

GENERAL TERMS AND CONDITIONS BERGIA DISTRIBUTIEBEDRIJVEN

filed at the Chamber of Commerce for Limburg under number 13023167

Artikel 1 Applicability

- 1.1 In these General Terms and Conditions the following terms shall have the following meaning:
- "Bergia": Bergia Distributiebedrijven BV, with its registered office in 6045 JG Roermond, the Netherlands, on the Industrieweg 2;
 - "product" or "products": pre-baked fries, other potato products and associated products offered or delivered by Bergia;
 - "purchaser": the purchaser who concludes an agreement with Bergia.
- 1.2 These terms and conditions apply to all agreements concluded between Bergia and the purchaser.
- 1.3 These conditions apply to the exclusion of possible General Terms and Conditions used by the (potential) purchaser.

Artikel 2 Offers and agreements

- 2.1 All offers of Bergia are non-binding. Contracts and acceptances of offers by the purchaser are irrevocable.
- 2.2 Oral promises or agreements by or with its personnel shall only bind Bergia if these have been confirmed by an employee authorized to represent.
- 2.3 Inaccuracies in an order confirmation of Bergia shall be reported to Bergia in writing within 3 days after the date of the order confirmation, in default whereof the order confirmation is deemed to reflect the agreement accurately and completely and the purchaser is bound thereto.

Artikel 3 Information

- 3.1 Images, descriptions, indicated weight, dimensions and colours as well as advertising material, information on the website and offers do not bind Bergia.
- 3.2 The purchaser guarantees the accuracy, completeness and reliability of the details and information provided to him by or on behalf of Bergia. Bergia is only bound to (further) performance of the agreement, if the purchaser has provided all details and information reasonably desired by Bergia.
- 3.3 The purchaser must ensure that the products and the accompanying packaging, labelling and other information comply with the requirements set by the government in the country of its destination. The use of the products and the conformity with the governmental provisions are for the risk of purchaser.

Artikel 4 Prices

- 4.1 Prices agreed upon with Bergia or indicated by Bergia are excluding VAT, packaging and/or packaging materials other than the standard Bergia packaging (materials), transport, import

and export duties, excise duties and other taxes or levies imposed or attached with regard to the products unless the order confirmation/agreement or offer state otherwise. Purchaser cannot claim compensation of possible costs that it had to make as a consequence of the manner of offering the products and documents by Bergia, unless this has been agreed upon expressly and in writing with Bergia.

- 4.2 If after the offer and/or the realization of an agreement, but before the delivery of the product, cost decisive factors change, Bergia is entitled to adjust the prices accordingly.
- 4.3 If after the offer and/or the realization of an agreement, Bergia applies lower prices in the context of a campaign, offer or for another reason, this has no consequences for the price agreed upon with the purchaser.

Artikel 5 Delivery Time and Delivery

- 5.1 Indicated delivery times have been established by estimation and cannot be considered final deadlines. Excess of the delivery time does not oblige Bergia to pay a compensation of damage and does not give the purchaser the right to no longer observe or suspend his obligations that follow from the agreement. However, the purchaser is entitled to terminate the agreement, if and insofar as Bergia has not still fulfilled the order within the reasonable period of time set by the purchaser. This reasonable period will at least be similar to the original delivery time. In that case, Bergia does not owe any compensation of damage.
- 5.2 Delivery takes place from the factory Roermond, the Netherlands, unless parties have expressly agreed otherwise. If it is agreed upon that Bergia takes care of the transport of the products, the delivery takes place at the delivery address that is stated in the order confirmation/agreement. The risk of the products passes over to the purchaser upon delivery.
- 5.3 If the purchaser does not receive the products or does not collect it or has it collected, these products are stored for the account and risk of purchaser as long as Bergia deems it necessary. In this case, Bergia is, as well as in case of every other (attributable) shortcoming of the purchaser, at all times authorized to either claim the observance of the agreement or to terminate the agreement (extrajudicially), all this regardless of its rights to compensation of the suffered damage and the lost profit, including the costs of the storage.
- 5.4 If delay arises in the performance of the agreement as a consequence of the fact that the purchaser does not observe his obligations vis-à-vis Bergia, the agreement will be carried out as soon as the planning of Bergia allows this.
- 5.5 Bergia is entitled to perform an agreement in parts and to claim payment of the part of the agreement that has been carried out.
- 5.6 Bergia is not obliged to honour a request of the purchaser for redelivery. If Bergia proceeds to do so nonetheless, the related costs are for the account of the purchaser.

Artikel 6 Packaging

- 6.1 At the request of the purchaser and after written acceptance thereof by Bergia, Bergia will use the packaging material of the purchaser or packaging material specially ordered for the

purchaser for its products. In this respect, separate price agreements will be made. The purchaser will in any case bear the costs of all the packaging material specifically purchased for the purchaser by Bergia, also if this is not completely used.

- 6.2 The purchaser guarantees the accuracy of the information stated on the packaging material as well as the absence of any negative influence of the packaging material on the products.
- 6.3 In case Bergia delivers the products on pallets, Bergia is entitled to charge purchaser the pallets at cost price. After prior written permission of Bergia, the purchaser is entitled to return Bergia pallets of a similar size, type and quality. It is exclusively up to Bergia to determine if there is a same size, type and quality. Bergia will credit the purchaser for the returned pallets it has approved.

Artikel 7 Force majeure

- 7.1 If Bergia is prevented from observing the agreement due to force majeure, it is entitled to suspend the performance of the agreement. In that case purchaser is not entitled to compensation of damage, costs or interest.
- 7.2 Force majeure shall mean: war, risk of war, strikes, fire, accidents or sickness of personnel, operational failure, failure of the potato harvest, stagnation in the transport, disturbing statutory provisions, limitations of import/export, unforeseen problems during the production or transport as well as any other circumstance that does not exclusively depend on Bergia's will, such as no delivery or the late delivery of matters or services by third parties that were engaged by Bergia.
- 7.3 If Bergia partially fulfilled its obligations when force majeure takes effect, or can only partially fulfil its obligations, it is authorised to separately invoice the part that was delivered and/or can be delivered and the purchaser is obliged to pay this invoice as if it concerned a separate contract.
- 7.4 In case of an event of force majeure, Bergia is authorized to terminate the part of the agreement that cannot be performed by means of a written statement. If the force majeure situation lasts longer than 4 weeks, the purchaser is also authorized to terminate the part of the agreement that cannot be performed by means of a written statement.

Artikel 8 Products with a limited durability

- 8.1 The purchaser guarantees that products that are provided with a best-before date or a sell-by date after will no longer be used or processed and no longer be offered for sale, use or consumption after the expiry of that date.
- 8.2 In case of products with a limited durability, the storage conditions have to be observed strictly by the purchaser.
- 8.3 The purchaser indemnifies Bergia against any claim of third parties for the compensation of damage which is the consequence of the use or consumption of the products after the sell-by date or best-before date, as well as against all costs following therefrom.

Artikel 9 Conformity and Claims

- 9.1 Bergia guarantees the reliability of the products delivered by it, in accordance with what the purchaser can reasonably expect on the basis of the agreement. If defects nevertheless occur in products delivered by Bergia, it will repair these defects (or have them repaired) or replace the products involved wholly or partially, or assign a reasonable price discount. If that is not possible within a reasonable period set by the purchaser, the purchaser is entitled to terminate the agreement. This guarantee applies until the use-by date or as the case may be the best-before date.
- 9.2 The guarantee does not include defects which occur in or (partially) are the consequence of the processing of the products by purchaser, the transport, storage or use of products or use different than the normal foreseen use by the (personnel of) the purchaser in an improper manner or in violation of the instructions provided by Bergia.
- 9.3 The purchaser shall accurately inspect the delivered products immediately after receipts. A possible claim with regard to the quantity of the delivered products shall be recorded on the consignment or delivery note upon delivery, in default whereof the quantities mentioned on the consignment or delivery note result in conclusive proof against the purchaser.
- 9.4 The purchaser shall submit possible complaints about the products or the performance of the agreement to Bergia within 5 days after the purchaser has discovered the defect or should have discovered the defects. If it concerns a defect to a fresh product the purchaser shall submit possible complaints within 24 hours after delivery to Bergia. In case of a late complaint, each claim on Bergia will expire.
- 9.5 The purchaser is obliged to keep the products in respect of which a complaint was submitted at the disposal of Bergia, to establish the shortcoming, such on pain of forfeiting each right to repair, termination and/or compensation (of damage).
- 9.6 After discovering a defect in a product, the purchaser is obliged to make every effort to prevent or limit damage, expressly including possible immediate discontinuations of use and trade.
- 9.7 Possible defects concerning a part of the delivered products do not give the purchaser the right to reject or refuse the whole party of delivered products.
- 9.8 Claims do not suspend purchaser's payment obligations.

- 9.9 The purchaser shall inform possible inaccuracies in invoices of Bergia within 8 working days after the invoice date in writing to Bergia, in default whereof the purchaser is deemed to have approved of the invoice.
- 9.10 Each claim against Bergia, unless acknowledged by Bergia, will expire by the sole expiry of 12 months after the claim has arisen.

Artikel 10 Retention of Title

- 10.1 Bergia reserves the property of the delivered products and the products that have to be delivered until its claims with regard to the delivered products and the products that have to be delivered and services have been complied with by the purchaser, including the claims due to the failure in the observance of one or several agreements.
- 10.2 If the purchaser is in default with the observance of his obligations, Bergia is entitled to collect (or have collected) the products that belong to it at the expense of the purchaser from the place where they are located.
- 10.3 The purchaser is not entitled to pledge the products that have not yet been paid or to transfer the property thereof in a context different than the normal business operations.
- 10.4 The purchaser is obliged to keep the products that were delivered subject to reservation of ownership with due care and recognisable as the property of Bergia.

Artikel 11 Payment

- 11.1 Unless otherwise agreed upon, payment of the invoices of Bergia shall occur within 14 days after invoice date.
- 11.2 At all times, Bergia is entitled to claim whole or partial advance payment and/or acquire security for payment in another manner.
- 11.3 In case no payment occurs in a timely manner, the purchaser owes an interest payment without further notice of default in respect of the invoice amount, which equals the statutory commercial interest.
- 11.4 The costs related to the collection are for the account of the purchaser. The extrajudicial collection costs amount to at least 15% of the amount that has to be collected with a minimum of EUR 200.-.
- 11.5 The complete invoice amount is immediately due and payable in full in case of the late payment of an agreed instalment on the due date, as well as in case purchaser goes bankrupt, requests a (temporary) moratorium of payments, the statutory debt management scheme (WSNP) is declared applicable to it and/or when any attachment is levied on the matters and/or claims of the purchaser. If one of the above-mentioned situations occurs, the purchaser is obliged to immediately inform Bergia hereof.
- 11.6 Payments made by the purchaser shall always first serve for the payment of the costs due, subsequently for the settlement of due interest and afterwards for payment of the longest outstanding due and payable invoices, even if the purchaser states that the payment relates to a later invoice.

Artikel 12 Cancellation

- 12.1 A purchaser cannot cancel a concluded agreement. If a purchaser cancels a concluded agreement nevertheless, he is obliged to compensate Bergia all costs that were reasonably made with a view to the performance of the agreement, the lost profits and other damage of Bergia, to be increased with VAT.

Artikel 13 Liability

- 13.1 In addition to what is determined in article 9, the purchaser has no claim whatsoever vis-a-vis Bergia due to defects in the products delivered by Bergia.
- 13.2 Bergia is never liable for immaterial damage, personal injury, business interruption, consequential damage and (other) indirect damage of the purchaser, unless there is gross negligence or intent on the part of Bergia.
- 13.3 Damage to products caused by damage or destruction of packaging is for the account and risk of the purchaser.
- 13.4 In all cases in which Bergia is obliged to compensation of damage with regard to the purchaser, it will never be higher than the invoice value of the delivered products as a consequence of which or in relation to which damage was caused. If damage is covered by an insurance of Bergia, the compensation will moreover never exceed the sum that is actually paid by the insurance company.

Artikel 14 Intellectual Property

- 14.1 Bergia is entitled to all intellectual and industrial property rights with regard to the products and the denominations thereof, and with regard to everything that Bergia develops, manufactures or provides, including packaging, advertising material and images,
- 14.2 The purchaser is not entitled to remove or change any indication of brands, trade names or other rights of intellectual property of the products. The purchaser will exclusively offer, sell and deliver the products under the brand, the logo and the packaging which Bergia has attributed to the products.
- 14.3 If packaging of the products has to be carried out subject to the designs, drawings or other instructions of the purchaser, the purchaser guarantees that there will be no violation of the intellectual or industrial property rights or other rights of third parties. The purchaser indemnifies Bergia against all claims of third parties due to violation of their intellectual or industrial property rights, either or not serving for the compensation of damage.
- 14.4 The offers issued by Bergia, as well as the drawings, calculations, descriptions, opinions, estimates and other information, designs manufactured or provided by Bergia, (test) products or (test) equipment made available by Bergia, remain the property of Bergia, regardless of the fact that costs have been charged to the purchaser.

Artikel 15 Representation

- 15.1 If the one who signs the order confirmation/agreement acts on behalf of one or several others, he is responsible and liable vis-à-vis Bergia as if he were the purchaser, regardless of the liability of those other parties.

Artikel 16 Final provisions

- 16.1 Every international treaty about the purchase of movable tangible matters of which operation between parties can be ruled out shall not be applicable and is hereby expressly excluded. More in particular the applicability of the Vienna Sales Convention 1980 (CISG 1980) is ruled out.
- 16.2 All agreements that are concluded by Bergia are exclusively governed by Dutch law.
- 16.3 The place of performance in case of a contract is deemed to be the place of business of Bergia.
- 16.4 All disputes between Bergia and the business purchaser will exclusively be heard by the competent court in the district where Bergia has its registered office. In case of deviations, Bergia is authorized to apply to the court of the place of residence/place of business of the purchaser.
- 16.5 The Dutch text of these General Terms and Conditions prevail over the translation(s) thereof.

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