



Danone NV Terms and Conditions of Sale

1. General

1.1. Insofar as they are not deviated from, in the case of special conditions or agreements signed by authorised representatives of Danone NV, Werkhuizenkaai 160, 1000 Brussels, company registration number 402.734.595 ("Seller") and its buyer/client ("Buyer"), these terms and conditions of sale apply to all quotations, orders, invoices and contracts relating to the supply of goods by Seller.

1.2. In the case of conflict between these terms and conditions and any separate written agreement between Seller and Buyer, the provisions of the separate written agreement prevail.

1.3. These terms and conditions take precedence over any other terms and conditions of the Buyer or his representatives, included or referred to in orders, in correspondence or elsewhere, notwithstanding any deviating provisions in such terms and conditions. Any deviations in relation to these terms and conditions require the prior written approval of the Seller.

1.4. Seller and Buyer acknowledge in this way that they have reached a legal equilibrium in the terms and conditions of sale, taking into account the economic and legal positions of Seller and Buyer and that the conditions and modalities set out in these Terms and Conditions of Sale are in accordance with the overall economy of such agreements and any applicable and valid commercial practices.

2. Orders

Orders placed by the Buyer (via EDI, fax, order form, telephone order etc.) are subject to the provisions included in these terms and conditions of sale, and to the provisions expressly agreed upon in any purchase agreement agreed by the parties (where applicable), and can no longer be cancelled or amended at no cost by the Buyer. As the orders are transferred immediately to production in order to enable smooth cooperation, we have no option but to charge the associated and incurred costs, estimated at 80% of the selling price.

3. Pricing, invoicing and payment

3.1. Notwithstanding an explicit written and signed agreement to the contrary, the price for the goods does not include VAT, taxes, import duties, other government levies or the return of packaging, all of which are payable by Buyer.

3.2. The prices that Seller will invoice are the prices that apply at the moment at which the goods are delivered and as stated on the price list applicable at that moment. If Seller and the Buyer have agreed to fix the prices for which the Buyer can order goods during a certain period of time, and the costs for Seller to supply the goods increase due to a rise in labor costs, raw material prices, transport costs or changes in the legislation (including taxes), Seller reserves the right to increase the said fixed price(s) in proportion to the increase in the cost price, upon reasonable notice.

3.3. The order shall be invoiced one (1) working day after delivery, at the prices and conditions as mentioned in the order confirmation or in the price lists provided by the Seller.

3.4. Notwithstanding a written agreement to the contrary, invoices are payable into the bank account designated by Seller within thirty (30) days of invoice date.

3.5. All invoices are payable in cash, without discount, in Euros, at the Seller's place of business and by the expiry date stated on the invoice; and in any case within thirty days of invoice date unless otherwise agreed upon in writing. In the case of the expiry date being a Saturday, Sunday or a public holiday, the last working day prior to the expiry date serves as the expiry date. In case of late payment, the Buyer is liable without prior notice of default, an interest of 10% a year from the expiry date. In the case of full or partial late payment, the Buyer is also liable, without prior notice, for flat-rate compensation of 10% of the total invoice amount, with a minimum of €375.00, even where payment terms are granted.

3.6. This applies without prejudice to the Seller's right to claim compensation for legal and/or extra-legal collection costs arising from non-payment. Furthermore, this applies without prejudice to Seller's right to claim greater compensation, provided evidence of greater, actual incurred damage. If payment terms have been granted, the full amount of the invoice will be due automatically in the event of non-payment by the due date of one (1) single invoice. In the event of non-payment by the due date of a single invoice, the balance of all other invoices, even not yet due, will be due automatically, immediately.

3.7. Non-payment of any invoice on the expiry date entitles the Seller to suspend any further orders of the Buyer pending full payment of the invoice. Furthermore, the non-payment of any invoice on the expiry date of one or more invoices always entitles the Seller to opt not to grant and/or compensate (with the additional costs of interest, extra charges etc.) any discounts/bonuses (of any nature: current and/or future, once-only, discounts on annual turnover etc.) in full or in part, for one particular year or multiple years, at the Seller's discretion and arising from the incorrect and timely fulfilment of the contractual obligations by the Buyer.

3.7. In the case of a dispute, an objection to the invoice must be lodged and duly substantiated within seven (7) calendar days of receipt, stating the number and date of the disputed invoice. Otherwise the invoice is deemed to have been accepted without reservation. Any response from the Seller to a belated complaint is always without prejudice and with all rights reserved.

4. Delivery

4.1. The ordered goods are delivered and accepted at the moment of delivery of the goods to the Buyer or a person designated for that purpose by the Buyer. This delivery can never include any form of transportation or relocation of the goods within the Buyer's commercial premises.

4.2. The stated delivery times are always approximate, unless otherwise agreed upon in writing. Seller does everything within its power to fulfil the agreed delivery time. Merely exceeding the agreed delivery time shall not constitute negligence on the part of the Seller and shall not give cause for compensation on the part of the Seller. However, in that case the Buyer is entitled to request that the Delivery take place within a reasonable timescale. If Delivery does not take place within a reasonable timescale and subject to Article 9, Buyer is entitled to unilaterally cancel the Agreement by registered post for the unimplemented part. Buyer is not entitled to do so if he is in default.

5. Transfer of ownership and liability

5.1. The goods are supplied EXW (Ex Works – Incoterms 2010) from the Seller's warehouse, unless parties have agreed otherwise in writing. Notwithstanding any agreement to the contrary, the liability for loss, theft, damage or potential spoiling of the goods or otherwise, is transferred to the Buyer from the moment that the sold goods are delivered. The Buyer must take out multi-risk insurance to cover damage after the delivery of the goods. After delivery, the liability for damage or loss of the supplied goods and any resulting damage arising therefrom immediately transfers to the Buyer.

5.2. All supplied goods remain wholly the property of the Seller until the moment of full payment of the invoice, the principal sum, interests, costs and compensation for damages, if any. The Buyer will handle the goods with care until the price plus any surcharges are settled. The Buyer bears the liabilities for damage, accidental loss or destruction of the goods from the moment of delivery onwards.

5.3. Pallets or other packaging materials not invoiced by the Seller remain at all times the property of the Seller and must be returned in good condition to the Seller within 30 days of delivery. If the Buyer does not return pallets or other packaging materials, in good condition, within 30 days, the Seller is entitled to invoice the cost to the Buyer.

5.4. The Buyer is entitled to resell the goods on to his Buyer on the understanding that Seller, as a result of his retention of ownership of the sold products, is exclusively entitled to demand the return of the goods until the moment that the ownership of the goods is transferred to the Buyer, and that if the Buyer fails to do so, to enter the Buyer's premises or those of a third party in order to repossess the goods. The Buyer agrees that the Seller can enter his premises in the scope of the aforesaid purposes.

Notwithstanding the foregoing, the Buyer shall not, without the prior written consent of the Seller, sell or pass on the products, directly or indirectly to any person based outside the European Economic Area ("EEA"), nor make the goods available to any person based outside the European Economic Area ("EEA"), whom the Buyer reasonably knows or should know will try to export the products directly or indirectly outside the EEA for resale. The Buyer will handle the goods with care and not outside the European Economic Area ("EEA") until the price plus any additional costs has been fully settled. The Buyer remains liable for damage, accidental loss or destruction of the goods.

5.5. Seller is entitled to supply and invoice orders in instalments unless otherwise agreed upon in writing.

6. Resale

Buyer is entitled to resell and deliver products supplied by the Seller, provided that the following are taken into account:

6.1. If Buyer decides to change the original packaging intended for the end user in which he has received the Seller's Product, then the Buyer is solely responsible for issuing compulsory notices and other applicable legislation to the (end) consumer;

6.2. This Buyer and his client, when operating in the capacity of a business, agree by means of a contractual clause that the latter must fulfil the obligation stated under 6.1. in the case of further resale.

7. Guarantees and liability

7.1. Without prejudice to the other provisions of these terms and conditions, the Seller guarantees that the goods meet the specifications of the Seller and are free of visible and hidden defects unknown to the Seller. Defects that would be discovered during a normal examination of the goods on delivery should be considered visible. When the Buyer takes receipt of the goods unconditionally, he has in all cases approved them. In other words, no guarantee is ever given for visible defects. Certain guarantees relating to suitability for a particular use are only binding for the Seller if this is confirmed in writing by an authorised representative of the Seller in relation to the order in question. All other guarantees are expressly excluded due to the nature of the goods. The Buyer must at all times use the goods responsibly and observe correctly and strictly all of the Seller's user and maintenance instructions. The use of goods, their handling and storage must fulfil certain requirements (also taking into account the Seller's instructions in this regard) under the professional responsibility of the Buyer.

7.2. Taking into account the nature of the Seller's goods and under penalty of forfeiture, the Buyer must inform the Seller in writing within 2 calendar days of delivery of any hidden defects or complaints relating to disparities between the ordered quantity and the supplied quantity, with a copy of the invoice and written proof of the defect. Complaints relating to the quality and any defects in the goods must be provided to the seller with sufficient supporting documentation before the expiry of a period of forty-five (45) calendar days from delivery, or at the latest the minimum expiry date of the goods concerned if this is earlier.

In the case of the Buyer reporting defects, if the complaint is well founded, the Seller will replace or repair the goods within a reasonable timescale. If this is not possible in the view of the Seller, the Seller will credit the purchase price in full or in part as compensation to the Buyer. Taking into account the nature of the goods and the interests of food safety, any return of goods will take place following Seller's inspection and with Seller's written confirmation.

Taking into account the nature of the goods, only goods which are in good condition and in their original packaging can be returned.

7.3. Without prejudice to that stated in articles 7.1 and 7.2 above and article 7.4 hereafter, the Seller's liability for any damage or loss caused by breach of contract, an illegal act or a breach of legal observations is always limited to the price paid by the Buyer for the goods from which the damage or loss has arisen.

7.4. Without prejudice to that stated in articles 7.1, 7.2 and 7.3 above, Seller is not liable towards the Buyer under these terms and conditions, or any agreement or order, for any loss of revenue, loss of profit or forecast profit, loss of turnover, contracts or goodwill or reputation, loss of expected savings, loss, damage or destruction of data or any other form of *lucrum cessans* or indirect consequential damage of any type, regardless of how such damage or loss is incurred or regardless of whether it originates or is caused by breach of contract, illegal acts or breach of legal obligations.

7.5. Nothing in this Article 7, or these terms and conditions, or any agreement between Seller and Buyer will exclude the liability of either party in relation to the other party in cases of deception, own intentions or those of representatives, for personal injury or death, own gross negligence or that of representatives, except for Acts of God or in such case as this cannot be excluded under the applicable law. The Seller's liability is in any case limited to a sum of twice the net invoice value of the goods that are not delivered or not delivered in time or delivered with defects. Net invoice value means the amount charged for these goods minus the packaging costs, before VAT and after deduction of discounts. If the limitations referred to in article 7.5. regarding the Seller's liability or an appeal to them is not accepted by the judge, the Seller's liability is limited to damage to the Buyer's property and injury.

7.6. If the nature and/or composition of the products are changed, fully or partially damaged or the products are unpacked after delivery, the Buyer's right to any claim against the Seller expires due to the nature of the goods and food safety, if the cause and shortcoming of the product concerned can be attributed to the Buyer or if the defect or shortcoming is due to incorrect or careless storage and handling by or on behalf of the Buyer.

7.7. Buyer will indemnify Seller against all third party claims regardless of the grounds in connection with the goods supplied by the Seller, unless the Buyer demonstrates that there is no connection between the third party claim and any circumstance covered by the client's risk.

8. Recall

8.1. Should Seller decide to recall the supplied goods, i.e. issue a warning to the target group for which they are intended, and potentially remove the goods from the market, the Buyer will cooperate at no cost.

8.2. In such cases the Buyer will be required to (1) respond to the first request from the Seller to return all goods under the recall to the Seller, (2) inform the Seller of which end consumers have received the goods concerned if possible and (3) urgently take the measures required by Seller in order to cooperate with the recall in the most efficient way possible.

9. Acts of God and hardship clause

9.1. Seller is legally free and not bound to comply with his commitments towards the Buyer in the case of an Act of God (e.g. war, partial or general strike, operational accidents, fire, machine failure, supplier bankruptcy, raw material shortage, epidemics, pandemics and suchlike, government decisions or actions, strikes, or any cause independent of the will of the Seller rendering production, delivery or transportation impossible or requiring excessive effort). Acts of God do not entitle the Buyer to dissolve the agreement or to any form of compensation for damages.

9.2. If Seller is genuinely and disproportionately disadvantaged as a direct consequence of economic and/or operational conditions, parties will strive to achieve a fair and balanced solution to reduce, prevent or exclude the disadvantage.

10. Crisis Management

10.1. In the case of a Crisis that arises concerning the execution of the agreement that may influence the reputation of the Seller and/or associated businesses, the respective managers of Seller and Buyer will immediately contact each other to evaluate, investigate and manage the Crisis, and find a mutually satisfactory way to deal with it including external communications.

Crisis means a situation characterised by i) a severe, often unexpected breach in the Seller's operational continuity; and/or ii) a high degree of uncertainty around the state of affairs; and/or iii) the risk that the media and/or government will be involved.

11. Communication

11.1. Buyer will not make any public statements, communications, advertising, press releases or other announcements to third parties concerning the contents of the agreement, its subject or the relationship with the Seller, without the prior written consent of Seller.

11.2. In particular, in the case of a Crisis: (a) the Buyer will not make a public statement, communication or press release without the prior written consent of Seller, and (b) every public statement or communication or press release including social media with regard to the Crisis or the general relationship with the supplier must be approved in writing by the Seller prior to publication.

12. Termination

12.1. Seller is entitled to terminate the agreement with the Buyer at any time with immediate effect, without court authorisation, without prior notice and without payment of any compensation in the following cases: (i) if the Buyer, despite written notice taking into account a period of at least ten (10) calendar days, remains in default of the (timely) fulfilment of one or more of the obligations arising from the agreement; (ii) in the case of suspended payment or (a filing for) bankruptcy; judicial reorganisation, collective debt mitigation, restructuring or if Buyer is involved in such a procedure, (iii) in the case of liquidation or cessation of the Buyer's activities or (iv) if the Buyer's assets (or a part thereof) are seized or (v) in the case of a change to the Buyer's shareholder structure.

12.2. In the case that the agreement is terminated at the cost of the Buyer, the Buyer will pay compensation of at least 12% of the total price, without prejudice to the right of the Seller to claim greater compensation provided evidence is given of a greater actual damage. In such cases, all of the Seller's demands are immediately payable.

13. Intellectual property

All intellectual property rights with regard to the products supplied by Seller to the Buyer remain the property of the Seller at all times and will not be transferred to the Buyer in any situation.

14. Confidentiality

14.1. Any information provided by a party in the scope of the agreement must be handled confidentially by the other party and may only be used for contractual purposes. The Buyer must treat the existence and the terms of the contract in confidence.

14.2. Any rights and information used in the execution of the contract may only be shared with a third party with the written consent of the party in ownership of the relevant information, and on the condition that the third party has committed, in writing, to confidentiality prior to any public announcement. On termination of the agreement, each party must immediately return any documents and information received from the other party to that party.

15. Privacy

Seller and Buyer acknowledge that the contract requires the exchange of personal details between Seller and Buyer, including but not limited to contact details of members of staff. In this case, both will act as processors in regard of the personal data. Seller and Buyer will meet all their obligations under all applicable laws and rules regarding data protection and will agree to provide suitable technical and organisational measures to ensure the rights and freedoms of those concerned. If the execution of the agreement requires the processing of personal data other than the personal data that is necessarily exchanged between Seller and Buyer in the terms of the contract, Seller and Buyer will enter into a data processing agreement.

16. Miscellaneous

16.1. If a (part of a) provision of these terms and conditions is invalid or unenforceable, this will not affect the validity and enforceability of the remaining provisions of these terms and conditions. In such cases, Seller and Buyer will negotiate in good faith and replace the invalid or unenforceable provision with a valid and enforceable provision that corresponds as closely as possible to the purpose and intent of the original provision.

16.2. The Buyer may not transfer his rights and obligations under this agreement without the prior written consent of the Seller.

16.3. An agreement between Seller and Buyer encompasses the entire agreement between Seller and Buyer relating to the subjects arranged here and replaces any previous written and verbal agreement between Seller and Buyer relating to these subjects.

16.4. Provisions which by their nature are intended to remain in place even after the termination and/or dissolution of the agreement between Seller and Buyer remain in force following termination and/or dissolution.

16.5. Client must act in accordance with all applicable legal provisions.

16.6. Any negligence or delay on behalf of a party in invoking any right or legal instrument cannot be considered as a waiver of that right or legal instrument. A particular method of implementation or the partial implementation of a right or legal instrument does not exclude any other or further implementation of that right or legal instrument. In order to be valid, a waiver of a right or legal instrument must be made in writing and signed by the waiving party.

16.7. Without prejudice to any other provision of these terms and conditions, any claims by the Buyer arising from or in relation to these terms and conditions, or any quotation, order or agreement thereunder expire in any case after one (1) year of the date of the delivery of the goods.

16.8. The Buyer is made aware that he must always ensure along with his client that licenses and/or permissions must be applied for and/or communications made before the client can sell the goods, and that the Seller bears no liability whatsoever for this.

16.9. Buyer agrees to comply with the principles of the Danone Code of Conduct for Business Partners (available at <https://www.danone.be/en/code-of-conduct-for-business-partners>) and Sustainability Principles (available at <https://www.danone.be/en/sustainability-principles-long-version>) as amended from time to time. Concerns about the principles stated in this code may be raised directly with the Danone contact person or reported in a confidential manner via DANONE ETHICS LINE <http://www.danoneethicsline.com>. In the event Buyer sells certain products of the portfolio of Seller that is presented to be a partial or total replacement for breastmilk for infants up to six months of age, it shall abide by the provisions of the Danone Policy for the Marketing of Breast-milk substitutes (available at <https://www.danone.com/content/dam/danone-corp/danone-com/about-us/impact/policies-and-commitments/en/2018/Danone%20Policy%20for%20the%20Marketing%20of%20Breast-Milk%20Substitutes%202018.pdf>).

17. Applicable law and jurisdiction clause

All agreements to which these terms and conditions apply, and any other agreements arising from them, are subject exclusively to Belgian law. Any disputes between Seller and Buyer fall within the authority of the competent courts of the judicial district of Brussels.