

**1. SCOPE OF APPLICATION – 1.1** All the supply of products ("Products") and provision of accompanying services by Barry Callebaut Belgium NV, Aalstersestraat 122, 9280 Lebbeke-Wieze, Belgium ("BC") are governed by these general terms and conditions of sale ("BC General Terms"). By placing an order ("Order") or entering into a contract ("Purchase Contract") and placing a call-off under such Purchase Contract ("Call-off") with BC, the customer ("Customer") is deemed to have read and accepted the BC General Terms and to have renounced his own general terms and conditions, if any. **1.2** In case of conflicting provisions, the provisions of any other written document between BC and the Customer will prevail. **1.3** BC expressly reserves the right to modify the BC General Terms.

**2. OFFERS AND ORDERS – 2.1** Any Order or Call-off by the Customer shall only become binding after sales order confirmation by BC. In the event of an Order on price list by Customer, BC expressly reserves the right not to accept such Order and to withhold the sales order confirmation. **2.2** In the event of a Call-off by the Customer that can relate to two or more Purchase Contracts with BC, quantities shall be called off on a first-in-first-out basis. **2.3** In the event of an Order by the Customer that can relate to a Purchase Contract with BC, such Order shall be deemed as a Call-off under such Purchase Contract unless confirmed otherwise in writing by the Customer at the latest at the time the Order is placed.

**3. PRICES – 3.1** Prices are agreed in writing and unless otherwise agreed exclusive of VAT, cost of carriage, customs and excise of other duties payable. **3.2** Price lists are valid for the reference period solely, without prejudice to the right of BC to adjust prices or delist Products during the reference period at its discretion. **3.3** If at the end of the delivery period under a Purchase Contract a volume balance remains outstanding, BC shall be entitled to increase the price by 1% per month calculated on the basis of the outstanding balance under the respective Purchase Contract. BC further has the right to claim additional actual damages. **3.4** In case of cancellation of an Order or Call-off or cancellation or early termination of a Purchase Contract by Customer, BC has the right to claim compensation damages.

**4. DELIVERY – 4.1** BC shall use its reasonable endeavors to comply with any date or time agreed for delivery. **4.2** BC's obligation to supply shall be suspended as long as the Customer is in arrears with any payment towards BC, or any company connected with BC (Article 11 Belgian Corporate Code), without any notice and without prejudice to BC's or the relevant company's right to claim compensation.

**5. TRANSPORT AND RISK – 5.1** All transport is carried out in accordance with the agreed Incoterm, or in absence hereof, Delivered At Place. **5.2** In case of a justified claim against BC for late delivery not caused by force majeure, the maximum amount for damages for which BC may be held liable, is limited to the value of the affected Products. These measures shall be deemed to fully indemnify Customer who is not entitled to any further claims or demands on whatever basis.

**6. QUALITY AND QUANTITY – 6.1** BC warrants that the Products will be of satisfactory quality and will comply with the specifications for the Products agreed in writing, if any. All other warranties are expressly excluded to the fullest extent permissible by law. **6.2** For some Products, BC can present a quality report as agreed between Customer and BC. BC cannot be held liable for any consequences that may directly or indirectly result from the use of the Products by the Customer prior to obtaining complete results of such quality report. **6.3** The quantity recorded by BC upon dispatch shall be decisive. Delivery of a shortage/surplus not exceeding 8% of the quantity of the Products ordered shall, at BC's option, be considered to be due execution of its contractual obligations and Customer shall not be entitled to reject the Products.

**7. ACCEPTANCE, INSPECTION AND CLAIMS – 7.1** Without prejudice to its right to inspect the Products, the Customer must take delivery of the Products immediately upon presentation. All costs incurred by BC relating to the Customer's default refusal to take delivery of the Products are for the Customer's account, including unloading costs (longer than three (3) hours), transportation and storage. **7.2** Upon arrival of the Products and before any use or resale of the Products, the Customer is responsible for verifying the condition, quality and quantity of the Products as well as their conformity with the specifications, if any. **7.3** Any claims must be notified to BC in writing within three (3) working days. Defects that could not have been discovered even after diligent inspection must be notified to BC within three (3) working days after discovery thereof. Any such claims must be addressed to BC by email (with read receipt), registered letter (with return receipt) or by courier to the attention of the customer care agent appointed to the Customer. **7.4** No claims will be accepted by BC after expiration of the shelf life of the Products. **7.5** The Customer shall lose all rights to claim for defects in case the Products were improperly handled or stored by or for the account of the Customer. **7.6** Any defects shall be ascertained jointly by representatives of BC and the Customer within a reasonable term after notification of the defect by the Customer. In the meantime, the Customer shall take any provisional measures in the parties' interest. **7.7** For justified or accepted claims, BC shall, at its own discretion (i) supply additional or replacing Products at its own expense; or (ii) partially or in full refund the invoiced amount or issue a credit note. These measures shall be deemed to fully indemnify the Customer who is not entitled to any further claims or demands on whatever basis.

**8. PAYMENTS – 8.1** Payments are to be performed to the party and on the terms of the invoice. The amounts shown on the invoice shall be due and payable without any deductions or set-off whatsoever, unless with BC's written consent. **8.2** Payments are to be performed at the address of BC's registered office. **8.3** Any claim relating to the invoice must be presented to BC within 7 calendar days upon receipt, by means as determined in article 7.3 above. **8.4** Prices are payable in the currency mentioned on the invoice. Any loss as a consequence of the volatility in exchange rates is for the Customer's account, unless agreed upon otherwise in writing. **8.5** Any EUR amounts are fully payable in EUR irrespective of a potential change to a different official currency in the jurisdiction of the Customer. **8.6** The mere fact of non-payment, even partially, by the stated due date shall be deemed to constitute default, without notice to the Customer. **8.7** Interest shall automatically and without notice accrue on overdue payments to BC at Euribor 3 months plus 700 basic points. **8.8** In the event the Customer fails to meet a payment date (i) all other outstanding invoices will become immediately due and payable without requirement of any notice and (ii) BC reserves the right to suspend or cease further supplies to the Customer. **8.9** In case BC and Customer agree that Products shall be supplied and/or invoiced to a third party, Customer shall remain fully liable for the fair and due execution of the Purchase Contract, Call-off or Order. **8.10** BC shall communicate changes of bank details for customer payments by registered letter solely and never by phone, fax or email. Customer may verify the content of any communication in this respect via corporate\_treasury@barry-callebaut.com.

**9. RETENTION OF TITLE - 9.1** Products remain the property of BC until full payment of the relevant invoice(s) by the Customer. **9.2** Customer shall handle the delivered Products subject to the retention of title with due care and properly insure them. Until title vests in the Customer, the latter may not process or

resell the Products other than in the normal course of business, not pledge the Products or grant any third party any other right in such Products.

**10. FORCE MAJEURE – 10.1** No party shall be deemed to be in breach of its contractual obligations by reason of any delay in performing or failure to perform if the delay or failure was due to any cause beyond its reasonable control, including but not limited to acts of God, explosions, floods, extreme weather conditions, fire, accident, war, terrorism, civil disturbance, industrial disputes or actions, strikes, lockout, interrupted supply of raw materials, import or export regulations or embargoes. **10.2** In the event of a party being prevented by such event, that party shall give prompt notice of suspension. Any party whose obligations have been suspended as aforesaid shall resume the performance of such obligations promptly after the removal of the event and shall notify the other party hereof. **10.3** If such event continues for more than sixty (60) days, either party may terminate the contractual relationship with immediate effect.

**11. TERMINATION – 11.1** Without prejudice to the other contractual sanctions each party may have, either party may terminate the contractual relationship in part or in full with immediate effect by giving notice to the other party by registered letter (with return receipt) or by courier if (i) a party commits a material breach of its contractual obligations, which cannot be cured, or if curable, is not cured within thirty (30) days after notification thereof by the non-breaching party; (ii) a party becomes insolvent, enters into liquidation or bankruptcy or has a receiver appointed or enters into an arrangement for the benefit of creditors; or (iii) a party ceases or threatens to cease to carry on its business. **11.2** Each Order or Call-Off which is in force at the date of the termination notice and whose performance has not begun, if any, shall be terminated at the discretion of the non-breaching party. **11.3** At the effective date of termination, the Customer shall settle for and acquire all Products already manufactured or packaging materials purchased by BC in the framework of the contractual relationship between the parties. Customer shall settle any profit or loss on raw materials purchased or covered on request of the Customer that have not yet been used in any Products. **11.4** Termination, in part or in full, shall not affect the validity of the BC General Terms. The articles 12, 13 and 14 will in any case survive the termination or expiration of the contractual relationship between the parties.

**12. LIMITATION OF LIABILITY – 12.1** Each party shall indemnify the other party for any damages or losses that it has caused to the other party by a willful or negligent breach of the contractual relationship. The obligation to indemnify the other party shall cover direct damages or losses which have been caused by the breach with reasonable causation. A party shall give notice of a breach as soon as reasonably possible after it has obtained knowledge of both the breach and the relevant facts. **12.2** Without prejudice to article 5.2 and article 7.7, the maximum amount of damages for which BC may be held liable, shall be limited to the higher of 100,000 EUR and the value of the affected Products. **12.3** In no event shall either party be liable to the other party for any consequential, indirect, punitive, incidental or special damage or loss, including but not limited to, lost revenue, lost profits or lost business, arising out of or in connection to the contractual relationship between the parties. **12.4** Nothing contained herein shall limit a party's liability in the case of fraudulent misrepresentation, willful misconduct or in case such limitation is not permitted by mandatory law.

**13. INTELLECTUAL PROPERTY RIGHTS – 13.1** BC shall remain the owner of intellectual property it has solely developed relating to the Products including specifications and recipes. BC shall grant the Customer the necessary license to use that intellectual property to the extent required for the application of incorporating the Products in the Customer's products; such license shall expire, but not for already purchased Products, as soon as the Customer stops purchasing commercial quantities from BC. **13.2** The Customer shall remain the owner of intellectual property it has solely developed, relating to the Products and shall grant BC the necessary license to use that intellectual property for the purpose of the contractual relationship between the parties. **13.3** In respect of any intellectual property developed jointly by the parties, the ownership will be vested in BC, unless agreed otherwise upon in writing.

**14. CONFIDENTIALITY –** Each party shall keep strictly confidential and shall not disclose to any third party (a) the terms of the contractual relationship between them and (b) any confidential, sensitive or proprietary information concerning the other party's business and its products (including, but not limited to, technical or commercial know-how, specifications, recipes, IP and processes) disclosed to it by the other party ("Disclosing Party") in writing, electronically or orally during the term of the contractual relationship between the parties, unless such disclosure is specifically consented to in writing and signed by an authorized representative of the Disclosing Party.

**15. MISCELLANEOUS – 15.1** No modification, amendment or waiver of the BC General Terms shall be binding upon either party unless made in writing and duly signed by both parties. **15.2** If any provision of the BC General Terms is or becomes invalid or unenforceable in part or in full, such invalidity or unenforceability shall not affect the validity of the rest of the provision or any other provisions. The invalid or unenforceable provision shall be replaced by a valid and enforceable provision which corresponds with the economic purpose of such invalid or unenforceable provision. **15.3** BC may assign its contractual obligations and/or any part thereof, delegate its obligations or assign its rights to any BC affiliates. BC shall not assign its obligations under this agreement to any third party, with the exception of the right of BC to assign any payment claims against the Customer to any third party without the consent of the Customer. The Customer may not assign any of its rights or obligations under the contractual relationship with BC to any third party (including affiliates) without the prior written consent of BC.

**16. LAW AND DISPUTES – 16.1** Clauses customarily used in commerce shall be interpreted in accordance with, and any reference to an Incoterm shall be a reference to, the Incoterms® 2010. **16.2** The BC General Terms as well as all legal relations between the Customer and BC are governed by the laws of Belgium, excluding the CISG (1980) and the law of 27 July 1961. **16.3** All disputes arising out of or in connection with the BC General Terms or any legal relations between the Customer and BC shall be resolved amicably and in good faith negotiations. In the event any such dispute appears insurmountable, the competent courts of Dendermonde (Belgium) shall have exclusive jurisdiction.

**Barry Callebaut Belgium NV • Aalstersestraat 122 • 9280 Lebbeke-Wieze • Belgium • 438.950.833 • www.barry-callebaut.com • BC General Terms June 2015 • De BC Algemene Voorwaarden zijn beschikbaar in het Nederlands op verzoek • Les Conditions Générales de BC sont disponibles en français sur demande. • Die Allgemeinen Verkaufsbedingungen von BC sind auf Anfrage auf Deutsch verfügbar. • Le Condizioni Generali BC sono disponibili in Italiano su richiesta. • Los Términos Generales de BC en español pueden obtenerse previa petición. • Warunki ogólne BC w polskiej wersji językowej dostępne są na żądanie. • 您可以向我们致函索取 BC 通用销售条款中文版。**