

General terms and conditions – Toby’s B.V.

1. General

1.1 Supplier: the Supplier shall be deemed to be **Toby’s B.V.** or any of its affiliates or subsidiaries, as defined in section 2:24a of the Netherlands Civil Code or a participation, as defined in section 2:24c of the Netherlands Civil Code with which **Toby’s B.V.** forms a group company, as defined in section 2:24b of the Netherlands Civil Code.

1.2 Purchaser: any person or legal entity which concludes or wishes to conclude a Contract with the Supplier or, if applicable, their representatives, proxies, legal successors, assigns or heirs;

1.3 Contracting Party: see the definition for “Purchaser”;

1.4 Contract: the written agreement between the persons or entities authorised to represent the Supplier and the Purchaser. Oral agreements with or commitments made by one or more subordinates shall be invalid, unless confirmed by the Supplier in writing;

1.5 Written/in Writing: for the purposes of the present terms and conditions (“T&C”), messages exchanged by email – which will explicitly be deemed to include the electronic version – shall be deemed equivalent to written documents;

1.6 Product: the term Product(s) shall cover all the products and services supplied or to be supplied by the Supplier;

1.7 Quotation: the written offer drawn up by the Supplier to supply a certain quantity of Products for a certain price;

1.8 Order: a request to supply drawn up by the Purchaser which has been accepted by the Supplier in writing;

1.9 Private Label Products: this shall at any rate include all the Products (including the contents thereof) bearing the name of the Purchaser, irrespective of whether the latter is removable, on the Product itself, the packaging, the list of contents or in any other shape or form.

2. Applicability

2.1 The present T&C are applicable to all requests, orders, quotations and agreements for the supply of Products between the Supplier and a Purchaser. The parties hereby explicitly rule out the applicability of any general terms and conditions invoked by the Purchaser.

2.2 Derogations from the present T&C shall be legally binding only if agreed by those authorised to represent the Purchaser and the Supplier, explicitly and in writing.

2.3 In the event of any conflict, any agreements or contracts agreed in a specific case shall prevail over the present T&C.

2.4 The organisation of the present T&C into sections, and the headings thereof, shall not be binding for the provisions.

3. The Contract and prices

3.1 The Supplier's Quotations shall be valid for 60 days, unless stated otherwise. The Supplier shall be bound by the Quotation only if accepted and confirmed by the Purchaser in writing within the period of its validity.

3.2 A Contract shall be concluded if the Supplier confirms the Purchaser's order in writing or if the Supplier commences executing the order.

3.3 A written indication by the Purchaser concerning a quantity of Private Label Products shall be deemed to be an irrevocable order.

3.4 If the Supplier has provided the Purchaser with a model, design, sample or specimen, this shall be deemed to have been provided for reference purposes only: the properties of the Products to be supplied in practice may derogate from the properties of the sample, design, model or specimen at the time of the quotation phase or after the Contract has been concluded, unless the parties explicitly agree otherwise.

3.5 The Supplier shall accept an order from the Purchaser on the tacit understanding that the information it obtains provides sufficient proof of the Purchaser's creditworthiness. The Supplier is authorised to request the Purchaser to provide security for the prompt and full compliance with its payment and other obligations before supplying or continuing to supply. If the Purchaser fails to do so, the Supplier shall be discharged of its obligation to supply or continue supplying, in which case the Purchaser shall not be entitled to any form of compensation while the Supplier shall be authorised to demand the compensation of its damage and costs.

3.6 Unless recorded otherwise, the prices quoted by the Supplier are:

- Net and in cash;
- In Euros (€);
- Excluding VAT;
- Excluding carriage and despatch.

3.7 The Supplier is authorised to increase the agreed prices at any time if the cost factors - including but not restricted to the underlying exchange rates, the quantity, cost of raw materials, labour, product specifications or statutory measures - provide grounds for doing so.

4. Quality

4.1 The Supplier is not responsible or liable for any damage or other consequences of the use of the Products, including the failure to comply with technical requirements or standards which may be applicable in the country where the Products are used, unless the Purchaser and the Supplier had agreed that the Products would comply with specific requirements applicable in that country and had explicitly recorded as much in the Contract when it was concluded.

4.2 The Purchaser is fully responsible for any instructions it provides the Supplier on the layout, format, text, labelling, packaging and other product specifications, while the Purchaser hereby warrants the Supplier that it will not infringe on the rights of third parties - including but not restricted to intellectual property rights - and that it shall indemnify the Supplier in full therefor.

4.3 Unless the Purchaser is also end user of the Products, it hereby warrants vis-a-vis the Supplier that it has implemented a satisfactory quality management and "track & trace" system in its operating systems with which the onward movement of the Products can be tracked precisely, for example to facilitate product recalls. If the Purchaser fails to do so, it shall be fully and unrestrictedly liable vis-a-vis the Supplier for any damage and costs which are the result of the absence of such systems.

4.4 The Purchaser shall cooperate in providing full and unconditional access to all information, business locations etc. if this is important for corrective measures (including recalls).

4.5 The Purchaser shall not be authorised to dissolve the Contract on the grounds of changes to the Products to be supplied, the layout, format, texts, labelling, packaging or relevant documents which are required to comply with the relevant statutory requirements or in the event of minor changes to the Product.

5. Delivery

5.1 The Purchaser is required to take receipt and control of the Products at the point at which these are delivered or made available under the terms of the Contract. If the Purchaser refuses to accept the Products upon the agreed delivery, is unwilling or unable to take receipt of the Products in practice or otherwise fails to provide the information or instructions which are necessary for the delivery, the Products shall be stored for the Purchaser's account and risk. In that event, the Purchaser shall be required to compensate the Supplier for any additional costs, at any rate including despatch, carriage and storage costs.

5.2 The agreed delivery date shall not be final and definitive. In the event of overdue delivery, the Purchaser must therefore serve the Supplier with written notice of default.

5.3 The Supplier is permitted to deliver the Products in consignments. If the Products are delivered in consignments, the Supplier shall be authorised to invoice each individual consignment.

5.4 The Supplier is authorised to derogate from the agreed quantity, to a maximum of 5%.

6. Incoming-product checks and notice of defects

6.1 The Purchaser must subject the Products to a satisfactory incoming-product check as soon as possible after delivery and at the latest within 2 workdays of delivery.

6.2 The Purchaser must report any defects in the incoming Products which can be confirmed immediately with a satisfactory incoming-product check to the Supplier in writing within 2 days of delivery. The Purchaser must report any other defects to the Supplier in writing within 2 days of discovery or the date on which the Purchaser could reasonably have discovered these. If the Purchaser fails to submit a written notice of defects to the Supplier within this period, it shall be deemed to have accepted and approved the incoming products.

6.3 Even if the Purchaser submits a notice of defects in good time, it shall remain required to pay and honour its commitments for the orders placed. Products can be returned to the Supplier only with its prior written permission.

6.4 Deliveries for which the Purchaser lodges a notice of defects must be left in the condition of delivery, unsorted, unprocessed and unused until the Supplier has had the opportunity to investigate that notice. The Purchaser must grant the Supplier full access to such a delivery.

6.5 The Purchaser cannot lodge any notice of defects for damage and defects with an invoice value of less than 2% of the consignment and sums of less than €20. Only major discrepancies in the weight, content, size, colour, tone and/or quality of the Products shall be deemed to constitute a defect.

6.6 The Purchaser shall have no right to claim a notice of defects if the incoming Products have been processed in whole or in part.

6.7 If the Purchaser's notice of defects is deemed to be well-founded, the Supplier may credit the Purchaser for the lower value, to a maximum of the invoice sum, may replace or repair the incoming Product(s) or consignment or make good the shortfall, at its discretion, unless the parties agree otherwise.

7. Payment

7.1 Payment must be made within 30 days of the invoice date by transfer of the outstanding sum onto a bank account to be indicated by the Supplier.

7.2 The submission of a notice of defects or any other problems concerning a consignment or delivery shall not constitute grounds for the suspension of the Purchaser's payment obligations.

7.3 The Purchaser shall be in default if it fails to make payment within 30 days of the expiry of the invoice date without requiring any further written notice of default; as of that point, interest at a rate of 1.5% per month shall be payable over the outstanding sum, for which purpose a part of a month shall be deemed to be a full month.

7.4 If the Purchaser defaults in complying with one or more of its obligations, all the judicial and extra-judicial costs to collect the debt shall be for its account and risk. Extra-judicial costs shall be fixed at 15% of the outstanding sum, with a minimum of €500 excluding VAT.

7.5 Any payments made by the Purchaser shall first be deducted from all the outstanding interest and costs and secondly from the outstanding invoices which have remained unpaid longest, even if the Purchaser states that a payment is for a later invoice.

7.6 The Supplier is authorised to set off claims against the Purchaser of any kind whatsoever at any time. The parties hereby rule out the Purchaser's right to set off debts or to suspend payments, unless this is done with the Supplier's written permission.

7.7 The Supplier is authorised to report unpaid invoices to its credit insurer and to transfer these to a third party if desired.

8. Dissolution/rescission/termination

8.1 The Supplier is authorised to dissolve, rescind or terminate a Contract with the Purchaser immediately and without requiring any further notice of default in the event of any default by the Purchaser in its compliance with the Contract, without prejudice to the Supplier's right to claim compensation of damage.

8.2 The Supplier is furthermore authorised to proceed with the dissolution of a Contract without requiring any further notice of default and without any obligation to compensate damage in the event of the rise of circumstances in connection with persons and/or materials (customarily) used by the Supplier in the execution of the Contract which are such that the execution of the Contract is impossible or onerous and/or disproportionately expensive to such an extent that the Supplier can no longer be required to comply with the Contract in reason.

8.3 The Supplier is authorised to suspend its continued execution of the Contract or proceed with its dissolution without prejudice to its right to claim compensation of damage if:

- **a.** after the conclusion of the Contract, the Supplier becomes aware of circumstances which give it good grounds to fear that the Purchaser will not comply with its obligations;
- **b.** upon concluding the Contract, the Supplier had requested the Purchaser for security for its compliance and if such security is not provided or is inadequate;
- **c.** the Purchaser is declared bankrupt, applies for its own bankruptcy, for a suspension of payments or if it applies for or becomes subject to the *Wet Schuldsanering Natuurlijke Personen* [debt rescheduling programme for natural persons];
- **d.** the Purchaser dies, goes into administration or is placed under a guardianship order;
- **e.** despite reminders, the Purchaser continues to default in complying with its obligations within the required period;
- **f.** the Purchaser loses his legal capacity for any reason whatsoever, or if an attachment is served on his real or other property or on the goods supplied which is not lifted within 2 weeks;
- **g.** the Purchaser leaves the European Union in the course of time.

8.4 If the Purchaser wishes to terminate the Contract prematurely, it can only do so after the Supplier has confirmed as much in writing. In that event, the Supplier is authorised to stipulate additional conditions for the dissolution. The Purchaser shall at any rate be liable for all the costs - including, but not restricted to and irrespective of - the shelf-life or use-by date of Private Label Products, and any basic and packaging materials used therefor.

8.5 A dissolution shall entail that all the Supplier's claims become immediately payable. The Purchaser is liable for all the direct and indirect damage suffered by the Supplier, for example loss of profits.

9. Reservation of title

9.1 The Products supplied by the Supplier shall remain its property until the Purchaser has complied with all its obligations under the agreements concluded with the Supplier, including but not restricted to the consideration for the

Products supplied or to be supplied themselves and any claims the Supplier may have on account of the Purchaser's failure to comply with any other agreements.

9.2 The Products supplied by the Supplier and covered by the reservation of title under paragraph 1 above may be sold on only as part of the Purchaser's normal business operations. The Purchaser is otherwise not authorised to pledge the Products or to create any other right thereon.

9.3 If the Purchaser fails to comply with its obligations or if the Supplier believes it has good grounds to fear that it will not do so, the Supplier shall be authorised to repossess the Products covered by the reservation of title referred to in article 9.1 from the Purchaser or from third parties holding the Product on the Purchaser's behalf or to have these removed. The costs thereof shall be for the Purchaser's account. The Purchaser is required to cooperate in this in every way, at the forfeiture of a penalty of 10% of the outstanding sum for every day on which the Purchaser fails to cooperate.

9.4 If third parties wish to create or validate any rights to the Products covered by the reservation of title, the Purchaser is required to notify the Supplier of that fact immediately.

9.5 The Purchaser hereby undertakes:

- to insure the Products covered by the reservation of title and to keep these insured against fire, explosion, water damage and theft and to make the policy of such an insurance as well as proof of payment of the relevant premium available to the Supplier for inspection;
- to pledge any claims the Purchaser may have against insurers in connection with the Products covered by the reservation of title to the Supplier in the manner prescribed in section 3:239 of the Netherlands Civil Code;
- to pledge any claims the Purchaser may acquire vis-a-vis its customers upon the resale of the Products supplied by the Supplier under the reservation of title to the Supplier in the manner prescribed in section 3:239 of the Netherlands Civil Code;
- to identify the Products covered by the reservation of title as the Supplier's property;
- to otherwise cooperate in any reasonable steps the Supplier may wish to take to protect its title to the Products, provided that these do not unreasonably hinder the Purchaser in its normal business operations.

10. Liability and force majeure

10.1 The Supplier's total liability on account of imputable non-performance (*toerekenbare tekortkoming*) of any agreement or on any other grounds - explicitly including but not restricted to any defect in the performance of a guarantee obligation agreed with the Purchaser - shall be restricted to the compensation of direct damage, to a maximum of the price agreed for that Contract (invoice value excluding VAT).

10.2 The Supplier shall never be liable for indirect damage, including but not restricted to consequential loss, loss of profits, the inability to qualify for savings or discounts, loss of goodwill, damage resulting from stagnation of its business operations, damage caused by claims from the Purchaser's customers or damage which is the direct or indirect result of government measures and/or product recalls.

10.3 Unless the Supplier's compliance is permanently impossible, it shall be liable on account of imputable non-performance and performance of the Contract only if the Purchaser serves it with written notice of default without delay, in which connection it must give the Supplier a reasonable period to make good the defect and only if the Supplier fails to remedy its imputable non-performance after this period. The Purchaser's notice of default must give a description of the non-performance which is as comprehensive and detailed as possible so that the Supplier is able to respond satisfactorily.

10.4 Any right to claim compensation for damage shall always be conditional on the Purchaser reporting the damage to the Supplier in writing at the earliest opportunity, but at the latest 2 workdays after the rise thereof. Any claim for compensation of damage vis-a-vis the Supplier shall be cancelled after the mere lapse of 6 months after the rise of the damage.

10.5 The Purchaser hereby indemnifies the Supplier against any claims lodged by third parties on account of product liability as a result of a defect in a Product which the Purchaser supplies to a third party and which was caused, in whole or in part, by the Supplier's Products, unless and to the extent that the Purchaser can demonstrate that the damage was caused by the Supplier's Products.

10.6 The Supplier shall never be liable for damage which is a result of or connected with the improper use or storage of the Products by the Contracting Party or third parties, including use after the sell-by date or in breach of the instructions and directions. When claiming any compensation for damage, the Purchaser must demonstrate that the instructions for use and storage have been complied with.

10.7 The Supplier's liability shall at any rate be restricted to the sum paid out by the business liability and product liability insurance at all times.

10.8 The exclusions and restrictions referred to in article 10.1 to article 10.7 shall be cancelled if and to the extent the damage is a result of intent or deliberate carelessness by the Supplier's executive or its senior subordinates.

10.9 The exclusions and restrictions from the Supplier's liability, as described in the preceding paragraphs of this article 10, shall not in any way prejudice any other exclusions and restrictions of the Supplier's liability on the grounds of the present T&C.

10.10 The Supplier is not required to comply with any obligation, including any guarantee obligations agreed by the parties, if such non-performance is a result of force majeure.

Force majeure shall at any rate be deemed to be: (I) force majeure by the Supplier's suppliers, (II) the improper compliance of the obligations of the Supplier's suppliers, (III) government measures, including but not restricted to product recalls ordered by national or international authorities, (IV) electricity, internet and data breakdowns, (V) war, natural disasters and virus outbreaks (VI) industrial blockades or stoppages, (VII) strikes, (VIII) general transport problems and (IX) the unavailability of one or more members of staff.

11. Confidentiality

11.1 The parties shall treat any information exchanged by them, in the past or otherwise, in any shape or form in connection with the (planned) conclusion or execution of a Contract in which they grant or granted each other insight or with which they become or became acquainted as strictly confidential. Such information shall be referred to as the Confidential Information.

11.2 The parties shall not use, copy or store the Confidential Information for a purpose other than for which it was provided to them.

11.3 The parties are not at liberty to provide the Confidential Information to third parties in any shape or form, unless they have obtained the Contracting Party's prior written permission to do so.

11.4 The parties furthermore undertake to ensure that only those members of their staff involved in the (planned) conclusion or execution of the Contract have access to the Confidential Information.

11.5 This obligation to observe confidentiality shall be cancelled 5 years after the parties concluded the Contract. If the parties eventually fail to conclude a Contract, this requirement shall be terminated 5 years after the date on which this was established.

12. Property rights

12.1 The Supplier shall retain the intellectual and industrial property rights to all the Products to be supplied and all the relevant documentation and images, unless the parties have agreed otherwise in writing.

12.2 The Purchaser hereby indemnifies the Supplier against all the financial consequences of claims lodged by third parties on account of the infringement of their intellectual and industrial property rights to items used at the Purchaser's request. The Purchaser hereby indemnifies the Supplier against any claims lodged by third parties on account of such (alleged) infringements and undertakes to compensate the Supplier for all the damage suffered as a result.

13. Miscellaneous

13.1 If the Supplier has permitted derogations from the present T&C, tacit or otherwise in the course of time, it shall retain the right to require the strict and immediate compliance with the present T&C as yet. The Purchaser can therefore never derive any rights from the fact that the Supplier tolerates derogations from the present T&C.

13.2 If one or more of the provisions of the present T&C or any other agreements between the Supplier and the Purchaser contravene any rules or regulations, statutory or otherwise, such a provision shall be cancelled and replaced by a new and comparable provision to be fixed by the Supplier which is permissible in law.

13.3 If any of the provisions in the Contract and/or the T&C are invalid, the Contract and/or the T&C shall otherwise remain valid. If the invalid provision is an essential provision, the Purchaser and the Supplier must agree on a new provision which corresponds as closely as possible with the parties' intentions. If the invalid provision is not an essential provision, the Supplier shall fix a new provision which approximates the purport of the invalid provision as closely as possible.

13.4 If the Supplier uses its discretion to waive any right against the Purchaser or compromises with the Purchaser in any other way, such waivers or compromises shall be restricted to the specific circumstances of the case and shall not affect any rights which the Purchaser can validate in other situations.

13.5 The Supplier is authorised to amend the present T&C. Such amendments shall become effective on the date and time announced. The Supplier must announce the amended T&C in good time. If no effective date and time have been announced, these shall become effective for the Purchaser as soon as it has been informed of the amendments.

In derogation of the statutory rules for the jurisdiction of the civil courts, any dispute between the Purchaser and the Supplier shall be adjudicated by the District Court of Amsterdam. The Supplier shall however remain authorised to summon the Purchaser before a court which is applicable in law or under relevant international treaties or conventions.

The Contracts and agreements between the Supplier and the Purchaser shall be subject exclusively to the laws of the Netherlands. The parties hereby rule out the applicability of the Vienna Sales Convention 1980 or similar international treaties or conventions.

The present T&C have been drawn up in the Dutch and English languages. In the event of any dispute on the content or purport, the Dutch-language text of the present T&C shall be binding.

The present terms and conditions were filed at the offices of the Clerk of the District Court of Amsterdam on March 21st 2020, under depot number 39/2020.

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