspend payment to FUDIUM.

#### **5. QUALITY AND CHECK**

- 5.1 Immediately upon delivery, the delivered goods must be checked by the other party for visible defects and non-conformity of the goods, weight, state, packaging and if relevant, sufficient cooling of the product. In case of a problem, the other party will immediately and utterly within 5 working days after delivery, send a detailed written message to FUDIUM on the ascertained problems. This term applies under penalty of inadmissibility.
- 5.2 In case of hidden defects, the other party is obliged to report these in writing within five working days after discovery thereof. This term applies under penalty of inadmissibility.
- 5.3 The other party is obliged to give FUDIUM the possibility to examine the products and if requested by FUDIUM, to have them examined by a surveyor.
- 5.4 The burden of proof with regard to defect in the product and complaints by the other party in relation to the delivery and products, including proof that these products are still in the same state as they were at the time of delivery to the other party, lies with the other party.
- 5.5 FUDIUM is no longer responsible for its products and every complaint with regard to products is inadmissible and rejected, as soon as the delivered products have been processed, unless (1) it can be shown that the goods were carefully and fully checked on defaults before being processed and (2) the other party took sufficient samples of the products, prior to the processing, and has carefully stored these samples.
- 5.6 If FUDIUM decides to examine a complaint, notwithstanding a lack of respect of any of the above terms and thus, inadmissibility, all actions of FUDIUM will in any case be under all prejudice and without any prejudicial acknowledgement.
- 5.7 All costs with regard to the examination of complaints will be for the account of the other party, unless it has been ascertained by both parties that the complaint is well found.
- 5.8 If a complaint with regard to delivered product, delivered services or an invoice is admissible and well found, FUDIUM has the right, under preservation of the existing contract, to credit a mutually agreed sum, to make a new (partial) delivery, or to deliver additional, mutually agreed services.
- 5.9 Specifically with regard to fluid products, it is agreed that all complaints with regard to defects or non-conformity must be received by FUDIUM immediately upon receipt of the goods by the other party and before the goods have been removed from the tank, processed and sent to third parties. In case samples have been taken, multiple samples must be taken, safeguarded and stored in reasonable quantities. FUDIUM must have been informed in writing prior to the taking of the samples.

## **6. PAYMENT**

- 6.1 Unless explicitly agreed otherwise in the specific sales contract with the other party, all invoices are due utterly 14 calendar days from the date of invoice. Payment can exclusively occur by transfer of the amount in EURO on the account number referred to on the invoice.
- 6.2 Complaints relating to an invoice are only admissible if they come with a detailed motivation of the complaints and insofar reported in writing within five working days after date of invoice. The burden of proof in respect of the 5 days term, lies with the other party. By default of any complaint within said term, the invoice is considered to be accepted by the other party. Any dispute of a part of an invoice does not affect the due character of the non-protested part of the invoice.
- 6.3 In case of late payment of (part of) an invoice, all other invoices, even those which are not yet outstanding, become immediately and automatically due. In such case an interest of 10 % per year is automatically due starting from date of invoice, without the need to send a prior formal notice. Each month that has started counts as a full month. Also, a fixed indemnity of 10 % of the contracted price, excluding VAT, with a minimum of 125 EUR, is automatically due without the need to send a prior formal notice, and without prejudice to the right of FUDIUM to claim full indemnity, including loss of profit. The other party is obliged to pay court costs relating to late or lack of payment of an invoice.
- 6.4 In case of a late or lack of payment, FUDIUM has the right to suspend or end any planned deliveries or services and at the same time, FUDIUM, without the need to send a prior formal notice, has the right to consider the contract as automatically terminated as a whole or to the extent of the not yet executed part thereof and such without prejudice to the right of FUDIUM to claim an indemnity for (future) damage.
- 6.5 All payments by the other party are always accounted firstly to the due interests and costs and next to the invoices which have been due for the longest time, even if the other party explicitly mentioned that the payment relates to a later invoice.
- 6.6 The other party cannot set off any payment obligations of FUDIUM with its own payment obligations.

## **7. RESERVATION OF PROPERTY**

- 7.1 Sold goods remain the exclusive property of FUDIUM until full payment by the other party of all due sums, possibly increased with interests, (fixed or other) indemnities and other costs which are due by the other party. "All due sums" do not only include the sums which relate to delivered goods to which the reservation of property relates but also to all other claims that FUDIUM has vis-à-vis the other party. All claims which the other party has or will have in relation to goods to which a reservation of properties applies, are automatically transferred by the other party to FUDIUM.
- 7.2 Until the property has been transferred following full payment, the other party will store the goods in good state and insure them against all insurable risks (for the total value) and will appoint FUDIUM as the beneficiary.
- 7.3 All claims that the other party might have in relation to goods that are still the property of FUDIUM in conformity to article 7.1 are automatically and unconditionally transferred to FUDIUM.
- 7.4 The other party gives FUDIUM the irrevocable right, in case he transferred the goods to a third party, to inform such third party that from that time on, the latter must store the goods for FUDIUM and in case FUDIUM requests, to return to the latter. In case the other party does not live up to this obligation, he will be fully reliable for all suffered damage, including loss of profit, interests, (extra-)procedural costs, ...
- 7.5 In case the other party has, in breach of the above provisions, processed the goods nonetheless and thus these goods have become undividable by mixture or processing with other products, FUDIUM will become an undivided co-owner of these goods pro rata the invoiced sum vs. the total value of the products used in the end product. In order to insure payment of the due invoices, FUDIUM as a co-owner, can also, without prior court order, demand that the undividable end product is sold so as to receive a pro rata output.

## **8. LIABILITY AND INDEMNIFICATION**

- 8.1. The total liability of FUDIUM for accountable default in respect of execution of the contract is limited to compensation of direct damage to max. the sum (ex VAT) that was contracted for that specific contract. Moreover, the total liability of FUDIUM is at all times limited to the amount that FUDIUM has insurance for, in case this is lower than the contracted price as mentioned in the first part of art 8.1.
- 8.2. FUDIUM's liability for indirect damage, including consequential damage, loss of profit, missed cuts is excluded. The other party will indemnify FUDIUM for all third party claims regarding compensation of damage described in this article 8.2.
- 8.3. The other party will indemnify FUDIUM for all third party claims based on product liability in consequence of a defect in a product delivered by the other party to a third party and which partially consisted of goods delivered by FUDIUM.
- 8.4. The other party will inform FUDIUM immediately of all third party claims which relate to deliveries of goods by FUDIUM to the other party.

- 8.5. The other party must ensure that all legal obligations are respected that might apply to the use or processing of the products into a deviated product or end product. FUDIUM can never be held liability in this respect and if nonetheless, FUDIUM is held liable by a third party, the other party will full indemnify FUDIUM.
- 8.6. The other party knows and accepts that the goods delivered by FUDIUM have only been tested in respect of its autarkic chemical food-related features and each warranty on the goods granted by the supplier / manufacturer, is limited to these features and never covers features of the goods in a systematical combination with other food products, in a mixture with other chemicals and/or in a manufacturing process, unless this was confirmed explicitly in writing by FUDIUM at the time of acceptance of the order and insofar FUDIUM was made fully aware of all concerned elements (manufacturing process, combined food products, ...). FUDIUM is never (jointly) liable for the manufacturing and/or processing process, which is thus executed by the other party at its own risk.
- 8.7. All liability claims of the other party vis-à-vis FUDIUM are time-barred 1 year after acknowledgment by the other party.
- 8.8. Notwithstanding the above, the other party acknowledges that FUDIUM is an intermediary and not a manufacturer of the concerned goods. In such sense, the liability of FUDIUM is in any case limited to the extent that FUDIUM is indemnified by such manufacturer or supplier. FUDIUM has the right to unlimitedly invoke any exceptions that the manufacturer or supplier invokes against FUDIUM, such as e.g. a time bar or limitation of liability, mutatis mutandis against to the other party.

## **9. NON DISCLOSURE**

- 9.1. Unless legally forced thereto, FUDIUM and the other party will keep all confidential information strictly confidential and will take all possible measures to secure such confidentiality. "confidential information" regards information that is identified as such or of which the confidential nature was reasonably to be assumed.
- 9.2. Unless with prior explicit approval of the other party in writing, each of the parties will not disclose information or data carriers to third parties and will only disclose such to its employees insofar needed to execute its part of the agreement.

## **10. UNFORESEEABLE FORCE**

- 10.1. When FUDIUM cannot execute the agreement due to circumstances beyond its control during more than 45 calendar days, FUDIUM has the right, to its option, either to suspend execution of the contract for max. 6 months, or either to declare the agreement as completely or partially terminated, without any right for the other party to claim an indemnity and even if this situation might bring FUDIUM any advantage.
- 10.2. "Circumstances beyond its control" is understood as such circumstances that are unaccountable to FUDIUM, whether they were foreseeable or not, having as result that (further) execution of the agreement cannot in all fairness be expected.

## **11. TERMINATION**

FUDIUM has the right to declare the agreement as automatically and without prior notice and/or judicial intervention, repudiated in full or part in case of insolvency, bankruptcy or arrest on a considerable part of the assets or liquidation of the other party. All outstanding debts of the other party, which came into existence before the moment of repudiation of the agreement, remain unchanged into force and become automatically and without prior notice and/or judicial intervention, due.

## **12. INTELLECTUAL PROPERTY**

FUDIUM warrants to hold all intellectually property rights or to have a mandate to close the agreement. All intellectual property rights remain with the legal holder thereof.

## **13. APPLICABLE LAW**

13. 1. Belgian law applies to all of FUDIUM's the agreements. In case of an international sale, parties agree that such sale will not be governed by the UN CISG (UN Convention on the International Sale of Goods, Vienna).
13. 2. The courts of Antwerp (Belgium) have exclusive jurisdiction in respect of any dispute relating to the drafting, interpretation or execution of an agreement. Parties will however, before the dispute is initiated in court, attempt to settle their disputes amicably.