

Danone Belgium and Luxembourg Terms and Conditions of Sale

1. General

1.1. Insofar as they are not deviated from, in special conditions or agreements concluded after the date on which these Terms and Conditions of Sale have been communicated and signed by the relevant authorised representatives of one of the following entities (i) Danone Rotselaar SP nv with registered office at Stationsstraat 170, 3110 Rotselaar, CBE 0402.734.595, (ii) Danone Belux nv/sa with registered office at Werkhuizenkaai 160, 1000 Brussels, CBE 0400.774.801 and (iii) Alpro nv with registered office at Vlamingstraat 28, 8560 Wevelgem, CBE 0420.429.375 (each individually referred to as the "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. Buyer and Seller together will be referred to as the "Parties", each separately the "Party".

1.2. In the case of any conflict between these Terms and Conditions of Sale and any separate written agreement between Seller and Buyer concluded after the communication date of these Terms and Conditions of Sale, the provisions of the separate written agreement shall prevail.

1.3. These Terms and Conditions of Sale take precedence over any other terms and conditions of the Buyer or its 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 that these Terms and Conditions of Sale take into account the economic and legal positions of Seller and Buyer and that these are balanced, in accordance with the overall spirit of similar agreements and applicable commercial practices.

2. Orders

2.1. Orders placed by the Buyer (via EDI, unless otherwise agreed) are subject to the provisions included in these Terms and Conditions of Sale, and to the provisions expressly agreed upon in any agreement subsequently agreed upon by the Parties (where applicable), and can no longer be cancelled or amended after acceptance thereof by Seller. Orders are only binding upon Seller when these are accepted or upon actual performance thereof.

2.2. In case of an order that is abnormal compared to the usual course of business with the customer (>25% of what is normally ordered), the Seller shall use its best efforts to deliver the products, but reserves the right to refuse, suspend or spread the delivery of the order.

2.3. Seller may refuse orders if these do not meet set minimum order quantities for the relevant products.

3. Pricing, invoicing and payment

3.1. Notwithstanding an explicit written and signed agreement to the contrary or indicated as such in documents originating from the Seller, 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. Seller has the right to adapt its price list/tariff at any moment in time. In that case, the new price list/tariff will be applicable within three (3) months after communication thereof. This term may be shortened in case of Force Majeure, a change of relevant applicable laws/taxes or in case of increases of labor costs, raw material prices or transport costs.

3.3. If Seller and 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 labour costs, raw material prices, transport costs or changes in the legislation (including taxes), Seller reserves the right to increase the said fixed price(s)/tariff(s) in proportion to the increase in the cost price, on condition that it gives the Buyer three (3) months' notice of such change.

3.4. In case of disagreement with any new price list/tariff communicated by Seller, the Buyer has the right to terminate the related commercial conditions by the date on which the new price list/tariff enters into force.

3.5. Any order by Buyer implies acceptance of the applicable price/tariff list applicable at the date of delivery.

3.6. 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 list/tariff provided by the Seller.

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

3.8. The Buyer shall make all payments due without any deduction by way of set-off or counterclaim. No disputes between Buyer and Seller about quality or other claims shall give the Buyer the right to suspend payment or to set off any amount against any unpaid invoices of the Seller.

3.9. In case the expiry date of the invoice is a Saturday, Sunday or a public holiday, the last working day prior to the expiry date serves as the expiry date and date on which the money should be in the bank account of the Seller. In case of late payment, Seller has the right to claim interests as of right and without prior notice of default, in accordance with the rate determined in the law of 2 August 2002 on late payment. In case of full or partial late payment, the Seller has the right to claim a lump sum compensation of 10% of the total invoice amount to compensate the damage suffered by the Seller, with a minimum of €375.00. The foregoing applies without prejudice to the Seller's right to claim compensation for legal and/or extra-legal collection costs arising from non-payment or the right to claim additional damages, provided that evidence of actual incurred damages is provided by Seller.

3.10. Non-payment of any invoice on the expiry date entitles the Seller to suspend any further acceptance and delivery of orders placed by the Buyer pending full payment of the invoice. Furthermore, the reductions allocated by Seller apply only if the Buyer has duly respected all corresponding terms, conditions and applicable payment deadlines. Bonuses and/or reductions in favour of the Buyer will only be owed after all the amounts owed by the Buyer and on which the bonus and/or reduction are/is calculated, have been paid to Seller. Amounts that are still owed by the Buyer, including the amounts that the Buyer calculated incorrectly, are deducted from the bonus and/or reduction amounts.

3.11. In the case of a dispute, an objection to the invoice must be lodged and duly substantiated within four (4) calendar days of receipt, stating the number and date of the disputed invoice. Otherwise, the invoice is deemed to have been accepted without reservation by Buyer.

3.12. Delisting of more than 15% of the product range or delistings which impact more than 15% of the (invoiced) turnover (based on the average turnover of the Buyer during the last 12 months) entitles the Seller to review any discounts/rebates/bonuses/commercial conditions of any nature (being current and/or future, recurrent or not, discounts on annual turnover etc.).

3.13. If, in Seller's opinion, the Buyer's creditworthiness has deteriorated prior to delivery or collection of the goods (as the case may be), Seller may require that the price of such goods be fully or partially paid prior to delivery or collection (as the case may be) or that security for payment by the Buyer be provided in a form acceptable to Seller.

3.14. Seller is entitled to invoice orders in instalments if reasonably deemed necessary.

4. Transfer of Risk - Delivery - Defects

4.1. The goods are supplied EXW (Ex Works – Incoterms 2020) from the Seller's warehouse, unless Parties have agreed otherwise in writing. Delivery can never include any form of transportation or relocation of the goods within the Buyer's commercial premises.

4.2. Notwithstanding any agreement to the contrary, the liability for loss, theft, damage or potential deterioration of the goods or otherwise, is transferred to the Buyer from the moment that the sold goods are delivered. Goods are deemed to be delivered if these are made available by Seller for pickup or unloading (= opening of the doors of the truck), depending on the applicable Incoterm.

4.3. After delivery, the liability for damage or loss of the supplied goods and any resulting damage arising therefrom immediately transfers to the Buyer.

4.4. 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 or penalties on the part of the Seller. However, in that case the Buyer is entitled to request that the Delivery takes place within a reasonable timeframe. If parties fail to agree on such timeframe, Buyer has the right to terminate the order in whole or in part.

4.5. The Buyer shall immediately inspect the goods following delivery for quantity variances and defects and shall notify Seller of any defects within 24 hours after delivery where apparent upon reasonable inspection or, in the event of hidden defects, within 24 hours after discovery. Goods delivered shall otherwise be deemed to conform to the order and be accepted by Buyer.

4.6. In case reported defects by Buyer are accepted by Seller, the Seller will replace the goods within a reasonable timeframe. If this is not possible as per sole discretion of Seller, the Seller will credit the purchase price in full or give a price reduction 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 prior inspection of the goods and 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.

5. Transfer of ownership and liability

5.1. All supplied goods remain 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.

5.2. Pallets or other relevant 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 not done by Buyer, the Seller is entitled to invoice the cost to the Buyer.

5.3. The Buyer is entitled to resell the goods in the normal course of business in the understanding that Seller is exclusively entitled to request 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 the relevant third party in order to repossess the goods. The Buyer agrees that the Seller can enter its premises in the scope of the aforementioned 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.

6. Resale

6.1. Buyer is entitled to resell and deliver products supplied by the Seller, provided that the following are taken into account: (1) it shall at all times keep the goods in a good and readily saleable condition and handle the Products with the required care and not commit or perform any act or omission which may affect the quality of the safety of the goods; (2) shall not use the goods in any way that may detrimentally affect the reputation of Seller; (3) is solely responsible for issuing any compulsory notices and respecting other applicable legislation; (4) The Buyer and its client, when operating in the capacity of a business, agree by means of a contractual clause that the latter must fulfil the obligations stated under 6.1(1-3) in the case of further resale.

7. Guarantees and liability

7.1. 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.

7.2. 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. The use of goods, their handling and storage falls under the professional responsibility of the Buyer, regardless of any guidance given in that regard by the Buyer.

7.3. Seller is not liable towards the Buyer under these Terms and Conditions of Sale, or any agreement or order, for any loss of revenue, loss of profit or forecasted 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. Seller shall also not be liable for damages resulting from abnormal storage or transportation conditions, intentional damage, negligence, abuse, accident by Buyer, or damages otherwise caused by the Buyer.

7.4. Nothing in this Article 7, or these Terms and Conditions of Sale, or any agreement between Seller and Buyer will exclude the liability of either Party in relation to the other Party in case of fraud, personal injury, death or for any liability that may not be excluded or restricted in accordance with applicable laws.

7.5. 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.



7.5. Seller's liability for any damage or loss caused by breach of contract, tort or breach of statutory obligations, will, in any event, be limited to the price paid by the Buyer for the goods that have led to the damage or loss.

8. Recall/withdrawal

8.1. Should Seller decide to recall/withdraw 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 as detailed by Seller to (1) respond to the first request of the Seller to return all goods subject to the recall initiated by the Seller or cease the distribution of the goods until further instruction given by the Seller, (2) inform the Seller which batches have been distributed to the end-consumers and (3) urgently take the measures required by Seller in order to cooperate with the recall/withdrawal in the most efficient way possible.

8.3. The Buyer shall not voluntarily initiate any recall/withdrawal of goods without prior consent of Seller.

9. Force Majeure and Hardship

9.1. Seller is not bound to comply with its contractual obligations in the case of Force Majeure (e.g. war, partial or general strike, operational accidents, fire, machine failure, supplier bankruptcy, raw material shortage, epidemics, pandemics government decisions or actions or any other cause independent of the will of the Seller rendering production, delivery or transportation impossible). Force Majeure does not entitle the Buyer to dissolve the agreement or to any form of compensation for damages

9.2. Article 5.74 of the Belgian civil code shall apply to the collaboration between Parties. The application of hardship is excluded to request the revision of commercial agreements that have been concluded for a specific period of time.

10. Crisis Management

10.1. Crisis means a situation characterised by i) a severe 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.

10.2. 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 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.

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, anticipatory breach and ENAC

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 mediation, 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. Either Party is authorized to terminate the agreement of indefinite duration for convenience, at any time, by means of registered letter, without compensation and with respect of a notice period of three (3) months. If Parties concluded a commercial agreement with a specific duration, neither Party is allowed to terminate such agreement, unless if explicitly foreseen in these General Terms and Conditions of Sale (e.g. article 3.2. and 3.3).

13. Intellectual property

All intellectual property rights with regard to the products supplied by Seller to the Buyer remain the property of the Seller or its affiliated entities 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. Any processing of personal data by the Seller is done in accordance with its Privacy Statement (available at <https://www.danone.be/nl/privacy>).

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. The Seller warrants that the quality, content, packaging and labelling of all goods delivered by it are in compliance with the relevant legislation, so that they can be placed on the market in Belgium and Luxembourg. The Buyer may market goods within the EEA and Switzerland, however, in such case the Buyer warrants that the quality, content, packaging and labelling of all goods delivered by it will be compliant with the applicable legislation.

16.6. Any negligence or delay on behalf of Seller 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 Seller.

16.7. Without prejudice to any other provision of these terms and conditions, any claim by the Buyer arising from or in relation to these terms and conditions, or any quotation, order, invoice, payment or credit note thereunder expire in 120 days of the default or cause giving rise to such claim, and otherwise shall be deemed irrevocably waived and null.

16.8. Buyer agrees to comply with (1) the principles of the Danone Code of Conduct for Business Partners and (2) the Danone Sustainability Principles as amended from time to time and made at <https://www.danonebelgie.be/compliance/> as well as with the ((1) the Danone Belux supply chain principles and the (2) Danone Belux Quality principles (as amended from time to time) and made available at <https://www.danonebelgie.be/algemene-verkoopsvoorwaarden/>

16.9. 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.danonebelgie.be/compliance/>)

16.10. Potential non-ethical conduct or any alleged violations of the aforementioned policies or other Danone Compliance Policies, applicable codes of practice or potential violations of laws and regulations can be raised directly with the Danone contact person or reported in a confidential manner via DANONE ETHICS LINE (<http://www.danoneethicsline.com>)

16.11. The communication of a recommended selling price by Seller is merely informative. The Buyer is free to exclusively determine the reselling price of the products at all times.

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 the seat of Seller. The application of the Vienna Convention on the International Sale of Goods will not be applied.