

General sales conditions Koninklijke Nedalco B.V. (The Netherlands)

1. General Applicability

- 1.1 Unless expressly agreed otherwise in writing, the present General Sales Conditions shall apply to any offers, sales agreements and deliveries.
- 1.2 In case of differences between the Dutch text of these General Sales Conditions and the German, the English or the French text, the Dutch text prevails.
- 1.3 Should any provision of these General Sales Conditions fail to apply, or be in contravention of public order or the law, only the provision in question shall be deemed not to have been written, and for the rest the General Sales Conditions shall remain fully in force, all this without prejudice to Article 17 below.
- 1.4 In these General Sales Conditions, the concept of „objects“ shall also comprise, though not be limited to, bulk loads, tankers and barrels.

2. Closing of the Agreement

- 2.1 Unless expressly agreed otherwise, any offer by the Seller shall be free of engagement.
- 2.2 The Seller shall be bound only after the Seller has confirmed the order in writing, or has carried it out without prior order confirmation.
- 2.3 At the request of the Seller, the Buyer shall place or confirm the order in writing.

3. Permit

At the request of the Seller, the Buyer shall submit a copy of his excise permit with the order he places. An excise permit shall be understood to mean a permit under which the fiscal authorities grant an exemption, conditional or not, from the alcohol excise tax.

4. Prices

- 4.1 Any prices offered or agreed by the Seller, shall be exclusive of VAT and excise tax.
- 4.2 New taxes and levies- and modifications or increases of taxes or levies burdening the objects sold and/or the delivery thereof- shall be charged to the Buyer.
- 4.3 If, at the request of the Buyer, the Seller pays the excise taxes and/or levies owed on the objects to be delivered, the Buyer shall be committed to reimburse the Seller accordingly, all this without prejudice to the provision of the previous paragraph.
- 4.4 The Buyer shall always forward documents required for the clearance of customs or transport documents of the Seller as referred to in the excise legislation, by registered post and within five days of the receipt by him of the objects delivered by the Seller. The Buyer shall be committed to retain proof thereof for a period of two years.
- 4.5 The Buyer shall be liable for the excise obligations which may arise for the Seller from the way in which the documents are dealt with, or the delivery of objects is taken by, or on behalf of, the Buyer.

5. Transport

Both in the Netherlands and abroad, the Seller shall deliver only under the condition 'Delivery Duty Unpaid' (Inco Terms 2000), unless expressly agreed otherwise.

6. Term for Delivery

- 6.1 Any term for delivery shall commence one day after the Agreement has been finalised, unless parties have expressly agreed on another commencement date for the period of delivery. If complete payment in advance or a down payment has been agreed, an additional requirement for the period of delivery to commence shall be the receipt of the entire (down) payment.
- 6.2 In the event of delivery on demand a fourteen-day period of delivery shall apply, unless otherwise agreed.
- 6.3 Any period of delivery shall be considered a target period. Such period shall be considered to have expired only if the Seller, for reasons to be attributed to him, does not deliver, or does not fully deliver, within a reasonable further period to be laid down by the Buyer in writing. In the event of a delay in the execution of the Agreement due to circumstances to be attributed to the Buyer, the period of delivery shall be extended by as many days as the Seller shall, within reason, require to make good the delay arisen.
- 6.4 Damages, such as additional costs or the loss of interest, incurred by the Seller on account of a delay in the execution of the Agreement due to circumstances to be attributed to the Buyer, shall be charged to reimbursed immediately after a statement to that effect has been issued by the Seller.

7. Transition of risk and Ownership

- 7.1 The risk of the objects shall pass to the Buyer as soon as a start has been made with the unloading at the delivery address. Should the Buyer, for reasons which cannot be attributed to the Seller, fail to accept the objects offered for delivery by the Seller, the risk shall be transferred on the moment the objects are offered, and all costs and damages incurred by the Seller due to the failure to accept, shall be charged to the Buyer.
- 7.2 The ownership of the objects shall be retained by the Seller, and shall be transferred to the Buyer only after full payment of that which the Buyer owes the Seller, for whichever reason, even in the event of cash on delivery. Within the framework of his normal business KK the Buyer shall be permitted to use or trade the objects which are subject to an ownership proviso.
This does not comprise the burdening of the objects with (surety) rights, however.

8. Packaging

- 8.1 Unless otherwise agreed, deliveries in barrels shall be effected in returnable barrels.
- 8.2 If the delivery is effected in returnable barrels made available by the Seller, the Buyer shall be permitted to choose whether he desires to return them to the Seller or not. Irrespective of the Buyer's choice on this point, the Buyer shall owe a recycling refund in the event of delivery in returnable barrels. Should the Buyer elect to return the barrels, such shall be done carriage-free and by the carrier to whom the transport of the full barrels was entrusted. The Buyer shall owe rent over the period starting one month after the delivery of the returnable barrels to the Buyer and ending with the return of the barrels to the Seller. Such rent shall be deducted from the deposit reimbursed to the Buyer after the return of the barrels. If the returnable barrels have not yet been returned to the Seller after one year has elapsed since their delivery to the Buyer, the Seller shall no longer charge rent, and the Buyer shall no longer be entitled to the reimbursement of the deposit. The Buyer shall be committed not to have returnable barrels used by third parties, nor to use them for other purposes or for denaturation, prior to their return to the Seller. The Seller shall not be committed to accept damaged barrels in return for the deposit.
- 8.3 The Buyer shall not return onetime barrels made available by the Seller.

9. Testing and Complaints

- 9.1 The Buyer shall be committed to test the objects received by him as soon as possible, but no later than within six working days after delivery, and before the objects are mixed. In the event of the delivery by tanker, the Buyer shall also be committed to take a representative sample of the objects unloaded, and to hold such sample available for possible complaints.
- 9.2 The Buyer shall notify the Seller of any complaints on the quality of the objects as soon as possible, at any rate within six days after their delivery. In addition, the Buyer shall confirm his complaints by registered letter.
- 9.3 A failure to complain in time and/or confirm in time a complaint as referred to above, and/or any mixing of the objects delivered with other objects, not including objects of the same nature delivered earlier by the Seller, and/or any unloading and sampling in contravention of the provisions of paragraph 1 of the present Article, shall result in the lapsing of any claim the Buyer might have due to, or relating to, shortages or quality defects.

10. Guarantee

- 10.1 The Seller guarantees that the alcohol produced by him is exclusively alcohol of agricultural origin.
- 10.2 The Seller guarantees that the objects delivered by him meet the technical specifications laid down by the Seller. Specifications shall be made available by the Seller on request.
- 10.3 The Seller does not guarantee that the objects delivered by him are suitable for the purpose for which the Buyer intends to use them, regardless of the Seller's awareness of their purpose.
- 10.4 The Seller shall not guarantee any requirements imposed by the Buyer with respect to smell and taste of the objects to be delivered, since it is not possible to objectively monitor the compliance with such requirements. If, however, in spite of organoleptic testing carried out by the Seller, the Buyer is of the opinion that the above requirements have not been met, the Buyer shall be entitled to return the objects and have them replaced by others, provided he files and confirms a timely complaint to that effect as referred to in Article 9, paragraph 2, and provided the objects have not yet been mixed with others, not including objects of the same nature delivered earlier by the Seller.
- 10.5 The guarantee obligation contained in paragraph 1 of the present Article shall apply, it being understood that the Seller shall be committed to take back the objects delivered only while crediting the purchase price "Freight Carriage Paid to Agreed Place of Delivery", though not including any excise taxes or other levies paid by the Seller or, at the discretion of the Buyer, to deliver new objects.
- 10.6 The guarantee obligation contained in paragraph 1 of the present Article shall lapse if, regarding the objects for which the Buyer invokes the first paragraph, he is in default with respect to any commitment imposed on him by Article 9.

11. Liability for Damages

- 11.1 As far as sales and deliveries are concerned, the Seller shall not be subject to any further or other liability than the one expressly undertaken by the Seller under the guarantee obligation contained in the present Conditions. Any further liability is hereby excluded.
- 11.2 Under no circumstances shall the Seller be liable for any form of indirect damage, including trading loss and consequential damage, even if the Seller has been notified of the possibility of such indirect damage.
- 11.3 The Buyer shall hold the Seller harmless in the event of claims by third parties for damages stemming from, or relating to, objects delivered by the Seller to the Buyer.
- 11.4 Under no circumstances shall the Seller be committed to indemnify an amount in excess of the one he himself is able to recover from his underwriters with respect to the damage for which he is held liable.
- 11.5 Any claim by virtue of, or relating to, an agreement to which the present Conditions apply, shall be instituted by the Buyer within one year after the occurrence from which the claim stems; if this deadline is exceeded, the claim shall lapse.

12. Force Majeure

In the event of force majeure on the part of the Seller, the latter shall be entitled to postpone delivery until the force majeure has ceased to exist. In the event of a force majeure which prevents either party to comply with their commitments stemming from this Agreement, and if the force majeure situation has not terminated within a period of sixty days, both the Seller and the Buyer shall be entitled to dissolve the Agreement without any judicial intervention and without them being committed to any indemnification vis-à-vis the other party. In these General Sales Conditions, force majeure shall be understood to include: war (including one outside the Netherlands), insurrection, fire, epidemics, traffic interruptions, lack of raw materials, modification of quality and/or other characteristics of raw materials, shortage of manpower, blockade, industrial action, sit-down strikes and boycotts, government measures at home and abroad, such as a ban on imports, exports, delivery or production, power failure, breakdown of machinery, eventualities during, or relating to, the transport of the objects, as well as any other circumstance which lies outside the power of the Seller or the Buyer, and which impedes, considerably hampers or aggravates the execution of the Agreement.

13. Tolerances

Regarding the quantities to be delivered, the Seller reserves the right to apply a tolerance of approximately five per cent.

14. Partial Deliveries

The Seller shall be authorised to have deliveries effected in part, every partial delivery being deemed to have been effected under a separate agreement to which these Conditions shall apply accordingly.

15. Obligation of Offtake, and Delivery on Buyer's call

- 15.1 The customer shall be subject to an obligation of offtake, even in the event of delivery on buyer's call. Minor defects shall not void the obligation of offtake.
- 15.2 If the objects bought on buyer's call have not been called for and taken off within the period stipulated, the Seller shall offer the Buyer an additional period of five days to accept them as yet without this entailing any additional expenses. Should the Buyer fail to accept the objects within the aforesaid period, the Seller shall be authorised to make the portion not accepted available to the Buyer, and to store it on his own premises or with third parties. The costs thereof shall be fully charged to the Buyer. In addition, the Seller shall be authorised to dissolve the Agreement for the part not yet carried out without judicial intervention, the Buyer being committed to full indemnification of the damages incurred by the Seller due to, and relating to, the Buyer's failure to accept and the dissolution of the Agreement.

16. Payment

- 16.1 Payment shall be effected without any deduction or retention, within ten days of the invoice date, by remittance on that date to a bank or postal giro account of the Seller, or by certified cheque. Setting off of the debt against another claim shall not be permitted, unless it concerns a claim expressly recognised by the Seller in writing or a claim on which an irrevocable judicial decision has been handed down.
- 16.2 The Seller shall at all times be authorised to claim payment in advance and/or surety -including surety for excise tax- before proceeding with the production or the delivery, or to supply the merchandise cash on delivery.
- 16.3 Without any notice of default thereof being required, the Buyer shall be in default as a result of the simple lapsing of the term of payment, as well as in the event of (filing for) bankruptcy or a moratorium, his being placed under legal restraint or in receivership, or in the event of liquidation.
- 16.4 As soon as the Buyer is in default with respect to a certain payment, any amounts payable by him to the Seller -for whichever reason- shall fall due forthwith. In this case, the Seller shall be authorised to postpone the execution of all agreements with the Buyer until full payment has been effected, or until surety therefor has been stood in a manner acceptable to the Seller, all this within a period of time to be determined by the Seller, failing which the Seller shall be authorised to annul the said agreements, the Buyer being committed to indemnify the Seller with respect to the non-compliance with, and the annulment of, the Agreement.
- 16.5 As of the due date, the Buyer shall owe an interest of one per cent per month or part thereof on all amounts due, up to the date on which payment has been effected. After one year, interest fallen due shall also bear interest. Moreover, the Buyer shall be charged with all expenses of judicial and/or extra-judicial collection, the latter being set at a minimum of fifteen per cent on the amount owed.

17. Escape Clause

Should the circumstances assumed by parties at the time the Agreement was concluded, undergo so radical a change that compliance with one or more of the above conditions can no longer be expected in reason from either party, consultation shall be held on an interim modification of the Agreement.

18. Disputes and Applicable Legislation

- 18.1 All sales agreements and deliveries shall be subject to Dutch law, with the exclusion of the uniform laws on international sales and the realisation thereof.
- 18.2 Any disputes stemming from -or relating to- offers, sales agreements and deliveries, shall be dealt with by the Court of Breda (The Netherlands).