

# GENERAL CONDITIONS OF SALE AND DELIVERY OF BURG GROEP

## **1. General**

In the present conditions, the expressions appearing below shall have the meanings assigned to them, namely

- customer: the party which concludes or has concluded an agreement with Burg Groep BV.

- Burg Groep: the private company Burg Groep BV, established in Heerhugowaard, all companies allied with the same and all companies operated by latter.

## **2. Applicability**

a. These conditions shall be applicable to all Burg offers and quotations and to the coming into existence and performance of all contracts concluded and to be concluded with Burg Groep, which in principle oblige Burg Groep to the making of deliveries or the provision of services, or a combination of the two.

Through the conclusion of such a contract with Burg Groep, as well as any orders for products or services placed with Burg Groep, the customer accepts these conditions as binding. The customer's (divergent) general conditions, even if pointed out earlier by the customer, shall be binding on Burg only with the latter's express, written and unconditional acceptance.

b. In the event of conflict of any stipulation of the present conditions with any legal regulation, the stipulation shall be interpreted in such a way that the conflict shall be removed, or if this shall not be possible, the stipulation shall be inapplicable, all remaining stipulations remaining in force.

## **3. Offers, orders, modifications, representation**

a. All offers by Burg Groep shall be non-binding. Burg Groep shall be entitled within five days following the acknowledgement of a non-binding offer, to withdraw the same.

b. Burg Groep shall only be bound to implement the agreement and the agreement shall only come into existence on the written confirmation of the order.

c. The order confirmation shall be binding (even) if it shall diverge from the order, unless the said divergence shall become the subject of reclamation by the customer within five working days. In that event, Burg Groep shall reconfirm the order in writing prior to executing the same.

d. Any modifications in the (implementation of) the agreement requested by the customer following the grant of the contract and the coming into existence of the agreement with Burg Groep, must be notified by the customer to Burg Groep in writing, before Burg Groep shall make a start on its performance. If in the judgement of Burg Groep, the modifications desired by the customer shall render the reliable implementation of the agreement impossible, Burg Groep shall be entitled to refuse the said modifications. In that event, the parties shall decide in consultation with one another whether the original agreement shall be implemented unmodified by Burg Groep or whether it shall be extra-judicially dissolved. In the event of the dissolution of the agreement, Burg Groep shall not be liable for any consequential prejudice sustained by the customer, irrespective of its extent or nature. If as a result of the dissolution, Burg Groep shall already have incurred costs in connection with the implementation of the original agreement, the customer shall reimburse the said costs to Burg Groep without delay.

e. If Burg Groep shall accept the modification to the original agreement in writing, the agreement shall be regarded as have been modified in that respect. The customer shall then have an obligation to pay to Burg Groep any resulting (additional) costs, regardless of the remaining payment obligations of the customer in respect of the original agreement concluded with Burg Groep.

f. If the modifications referred to in this article shall result in delaying the implementation of the agreement, the times quoted by Burg Groep shall be extended by the period of the delay, regardless of a situation of *force majeure* defined in these conditions. Burg Groep shall then no longer be liable to the customer for the delay.

g. Verbal arrangements, promises and explanations by the Burg employees shall only be binding following their written confirmation.

## **4. Delivery promises, delivery, risk and reclamations**

a. Product delivery promises shall always be approximate and shall never be deadlines. If the implementation of the agreement within the timescale quoted by Burg Groep shall not be possible, Burg Groep shall make to the customer as soon as possible a delivery promise within which the agreement shall be able to be implemented.

b. If a delivery promise quoted by Burg Groep shall have been exceeded, Burg Groep shall only be regarded as being late after the customer shall have informed Burg Groep in writing of the said late delivery and shall have set to the latter a reasonable period of time to comply with its obligations. The said reasonable period of time shall be at least equal to half the originally agreed period for the implementation of the agreement in question.

c. The delivery of products shall take place ex works, unless otherwise expressly agreed. The products shall at all times travel at the risk and expense of the customer, except in the case of free delivery.

d. In the case of free delivery, Burg Groep shall choose the means of transport for delivering the products. Delivery shall take place to the nearest warehouse or works of the customer, which the means of transport shall be able to reach safely and reliably by a route suited to the means of transport in question. The customer shall have the obligation to accept the products and to give assistance on unloading them. If the customer shall fail to do so, the costs of delay but not only these costs, shall be for the account of the customer.

e. In the case of ex works delivery of bulk products, the customer shall (have) the products transported in a sealed means of transport, subject to a satisfactory cleanliness report concerning the means of transport in question. Burg Groep shall implement an organoleptic control of the product(s) before the product(s) is/are loaded. If, for whatever reason, the customer shall not make available to Burg Groep a cleaning report concerning the means of transport in which the products are to be transported, Burg Groep shall be entitled to refuse to load the products. In that event, Burg Groep shall not be liable for any consequential prejudice sustained by the customer, regardless of its type and extent.

f. Immediately following delivery, the customer shall have an obligation to record or to have recorded and signed a report of any visible shortages or damage on the delivery note, or on the transport document and to have a protocol drawn up by the carrier. If the products shall have been delivered to

a third party holding the products on behalf of the customer, the obligation shall devolve on the said third party on behalf of the customer.

## **5. Delivery of products for onward handling**

a. Delivery of product(s) to be filled or packed for the customer shall be free of charge, unless otherwise agreed in writing. The customer shall deliver the product(s) in sealed transport, accompanied by a cleanliness report concerning the means of transport in question. Burg Groep shall implement an organoleptic control of the means of transport before the product(s) are unloaded.

b. The filled or packed products shall be delivered by Burg Groep to the customer free of charge. The customer shall check the products immediately after delivery as to whether they meet the agreement in terms of definition, quantity as well as of the agreed quality requirements. Art. 4 f shall apply.

c. If the customer shall not, for whatever reason, furnish to Burg Groep, a cleanliness report concerning the means of transport in which the product(s) are to be carried, Burg Groep shall be entitled to refuse to unload the delivered product(s), or to load products to be delivered. Burg Groep shall not be liable for any consequential prejudice sustained by the customer, regardless of its type or extent.

d. Before Burg Groep shall have unloaded products delivered by the customer or via third parties, it shall implement an organoleptic control by means of taking (a) sample(s) of the product(s). Burg Groep shall receive from the customer on the occasion of every delivery or the third party involved, (a) sample(s) of the delivered product(s). Burg Groep shall keep a reference sample of the delivered product(s) for twelve (12) months, unless otherwise agreed in writing.

e. If, in the opinion of Burg Groep, the control shows that the products delivered do not meet, in terms of either quantity or quality, the supplier's specification and/or they do not meet expectations, Burg Groep shall be entitled to refuse to unload the product(s), without being in any way liable for any resulting prejudice to the customer. Any costs incurred in connection with the said refusal shall be for the account of the customer.

f. The ownership of the product(s) to be filled or packed and thereby also all associated obligations and risks, shall at all times devolve on the customer including the time during which the product(s) shall be under the control of Burg Groep.

g. The customer shall be responsible for subscribing an insurance policy, which shall cover the value of the supplied product(s) against the risks of complete or partial loss, or damage by fire or storm or other events, which are normally insured against fire, for at least the period during which the product(s) shall be under the control of Burg Groep.

h. Burg Groep shall be entitled to recoup itself via the customer's product(s), even already filled or packed product(s), which has/have come under its control, in order to offset the value of unpaid invoices.

## **6. Complaints**

a. The customer shall have an obligation to inform Burg Groep immediately about complaints relating to the implementation of the agreement by Burg Groep. Complaints must in all cases be communicated to Burg Groep in writing within forty-eight (48) hours following delivery, when the causes of the complaints have been detected or could have been detected; if that period shall have been exceeded, any claim on Burg Groep resulting from the complaint in question shall lapse.

b. If Burg Groep shall regard the complaint as being justified, Burg Groep shall be entitled to repeat the delivery, or to settle the complaint, as elected by Burg Groep. In this connection Burg Groep shall not be liable for any prejudice sustained by the customer as a result of the complaints, unless Burg Groep shall have been guilty of malicious intent, or of gross error.

c. Complaints concerning the implementation of the agreement by Burg Groep shall not confer on the customer a right to disregard his payment obligations to Burg Groep.

## **7. Force majeure**

a. In the event of *force majeure*, which shall be understood to mean circumstances as a result of which Burg Groep shall encounter temporary or permanent obstacles to the implementation of the agreement, such as restrictive government measures, strikes, war, or disturbances within Burg Groep, or in the supply or the transport of raw materials and products, as well as any other of the unforeseen circumstances mentioned earlier, in which implementation cannot reasonably be demanded of Burg Groep, Burg Groep shall be entitled to suspend the implementation of the agreement during a reasonable period to be determined by it, or to dissolve the agreement in question fully or partly by means of forwarding written communication of justification to the customer without the said communication conferring on the latter any right to claim compensation.

b. If under the circumstances described in the preceding paragraph, Burg Groep shall nevertheless be able to implement the agreement, then this shall not affect the right of Burg Groep to make use of its ability to dissolve the agreement in the following case.

c. Burg Groep shall be entitled to suspend the implementation of the agreement during a reasonable period to be determined by it, or to dissolve the agreement in question wholly or partly, by means of sending a written justification to the customer, without the latter gaining any right claim damages if in the judgement of Burg Groep no timely payment can be expected from the customer.

## **8. Prices, tariffs, invoicing and payment**

a. Unless expressly otherwise stipulated, prices and tariffs quoted by Burg Groep shall exclude tax on turnover and any other government imposts. The prices and tariffs shall apply to the agreement referred to in the order confirmation in accordance with specifications.

b. Burg Groep shall be entitled to charge price increases to the customer, which shall be due to factors coming into existence after the quotation or offer and after the coming into existence of the agreement.

c. If an order shall be delivered in tranches, Burg Groep shall be entitled to invoice each part-delivery separately.

d. Payment of delivered products or services shall be made within fourteen (14) days following the invoice date. All due payment dates shall be regarded as absolute, unless otherwise agreed. Every settlement-related entitlement or unilateral deduction by the customer for whatever reason shall expressly be barred.

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e. Payments by the customer shall in the first instance cover owed interest and costs and only then the oldest unpaid invoices, whilst any claim by the customer to the effect that a payment covers a later invoice, shall be ignored.

f. Burg Groep shall at all times be entitled to demand the entire, or a partial advance payment, as well as to terminate any credit facilities with immediate effect.

g. The customer hereby undertakes to provide at the first request of Burg Groep (additional) security, or to increase individual securities such as are in the view of Burg Groep, required to safeguard the customer's ability to comply with his payment obligations to Burg Groep under the agreement(s) concluded with the latter.

### **9. Non-compliance and dissolution of the agreement**

a. If the customer shall not pay in time, or in full, he shall without further notice owe interest on the outstanding amount of the invoice in question of 1.5 % a month as from the due date of payment, a part of a month counting as a whole month. Likewise for the account of the customer shall be all (extra-) legal costs, which Burg Groep may incur for the implementation of the agreement, or for the collection of the sum(s) owed, without this affecting any claims for damages which it may have in respect of and/or compliance with and/or dissolution of the agreement.

b. The stipulations of the preceding paragraph shall also apply, if the customer shall be late in accepting the purchases within the agreed period.

c. If the customer shall not comply with one or more of his obligations to Burg Groep, not comply with them on time or in the required manner, Burg Groep shall be entitled, irrespective of any other of its rights, to suspend the compliance with its obligations towards the customer, until the latter shall have complied fully with his obligations towards Burg Groep.

d. Burg Groep shall have, irrespective of any other rights, the right to dissolve any agreements concluded with the customer, without being in breach and without Court intervention, by means of an extra-judicial written declaration, if

I. it is a question of ongoing *force majeure* as defined in article 5 of the present conditions;

II. the customer notwithstanding clear notification, shall continue to fail to comply on time, completely or properly with one or more of his obligations to Burg Groep laid down in the agreement;

III. the customer shall be granted a (temporary) delay of payment, an application shall have been made for the customer's bankruptcy, the customer himself shall have applied to be made bankrupt, the customer shall have offered to make a (private) settlement with his creditors or (with that objective) shall have called a meeting of creditors;

IV. the customer's company shall have been liquidated and/or the customer's company operations shall have been suspended or moved to a place outside The Netherlands;

V. the customer's assets shall have been placed in administration, parts of the customer's assets shall have been attached and the attachment shall have lasted for at least one month, or the recovery of the customer's assets shall otherwise be sought;

VI. the control situation at the customers' shall have changed in such a way as to render compliance with the customer's obligations no longer able to be guaranteed, or shall have been endangered.

### **10. Reservation of ownership**

a. Products produced and supplied by Burg Groep and not being merely filled and/or packed products, shall remain the property of Burg Groep pending the customer's having met in full all his payment obligations to Burg Groep on the basis of any agreement concluded with Burg Groep concerning the supply of products, or the provision of services, including dealing with problems linked to allegedly inadequate compliance with such an agreement.

b. As long as the customer is not yet the owner of the products, he shall not be entitled, in the absence of the written consent of Burg Groep, to sell, pledge or otherwise dispose of the products otherwise than for his normal business purposes.

c. If the customer shall nevertheless breach these prohibitions, the products shall remain the property of Burg Groep, until the customer shall have paid for them in full. Any buyer shall likewise not be entitled to dispose of the unpaid-for products.

d. In the event of the customer's not complying with his obligations to Burg Groep in the matter of the reservation of ownership, Burg Groep shall be entitled and shall be regarded by the customer as being entitled, to remove or to have removed the products supplied from the customer's premises, or from the premises of any third parties holding or otherwise controlling the said products. Burg Groep shall then be entitled to recover the said products, if the customer shall still not comply with his obligations within a reasonable period set by Burg Groep. Any associated costs shall be for the account of the customer.

### **11. Responsibility, lapse due to time expiry**

a. Burg Groep shall only be responsible for direct damage sustained by the customer to the extent stipulated in the present article.

b. Communications from, or on behalf of, Burg Groep concerning the quality, composition, use and/or properties of products and/or services and /or advice furnished by it, shall have been given to the best of the knowledge of Burg Groep, based on practical experience, but without any guarantee and excluding any liability by Burg Groep for any resulting damage, including damage sustained by third parties.

11c. Burg Groep shall likewise not be liable for any damage resulting from the mention or the use of the symbols determined by the European Article Numbering Association (E.A.N.).

d. Notwithstanding anything laid down in the present general conditions, Burg Groep shall not be liable for damage sustained, or to be sustained, by the customer (or by third parties), whatever its kind and/or extent, connected with or resulting from the implementation of the agreement, including damage to products or businesses owned by the customer or by third parties, or for any consequential or operational damage, unless it shall be attributable to the commission of a serious error by the management of Burg Groep.

e. Burg Groep shall not be liable for the (complete or partial) loss or damage of product(s) under its control held for filling or packing and belonging to the customer, unless due to malicious intent or serious error by the management of Burg Groep.

f. Burg Groep shall never be liable for damage and/or costs of whatever kind or extent, which shall in any way be linked with, or result from the actions, negligence, errors and/or the quality of work furnished by third parties, employed by Burg Groep on the implementation of the agreement, including damage and/or costs attributable to gross errors of the said third parties.

f. If, to the extent and irrespective of what is laid down in preceding paragraphs, some liability might appear to devolve on Burg Groep under any head, the said liability shall at all times be restricted, in any case of damage, to the net amount of the invoice of the (part) products or services on which the liability is based, up to the amount covered by Burg Groep's insurer. A series of cases of damage/events shall rank as a single case of damage/event.

g. Any legal claim of the customer on Burg Groep shall lapse one year after the end and/or completion of the (partial) implementation of the agreement to which the claim relates or on which it is based, except if the fact on which the legal claim is based shall not reasonably have been able to be found within the said period. In that case, the claim concerned shall lapse one year after the date on which the fact in question was or could have been reasonably able to be found.

h. The customer shall hold Burg Groep immune from any claims by third parties based on agreements (partly) not implemented and/or goods delivered by Burg Groep, unless it shall be legally established that the said claims are attributable to malicious intent or gross error by the management of Burg Groep and the customer can moreover show that no blame attaches to him.

i. If the agreement to be implemented by Burg Groep shall include the production of private label products for the customer and the filling or packing of private label product(s) for the latter, liability shall devolve, on the basis of articles 6:185 *et seq* of the Civil Code (product liability) solely and wholly on the customer. The customer shall hold Burg Groep immune from claims of any kind and extent of third parties based on the aforementioned regulations concerning product liability. Any compensation, to the payment of which Burg Groep might nevertheless be held in connection with product liability legislation, or which Burg Groep might be ordered to pay by a Court ruling, shall immediately be reimbursed by the customer to Burg Groep, including all process and other costs. Any compensation paid by the customer shall not be able to be recovered by the latter from Burg Groep.

j. The customer shall be liable at any moment during the currency of the agreement from the correct implementation of the legal requirements/rules concerning the wording of labels, which Burg Groep shall apply/affix to the packing of private label products produced and/or filled by it. The customer shall hold Burg Groep immune from the payment of any fines and/or demands to pay the same. The customer shall deal with any case of Burg Groep being summoned by a qualified (European and/or national) authority.

### **12. Applicable law, selection of jurisdiction**

a. The law of The Netherlands shall solely govern all agreements between the customer and Burg Groep.

b. Any disputes, which may arise in connection with the (implementation of the) agreement between Burg Groep and the customer, including any arrangements arising from or connected with the present agreements shall in the first instance be laid before the qualified judges in Alkmaar, unless otherwise laid down by legal stipulations.

### **13. Conditions in other languages**

a. The Dutch text of the present conditions shall at all times be binding and of decisive effect, if these conditions should have been drawn up in a language other than Dutch and if there should be contradiction and/or lack of clarity in the said conditions.