

**Konings**



**Terms & conditions**

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## 1.

- "Agreement" means the Agreement between the parties related to the purchase and sale of the Goods and/or Services as detailed in the offer and these GCS;

- "Customer" means the legal entity, as identified in the Agreement, requesting the Goods and/or Services.

- "Customer Material" means the material that will be supplied by the Customer or any subcontractor of Customer to Konings in order to execute the Agreement.

- "Good(s)" mean(s) the material(s) to be supplied by Konings to the Customer according to this Agreement.

- "Konings" means to the legal entity of Konings Group NV performing the Agreement as specified on the offer.

- "Material" means any and all raw material, packaging or other material that Konings needs to purchase in order to execute the Agreement.

- "Service(s)" refer(s) to the services to be carried out by Konings for the benefit of the Customer, as described in the Agreement.

**2.** Save in the event of an explicit written clause to the contrary, all sales and purchases of the Goods and Services are subject exclusively to these GCS. Any terms and conditions that appear on the Customer's own documents cannot be regarded as such an explicit written clause to the contrary. Customer hereby explicitly waives and renounces the applicability of its own terms and conditions or any similar wordings with legal implications that appear on Customer's documents, irrespectively if they are transferred before, during or after the acceptance of the GCS. It shall be assumed, upon commencement of the provision of Goods and/or Services, that these General Conditions of Sale have been accepted by Customer irrevocably.

**3.** Orders are considered to be binding for the Customer. The Customer shall have no right to cancel orders without written permission of Konings. Irrespective of the right for Konings to claim execution, parties agree that a (unilateral) cancellation by the Customer entails an indemnification of (1) at least 30% of the fees of the cancelled order and (2) any and all costs including but not limited to costs for Material, without Konings having to prove the existence or the volume of the damage, and notwithstanding the right of Konings to claim its actual damages. All changes to an order have to be made in writing and within five (5) working days after the initial order at the latest. In the event Konings already started partial or full execution of the order, after the order confirmation, the Customer cannot withhold the non-execution of the changes.

**4.** Each price shall be valid for the term agreed upon in the offer, with a maximum of one (1) year, and this subject to possible intermediate increases in the prices of the Materials or Services as a result of surging production, oil, gas, energy -and/or transport costs, increased wages, cost increases due to changes in the

applicable legislation, and/or changes in the relevant markets.

All invoices are payable in euro (unless otherwise agreed between the parties) into the bank account and at Konings' place of business mentioned on the invoice, within thirty (30) days of the invoice date. All prices are the net prices excluding VAT, other taxes, excise duties, costs, bank costs and the like and without any discount. If Konings is required by applicable mandatory legislation to invoice VAT, excise duties or other taxes or levies, these amounts will be added to the invoice and will be payable under the same conditions as mentioned in these GCS. The invoice shall be deemed to have been accepted irrevocably if the Customer does not submit a written complaint or dispute it in writing within seven (7) days of receiving the invoice. Konings shall request a credit limit related to any deliveries / invoices issued to the Customer. If this limit is reduced or withdrawn by the insurance company, Konings is entitled to suspend deliveries as long as there is no credit limit or may demand advance payment.

In case of arrears or in the event of infringement of credit limits, Konings has the right to either postpone delivery or terminate the existing Agreements without prior notice of default and without being required to pay any compensation to the Customer, and all invoices issued to this Customer shall become payable immediately. In this event, the Customer shall compensate Konings for all its damages and costs that origin in the postponement or termination of the Agreements.

If Konings' trust in the solvability of the Customer is damaged because of indicative events, like judicial procedures against the Customer, Konings retains the right to demand Customer for suitable warranties or advance payment. If the Customer does not provide these warrants, Konings reserves the right to annul the entire order or a part of it, even when some Goods were already sent, notwithstanding the right of Konings to claim damages and payment of the outstanding invoices and additional costs and interests for late payment.

All invoices that have not been settled by the due date will ipso jure be liable to an interest for late payment of 1% per month, as from its due date, without written formal notice of default being necessary. Moreover Konings is entitled but not obliged to charge 15% on the full amount of the orders by way of compensation, with a minimum of 100 EUR per invoice and all its costs made to collect the payment.

**5.** Except if agreed otherwise, ownership of the Goods shall only be transferred to Customer on full payment of the price, and Konings reserves the right to reclaim the Goods where necessary. All risks shall be transferred to Customer once delivery has taken place.

**6.** Save where explicitly stipulated otherwise in writing, delivery of the Goods shall take place "Free Carrier" or "FCA" Konings' production site and in accordance with the conditions stated on the order form. Mentioned term of

delivery is indicative. Delays in delivery can in no case give cause to breach of Agreement, to a right of compensation or interests, unless explicitly agreed in writing by Konings. In the event that the Customer's activities or those of a third-party deliverer directly or indirectly involved in the delivery of the Goods will be delayed for whatever reason (including strikes), Konings cannot be held responsible for possible problems at delivery. Konings reserves the right to carry out partial deliveries. If Customer fails to respect the collection date, Konings shall be entitled to charge any associated costs such as but not limited to charge storage costs and costs of custody. Customer shall be fully responsible for the transport and all associated costs to transport, shall in any case be payable by Customer. Customer shall deliver the Customer Material on time and place as agreed between the parties. Customer shall be liable for any damages and costs due to delays in delivery of the Customer Material.

**7.** If parties agree that Konings will invest in equipment in order to perform the Agreement and parties agree to a capex fee to be added to the price and at the end of the Agreement Customer did not purchase the minimum volume (as specified on the offer) or if the Agreement is ended before the end of its term by Customer while the minimum volume is not purchased, Customer shall refund in one off payment the remaining balance of the investment in the equipment (equal to the capex fee multiplied by the non-purchased volume below the minimum volume) to Konings. This equipment shall be owned by Konings at all times.

**8.** Except if agreed otherwise, ordered Goods will be delivered in the package as agreed between the parties and in accordance with the specifications. In case there are no specifications, Konings reserves the right to deliver the Goods in a suitable packaging format of its choice. In the latter event, Konings equally reserves the right to modify its Goods and packaging without prior notice. Ordered quantities may be modified in order to meet the standard packaging units.

**9.** Konings shall ensure that the Goods are filled, packaged, stored and loaded in accordance with the applicable European legislation, including but not limited to the European standards for filling of beverages and if applicable the quality manual explicitly agreed upon in writing between the parties.

The Customer guarantees and warrants that the content of the artwork, labels, recipes, formulas and Customer Material are in accordance with any applicable European and national legislation and fit for the production of the Goods. If there is a quality manual, the Customer represents and warrants that the content of such a manual is accordance with any applicable laws and that it does not breach any third-party rights. The Customer further declares and guarantees that the product specifications, the Goods, the artwork, the labels to be used, the product names, etc. are not in conflict with Intellectual Property

Rights of third parties. The Customer undertakes to indemnify and hold Konings harmless for any and all damages incurred by Konings as a result of a violation of the guarantees under this clause, including but not limited to all claims of third party for the violation of their intellectual property rights. Each party shall remain the sole owner of its intellectual property rights and without any explicit Agreement between the parties, no intellectual property right shall be transferred from one party to another. Any disclosure of information relating to intellectual rights of one party shall under no circumstances imply the transfer of ownership of the intellectual property rights to the other party, nor shall a licence or any other right relating to intellectual property be deemed to have been established. The qualification of the Goods according to the national fiscal and/or excise legislation is a sole responsibility of the Customer.

Konings does not assume any liability for any consequences (direct or indirectly) related to this qualification.

The created E-ad, concerning the Goods that are moved under a duty suspension arrangement within the EU, and/or the created E-Ad within the excise movement and control system (EMCS), concerning the Goods that will be exported outside the EU, needs to be electronically cleared promptly (and at the latest within five days after the transportation ends) in the automated system of the addressee. If the E-ad is not cleared within a period of three (3) months, the Customer will be liable to pay any potential excise duty and other fiscal duty charges related to the Goods.

**10.** All complaints with regard to wrong deliveries, lacking, damaged or faulty Goods will have to be made in writing to Konings five (5) working days after delivery (in the event of visible defects) and within eight (8) working days (in the event of hidden or latent defects) after discovery of the hidden defect, and in any event before processing of resale of the Goods, mentioning all relevant data, amongst others: order and invoice number, description of the defect, description of the damages and any reasonable information requested by Konings.

In any case, complaints based on hidden or latent defects shall have to be made within the shelf life of the Goods with a maximum period of six (6) months after the date of delivery.

Konings liability for costs and damages incurred by the Customer due to defects shall be limited to the selling price of the Goods in dispute, with an absolute maximum amount of 1,000,000 euro per event, or to replace the Goods with flawless Goods.

Customer. For any claim made against the Customer by a third party for death, personal injury or damage to property arising out of, or in connection with, defective Goods, to the extent that the defect in the Goods is attributable to the acts or omissions of Konings, its employees, agents or subcontractors and such has been confirmed by a final and bin-

ding judgment, Konings shall be liable up to a maximum of € 1,000,000 per incident or series of related incidents.

If either Party becomes aware of any quality or technological problem or any defect relating to the Goods that could give rise to product liability, it will immediately inform the other Party accordingly and include any relevant information. Konings shall, after consultation with the Customer, decide to initiate a product recall if there is a health risk or if the recall is imposed by a governmental agency. In the event of a health risk or in case a governmental agency imposes a recall, the direct costs, being the expenses to track the Goods, to transport the withdrawn Goods, to separate and destroy the withdrawn Goods, the costs of the personnel required to accomplish the recall, shall be borne by Konings, however up to a maximum of € 250,000 per incident or series of related incidents. Any costs related to a recall in other events, initiated by the Customer, shall be borne by the Customer unless otherwise agreed. Neither Party shall be liable for any indirect or consequential damages, such as but not limited to loss of profits and reputational damages.

Konings is not liable for any damages that origin in Customer Materials and Customer undertakes to indemnify and hold Konings harmless for any and all damages incurred by Konings that origin in the Customer Materials.

Nothing in this General Conditions of Sale will limit or exclude either party's liability for any liability which cannot be limited or excluded by law. Konings shall in no event be liable for any type of punitive damages (or related damages), especially but not limited to those in the United States of America.

Complaints will give the Customer in no case the right to postpone or defer payment of the price, not even partially, nor the right to compensate damages with outstanding invoices, nor the right to cancel the full order or delivery, except if such postponement is agreed by Konings.

**11.** The Customer bears the risk of force majeure. Moreover, should the performance of this Agreement be hindered or incommensurately be burdened due to force majeure, Konings' obligations will be suspended.

Force majeure includes amongst others: every occurrence which is reasonably beyond Konings' control, including but not limited to strikes, lock outs, delays or disruptions in transport, acts of war, pandemics, riots, fire, orders, bye-laws or regulations from the government or administration, inability to obtain natural gas, other fuels or natural resources, supply difficulties, scarcity of (raw)materials or lack of Goods for manufacture, weather conditions that make the execution of the Agreement temporarily difficult or impossible, mistakes or delays payable by Konings' suppliers, acts by third parties, one or more manufacturing mistakes in material from one of Konings' suppliers, etc., irrespective of whether these problems occur at Konings or the supplier from

whom Konings obtains Goods and without Konings being obliged to prove the influence thereof.

If Konings proves that: a) the continued performance of its contractual duties has become excessively onerous due to an event beyond its reasonable control which it could not reasonably have been expected to have taken into account at the time of the conclusion of the Agreement; and that b) it could not reasonably have avoided or overcome the event or its consequences, the parties are bound, within a reasonable time of the invocation of this clause, to negotiate alternative contractual terms which reasonably allow to overcome the consequences of the event. If the parties have been unable to agree alternative contractual terms within a period of 3 months starting from the invocation of this clause, Konings is entitled to terminate the Agreement immediately and this without the payment of any termination fee or penalty.

**12.** This offer and/or any Agreement or any related matters to the aforementioned shall be governed by and construed in accordance with the Belgian law, without giving effect to any other choice of law or conflict-of-laws rules or provisions (including the United Nations Convention on Agreements for the International Sale of Goods (1980) ("Vienna Convention") (if applicable). The courts of Hasselt (Belgium) shall have exclusive jurisdiction with regard to any dispute between parties related to this offer and/or Agreement and all related matters thereto.

**13.** Should the court declare one of the above-mentioned clauses ineffective, the other clauses will remain fully applicable. Any failure or delay by Konings in exercising any right under an Agreement with the Customer, any single or partial exercise of any right under such Agreement or any partial reaction or absence of reaction by Konings in the event of violation by the Customer of one or more provisions of such an Agreement, shall not operate or be interpreted as a waiver (either express or implied, in whole or in part) of Konings' rights under such Agreement or under the said provision(s), nor shall it preclude any further exercise of any such rights. Any waiver of a right must be express and in writing. If there has been an express written waiver of a right following a specific failure by Konings, this waiver cannot be invoked by the Customer in favour of a new failure, similar to the prior one, or in favour of any other kind of failure.

The signature of the offer by a party via a scanned or digitized image of a handwritten signature (e.g. scan in PDF format) or an electronic signature, shall have the same force and effect as an original handwritten signature. Delivery of the offer including the related invoices via e-mail or via an electronic signature system shall have the same force and effect as delivery of an original hard copy.