

## **ARTICLE 1. SCOPE OF APPLICATION**

1.1. These General Terms and Conditions of Sale (hereinafter referred to as 'these terms and conditions') have been lodged at the Commercial Registry of the Chamber of Commerce in Amsterdam on April, 1st 2013 and shall apply to all offers, agreements, deliveries, services to be provided, and work to be performed, whatsoever their nature and howsoever they are called, referring to NOFOTA Trading Rules, involving Loders Croklaan B.V. and IOI - Loders Croklaan Oils B.V. established in Wormerveer, The Netherlands, hereinafter together referred to as 'Loders Croklaan'.

1.2. These terms and conditions apply to any agreement of Loders Croklaan, referring to NOFOTA Trading Rules: both NOFOTA Trading Rules and these terms and conditions apply to such 'NOFOTA Trading Rules agreements'. In case of any inconsistencies, these terms and conditions shall prevail. In case there is no reference to a specific version of the NOFOTA Trading Rules, the most recent NOFOTA Trading Rules, in force at the time when the agreement is concluded, shall apply. Under any circumstances Loders Croklaan explicitly rejects other general terms and conditions (of purchase or otherwise) of any of its existing or potential contracting parties (hereinafter referred to as 'the Customer'), even if the Customer refers to the same in a request for Loders Croklaan to present an offer. The applicability of the Customer's general conditions is hereby explicitly excluded.

1.3. If any provisions of these terms and conditions are void or nullified, the remaining provisions shall continue to apply in full and Loders Croklaan and the Customer shall consult each other in order to agree on new provisions to replace those which are void or have been nullified, having regard, as far as possible, to the purpose and import of the latter provisions.

## **ARTICLE 2. OFFER AND ACCEPTANCE**

2.1. Any offer shall be free of obligations and shall be treated in its entirety as a single offer.

2.2. An agreement shall only come into effect following acceptance of the Customer of an offer of Loders Croklaan and written confirmation of the relevant order by Loders Croklaan, or after the latter has commenced fulfillment of the same.

2.3. In the event that no confirmation of an order is sent owing to the circumstances, including the nature, scope, or urgency of the order concerned, an invoice issued by Loders Croklaan shall be considered to constitute a confirmation.

2.4. The written consent of the parties shall be required for any amendment of an agreement. Such an amendment and any additional work which may be required due to the provision of inaccurate or incomplete information, or inadequate cooperation on the part of the Customer whatsoever shall be considered additional work and, as such the Customer shall be liable for any costs involved.

2.5. The prices quoted by Loders Croklaan are based on the price determining factors, including prices of raw materials etc., applicable at the time the offer is made. If, after the date of the offer, one or more of these price determining factors change, Loders Croklaan shall be entitled to adjust the sum agreed upon with the acceptance of the order.

2.6. If, after the agreement has been concluded, the Customer desires to make amendments or additions to the agreement, Loders Croklaan shall effect those to the extent that it may be reasonably expected to do so. To the extent that the amendments and additions desired by the Customer involve extra costs, Loders Croklaan shall be entitled to charge these to the Customer in their entirety. In that event Loders Croklaan shall be entitled to set a new delivery period.

## **ARTICLE 3. PRICES**

3.1. All of Loders Croklaan's prices shall be in euro and are stated inclusive duties paid, unless explicitly agreed otherwise. If applicable, the Customer shall provide Loders Croklaan with its correct

VAT registration number in the absence of which the price is automatically increased by adding the VAT without prejudice to Loders Croklaan's right to claim compensation from the Customer.

## **ARTICLE 4. PAYMENT**

4.1. Payment shall be effected within 14 days after the invoice date, unless explicitly agreed otherwise.

4.2. Unless explicitly agreed otherwise, the Customer shall effect payment by means of a net cash deposit in euro into an account designated by Loders Croklaan without any discount or deduction, howsoever it may be called, and without any recourse to set off.

4.3. Should the Customer fail to comply with any term of payment stipulated in these terms and conditions or agreed separately, it shall immediately be in default by operation of the law without the need for any further notice to this effect. In this case Loders Croklaan shall be entitled to proceed with collection without any further notice of default, and the Customer shall be charged for any statutory commercial interest permitted under the terms of Book 6, Section 119a of the Dutch Civil Code.

4.4. In addition to the principal sum and interest payable due to the delay, the Customer shall be liable for all expenses, both judicial and extrajudicial, which Loders Croklaan incurs for the purpose of collecting the debt and securing its entitlements. These judicial expenses shall at any rate include fees declared by lawyers, local counsel, experts, and any other person whom Loders Croklaan has engaged to help it with such collection, or whom Loders Croklaan has instructed to institute proceedings for this purpose, even if the relevant declarations may exceed any sum which a court of law deems to be the costs payable by the party held to be in the wrong in any proceedings. The extrajudicial expenses shall at any rate include any declarations and bills presented by expert advisers (legal and otherwise), debt collection agencies, bailiffs, and anyone else whom Loders Croklaan has instructed to help it for the purposes of extrajudicial collection. The extrajudicial expenses shall be held to be the equivalent of no less than 15% of the original sum plus VAT subject to an absolute minimum of EUR 250.

4.5. Loders Croklaan shall at any time have the right to require payment in advance or the provision of security in relation to any delivery. Loders Croklaan shall be entitled to suspend the performance of its obligations if, and for as long as, the Customer refuses or is unable to provide the payment in advance or security requested.

4.6. Loders Croklaan reserves the right to suspend performance of the agreement until payment has been received. All storage costs incurred in this respect shall be for the Customer's account.

4.7. Loders Croklaan shall at all times be entitled to set off any claim which the Customer has against it and which can be expressed in pecuniary terms, against any claim whatsoever which Loders Croklaan (the company that concluded the agreement with the Customer) and any of its associated companies has against the Customer.

4.8 In case of non-fulfillment (including non-timely fulfillment) by the Customer of its obligation to accept delivery of ordered goods under any agreement between parties involved at the agreed date of delivery, the Customer shall be automatically in default without any further notice being required. In case of such default, Loders Croklaan may exercise its rights under NOFOTA Trading Rules (such as Clause 24 Default).

4.9 Customer shall provide Loders Croklaan with all the information and documents (to establish the applicable rate of VAT), in the type and way as requested by Loders Croklaan. Customer shall in any case provide Loders Croklaan in writing, the VAT number that the Customer uses for each individual transaction. If applicable, the Customer will confirm in writing to Loders Croklaan that the product is transported to another EC Member State by or on behalf of the Customer, and the Customer will provide Loders Croklaan with written proof of this transport and the arrival of the product in the country

of destination by means of stamped and signed (CMR) consignment notes and/or customs documents. The term of providing all the information and documents to Loders Croklaan is four (4) weeks.

## **ARTICLE 5. DELIVERY**

5.1. Delivery shall be in accordance with the most recent Incoterms in force at the time when the agreement is concluded.

5.2. Where delivery is spread over several months, it shall, in the absence of any other arrangements, take place monthly in approximately equal installments.

5.3. The Customer shall inspect the delivered products immediately after delivery for any defects and shall notify Loders Croklaan thereof in writing as soon as possible, and in any event no later than eight days after the products have been delivered.

5.4. Defects caused by the Customer by not following directions given by Loders Croklaan pertaining to location, storage, cooling, testing, assembly, inspection, or maintenance will never be considered defects of products of Loders Croklaan. Any notifications or complaints in that respect will not be dealt with or accepted by Loders Croklaan.

5.5. As for the delivery, it is further referred to the relevant NOFOTA Trading Rules.

## **ARTICLE 6. RETENTION OF TITLE**

6.1. All products that are delivered to the Customer shall remain the property of Loders Croklaan, but shall be for the account and risk of the Customer until the Customer has paid in full all sums it owes for products that are delivered or to be delivered under the agreement, as well as any claims arising from the Customer's failure to comply with these terms and conditions or with any similar agreement(s), including interest and collection costs.

6.2. The Customer shall take all appropriate measures to separate, and keep separated, the products referred to in the preceding paragraph from other products in its care, and to mark these products in such a manner that they are clearly recognizable for third parties as being the property of Loders Croklaan. The Customer shall at all times grant Loders Croklaan and its representatives free access to the spaces where the products, delivered by Loders Croklaan, are stored.

6.3. For as long as the ownership of the products has not yet passed to the Customer, the Customer shall not be entitled to process these products, transfer actual control of them, alienate them, pledge them, or encumber them in any way whatsoever.

6.4. If the Customer fails to comply with its obligations or if Loders Croklaan has good grounds to fear that the Customer shall fail to comply with its obligations, Loders Croklaan may invoke its retention of title. If Loders Croklaan invokes the retention of title, the Customer shall, if so requested, transfer the delivered products immediately under the actual control of Loders Croklaan, free of charge.

6.5. Should the law of the country of destination of the products and/or the country where the work has been performed offer more far reaching alternatives for the retention of title than is provided for in this article, such far reaching alternatives shall be deemed to have been agreed by the parties for Loders Croklaan's benefit, subject to the provision that, if it is possible to determine objectively which far reaching rules these provisions relate to, the foregoing provisions of this article shall continue to apply.

## **ARTICLE 7. INTELLECTUAL PROPERTY**

7.1. All intellectual and industrial property rights to all analyses, formulas, designs, drawings, models, programs, documents, and products, as well as preparatory material thereto, developed or made available ("the Information"), shall remain exclusively vested in Loders Croklaan or its licensors.

7.2. The Customer shall only acquire the rights and powers of use that are explicitly granted to it under the agreement or in any other way.

7.3. The Customer is not allowed to make the Information available to third parties, to reproduce it, or to make copies thereof.

7.4. The Customer shall observe secrecy with respect to all Information placed at its disposal by Loders Croklaan.

## **ARTICLE 8. INFRINGEMENT OF THE RIGHTS OF THIRD PARTIES**

8.1. If a competent court irrevocably decides in a lawsuit against Loders Croklaan, that any products delivered by Loders Croklaan infringe the intellectual or industrial property rights of a third party, Loders Croklaan shall, at its own discretion, replace the relevant product with a product that does not infringe the relevant right, acquire the right of use with respect to that product, or refund the Customer the amount paid for that product, less a reasonable depreciation. In that case, Loders Croklaan shall have the right to take back the original product.

8.2. Loders Croklaan shall have no obligations with respect to any infringement of the rights of third parties other than the obligation to replace, acquire or refund as mentioned in the first paragraph.

8.3. If an order is carried out on the basis of a formula, design, drawings, specifications, or directions that are provided by or on behalf of the Customer, the Customer shall indemnify and keep Loders Croklaan indemnified against any claims made in relation to infringements of the intellectual or industrial property rights of third parties.

## **ARTICLE 9. FORCE MAJEURE**

9.1. Any obligation which Loders Croklaan has to comply with under the agreement shall be suspended for as long as it is impossible for it to do so or to do so properly due to force majeure.

9.2. Under these terms and conditions, force majeure on the part of Loders Croklaan shall be deemed to cover any circumstances that are beyond its control, be they foreseen or unforeseen, as a result of which the Customer can no longer reasonably require Loders Croklaan to comply with the relevant agreement.

9.3. Force majeure shall include, but not be limited to, fire, flooding, weather conditions, industrial strikes, epidemics, war (civil or otherwise), terrorism, government measures, the absence (temporary or otherwise) of a licence, trade embargos, labour unrest, power failures, and breakdowns.

9.4. In the event that compliance is suspended for longer than three months or as soon as it is certain that this will be the case for at least three months, either party may request by means of a registered letter that the agreement concerned either be amended in accordance with the circumstances or that the relevant part of it be cancelled with immediate effect. The Customer shall in this event not be entitled to any compensation.

9.5. Should Loders Croklaan have already fulfilled part of its obligation as agreed when the force majeure situation commences, it shall be entitled to issue a separate interim invoice for the work it has already performed, and the Customer shall be required to pay this invoice as though it concerned a separate order.

9.6. As for the Force Majeure, it is further referred to the relevant NOFOTA Trading Rules.

## **ARTICLE 10. LIABILITY**

10.1 Loders Croklaan can only be held liable for damages, if, and insofar as these damages are a direct consequence of a demonstrable defect of products delivered by Loders Croklaan and insofar as

these products do not offer the physical safety that, all circumstances considered, one may have reasonably expected.

10.2. Loders Croklaan's total liability, due to an attributable failure to perform the agreement shall be limited to compensation of the material and direct damage, to an amount not exceeding twice the net invoice value of the products involved.

10.3. With regard to the aforementioned damage, Loders Croklaan shall not be liable for any damages against which it is not insured or should not be insured in accordance with common practice in the industry.

10.4. Loders Croklaan shall never be liable for consequential losses, which shall also be understood to include, but not be limited to, loss of turnover, loss of profit and damage to goodwill.

10.5. Any and all claims against Loders Croklaan, shall lapse on account of the mere expiration of a period of twelve months after the date on which the Customer should reasonably be aware of the grounds for its claim.

10.6. The Customer shall indemnify and keep Loders Croklaan indemnified against all claims from third parties for liability due to a defect in a product delivered by the Customer to a third party which included products supplied by Loders Croklaan, except if, and insofar as, the Customer proves that the damage was caused solely by the products supplied by Loders Croklaan.

10.7. The Customer shall comply with all legislation and governmental measures, such as those regarding food safety, traceability, and recall. The Customer shall immediately inform Loders Croklaan of any claim by a third party, (possible) product liability, and recall issues and shall cooperate with Loders Croklaan and relevant authorities in order to avoid or minimize damages.

## **ARTICLE 11. DISSOLUTION**

11.1 In the event that:

- a. the Customer fails to comply with any obligation it may have towards Loders Croklaan, or fails to do so properly or, in time, or - in addition thereto in case of tailored made products - if the Customer has failed to comply with its earlier obligations towards Loders Croklaan as to the purchasing and payment of such products;
- b. the Customer is declared bankrupt, or an application is filed for this purpose, has applied for or has been granted a suspension of payment, or has sought or been granted leave to apply debt rescheduling provisions;
- c. all or part of the Customer's property has been attached (by prejudgment attachment or otherwise);
- d. the Customer is dissolved, liquidated, hived off, or party to a merger;
- e. the Customer ceases its business or transfers its business operations or a significant part thereof, including the incorporation of its business in another one;
- f. any information provided by the Customer to Loders Croklaan proves to differ from the actual situation, and if the Customer has not yet fulfilled its obligations towards Loders Croklaan, the latter shall be entitled, merely by the occurrence of any of the aforementioned circumstances and without a need for any notice of a default or judicial intervention, either to consider the relevant agreement to be dissolved, or to demand full payment of any amount which the Customer owes Loders Croklaan. Furthermore, Loders Croklaan shall at all times be entitled to seek compensation from the Customer.

11.2 Loders Croklaan furthermore explicitly reserves its rights under NOFOTA Trading Rules (such as Clause 22 Insolvency and Clause 23 Circle) in case of circumstances described therein.

## **ARTICLE 12. LABELLING OF TECHNICAL AND FEED APPLICATIONS**

12.1 In case of products not to be used in the food/feed chain: in the contract it is referred to that the products described under and sold pursuant to that contract are not for "food" or "feed" purposes. In that case, the Customer shall not use the products in any food or feed application either directly, or after any further processing of the goods. In case of resale of the products, the Customer shall include this as a clause in any contract for the sale of all or any of such products including this obligation.

12.2 In case of products for which further processing is required to comply with food/feed law: in the contract it is referred to that the products described under and sold pursuant to that contract are not for "food" or "feed" purposes. In that case, the Customer shall not use the products in any food or feed application either directly or without further processing of the goods. In case of resale of the products, the Customer shall include this as a clause in any contract for the sale of all or any of such products including this obligation.

## **ARTICLE 13 APPLICABLE LAW AND JURISDICTION**

13.1. Any offers and agreements which are subject to these terms and conditions shall be solely governed by the law of the Netherlands.

13.2. The U.N. Convention on International Sale of Goods (frequently referred to as the Vienna Sales Convention) shall not apply.

13.3. All disputes shall, in first instance, be exclusively settled by the competent court in the district of Haarlem, the Netherlands, with exclusion of all other courts. However, disputes shall be exclusively settled by the Netherlands Arbitration Institute (Nederlands Arbitrage Instituut) in accordance with the Rules of the Nederlands Arbitrage Instituut if the Customer is domiciled outside one of the member-states of the European Union. The place of arbitration shall be Rotterdam, the Netherlands.