



CUBE ►► FOOD FORWARD

GENERAL CONDITIONS OF SALE AND DELIVERY

Article 1 : Application

1.1. These general conditions of sale and delivery are applicable **to the following**

1.1.1. offers and agreements related to the sale and delivery of goods (further mentioned as “goods”) where CUBE NV acts as supplier or salesman and not on those goods for which CUBE NV acts as official intermediary for a third party.

1.1.2. Toll manufacturing of goods produced at the site of CUBE NV, further defined as

1.2. Deviation of these conditions can only be agreed to in writing.

1.3. General conditions, in no matter what form or under no matter what name, from the opposing party of CUBE NV (further mentioned as “the opposing party”) are not applicable.

Article 2 : Offers

2.1. An offer from CUBE NV is free of engagement unless the opposite appears explicitly from the offer.

2.2. The prices, data and/or specifications mentioned in the catalogues or other documentation from CUBE NV, are subject to modifications and do not bind CUBE NV, unless these prices, data and/or specifications are explicitly agreed to by the parties.

Article 3 : Realization of the agreement

3.1. If a written order is placed by the opposing party as a result of a fixed offer from CUBE NV, the agreement is realized when the order is received by CUBE NV.

3.2. If the written order is not preceded by an offer from CUBE NV or if an order follows on an offer free of engagement, then the agreement is realized when CUBE NV sends the written order confirmation or when the goods are delivered by CUBE NV according to the order.

3.3. When an agreement is concluded verbally, the execution of the agreement is suspended until the written confirmation of the order is sent by CUBE NV. Not sending the written confirmation of the order within 30 days after the conclusion of the verbal agreement, dissolves the agreement by the simple expiring of this term.

Contrary to the stated above, the suspension is also undone if, within the term of 30 days after concluding the verbal agreement, the goods are delivered by CUBE NV according the order.

3.4. If and as far as the procedure as intended in subsections 1 up to and including 3 of this article, takes place by fax or e-mail, the faxes and e-mails are considered as written pieces. The same applies to notifications from one party to the other, as intended in these conditions.

Article 4 : Responsibility of Third Party Goods & Toll manufacturing

4.1. Toll manufacturing is defined as the handling, storage & production of goods at the production site(s) of CUBE NV with (raw) materials, packaging or machinery owned by a third party, here further described as third party materials.

4.2. Delivery, transport and contents of third party materials, which are or have been made available for any purpose whatsoever, are for the risk of the owner. CUBE NV is only responsible for the correct handling, storage and processing of third party goods inside the factory. Goods or materials of third party will be handled with the same care as their own goods, following overall food policies and their ISO22000. If any third party material needs to be treated different this needs to be reported in writing prior to use and/or delivery of these third party materials

4.3. CUBE NV cannot be held liable for the damage/loss/lack of product quality and/or safety caused by failures in quality, production, storage and delivery of the final product caused by third party materials, supplied or shipped late or incorrectly.

4.4. Damage to our equipment, materials and buildings caused by third party supplied materials can be recovered from the third party.

4.5. CUBE NV always has the right to refuse/return third party materials at any time by any reason, unless agreed otherwise.

Article 5 : Prices

The prices are in EURO/kg, unless explicitly mentioned in the offer or catalogues, and are standard packing included, VAT and alcohol excises excluded, and are based on the delivery conditions “EX WAREHOUSE – Oostkamp”, unless explicitly mentioned or agreed to otherwise.

Prices are valid 4 weeks from date mentioned on offer, unless explicitly mentioned or agreed otherwise

Article 6 : Delivery

6.1. For the interpretation of the delivery conditions are the “Incoterms” edition 2010 published by the International Chamber of Commerce applicable.

6.2. Delivery is executed “EX WAREHOUSE” unless mentioned otherwise.

6.3. CUBE NV is authorized to execute partial deliveries.

6.4. Mentioned delivery terms are never to be considered as binding terms, unless explicitly agreed to otherwise.

CUBE NV however, will do all that is possible to realize the delivery within the mentioned delivery time.

6.5. As soon as CUBE NV knows of facts and/or circumstances which make the realization of the delivery at or within the mentioned term, CUBE NV will inform the opposing party of this as soon as possible by written message with mention of the new expected delivery time.

6.6. If the inability of respecting the term, as intended in previous subsection, continues longer than 3 months, the opposing party has the right to dissolve the agreement.

6.7. Dissolution according to the stated in subsection 6, has as consequence that the opposing party will compensate the costs made by CUBE NV in preparation of the execution of the agreement.

Article 7 : Risk and property

7.1. The risk related to the goods passes from CUBE NV to the opposing party at the moment of delivery.

7.2. If the opposing party neglects to perform the action he needs to perform to cooperate to the delivery, CUBE NV can consider the goods as delivered and store and insure these for a reasonable period, this and that for the account and at the risk of the opposing party.

7.3. If the neglect of the opposing party continues longer than 3 months, CUBE NV has the right to dissolve the agreement, without CUBE NV being held to any compensation and without prejudice to any rights that CUBE NV continues to be entitled to.

7.4. The property of the goods passes from CUBE NV to the opposing party in first after payment by the opposing party from the purchase price and all the remaining that the opposing party is due according to any purchase agreement, as well as due to any claim for failing the observance of agreements as such.

Article 8 : Payment

8.1. Payment takes place after delivery within 30 days after sending the invoice. Complaints regarding to the invoice must be formulated within five days after reception of the invoice and this by registered letter.

8.2. Payments made by the opposing party always serve as settlement of all due interests and costs and then of claimable invoices which are outstanding the longest, even if the opposing party mentions that the payment concerns a later invoice.

8.3. In case of non-payment on the expiry date, the opposing party is legally in failure without any proof of default being required and the opposing party is held to paying the interest of negligence of 12% on the amount due counting from the expiry date as well as fixed damages of 10% with a minimum of EUR 100,00.

8.4. All legal and extra-legal costs that CUBE NV needs to make to recover of her receivable(s) are completely for the account of the failing opposing party. The extra- legal costs are 15% of the remaining amount with a minimum of EUR 250,00 – VAT not included.

8.5. The opposing party is not allowed by means of compensation, to deduct payment obligations from CUBE NV other than these resulting from this agreement from what the opposing party in question is due according to this agreement.

8.6. CUBE NV has the right, in circumstances defined by her, to demand that the opposing party, before delivery takes place, as assurance of the obligations of the opposing party resulting from the agreement, deposit an irrevocable and unconditional bank guarantee at a for CUBE NV acceptable bank.

Article 9 : Transfer of Rights and Obligations

CUBE NV has the right to transfer the observance of her obligations and the execution of her rights resulting from this agreement to one or more third parties. CUBE NV gives a written notice of such transfer to the opposing party.

Article 10 : Industrial and Intellectual property

10.1. The opposing party recognizes that CUBE NV is and stays the only and exclusive owner or licence holder of all Intellectual Property rights on the goods.

The opposing party recognizes as well that CUBE NV is and stays the only and exclusive owner of all Intellectual Property rights which originate from or are the consequence of the execution of the agreement by CUBE NV or by third parties who have been involved in the execution of the agreement. With Intellectual Property rights is meant all registered, non-registered or demands for trade names, brand names, domain names, patents, copyrights, database rights, drawings, models, designs, trade characteristics and any know-how on which CUBE NV can apply Intellectual Property rights and are property or given in licence to CUBE NV

10.2. No right or licence in relation to previously mentioned Intellectual Property rights will be accorded to the opposing party in any possible way. In particular, the opposing party will not be allowed to register or to use the Intellectual Property rights in his favour or as part of his trade name.

10.3. If the opposing party has put samples, specifications and the like at the disposition of CUBE NV as part of the execution of the agreement, the opposing party will protect CUBE NV from any claim resulting from the supposed violations on Intellectual Property rights from third parties on these samples, specifications, and the like. The opposing party will compensate all damages suffered by CUBE NV and third parties in consequence of such claim.

Article 11 : Quality, Inspection

- 11.1. At delivery the opposing party verifies if the goods meet with the agreed specifications and complains in writing to CUBE NV within 8 days after delivery if, in her opinion, they do not meet.
- 11.2. In case of the previous subsection the opposing party will keep the goods clearly separated for inspection by CUBE NV and will not process the goods, neither completely nor partially.
- 11.3. Parties will consult together within 14 days after delivery about the complaint of the opposing party. If the parties do not reach an agreement, an inspection will be done within a month after the delivery by an independent inspection organism appointed by both parties together.
- 11.4. If the goods do not meet the agreed specifications the inspection organism will also evaluate if the abnormality has arisen before or after the delivery.
- 11.5. Only if the abnormality has arisen before the delivery, the goods will be replaced at the choice of CUBE NV or the part of the purchase price that already has been paid by the opposing party, will be refunded after reception of the goods by CUBE NV.
- 11.6. The costs related to the inspection are for the account of the party whose opinion is countered by the inspection, unless the parties have agreed in advance to support the costs together.
- 11.7. An inspection as defined in present article does not postpone the payment obligations.

Article 12 : Liability

- 12.1. CUBE NV is exclusively liable for the damage which is a direct and immediate result of the execution of the agreement, if and for as far as the opposing party proves that the damage is due to the fault of CUBE NV, or by law, by act of law or by the notions valid in traffic for risks.
- 12.2. The liability of CUBE NV according to previous subsection is limited to at the most the amount for which CUBE NV has covered her liability by insurance, unless the opposing party proves that the damage is a consequence of a glaring mistake, glaring negligence by CUBE NV or is on purpose.
- 12.3. CUBE NV is not liable in any way for any form of indirect damage, including (yet not limited to) the loss of profits or earnings, the suffering of loss including product losses, costs of standstill or delay, fines or reductions and all payments to third parties.
- 12.4. The opposing party protects CUBE NV for all claims of third parties on compensation of damage as described in subsection 3 of the present article.
- 12.5. The opposing party will inform CUBE NV as soon as possible in writing of claims on compensation as described in the present article.

Article 13 : Dissolution

- 13.1. In case of shortcoming from the opposing party in the fulfilling of her obligations resulting from the agreement or from other agreements resulting from this agreement, as well as in case of her bankruptcy or extension of payment and in case of close down, liquidation or take-over or any other comparable situation of the company of the opposing party, she is legally in omission. In that case CUBE NV has the right to dissolve the agreement completely or partially without proof of default and without any judicial intervention, by means of a written notification to the opposing party and/or postpone the execution of the agreement completely or partially, also if a fixed delivery time has been agreed to, without CUBE NV being held to any compensation, without the prejudice to possible future rights that CUBE NV is entitled to.
- 13.2. All claims that CUBE NV should have or gets in these cases, will be immediately and fully due.

Article 14 : Applicable law, disputes

- 14.1. The agreement and all agreements resulting from this agreement are subject to the Belgian law.
- 14.2. All disputes (including those who are considered as such by only one of the parties) which should occur between the parties as a result of this agreement or the agreements resulting from this agreement will be taken up with the competent judge in the district of Brugge.