



**Intersnack Nederland B.V.  
General Conditions of Sale**

**1. Applicability**

- 1.1 These general conditions ('Conditions') are applicable to every quote, offer, confirmation of instruction and delivery of Intersnack Nederland B.V., hereinafter referred to as: "Intersnack", and form part of every agreement ('Agreement') entered into by Intersnack with another party ('Buyer') with regard to goods and/or services to be supplied by Intersnack, as well as (legal) acts in connection with that, insofar as the parties have not explicitly departed from these Conditions in writing.
- 1.2 The applicability of any general (purchase) conditions applied by the Buyer is explicitly rejected by Intersnack.
- 1.3 Changes or supplements to these Conditions or the Agreement only bind Intersnack after written confirmation thereof by Intersnack and only relate to the agreement concerned.
- 1.4 Verbal arrangements and/or promises only bind Intersnack if they have been confirmed by Intersnack to the Buyer in writing.
- 1.5 If one or more of the provisions of these Conditions are void, the remaining provisions of these Conditions will remain in full force.

**2. Offers and formation of the Agreement**

- 2.1 All quotes and offers made by Intersnack, both verbally and in writing, are free of obligation and can be revoked by Intersnack at all times.
- 2.2 An Agreement is formed by the written confirmation thereof by Intersnack, yet in any case the moment that Intersnack starts executing the Agreement. If the event of an instruction for partial deliveries, the Agreement is deemed to have been formed in full once the first partial delivery has been made.
- 2.3 Any arrangement, promises, supplements and/or changes made in or to the agreement after the confirmation of instruction are only binding if agreed by the parties in writing.
- 2.4 If so deemed required or desired by Intersnack, Intersnack will be entitled to engage third parties in the execution of the instruction, the costs of which will be passed on to the Buyer. Intersnack will consult the Buyer regarding this in advance.



### **3. Prices**

- 3.1 All prices are in Euros, unless agreed otherwise.
- 3.2 All prices stated by Intersnack are based on delivery Ex Works and exclusive of VAT, unless agreed otherwise in writing.
- 3.3 Any other costs to be incurred in connection with the delivery are not included in the price, insofar as not agreed otherwise in the Agreement.
- 3.4 If one or more cost price factors are subject to an increase after the offer date or in the event of a change in the exchange rate - regardless of whether this increase could have been foreseen - Intersnack will be entitled to increase the agreed price accordingly.

### **4. Delivery and delivery period**

- 4.1 All deliveries are made Ex Works, unless explicitly agreed otherwise.
- 4.2 Insofar as the parties, contrary to article 4.1, agree on delivery conditions that are standard in business practice, such as DAP and FCA, they will be subject to the (2010) Incoterms of the International Chamber of Commerce in Paris, unless explicitly agreed otherwise.
- 4.3 Intersnack is entitled to supply the goods in parts. In that case, Intersnack will be entitled to invoice separately and the Buyer will be obliged to pay these invoices as if they were invoices for separate agreements.
- 4.4 Delivery times are stated for indicative purposes only and are never final. If the given delivery date or dates cannot be honoured by Intersnack, Intersnack will notify the Buyer thereof expeditiously, stating the newly expected delivery date or dates, without the Buyer being able to derive any right to any compensation from this or proceed to terminate the Agreement.
- 4.5 If Intersnack continues to fail in the performance one month after the delivery date stated in the Agreement, the Buyer will be entitled to cancel the Agreement in full or for the non-performed part, provided the cancellation is effected by registered letter and Intersnack receives the cancellation notice prior to delivery of the goods concerned.

### **5. Differences and deviations**

- 5.1 Supplying 10% more or less than the ordered quantity is permitted. Differences are calculated at the unit prices, unless agreed otherwise.
- 5.2 Minor deviations in terms of quality, colour, flavour etc. in respect of the goods sold do not give rise to rejection. Assessments whether a delivery exceeds permissible margins must be based on averages from the delivery and therefore the delivery cannot be rejected as a result of non-conformity of some individual items.



**6. Transfer of ownership and risk**

- 6.1 Intersnack retains title to the goods sold until the moment the Buyer has fulfilled all his payment obligations and any additional costs.
- 6.2 During the period that ownership of the goods remains vested in Intersnack, the Buyer is obliged to carefully store the goods supplied under retention of title and as the recognisable property of Intersnack, while the Buyer will not be able to transfer the goods to third parties (as security) and/or create security interests in these goods.
- 6.3 If the Buyer fails in the fulfilment of his obligations towards Intersnack, or if Intersnack has reasonable grounds to fear that the Buyer will fail in the fulfilment of those obligations, Intersnack, without prior notification, will be authorised to take back the goods supplied, without prejudice to the right of Intersnack to compensation.
- 6.4 The risk with regard to the goods sold transfers upon delivery, which will be Ex Works, unless agreed otherwise.
- 6.5 Contrary to the provisions of articles 6.1 to 6.4, agreements between Intersnack and the Buyer for deliveries of goods destined for Germany, insofar as the retention of title is concerned, will be subject to the 'Germany Clause'.
- 6.6 In the event of possible legal invalidity or voidness of the attached 'Germany Clause', the retention of title referred to in article 6 of these Conditions applies instead.

**7. Transport documents**

- 7.1 The copy held by Intersnack of the transport document signed by the carrier for receipt, without comments, will serve as full evidence of the dispatch of the quantities stated on the transport document, as well as of the exterior condition of the goods.
- 7.2 If contrary to article 4.1, alternative delivery conditions are agreed, the transport document signed by or on behalf of the Buyer for receipt, without comments, will serve as full evidence of the dispatch of the quantities stated on the transport document, as well as of the exterior condition of the goods.

**8. Complaints**

- 8.1 Upon delivery, the Buyer is obliged to inspect the goods to verify whether they conform to the Agreement.



- 8.2 Complaints with regard to the quantity must be immediately noted down on the confirmation of receipt, upon handover of the goods bought to the Buyer or recipient of the Buyer. Complaints with regard to the quality of the goods sold must be submitted to Intersnack in writing within 10 days of receiving the goods concerned. Complaints with regard to invoices must also be submitted in writing, within 5 days of the invoice date.
- 8.3 Following expiry of the terms referred to in article 8.2, the Buyer will no longer be able to invoke the goods supplied not conforming to the Agreement.
- 8.4 Faults in part of the delivery do not constitute a right to refuse the entire batch.
- 8.5 Goods returned without prior consultation with Intersnack will not be accepted by Intersnack. Return shipments are at the expense and risk of the Buyer.
- 8.6 Regardless of the previous paragraphs of this article, complaints will not be accepted by Intersnack if the goods supplied have been processed or treated or supplied to a third party or if the commonly accepted storage conditions for these goods have not been observed.
- 8.7 Complaints or disputes, of whatever nature, do not entitle the Buyer to suspend payment.
- 8.8 If any complaint is upheld by Intersnack, Intersnack, at its discretion, can either resupply the goods concerned or refund the purchase price, as part of which the goods concerned must be made available to Intersnack in their original condition and free from any damage. In all other respects, Intersnack is not obliged to pay any damages, losses or costs.
- 9. Payment**
- 9.1 Payments must be effected within 30 days of the invoice date, in the agreed currency used for invoicing.
- 9.2 If the Buyer fails to pay an amount owed before the due date, he is deemed to be in default by operation of law, without the need for any demand or notice of default. In that event, all amounts of Intersnack owed by the Buyer will become immediately due and payable, regardless of whether Intersnack has already invoiced these amounts. As such, Intersnack will not be obliged to make any further deliveries to the Buyer and it is entitled to suspend all agreements entered into with the Buyer or to terminate or dissolve them without judicial intervention, without prejudice to the obligation of the Buyer to pay compensation. This provision also applies if the Buyer dies, is declared bankrupt or applies for a moratorium on payments.
- 9.3 The Buyer is in no event entitled to any setoff, discount and/or suspension.



- 9.4 Both before and after conclusion of the Agreement, Intersnack will be entitled to demand from the Buyer payment in advance or security, to ensure that payment and other obligations are fulfilled. If the Buyer has failed to meet this requirement within 14 days, Intersnack will be entitled to terminate the Agreement, without judicial intervention and without being obliged to pay compensation.
- 9.5 In the event of a failure to pay (within the agreed payment term), the Buyer, without any demand or notice of default being required, from that date onward, owes interest in accordance with the commercial interest rate by virtue of Section 6:119a of the Netherlands Civil Code, plus 2% on the outstanding amount, up to the date on which payment is received.
- 9.6 If the Buyer fails in the fulfilment of his obligations, he owes extrajudicial (collection) costs, which are set at 15% of the principal sum owed, or 15% of the damage suffered or actual costs incurred for legal assistance, should those amounts be higher, as well as all court costs.
- 9.7 Payments made by the Buyer will firstly be applied to reduce costs owed, subsequently to any interest due and finally to the invoice that has been outstanding for longest.

### **10. Industrial and intellectual property**

- 10.1 The copyright or property right to the designs, drawings, patterns etc. made by or on the instruction of Intersnack are owned by Intersnack. However, Intersnack does not guarantee that these designs, drawings, patterns etc. do not infringe any third-party copyright or industrial property rights.
- 10.2 If the Buyer puts a design, drawing, patterns etc. made by him or on his instruction into production at Intersnack, he will indemnify Intersnack against claims on account of any (alleged) infringement of any third-party copyright or industrial property rights.

### **11. Force majeure**

- 11.1 In the event Intersnack is unable to partially or fully fulfil its obligations under the Agreement due to reasons that cannot be attributed to Intersnack, that were unforeseen or could not reasonably be prevented, including, but not limited to, strikes, stagnation with suppliers, government measures and/or measures by order of any permit to be obtained from the government, bans on imports, export or other transports, fire, flooding, natural and/or nuclear disasters, (thread of) war etc., the obligations of Intersnack will be suspended until Intersnack will be able to fulfil its obligations in the agreed manner, where Intersnack will not be deemed to be in default in any way or owe the Buyer any compensation.
- 11.2 If it has been agreed to make partial deliveries, the above provision applies to each delivery separately.
- 11.3 Cases of force majeure invoked by the suppliers of Intersnack, also apply to Intersnack as a case of force majeure.



**12. Liability**

- 12.1 Any liability of Intersnack on account of breaches of the Agreement and/or delivery of goods, as well as arising from a wrongful act, will be limited to the amount paid and/or still owed by the Buyer in respect of the agreement which the loss event relates or is connected to, subject to the maximum amount that will be paid by the liability insurer of Intersnack in such a case. If, for whatever reason, no payment is effected by virtue of the insurance referred to, this maximum will be € 100,000.
- 12.2 Intersnack will in no event be liable for:
- a. indirect damage (which in any case includes direct trading loss, business interruption and loss of profits or use on the part of the Buyer) arisen at the Buyer or third parties;
  - b. damage arisen at the Buyer or third parties as a result of acts or omissions of subordinates and/or independent auxiliary persons or suppliers engaged by Intersnack, which includes staff of companies affiliated to Intersnack;
  - c. damage arisen at the Buyer or third parties which is the result of the Buyer providing Intersnack with incorrect or incomplete information or information, also if this information originates from third parties, or damage that is otherwise the result of instructions, acts or omissions of the Buyer.
- 12.3 Limitations or exclusions of liability apply insofar as the damage is the result of an act or omission by the management or board of Intersnack, unless that damage is caused with intent or if it is the result of wilful recklessness and with the knowledge that this damage was likely to arise from it.
- 12.4 The Buyer's right to compensation does in any case cease:
- as soon as the Buyer has used, treated or processed the goods supplied by Intersnack;
  - if the Buyer has failed to claim or complain within the term referred to in article 8 of these Conditions.
- 12.5 Intersnack cannot be held liable for any advice given or to be given to the Buyer.
- 12.6 The Buyer will fully cooperate in Intersnack's investigation into the cause, nature and scope of the damage. If such cooperation is not given, the Buyer loses the possibility of compensation of the damage.
- 12.7 The Buyer is obliged to compensate and indemnify Intersnack for and against all third-party claims (including, but not limited to, from auxiliary persons and employees of the Buyer and Intersnack) arising from or in connection with the Agreement and/or the goods supplied, except insofar as these claims are the result of intent or wilful recklessness on the part of Intersnack managers.



12.8 Intersnack does not issue guarantees with regard to the usability, marketability or suitability of any purpose of the goods supplies.

**13. Suspension and termination of the Agreement**

13.1 In the event that the Buyer fails to fulfil any of his obligations ensuing from the agreement or fails to do so properly or in good time, as well as in the event of liquidation, moratorium or guardianship of the Buyer, or the discontinuation his business, merger with or takeover of the Buyer by another party, Intersnack, at its discretion and without being obliged to pay any compensation and without prejudice to any of its other rights, will be entitled to terminate the Agreement or to partially or fully dissolve it by means of an extrajudicial declaration, or to suspend the (further) execution of the Agreement.

13.2 In the event of a situation as described in article 11.1 (force majeure), Intersnack will be entitled to terminate the Agreement.

13.3 In the event of termination by Intersnack by virtue of article 13.1, Intersnack, at its discretion, by way of compensation, is entitled to:

a. the possible negative difference between the contract price and the market value of the goods as at the day of non-performance, or;

b. the difference between the contract price and the price of the covering sale,

all this without prejudice to the right of Intersnack to additional or alternative compensation.

13.4 Every right of the Buyer to terminate the Agreement is excluded.

**14. Auxiliary persons**

14.1 Intersnack, without prior approval from the Buyer, is entitled to engage third parties for the execution of the work. In the event Intersnack has engaged a third party for the execution of the work, these Conditions also serve to protect this third party towards parties other than Intersnack and this third party will be able to rely on these Conditions towards parties other than Intersnack.

**15. Time limit**

15.1 Any claim against Intersnack must be brought before the competent court no later than twelve months after the Buyer has discovered or could have reasonably discovered the damage, failing which the right to compensation and/or performance lapses.



**16. Applicable law and jurisdiction**

16.1 These Conditions, as well as every quote, offer, confirmation of instruction, delivery and Agreement to be entered into are exclusively governed by Dutch law.

16.2 Contrary to the provisions of the previous paragraph, in the event of agreements between Intersnack and the Buyer for deliveries of goods destined for Germany, German law applies to the consequences of retention of title, both under the law of obligations and under property law, as indicated in the enclosed German clause. The remaining provisions of the legal relationship continue to be fully governed by Dutch law.

16.3 All disputes arising from or in connection with the Agreement or these Conditions will be heard by the competent court of Rotterdam, on the understanding that Intersnack reserves the right to bring claims against the Buyer before other courts of justice which are authorised to take cognizance of such claims.



## GERMANY CLAUSE

### Extended Retention of Title

- (1) Intersnack retains property rights to the delivery items until all payments according to the delivery contract have been made. Processing or transformation shall always take place on behalf of Intersnack as the manufacturer but without any obligation being imposed upon them. If the delivery item is not processed with other items that do not belong to Intersnack then Intersnack shall acquire joint ownership of the new object in proportion to the value of the purchased items to the other processed items at the time of processing. Should Intersnack's (joint) ownership expire due to the combination, then it has already been agreed that Intersnack's (joint) property rights to the combined item are transferred to Intersnack pro rata (invoice value) . The Buyer shall store Intersnack's (joint) property without charge. Goods that can be counted as (joint) property of Intersnack are called reserved good hereafter.
- (2) The Buyer may process or sell the reserved goods in the correct ordinary course of business provided he is not in default. Pledging or title transferred as collateral is not allowed. Preventively the Buyer shall now and in full transfers to Intersnack all claims that may from the resale or other legal grounds (insurance, illegal trade) related to the reserved goods. Intersnack revocable authorizes the Buyer to collect claims transferred to Intersnack for its accounts in the buyer's name. The direct debit authorization can only be revoked if the buyer does not properly fulfil his obligation to pay.
- (3) In the case of third-party claims on the goods subject to retention of title, the Buyer will make notice of Intersnack's ownership and immediately notify the company.
- (4) If the Buyer acts in violation of the contract – in particular in the case of arrears – Intersnack has the right to take back the reserved goods or demand, if necessary, the assignment of the Buyer's claim against a third party. Intersnack's withdrawal as well as seizure of the reserved goods shall not imply a withdrawal from the contract.
- (5) Intersnack is obliged to release the security collateral it is entitled to if the Buyer so demands, provided that the value of the security exceeds the claims to be secured by 20%. For the evaluation of the collateral, even in those cases when it is processed or changed, the cost price is binding. The evaluation of assigned claims are accounted for at par value.