General Terms and Conditions – Business Deliveries

Definitions

“Klepper & Klepper” shall mean: Klepper & Klepper.
“Buyer” shall mean: any natural person or legal entity acting in the course of a profession or business.

Klepper & Klepper and the Buyer together: Parties.

1. Applicability of General Terms and Conditions

1.1
These general terms and conditions apply to all offers, quotations, order confirmations, agreements and other legal relationships, however named, between Klepper & Klepper and the Buyer, regardless of the place of establishment of the Parties and regardless of the place where the agreement is concluded or performed.

1.2
The applicability of any general or specific terms and conditions of the Buyer is expressly rejected, even if such terms and conditions have been provided to Klepper & Klepper before, at or after the conclusion of the agreement, unless explicitly agreed otherwise in writing.

1.3
If Klepper & Klepper in some instances does not require strict compliance with these terms and conditions, the Buyer can not derive any rights from this, and this shall not affect Klepper & Klepper’s right to require strict compliance at a later time.

1.4
These general terms and conditions shall also apply to all future legal relationships between the Parties, without the need for any further declaration of applicability.

1.5

These terms and conditions are also available in the Dutch language. In the event of any inconsistencies between the two versions, the Dutch version shall prevail.

2. Offers and Agreements

2.1
All offers, quotations, price statements and other communications of Klepper & Klepper are non-binding and may be revoked at any time, unless expressly stated otherwise in writing.

2.2
An agreement shall only be concluded at the moment Klepper & Klepper confirms an order in writing or commences with the performance of the agreement.

2.3
Any stated specifications, images, samples, weights, dimensions, packaging and other product descriptions are indicative only and shall not constitute a guarantee, unless expressly agreed otherwise in writing.

2.4
Obvious errors or mistakes in offers, order confirmations, price lists or other communications of Klepper & Klepper shall not be binding on Klepper & Klepper.

3. Prices

3.1
All prices are exclusive of VAT and other government-imposed levies and are based on the cost factors applicable at the time the agreement is concluded, including but not limited to raw material prices, wages, transport costs, energy prices, taxes,exchange rates and other product related costs.

3.2
Klepper & Klepper reserves the right to adjust the agreed prices if one or more of the cost factors referred to in Article 3.1 change.

3.3
Price changes shall be communicated by Klepper & Klepper to the Buyer in writing, observing a notice period of at least one (1) month.

3.4
If the Buyer does not agree to a notified price change, the Parties shall consult with each other. Until the price change takes effect, the existing prices shall remain applicable. If the Parties fail to reach agreement within 30 days, the Buyer shall be entitled to terminate the agreement in writing with a notice period of one (1) month, provided that the price change results in an increase of more than 10% of the then applicable price.

4. Delivery within the Netherlands

4.1
Orders received by Klepper & Klepper on a working day and confirmed in writing shall, in principle, be delivered within two (2) working days after order confirmation, or on the delivery date requested by the Buyer, provided that such date has been accepted by Klepper & Klepper.

4.2
The delivery period referred to in Article 4.1 is indicative only and shall not constitute a strict or binding deadline, unless expressly agreed otherwise. The Buyer may not derive any rights from this period, including but not limited to any right to compensation, termination or suspension of payment obligations.

4.3
The Buyer shall not be entitled to suspend its payment obligations due to delays in delivery, unless Klepper & Klepper after having been given written notice of default (providing a reasonable period for performance and except in cases of force majeure) is in default and such default constitutes a material breach.

4.4
If delivery is delayed due to circumstances beyond the control of Klepper & Klepper, including but not limited to transport issues, capacity constraints, force majeure or delays caused by third parties, the delivery period shall be extended accordingly.

5. Transport within the Netherlands

5.1
The risk of loss, damage or depreciation of the goods shall pass to the Buyer at the moment of actual delivery to the Buyer or to a third party designated by the Buyer.

5.2
Transport of the goods shall be arranged or coordinated by or on behalf of Klepper & Klepper, unless the Parties have expressly agreed otherwise in writing.

5.3
Klepper & Klepper shall not be liable for any damage arising during or as a result of transport, except in cases of intent or gross negligence on the part of Klepper & Klepper, to the extent such exclusion is permitted by law.

5.4
If the Buyer requests a specific method of transport, packaging or delivery, this shall be entirely at the Buyer's expense and risk.

6. Deliveries outside the Netherlands (Ex Works)

6.1
Delivery periods are indicative only. The Buyer may not derive any rights from such periods, including but not limited to any right to compensation, termination or suspension of payment obligations.

6.2
Deliveries outside the Netherlands shall be made exclusively on the basis of Ex Works (EXW) in accordance with Incoterms® 2020, unless expressly agreed otherwise in writing.

6.3
The risk shall pass to the Buyer as soon as the goods are made available at the premises of Klepper & Klepper.

6.4
Transport, export formalities, customs clearance and insurance shall be entirely at the Buyer's expense and risk.

6.5
The Buyer guarantees compliance with all applicable export control laws and sanctions regimes, including those of the EU, the United States and the United Nations.

6.6
If Klepper & Klepper has reasonable and objective grounds to doubt the Buyer's compliance with its obligations under this agreement or with applicable laws and regulations, Klepper & Klepper shall be entitled to temporarily suspend delivery. Klepper & Klepper shall inform the Buyer thereof as soon as reasonably possible. Suspension under this article shall not give rise to any liability for any resulting delay, unless there is intent or gross negligence.

7. Retention of Title

7.1
All goods delivered by Klepper & Klepper shall remain the property of Klepper & Klepper until the Buyer has fully complied with all obligations all agreements concludedbetween the Parties, including but not limited to payment of the purchase price, interest, costs and any damage payments.

7.2
The Buyer shall not be entitled to pledge or otherwise encumber the goods delivered subject to retention of title.

7.3
If the Buyer fails to fulfil its obligations, Klepper & Klepper shall be entitled to repossess the goods. The Buyer hereby grants unconditional and irrevocable permission in advance for Klepper & Klepper to enter its premises for that purpose.

8. Payment

8.1
Payment shall be made within thirty (30) days after the invoice date.

8.2
All payments shall be made to a bank account designated by Klepper & Klepper.

8.3
If the Buyer fails to pay within the period referred to in Article 8.1, it shall be in default by operation of law, without any further notice of default being required.

8.4
If payment is not made within the payment term set out in Article 8.1, the Buyer shall, by operation of law, be liable for the statutory commercial interest on the outstanding amount, without prejudice to any other rights of Klepper & Klepper.**8.5**
All judicial and extrajudicial costs incurred by Klepper & Klepper in the collection of outstanding claims shall be borne in full by the Buyer. The extrajudicial collection costs shall amount to 15% of the outstanding amount, with a minimum of EUR 250, without prejudice to Klepper & Klepper's right to prove and recover higher costs if incurred.

8.6
Without prejudice to the foregoing, Klepper & Klepper retains all rights available to it under the law if the Buyer fails to fulfil its payment obligations, including the right to suspend further deliveries or to terminate the agreement in whole or in part, without being liable for any damages.

8.7
Payments made by the Buyer shall always first be applied to costs due, then to accrued interest and finally to the oldest outstanding principal amount.

9. Complaints

9.1
The Buyer is obliged to inspect the delivered goods immediately upon delivery for visible defects, quantities and conformity. Deviations resulting from transport, storage, processing or use after delivery fall outside the responsibility of Klepper & Klepper.

9.2
Complaints regarding the delivered goods must be submitted in writing to Klepper & Klepper no later than seven (7) days after delivery, including a clear and complete description of the nature and extent of the complaint.

9.3
Complaints that could not reasonably have been discovered upon delivery must be reported in writing without delay after discovery, and in any event no later than seven (7) days after such discovery.

9.4
After expiry of the periods referred to in this article, the goods shall be deemed to have been irrevocably accepted and to have been delivered in conformity with the agreement.

9.5
Submitting a complaint shall not release the Buyer from its payment obligations and shall not entitle the Buyer to suspend payment.

9.6
Return of goods shall only be permitted with prior written consent of Klepper & Klepper and subject to conditions to be determined by Klepper & Klepper.

10. Warranty and Conformity

10.1
Klepper & Klepper warrants solely that the goods delivered comply, at the time of delivery, in all material respects with the specifications agreed in writing and with the statutory requirements applicable at that time.

10.2
All other warranties, whether express or implied, including but not limited to warranties of merchantability, fitness for a particular purpose, shelf life after delivery or commercial usability, are expressly excluded, to the extent permitted by law.

10.3
Klepper & Klepper provides no warranty as to the suitability of the goods for any specific purpose intended by the Buyer, nor with respect to any national or international regulations applicable after delivery or outside the Netherlands.

10.4
If it is established that there is an attributable non-conformity, Klepper & Klepper's obligation shall be limited, at its sole discretion, to:
a. replacement of the relevant goods; or
b. issuing a credit note for the invoice value of the non-conforming goods.

10.5
Any further liability or warranty is excluded.

11. Liability

11.1
The total liability of Klepper & Klepper, on any legal basis whatsoever, shall be limited to the lower of: (i) the invoice amount of the delivery to which the liability relates, or (ii) the amount actually paid out in the relevant case under Klepper & Klepper's liability insurance, increased by the applicable deductible.

11.2
Klepper & Klepper shall not be liable for any financial or economic loss, including but not limited to loss of profit, loss of revenue or reputational damage, nor for any non-material damage of any kind, nor for damage resulting from claims by third parties.

11.3
Any deficiencies in quality, packaging, labelling, sealing, outer packaging or other commercial aspects shall be regarded as commercial non-conformity and shall not in itself constitute an indication that the goods are unsafe.

11.4
Klepper & Klepper shall not be liable for any costs or damages related to product recalls, market withdrawals, destruction, replacement of entire production batches or similar measures, unless:
a. there is a demonstrable health or safety risk; and
b. such risk has been directly caused by intent or gross negligence on the part of Klepper & Klepper.

11.5
The limitations of liability set out in this article shall not apply if and to the extent that the damage is the result of intent or gross negligence on the part of Klepper & Klepper, to the extent that exclusion or limitation of liability is not permitted by law in such case.**11.6**
The Buyer shall indemnify and hold harmless Klepper & Klepper against all claims from third parties related to the use, further distribution, processing, storage, labelling or sale of the goods after delivery.

11.7
In all cases, the total liability of Klepper & Klepper per calendar year shall be limited to the amount actually paid out under its liability insurance in that year, increased by the deductible. If no payment is made, liability shall be limited to a maximum of the invoice amount of the relevant delivery.

11.8
Any claim for damages shall lapse if it has not been submitted to Klepper & Klepper in writing, with substantiation, within twelve (12) months after the Buyer became aware or could reasonably have become aware of the damage, and in any event no later than eighteen (18) months after delivery.

12. Force Majeure

12.1
Force majeure shall mean any circumstance beyond the reasonable control of Klepper & Klepper that wholly or partially prevents the (timely) performance of its obligations, including but not limited to natural disasters, fire, flooding, war, terrorism, pandemics, epidemics, government measures, trade restrictions, sanctions, transport disruptions, strikes, shortages of raw materials, energy or labour, as well as failures of suppliers or carriers.

12.2
In the event of force majeure, Klepper & Klepper shall be entitled to suspend its obligations for the duration of the force majeure event, without being liable for any damages.

12.3
If the force majeure situation continues for more than thirty (30) days, either Party shall be entitled to terminate the agreement in whole or in part in writing, without any obligation to pay damages.

12.4
Insofar as Klepper & Klepper has already partially performed its obligations at the time the force majeure event occurs, it shall be entitled to invoice such performance separately.

13. Intellectual Property

13.1
All intellectual property rights, including but not limited to trademarks, trade names, logos, designs, packaging, product concepts, recipes, documentation and promotional materials, shall at all times remain exclusively vested in Klepper & Klepper.

13.2
Nothing in the agreement shall be construed as granting any licence or other right of use to the Buyer, unless expressly agreed otherwise in writing.

13.3
The Buyer shall not be permitted, without the prior written consent of Klepper & Klepper, to use, copy, modify, register or have registered any intellectual property rights of Klepper & Klepper, nor to create identical or confusingly similar rights, anywhere in the world.

13.4
The Buyer shall indemnify and hold harmless Klepper & Klepper against all claims from third parties arising from unauthorized use of intellectual property rights by or on behalf of the Buyer.

14. Confidentiality

14.1
The Parties undertake to maintain strict confidentiality with respect to all confidential information obtained from each other in connection with the agreement, including but not limited to commercial terms, prices, product information, specifications, customer data and business strategies.

14.2
Confidential information may only be used for the performance of the agreement and shall not be disclosed to third parties, unless this is necessary for the performance of the agreement or required by law.

14.3
The obligation of confidentiality shall remain in full force and effect after termination of the agreement.

14.4
In the event of a breach of this Article, the Buyer shall be liable for damages, without prejudice to the provisions of Article 15.

15. Penalty Clause

15.1
In the event of a breach by the Buyer of one or more of the obligations set out in:

• Articles 13.1 through 13.4 (intellectual property),
• Articles 14.1 through 14.3 (confidentiality),

the Buyer shall forfeit to Klepper & Klepper, without any notice of default or judicial intervention being required within the meaning of Section 6:82 of the Dutch Civil Code, an immediately due and payable penalty of EUR 5,000 per breach, increased by EUR 500 for each day that the breach continues.

15.2
The penalty referred to in Article 15.1 shall be without prejudice to Klepper & Klepper's right to claim full compensation for damages.

15.3
The penalty shall be payable regardless of whether the breach is attributable to the Buyer.

15.4
Payment of the penalty shall not release the Buyer from the obligation to immediately cease the breach.

16. Governing Law and Jurisdiction

16.1
All offers, agreements and legal relationships between Klepper & Klepper and the Buyer shall be governed exclusively by Dutch law.

16.2
The applicability of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is expressly excluded.

16.3
All disputes arising out of or in connection with the agreement shall be submitted exclusively to the competent court in the district of Midden-Nederland, without prejudice to Klepper & Klepper's right to submit the dispute to the competent court at the Buyer's place of residence or place of business.

Final Provision

If any provision is null and void or voidable, the remaining provisions shall remain in full force and effect. In such case, the Parties shall agree on a replacement provision that aligns as closely as possible with the purpose and intent of the original provision.