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## GENERAL SALES CONDITIONS 220826

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## **1 DEFINITIONS AND INTERPRETATION**

- 1.1 The definitions and guidelines for interpretation are set out and specified in Annex 1.

## **2 GENERAL**

- 2.1 Unless expressly stipulated otherwise in an agreement and agreed upon in writing by Unifood, these General Sales Conditions shall apply to (i) the Agreement; (ii) Orders; (iii) Sales Confirmations; (iv) Purchase Orders; (v) Quotes; (vi) the provision or supply or sale of products or goods by Unifood; and (vii) any other agreements and/or legal relationships between Buyer and Unifood resulting from or in connection with the foregoing.
- 2.2 Unless expressly stipulated otherwise in an agreement and agreed upon in writing by Unifood, general conditions used or applied by Buyer shall not be applicable to (i) the Agreement; (ii) Orders; (iii) Sales Confirmations; (iv) Purchase Orders; (v) Quotes; (vi) the provision or supply or sale of products or goods by Unifood; or (vii) any other agreements and/or legal relationships between Buyer and Unifood resulting from or in connection with the foregoing.
- 2.3 If Unifood has accepted the applicability of Buyer's general conditions, as referred to in Clause 2.2, such general conditions shall become a Schedule to the Agreement and shall be last or lowest in the prevailing order of documents specified in Clause 3.2.

## **3 STRUCTURE AND ORDER OF PRECEDENCE**

- 3.1 In general, an Order is documented:
- 3.1.1 on the part of Unifood, by: a Quote; and upon receipt of a Purchase Order: one or more Sales Confirmations, (pro forma) invoices, certificates of origin, packing lists, quality certificates, (veterinarian) health certificates for the market of destination, certificates of conformity, technical sheets, freezing certificates, HDI certificates, depending on the destination a non-wood declaration and - depending on the method of transportation - bills of lading or CMR; and
- 3.1.2 on the part of Buyer, by: a Purchase Order, followed by one or more loading instructions to Unifood.
- 3.2 In general, the Agreement will consist of the following documents, whereby the document first listed shall prevail over the document listed later:
- 3.2.1 The Unifood Documentation;
- 3.2.2 The General Sales Conditions;
- 3.2.3 The Buyer Documentation.

## **4 QUOTES / ORDERING**

- 4.1 If Buyer wishes to purchase or acquire Products from Unifood, Buyer shall either (i) place a Purchase Order with Unifood to that effect; or (ii) request Unifood to provide a Quote. Purchase Orders and requests for Quotes may be submitted to Unifood in writing, via (regular) mail, fax, e-mail, (Skype)chat or text message.
- 4.2 All Quotes are free of commitment and subject to contract, even when a period for acceptance is mentioned in the Quote. In case no period for acceptance is mentioned in a Quote, it will cease to apply one (1) hour from the moment it was sent by Unifood.

- 4.3 Unifood shall review a Purchase Order within a reasonable time after receipt thereof. If Unifood is willing and able to provide the requested Products to Buyer, Unifood shall confirm such to Buyer in writing, by email or by facsimile or via (Skype)chat, by sending a signed Sales Confirmation to Buyer. Sales Confirmations may be submitted to Buyer via (regular) mail, fax, e-mail, (Skype)chat or text message. Unifood will only provide Products to Buyer on the basis of a Sales Confirmation.
- 4.4 Unless Unifood has made any material alterations to a Purchase Order, in the acceptance of such Purchase Order and drawing up the Sales Confirmation, Buyer shall be bound by Unifood's acceptance of the Purchase Order as confirmed and specified in the Sales Confirmation. The Sales Confirmation does not need to be signed by Buyer in order to be valid.
- 4.5 In the event that Unifood has made any material alterations to a Purchase Order, in the acceptance of such Purchase Order and drawing up the Sales Confirmation, the Sales Confirmation shall be subject to Buyer's approval and acceptance. If Buyer approves of the Sales Confirmation, (an authorized representative of) Buyer shall sign the Sales Confirmation for acceptance and provide a copy thereof to Unifood.
- 4.6 In the event that Buyer makes any alterations to the Sales Confirmation that was sent to Buyer by Unifood, other than completing the required fields in the signature area and signing the Sales Confirmation for acceptance, such alterations shall: (i) be considered a rejection of the Sales Confirmation; and (ii) constitute a new Purchase Order, which may be accepted or rejected by Unifood at Unifood's sole discretion.
- 4.7 Clause 24.2 shall also apply to determine the moment of receipt of a Purchase Order of a Sales Confirmation.

## **5 QUALITY AND TESTING**

- 5.1 Unifood will continuously monitor the quality level of its Products in order to make sure that the Products meet the agreed specifications. For quality control purposes Unifood may opt to, but shall not be required to, deploy a Data Logger to monitor and record the temperature (and possibly also the humidity) within a container used for transport of the Products. Unless expressly agreed otherwise in writing by Unifood, title of ownership to such Data Logger will remain with Unifood. Buyer undertakes to return the Data Logger to Unifood at Unifood's first request.
- 5.2 Upon delivery of the Products by or on behalf of Unifood to Buyer, Buyer shall verify if the Products meet the agreed specifications and other relevant obligations of Unifood.
- 5.3 Without prejudice to Clause 5.2, upon delivery Buyer will - at least - perform the following:
- 5.3.1 Quality test: Buyer shall take samples of the Products to verify the quality of the Products; and
- 5.3.2 Quantity test: Buyer shall verify if the agreed quantity of Products has been delivered.

The tests will be performed by investigating a minimum of five percent (5%) up to a maximum of ten percent (10%) of the shipment involved.

## **6 DELIVERY DATES / DELIVERY PERIODS / SHIPMENT PERIODS**

- 6.1 All Delivery Dates and Delivery Periods and Shipment Periods will be determined by Unifood based on information known to Unifood when it issues the Sales Confirmation. All such dates and periods will be deemed estimated dates and estimated periods.
- 6.2 Unifood shall not be bound by firm or non-firm Delivery Dates or Delivery Periods or Shipment Dates:
- 6.2.1 which can no longer be met on account of circumstances beyond its control which have occurred after the Order was concluded; or

6.2.2 in case the Parties have agreed to modify the substance or scope of the Order.

6.3 Unifood shall properly exert its commercially reasonable efforts to observe agreed Delivery Dates and Delivery Periods or Shipment Periods as much as possible. In case of a threatening delay to the Delivery Date or Delivery Period, Unifood shall notify Buyer thereof in writing without undue delay and Unifood and Buyer shall consult with each other as soon as possible. The mere fact that a stated or agreed Delivery Date or Delivery Period or Shipment Period has been exceeded, shall not cause Unifood to be in default. Buyer shall not be entitled to reject delivery of the Products on the basis that there has been - or will be - a delay in delivery of the Products.

6.4 In the event Unifood has failed to meet or observe a Delivery Date or Delivery Period or Shipment Period, Buyer shall promptly notify Unifood thereof in writing in accordance with Clause 24 and grant Unifood a reasonable period to make the delivery.

## **7 DELIVERY**

7.1 Products shall be delivered in accordance with the Sales Confirmation.

7.2 Without prejudice to the generality of Clause 7.1, unless expressly agreed otherwise by Unifood in the Sales Confirmation, Products shall be delivered on the basis of the Incoterm 'Cost Insurance and Freight - (named port of destination)' at a port of export or port of origin specified by Unifood in the Sales Confirmation. If the place of delivery has not been specified in the Sales Confirmation, Unifood shall be entitled to designate the place of delivery in documentation provided subsequently by Unifood to Buyer.

7.3 If Buyer fails to timely accept delivery of Products or in any way hinders a timely delivery, Buyer shall bear all losses and costs arising from such hindrance or failure to timely accept delivery.

## **8 DELIVERY IN INSTALMENTS**

8.1 Except when expressly agreed otherwise in writing by the Parties, Unifood shall be entitled to execute an Order in instalments.

8.2 In the event Unifood is not able to deliver the agreed quantities in full, then:

8.2.1 Buyer shall be obligated to pay the rate specified in the Sales Confirmation for the quantity of Products delivered; and

8.2.2 Unifood shall – in consultation with Buyer – replace any shortfall in the agreed Products with similar Products, subject to Unifood and Buyer reaching agreement on the purchase price for the replacement Products.

## **9 ACCEPTANCE / REJECTION**

9.1 Buyer shall be entitled to refuse or reject Products or a shipment of Products, subject to the conditions set forth in this Clause 9. In absence of (receipt) of a written notice of non-conformity in accordance with Clause 9.2, the shipment and/or Products shall be deemed in conformity with the Order and shall be deemed accepted by Buyer without any reservation.

9.2 Should Buyer wish to reject (part of) the Products, Buyer shall inform Unifood thereof in writing in accordance with Clause 24, such in reasonable detail and substantiated with photographs, without undue delay and at any rate (i) within three (3) Business Days from the date of the Delivery, with respect to deep-frozen Products; and (ii) within one (1) Business Day from the date of Delivery, with respect to chilled or fresh Products.

- 9.3 Buyer shall allow Unifood to test the Products, and shall enable Unifood to have the Products tested by an independent surveyor. To ensure a fair and proper testing procedure, Buyer shall meet the following requirements:
- 9.3.1 Buyer shall ensure the Products will be stored in a sealed and climate-controlled environment for testing by Unifood or by an independent surveyor of Unifood's choice; and
  - 9.3.2 If Unifood shipped the Products with a Data Logger (as referenced in Clause 5.1), Buyer will not in any way attempt to manipulate or tamper with such Data Logger or the data stored thereon. Notwithstanding the foregoing, Buyer shall upon Unifood's request provide Unifood with a copy or read-out of the data stored on or recorded by the Data Logger. Buyer shall ensure the Data Logger and the data stored thereon are available for inspection by Unifood, and by an independent surveyor of Unifood's choice.
- 9.4 The costs associated with the testing procedure by the independent surveyor shall be borne by:
- 9.4.1 Unifood: if the independent surveyor determines that the relevant Products do not meet the agreed quality specifications; or
  - 9.4.2 Buyer: if the independent surveyor determines that the relevant Products do meet the agreed quality specifications.
- 9.5 If the independent surveyor has determined that the Products do not conform to the Order or the Agreement, Unifood shall – at its option – :
- 9.5.1 refund the price paid by Buyer for the rejected Products; or
  - 9.5.2 replace the rejected Products.

## **10 PRICES**

- 10.1 All purchase prices and charges for Products shall be agreed upon in writing and specified in an Order.
- 10.2 Unless expressly agreed otherwise in writing in an Order, the purchase price shall be determined by metric ton net weight.
- 10.3 Unless agreed otherwise in writing in an Order, all prices and charges shall be quoted in United States Dollars (US\$) and exclusive of VAT.
- 10.4 Unless agreed otherwise in writing in an Order, all prices and charges shall be fixed and exclusive of any taxes VAT, duties and other levies and costs incurred in executing an Order.

## **11 INVOICING AND PAYMENT**

- 11.1 If the Order is executed in instalments, Unifood shall be entitled to invoice the purchase price in instalments that are equal to the instalments for the delivery of the Products.
- 11.2 Unifood may require Buyer to make a down payment or prepayment to Unifood prior to commencing or during the performance of an Order, such in accordance with Clause 19.
- 11.3 Unifood shall submit its invoices to Buyer via regular mail and/or via e-mail.
- 11.4 Unless specified otherwise in the Sales Confirmation, Unifood's invoices are payable within five (5) Business Days of receipt of the invoice by Buyer.

- 11.5 In case Buyer has a complaint with respect to (part of) an invoice, Buyer will communicate such complaint in writing to Unifood, in accordance with Clause 24, within the payment term of the invoice. In the absence of (timely receipt of) such written complaint, the invoice shall be deemed accepted and approved by Buyer.
- 11.6 If Buyer has disputed an invoice in accordance with Clause 11.5, the Parties shall use commercially reasonable efforts to resolve the invoice dispute amicably within one (1) Business Day of Unifood's receipt of the complaint. In the event the Parties fail to resolve the invoice dispute amicably within the aforementioned time frame, each Party shall be entitled to submit the dispute to the competent jurisdiction in accordance with Clause 31.
- 11.7 Buyer shall not be entitled to any set-off or deduction of payment of an invoice. Buyer shall only be entitled to suspend its payment obligations with regards to the part of an invoice that has been disputed in good faith in accordance with Clause 11.5.
- 11.8 If Buyer does not pay an invoice within the payment term, in the event that such invoice has not been disputed in accordance with Clause 11.5, or if Buyer does not pay the undisputed part of an invoice within the payment term, Buyer shall be in default without a warning or notice being required and Unifood will then, without an additional warning or notice of default being required, be entitled to charge Buyer interest on such sum on a daily basis from the due date until the date of payment on the basis of the Dutch statutory commercial interest rate or – if higher – six percent (6%) per annum.
- 11.9 In addition to Clause 11.8, Buyer shall in case of default of payment also be obliged to reimburse all extrajudicial and judicial collection costs to Unifood. The extrajudicial collection costs are deemed to amount to at least fifteen percent (15%) of the amount owed by Buyer, with a minimum of five hundred United States Dollars (US\$500.-), without prejudice to the right of Unifood to claim the actual collection costs.
- 11.10 Unifood shall be entitled to compensate or set-off any of its claims for payment against Buyer with claims from Buyer against Unifood, even when such claims are not related.

## **12 TRANSFER OF RISK / RETENTION OF TITLE**

- 12.1 With effect from delivery to Buyer of the Products, such Products shall be for the risk of Buyer. However, title of ownership to the Products will only pass to Buyer on the receipt by Unifood of payment - in full - of the purchase price for such Products, as specified in the Sales Confirmation, and of any other claims related to the Order(s), such as interest and legal fees.
- 12.2 Until Unifood has received payment in full for the Products, as well as payment of any other claims referred to in Clause 12.1, Buyer shall:
- 12.2.1 only be entitled to use or resell the Products to the extent required in Buyer's ordinary course of business;
  - 12.2.2 in the event that Buyer processes the Products and creates new Products or goods, hold such new Products and goods for the benefit of Unifood;
  - 12.2.3 at Unifood's first request, grant Unifood an undisclosed right of pledge on the Products, as well as on any newly created Products or goods, with respect to all of the Unifood's existing and future claims against Buyer;
  - 12.2.4 not be entitled to grant a right of pledge, whether possessory or undisclosed, on the Products to a third party or to otherwise encumber the Products with any security rights for the benefit of others;
  - 12.2.5 adequately insure the Products;
  - 12.2.6 to the extent possible, keep the Products received from Unifood separate from other Products; and

- 12.2.7 immediately notify Unifood of any third party claims which may affect the Products or Unifood's rights with respect to the Products;
- 12.2.8 immediately notify any third party seeking to seize or attach the Products that such Products are owned by Unifood;
- 12.2.9 to the extent possible, deny any third party seeking to seize or attach the Products all access to the Products and promptly take action to protect Unifood's rights;
- 12.2.10 allow Unifood access to the Products, and allow Unifood to repossess the Products, at any time, upon Unifood's first request to that effect.

### **13 CONFIDENTIALITY**

- 13.1 During the Order, and during a period of two (2) years after termination or completion of the Order, a Receiving Party shall:
  - 13.1.1 keep all Confidential Information confidential, using the same safeguards as it uses to protect its own commercially confidential information of a similar character, and at least using reasonable care;
  - 13.1.2 not disclose any Confidential Information to any other person other than with the prior written consent of the Disclosing Party or in accordance with Clauses 13.3, 13.4 and 13.5.
- 13.2 A Receiving Party shall solely use the Confidential Information (i) in connection with – and for the purpose of – the fulfilment of its obligations under the Agreement; or (ii) in dispute resolution proceedings, to the competent mediator, court or arbitral tribunal, to the extent necessary for the enforcement of its rights under the Agreement or its defence in such proceedings.
- 13.3 The Receiving Party may disclose Confidential Information to:
  - 13.3.1 its employees and its advisors to the extent that it is necessary for the purposes of the Agreement; and
  - 13.3.2 to its (ultimate) shareholders to the extent necessary in connection with compliance with internal group information policies.
- 13.4 The Receiving Party shall procure that each Recipient is made aware of, and complies with, all the Receiving Party's obligations of confidentiality under the Agreement as if the Recipient was a party to the Agreement.
- 13.5 The obligations contained in Clauses 13.1 up to and including 13.4 shall not apply to any Confidential Information which:
  - 13.5.1 at the date of the Agreement is, or at any time after the date of the Agreement becomes, public knowledge other than through breach of the Agreement by the Receiving Party or any Recipient;
  - 13.5.2 can be shown by the Receiving Party to have been known to the Receiving Party prior to it being disclosed by the Disclosing Party to the Receiving Party;
  - 13.5.3 subsequently comes lawfully into the possession of the Receiving Party from a third party;
  - 13.5.4 is required to be disclosed or used by Law or a stock exchange.

### **14 PENALTY**

- 14.1 For each Breach of the provisions of Clause 13 (Confidentiality), the Receiving Party will forfeit immediately, without prior notice or any judicial intervention being required, a penalty of ten thousand United States Dollars (US\$ 10,000.=) to the Disclosing Party.

14.2 Payment of the penalty referred to above shall be without prejudice to:

14.2.1 the Breaching Party's (continued) obligations under the Agreement;

14.2.2 any other rights and remedies to which the non-Breaching Party may be entitled under the Agreement or applicable Law; and

14.2.3 the non-Breaching Party's right to claim the actual damages it has suffered through such Breach and/or any injunctive relief through summary proceedings to which it may be entitled.

## **15 WARRANTIES**

15.1 Each Party warrants, represents and undertakes that it:

15.1.1 has obtained and that it will - at least for the duration of the Agreement - maintain all of the necessary licenses, permits, and authorizations to conduct its business and to perform its obligations under the Agreement;

15.1.2 shall comply with all relevant Laws when conducting its business and performing its obligations under the Agreement.

15.2 Unifood warrants that all Products are in accordance with the specifications that are mentioned in the Order, in particular in the Sales Confirmation.

15.3 The abovementioned warranties are exclusive and in lieu of all other warranties, whether express or implied.

## **16 INDEMNITY**

16.1 Each Party shall indemnify the other from any claims by third parties and expenses (including reasonable legal fees) with respect to damage to property, personal injury or death caused by such Party's gross negligence or willful (mis)conduct or willful recklessness.

16.2 In case of any Breach by Buyer, or as a result of any actual or alleged act or omission on the part of Buyer related to its performance hereunder, including any error, mistake or negligence on the part of Buyer in reselling any of the Products, Buyer shall indemnify and hold harmless Unifood against all actions, losses, costs, damages, awards, expenses, fees (including legal fees incurred by or awarded against Unifood), proceedings, claims or demands in any way connected with the Agreement.

16.3 In the event that a Party becomes aware of a claim for which it may seek to be indemnified (the "**Indemnified Party**"), the Indemnified Party shall immediately notify the other Party (the "**Indemnifying Party**"). The Indemnifying Party may, at its option, settle or compromise such claim or retain counsel and control and prosecute the defence. In no event shall the Indemnified Party have the right to pay, settle, or otherwise compromise such claim without the prior written consent of the Indemnifying Party, which shall not be unreasonably withheld. Each Party shall provide the other Party with reasonable aid and cooperation in the conduct of the defence against and/or settlement of such claim as regards any liability to a third party.

## **17 LIMITATION OF LIABILITY**

17.1 This Clause 17 is without prejudice to the indemnity obligations set forth in Clause 16.

17.2 Unifood shall not be liable to Buyer under or in connection with the Agreement - in respect of any Breach or otherwise - for loss of profits, contracts or goodwill or any other type of special, indirect, consequential or purely economic loss; and such liability is excluded whether it is foreseeable, known, foreseen or otherwise.

17.3 In addition to Clause 17.2, Unifood shall not be liable for:

- 17.3.1 any harm or personal injury to Buyer or Buyer's employees, clients, business relations, representatives or agents, except when such harm or personal injury is the direct result of gross negligence or wilful misconduct on the part of Unifood;
  - 17.3.2 faulty or delayed or incomplete delivery of the Products;
  - 17.3.3 damage that is the direct or indirect result of any actions of Buyer contrary to (one of) its obligations under the Agreement;
  - 17.3.4 damage that is the direct or indirect result of an inaccuracy of the information provided by or on behalf of Buyer;
  - 17.3.5 damage that is the direct or indirect result of Buyer's use of information or documentation provided by Unifood;
  - 17.3.6 damage in case Unifood has not been declared liable for such damage in writing within fourteen (14) days after Buyer has come to know of the damaging event, or should reasonably have known of it; or
  - 17.3.7 any damage in case and insofar such damage is covered by any insurance effected by or for the benefit of Buyer.
- 17.4 Should Unifood be liable in spite of the provisions set out above in this Clause 17, this liability is limited to:
- 17.4.1 direct damage of Buyer; and
  - 17.4.2 the amount that is in the relevant case paid out by the liability insurance of Unifood, which shall in – in any calendar year – not exceed the sum of the purchase prices paid by Buyer to Unifood for the Products in the twelve (12) month period prior to the event or events giving rise to such liability, and in any case not exceed an amount of five hundred thousand United States Dollars (US\$ 500,000.=).
- 17.5 Buyer's claims for compensation in respect of a Breach by Unifood of Clause 15.2 shall end, in respect of claims involving or relating to:
- 17.5.1 deep-frozen Products, within one (1) month of the date of delivery;
  - 17.5.2 chilled or fresh Products, within five (5) days of the date of delivery; unless (i) notice of the claim has been given to Unifood; or (ii) Unifood and Buyer have come to a written arrangement with respect to such claim; or (iii) Buyer has commenced legal action in accordance with Clause 31.
- 17.6 Subject to Clause 17.5, all Buyer's claims for compensation end in any case twelve (12) months after the damaging event has taken place, unless (i) Unifood and Buyer have come to a written arrangement with respect to such claim; or (ii) Buyer has commenced legal action in accordance with Clause 31.
- 17.7 Nothing in the Agreement shall operate to exclude or limit a Party's liability for damage or loss resulting from or caused by an act or omission of said Party or of its senior management, if and to the extent that such act or omission qualifies as (i) willful misrepresentation or fraud; or (ii) willful misconduct; or (iii) malicious intent; or (iv) gross negligence; or (v) willful recklessness.

## **18 INSURANCE**

18.1 Unifood recommends that Buyer, and it shall be Buyer's responsibility to, obtain and- at least for the duration of the Agreement - maintain insurance with a reputable insurance company, which insurance should (at minimum) preferably cover:

18.1.1 third party liability;

18.1.2 Buyer's liability towards Unifood; and

18.1.3 Buyer's liability as an employer towards its employees.

## **19 DOWN PAYMENTS AND SECURITIES**

19.1 Unifood is, at its sole discretion, entitled to require down payments, prepayments or securities of Buyer prior to delivery of Products to Buyer.

## **20 SUSPENSION**

20.1 Buyer's right to suspend the performance of its obligations under the Agreement shall be limited to the occurrence of any of the events set out in Clause 21.1 and shall further be limited by Clause 20.3. Buyer shall not be entitled to suspend its obligations under Clauses 12 and 13. Buyer is only entitled to suspend its payment obligations in accordance with Clause 11.7.

20.2 Without prejudice to any of its other rights and obligations, Unifood shall be entitled to suspend the performance of its obligations under the Agreement, with immediate effect, by giving written notice to Buyer in accordance with Clause 24, without an obligation to take into account a notice period,:

20.2.1 if Unifood receives an order or ruling or decision to that effect from a court, any law enforcement authority or any (other) governmental authority;

20.2.2 if Buyer has failed to comply with its payment obligations under the Agreement and has failed to remedy such Breach within of seven (7) days of receipt of Unifood's notice thereon;

20.2.3 if Buyer has failed to maintain the licenses, permits, and authorizations referred to in Clause 15.1.1 and has failed to remedy such Breach within of seven (7) days of receipt of Unifood's notice thereon;

20.2.4 upon the occurrence of any of the events set forth in Clause 21.

20.3 Neither Party may suspend its performance of terms or conditions the survival of which is necessary for the interpretation or enforcement of the Agreement.

## **21 TERMINATION**

21.1 Without prejudice to any of its other rights and obligations, each Party may at its option terminate the Agreement with immediate effect, by giving written notice to the other Party in accordance with Clause 24, without an obligation to take into account a notice period if any of the following events occurs:

21.1.1 the other Party has ceased to exist or has been dissolved;

21.1.2 the other Party has been declared bankrupt, has been granted suspension of payments or has entered into voluntary liquidation;

21.1.3 the other Party's business has been discontinued;

21.1.4 the other Party is unable to perform its obligations due to an event of Force Majeure, provided that the event of Force Majeure has lasted more than thirty (30) days and the Parties are unable to reach a temporary solution for the Force Majeure period in spite of having negotiated in good faith with respect to such temporary solution;

21.1.5 the other Party is in Breach of any of its material obligations under the Agreement and – to the extent such material Breach can be remedied - fails to remedy such material Breach within a period of thirty (30) days after having received a written notice of default with respect to the Breach.

21.2 In addition to Clause 21.1, Unifood shall – at its option and without prejudice to any of its other rights and obligations – be entitled to terminate the Agreement with immediate effect, by giving written notice to Buyer, without an obligation to take into account a notice period, in the event of a change of Control of Buyer.

## **22 CONSEQUENCES OF TERMINATION OR EXPIRATION**

22.1 Termination or expiration of the Agreement shall be without prejudice to any rights or remedies available to - or obligations or liabilities accrued to - the Parties as at the date of termination or expiration.

22.2 The Clauses the survival of which is necessary for the interpretation or enforcement of the Agreement shall survive expiration or termination of the Agreement, and shall continue in full force and effect.

## **23 FORCE MAJEURE**

23.1 A Party shall not be deemed in Breach if, and to the extent that, the performance of such obligation is prevented or delayed by an event of Force Majeure.

23.2 The non-performing Party that intends to claim relief under this Clause, shall: (i) notify the other Party of the occurrence of the Force Majeure event, as soon as reasonably possible, and no later than five (5) Business Days after the first occurrence of such event; (ii) provide the other Party with information on the Force Majeure event (in reasonable detail); and (iii) use commercially reasonable efforts to avoid or minimize the effects of the Force Majeure event on the performance of its obligations under the Agreement.

## **24 NOTICES**

24.1 Unless specified otherwise herein, any notice or other communication under or in connection with the Agreement shall be in writing and shall be delivered personally or sent by registered mail or by pre-paid recorded courier delivery or by fax, to the Party due to receive the notice at its address or fax number set out in the Purchase Order or such other address as any Party may specify by notice in writing to the other.

24.2 In the absence of evidence of earlier receipt, any such notice, demand or other communication shall be deemed to have been received:

24.2.1 if delivered by hand, at the time of delivery;

24.2.2 if posted, on the expiration of three (3) Business Days after the notice has been provided to the courier company;

24.2.3 if sent by e-mail, the moment the e-mail has been received on or by a mail server or mail exchanger used or operated by the receiving Party.

24.2.4 if sent by facsimile, on the date confirmation of successful transmission is received.

## **25 SEVERABILITY**

25.1 Should any or several of the provisions of the Agreement be invalid or null or void, this shall not affect the remaining provisions thereof. In such event, the relevant provision shall be replaced by a valid provision that reflects – to the extent possible – the purpose and the intended effect of the original provision.

## **26 INDEPENDENT CONTRACTORS**

26.1 Buyer shall act as an independent contractor towards Unifood and Unifood's Affiliates. Nothing in the Agreement shall be construed to constitute Buyer as a partner of or a partner in Unifood or any of Unifood's Affiliates, nor shall it be construed to constitute a Party to be an agent of the other Party.

## **27 NO THIRD PARTY BENEFICIARIES**

27.1 Nothing in the Agreement shall confer upon any third party any right, benefit or remedy of any nature under the Agreement.

## **28 WAIVER**

28.1 No waiver of any of the terms of the Agreement or of any Breach of those terms shall be effective unless such waiver is in writing and signed by the waiving Party. No waiver of any Breach shall be deemed to be a waiver of any other or subsequent Breach.

## **29 TRANSFER OF RIGHTS / OBLIGATIONS**

29.1 Buyer cannot and will not assign or transfer, or purport to assign or transfer, any rights or obligations under the Agreement to an Affiliate or another third party without the prior written consent of Unifood.

29.2 Unifood is entitled to assign or transfer any rights or obligations under the Agreement to an Affiliate or another third party upon written notice to Buyer, without needing or requiring the written consent of Buyer.

## **30 GOVERNING LAW**

30.1 The General Sales Conditions, the Agreement, any Order, any Quote and any and all matters arising there from or connected therewith shall be subject to - and construed in accordance with - the Laws of the Netherlands, including provisions of the UN Convention on Contracts for the International Sale of Goods.

## **31 JURISDICTION / DISPUTE RESOLUTION**

31.1 Subject to Clause 31.2, the competent courts of Unifood's principal place of business, shall have exclusive jurisdiction to hear and determine any suit, action or proceedings, and to settle any disputes, which may arise out of or in connection with the Agreement or other agreements or other legal relationships resulting there from or in connection therewith.

31.2 In the event that Buyer's principal place of business (as specified in the Sales Confirmation) is located in a country that is not a party to the "Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters" or any other treaty with the country of Unifood's principal place of business on the enforcement of judgments in civil or commercial matters, but is a party to the "Convention on the Recognition and the Enforcement of Foreign Arbitral Awards" (also known as the 'New York Convention') or any other treaty with the country of Unifood's principal place of business on the enforcement of foreign arbitral awards, then all disputes arising out of or in connection with the Agreement or other agreements or other legal relationships resulting there from or in connection therewith shall be fully and finally settled in accordance with rules of arbitration of the International Chamber of Commerce. The following will apply:

31.2.1 The arbitral tribunal will decide on the basis of the rules of Law.

31.2.2 The arbitral tribunal shall consist of one (1) arbitrator. In deviation of the foregoing, in the event that the dispute involves a claim of more than one hundred thousand United States Dollars (US\$ 100,000.=) the arbitral tribunal shall consist of three (3) arbitrators, whereby the president or chairman of the arbitral tribunal shall have a degree as master of the Law that governs the Agreement.

31.2.3 The place of arbitration shall be Amsterdam, the Netherlands. The arbitral tribunal may hold hearings, deliberate and hear witnesses and experts at any venue or location it deems appropriate within the aforementioned place of arbitration.

31.2.4 The arbitral procedure shall be conducted in the English language

31.3 Clause 31.2 shall be without prejudice to a Party's right to seek interim relief in summary proceedings, to be brought before or to apply for protective measures to the competent courts of Amsterdam, the Netherlands.

## **32 MISCELLANEOUS**

32.1 The General Sales Conditions have been drawn up in the English language. If the General Sales Conditions are translated into another language for whatever purpose, and if said translation of the General Sales Conditions is referenced or declared applicable by the Parties, the English language version shall have precedence and will prevail in case of discrepancies between the English language version and the translated version.

32.2 The Agreement cannot be modified in whole or in part, except in writing and signed by both Parties. Any amendments or changes to the obligations of either Party or any other material aspect of an Order shall require a written amendment signed by both Parties that describes the changes and any related costs and/or schedule adjustments.

32.3 In the event of a conflict or dispute between the General Sales Conditions and an Order, the terms of that Order shall – in respect of such Order (and not for any other Order) – have precedence and prevail.

### **ANNEX 1 – DEFINITIONS AND GUIDELINES FOR INTERPRETATION**

In the Agreement the following words and expressions have the following meanings:

<b>Affiliate:</b>	means with respect to a Party a legal entity, which is directly or indirectly: a) a Subsidiary of that Party; b) the Parent of that Party; c) a partner in that Party; d) a Subsidiary of a Parent which is also the Parent of that Party; or e) a Subsidiary of a partner which is also a partner in that Party;
<b>Agreement:</b>	means the Order, together with these General Sales Conditions;
<b>Breach:</b>	means any inaccuracy in any representation and warranty, and any attributable failure to comply with or perform any obligation under the Agreement;
<b>Buyer Documentation:</b>	means the documents referred to in Clause 3.1.2;
<b>Buyer:</b>	means the business or company or organization that has agreed to buy and/or procure and/or receive and/or accept Products from Unifood, as well as any business or company or organization that has requested a Quote from Unifood and/or submitted a Purchase Order to Unifood, and furthermore any of such party's permitted assignees;

<b>Confidential Information:</b>	means (i) all information not publicly known, used in or otherwise relating to the Agreement; (ii) all information not publicly known, used in or otherwise relating to the business or affairs of a Party, disclosed (whether in writing, verbally or by any other means and whether directly or indirectly) by the Disclosing Party to the Receiving Party whether before or after the date of the Agreement;
<b>Control:</b>	means the ability, whether directly or indirectly, alone or together with group entities, whether through the exercise or non-exercise of any voting power whether in general meeting or in any meeting of managing directors or supervisory directors (if any) or managers or whether by agreement or otherwise, to direct the business affairs of a company or other undertaking or to cause the direction of the management, policies and decisions of a company or other undertaking;
<b>Data Logger:</b>	means a portable (electronic) measurement instrument or device that is capable of monitoring and recording temperature, and -depending on the device- potentially also humidity;
<b>Delivery Date:</b>	means the agreed estimated date of delivery of Products to Buyer, as specified in the Sales Confirmation;
<b>Delivery Period:</b>	means the agreed estimated period for delivery of Products to Buyer, whereby such period commences and ends on the dates specified in the Sales Confirmation;
<b>Disclosing Party:</b>	means the Party that discloses Confidential Information to the Receiving Party, as referred to in Clause 13;
<b>Force Majeure:</b>	means any event outside the reasonable control of a Party affecting its ability to perform any of its obligations under the Agreement, such as: acts of God; acts of terrorists; acts of war; outbreak of hostilities; sabotage; civil disorder; riots; acts or demands of any (local) government or government agency; restrictions related to an outbreak of disease (such as bird flu or the Mexican flu); epidemics. For the avoidance of doubt: Force Majeure shall not include any labour problems or strikes relating to the workforce of Buyer or Buyer's Affiliates or Buyer's Partners Networks or Buyer's subcontractors or any incapacity of Buyer to timely pay Unifood;
<b>Incoterms:</b>	the series of international commercial terms or international sales terms, published from time to time by the International Chamber of Commerce;
<b>Know How:</b>	means all information not publicly known, owned or used - or required to be used - by a Party or its Affiliate(s), held in any form (including, without limitation, that comprised in or derived from drawings, data, formulae, specifications, component lists, instructions, manuals, brochures, catalogues and process descriptions) and relating to its business;
<b>Law:</b>	means all applicable law, statute, subordinate legislation, treaty, regulation, directive, decision, by-law, ordinance, circular, rules, regulations, guidelines, code, order, notice, demand, decree, injunction, resolution, permit, judgement or recommendation of any government, quasi-government, statutory, administrative or regulatory body, court, agency or association;
<b>Order:</b>	means the agreement that comes into existence upon the acceptance (i) by Unifood of a Purchase Order, as specified in Clause 4.3 and Clause 4.4; or (ii) by Buyer of a Sales Confirmation, as specified in Clause 4.5;

<b>Parent:</b>	used in relation to a Party, shall mean a legal entity of which such Party is a Subsidiary;
<b>Unifood :</b>	means Unifood Atlantic B.V., a private company with limited liability, incorporated under the laws of the Netherlands, registered with the commercial register of the Dutch Chamber of Commerce under number 99885727; and each partnership in which Unifood Atlantic B.V. participates (whether directly or through its Subsidiaries);
<b>Unifood Documentation:</b>	means the documents referred to in Clause 3.1.1;
<b>Unifood:</b>	means Unifood Atlantic B.V. in connection with or in relation to the sale or supply or delivery or supply of Products by such member;
<b>Party:</b>	means Unifood or Buyer;
<b>Product:</b>	means any goods or food products intended for human consumption, such as beef, pork and poultry;
<b>Purchase Order:</b>	means the document, completed and signed on behalf of Buyer, in which is itemised which Products Buyer intends to procure from Unifood;
<b>Quote:</b>	means any offer, quote, proposal and/or tender-bid made by Unifood;
<b>Receiving Party:</b>	means the Party that receives – or is granted access to – Confidential Information by the Disclosing Party, as referred to in Clause 13;
<b>Recipient:</b>	means the employees, advisors and shareholders to whom a Party discloses Confidential Information, as referred to in Clause 13;
<b>Sales Confirmation:</b>	means the document, completed on behalf of Unifood, in which is itemised which Products Unifood shall provide or supply to Buyer;
<b>Shipment Period:</b>	means the date or period on which the Products are estimated or expected to be shipped from their country or port of origin;
<b>Subsidiary:</b>	used in relation to a Party, shall mean a legal entity that the Party is able to Control.

In the Agreement, unless the context indicates otherwise or the contrary is expressly stated:

- references to the singular include references to the plural and vice versa;
- a reference to a person includes a reference to any individual, body corporate (wherever or however incorporated or established), association, partnership, government, state agency, public authority, joint venture, works council or other employee representative body in any jurisdiction and whether or not having a separate legal personality;
- a reference to a person includes a reference to that person's legal personal representatives, successors, permitted assigns and permitted nominees in any jurisdiction and whether or not having separate legal personality;
- a statutory provision includes a reference to (i) the statutory provision as modified or re-enacted (or both) before the date of the Agreement; and (ii) any subordinate legislation made under the statutory provision (before the date of the Agreement);

- a reference to “includes” or “including” means “including but without limitation to the generality of the foregoing”; and
- any reference to “or” (but not “and”) means “and/or”.

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