

General terms and conditions of delivery B2B

Filed by:

VESPINAE INTERNATIONAL B.V.

(Disposable Discounter)

Postbus 70016 - 9704 AA GRONINGEN

The Netherlands

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## **GENERAL TERMS AND CONDITIONS OF DELIVERY**

OF:

Vespinae International B.V.

Postbus 70016 - 9704 AA GRONINGEN, the Netherlands

hereafter referred to as 'the Seller'

### **Article 1 Definitions**

In these General Terms and Conditions, the terms below will be understood to have the following meaning, unless expressly stated otherwise.

The Seller:	the party applying these General Terms and Conditions
The Buyer:	the Seller's counterparty, acting in the performance of his/her profession or operation of its company;
The Agreement:	the agreement between the Seller and the Buyer.

### **Article 2 General**

1. These General Terms and Conditions will apply to every offer and Agreement between the Seller and the Buyer, to the extent that these Terms and Conditions have not expressly been deviated from by the parties in writing.
2. The current Terms and Conditions will also apply to all Agreements with the Seller for the performance of which third parties are to be engaged.
3. The Buyer's General Terms and Conditions will only apply if it has been expressly agreed in writing that same will apply to the Agreement to the exclusion of these Terms and Conditions. In that event, any contradictory provisions laid down the Seller's General Terms and Conditions and those of the Buyer will only apply between the parties to the extent that same are part of the Seller's Terms and Conditions.
4. In the event that one or more provisions of these General Terms and Conditions are null and void or non-binding in any other way, this will not affect the validity and applicability of the remaining provisions of these General Terms and Conditions. In that event, the Buyer and the Seller will enter into consultations to find a solution as much as possible in accordance with the purport of the provision that has been declared null and void or non-binding.
5. In the event that the Seller concludes Agreements with the Buyer more than once, the present General Terms and Conditions will apply to all subsequent Agreements, irrespective of whether or not same have been explicitly declared applicable.

### **Article 3 Offers / Quotations**

1. All quotations will be free of obligation, unless a term for acceptance is stated in the quotation.
2. Quotations made by the Seller will be without obligation; they will be valid for thirty days, unless the contrary is indicated. The Seller will only be bound by quotations if their acceptance has been confirmed by the Buyer in writing within thirty days. Following written confirmation by the Buyer, the Seller will be entitled to withdraw its offer

within two days of receipt of the said confirmation. Quotations issued by the Seller's employees will only be valid if they have been signed by an authorised member of the Seller's Board.

3. Delivery dates stated in quotations issued by the Seller must be deemed to be indicative and will not entitle the Buyer to dissolution or damages if same are exceeded, unless provisions to the contrary have been explicitly agreed.
4. In the event that a natural person concludes an Agreement on behalf or for the account of another natural person, he/she will be deemed to declare – by signing the order form/order – that he/she is authorised to do so. This person, in addition to the other natural person, will be jointly and severally liable for all obligations ensuing from the Agreement.
5. The prices stated in said quotations will be exclusive of Dutch VAT and other government levies, as well as exclusive of dispatch, and possible transport and packaging costs, unless expressly stated otherwise.
6. In the event that the acceptance deviates (on minor points) from the quotation laid down in the quotation, the Seller will not be bound by same. In that event, the Agreement will not be concluded in accordance with that deviating acceptance, unless the Seller indicates the contrary.
7. In the event of an oral Agreement, the invoice will be deemed to contain a correct and complete representation of the Agreement, unless a complaint is lodged within 30 days of the invoice date.
8. Discounts may only be agreed upon in writing.
9. A composite quotation will not oblige the Seller to supply a part of the goods included in the quotation for a corresponding part of the price stated.
10. The Seller will be entitled to adjust its prices each year, or at least correcting same for inflation.
11. The Seller will be entitled to charge the costs of sustainable packaging materials separately. These costs will be credited by the Seller as soon as the packaging materials have been returned undamaged by the Buyer.
12. Quotations will not automatically apply to follow-up orders.
13. The Seller's employees will not be authorised to make additional verbal agreements or make oral commitments exceeding the purport of the written Agreement.
14. The Seller may refuse an order or part of an order or attach conditions to an order without stating its reasons.

#### **Article 4        Delivery**

1. Delivery will be made ex Seller's works/warehouse, unless provisions to the contrary have been explicitly agreed.
2. If delivery is effected on the basis of the 'Incoterms', the Incoterms that apply at the time of the Agreement's conclusion will govern the Agreement.
3. The Buyer will be obliged to take delivery of the goods, without making any reservation, at the time that the Seller delivers same to it or has same delivered to it by third parties, or at the time at which the goods are made available to it pursuant to the Agreement.
4. In the event that the Buyer refuses to take delivery or fails to provide information or instructions necessary to effect the delivery, the Seller will be entitled to store the goods at the Buyer's expense and risk. In the event that the Buyer does not take delivery of the goods within two months, the Seller will be entitled to sell the goods to another party. If it is unable to do so, the Seller will be entitled to destroy the goods. The damage incurred by the Seller by selling the goods to another party or by destroying the goods will be borne by the Buyer.

5. In the event that the goods are delivered, the Seller will be entitled to charge the Buyer any delivery costs. In that event, such costs will be invoiced separately.
6. In the event that the Seller requires information from the Buyer in the context of the Agreement's performance, or requires down payments and/or security, the delivery period will commence after the Buyer has made such information available to the Seller.
7. In the event that the Seller has stated a delivery period, same must be deemed to be an indication. A stated delivery time may therefore never be deemed to be a firm deadline. In the event that a term is exceeded, the Buyer must give the Seller written notice of default.
8. The Seller will be entitled to deliver the goods in parts, unless provisions to the contrary have been laid down in the Agreement or such partial delivery would not have any independent value. The Seller will be entitled to invoice such deliveries separately. All partial deliveries will be considered separate delivery transactions, with all the ensuing legal consequences.
9. In the event that it has been agreed that the Agreement will be performed in phases, the Seller may postpone performance of those parts belonging to a subsequent phase until the Buyer has approved the results of the preceding phase in writing.
10. The Seller will be entitled at all times to require, before effecting delivery or continuing delivery, that the Buyer provide sufficient security vis-à-vis the Seller for the performance of its obligations vis-à-vis the Seller, in default of which the Seller will be entitled to dissolve the Agreement, or to consider it dissolved for the future.
11. For customer-made printed products, such as private labels, the quantities may differ from the quantities ordered up to an average of 15%. Seller is entitled not to deliver the goods until customer has paid for the overproduction and the recalculation of the freight/shipping costs.

## **Article 5        Samples and models**

1. If the Buyer has been shown or provided with a sample or model, same will be assumed to be provided as an indication only, without the good having to correspond to same, unless it has been expressly agreed that the good will correspond.
2. The product to be supplied by the Seller to the Buyer will be tested by the Seller on the basis of the standards that apply at that time, using a testing method at the Seller's discretion. If the test results with respect to the product meet the applicable standards, the Seller will deliver the product to the Buyer, as a result of which the Seller will have effected delivery to the Buyer in accordance with the Agreement. The above will not be affected by any investigation subsequently instituted by the Buyer based on a different testing method.
3. The Buyer is not allowed to copy samples or models supplied by the Seller

## **Article 6        Investigation, complaints, returns policy**

1. The Buyer will be obliged to inspect the delivered goods, or instruct others to do so, at the time of delivery, though in any event within 14 days, with due observance of the testing method agreed. In so doing, the Buyer must investigate whether the quality and quantity of the delivered goods correspond with the Agreements made, or in any event meet the requirements expected in that respect in standard business (B2B) practice.
2. Any visible defects or shortfalls must be reported to the Seller in writing within three days of delivery. Invisible defects or shortfalls must be reported in writing within 14 days of their discovery.
3. In the event that a timely complaint is submitted pursuant to the preceding paragraph, the Buyer will remain obliged to take delivery of and pay for the purchased goods. In the event that the Buyer wishes to return defective items, this may only be effected following written permission from the Seller, in the manner indicated by the Seller. If there is any damage incurred during transport and the Buyer wants to complain about this damage to the Seller, than the damage should be noted on the delivery note of the transporter at the moment of delivery.

4. The following situations will under no circumstances justify the lodging of a complaint: deviations in colour, weight and measurements of less than 15%; natural colours, lines, bumps, dents and hair cracks; and any typesetting, printer's or typographical error in the webshop, catalogue, offer or price list.
5. In the event that a complaint is well-founded, the Seller will replace the delivered good, unless this has become demonstrably pointless to the Buyer by that time. If this is the case, the Buyer should state so in a written communication. The Seller will in all events only be liable within the limits of the provisions laid down in the Article 'Liability'.
6. Returns are possible until 2 weeks after purchase, provided that the Buyer adheres to the conditions of the Seller;
  - Returns are only possible if the package is unopened (with the exception of the outer box) and if the product is undamaged. The outer box as well as the original packaging must be blank/unwritten.
  - The return item must be properly packed (in an outer box) and the return item must be free of stickers and/or tape.
  - Articles which have been damaged due to improper packaging, cannot be credited.
  - Returns without a completed return form can not be processed.
  - Crediting of returns will take place after receipt, checking and approval of the goods by the seller.
  - Crediting of returns occur without the shipping costs made by the buyer and without the freight costs charged by the Seller.
  - Packaging of articles which are food-related and which have been opened, can not be returned for food safety reasons.
  - Especially for the Buyer ordered items can not be returned.

#### **Article 7          Payments, price and costs**

1. In the event that the Seller and the Buyer have agreed on a fixed sales price, the Seller will nevertheless be entitled to increase that price.
2. The Seller may pass on price rises - among other things - in the event that, between the time of the offer and the delivery, price changes exceeding 5% have occurred with respect to, for instance, exchange rates, wages, raw materials, semi-manufactured goods or packaging materials.
3. The prices applied by the Seller will be exclusive of Dutch VAT and any other levies, as well as any costs to be incurred in the context of the Agreement, including shipment and handling charges, unless stated otherwise.
4. The Seller will state its prices in euros and based on the prices, rates, terms and conditions, levies, etc. as such apply at the time of the quotation.

#### **Article 8          Payment**

1. Orders will be paid up front through Ideal, Paypal or creditcard. Payments by creditcard will be charged.
2. All payments are made within a secure payment-environment. After payment the order will be processed immediately.
3. Orders for which a 'prepayment' has been made will be processed as soon as the payment is received. The delivery time will start after receiving the payment.
4. 'Postpayment' through Billink must be made within 14 days. The Buyer receives an invoice with payment instructions from Billink as soon as the goods have been delivered. For this form of payment the payment terms of Billink will be applied.

5. If an order is delivered on account, our invoices must be paid within 14 days after the date of invoice, unless expressly and in writing otherwise agreed. However, Seller has always the right to demand payment in advance and or otherwise to obtain security for payment.
6. The risks and costs associated with the payment are for the Buyer.

#### **Article 9            Retention of title**

1. All goods supplied by the Seller, including any designs, sketches, drawings, films, software, electronic and other files, etc., will remain the Seller's property until the Buyer has performed all its obligations ensuing from all Agreements concluded with the Seller.
2. The Buyer will not be allowed to pledge or encumber in any other way the goods covered by the retention of title.
3. In the event that third parties levy attachment on the supplied goods covered by the retention of title or wish to create or enforce rights with respect to same, the Buyer will be obliged to inform the Seller thereof as soon as may reasonably be expected.
4. The Buyer undertakes to insure and keep insured the goods supplied under retention of title against fire, explosion and water damage and against theft, and to allow inspection of the insurance policy in question at the Seller's first request.
5. Any goods supplied by the Seller that are covered by the retention of title pursuant to paragraph 1 of this Article may only be sold on within the context of normal business operations and may never be used as a means of payment.
6. Should Seller wish to exercise its rights of retention of title as laid down in this Article, the Buyer hereby grants unconditional and irrevocable permission to the Seller or any third parties to be designated by the Seller to enter those places where the Seller's property is located and to recover those goods.

#### **Article 10          Cancellation**

1. In the event that the Buyer wishes to cancel an Agreement after same has been concluded with the Seller and before the Seller has effected delivery to the Buyer, the Buyer will be charged 25% of the order price agreed upon, excluding Dutch VAT, in cancellation costs.
2. If the Buyer has purchased a private label item, cancelling is not possible after the Seller has received the approval to print from the Buyer.
3. If the Buyer cancels a private label item order after the purchase and before the approval of the print, the Seller reserves the right to charge the Buyer for the costs that have been made.

#### **Article 11          Collection costs**

1. In the event that the Buyer is in breach of contract or default in the performance of one or more of its obligations, then all costs reasonably incurred in obtaining payment extra-judicially will be borne by the Buyer. If the Buyer remains in default of timely payment of a certain amount, it will forfeit an immediately due and payable penalty of 15% of the outstanding amount, subject to a minimum of EUR 350.
2. In the event that the Seller has incurred higher costs which were reasonably necessary, such costs will also qualify for reimbursement.
3. Any reasonable court costs and enforcement costs will also be borne by the Buyer.

4. The Buyer will owe the Seller interest with respect to the collection costs incurred.

## **Article 12      Suspension and dissolution**

1. Without prejudice to the Seller's other rights ensuing from the Agreement and the law, particularly including its right to performance and/or damages, the Seller will be entitled, without any further notice of default or judicial intervention being required, to suspend performance of the Agreement or to fully or partially dissolve the Agreement with immediate effect as far as its future performance is concerned pursuant to a written statement, in the event that:
  - the Buyer fails to perform its obligations ensuing from the Agreement or fails to perform such in full;
  - circumstances that have come to the Seller's attention following the Agreement's conclusion give it good reason to fear that the Buyer will not perform its obligations; in the event that there is good reason to fear that the Buyer will only perform its obligations in part or will not perform such properly, suspension will only be permitted to the extent that such is justified by the relevant failure; or
  - upon the Agreement's conclusion, the Buyer was requested to provide security for the performance of its obligations arising from same Agreement and such security has not been provided or is insufficient. As soon as security has been provided, the right to suspend performance will lapse, unless the performance has been unreasonably delayed as a result.
2. In addition, the Seller will be entitled to dissolve the Agreement or have it dissolved if circumstances arise of such a nature that performance of the Agreement is impossible or can no longer be required pursuant to standards of fairness and reasonableness, or if any other circumstances arise of such a nature that continued unamended maintenance of the Agreement can no longer reasonably be expected.
3. In the event that the Agreement is dissolved, the Seller's claims vis-à-vis the Buyer will become immediately due and payable. In the event that the Seller suspends performance of its obligations, it will retain its claims ensuing from the law and the Agreement.
4. The Seller will at all times retain the right to claim damages.

## **Article 13      Return of goods made available**

1. In the event that the Seller has made goods available to the Buyer in the context of the performance of the Agreement, the Buyer will be obliged to return such goods to the Seller within 14 days in their original condition, free from defects and complete. If the Buyer fails to perform this obligation, all ensuing costs will be for its account.
2. If the Buyer, for whatever reason, following a letter demanding performance, remains in default of performance of the obligation mentioned in paragraph 1, the Seller will be entitled to recover any ensuing damage and costs, including the costs of replacement, from the Buyer.

## **Article 14      Liability**

1. In the event that goods supplied by the Seller are defective, the Seller's liability vis-à-vis the Buyer will be limited to the provisions laid down in these Terms and Conditions under the heading 'Warranty'.
2. In the event that the Seller is liable for direct damage, that liability will be limited to twice the invoice amount, or at least to that part of the Agreement to which the liability pertains. The Seller's liability will at all times be limited to the maximum amount paid out by the Seller's insurer in such events.
3. Direct damage will only include:
  - the reasonable costs incurred in assessing the cause and scope of the damage, to the extent that such assessment relates to damage within the meaning of these Terms and Conditions;
  - the reasonable costs incurred to have the Seller's defective performance correspond to the Agreement, unless the defect in question cannot be attributed to the Seller; and

- the reasonable costs incurred in order to prevent or limit damage, to the extent that the Buyer demonstrates that such costs have resulted in the limitation of direct damage as referred to in these General Terms and Conditions.
- 4. The Seller will under no circumstances be liable for indirect damage, including consequential damage, loss of turnover and profit, loss of savings and any damage due to an interruption in business operations.
- 5. The limitations of liability with respect to direct damage laid down in these Terms and Conditions will not apply in the event that the damage is attributable to an intentional act or omission or gross negligence on the part of the Seller or its employees.
- 6. The Buyer must report any claims for damages to the Seller within 14 days of delivery, on pain of their forfeiture.
- 7. The Seller will never be liable for the composition of the goods sold.
- 8. The Buyer shall indemnify the Seller against any claims of third parties that may incur damage in connection with the performance of the Agreement and which is attributable to the Buyer.
- 9. The Seller will under no circumstances be liable for damage ensuing from incorrect use of the good, from use that is not in accordance with the instructions for use or from use for a purpose other than that for which the good is intended.
- 10. The Seller will under no circumstances be liable for damage ensuing from any advice given. Advice will always be given on the basis of the facts and circumstances known to the Seller and of mutual consultations, in which respect the Seller will always use the Buyer's intention as a guideline and starting point.
- 11. The Buyer must ascertain in advance whether the purchased good is suitable for the purpose for which it intends to use same. Should it emerge in retrospect that the purchased good is not suitable for its intended use, then the Seller cannot be held liable for any ensuing damage.
- 12. The limitations of liability with respect to direct damage laid down in these Terms and Conditions will not apply in the event that the damage is attributable to an intentional act or omission or gross negligence on the part of the Seller or its employees.

#### **Article 15      Passing of risk**

- 1. The risk with respect to the loss of or damage to the products that are the subject of the Agreement will pass to the Buyer at the point in time at which same products are legally and/or actually delivered to the Buyer and therefore come under the Buyer's control or under the control of third parties designated by the Buyer.
- 2. In the event that the Seller is to provide for the transport/shipment of the goods that are the subject of the Agreement, this will be fully at the Buyer's expense and risk, unless the parties have agreed otherwise. The Seller will determine the means of transport.

#### **Article 16      Force majeure**

- 1. The parties will not be obliged to perform any obligation if they are prevented from doing so as a consequence of a circumstance for which they cannot be blamed, and which is not for their account pursuant to the law, a juristic act or generally accepted practice.
- 2. In these General Terms and Conditions, the term '*force majeure*' must be understood to mean, in addition to its meaning according to the law and in case law, all external causes, foreseen or unforeseen, which the Seller cannot influence, and as a result of which the Seller is unable to perform its obligations. This will include strikes at the Seller's company, postal strikes, traffic congestion, tailbacks, theft, fire, export impediments, power failures and delays in the supply of goods by suppliers.
- 3. The Seller will also be entitled to invoke *force majeure* if the circumstance preventing performance or further performance arises after the Seller should have performed its obligations.



4. The parties may suspend the obligations ensuing from the Agreement during the period that the situation of *force majeure* continues. In the event that this period lasts longer than two months, either party will be entitled to dissolve the Agreement without being obliged to pay the other party damages.
5. To the extent that the Seller has partly performed its obligations arising from the Agreement or is able to partly perform same at the time that the situation of *force majeure* first occurs, and that part performed or to be performed has independent value, the Seller will be entitled to invoice the part performed or to be performed separately. The Buyer will be obliged to pay that invoice as if it pertained to a separate Agreement.

#### **Article 17 Indemnification**

1. The Buyer shall indemnify the Seller against claims instituted by third parties pertaining to intellectual property rights with respect to materials or data provided by the Buyer and used in the performance of the Agreement.
2. In the event that the Buyer provides the Seller with data carriers, electronic files, software, etc., it must guarantee that such data carriers, electronic files, software, etc., are virus-free and without defects. The Buyer will be fully liable for any damage that may arise with respect to computer systems or data files stored on same if the damage has directly or indirectly resulted from data carriers, electronic files, software, etc., that is not virus-free and/or not without defects and which has/have been provided by the Buyer.
3. The Buyer shall indemnify the Seller against any claims of third parties that may incur damage in connection with the performance of the Agreement and which is attributable to the Buyer.

#### **Article 18 Intellectual property and copyrights**

1. Without prejudice to the other provisions of these General Terms and Conditions, the Seller reserves the rights and powers vested in it pursuant to the Dutch Copyright Act [*Auteurswet*].
2. The Buyer will not be permitted to modify goods, unless the contrary follows from the nature of the goods supplied or has been agreed in writing.
3. Any designs, sketches, drawings, films, software and other materials or electronic or other files created by the Seller in the context of the Agreement will remain the Seller's property, irrespective of whether same have been made available to the Buyer or to third parties, unless the contrary has been agreed, under the explicit reservation of the copyrights, design rights and patent rights.
4. Any documents made available by the Seller, such as designs, product composition statements, sketches, drawings, films, software, electronic and other files, etc., will be intended for the Buyer's use alone and may not, without the Seller's prior written permission, be multiplied, published or brought to the attention of third parties by the Buyer, unless the contrary ensues from the nature of the documents provided.
5. The Seller will retain the right to use any knowledge acquired during the performance of the work for other purposes, to the extent that this does not involve making confidential information available to third parties.
6. In the event that special packaging has been designed and/or a product has been especially composed for the Buyer by the Seller at the Buyer's request, that design and/or that product composition will at all times remain the Seller's property. If the Buyer dissolves the Agreement, for whatever reason, the Buyer will be obliged to purchase any packaging material made especially for it by the Seller, to the extent in stock, from Seller at cost price.

#### **Article 19 Secrecy**

1. Both parties will be obliged to observe secrecy with respect to all confidential information which they may have obtained from one another or from another source in the context of the Agreement. Information will

be considered confidential if it has been designated as such by the relevant party or if its confidential nature ensues from the nature of the information.

2. In the event that the Seller is obliged pursuant to a statutory provision or a judicial decision to provide third parties designated by law or by the competent court with confidential information and the Seller is unable to invoke a right to decline to give information acknowledged or allowed by law or by the competent court, the Seller will not be obliged to compensate the other party or pay it damages and the other party will not be entitled to dissolve the Agreement on the basis of any damage that may have arisen as a consequence.

## **Article 20      Non-acquisition of staff**

During the Agreement's term and for one year after its end, the Buyer shall refrain from hiring in any way the Seller's employees or employees of enterprises engaged by the Seller for purposes of the performance of the Agreement and which are or have been involved in its performance, or from having such persons work for it, directly or indirectly, unless it has the Seller's explicit and written permission to do so.

## **Article 21      Disputes**

The competent court in the city or town where the Seller has its registered office will have exclusive jurisdiction to take cognisance of any disputes. Nevertheless, the Seller will be entitled to submit any disputes to the competent court according to the law.

## **Article 22      Applicable law**

All Agreements concluded between the Seller and the Buyer and all disputes between the Seller and the Buyer arising from the performance of such Agreements will be exclusively governed by Dutch law.

## **Article 23      Amendment, interpretation and location of the Terms and Conditions**

1. These Terms and Conditions have been filed at the offices of the Chamber of Commerce for Groningen.
2. The Dutch text will under all circumstances be decisive for the interpretation of the substance and purport of these General Terms and Conditions and/or any translation of these Terms and Conditions.
3. In each case, the version which was filed most recently or the version as such applied at the time of the Agreement's conclusion will apply as appropriate.