

Terms & Conditions of Sale (“T&Cs”) of Royal FrieslandCampina N.V. and its Subsidiaries (each, “FrieslandCampina”)

1 Scope of Application

1.1 Any contract concluded between FrieslandCampina and any third party (“Customer”) for the sale by FrieslandCampina to the Customer of any products (including any related services) (collectively, “Products”), and the purchase of such Products by the Customer from FrieslandCampina, including the Commercial Terms, and, if applicable, the Additional Conditions (as defined in clause 16.7 below) (collectively, a “Contract”), shall be subject to these T&Cs, unless FrieslandCampina expressly agrees otherwise in writing. All other terms and conditions are excluded, including any terms and conditions which the Customer purports to apply under any purchase order, order confirmation or otherwise.

1.2 “Commercial Terms” shall mean any document (including e-mail) of FrieslandCampina that sets out one or more commercial terms such as delivery term, Product price, quantity and description of Products, and duration.

In the event of a conflict between these T&Cs and a Contract, the Commercial Terms shall have priority, followed by the Additional Conditions, and these T&Cs.

2 Orders, Offers, and Formation of Contract

2.1 Each order or acceptance of a quotation of FrieslandCampina by the Customer shall be deemed to be an offer by the Customer to FrieslandCampina to purchase Products subject to these T&Cs (and the Additional Conditions, where applicable). A Contract is formed when the Customer order (or similar offer) is accepted by FrieslandCampina in writing, including by way of a written order confirmation. FrieslandCampina shall be entitled to accept or reject each and every order (or similar offer) in its sole discretion.

2.2 Unless expressly agreed otherwise in writing by FrieslandCampina, the Customer shall not be entitled to cancel a Contract. FrieslandCampina shall be entitled to change or cancel a Contract at any time prior to delivery, on written notice to the Customer.

3 Warranties

3.1 FrieslandCampina warrants to the Customer that all Products sold to the Customer (a) will on delivery comply with such Product specifications as may have been agreed by FrieslandCampina and the Customer in writing (the “Specifications”), (b) are manufactured in accordance with good manufacturing practices, (c) are subject to a quality assurance system to ensure compliance with the foregoing, and (d) will be free of any liens and encumbrances on delivery. No other warranties (whether express or implied) are given by FrieslandCampina.

3.2 The Customer warrants to FrieslandCampina that (a) it will not, and shall procure that its employees, agents and / or sub-contractors shall not, offer to, solicit or accept from any public official or private person any undue pecuniary or other advantage in connection with any Contract, and (b) where applicable, the Customer’s products, into which any Products are incorporated, do not infringe on the intellectual property rights of any third party.

4 Prices and Payment

4.1 If and to the extent FrieslandCampina’s Product prices (“Prices”) are based on price lists of FrieslandCampina, the Prices stated in the current Price list at the time of delivery of the Products shall, in each case, apply. FrieslandCampina shall be entitled to adjust the Prices, and / or to amend the Price list (collectively, an “Amendment”), provided that FrieslandCampina shall notify the Customer of any such Amendment in writing as soon as possible, but ultimately before the effective date of any such Amendment. If the Customer should not agree to a proposed Amendment, either party shall be entitled to terminate the Contract on providing reasonable written notice to the other party, and without being liable to pay any type of compensation to the other party.

4.2 The Prices shall be exclusive of any taxes, duties, levies and / or any other surcharges, all of which shall be for the account of the Customer.

4.3 Payment shall be made at the time agreed in the Contract or, if no time has been agreed, within 14 days of the invoice date, in the currency stated in the invoice and in the manner stipulated in the invoice. FrieslandCampina shall be entitled at all times to demand full or partial advance payment and / or to otherwise require security for payment. The Customer shall pay all invoices of and sums due to FrieslandCampina in full without any deduction, withholding, counterclaim or set-off of any nature whatsoever.

4.4 If the Customer fails to remit any payment due, all amounts owed by the Customer to FrieslandCampina shall immediately become due and payable, and the Customer shall be in default without notice of default being required to be given.

5 Delivery

5.1 The method of delivery of the Products will be agreed in the Contract. In the event that a Contract should not contain any provisions in this regard, deliveries will be effected by FrieslandCampina FCA FrieslandCampina’s premises, or such other place as may be agreed to by FrieslandCampina, in each case in accordance with the latest applicable version of the Incoterms. FrieslandCampina reserves the right to deliver in batches.

5.2 Time of delivery shall not be of the essence.

5.3 The Customer shall be responsible for the provision of sufficient loading and unloading facilities for fast unloading.

6 Packaging Materials

6.1 All packaging materials not intended for once-only use, including pallets, crates, containers and other packaging and / or transport resources (collectively, “Packaging Materials”), shall be and remain at all times the property of FrieslandCampina, even if the Customer has paid a deposit for same.

6.2 The Customer shall return the Packaging Materials to FrieslandCampina, sorted and cleaned, as soon as possible, but in any event by no later than the next delivery of Products by FrieslandCampina to the Customer (or, if there is no next delivery, the Customer shall return the Packaging Materials to FrieslandCampina immediately). The costs of these returns shall be for the account of the Customer.

7 Risk and Ownership

7.1 The risk in the purchased Products shall transfer to the Customer at the time at which FrieslandCampina offers the Products for delivery.

7.2 Title to the Products delivered to the Customer shall not pass from FrieslandCampina to the Customer unless and until the Customer has fulfilled all and any payment obligations that it may have towards FrieslandCampina, howsoever arising.

8 Intellectual Property Rights

8.1 All intellectual / industrial property rights and / or know-how in and / or related to the Products (“IPR”) are owned by and shall remain the property of FrieslandCampina. No IPR shall be transferred to the Customer by virtue of any Contract or similar document, and no licenses to any IPR shall be granted to the Customer, even if the Products have been designed, developed and / or manufactured specifically for the Customer.

8.2 The Customer shall immediately alert FrieslandCampina in writing if it becomes aware that a third party infringes or threatens to infringe any IPR of FrieslandCampina, or if third parties should be of the view that any Products infringe their own industrial or intellectual property rights or know how.

9 Confidentiality

9.1 The Customer shall, and shall procure that its officials, employees, agents, sub-contractors and / or any other parties engaged by it shall, protect the confidentiality of all confidential or proprietary information that it may obtain from and / or relating to FrieslandCampina (“Confidential Information”), whether such information is designated as confidential or not, and shall not use such Confidential Information other than to comply with its obligations in terms of any Contract and / or these T&Cs.

9.2 If the Customer should be obliged to disclose Confidential Information on the basis of a court or regulatory order, the Customer shall be entitled to do so, provided that it obtains the prior written approval from FrieslandCampina, and limits such disclosure to the necessary minimum. FrieslandCampina shall not unreasonably withhold its approval.

10 Force Majeure

10.1 Either party shall be entitled to invoke force majeure if the implementation of a Contract, in whole or in part, temporarily or not, should be delayed or impeded by circumstances reasonably outside such party’s control (a “Force Majeure Event”), including, but not limited to, trade embargoes, strikes, civil commotion, terrorism, acts of God such as lightning strikes, work-to-rule and lockouts, lack of raw materials, delayed deliveries to such party by third parties of ordered goods or services in circumstances other than can be imputed to such party, accidents, breakdowns, animal diseases, unforeseeable problems with production or transport, devaluation, increasing of levies or taxes of whatever nature, significant change of prices of raw materials or energy, and lapse, withdrawal or non-extension of the required permits, certificates, licences and such like.

10.2 In the case of a Force Majeure Event on the part of either party, this party shall promptly notify the other party of such Force Majeure Event in writing and the obligations of that party shall be, to the extent that it is so prevented or impeded, suspended without liability for breach or non-performance. The reciprocal obligations of the other party shall also be suspended without liability for breach or non-performance.

10.3 If a Force Majeure Event affecting a party can reasonably be expected to continue in excess of two months, or has already lasted for a period of two months, the other party may terminate the Contract on written notice to the affected party with immediate effect, without thereby creating any rights to compensation.

11 Inspection, Notification, and Claims

11.1 The Customer shall, following delivery to it of any Products, promptly conduct an inspection of such Products. Any defects shall be notified by the Customer to FrieslandCampina in writing within two business days of the delivery of the Products.

11.2 Hidden defects shall be notified by the Customer to FrieslandCampina in writing within two business days after their discovery, but in any event by no later than six months following delivery of the Products in question.

11.3 Any notices shall contain an accurate description of the (alleged) defect. Neither the provision of a notice to FrieslandCampina, nor the institution of a claim in any other manner shall relieve the Customer from its payment obligations.

- 11.4 Failure by the Customer to comply with the notification periods stated above shall preclude the Customer from making any claims against FrieslandCampina.
- 11.5 No claims shall in any event be made against FrieslandCampina if the Products concerned have been transported, handled, used, processed or stored by or for the Customer incorrectly or contrary to any instructions given by or on behalf of FrieslandCampina.
- 11.6 In cases of a justified and timely claim relating to a defective Product, the sole remedy available to the Customer shall be the replacement of the Product by FrieslandCampina at no charge to the Customer, or the crediting by FrieslandCampina to the Customer of the purchase price paid by the Customer for the defective Products, as shall be decided and agreed by the parties in writing.
- 12 Liability**
- 12.1 In all cases in which FrieslandCampina is obliged to pay damages, these shall be limited per calendar year to an amount equal to the total value of the invoices (excluding VAT) paid by the Customer under a Contract for the particular type of Product in such calendar year, but in any event to an aggregate maximum of EUR 2,000,000 (two million Euro) for all and any claims against FrieslandCampina.
- 12.2 FrieslandCampina shall in no event be liable for any loss of income or profits, loss of business or clients, loss of goodwill, loss of use, increased cost of working, penalties, fines, and, punitive damages, damage resulting from late delivery, damage to reputation, or any special, indirect or consequential damages or losses arising out of or in connection with any Contract.
- 12.3 The limitations described herein shall not apply in case of gross negligence or wilful misconduct of FrieslandCampina.
- 13 Product Recall**
- FrieslandCampina shall be entitled to recall or withdraw, and to direct the Customer to promptly remove from the market and / or any warehouses, any Products or products that contain / include Products, which are defective, or in which a defect threatens to manifest itself. The Customer shall promptly comply with any such direction / instructions.
- 14 Miscellaneous Customer Obligations**
- 14.1 The Customer shall at all times refrain from doing anything that might adversely influence the quality, safety of the Products, reputation of FrieslandCampina, and / or any of the trademarks or other intellectual property of FrieslandCampina.
- 14.2 The Customer shall not, without the prior written permission of FrieslandCampina, make any (direct or indirect) use of its relationship with FrieslandCampina for promotional activities or other purposes.
- 14.3 The Customer shall store all Products separate from each other and from any other goods of the Customer, and the Products shall be clearly identifiable.
- 14.4 If the Customer provides any artwork, label(ling), translations, or similar materials or content (collectively "Artwork"), the Customer shall be solely responsible and liable for such Artwork, including its quality, correctness, and its compliance with all applicable laws. The Customer shall indemnify and hold harmless FrieslandCampina with respect to any claim, loss, suit, cost, expense, liability, and / or judgment suffered by FrieslandCampina in any way connected with any Artwork, including as a consequence of (a) errors and / or omissions in the Artwork, (b) the infringement of third party intellectual property rights by the Artwork, and (c) misleading and / or illegal advertising.
- 15 Termination**
- 15.1 FrieslandCampina shall be entitled to suspend the execution of a Contract, or to terminate a Contract (whether in full or in part, and whilst retaining all of its rights to compensation for costs and damages) with immediate effect on written notice, if:
- (a) the Customer fails to meet one or more of its obligations, or if it is established that full compliance will be impossible;
- (b) the Customer commits any serious misconduct, or any intentional, negligent or tortuous act;
- (c) the Customer contravenes any policy of conduct of FrieslandCampina, available at <https://www.frieslandcampina.com/about-us/policies-and-commitments/> ;
- (d) any advantage is offered or granted by the Customer in connection with the formation or execution of the Contract to a person forming part of FrieslandCampina;
- (e) the Customer is declared bankrupt, or (provisional) suspension of payment is requested, if its business is liquidated or discontinued or it is otherwise insolvent; or
- (f) in the opinion of FrieslandCampina, major changes are made to the direct or indirect ownership or control ratios at the business of the Customer.
- 15.2 FrieslandCampina shall be entitled, at any time and for any reason, to terminate a Contract on three months' written notice to the Customer.
- 15.3 Both parties shall be entitled to terminate a Contract in accordance with the provisions of clause 10 (Force Majeure) hereof.
- 15.4 If and when terminated in accordance with the foregoing provisions, the Customer shall not have any claims against FrieslandCampina as a consequence of such termination.
- 16 Miscellaneous**
- 16.1 The Customer shall not assign any Contract without the prior written consent of FrieslandCampina. The consummation of a reorganization, merger, share exchange, consolidation, or sale or disposition of all or substantially all of the assets of the Customer shall constitute a change of control situation for which the prior written consent of FrieslandCampina is required. FrieslandCampina shall be entitled to subcontract the obligations it is to perform in terms of any Contract. FrieslandCampina shall be entitled to delegate authority to execute any Contract on its behalf to any of its affiliates.
- 16.2 All notices, requests, demands, waivers, consents, approvals and / or other communications (collectively, "Notices") required in terms hereof (or the Additional Conditions, where applicable) to be given in writing, may also be given electronically (i.e. by e-mail), with the exception of (a) any Notices to be given in terms of clause 15 (Termination) above, and (b) any modifications and / or alterations of the provisions hereof (and the Additional Conditions, where applicable), both of which shall be given and made in writing other than by e-mail.
- 16.3 These T&Cs and the Additional Conditions (where applicable) have been drawn up in the English language. All Notices and other documents in terms of any Contracts and these T&Cs shall be in the English language, unless otherwise agreed by FrieslandCampina in writing. Any translations into other languages of these T&Cs and the Additional Conditions (where applicable), shall be for purposes of convenience only.
- 16.4 If one or more of the provisions of these T&Cs should be held to be invalid or ineffective by a competent court of law, the remaining provisions shall continue in full force and effect.
- 16.5 Any disputes in connection with a Contract, and / or these T&Cs, shall be exclusively subject to the laws of The Netherlands. The applicability of the United Nations Convention on Contracts for the International Sale of Goods of 1980 (CISG) is expressly excluded. The Court of Midden-Nederland, The Netherlands, shall have jurisdiction.
- 16.6 Baby food purchasers are obliged to act in conformity with the FrieslandCampina Corporate Policy and Standard for the Marketing of Infant Foods, the latest versions of which are available at <https://www.frieslandcampina.com/about-us/policies-and-commitments/> .
- 16.7 In addition to these T&Cs, the Additional Conditions of Sale of FrieslandCampina (the "Additional Conditions"), will be applicable to all offers, sales and deliveries by FrieslandCampina to Customers of cheese products as described in the Additional Conditions. The Additional Conditions are available at <https://www.frieslandcampina.com/terms-and-conditions/>.
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