



GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY OF ARLA FOODS AMBA (AF)

1.0 Scope of Application

- 1.1 These General Terms and Conditions of Sale and Delivery (hereinafter referred to as the Terms), the Market Rules, Bidder Contracting Information and Contract Confirmation (hereinafter referred to as the Contract) shall apply to all deliveries made by Arla Foods amba (hereinafter referred to as AF) to a winning bidder in a GlobalDairyTrade Trading Event (hereinafter referred to as the Bidder) of all products including services incidental thereto (hereinafter referred to as the Goods), to the exclusion of the Bidder's terms of purchase.
- 1.2 Any deviating terms and conditions of purchase issued by the Bidder or additions, modifications or limitations to these Terms, the Market Rules, Bidder Contracting Information or Contract Confirmation shall apply only if expressly approved by AF in writing.

2.0 Contract Confirmation

- 2.1 Upon becoming a winning Bidder of a Trading Event Bidder acknowledges that Bidder has formed a binding contract to purchase the Goods from AF.
- 2.2 AF shall accept no liability for any typographical or other errors or omissions in any information submitted by AF and published at the GlobalDairyTrade trading website, invoice or other document or information issued by AF. AF reserves the right to correct any such errors and omissions.

3.0 Prices

- 3.1 The Prices for the Goods shall be the price specified in Part A in the Market Rules (FAS winning price in USD per metric ton) as adjusted to incorporate any additional charges or other matters stated in the Bidding Contracting Information, multiplied by the actual quantity of the Goods purchased as rounded in accordance with the Market Rules exclusive of taxes and duties.

4.0 Payment

- 4.1 Unless otherwise confirmed by AF in writing, the terms of payment shall be net cash. In the event that the Bidder is granted a credit, the Bidder shall provide full and good security for such credit on terms approved by AF.
- 4.2 Payment shall be deemed to have been effected once the sums due without deduction are made available to AF in the account designated by AF. Agents and distributors have no authority to receive payment.
- 4.3 The Bidder shall not be entitled to make any deductions, set-offs or counterclaims in sums due to AF, unless confirmed by AF in writing.
- 4.4 AF shall be entitled to cancel the Contract and/or suspend any further deliveries under any current Contract until any and all outstanding sums have been paid in full.

- 4.5 Title in the Goods shall pass from AF to the Bidder only when payment of all sums due has been made in full.

5.0 Delivery.

- 5.1 Unless otherwise confirmed by AF in writing, delivery shall be made CIP (Incoterms 2010).
- 5.2 All dates quoted for delivery of the Goods shall be approximate only, and AF shall not be liable for any losses or damages suffered by the Bidder due to any delay in delivery or non-delivery of the Goods howsoever caused.
- 5.3 If the Bidder fails to take timely delivery of the Goods – or if, where the Bidder is to give delivery instructions, the Bidder fails to give such instructions – AF may at its discretion either extend the time of delivery or shipment of the Goods, storing the Goods at the Bidder's risk and cost until actual delivery or cancel the Contract or any part thereof, in either case without prejudice to any other right or remedy available to AF.
- 5.4 Partial shipment or partial delivery and/or transshipment shall be permitted. Each partial shipment or delivery shall be regarded as fulfilment of a separate and independent Contract.
- 5.5 Risk of damage to or loss of the Goods shall pass to the Bidder at the time of delivery as defined in Clause 5.1, or if the Bidder wrongfully fails to take delivery of the Goods, at the time when AF has tendered delivery of the Goods.
- 5.6 The Bidder undertakes to abide strictly by the instructions of AF in respect of the customs handling of the Goods and to provide to AF, as and when requested by AF, all relevant documents, including but not limited to export/import documents from EU member states and/or third country required for the entitlement to export refunds or other subsidies. The Bidder shall be liable for and shall hold AF and its affiliates harmless from and against all costs and losses suffered or incurred by AF and its affiliates as a result of the Bidder's breach of this undertaking.

6.0 Examination and Notice

- 6.1 Immediately upon receipt of the Goods the Bidder shall carry out a thorough examination of the Goods in order to ascertain whether the Goods are conform.
- 6.2 The Bidder shall lose the right to rely on a non-conformity in the Goods if the Bidder fails to notify AF thereof in writing, specifying the nature of the non-conformity as soon as possible after the Bidder has discovered or ought to have discovered such non-conformity, and in any case before the end of the shelf life of the Goods.



7.0 Indemnification and Liability

- 7.1 Unless otherwise confirmed by AF in writing the Goods shall comply with the national legal requirements applicable in the country of manufacture. AF is not liable for the compliance of the Goods with the requirements of statutes, administrative rules and/or regulations applicable in the country of delivery and undertakes no risk or liability in respect hereof.
- 7.2 The Bidder shall be responsible for complying with any and all legislation, administrative rules and/or regulations governing the importation of the Goods into the country of distribution and the subsequent processing, marketing, distribution, resale and/or use hereof.
- 7.3 If the Goods are non-conform due to circumstances for which AF is liable, the Bidder may – subject to the time limits contained in Clause 6.2 and the provision of evidence of the non-conformity – reject such Goods whereafter AF at its discretion may either issue a credit note in respect of such non-conforming Goods, make a deduction in the price of the Goods corresponding to the reduced value of the Goods, or replace the non-conform Goods.

NO further remedy is available to the Bidder in the event of non-conformity of the Goods, howsoever caused.

Non-conforming Goods rejected by the Bidder are the property of AF and shall, at AF's request, be made available to AF. Unless AF elects to take back the non-conform Goods, such Goods shall be disposed of by the Bidder for AF's risk and account in the manner directed by AF, always provided that the Bidder shall use all commercial efforts to mitigate the costs of such disposal.

- 7.4 AF SHALL NEVER BE LIABLE FOR ANY OPERATING LOSS, LOSS OF ORDERS, LOSS OF INCOME, LOSS OF PROFITS, LOSS OF TIME, LOSS OF PUBLIC SUBSIDIES, LOSS OF GOODWILL OR FOR ANY SPECIAL, INDIRECT OR CONSEQUENTIAL LOSSES OR DAMAGES WHATSOEVER, HOWSOEVER CAUSED.
- 7.5 AF is not liable for the fitness for intended purpose of the Goods and the Bidder undertakes the risk and liability that the Goods are suitable for the purpose for which they are marketed and/or used.
- 7.6 Unless otherwise confirmed in writing by AF, AF shall at all times without incurring liability be entitled to modify or amend the specifications, production processes, packaging and/or labelling of the Goods without notice to the Bidder.
- 7.7 Force majeure: AF shall not be liable for a failure to perform any of AF's obligations or deemed in breach thereof, if AF shows that the failure was due to an impediment beyond the control of AF. The occurrence of such an event relieves AF from damages, penalties and other contractual sanctions.

Such events shall include in particular, but shall not be limited to strikes, lockouts, labour disputes, interruptions of operations, explosion, fire, natural disasters, governmental measures and restrictions imposed by national or foreign authorities, confiscation, embargoes, currency restrictions, lack of transport, veterinary diseases, malicious tampering,

acts of terror, environmental measures and defective or delayed supplies from sub-contractors and events related to the information published or procedures on the Global DairyTrade trading website.

Further, it postpones the time for performance for such period as may be reasonable, thereby excluding the Bidder's right, if any, to terminate or revoke the Contract.

- 7.8 Where the performance of a Contract becomes onerous on AF due to the occurrence of events that fundamentally alter the preconditions of the Contract either because the costs of performance have increased or the performance for other reasons is subject to hardship, AF shall be entitled to withhold performance or be released of such Contract without incurring liability.

8.0 Product Liability

- 8.1 The Bidder agrees to hold harmless and indemnify AF, its affiliates and representatives against and from all costs, losses, liabilities, damages and expenses arising out of or resulting from the death of or injury to any person or from any damage to or loss of property due to the acts and/or omissions of the Bidder.
- 8.2 AF shall only be liable for physical injury and/or damage to property caused by the Goods if it is proven that the injury or damage is attributable to AF or such liability follows from applicable mandatory law.
- 8.3 AF SHALL NEVER BE LIABLE FOR ANY OPERATING LOSS, LOSS OF ORDERS, LOSS OF INCOME, LOSS OF PROFITS, LOSS OF PUBLIC SUBSIDIES, LOSS OF GOODWILL OR FOR ANY SPECIAL, INDIRECT OR CONSEQUENTIAL LOSSES OR DAMAGES WHATSOEVER, HOWSOEVER CAUSED.
- 8.4 Recall: In the event of a recall of the Goods instigated by AF or a competent authority, the Bidder shall in consultation with AF take all necessary actions that are appropriate in the circumstances. These may include, without limitation, to stop delivery of the Goods and to recall the Goods from warehouses, distributors and retailers. The Bidder shall not interfere with the recall proceedings, which shall be controlled by AF only, and shall not make public any actual or planned recall of the Goods, except as provided by applicable mandatory law or as instructed by AF.

9.0 Intellectual property rights

- 9.1 All intellectual property rights or other proprietary rights in and to the Goods or related to the Goods, including but not limited to their formula, design, packaging and know-how, and any modifications or developments thereto, as well as the trademarks and trade names under which the Goods are marketed shall remain the sole and exclusive property of AF and the Bidder acquires no rights, title or license therein or thereto. If the Bidder challenges, harms or prejudices the validity or enforceability of such proprietary rights, AF shall without liability be entitled to immediately terminate any cooperation between the parties with immediate effect and to cancel any Contract.



10.0 Miscellaneous

- 10.1 If any provision contained in these Terms should be held to be void or unenforceable, the validity of the other provisions shall not be affected thereby.
- 10.2 No waiver by AF of any breach by the Bidder, or failure by AF to insist on the Bidder's performance of obligations shall be considered a waiver of any subsequent breach of the same or any other provision.
- 10.3 The Bidder shall hold in confidence and not disclose to any third party any confidential information disclosed by AF. The Bidder shall not use such information for the Bidder's own benefit or the benefit of any third party.
- 10.4 Nothing in the relationship between AF and the Bidder shall create an agency, partnership or joint venture between the parties and in specific the Bidder shall not be entitled to make any representation or warranty on behalf of AF.

11.0 Governing Law and Jurisdiction

- 11.1 The validity, performance and construction of any Contract with AF shall be governed by Danish law. Any disputes arising out of or in connection with any Contract or offer, quotation or order confirmation issued by AF or in connection with the delivery of the Goods to the Bidder, including but not limited to disputes relating to the construction of these Terms, shall be settled in accordance with Danish law.
- 11.2 Any dispute shall be settled before the courts of law in Denmark and legal proceedings shall be instigated at the Maritime and Commercial Court of Copenhagen (Sø- og Handelsretten).
- 11.3 Notwithstanding the above, AF shall at all times at its discretion be entitled to initiate legal proceedings against the Bidder in the country in which the registered office of the Bidder is located.

12.0 Definitions

"Bidder Contracting Information" means the bidder specific information made available to a bidder in accordance with the Market Rules prior to the Trading Event at which the Goods were purchased.

"Contract Confirmation" means the contract confirmation or other such written documentation issued by AF after the Trading Event which confirms, supplements, or modifies the details of a Bidders winning bid in a Trading Event. Unless otherwise stated by AF in writing the Contract Information shall include these Terms.

"Market Rules" means the rules governing the GlobalDairy-Trade trading website.

"Trading Event" means the GlobalDairyTrade trading events at which AF offers products for sale via a trading website in accordance with the Market Rules.

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