

General terms and conditions of **W. van der Zwan en Zonen B.V.**, having its registered office in The Hague, hereinafter referred to as Van der Zwan, as filed on 29 September 2016 at the Registry of the The Hague District Court under No. 36/2016.

1. General

- 1.1. With the filing of these General Terms and Conditions at the Registry of the The Hague District Court, all previous terms and conditions of Van der Zwan cease to apply.
- 1.2. Agreement is taken to mean: all agreements between Van der Zwan and the Customer regarding the purchase of goods and/or use of services by the Customer supplied by Van der Zwan, as well as any other order placed with Van der Zwan by the Customer, including all actions and legal actions related to these.
- 1.3. Customer is taken to mean: the party that Van der Zwan supplies goods and/or services to, or that has agreed to this with Van der Zwan, as well as any party that has placed an order with Van der Zwan of another nature.
- 1.4. Van der Zwan is taken to mean: the Van der Zwan entity that uses these General Terms and Conditions and has declared that they are applicable, and/or the companies affiliated to it.

2. Applicability

- 2.1. These terms and conditions are applicable to all offers, both oral and in writing, to the Agreement, to all activities of and deliveries by Van der Zwan, and to all other legal actions between the Customer and Van der Zwan, insofar as not expressly agreed otherwise in writing.
- 2.2. The applicability of any general terms and conditions of the Customer is expressly ruled out. In particular the mere referral by the Customer to its own terms and conditions or a standard clause on its stationery or in the Customer's own terms and conditions which claims the exclusive applicability of such own terms and conditions will not suffice.
- 2.3. In the event that the Agreement has been made in writing and the content differs from these General Terms and Conditions, these General Terms and Conditions will continue to apply to the rest of that Agreement. Any agreed deviations will never apply to more than one Agreement, unless this is agreed to in writing on each occasion.
- 2.4. The legal relationship between Van der Zwan and the Customer is governed (in addition to the conditions of the Agreement and these General Terms and Conditions) by the most recent version of the Incoterms at the time that the Agreement is concluded. In instances where the conditions of the Agreement and/or these General Terms and Conditions clearly differ in content from the conditions of the most recent version of the Incoterms at the time that this Agreement is concluded, the conditions of the Agreement and/or these General Terms and Conditions shall prevail.

3. Offers and formation of an Agreement

- 3.1. All offers made by Van der Zwan are without obligation, unless expressly otherwise agreed, and can be revoked by Van der Zwan at any time.
- 3.2. If an offer is not accepted, Van der Zwan reserves the right to charge the costs made or a part thereof.
- 3.3. The Agreement or a change to the Agreement will only be effected when Van der Zwan has confirmed an order or engagement of the Customer or the change, expressly and in writing, or has commenced its execution.
- 3.4. Changes of any nature to the original order, whether in writing or oral, made by or on behalf of the Customer, which lead to higher costs than could be anticipated at the time of the quotation and/or order confirmation, will be brought as an extra charge to the Customer.

4. Prices and price changes

- 4.1. The prices in the offers are only applicable to the quantities given.
- 4.2. In the event of a combined quotation, there is no obligation to deliver part of the offered goods for a corresponding part of the price quoted for the whole.
- 4.3. All prices submitted by Van der Zwan are exclusive of VAT and/or any other taxes, levies or duties attached, unless expressly indicated otherwise in the order confirmation.
- 4.4. Unless expressly agreed otherwise in writing, the prices are 'ex works' ('ex cold store') as referred to in the Incoterms 2010, that is, the most recent version of the Incoterms at the time of the formation of the Agreement.
- 4.5. The quoted prices are expressly subject to change without prior notice and also after the order confirmation has been sent; in the period between the formation of the Agreement and before the entire delivery has taken place, Van der Zwan is entitled to pass on to the Customer any costs related to pay rises, employer's social insurance contributions and/or other terms and conditions of employment, as well as other increases in rates, duties, levies, contributions and taxes, as well as any changes in exchange rates which increase the costs incurred by Van der Zwan. If the cost increase exceeds 5% of the agreed price, the Customer is entitled to cancel the Agreement subject to the obligation of meeting payment to Van der Zwan for the part of the Agreement already fulfilled.
- 4.6. Unless otherwise agreed to in writing, the prices indicated by Van der Zwan are in euros. The exchange rate risk will be borne by the Customer. If the price has been settled in another currency than euros, the amount in euros corresponding to this price at the moment of payment may not be lower than the price in euros would have been at the moment of formation of the Agreement.

5. Execution of the Agreement

- 5.1. Van der Zwan is authorised to make partial deliveries and to submit corresponding partial invoices.

- 5.2. At all times, Van der Zwan is entitled to deliver 5% more or 5% less.
- 5.3. Without notification of or consultation with the Customer, Van der Zwan is entitled to subcontract the Agreement or parts thereof to, or to have the Agreement or parts thereof fulfilled by, a third party in the employ of Van der Zwan, if the latter is of the opinion that this facilitates a good or efficient execution of the Agreement.
- 5.4. All Agreements concluded with the Customer related to fishery products are subject to catch. If the amount of products is smaller than could be reasonably expected when the Agreement was concluded due to the catch not meeting expectations with regard to the amount and/or quality of fishery products, which also includes due to their being rejected by the competent authorities, Van der Zwan has the right to reduce the amounts being sold accordingly. Van der Zwan is not required to deliver substitute fishery products.
- 5.5. If an Agreement must be expedited, extra manpower, overtime, rush orders and/or any extra costs incurred may be charged.
- 5.6. The rights of the Customer under an Agreement are transferable as referred to in Section 3:83.2 of the Dutch Civil Code (BW: *Burgerlijk Wetboek*).

6. Delivery; risk transfer

- 6.1. All delivery times provided by Van der Zwan are approximate only and are not binding. The delivery period commences when the order confirmation has been sent, and in addition to this Van der Zwan is satisfied that it has received all of any necessary data from the Customer.
- 6.2. The agreed or submitted delivery times may never be regarded as final deadlines unless expressly otherwise agreed. An instance of failing to meet the delivery time may thus not be interpreted as negligence of Van der Zwan and consequently will not result in any liability for compensation on Van der Zwan's part. The Agreement may not be dissolved due to exceeding the delivery time, unless Van der Zwan fails to deliver within a reasonable period after the delivery time as notified to Van der Zwan in writing by the Customer. A reasonable period as referred to in the previous sentence is at least two weeks.
- 6.3. Unless expressly agreed otherwise in writing, the goods delivered by Van der Zwan are 'ex works' ('ex cold store') as referred to in the Incoterms 2010, i.e. the most recent version of the Incoterms at the time of the formation of the Agreement.
- 6.4. The Customer has a purchase obligation.
- 6.5. Risk transfer shall occur when Van der Zwan offers the goods for delivery in accordance with the Agreement, also in the event that the Customer does not take delivery for whatever reason.
- 6.6. In the event that the Customer does not take delivery or does not take delivery in time of goods offered for delivery in accordance with the Agreement, all costs incurred by Van der Zwan in connection with the failed delivery and any further costs connected to transport, conservation and storage are payable by the Customer. In that case, as soon as three days have passed since the goods were offered to the Customer, Van der Zwan is authorised to sell these goods to third parties.

In the latter case, the proceeds of the goods will replace the goods up to no more than the agreed price for the goods, on the understanding that Van der Zwan is authorised to deduct from or set off against the proceeds all the costs and damages it has incurred, notwithstanding the right of Van der Zwan otherwise to claim from the Customer all costs and damages, and with none of this affecting any other of Van der Zwan's rights in that case with respect to the Customer.

7. Packaging

- 7.1. Where Van der Zwan is of the opinion that this is necessary, or when the Customer expressly so desires, the goods will be delivered on pallets; the pallets shall remain the property of Van der Zwan. There is a deposit fee for the pallets which is payable by the Customer.
- 7.2. The Customer will be credited for the amount of the deposit charged to it, or charging the deposit will be waived, if the pallets mentioned in 7.1 are considered by Van der Zwan to be reusable and they have been delivered in good condition to Van der Zwan carriage paid and in a timely fashion.

8. Complaints

- 8.1. The goods and/or services delivered by Van der Zwan are considered sound if they meet the Dutch legal quality standards applicable at the time of the formation of the Agreement at the Van der Zwan business location, and also meet any specifications expressly agreed to between Van der Zwan and the Customer.
- 8.2. The Customer is required to check the quantity, dimensions, weight and/or packaging of the delivered goods. This check must be carried out immediately after delivery. If complaints are not made immediately after delivery and receipt, the details of the consignment note or delivery note will be acknowledged to be correct.
- 8.3. The Customer is authorised to check all products or to have them checked with regard to weight, quantity and quality. The costs involved are payable by the Customer, except in the event the goods are rejected.
- 8.4. Any complaints with regard to all Van der Zwan products must be reported in writing to Van der Zwan within 48 hours of receipt of delivery, at the risk of forfeiting all rights connected to any faults. Any report, whether in writing or not, to agents, intermediaries, brokers or traders of Van der Zwan does not comprise a complaint within the meaning of this Article.
- 8.5. Faults which in reason could not have been discovered directly after delivery must be reported to Van der Zwan immediately after being discovered – or in any case no later than within eight days of receipt of the delivery – at the risk of forfeiting all rights connected to any faults.
- 8.6. The Customer is required to store frozen fish at minus 20 degrees Celsius or colder, at the risk of forfeiting all rights connected to any faults in the absence of proof thereof.
- 8.7. After any fault or any alleged fault has been discovered, any processing or any other use of the product must be ceased immediately.

- 8.8. The Customer will cooperate fully with Van der Zwan in investigating the fault, including allowing Van der Zwan to investigate, or commission an investigation of, the quality and/or quantity of the delivery or provided service at the Customer's premises; in the event that this cooperation is not provided, the Customer will not be able to make any claims with respect to Van der Zwan regarding the fault(s).
- 8.9. If Van der Zwan acknowledges that a fault regarding the delivery has been proven, it may choose to redeliver free of charge or to credit the invoiced price in part or in full, in which case Van der Zwan is entitled to repossess the delivery in part or in full.
- 8.10. A complaint regarding certain work or deliveries does not suspend the Customer's payment obligation regarding the work or deliveries, nor that regarding other work or deliveries.
- 8.11. Faults to part of a delivery do not give entitlement to turn down the delivered goods or services in their entirety.
- 8.12. Complaints regarding the amounts of invoices submitted by Van der Zwan must be reported within seven (7) days of the invoice date, which period is the expiry period.
- 8.13. Van der Zwan is not responsible for printing, writing and/or counting errors and/or any lack of clarity in offers, order confirmations and/or prospectuses, nor for their consequences. In the event of differences of opinion on the interpretation of offers, order confirmations or prospectuses, Van der Zwan's explanation is binding.

9. Return shipments

- 9.1. Van der Zwan will not accept return shipments unless it has confirmed in writing that it will accept the goods that have been or will be returned.
- 9.2. The provisions of Article 9.1 also apply to goods of which delivery has been taken; the fact of delivery being taken by the warehouse of Van der Zwan and/or its employees thus does not comprise acceptance of the delivery.
- 9.3. Any return shipments made erroneously will remain at the disposal and risk of the Customer; any transport and/or storage costs are payable by the Customer. The above applies in full to return shipments about which complaints have been made that turn out to be erroneous.

10. Payment

- 10.1. Unless otherwise agreed, all payments must be made within fourteen days of the invoice date, nett in cash without deductions and in current Dutch currency. The expiry date of the period given is a strict deadline. In the event that payment is not made in time, the Customer is in default by operation of law, from which moment all outstanding amounts owed by the Customer to Van der Zwan are immediately due and payable.
- 10.2. If an Agreement is concluded with two or more natural persons and/or legal entities, these natural persons and/or legal entities are jointly and severally liable for the complete fulfilment of any ad hoc obligations deriving from the Agreement

- 10.3. The Customer is never entitled to set off any claims it has or believes to have against Van der Zwan by deducting the amount from any outstanding invoice, nor is the Customer authorised to suspend its obligation to pay or any of its other obligations related to delivered goods and/or services.
- 10.4. At all times, Van der Zwan is authorised to demand advance payment for every delivery or partial delivery, or to demand adequate security.
- 10.5. If payment has not taken place within the payment term, also in the event that Van der Zwan has granted permission for this, the Customer is required to pay interest over the invoice amount at 1% per month or part of a month, beginning on the date the invoice amount becomes due and payable; in addition, after each subsequent period of one year, the Customer will also owe interest at the aforementioned rate over the accrued interest. If and to the extent that the statutory interest rate as referred to in Section 6:119a BW is higher than the percentage specified here, the statutory interest rate shall apply.
- 10.6. At the first request of Van der Zwan, the Customer will provide security, whether or not supplementary, for the payment of the amount it owes to Van der Zwan, for example with a bank guarantee. If Van der Zwan has good grounds to believe that the Customer will not meet its financial obligations, and the Customer refuses to provide security or supplementary security, Van der Zwan is authorised to suspend execution of the Agreement, notwithstanding its statutory right of suspension.
- 10.7. Van der Zwan is authorised to add up all the payable claims of the Customer against companies within the group of companies to which Van der Zwan belongs and to offset the amount against the amount(s) payable by the Customer to a company belonging to said group, if and when the Customer is in default.
- 10.8. All judicial and extra-judicial costs incurred by Van der Zwan in enforcing its rights are payable by the Customer, on the understanding that the minimum amount to be claimed by Van der Zwan with regard to extra-judicial costs is equal to 10% of the amount claimed by Van der Zwan from the Customer.

11. Suspension, dissolution

- 11.1. Van der Zwan is authorised to immediately suspend its deliveries and work and even to regard all agreements with the Customer as partially or entirely terminated, without a notice of default and/or judicial intervention being required, while retaining its right to damages and costs, in the event that, at the sole discretion of Van der Zwan:
 - the Customer fails to meet any of its obligations following from any Agreement ruled by these General Terms and Conditions, or if Van der Zwan has justifiable reason to believe that the Customer will not meet its obligations to Van der Zwan;
 - any insolvency proceedings are declared applicable to the Customer, or if all or part of its property is seized;

- the Customer ceases or transfers all or a material part of its business operations, including transfer into an existing company or a company yet to be established, as well as a change in the object of its company, or
 - if a change takes place in the control of the Customer.
- 11.2. Any and all claims which Van der Zwan may have on the Customer as described in Article 11.1 above will be payable on demand and in full.

12. Retention of title and right of pledge

- 12.1. All goods delivered by Van der Zwan will remain its property until the Customer has met in full all existing and future claims payable to Van der Zwan pursuant to the Agreement and any further agreements based on the Agreement, and pursuant to any failure in the fulfilment of the Agreement or further agreements, including any interest and costs. The retention of title this entails also applies to new goods made from the aforementioned goods. The Customer will relinquish in advance any right of retention with regard to these goods and will not seize these goods or have them seized.
- 12.2. As an exception to the provisions of Article 12.1, the Customer is authorised to dispose of and deliver goods delivered under retention of title as part of normal business operations, on the understanding that at the first request of Van der Zwan it will assign or, should Van der Zwan so choose, pledge to Van der Zwan any claims it has with regard to its customers as a result of these sales.
- 12.3. In such cases the Customer will inform third parties about the retention of title of Van der Zwan.
- 12.4. The Customer is required to treat goods delivered under retention of title with due care and to store these in a manner that they remain clearly recognisable as the property of Van der Zwan and segregated from any other goods held by the Customer.
- 12.5. The Customer is obliged to sufficiently insure the goods, and to keep them insured for the term of the retention of title, against damage caused by fire, explosion and water as well as theft and to submit the relevant insurance policies to Van der Zwan for inspection on demand.
- 12.6. In the event that payment is not made by the Customer in time, Van der Zwan is authorised to repossess the goods that are its property, wherever these are located, on its own authority and with the costs payable by the Customer. The Customer must cooperate fully with this.
- 12.7. If the Customer fails in the fulfilment of its obligations to Van der Zwan, or if Van der Zwan has good reason to fear that the Customer will fail to meet its obligations, Van der Zwan is authorised to repossess goods delivered under retention of title. The Customer must cooperate fully with this. After repossession, the Customer will be credited at market value, which in no case will be higher than the original purchase price less the costs involved in the repossession, and notwithstanding any other rights Van der Zwan is entitled to, including the right to set off any damages incurred by Van der Zwan. Any costs that the Customer may have made connected to the goods delivered by Van der Zwan under retention of title and which are repossessed by Van der Zwan, are at the risk and expense of the Customer and thus cannot be passed on to Van der Zwan.

13. Retention of title in Germany

13.1. In deviation from the provisions of the previous article, the following applies to goods delivered to Customers of Van der Zwan located in Germany:

(In Abweichung vom im vorgehenden Artikel Festgelegte, gilt bezüglich der vom Lieferanten an in Deutschland etablierte Abnehmer gelieferten Sachen folgendes:) Das Eigentum an den gelieferten Waren bleibt zur Sicherung aller Ansprüche vorbehalten, die dem Lieferanten aus der gegenwärtigen und künftigen Geschäftsverbindung bis zum Ausgleich aller Salden gegen den Abnehmer zustehen. Das Eigentum des Lieferanten streckt sich auch auf die durch Verarbeitung der Vorbehaltsware entstehende neue Sache. Der Abnehmer stellt die neue Sache unter Ausschluss des eigenen Eigentumserwerbs für den Lieferanten her und verwahrt sie für ihn. Hieraus erwachsen ihm keine Ansprüche gegen den Lieferanten. Bei einer Verarbeitung der Vorbehaltsware des Lieferanten mit Waren anderer Lieferanten, deren Eigentumsrechte sich ebenfalls an der neuen Sache fortsetzen, erwerbt der Lieferant zusammen mit diesen anderen Lieferanten – unter Ausschluss eines Miteigentumserwerbs des Abnehmers – Miteigentum an der neuen Sache zu deren vollem Wert (einschließlich Wertschöpfung) wie folgt: a Das Miteigentumsanteil des Lieferanten entspricht dem Verhältnis des Rechnungswertes der Vorbehaltsware des Lieferanten zu dem Gesamt-rechnungswert aller mitverarbeiteten Vorbehaltswaren. b Verbleibt ein von Miteigentumsvorbehalten zunächst nicht erfasster Restanteil, weil andere Lieferanten den Eigentumsvorbehalt nicht auf die Wertschöpfung durch den Abnehmer erstreckt haben, so erhöht sich der Miteigentumsanteil des Lieferanten um diesen Restanteil. Haben jedoch andere Lieferanten ihren Eigentumsvorbehalt ebenfalls auf diesen Restanteil ausgedehnt, so steht der Lieferant an ihm nur ein Anteil zu, der sich aus dem Verhältnis des Rechnungswertes der Vorbehaltsware des Lieferanten zu den Rechnungswerten der mitverarbeiteten Waren dieser anderen Lieferanten bestimmt. Der Abnehmer tritt bereits jetzt seine Forderungen aus der Veräußerung von Vorbehaltsware aus die gegenwärtigen und künftigen Warenlieferungen des Lieferanten mit sämtlichen Nebenrechten im Umfang des Eigentumsanteils des Lieferanten zur Sicherung am Lieferanten ab. Bei Verarbeitung im Rahmen eines Werkvertrages wird die Werklohnforderung in Höhe des anteiligen Betrages der Rechnung des Lieferanten für die mitverarbeitete Vorbehaltsware schon jetzt am Lieferanten abgetreten. c Solange der Abnehmer seine Verpflichtungen aus der Geschäftsverbindung mit dem Lieferanten ordnungsgemäß nachkommt, darf er über die in Eigentum des Lieferanten stehende Ware im ordentlichen Geschäftsgang verfügen und die an abgetretene Forderungen des Lieferanten selbst einziehen. Bei Zahlungsverzug oder begründeten Zweifel an der Zahlungsfähigkeit oder Kreditwürdigkeit des Abnehmers ist der Lieferant berechtigt, die abgetretenen Forderungen einzuziehen und die Vorbehaltsware zurückzunehmen; jedoch liegt ein Rücktritt vom Vertrag nur dann vor, wenn der Lieferant dies ausdrücklich schriftlich erklärt. Übersteigt der Wert der eingeräumten Sicherheiten die Forderungen des Lieferanten um mehr als

10%, so wird der Lieferant auf Verlangen des Abnehmers insoweit Sicherheiten nach seiner Wahl freigeben. Scheck-/Wechsel-Zahlungen gelten erst nach Einlösung der Wechsel durch den Abnehmer als Erfüllung.

14. Intellectual property

- 14.1. All intellectual property rights with regard to the goods and services delivered are vested in Van der Zwan. Without the prior written permission of Van der Zwan, the Customer is not permitted to reproduce, publish or imitate the goods in part or in full.
- 14.2. The Customer may only trade the goods originating from Van der Zwan under the trademark, trade name and brand name and the specifications under which these goods were delivered to it. The Customer is not authorised to change the properties of the goods it has purchased from Van der Zwan, including their labelling, printing and instructions.
- 14.3. The Agreement does not contain any transfer or licensing of any intellectual property rights with regard to goods delivered to the Customer or services supplied to the Customer or the related documents.

15. Liability

- 15.1. In no event is Van der Zwan liable for indirect or non-material damage, such as, but not limited to, direct trading loss, consequential damage or demurrage and loss of income and profits, loss of customers, damage to name and/or goodwill, unless such damage is the result of gross negligence or intent on the part of one of the managerial members of staff.
- 15.2. In all cases where Van der Zwan is required to pay damages, this amount shall never exceed the amount which the insurer in that case would actually pay out.
- 15.3. The Customer shall inform Van der Zwan in writing of the amount of any damage which has occurred within eight (8) calendar days after the Customer has discovered such damage or reasonably could have discovered it. If Van der Zwan is not informed within the aforementioned period, Van der Zwan shall be released from any liability connected to such damage.

16. Food safety

- 16.1. At all times, the Customer shall undertake to meet all applicable international, European and national legislation and regulations regarding consumer safety, product safety and product recall, and to adhere to and fully cooperate with any instructions given by any national authority and/or Van der Zwan regarding (i) consumer and/or product safety, or (ii) product recall. With the exception of product recall sanctioned by applicable legislation and regulations, or ordered by or on behalf of any governmental authority, Van der Zwan is authorised to determine whether an action regarding products qualifies as product recall. At the request of Van der Zwan, the Customer shall require all its customers, among other things, to immediately cease the use or sale of the products, to return the products to Van der Zwan or to third parties designated for that purpose by Van der Zwan,

and/or to immediately conduct or commission certain maintenance with regard to the products. The Customer is required to determine an adequate and detailed product recall strategy which allows it to adequately conduct and coordinate a product recall procedure, and to monitor the extent to which it is implemented and complied with.

- 16.2. The Customer indemnifies Van der Zwan from all third-party claims, including from government bodies, in the event and to the extent that the Customer has not complied strictly with the aforementioned regulations.

17. Force majeure

- 17.1. In the event of force majeure with regard to one of the parties, the execution of the Agreement shall be suspended in part or in full for as long as the situation resulting in force majeure continues to exist, without either party being liable for any form of compensation to the other party.
- 17.2. If there is good reason to expect that the force majeure will continue to exist for over two months or if it has existed for two months, the other party may immediately terminate the Agreement without judicial intervention, without this leading to any right to claim compensation.
- 17.3. Force majeure on the part of Van der Zwan will in any event be taken to include: a) circumstances with regard to persons and/or material which Van der Zwan uses or is accustomed to using in the execution of the Agreement, which are of such a nature that the execution of the Agreement becomes impossible or so difficult and/or unreasonably expensive for Van der Zwan that it can no longer be required to execute, or immediately execute, the Agreement; b) strikes; c) animal disease or the suspicion thereof; d) trade restrictions imposed or recommended by local, national or international government bodies; e) the circumstance that Van der Zwan is not supplied with goods or services that are important to the fulfilment of its own contractual obligation, or is not supplied with them on time or in full; f) war, riots and the like.

18. Invalidity of one or more provisions

- 18.1. The invalidity of a provision of the Agreement and/or these General Terms and Conditions shall not affect the validity of the remaining provisions of the Agreement and these General Terms and Conditions.
- 18.2. In the event and to the extent that a provision of the Agreement and/or these General Terms and Conditions is invalid or must be deemed unacceptable under the given circumstances according to criteria of reasonableness and fairness, a provision will apply which, given all circumstances, is acceptable to the parties.

19. Applicable law

- 19.1. All agreements made and transactions conducted by Van der Zwan are exclusively governed by Dutch law. The applicability of the United Nations Convention on Contracts for the International Sale of Goods (CISG), however, is excluded.

19.2. Any and all disputes, of whatever nature, shall be subject to the judgement of the The Hague District Court or the provisional relief court of the The Hague District Court, to the exclusion of all other arbitration, advisory and judiciary bodies.

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