

PEPSICO SALES AND DELIVERY TERMS AND CONDITIONS*

These Terms and Conditions have been filed with the Chamber of Commerce in Utrecht, the Netherlands, on November 3, 2011.

*In the event of discrepancies or ambiguity between the original Dutch version of these Terms and Conditions and this translation, the Dutch text shall prevail.

These General Terms and Conditions (hereinafter: "Terms and Conditions") apply to all orders, offers and agreements concluded, or to be concluded, between **PepsiCo Nederland B.V.** (hereinafter: "the Seller") and the other party (hereinafter: "the Buyer") and to all other legal relationships between them.

1 GENERAL

- 1.1 Oral offers and commitments only bind the Seller after, and in so far as, they have been confirmed by the Seller in writing. All offers made by the Seller, in any form whatsoever, are without obligation, unless stated otherwise.
- 1.2 The Seller is entitled, at its own discretion, to accept or reject orders placed by the Buyer. Agreements only come into effect after the Seller has confirmed an order placed by the Buyer in writing or has started to fulfil that order.
- 1.3 If the Buyer refers to its own general terms and conditions or otherwise states that its general terms and conditions shall apply to the (intended) agreement, such a reference or statement shall have no effect whatsoever and the Seller's Terms and Conditions shall apply.
- 1.4 Any alterations in and to these Terms and Conditions shall only apply if, and in so far as, they are expressly confirmed in writing by the Seller.
- 1.5 All images and specifications of goods in catalogues, price lists, advertisements and the like must be regarded as approximate representations. The Seller cannot guarantee the correctness and accuracy of specifications of weight, measurements, capacity and the like.
- 1.6 Without prejudice to any other provision in the (annual) arrangements, the Seller has the right to change prices, provided that the Seller announces the relevant price change at least one (1) month in advance in writing. The Buyer will be deemed to have accepted this price change with respect to current orders, unless it notifies the Seller in writing of its intention to cancel the order within five (5) working days after notification of said price change. The Buyer may only cancel orders relating to complete product groups. In the event of such a cancellation, the Seller may, at its discretion, perform the agreement at the originally offered or agreed price or accept the cancellation of the complete product group concerned.
- 1.7 If agreements are concluded by email or other electronic means of communication, these emails or other electronic means of communication have the same validity as written statements.
- 1.8 The Seller is at all times authorised to make alterations to the goods to be delivered in order to improve them or to comply with any government regulation.
- 1.9 The Buyer shall only be entitled to cancel an order after receipt of prior written permission from the Seller, the Seller retaining the right to attach conditions to such permission.
- 1.10 The Buyer is not allowed to assign, pledge or under any other title transfer to a third party the legal relationships between the Buyer and the Seller and/or its claims against the Seller without prior written permission from the Seller.
- 1.11 If the Seller refers to technical, safety or quality regulations and/or other information in any document, the Buyer shall be deemed to know these regulations or this information, unless it informs the Seller of the contrary in writing and without delay. In that event, the Seller will further inform the Buyer of these regulations.
- 1.12 Without prejudice to Article 9.7, if the Seller is legally obliged to take back the delivered goods, for any reason other than that of a shortcoming, all costs in connection with such a take-back shall be borne by the Buyer.
- 1.13 The Buyer shall observe and comply with all instructions and measures provided by the Seller in relation to product safety and "product recall", as prescribed by the Seller at its own discretion. The Seller shall only compensate the Buyer for costs actually incurred by the Buyer if this is agreed in advance between the parties in writing. The Buyer shall indemnify the Seller against all costs and damage (including but not limited to any fines imposed by competent [government] authorities) which are incurred or suffered by the Seller and caused by the Buyer's failure to fulfil its obligations under this provision or local law.
- 1.14 In the context of, or in connection with, the goods delivered or to be delivered, the Seller may carry out or have work carried out at the Buyer's location and may for that purpose use tools or instruments of the Buyer. In that event, the Buyer shall undertake towards the Seller to furnish and maintain the rooms, tools and instruments used for rendering these services in such a way and to, well in advance, take measures and give instructions that are reasonably necessary so as to prevent persons engaged in carrying out the work (both the employees of the Seller and third parties engaged by the Seller) from suffering damage. The Buyer indemnifies the Seller from claims instituted against the Seller that arise from or are based on the non-fulfilment of the obligations laid down in the previous sentence.

2 DELIVERY

- 2.1 Unless otherwise agreed, the goods will be delivered EXW (Incoterms 2010).
- 2.2 Unless expressly agreed otherwise in writing, the delivery times stated by the Seller shall never be regarded as the final terms. In the event of late delivery, the Buyer shall give the Seller a written notice of default, which allows the Seller a reasonable term to fulfil its obligations. If the Seller exceeds this reasonable term, the Buyer has the right to partly or completely dissolve this agreement, but only with respect to the undelivered goods. In that event, the Seller shall not be liable towards the Buyer for any damage.
- 2.3 The Seller has the right to deliver the goods in instalments.
- 2.4 The Buyer shall take receipt of the goods as soon as they are offered by the Seller. If the Buyer does not accept delivery, the Buyer is liable for all ensuing costs and damage, including but not limited to storage and redelivery costs. The Buyer may not return delivered and received goods to the Seller without the Seller's written permission.
- 2.5 If the Seller's production and supply capacity do not allow the orders placed by the Buyer and third parties to be (completely) fulfilled, the Seller shall, at its own discretion, determine which of the orders will be fulfilled at which times. In that event, the Seller may deliver less than agreed. Nothing in these Terms and Conditions shall grant the Buyer any priority over other buyers of the Seller as far as deliveries are concerned.
- 2.6 The risk of the goods passes to the Buyer when the goods are offered at the agreed location.

3 TRANSPORT

- 3.1 If the delivery, as referred to in the previous article, involves the Seller taking care of the transport, unless otherwise agreed in writing, this transport shall be made to one central address only, even if the goods are intended to be distributed to several locations. The Buyer shall at all times enable the Seller or road haulage companies engaged by the Seller to actually deliver the goods and shall to that end do everything possible to prevent and limit waiting times. During unloading and receipt of the goods, the Buyer shall assist the Seller or the road haulage company engaged by the Seller at

the expense of the Buyer, including but not limited to providing mechanical resources such as fork-lift trucks.

4 PAYMENT

- 4.1 Unless agreed otherwise in writing, all prices are carriage paid to the Buyer's warehouse, and exclude VAT, transport costs, insurance costs and any other costs. Payment must be made in Euros (€).
- 4.2 If no explicit price was agreed when the agreement was concluded, the price stated in the price lists of the Seller when the agreement was concluded shall apply.
- 4.3 The Buyer is not entitled to an offset or suspension of payments.
- 4.4 Unless agreed otherwise in writing, the Buyer shall pay the full purchase price (or the remainder thereof if an advance payment has been made) without any deduction, discount or reduction, within 14 (fourteen) days after the invoice date, into a bank account indicated by the Seller. Buyer is entitled to deduct 1% of the invoice amount, only in the case where payment is received within 8 (eight) days of the invoice date.
- 4.5 If the Buyer fails to pay the purchase price within the agreed payment term, the Buyer shall be in default immediately and all claims of the Seller shall become immediately due and payable in full. In that event, the Buyer shall also be obliged to pay the statutory commercial interest plus 2% over the outstanding sum, until payment has been made in full.
- 4.6 In the event of late payment, the Seller is entitled to be compensated for all extrajudicial costs, including but not limited to costs incurred for sending reminders, final demands and/or notices of default, which extrajudicial costs shall amount to at least fifteen percent (15%) of the amount due, with a minimum of €500.
- 4.7 Unless the Buyer raises objections against an invoice within the payment term, that invoice shall be considered as having been accepted.
- 4.8 If a turnover bonus or discount scheme was agreed, this shall only be due and payable after the Buyer has fulfilled all its obligations towards the Seller.
- 4.9 The Seller, if it deems it advisable, may demand advance payment or any other security from the Buyer for fulfilment by the Buyer of any payment obligations (and the Buyer shall comply with such a request). The Seller may suspend performance of an order until said security has been furnished.
- 4.10 If legal proceedings are completely or largely decided in favour of the Seller, the Buyer shall be obliged to compensate the Seller for all costs incurred in connection with such proceedings, even if these costs exceed the amount assigned by the court or arbitrator. The Seller may invoke this provision irrespective of whether the Buyer has appealed against the relevant court or arbitration decision.

5 RETENTION OF TITLE

- 5.1 The Seller retains the ownership of all goods delivered, and to be delivered, to the Buyer until full payment of all purchase prices has been received, as well as of any sums payable by the Buyer for work that the Seller has performed in connection with these purchase agreements and with respect to claims against the Buyer for attributably failing to perform such agreements.
- 5.2 As long as the ownership of the delivered goods has not passed to the Buyer, the Buyer may not pledge the goods or grant any right thereon to a third party. The Buyer may sell to third parties and actually deliver the goods delivered under retention of title within the context of their normal business activities.
- 5.3 The Buyer shall store the goods delivered under retention of title carefully and ensure that they are identifiable as the property of the Seller. It shall also insure these goods against fire and water damage and theft. Any claims of the Buyer under these insurances shall be pledged by the Buyer to the Seller upon the Seller's request, as an additional security for claims of the Seller against the Buyer.
- 5.4 If the Buyer fails to perform any obligation towards the Seller, or the Seller has good reason for fearing that the Buyer will fail to perform any of these obligations, the Seller is authorised to take back or have the goods delivered under retention of title taken back, even if they have to be loosened or disconnected from other goods. The take-back costs shall be borne by the Buyer, without prejudice to the Seller's right to further damages.
- 5.5 The Buyer shall, upon the Seller's request, create a right of pledge for the benefit of the Seller - as referred to in Article 3:239 Dutch Civil Code - on claims on third parties arising from the sale of goods delivered by the Seller.

6 FORCE MAJEURE

- 6.1 If the Seller fails to fulfil its obligations, but this failure cannot be attributed to it (force majeure), it shall not be liable. In so far as fulfilment is not permanently impossible, its obligations are suspended. If the period in which fulfilment is not possible because of the force majeure exceeds, or will exceed, two (2) months, both parties may dissolve the agreement without this creating an obligation to pay damages.
- 6.2 If the Seller, when the force majeure occurs, has already fulfilled or is only able to fulfil part or its obligations, it may invoice the part already delivered or the deliverable part separately and the Buyer shall pay this invoice as if it related to a separate agreement.
- 6.3 Force majeure events which affect the Seller within the meaning of this article include (work) strikes, lack of base materials, illness, harvest failure, delays, transport problems, (threat of) war, (full or partial) mobilisation, riots, sabotage, floods, fire, nuclear threats or other types of destruction within the company of the Seller, (employee) lockout, interruptions with suppliers and breakdown of machines or tools or other interruptions within the company of the Seller. Force majeure events also occur if one or more of the abovementioned circumstances occur within the companies of the suppliers of the Seller and as a consequence the Seller is not able to (timely) fulfil its obligations.

7 COMPLAINTS AND INSPECTION

- 7.1 The Buyer shall inspect the delivered goods or have them inspected for numbers and visible defects; visible defects or shortcomings must be reported to the Seller immediately at delivery. The Buyer shall notify the Seller of defects that were not visible upon delivery within 48 hours of them being detected and, in any event, within 48 hours after the Buyer should reasonably have detected them. The complaint must include an accurate description of the nature and ground of the complaint. The Buyer's right to submit complaints ends if the defect can be attributed to the Buyer, including but not limited to the improper storage or use of delivered goods or the use thereof in a manner which is contrary to the agreed or customary purpose. Improper shall include the non-compliance of storage, use and maintenance instructions issued by the Seller.

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- 7.2 The Buyer shall perform the inspection with due care or have the inspection performed with due care by the road haulage company or other party that it has engaged. The Buyer bears the risk of random inspections and may not rely on the fact that it failed to detect a defect that was visible or that could have been detected upon delivery because it – or a third party engaged by it – did not check the entire batch.
- 7.3 In the event of a valid complaint, the Seller is only obliged to – at its own discretion – (i) repair the defect, (ii) replace the item, or (iii) partly or fully credit or repay the sum invoiced in connection with the defective item.
- 7.4 All rights and claims that the Buyer has in connection with the payment of sums of money and/or the repair of the relevant item and/or the replacement of the relevant item and/or the delivery of a shortage, on any ground whatsoever, as well as the right to dissolve the agreement, end on the earliest of the following dates: a) late notification under Article 7.1, b) after expiry of the best-before date of the goods delivered by the Seller or c) 12 months after the delivery date.

8 RE-SALE

- 8.1 The Seller shall inform the Buyer about the positioning and image advocated by the Seller with respect to the relevant goods and the trademarks related to these goods. The Buyer shall present and promote the goods in accordance with this positioning and image and refrain from any acts that may affect the trademark, positioning and image of these goods. Furthermore, the Buyer shall offer the goods in a distinct and prominent place in the shop.
- 8.2 Unless explicitly agreed otherwise in writing, the Buyer shall sell the goods delivered by the Seller on a "first in, first out" basis. The Buyer shall never sell (including but not limited to the sale to end users and the re-sale to third parties) the goods delivered by the Seller after the applicable or specified sell or use-by date.
- 8.3 The Buyer is advised to offer the goods at the recommended retail price proposed by the Seller to the Buyer. However, the Buyer shall be independently responsible for the sale prices that it applies.
- 8.4 The Buyer may re-sell goods delivered by the Seller on the condition that the Buyer imposes the obligations arising from the provisions in this article on its buyers or has these obligations imposed on subsequent buyers by way of a perpetual clause.
- 8.5 The Buyer may not offer goods delivered by or from the Seller with other goods at a combined price or use goods delivered by the Seller as a giveaway with other goods without prior written permission from the Seller.
- 8.6 The Buyer shall only sell (including but not limited to the sale to end users and the re-sale to third parties) the goods delivered by the Seller in the original packaging of the Seller, without any change or damage.
- 8.7 Without prejudice to the other rights of the Seller based on these Terms and Conditions or in law (including but not limited to the Seller's right to damages to the extent that the damage actually suffered exceeds the amount of the fine), if any provision of this Article 8 is violated, the Buyer will owe the Seller an immediately due and payable fine of €10,000 for each violation and €2,000 for each day that the violation continues.

9 LIABILITY

- 9.1 Any liability of the Seller with respect to a lack of conformity of any delivered item shall be limited to the obligations mentioned in Article 7.3.
- 9.2 The Seller does not accept any liability for damage resulting from, or in connection with, faults or omissions in advice given by the Seller or in processing instructions recommended by the Seller.
- 9.3 The Seller does not accept any liability – irrespective of the ground of the claim – for indirect or consequential damage, including but not limited to loss due to delay, loss of profit, loss of savings, loss of opportunities, loss of goodwill, or forfeited (periodic) penalties or fines.
- 9.4 The Seller shall never be liable for faults or inaccuracies in labelling affixed to packaging, as referred to in the "Bar Code Regulation" of the European Article Numbering Association.
- 9.5 Nothing in these Terms and Conditions shall exclude or limit the Seller's liability for damage arising from intentional acts or gross negligence committed by employees of the Seller in senior positions.
- 9.6 The Buyer shall indemnify the Seller against all third party claims in connection with goods delivered by the Seller.
- 9.7 Unless explicitly agreed otherwise in writing and without prejudice to the Seller's other rights under these Terms and Conditions, the only liability of the Seller in the event of a "product recall" shall consist of the handling costs of the Buyer in connection with the products covered by the product recall, which liability shall never total more than €10,000.
- 9.8 In the event of actions that have been organised jointly by the Seller and the Buyer and/or one or more third parties, the Seller shall never be liable for information supplied by the Seller or a third party (including, but not limited to the accuracy or completeness thereof).

10 SUSPENSION AND DISSOLUTION

- 10.1 Without prejudice to the Seller's rights (of termination) under these Terms and Conditions or under legislation, the Seller has the right to at any time wholly or partly suspend the (further) performance of the agreement concluded with the Buyer or to wholly or partly dissolve the agreement concluded with the Buyer, if (i) the Buyer fails to fulfil one or more of its obligations towards the Seller or any of its affiliated companies or the Seller has well-founded reasons to fear that the Buyer will fail to fulfil its obligations, (ii) the Buyer has applied for or has been granted a moratorium of payments, (iii) the bankruptcy of the Buyer has been applied for or ordered or if the Buyer has otherwise lost the power to dispose of its assets, (iv) any goods of the Buyer have been seized, (v) licences or permits necessary for the performance of the agreement have expired or have been withdrawn, and/or if (vi) the Buyer ceases its business or more than 50% of the Buyer's share capital is transferred to a natural person or legal entity which does not own at least 25% of the Buyer's share capital at the time the agreement to which these Terms and Conditions apply is concluded, or any share capital is transferred to a natural person or legal entity producing or selling products that compete with the Seller's products, or the control or supervision of the Buyer's business changes in any way. Any right of suspension of the Buyer is excluded.

11 INTELLECTUAL PROPERTY RIGHTS

- 11.1 The Buyer acknowledges and agrees that all Intellectual Property Rights on goods delivered by the Seller to the Buyer (including promotional material) and any ensuing products rest with the Seller and/or its affiliated companies, and that the Buyer shall not obtain any rights or corresponding goodwill in the Seller's Intellectual Property Rights. The Seller's "Intellectual Property Rights" include all trademarks, trade names,

logos, designs, symbols, emblems, signs, slogans, service marks, copyrights, patents, models, drawings, know how, information and any other distinct material – whether it is suitable for registration or filing, or not – and all other intellectual property rights of the Seller.

- 11.2 The Buyer shall not do or have anything done that may damage, jeopardise or affect the Seller's Intellectual Property Rights, nor shall the Buyer assist third parties to do so or have them do so. More specifically, the Buyer shall not: (a) change, remove or otherwise make alterations to Intellectual Property Rights or other ways of identifying goods delivered by the Seller; (b) use the Seller's Intellectual Property Rights in a manner that may affect its distinctness or validity; (c) use trademarks other than those of the Seller with respect to the goods delivered by the Seller without the Seller's prior written consent, or (d) use trademarks or trade names that are similar to the trademarks and trade names of the Seller, which could mislead or cause confusion.

- 11.3 The Buyer shall notify the Seller immediately and in full of any actual, expected or intended infringement of the Seller's Intellectual Property Rights that the Buyer becomes aware of.

12 CONFIDENTIALITY AND PUBLICITY

- 12.1 The Buyer shall refrain from disclosing information, in any way, to third parties about the agreement or about one or other of the parties' performance of the agreement, whether or not for publicity purposes, unless this disclosure is made with prior written permission from the Seller, which shall not be refused on unreasonable grounds.
- 12.2 The Buyer undertakes towards the Seller not to disclose to third parties any information that is brought to the knowledge of the Buyer or its employees or third parties engaged by it in connection with the company and/or business operations of the Seller, with the exception of widely known and/or generally accessible information. The obligation to observe confidentiality also extends to information contained in reports, drawings, designs and/or other documents that the Seller makes available to the Buyer in connection with the agreement. The Buyer undertakes to bind its employees and third parties engaged by it to an obligation of confidentiality that corresponds with the provisions in this Article 12. Making photocopies of said documents and documentation other than for the performance of the agreement with the Seller is not permitted, unless the Seller's prior written permission is obtained in each case.
- 12.3 The obligation of confidentiality remains after the agreement is terminated.
- 12.4 The Buyer shall return all information as referred to in Article 12 to the Seller at the end or upon termination of the agreement and in any case within 30 days after a request has been submitted to that end by the Seller.
- 12.5 Without prejudice to the other rights of the Seller based on these Terms and Conditions or in law (including but not limited to the Seller's right to damages to the extent that the damage actually suffered exceeds the amount of the fine), if any provision of this Article 12 is violated, the Buyer will owe the Seller an immediately due and payable fine of €10,000 for each violation and €2,000 for each day that the violation continues.
- 12.6 The Seller may impose certain further rules with respect to the provisions in the previous paragraphs.

13 PACKAGING MATERIALS

- 13.1 The Seller may invoice the costs of packaging separately.
- 13.2 Packaging materials and pallets that are not intended for single use will remain the property of the Seller and the Buyer shall return the materials. The Seller may set a term within which the materials must be returned.
- 13.3 Returns are carriage paid. Returns of packaging materials are at the risk of the Buyer.

14 APPLICABLE LAW AND COMPETENT COURT

- 14.1 All offers and agreements referred to in the preamble of these Terms and Conditions, as well as these Terms and Conditions themselves, are governed by Dutch law. The applicability of the Vienna Sales Convention (CISG) is excluded.
- 14.2 All disputes relating to the offers and agreements referred to in the preamble of these Terms and Conditions, and to these Terms and Conditions themselves, shall be submitted exclusively to the competent court in Amsterdam, the Netherlands.
- 14.3 The above does not affect the Seller's right to submit a dispute to the court that would be competent had this provision been absent.