



# Terms and Conditions of Sale regarding Frozen Products of

Dawn Foods International B.V. acting as Dawn Foods Benelux

## A. Definitions

In this contract the following terms shall bear the following meaning:

1. 'Buyer' shall mean the person, company or firm to whom the Seller makes an offer or with whom the Seller concludes an agreement.
2. 'CMR' shall mean the consignment note which details the Goods supplied in a delivery.
3. 'Goods' shall mean all the items supplied by the Seller.
4. 'Place of Delivery' shall mean the Seller's address as set out in clause A6 below unless another place of delivery has been agreed in writing between the Seller and the Buyer.
5. 'Price' shall mean the total price of all the Goods ordered.
6. 'Seller' shall mean Dawn Foods International B.V. acting as Dawn Foods Benelux, Zilverhoek 1, Steenbergseweg 6, Breda.
7. 'VAT' shall mean the amount of value added tax due in respect of the Price.

## B. Application of Terms and Conditions

1. These conditions apply to all offers by and all orders to Seller for the sale of the Goods, and to all agreements with Seller with respect thereto.
2. The applicability of conditions of the Buyer is hereby expressly excluded.
3. Any and all future orders shall be deemed to be offers by the buyer to purchase goods pursuant to these terms and conditions unless the Seller shall amend these terms and conditions or notify the buyer to the contrary.
4. Any variation to these terms and conditions may only be made by writing by the seller and unless so made, shall have no effect.
5. Each and every clause, subclause and provision shall be separate and severable and enforceable accordingly and the invalidity of any clause or provision as aforesaid shall not affect the enforceability or validity of any other provision. If, for any reason whatsoever, any part of these conditions is invalid, parties will, in mutual consultation, provide a regulation in substitution for the invalid stipulation, the purport of which shall be maintained to the maximum extent possible.

## C. Offers, orders and agreements

1. All offers from the Seller are non-binding (in Dutch: "*vrijblijvend*").
2. Orders and acceptances of offers by the Buyer are irrevocable.
3. The Seller shall only be bound when it has accepted an order in writing or has begun carrying out the order. Verbal commitments or agreements by or with its personnel do not bind the Seller except insofar as the Seller confirms these in writing.
4. The Seller reserves the right to subcontract in fulfilment of any of the Buyer's orders or any part thereof.

## D. Delivery

1. Delivery of the goods shall be Ex Works at the Place of Delivery.
2. Delivery shall be made by the Seller giving the Buyer possession of the Goods at the Place of Delivery.
3. The Goods to be delivered by the Seller shall be deemed delivered when Seller has notified Buyer that the Goods are available to be picked up by or on behalf of Buyer at the Place of Delivery.
4. The Buyer shall make all necessary arrangements to take possession of the goods on the delivery date and at the place of delivery.
5. The time of delivery shall not be of the essence and in the event that the Seller is unable to give the Buyer possession of the Goods on the delivery date at the Place of Delivery then this shall not form a breach under this agreement and the buyer shall not be entitled to terminate the contract, reject the goods or claim damages in connection therewith.
6. A failure to make timely delivery shall never entitle the Buyer to additional or substitute compensation or to non-fulfilment by the Buyer of any of its own obligations arising from the agreement.
7. The Seller has the right to deliver in parts. Each partial delivery will be deemed an independent delivery with respect to the applicability of these conditions.
8. Temperature – Dry premixes and baked products specified and sold as ambient stable will be delivered at prevailing ambient temperatures unless otherwise agreed in writing. Products specified as frozen will be delivered at a temperature of minus 15°C or colder.



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In cases of dispute, temperatures must be mutually verified by both parties with calibrated equipment at the time that the Goods are picked up by or on behalf of Buyer. In case of measurement of the temperature, the temperature probe should be placed between cases in the centre of one side of a pallet. It should be checked on the vehicle prior to unloading. In case of doubts/dispute the temperature should be measured at the centre of an individual product.

9. Residual Best Before Date for frozen and ingredients deliveries – Unless otherwise contractually specified, or specified in a mutually agreed and signed concession document, there will be a minimum of 3 months shelf life remaining on products at time of delivery.
10. Comments concerning the discharged consignments must be mentioned by the recipient at reception of the Goods on the CMR. If comments are not placed directly on the CMR, the Seller cannot be held responsible for any discrepancies or shortcomings regarding the Goods that could be visually perceived.
11. Pallet exchange – Pallets that are used to deliver the Goods have to be returned by the Buyer. If the Buyer fails to fulfill this obligation, the Seller will invoice the pallets separately to the Buyer and Buyer is obliged to pay for the pallets.
12. Precedent to recovery for total or partial loss of and/or a shortage (including weight) in and/or damage to any Goods and/or in respect of the quality or condition of any Goods supplied by the Seller, every claim must be made by telephone or fax to the Seller in the first instance immediately on receipt of the Goods and confirmed subsequently by letter to the Seller so as to reach the Seller within 7 days of the date on which the Goods in question were picked up by or on behalf of the Buyer. The Seller must be afforded an opportunity to inspect and recollect any such Goods and to take such samples and perform such tests thereon as Seller deems necessary.

## E. Risk and transfer of ownership

1. Goods to be delivered by the Seller are at the risk of the Buyer from the moment the goods are deemed to be delivered as referred to in clause D3.
2. Unless expressly agreed otherwise, loading, dispatching or transport, unloading and insuring of the Goods to be delivered, takes place at the risk of the Buyer, even if these are handled by the Seller.
3. All Goods delivered by the Seller shall remain the property of the Seller until such time as the Buyer has paid in full all that which is owed to the Seller in connection with the underlying agreement regarding the sale of Goods and/or in connection with prior or subsequent agreements of the same nature, including damages, costs and interest. The Buyer has no right of retention with respect to these Goods.

## F. Payment

1. The Buyer will pay to the Seller the amount stated on the invoice including VAT, in the currency stated on the invoice, by no later than 30 days from the invoice date. Seller, however, shall at all times have the right to demand full or partial payment from Buyer in advance and/or obtain security for payment from Buyer in advance.
2. Payment may be made by direct electronic transfer to the bank account of Seller mentioned on the invoice.
3. Invoices are accepted by Buyer and no objections may be made to such invoice if the Seller has not received a written objection from the buyer within 7 days of the invoice date.
4. The moment of payment shall be the moment at which the amount due has been fully and irrevocably credited to the account of the Seller.
5. Payment must be made without any discount or set-off for a claim which the Buyer has or allegedly has against the seller.
6. If the Buyer fails to pay any amount due pursuant to the foregoing, it shall be in default without notice. As from the day the Buyer is in default, the Buyer shall pay interest as of the due date of the invoice until the Buyer is no longer in default. The interest rate shall be equal to the statutory interest rate as set forth in section 6:119a of the Dutch Civil Code.
7. In case payment is received after the date mentioned in clause F1, the Seller will be entitled to charge all judicial and extrajudicial collection costs to the Buyer owing the payment concerned.

## G. Acceptance of Goods

1. The Buyer shall be deemed to have accepted the Goods if it has expressly notified the Seller of its acceptance or if the Buyer fails to notify the Seller in writing that it does not accept the Goods within 7 days after the Goods were picked up by or on behalf of the Buyer.



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## H. Exclusion and Limitation

1. The Seller shall not be liable to the Buyer for indirect or consequential loss (including loss of profits) sustained by the Buyer following breach of contract by the Seller except in case of wilful misconduct by Seller itself.
2. In all cases in which the Seller is obliged to pay damages, these will never be higher than (except in case of gross negligence or wilful misconduct of Seller itself, in which case this limitation shall not be applicable), at the Sellers option, either the invoice value of the good or product delivered whereby or in connection with which the damage was caused, or, if the damage is covered by an insurance policy of the Seller, the amount that is actually paid out by the insurer with respect thereto.
3. Each claim against the Seller, except those acknowledged by the Seller, shall lapse on account of the mere expiration of a period of six (6) months after the claim arose.
4. Where Goods are supplied with a 'best before' or 'sell by' date, the Seller shall have no liability for any Goods sold after such 'best before' or 'sell by' date.
5. The Seller shall not be liable for any delay, loss or damage whatsoever arising out of Acts of God, Government Orders, strike, lock outs or other industrial disputes, inability to secure labour, materials or supplies at commercial rates, accidents, delayed delivery or inability to deliver by third parties (such as suppliers) of orders placed by Seller, plant breakdown, wars, civil commotion or any other circumstances (whether the foregoing class or not) beyond the control of the Seller and all contracts are subject to cancellation by the Seller or variation as may be necessary due to force majeure.
6. Buyer indemnifies Seller for any claims from third parties resulting from or arising in connection with Seller carrying out its obligations under an agreement with Buyer.

## I. Warrants and Indemnities

1. Where the Buyer requests that the Seller holds stocks on packaging, ingredients and finished goods on their behalf, the Buyer warrants the purchase of all stocks at the full cost.
2. Where the Goods supplied by the Seller are reprocessed after delivery of the Goods, the Buyer shall at all times keep the Seller indemnified against any claims for damages, loss or injury to third parties.
3. The Seller warrants that the Goods supplied shall be of satisfactory quality.

## J. Disputes and applicable law

1. All disputes between parties shall be submitted exclusively to the competent Court of Breda, unless the Seller prefers another competent forum.
2. This contract as well as any claims that arise in connection therewith are governed by the law prevailing in The Netherlands.