

Specific terms and conditions of sale of VANDEN AVENNE COMMODITIES n.v.

1) Scope: All commercial transactions concluded between Vanden Avenue Commodities n.v., with registered office at Engelse Wandeling 2-F3, 8500 Kortrijk, Belgium, VAT BE 0402.763.301 (hereinafter called "VDA") as seller and the customer as buyer are subject to these specific terms and conditions. VDA's main activity is the trade in and distribution of raw vegetable materials (hereinafter called "Products"), and the company sells exclusively to professional customers. If the customer is of the opinion that he cannot be considered a professional buyer, VDA needs to be informed explicitly by the customer in advance. Sales contracts with customers may be concluded through a broker, who is deemed to mediate and conclude the agreement on the basis of a mandate from VDA, subject to explicit corrections by VDA within 24 hours after receipt of written confirmation from the broker that the agreement has been concluded.

By placing an order / purchasing products the customer acknowledges having read, understood and agreed to VDA's present terms and conditions. The present terms and conditions serve as specific terms and conditions for standard commercial contracts of associations which are applied in the raw vegetable materials sector, are recognised as the generally applicable terms and conditions in the sector (depending on the nature of the Products which are the subject of the transaction) and apply in the region where the transaction with the buyer is concluded, are explicitly mentioned on the price offer / order confirmation and are therefore known to and accepted by the customer. In case of conflicts between the sector-specific terms and conditions and the present terms and conditions the latter terms and conditions will take precedence.

These terms and conditions shall in any case take precedence over the customer's terms and conditions, if any, even if the latter stipulate that they are the only valid terms and conditions.

VDA reserves the right to change or adjust these terms and conditions at any given time. The customer is expected to consult these terms and regulations on a regular basis.

If any of the provisions of these terms and conditions are invalid, such invalidity shall not affect the enforceability of any other provisions. In case of invalidity of one of the provisions, VDA and the customer will, as far as possible and in accordance with their loyalty and conviction, negotiate to replace the invalid provision by an equivalent provision that is in line with the general spirit of the present terms and conditions.

The fact that VDA refrains from demanding strict enforcement of one of the provisions in these terms and conditions cannot be considered a tacit waiver of the rights granted to VDA under these terms and conditions, and does not prevent VDA from demanding strict enforcement of those provisions at a later point in time.

2) Quotation: Unless explicitly stated otherwise, any quotation of VDA is entirely non-committal and only to be regarded as an invitation to the customer to purchase products or to place an order.

A quotation only applies to the specific order to which it relates, which means it does not automatically apply to subsequent similar orders. A quotation only applies to the Products and for the duration explicitly specified therein.

All product information mentioned in the quotation, whether or not in the form of product sheets, is purely based on current information without any contractual guarantee from VDA and does not release customers from their obligation to obtain information and advise themselves.

3) Effect: An agreement only takes effect upon written or electronic confirmation of a customer's order by a person authorised to bind VDA (an authorised VDA staff member and/or an authorised broker cf. art. 1), subject to correction by VDA (cf. art. 1).

Possible changes and/or additions to the agreement after its conclusion are only valid upon written consent of the customer and VDA, e.g. with regard to the terms and conditions of payment, the Products ordered and the completion deadline(s).

In case of cancellation of a purchase by the customer prior to delivery, whether in full or in part, VDA reserves the right to claim damages from the customer pursuant to the relevant terms and conditions generally applicable in the sector.

4) Price: Unless explicitly stated otherwise, all prices are quoted in the currency indicated in the customer's order/purchase document and exclude VAT, delivery costs, shipment costs and other administrative expenses.

The Products are always sold at the prices applicable on the effective date of the purchase, barring provisions to the contrary in the sector-specific terms and conditions that are explicitly given precedence by VDA or provisions to the contrary in the written agreement concluded between the customer and VDA.

To the extent that the prices are based on current government charges, transport costs (e.g. applicable water surcharges), insurance premiums and/or other costs, VDA has the right, in case of an increase or decrease of one or several of these price factors, to increase or decrease its prices accordingly within the scope of the legally applicable standards.

5) Delivery: Any quoted delivery period is always approximate. Unless in the event of deliberate intent of VDA, non-observance of the delivery period can under no circumstances give cause for damages or termination of the agreement at the expense of VDA.

VDA shall at all times reserve the right to deliver the ordered quantity of Products with a 5% tolerance.

Changes to the order automatically result in cancellation of the delivery periods. VDA accepts no liability for delays incurred through the fault of suppliers, the customer and/or any other third party. Non-observance of the delivery period by VDA does not release customers from their obligations. VDA reserves the right to make partial deliveries for any order.

Unless explicitly agreed otherwise between the parties, the products shall be delivered Ex Works (Incoterms® 2010) at the time and place when the Products are loaded.

Any costs relating to the acceptance of the Products are always at the customer's expense. Collection by the customer always takes place at the customer's expense and risk and at the time and place indicated by VDA. Any additional costs relating to the collection of the Products are always at the customer's expense.

Purchased Products which are not collected by the customer within the delivery period indicated by VDA can be placed in storage at VDA's initiative without any notice being required, at the customer's expense and risk. The resulting storage costs are set at a fixed 1% of the total selling price and at a fixed € 2.50 per tonne in silo rent for every calendar month started. If the Products are not collected by the customer, VDA can also opt to regard the agreement as cancelled without any notice being required (in which case damages can be claimed as described in article 3) or to increase the initially agreed price of the Products. VDA can in any case freely decide whether to opt for one of the above consequences in case of non-collection by the customer or to give precedence to the rules included in the sector-specific and/or product-specific terms and conditions.

The Products are always delivered in bulk. The weight actually delivered by VDA or the quantities indicated by VDA serve as the only basis for invoicing.

6) Visible/hidden defects and complaints: Any deviations which are customary in the sector or which fall within the scope of normal production/delivery are reserved by VDA.

VDA's Products are natural products and are sold with their potential natural flaws. Minor variations in colour, flavour, shape or structure are always possible, as is the presence of foreign materials (which is understood to include visible and invisible impurities as well as goods other than the Products which are the objects of the sale) which do not hinder the normal use of the Products. Such minor deviations with the customary tolerances will not constitute sufficient ground for the customer to file a complaint, claim damages or request cancellation of the order. The customer needs to perform a first inspection of all directly verifiable characteristics of the Products immediately upon delivery of the Product. This obligation to immediately perform an inspection concerns, among other things, quantity and dimensions, conformity of delivery, visible defects, correct location(s), etc. The customer needs to report any immediately verifiable deviations to VDA in writing within 24 hours of delivery and in any case before using the Products, at the risk of forfeiting any right to compensation.

Hidden defects need to be reported to VDA by registered mail within 30 days of delivery of the products (delivery note), but in any case within 48 hours of discovery. VDA's liability for hidden defects is limited to the statutory guarantee provided that the hidden defect was present at the time of delivery and to the extent that the hidden defect makes the Products unfit for their intended use or has a major impact on their use.

The parties agree that VDA cannot be held liable for a defective product if the customer does not make use of the possibility to take a sample in the presence of both parties upon delivery in line with the sector-specific terms and conditions at the moment when the Products are offered for collection.

Samples of the Products which are taken previously in the presence of both parties can only be used in case of discussion between the parties.

If no complaints are communicated within the indicated time periods or in line with the aforementioned terms and conditions, the customer shall be deemed to have approved and accepted the delivery. The customer needs to demonstrate that he has stored the Products correctly both before and after the discovery of the defects under penalty of inadmissibility of the complaint.

As soon as a defect has been discovered, the customer shall stop using the relevant Product and furthermore take all reasonable measures to prevent (further) damage and to ensure correct storage of the goods under penalty of inadmissibility of the complaint. VDA's liability for hidden defects does not apply if the damage results from incorrect use, storage or handling of the Product.

The customer shall under no circumstances return the Products to VDA on the basis of the present article without the prior consent of the latter. VDA reserves the right to establish the defects in situ in the presence of the customer and to determine the cause. VDA shall under no circumstances be responsible for any loss of or damage to returned Products until these products have been accepted by VDA in its warehouses.

Any claim on the basis of this article shall be rejected in case of processing, utilisation or modification by the customer or by third parties or in the event of abnormal or extraordinary use of the product or damage caused by force majeure.

The customer shall compensate any costs resulting from unjustified complaints.

The guarantees offered by VDA to the customer remain limited to (full or partial): (i) replacement (ii) take-back of the relevant Products, with the relevant amount credited to the customer's account at VDA's option and discretion.

VDA shall under no circumstances be liable for the costs of Products taken back.

7) Payment: Unless agreed otherwise, all invoices of VDA are always payable in full within the time period indicated on the invoice, in the currency indicated on the invoice, and without any discount on the invoice date.

VDA at all times reserves the right to demand an advance or to request full or partial advance payment of the price of the Products.

The acceptance of bills of exchange as payment, if any, shall not create a novation of the debt. The original agreement and the commitments contained therein continue to exist regardless of the method of payment.

Invoices can only be protested validly in writing by registered letter within 7 calendar days of the invoice date with indication of the invoice date, the invoice number and a detailed motivation.

Any invoice not paid in full by the due date shall, by operation of law and without prior notice, yield interests on overdue payments at a rate of one percent per month, whereby any part of a month shall be considered a full month. VDA furthermore reserves the right to increase the amount payable with 10% of the invoice amount with a minimum of € 125.00 (excl. VAT) by way of lump-sum compensation, without prejudice to VDA's right to demand a higher compensation.

8) Electronic invoicing: By ordering a Product the customer shall be deemed to explicitly agree to the use of electronic invoicing by VDA unless specific arrangements to the contrary are made in writing between the parties.

9) Retention of title: The ownership of the sold Products shall only be transferred to the customer upon full payment of all amounts owed in exchange for the Products delivered or to be delivered by VDA (including the principal amount, interests and costs), even after processing, mixing and incorporation. Nevertheless, all risks of loss or destruction of the sold Products shall in their entirety pass to the customer upon delivery.

The customer is therefore prohibited from selling or pledging the delivered Products to third parties, using them as a means of payment, mortgaging them or disposing of the materials in any manner as long as the price has not been paid in full. Insofar as necessary, the present clause is deemed to apply to each and every delivery.

The customer undertakes to immediately inform VDA by registered letter of any attachment of the sold Products by a third party.

If the customer sells the Products belonging to VDA, whether or not in processed form, he shall transfer any claims resulting from this sale to VDA from that very moment. The customer shall transfer any amounts he receives for Products covered under the retention of title, whether or not in processed form, to VDA by way of compensation for the termination of the rights of ownership and by way of guarantee for VDA, to the amount of the value of the Products covered by these rights of ownership. Any advance payments made remain the property of VDA by way of compensation of possible resale losses.

The ownership rights on the Products do not change after processing by the customer. VDA becomes co-owner of the product resulting from the processing operations, even if other goods were used in the process, to the amount of the value of the Products covered by the retention of title.

The customer shall always make reasonable efforts to safeguard the rights of ownership over unpaid Products.

10) Liability: The Products are offered on the basis of the principle that the buyer has taken all reasonable measures to ensure that the Products purchased are suitable for the use envisaged by the customer. The Products are used under the exclusive responsibility of the customer, who accepts liability for any direct or indirect consequences. VDA does not offer any guarantees in this respect.

VDA's liability is limited to the invoice value (excl. VAT) of the products delivered by VDA, and in any case limited to the liability imposed by law. VDA can under no circumstances be held liable to a higher extent than its own suppliers/manufacturers. VDA shall under no circumstances compensate indirect damage (such as, but not limited to, revenue loss or damage to third parties). If proof is provided of VDA's liability, the company shall have the right to opt for (full or partial) (i) replacement of the Products; or (ii) take-back of the relevant Products, with the relevant amount credited to the customer's account.

In addition, VDA cannot be held liable for defects directly or indirectly caused by an act of the customer or a third party, regardless whether these defects result from a fault or omission. The buyer shall safeguard VDA from any third-party claims. The customer furthermore shall take out a product liability insurance policy, a copy of which shall be presented to VDA upon request.

The buyer shall in any case compensate VDA for any claims in case VDA is held liable by a third party due to an error made by the buyer. If VDA did not make an error, the consumer and/or end user and/or any other third party who has no direct relationship with VDA shall under no circumstances be able to file a direct claim.

If the customer mixes the Products with other products, the customer shall bear the burden of proof for the identification of the Products delivered by VDA and for the impact of these Products on the alleged damage.

Any advice from VDA to the buyer is offered on a voluntary basis and is accepted at the buyer's own risk and decision without any liability on the part of VDA.

The customer furthermore acknowledges that VDA does not offer any guarantee that the Products meet the regulations or requirements applicable in any jurisdiction except for the regulations or requirements applicable in the European Union at the time of delivery of the Product to the customer, which means that VDA cannot be held liable for any future legal changes. The above does not apply to products delivered CIF (Incoterms® 2010) Transit, which are not covered by a guarantee of compliance with any European regulations.

11) Force majeure/hardship: If force majeure prevents VDA from fulfilling its obligations or imposes an unreasonable burden on this fulfillment, VDA shall have the right to suspend the fulfilment of its obligations, either in part or in full and either temporarily for the duration of this force majeure or permanently, without any liability on the part of VDA to give prior notice or to pay damages. The following events or circumstances are generally regarded as cases of force majeure: war, hostilities, blockade, revolt, strike or lock-out, attachment, shortage of means of transport, general shortage of raw materials or products, and restrictions on energy consumption either with VDA or with one of its suppliers, possibly complemented with the sector-specific terms and conditions if they are broader in scope than what is described above.

In case of hardship, VDA shall reserve the right to renegotiate the terms and conditions of the agreement. If no agreement can be reached between the parties, VDA shall reserve the right to suspend the execution of the agreement either in full or in part for the duration of the hardship.

12) Set-off: Pursuant to the provisions of the Belgian Financial Securities Act of 15 December 2004, VDA and the customer shall automatically set off and settle all current and future mutual debts in a legal manner. This means that it is only the balance of the highest claim that remains payable in the long-term relationship between VDA and the customer. This set-off will in any case have legal effect for the trustee in bankruptcy and other concurrent creditors, who will thus be unable to object to the set-off by the parties.

13) Intellectual rights: VDA warrants it has the appropriate licences to offer its product range. Nevertheless, VDA retains all intellectual rights to the Products and samples, which means that the customer cannot copy or use the Products for other than their intended purposes without prior written approval from VDA.

14) Personal details: The customer grants VDA permission for keeping the personal details provided by the customer in an automated data file. Within this scope, VDA shall act in accordance with the Belgian act of 8 December 1992 on the protection of privacy in relation to the processing of personal data.

These details can be used for conducting informational or promotional campaigns with regard to the services and/or Products offered by the VDA within the scope of the contractual relation between VDA and the customer as well as for the performance of the agreement.

The customer can always request access to and correction of their details. If the customer no longer wants to receive any commercial information from VDA, the former needs to inform the latter.

VDA always reserves the right to record telephone calls with the customer in order to have proof of commercial transactions. The recorded telephone calls shall under no circumstances be kept for a longer period than required for the above purposes. The recorded calls shall in any case be erased no later than at the end of period in which transaction can be contested in court.

15) Jurisdiction & applicable law: Any disputes arising between VDA and the buyer shall by preference be settled in accordance with the arbitration clauses included in the applicable sector-specific terms and conditions.

If the afore-mentioned competent arbitration body / arbitrators appear to have no jurisdiction to hear the dispute in question, the dispute shall be settled in accordance with the Cepina Arbitration Regulations by arbitrators who have been appointed on the basis of those regulations. In this case the tribunal shall consist of three arbitrators. The arbitration proceedings shall take place in Kortrijk, be conducted in Dutch and be in line with the applicable Belgian law.

16) Priority: The Dutch text takes priority in case of possible interpretation problems with regard to the special terms and conditions of sale.