

1 Applicability

1.1 These Terms and Conditions shall apply to all offers and agreements made by:

- Van Marcke Food Group b.v.;
- Van Marcke Chips b.v.;
- VMF Continental Snacks b.v.,

after this together “Van Marcke”, for the sale and delivery of products to Purchasers by Van Marcke. They replace previous Terms and Conditions.

- 1.2 These Terms and Conditions shall apply both within and outside The Netherlands, regardless of the place of business of the party's party to the agreement, regardless also of the place where the agreement was concluded, or should have been executed.
- 1.3 Van Marcke hereby explicitly rejects any terms or conditions set by the other party or by the Purchaser.
- 1.4 Any stipulations or provisions which are at variance with those contained in this document may be invoked by the Purchaser only if and to the extent that these have been accepted by Van Marcke in writing.

2 Acceptance

- 2.1 All offers of Van Marcke are without obligation. A contract between Van Marcke and the Purchaser shall come into being only upon confirmation by Van Marcke of the order placed by the Purchaser or if Van Marcke is entitled to assume from the actions of the Purchaser that the Purchaser has accepted the offer and Van Marcke has actually started to perform the contract.
- 2.2 The information given by Van Marcke on the quality of the product to be supplied by it, including colour, size or other specifications is given by Van Marcke to the best of its knowledge but shall not be binding.
- 2.3 Van Marcke reserves the right to change (supplied) specifications, such changes shall never entitle the Purchaser to dissolve this agreement, refuse delivery of products, claim any discount on the invoice amount.
- 2.4 Van Marcke reserves the right to have this agreement performed in whole or in part by third parties, in which event these conditions shall also apply to these third parties.
- 2.5 Upon conclusion of this agreement, all prior agreement, all statement and representations pertaining to the subject matter of such agreement shall be repealed.

3 Prices

3.1 Unless expressly agreed otherwise in writing, prices and rates of Van Marcke shall be:

- a) in Euro;
- b) exclusive of Dutch value added tax (B.T.W.) and other levies imposed by the authorities;
- c) Ex Works (EXW) at Van Marcke, in accordance with the INCOTERMS 2010 (ICC).

3.2 In the event of any price increases, e.g. as a result of exchange rate fluctuations, import duties, insurance, loading and transport costs or purchase prices, Van Marcke shall be entitled to raise the price charged to the Purchaser accordingly.

4 Delivery

- 4.1 Unless agreed otherwise in writing, delivery shall be Ex Works (EXW) in accordance with the INCOTERMS 2010 (ICC).
- 4.2 The terms of delivery agreed upon by Van Marcke are approximate terms only. Non-compliance with the terms of Van Marcke shall not entitle the Purchaser to any damages by way of supplement or replacement, nor give it the right not to comply with any of its obligations as laid down in this agreement.

See next page

- 4.3 Van Marcke is obliged to deliver the agreed quantity. In the event performance by Van Marcke of the agreement is prevented or hampered caused by force majeure, as mentioned in clause 12.2, Van Marcke shall be entitled to deliver less than the agreed quantity or suspend the performance of the delivery.
- 4.4 The Purchaser is obliged to accept delivery at the delivery time. If the Purchaser fails to accept delivery at the delivery time he shall nevertheless pay any part of the delivery price which becomes due on delivery as if delivery had taken place. Van Marcke shall arrange storage of the product at the risk and expense of the Purchaser.
- 4.5 Van Marcke shall have the right to postpone new deliveries until Purchaser has met all its outstanding payments or other obligations towards Van Marcke.

5 Transport

- 5.1 Unless otherwise agreed, necessary transport of the product and/or parts thereof shall be pursuant to the provision of clause 4 at the risk and expense of the Purchaser.

6 Acceptance of products supplied

- 6.1 The Purchaser shall check the product immediately upon delivery to satisfy itself that the product is in conformity with this agreement, namely:
 - a) that the correct product has been delivered;
 - b) that the product delivered is of acceptable quality and/or satisfies the requirements for normal use;
 - c) that the quantity (number, amount, weight) of the product delivered corresponds with what was agreed.

If the Purchaser wishes to lodge a complaint, he shall notify Van Marcke of the complaint by fax as soon as possible no later than 8 days after delivery date. Defects not visible upon first inspection must be notified to Van Marcke in writing immediately upon detection.

- 6.2 If and to the extent that a claim is held legitimate by Van Marcke, Van Marcke shall either restore the defect in the product or replace the defective product. The Purchaser shall not be entitled to compensation of any kind.
- 6.3 If the Purchaser does not notify Van Marcke of a defect within the 8 days from the delivery date, he shall be deemed to accept the condition in which the product was delivered and waive the right to warranty and claim.
- 6.4 Claims shall not give the Purchaser any right whatsoever to either refuse or suspend payment in whole or in part or set off a payment obligation in any way against an amount allegedly owed by Van Marcke to the Purchaser.

7 Return of the products

- 7.1 The Purchaser shall only be entitled to return delivered products after prior written consent of Van Marcke.
- 7.2 Return shipment must take place in complete, original and good order, postage prepaid Kapelle (the Netherlands). The return shipment must be accompanied by the original as well as the number of return authorisation as indicated by Van Marcke in accordance with the consent as mentioned in clause 7.1.

8 Warranty

- 8.1 Van Marcke warrants the sell by date of the product delivered as indicated on the package. This warranty is only valid in the event that the product delivered by Van Marcke is transported and stored in the manner indicated by Van Marcke.
- 8.2 Van Marcke warrants the quality and origin of the product delivered, comply in all respects with the requirements under the law and/or other regulations. This warranty is subject to the condition that the product delivered by Van Marcke is transported and stored in the required manner.

9 Payment

- 9.1 Unless agreed otherwise in writing, payment shall take place within thirty days from the invoice date. The Purchaser who fails to meet its payment obligations will be held in default by operation of the law without any notice having to be served.
- 9.2 Van Marcke shall stipulate into which bank or giro account payment must be made.
- 9.3 Payment shall at all times take place without deduction or set-off by the Purchaser.

See next page

- 9.4 From the moment at which the Purchaser is in default until such date that full payment is effected, the Purchaser shall owe interest for late payment of one percent per month or part thereof. Van Marcke retains the right to full compensation for damages as allowed by law, and to reimbursement of costs (including judicial and extra-judicial costs) incurred in the collection of the amount due, the costs of which are hereby set at fifteen percent of such amount with a minimum of € 500,-.
- 9.5 If the Purchaser remains in default of payment of a particular invoice or otherwise fails to perform its obligations to Van Marcke, all outstanding invoice to this Purchaser shall be due for payment immediately.
- 9.6 Van Marcke shall at all times have the right to demand that the Purchaser provides security for invoices due for payment at any time. Security may take the form of:
- a) an irrevocable simple demand warranty payable upon first request of a banking institution of good standing established in the Netherlands, in accordance with the Uniform Rules for Demand Guarantees of the International Chamber of Commerce in Paris (ICC Publication no. 758);
 - b) a collection arrangement under documentary credit in accordance with the Uniform Rules for Collection 1995 of the International Chamber of Commerce in Paris (ICC Publication no. 522), issued by a banking institution of good standing established in the Netherlands;
 - c) an irrevocable Letter of Credit in accordance with the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce in Paris (ICC Publication no. 600), confirmed by a banking institution of good standing established in the Netherlands.
- 9.7 Pending the security referred to under clause 9.6 above, Van Marcke shall be entitled to suspend all of its obligations forthwith.

10 Retention of title

- 10.1 Title to the goods delivered or to be delivered by Van Marcke will remain with Van Marcke until the Purchaser has met all its obligations arising from the goods delivered or to be delivered by Van Marcke to the Purchaser, and from services rendered or to be rendered under the agreement to the Purchaser by Van Marcke.
- 10.2 Until title to the goods delivered is transferred to the Purchaser, the Purchaser may not transfer or encumber the goods.
- 10.3 Should Van Marcke have good reason to believe that ownership to the goods delivered under the retention of title will pass to the Purchaser through accession, conversion or merger, the Purchaser shall unconditionally provide a lien forthwith on such goods.

11 Liability and Indemnification

- 11.1 With due consideration for the other stipulations in this article, the liability of Van Marcke shall expressly be limited to what is provided in article 6 (2) regarding claims, and Van Marcke shall never be liable for any further loss, including consequential loss, nor shall it be liable to pay damages to the company for loss of profits, damages arising from third party claims, on the Purchaser or any other kind of damages, unless Van Marcke was to be guilty of gross negligence or wilful intent, in which case compensation for damages shall under no circumstances exceed the invoice value of the goods delivered.
- 11.2 Van Marcke shall never be liable for damage of any kind which according to Van Marcke arose from or was caused by improper usage of the goods supplied or unsuitability of such goods for the purpose to which the Purchaser has applied them.
- 11.3 Notwithstanding the stipulations in the Terms and Conditions, the liability of Van Marcke shall in any event be limited to the invoice amount, with a maximum of € 11.500,-.
- 11.4 Only the contracting entity of Van Marcke can be liable for any kind of damage as defined in this article. The other entities of Van Marcke are not liable for any damage caused by the contracting entity of Van Marcke. In case it is not clear which entity of Van Marcke is the contracting entity, the entity who has sent the invoice(s) will be considered as the contracting entity of Van Marcke.
- 11.5 Any legal action by the Purchaser against Van Marcke pursuant to these Terms and Conditions shall expire one year after the goods were supplied.
- 11.6 The Purchaser shall indemnify Van Marcke against all claims by third parties seeking damages related to goods supplied to the Purchaser by Van Marcke unless the damage is the result of gross negligence or wilful intent on the part of Van Marcke personnel.

See next page

12 Force Majeure

- 12.1 In the event of performance by Van Marcke of an agreement becoming onerous or impossible due to force majeure, Van Marcke may either suspend performance of the agreement, in so far as it has not yet been carried out, or rescind the agreement in writing.
- 12.2 Force Majeure as referred to in the first paragraph of this clause includes all circumstances for which Van Marcke is not to blame, including but not limited to war, civil unrest, epidemics, fire, industrial strikes, malfunction of the production process and irregularity in deliveries by suppliers.

13 Suspension and Termination

- 13.1 Van Marcke shall have the right to suspend all of its obligations forthwith until such time as the Purchaser has fulfilled all its payment obligations which are due and outstanding.
- 13.2 Van Marcke shall have the right without any notice of default having to be served upon the purchaser to terminate the agreement if the purchaser files for a preliminary suspension of payment, or insolvency, is declared bankrupt its business is liquidated or it winds up its business, its assets or parts thereof are sequestrated by third parties or if Van Marcke does not expect the Purchaser to be able to fulfil its obligations.
- 13.3 If, at the time the agreement is rescinded, parts of it have already been carried out by Van Marcke the rescission shall only apply to the part of the agreement that has not yet been carried out by Van Marcke. Amounts invoiced or to be invoiced by Van Marcke for part performance will remain due in full and shall be payable forthwith upon rescission of the agreement.

14 Intellectual Property Rights

- 14.1 Unless stated otherwise in a quotation or agreement entered into, all recipes, formulas, designs and/or ideas concerning the goods produced and services rendered will remain the property of Van Marcke.

15 Applicable Law, Arbitration

- 15.1 These Terms and Conditions, as well as any and all offers an agreements to which these Terms and Conditions apply in whole or in part, shall be governed solely by Dutch law, not including the provision of the Vienna Convention on the International Sale of Goods and any other present or future international arrangement on the sale of goods the jurisdiction of which can be excluded by parties.
- 15.2 All disputes arising between parties on the interpretation or application of these Terms and Conditions or on the execution of an agreement shall not be submitted to any court of law but will be settled by arbitration in accordance with the Rules of the Netherlands Arbitration Institute (Nederlands Arbitrage Instituut).
- 15.3 A dispute shall be deemed to have arisen if one of the parties makes a statement to that effect.

16 Language

- 16.1 These terms and Conditions are executed in the English language and may be translated into other languages.

17 General Terms

- 17.1 Any departure from these Terms and Conditions shall require a supplementary written agreement.
- 17.2 Oral arrangements shall be binding upon Van Marcke only to the extent that they are confirmed in writing by its duly authorised staff.
- 17.3 If one of the provisions of these Terms and Conditions are declared null and void by competent judge, this shall not affect the validity of any of the other provisions or of parts thereof.

Van Marcke, August 2017

Managing Director
H.A van der Doe