



Van Osch
s n a c k s

STANDARD TERMS AND CONDITIONS
of the

General Association of Kitchenware and Snack Food Manufacturers
(Algemene Kokswaren- en Snackproducentenvereniging AKSV)

1. SCOPE

- 1.1 For the purposes of these terms and conditions the "seller" is any natural or juridical person who as a member of the Algemeen Kokswaren- en Snackproducentenvereniging AKSV enters into a contract for the sale and/or supply of goods which is subject to these terms and conditions.
- 1.2 These terms and conditions shall apply to any offer from or to a seller and to any contract with a seller and the performance thereof except where the seller is acting as the selling and/or supplying party therein or is likely to act as such in respect of an offer.
- 1.3 For the purposes of these terms and conditions the "buyer" is any person, or his representatives, proxies, assignees and successors, who may act as the other party to the seller on the occasion of an offer or contract in which the seller is acting as the selling and/or supplying party or is likely to act as such as described in Section 2.
- 1.4 The fact that these terms and conditions do not apply to any offer and/or contract shall have no bearing on their applicability to other offers and contracts.
- 1.5 The contents of these terms and conditions may be amended from time to time. Before any amended version comes into force it shall be brought to the attention of potential buyers in the same way as the previous version which contains this stipulation. The most recent version shall apply to any offers or contracts which may be drawn up thereafter.
- 1.6 Any departures from these terms and conditions and any amendments to or cancellations of contracts shall be binding on the seller only to the extent that they have been expressly accepted by the seller's management. Acceptance by others may only be binding on the seller insofar as there is no doubt in terms of the common opinion which exists between the parties as seller and buyer that the others are authorised to represent the seller in the matter.
- 1.7 Legitimate departures from these terms and conditions shall be binding on the seller only in respect of the offer or contract subject to this departure.

2. CREATION OF CONTRACTS

- 2.1 The buyer may place orders with the seller by sending, if desired by fax, a completed order form in accordance with the model provided by the seller for this purpose or at all events a model of the same import and clarity, where the seller makes use of such order forms.
- 2.2 The order form must be completed clearly. Corrections and/or amendments may not be made by crossing out or amending items on the actual order form. If this does happen the seller cannot be held liable for disregarding or misunderstanding crossings-out or corrections.
- 2.3 Oral orders placed by telephone or otherwise with a seller who uses the aforementioned order forms shall be deemed to have been placed in accordance with the foregoing. The seller shall be entitled to complete an order form as if this had been done by the buyer.
- 2.4 If and when the seller receives an order form completed by the buyer as specified in Section 2 of this clause, this form shall be deemed to be an offer from the buyer to enter into a contract and to perform in all respects the contract to be established on the basis of this offer, thereby nullifying any contracts previously in force between the parties.
- 2.5 Where the seller does not make use of order forms as specified above, any statement by the buyer to the effect that he wishes to enter into a contract with the seller shall be regarded as an offer to enter into a contract which will nullify any contracts previously in force between the parties.
- 2.6 The buyer's offer shall be irrevocable for the period within which the contract can be established in accordance with Section 7 of this clause. The offer shall also be referred to hereinafter as the "order".
- 2.7 Contracts come into force solely on the basis of the buyer's offer when the seller expressly accepts the offer. Receipt of the offer itself or a response to the offer by invoicing or supply by the buyer, in this last case where the invoicing or supply relates to the offer, shall not be deemed to constitute such acceptance. Acceptance of the offer by one of the methods referred to above shall take place within the time within which the seller must supply the goods as specified in Clause 4 of these terms and conditions, in default of which the buyer shall be entitled to inform the seller that his offer is to be regarded as null and void.
- 2.8 Any statements by the seller which may be interpreted as an offer shall be without obligation. Sections 1, 2, 3, 4 and 6 of this clause shall apply by mutual agreement to any acceptance of such offer, where "offer" and "order" shall be amended to read "acceptance".

3. CONTENTS OF CONTRACTS

- 3.1 With regard to sections not governed by these terms and conditions, the contents of the contract shall be determined by the offer and acceptance thereof by the buyer or acceptance thereof by the seller as appropriate, subject to mutual agreement. All statements on the part of the seller and the buyer as well as the relevant sections of the contract shall be read as follows:
- a) statements relating to quantity, number of units, size, weight, colour, construction, shape, dimensions, etc. shall be deemed to be approximate. Any margins deemed to be acceptable according to common opinion between the parties as buyer and seller may be utilised to the full by the seller;
- b) statements relating to price shall be without obligation and shall only be confirmed by the seller after and/or with reference to the time specified for delivery of the items in question, on the basis of earlier statements and any subsequent increases -whether or not foreseen or foreseeable- in prices and costs of raw materials and additives, energy, freight charges, wages, social contributions, taxation, consequences of devaluation or revaluation, etc. and increases to which the seller is entitled by law.
If more than three months have elapsed between the coming into force of the contract and delivery of the goods the seller shall be entitled to raise the price established in accordance with the foregoing. All prices are quoted "ex works" unless otherwise specified; and costs arising from the length of time the goods sold or to be supplied have been ready for despatch on the seller's premises, such as freight charges, shall be payable by the buyer in addition to the price. These additional costs shall be charged by the seller on the basis of actual costs incurred. Where these costs are paid immediately by the buyer this shall be deemed to be an advance payment to the seller. All amounts shall be shown in euros, exclusive of Value Added Tax;
- c) statements relating to delivery times shall apply subject to the appropriate provisions in Clause 4 and elsewhere in these terms and condition;
- d) any samples and patterns shown are only provided as an indication and actual goods supplied need not match them exactly.

- 3.2 By assuming obligations under the contract, howsoever worded, the seller cannot be deemed to guarantee performance to the extent that any legal or contractual right to claim that it is not at fault is diminished.

4. DELIVERY PERIOD AND DELIVERY

- 4.1 Delivery period means the total time which may elapse between the moment when the seller receives the order and, if a contract has been established, the moment of delivery. The delivery period can be expressed as a number of units of time, as a specific date which serves as the final delivery date or in words indicating an imprecise measure of speed.
- 4.2 Agreed delivery periods give an indication of the time when delivery is to be made. Delivery shall take place no sooner than seven days before the last day of the agreed delivery period and no later than as many working days after the last day as the agreed delivery time in working days, with a minimum of five and a maximum of fourteen working days. If the first preceding day or the last following day falls on a Saturday, Sunday or holiday, delivery will be brought forward to or held over until the first working day before or after, as the case may be. The seller cannot be in default before the final date by which the seller must deliver the goods under this clause, not even on grounds of proof of default.
- 4.3 Delivery periods as specified by the buyer which have not been contradicted shall be deemed to be agreed delivery periods provided that they are at all times regarded as commencing at least three days after receipt of the order by the seller.
- 4.4 Where no delivery period has been agreed, a delivery period of fourteen days shall be deemed to have been agreed. Where the agreed delivery period has been expressed in imprecise words indicating speed, a delivery period of eight days shall be deemed to have been agreed. In both of the cases referred to in this section delivery may also be made before the earliest delivery date as specified in Section 2 of this clause.
- 4.5 Deliveries at a time which departs from the provisions of Section 2 of this clause shall be deemed to have been made on time unless the buyer has made a specific complaint immediately, or as soon as justified by the seller's circumstances, after he learned or ought to have learned that the delivery would be late.
- 4.6 Unless otherwise specified, the seller shall arrange shipment of the goods purchased by means of its own or third party transport on the understanding that the good shall be transported by or on behalf of the seller to place accessible by the means of transport which is nearest to the main entrance of the address given by the buyer. Where the seller is responsible for shipment, delivery shall be deemed to have made immediately before and at the place of loading on the first means of transport which will carry the goods to the buyer. If shipment is arranged by or on behalf of the buyer, delivery shall be deemed to take place at the moment in which the seller informs the buyer that the goods are ready for shipment and at the place where the goods are available as indicated by the seller, where they will continue to be kept by the seller for the buyer.



Van Osch
s n a c k s

- 4.7 The seller shall be entitled to deliver the goods sold and/or to be supplied in their entirety or part shipments, irrespective of whether the purchase and/or delivery requirements have arisen from one or more contracts.
- 4.8 If for any reason whatever the seller is obliged to make good a fault it shall be entitled to do so at a later date than the time of the faulty delivery.
- 4.9 The buyer undertakes of his own accord to make any arrangements and take any measures necessary to achieve a satisfactory delivery, where the buyer has not expressly assumed responsibility for them in the contract.
- 4.10 A call-off order is a contract which expressly stipulates that deliveries shall be made as and when goods are called off by the buyer. Only when a particular time is specified by which the call-off will be made shall this be deemed to be such a call-off order and the following conditions apply with regard to delivery time. In all other cases the rules for standard contracts shall apply.
- 4.11 In the case of call-off orders, the call-off shall be regarded as an order and the consequences of the call-off shall be governed by the provisions that govern the consequences of orders.
- 4.12 Where the call-off order specifies a latest date of call-off, in the absence of a call-off before that date the seller shall be entitled but not obliged to consider the call-off completed at any desired time after said latest date.
- 4.13 The seller shall be entitled but not obliged to consider call-offs made before the time specifies in Section 10 of this clause as having been completed only on that date.
5. PAYMENT
- 5.1 The price must have been received in full by the seller within fourteen days of invoice date or before delivery where this is sooner. Part payment shall not bind the seller to make any delivery. For so long as the buyer owes the seller any sum or any required guarantee remains unpaid or has not been issued the buyer shall not be entitled to claim full payment of the price.
- 5.2 For the purposes of the foregoing section the conditions applying to the buyer shall apply equally to any third party who has, has had or will have financial or organisational links with the buyer. Where the price as referred to above has not been paid in full or cannot be regarded as such at the time originally agreed, the delivery periods as agreed shall not commence until this is so.
- 5.3 The seller may demand the return of anything that it has delivered before payment was made in full as specified in Section 1 of this clause where the sum due remains unpaid. This must not in any way leave the seller in a worse position than if it had not made this delivery. The buyer shall bear any costs incurred when taking delivery of and returning the goods and during the period between delivery and return of the goods. Before any of the seller's obligations can be invoked, no consequences of the seller's failure to perform that obligation can ever have arisen and no claim can ever have been made to the seller casting doubt on the performance of its obligations.
- 5.4 The buyer shall be in default as soon as the latest date for payment has passed, without the necessity of proof of default.
- 5.5 Irrespective of any statements by the buyer to the contrary, payments from the buyer shall always cover the settlement of sums due for any reason whatever to the seller by the buyer in the following order: interest and charges relating to goods supplied by the seller to the buyer which are no longer reclaimable by the seller by dint of reservation of title, the price of the aforementioned goods, other sums due by the buyer to the seller, interest and charges relating to goods sold by the seller to the buyer which are still reclaimable by dint of reservation of title and finally the price of the last named goods, where within each category the item which has been outstanding for the longest time shall be paid first.
- 5.6 Payments made on or before the due date shall not constitute a right to any discount, interest or refund.
- 5.7 The buyer shall not be entitled to offset any credit prices, interest and charges payable by him against sums due to him by the seller unless said sums due have been specifically shown by the seller as a credit item in its respective invoice.
- 5.8 Any discounts granted shall cease to apply where the buyer defaults on the discounted price.
- 5.9 The buyer is not obliged to issue receipts for payments.
- 5.10 No receipt issued by the seller for any principal sum without a specific receipt for interest and charges shall ever constitute a receipt for the latter. Any receipt issued by the seller for a payment shall relate solely to the payment for which the receipt has been specifically issued and not, for example, to previous payments of sums due.
- 5.11 Any agreed sales bonuses shall not be payable until the sales to which they apply have been achieved in full and agreed with the seller and then only after receipt of an invoice from the seller which specifically includes these bonuses.
- 5.12 The buyer undertakes to provide surety for the seller on request in respect of any obligations which he may have towards the seller at any time, within a date to be specified by the seller.
6. LIABILITY
- 6.1 The seller shall at no time be held liable for any claim for damages and costs by the buyer, howsoever caused, in respect of a sum higher than the price paid to the seller for the goods which have given rise to the claim or in relation to which the claim has arisen.
- 6.2 Any faults caused in part or in whole by the actions of third parties engaged by the seller, whether or not employees of the seller, and of third parties on which the seller depends for the performance of the contract may only be attributed to the seller where the seller can be held liable for intent to default or gross negligence in respect of said actions.
- 6.3 Section 2 shall also apply in case of intent to default or gross negligence on the part of said third parties.
- 6.4 Any faults caused in part or in whole by the unsuitability or other defects of the things used by the seller in the performance of its obligations can only be attributed to the seller where the seller can be held liable for intent to default or gross negligence in this respect.
- 6.5 The seller shall at no time be liable for the consequences of handling in any manner of its choosing or otherwise or selling to third parties goods of which the delivery to the buyer has been prevented or turned back.
- 6.6 The seller shall in no way be liable for the useability or reliability of any raw materials and goods which have been supplied or firmly specified by the buyer.
- 6.7 The seller shall at no time be liable for loss of profit or other consequential losses.
- 6.8 The seller provides no guarantee of any kind as to the (re)saleability and/or profitability of any goods sold and/or supplied by it.
- 6.9 Where the buyer claims repair or replacement of goods supplied the seller shall at all times be entitled to change this to replacement or repair respectively or to refund or wive payment of the price instead. The buyer shall derive no rights from the time taken to repair or replace the goods or refund the price.
- 6.10 The seller may not be considered in default of any obligation, including obligations in respect of delivery period unless it has been notified of default in accordance with the law with a minimum of eight day's prior notice. Within this period the seller shall be entitled at its discretion to replace fully any goods supplied with goods which comply with the contract without admitting any failure to perform in respect of the goods originally supplied.
- 6.11 The time within which the buyer must lodge a protest in respect of any failure to perform by the seller on penalty of losing the right to make a claim in respect of such failure shall terminate no later than one quarter of the time after delivery during which the goods supplied could reasonably, having regard to their storage life, be sold to resellers and at all events as soon as the goods have been treated or processed by the buyer and/or are handled in such a way that the aforementioned time is made shorter than it would have been if efforts had been made to ensure maximum storage life.
- 6.12 Any protests in respect of the seller's failure to perform shall only be valid if made in writing.
- 6.13 As soon as the goods supplied have been treated or processed by the buyer the buyer shall forfeit all rights in respect of any default by the seller.
- 6.14 On penalty of forfeiting the seller's liability and on penalty of having to compensate any loss suffered by the seller in default thereof, the buyer undertakes from the moment of delivery to handle the goods supplied in such a way that no cause of avoidable deterioration is created or continues to exist, taking into account the fact that the goods will or may be returned to the seller. The buyer shall at no time be entitled to return to the seller goods supplied without the seller's prior consent in writing or by any means other than those set out in the consent. Consent given by the seller for the return of goods shall not constitute an admission of the grounds for return.
- 6.15 The buyer undertakes to insure any goods supplied to him by the seller, irrespective of whether they have already become his property, against the usual risks such as fire, and theft and storm and water damage. The buyer is not entitled to assign to third parties or otherwise transfer his liabilities arising out of the relative insurance policies or pledge them as security.
- 6.16 If the buyer supplies to his customers goods which he knows or ought to know are faulty, if he has declared that no faults are present when supplying them and if on being notified of the fact that he has been or will be held liable in respect of faults in the goods supplied the buyer fails to provide the seller promptly with all known information on the matter, the buyer, even as a legal successor of third parties, may not recover from the seller any compensation and associated costs to be paid as a result of these faults and the buyer shall be obliged to reimburse the seller with any damages and costs which the seller may incur or may have to pay as a result of these faults.



Van Osch
s n a c k s

- 6.17 The buyer shall at no time be entitled to claim any right of retention against the seller.
7. CANCELLATION
- 7.1 The seller is always entitled but never obliged to regard as grounds for cancelling a contract a resolutive condition in that contract and the origin of said grounds as the coming into effect of that resolutive condition, without prejudice to the seller's right to any compensation which would be due to it if it had otherwise cancelled the contract.
- 7.2 Where through no fault of its own the seller is unable to perform its obligations on time, the buyer shall not be entitled to cancel or cause to be cancelled the contract in whole or in part.
8. RESERVATION OF TITLE
- 8.1 The seller is entitled but never obliged to supply to the buyer goods in respect of which no payment has yet been received of the price, transport costs and/or sums due as a result of failure to perform his obligations.
- 8.2 Where the seller does supply the goods as specified in Section 1 of this clause into the possession of the buyer, the seller shall retain title in the goods supplied until such time as the buyer has paid in full the price, transport costs and sums due as specified in Section 1, in accordance with Clause 5 of these terms and conditions.
- 8.3 The buyer is entitled to transfer to third parties the goods in respect of which title has been retained provided they are transferred on payment of no less than the price payable by the buyer to the seller for the goods concerned in cash, by advance payment or under the terms of a similar reservation of title. The buyer is expressly forbidden to pledge these goods as security to third parties or hand them over to third parties who can obtain a right of retention over the goods.
- 8.4 For as long as the seller retains ownership of the goods supplied the buyer is obliged to return the goods to the seller at the seller's first request by a route to be specified by the seller.
- 8.5 Once goods have been returned the buyer shall continue to be responsible for full compensation plus any interest, penalties and costs, from which the only deduction shall be any sum already received by the seller as a result of the seller's converting the goods into money. The seller shall not be obliged to convert these goods into money or to convert them in any specific way or at any specific time. Nor shall the seller be obliged to exercise its rights arising out of the retained title.
- 8.6 The sale, supply or transfer of the goods shall at no time embrace any part of or right deriving from the seller's intellectual and industrial property rights.
- 8.7 Any non-disposable packing and shipping material such as pallets, pallet boxes and containers which are delivered to the buyer shall remain the property of the seller and must be returned to the seller at its first request. Where the buyer is in default of this condition he shall be obliged to make good to the seller the replacement value of the items concerned, without prejudice to the rights of the seller arising out of the foregoing.
9. FINAL CLAUSE
- 9.1 The headings of the clauses in these terms and conditions are intended merely as general classifications and do not form part of the respective clauses which as a result may not be interpreted either in a more restricted or in a more comprehensive manner.
- 9.2 Any extrajudicial costs incurred by the seller as a result of any failure by the buyer to perform his contractual obligations, including these terms and conditions, shall be for the account of the buyer with as a minimum the percentage of the sum to be collected which would be charged by a solicitor for collection on the basis of the collecting rates for solicitors, irrespective of whether a solicitor has actually been engaged and whether that was on the basis of the collecting rates.
- 9.3 Where any provision of these terms and conditions is for any reason whatever deemed not to be applicable, the seller shall be entitled to stipulate that the respective contract and/or other provisions of these terms and conditions shall also cease to apply and/or to stipulate which provision with a similar effect for the seller shall replace the non-applicable provision, notwithstanding the divisibility of the provisions that were not applied.
- 9.4 All contracts and offers to which these terms and conditions apply, these terms and conditions themselves and any disputes arising therefrom shall be governed by the laws of the Netherlands. The Vienna Convention on Purchasing (UN Convention dated 11th April 1980, Tbr. 1981, 184/1-986, 61), shall not apply, nor shall any other non-compulsory law or convention.
- 9.5 The inclusion of provisions in these standard terms and conditions does not imply that they are to be regarded as standard terms and conditions as defined in law.
- 9.6 Any buyer who himself makes use of standard terms and conditions in respect of third parties which are linked to contracts concluded by him with the seller, including the present terms and conditions, and who is confronted by a third party attempting directly or indirectly to nullify in whole or in part or impose unreasonably onerous conditions on his standard terms and conditions, shall be obliged to notify the seller promptly, providing it with all the relevant facts. The seller shall be entitled to regard such notification and wrongful failure to provide such notification as a resolutive condition for one or more as yet not fully performed contracts with the buyer. In the event of failure to issue the aforementioned notification the buyer shall be obliged to compensate the seller for any losses suffered as a result, where these would not have had to be compensated if notification had been provided.