

# General Terms & Conditions of Dietz Cacao Trading B.V. KvK Limburg 14016339

## Article 1: Definitions

1.1. Unless explicitly mentioned otherwise, the terms listed below shall have the following meanings hereunder:

User: The closed joint stock company under Dutch law Dietz Cacao Trading B.V. (hereinafter referred to as Dietz Cacao Trading B.V.) applies the General Terms & Conditions (hereinafter referred to as GTC);

Customer: the counterparty or client of Dietz Cacao Trading B.V., acting as commercial party or on behalf of its enterprise, which Dietz Cacao Trading B.V. sells and supplies goods to and/or provides services for, which in this case shall also include its function as provisional service provider;

Contract: the contract concluded by and between Dietz Cacao Trading B.V. and Customer/client;

Goods: the goods and services provided and/or to be provided by Dietz Cacao Trading B.V.

## Article 2: Scope

- 2.1. Unless explicitly agreed otherwise by the Parties hereto in writing, the present GTC shall apply to any and all legal transactions by and between Dietz Cacao Trading B.V. and Customer and to any and all quotation, offer, and/or Contract by and between Dietz Cacao Trading B.V. and Customer, to which Dietz Cacao Trading B.V. has declared the present GTC to apply.
- 2.2. Additionally, the present GTC shall also apply to any and all Contracts concluded with Dietz Cacao Trading B.V., the performance of which third parties are responsible for. Customer shall thus be obliged to point out on the applicability of the present GTC.
- 2.3. Any and all deviations from the present GTC shall be explicitly agreed in writing in order to take legal force and effect.
- 2.4. We explicitly reject the applicability of possible sales terms and/or other terms and conditions of Customer. The present GTC shall generally prevail.
- 2.5. In the event one or more provisions hereunder are or should become null and void, this shall in no form whatsoever affect the remaining provisions' validity. In suchlike case, Dietz Cacao Trading B.V. and Customer shall mutually negotiate and agree such new provisions that meet the initially intended purpose and nature of the invalid ones best.

## Article 3: Offers & Contract Conclusion

- 3.1. Any and all offers made by Dietz Cacao Trading B.V. shall be unbinding unless a date of accepting is explicitly defined by or in relation to the respective offer and has been agreed to be binding by the Parties hereto.
- 3.2. The prices stated in suchlike offers/quotations shall be exclusive of VA T and other statutory fees and/or public charges. Unless agreed otherwise in writing, they shall furthermore be exclusive of costs accrued within the scope of the Contract (such as shipping and/or administrative costs).
- 3.3. Any and all offers shall exclusively be based on the information provided by Customer, whereas Dietz Cacao Trading B.V. shall be entitled to rely on suchlike information's correctness and completeness. Any and all modifications thereto made in the meantime and relevant for the Contract's fulfillment shall be immediately - i.e. within five (5) days - communicated to Dietz Cacao Trading B.V. in writing.
- 3.4. Contracts by and between Dietz Cacao Trading B.V. and Customer shall be concluded in the manner and at the times defined below:
  - a) in case no order confirmation has been provided: at the time Customer explicitly accepts

the offer made by Dietz Cacao Trading B.V. verbally or in writing without any modifications and/or amendments made thereto;

b) in case an order confirmation has been sent: at the time that Dietz Cacao Trading B.V. receives the returned and signed as accepted order confirmation it has sent to Customer;

c) or at the time that Dietz Cacao Trading B.V. has started performing the assigned order/works upon Customer's request.

In either case the registered office of Dietz Cacao Trading B.V. shall be the place of the Contract's conclusion, unless and notwithstanding the applicability of the provisions stipulated by Article 16. Dietz Cacao Trading B.V. has defined another place as place of the Contract's conclusion.

Nevertheless, either of the Parties hereto shall be free to prove that Contract's conclusion in another way and/or at another time.

#### **Article 4: Contract's Fulfillment**

4.1. Dietz Cacao Trading B.V. shall use its best efforts to fulfill the present Contract.

However, we shall not guarantee the accomplishment of specific goals.

4.2. Any and all deadlines and dates stated by Dietz Cacao Trading B.V. shall generally be reference dates and shall not be regarded fixed deadlines. In case suchlike deadlines are exceeded, Di Dietz Cacao Trading B.V. shall nt be obliged to any compensation for damages whatsoever. Neither shall Customer be entitled to terminate the present Contract as a result thereof, unless Customer is able to prove Dietz Cacao Trading B.V.'s intent or gross negligence.

4.3. In the event Dietz Cacao Trading B.V. fails to supply Customer in due time, Customer shall be obliged to send Dietz Cacao Trading B.V. a reminder before the latter is in default. Moreover, Customer shall be obliged to grant Dietz Cacao Trading B.V. a reasonable grace period to meet its obligations hereunder.

4.4. If so required for the present Contract's proper fulfillment, Dietz Cacao Trading B.V. shall be entitled to assign third parties with the performance of specific works hereunder.

4.5. Customer shall be responsible for providing Dietz Cacao Trading B.V. with any and all data and information requested by Dietz Cacao Trading B.V. and/or reasonably regarded necessary for the present Contract's fulfillment in due time. If Customer fails to meet the aforementioned obligation, Dietz Cacao Trading B.V. shall be entitled to suspend the Contract's performance and/or charge Customer the additional costs resulting from suchlike delay or failure at the customary rates.

4.6. Dietz Cacao Trading B.V. shall be entitled to inspect Customer's accounting data related to financial transactions with Dietz Cacao Trading B.V. at any time. The aforesaid shall in particular apply to respective tax obligations such as e.g. sales tax.

#### **Article 5: Deliveries**

5.1. Any and all deliveries shall be ex works/warehouse of Dietz Cacao Trading B.V. or made ex a location to be defined by Dietz Cacao Trading B.V.

5.2. Customer shall be obliged to accept the Goods at the time these are delivered by Dietz Cacao Trading B.V. to Customer's premises and/or at the time contractually defined.

5.3. In the event Customer rejects the acceptance of Goods or fails to provide the information and/or instructions required for proper deliveries, Dietz Cacao Trading B.V. shall be entitled to store the Goods at Customer's risk and on Customer's account.

5.4. Unless agreed otherwise in writing, any and all expenses for the Goods' transportation, (intermediate) storage and transshipping shall be borne by Customer and be in accordance with the respective quotation, order or invoice.

5.5. The commodity risk shall transfer to Customer at the time the Goods are legally and/or

actually delivered to Customer and are thus under Customer's control or controlled by a third party designated by Customer.

## **Article 6: Costs & Prices**

- 6.1. Any and all prices shall be exclusive of VAT, exclusive of costs accrued hereunder and exclusive of statutory fees or charges.  
Dietz Cacao Trading B.V. shall be entitled to increase quoted prices if the present Contract is modified and/or amended and respective amendments or modifications would have already resulted in higher quotation prices at the time of the Contract's conclusion.
- 6.2. Moreover Dietz Cacao Trading B.V. shall be entitled to pass increase in prices if the share in operational costs and/or the costs for performance have increased in the period between the quotation's presentation and the actual delivery.

## **Article: 7 Payment**

- 7.1. Any and all payments shall be made within 14 days as from the invoice date in the form defined by Dietz Cacao Trading B.V. and in the designated currency. Unless agreed otherwise in writing on the quotation, order or invoice, Customer shall not be entitled to any deduction, discount or offsetting. In case of doubt the term specified on the invoice shall apply. Possible objections regarding the invoice amount shall not have any suspending effects on Customer's payment obligation.
- 7.2. In the event Customer fails to settle its invoice within the term of 14 days, Customer shall legally be in arrears with payment without the necessity of giving notice of default. In suchlike case Customer shall owe the default interest corresponding to the commercial interest defined by Art. 6:119, subpar. 1 and 2, Civil Code, irrespective of the possible past, current or future financial loss suffered from by Dietz Cacao Trading B.V. as a result of Customer's default. Interest on the outstanding amount shall be due up from the time of Customer's default and shall be applied until the outstanding amount has been paid in full, whereas each part of a month shall count as a whole month.
- 7.3. In the event Customer ceases its business, goes bankrupt, is subjected to personal debt conversion, confiscation, or legally granted a respite as well as in the event of the circumstances specified in Article 12 hereof, Dietz Cacao Trading B.V.'s claims towards Customer shall immediately be demandable.
- 7.4. Dietz Cacao Trading B.V. shall be entitled to primarily use Customer's payments to pay off its debt, secondarily to pay off any interest owed by Customer, and finally to pay off the main amount and the current interest. Dietz Cacao Trading B.V. shall be entitled to reject Customer's payment offers without being in default if Customer defines a different order for the payment. Dietz Cacao Trading B.V. shall also be entitled to reject the main amount's full settlement if accrued and current interests as well as expenses are not settled at the same time.
- 7.5. In the event individual payment deadlines are being exceeded, Dietz Cacao Trading B.V. shall be entitled to suspend any further deliveries to be made to Customer until the amount outstanding under any and all Contracts concluded with Dietz Cacao Trading B.V. has been paid in full. In suchlike cases, Dietz Cacao Trading B.V. shall furthermore be entitled to ship any and all outstanding deliveries as COD consignments only, whereas the decision as to changing the GTC respectively shall be in Dietz Cacao Trading B.V.'s sole discretion.
- 7.6. In the event Customer continuously fails to meet its obligations hereunder, the original Contract shall be terminated. However, the aforesaid shall not affect Dietz Cacao Trading B.V.'s right to claim the Contract's fulfillment or at least claim for

compensation. Dietz Cacao Trading B.V. shall in suchlike cases be entitled to offer Customer a new Contract with modified (complementary) provisions.

#### **Article 8: Reservation of Proprietary Rights**

- 8.1. Any and all Goods delivered by Dietz Cacao Trading B.V. shall remain legal property of Dietz Cacao Trading B.V. until Customer has fully fulfilled any and all of its obligations resulting from the Contracts concluded with Dietz Cacao Trading B.V., the decision as to which shall be in Dietz Cacao Trading B.V.'s discretion.
- 8.2. Customer shall not be entitled to put the Goods subject to title retention in pledge and/or to debit, alienate, process and/or rework them in any other form unless agreed otherwise in writing. If the Goods supplied forfeit their original properties by mixing them with other goods, the new products resulting therefrom shall be subject to title retention.
- 8.3. Customer shall be obliged to immediately inform Dietz Cacao Trading B.V. reasonably on any third party attempts to seize Goods subject to title retention and/or announce or attempt to exercise legal titles thereon. Customer shall furthermore be obliged to use its best efforts to reverse any already effected seizures.
- 8.4. Customer undertakes to take out permanent fire, damage by explosion and water, theft and thievery and alienation insurance for Goods delivered under title retention. Upon our first request, Customer shall submit the respective insurance policy for inspection.
- 8.5. Any and all Goods delivered by Dietz Cacao Trading B.V., which are subject to title retention as defined in Paragraph 1 hereof, shall only be resold within the scope of common business transactions. Under no circumstances whatsoever shall they serve as means of payment. Customer undertakes to exclusively resell suchlike Goods under its proprietary title retention.
- 8.6. In the event Dietz Cacao Trading B.V. decides to exercise its proprietary rights defined hereunder, Customer shall already be now grant Dietz Cacao Trading B.V. or a third party designated by the same its unconditional and irrevocable consent to enter any and all locations at which property of Dietz Cacao Trading B.V. is stored in order to obtain the Goods and/or goods resulting from the same being mixed with other materials or goods.

#### **Article 9: Collection Costs**

- 9.1. Any and all judicial and extrajudicial (collection) costs reasonably incurred by Dietz Cacao Trading B.V. as a result of Customer's failure to meet its payment obligations hereunder (in due time) shall be borne by Customer. Reasonable expenses hereunder shall be at least 15% of the invoice amount incl. VAT at a minimum amount of EUR 250.- excl. of VAT plus expenditures. Expenditures shall be the costs incurred by obtaining information, excerpts, affidavits of bailiff services, and registered mail, without being limited thereto.
- 9.2. Customer shall be obliged to pay the applicable interest rate on collection costs.

#### **Article 10: Inspection, Objection & Exclusion of Liability**

- 10.1. Customer shall inform Dietz Cacao Trading B.V. in writing on possible objections within seven days after identifying the respective reason. Complaint letters shall specify the complaint as detailed as possible in order to facilitate Dietz Cacao Trading B.V.'s adequate reaction.
- 10.2. Upon the first respective request, Customer shall provide Dietz Cacao Trading B.V. with a sample of the objected item that allows for determining whether or not the complaint is justified. Dietz Cacao Trading B.V. shall be entitled to take samples by

- itself and assign one or more laboratories with their examination. The laboratory findings shall be binding for the Parties hereto.
- 10.3. With respect to justified complaints, it shall be within Dietz Cacao Trading B.V.'s sole discretion to decide to adjust the invoice amount, to replace or re-render the product or service in question, or to refund the amounts already paid in part without the Contract's continuous performance.
- 10.4. In the event Customer fails to raise its objections within the deadline specified in Art. 10.1, any and all of Customer's rights and claims under which title ever shall forfeit with respect to the objected item.
- 10.5. Dietz Cacao Trading B.V.'s liabilities (within the chain) shall be excluded for any and all processing, reworking, storage, transportation, and/or any other circumstances related to the Goods delivered that are beyond Dietz Cacao Trading B.V.'s reasonable control shall be excluded.
- 10.6. Notwithstanding the above paragraph, Customer shall in the event of quality issues be obliged to immediately inform Dietz Cacao Trading B.V. thereon in order to give Dietz Cacao Trading B.V. the chance to limit or prevent the problem or make it in any other form whatsoever part of its quality control.
- 10.7. Any and all cases not governed by the present GTC shall be within Dietz Cacao Trading B.V.'s sole discretion.

#### **Article 11: Complaint Period**

- 11.1. Notwithstanding the provisions stipulated under Art. 10 hereof, Customer shall be required to immediately inform Dietz Cacao Trading B.V. in writing if Customer comes to the conclusion that Dietz Cacao Trading B.V. fails to perform its contractual obligations (properly and/or in due time and/or completely) and to legally assert any and all claims based thereon within a term of three months upon the date of the above-specified notification, unless Customer has already done so on base of Article 10. In the event Customer fails to do so, any and all of its rights and claims shall forfeit as a result of the above complaint period's exceeding.

#### **Article 12: Suspension & Cancellation**

- 12.1 In the event Customer fails to meet its obligations towards Dietz Cacao Trading B.V. properly and/or in due time, if the options for compensation and/or Customer's organizational form change, if Customer goes bankrupt or a legal insolvency application related to Customer is filed, if the Act on individual refinancing is applied, Customer has filed an application for respite and/or the same has been granted, if Customer's business is being discontinued or liquidated, Customer's goods are being seized, and/or Customer is placed under disability, Dietz Cacao Trading B.V. shall be entitled to suspend the performance of its obligations towards Customer and/or cancel the Contract concluded with Customer in whole or in part without giving notice or legal intervention and without being obliged to compensate Customer. The aforesaid shall apply irrespective of Dietz Cacao Trading B.V.'s remaining rights including its entitlement to compensation.

#### **Article 13: Liability**

- 13.1 Dietz Cacao Trading B.V.'s liabilities shall generally be limited to the cases specified hereunder.
- 13.2 Dietz Cacao Trading B.V.'s liabilities for damages suffered by Customer and resulting from the Contract's delayed, incomplete, and/or improper fulfillment shall be limited to maximum the invoice amount that Dietz Cacao Trading B.V. has charged

Customer for the delivery of suchlike Goods and/or rendering of suchlike services the damage or loss results from. However, under no circumstances shall Customer's compensation owed by Dietz Cacao Trading B.V. exceed the amount covered by or specified in Dietz Cacao Trading B.V.'s respective insurance policy, in case the insurance should not pay for the damage or loss in question. Exceptions to the aforesaid shall be limited to Dietz Cacao Trading B.V.'s intent or gross negligence. Within the scope of this and the following provisions, the term "Dietz Cacao Trading B.V." shall include Dietz Cacao Trading B.V.'s employees and third parties possibly assigned with the execution of orders.

- 13.3 Dietz Cacao Trading B.V. shall not be liable for damage or loss resulting from Customer's failure to meet its information obligations defined by Art. 3.3. Exceptions to the aforesaid shall be limited to Dietz Cacao Trading B.V.'s intent or gross negligence.
- 13.4 Moreover, Dietz Cacao Trading B.V. shall not be liable for damage or loss resulting from Customer's actions and/or omissions related to third party-execution of orders. Exceptions to the aforesaid shall be limited to Dietz Cacao Trading B.V.'s intent or gross negligence.
- 13.5 Furthermore, Dietz Cacao Trading B.V. shall generally be entitled to limit Customer's damage or loss as good as possible or to compensate for it in full. Customer shall support Dietz Cacao Trading B.V.'s respective activities to the best of its abilities.
- 13.6 Customer shall be obliged to limit the damages or losses suffered from by itself and/or by its employees to the extent possible or - if possible - compensate for them in full.
- 13.7 Under no circumstances whatsoever shall Dietz Cacao Trading B.V. be liable for indirect damage such as consequential damage, profits lost, savings lost or loss resulting from business stagnation. Exceptions to the aforesaid shall be limited to Dietz Cacao Trading B.V.'s intent or gross negligence.
- 13.8 Dietz Cacao Trading B.V. shall take out cargo insurance. In the event of damage or loss resulting from the Goods' transportation, the respective insurance company's general terms & conditions (which Customer shall be provided with upon request) shall prevail over the present GTC.
- 13.9 With the exception of unreasonable or unrighteous cases, the burden of proof shall be with the claimant.

#### **Article 14: Guarantee**

- 14.1 Customer shall keep Dietz Cacao Trading B.V. indemnified from any and all third party claims related to copyrights in materials and information provided by Customer and used for the Contract's fulfillment.
- 14.2 Additionally, Customer shall keep Dietz Cacao Trading B.V. indemnified from any and all third party claims for compensation related to and/or arising from Dietz Cacao Trading B.V.'s execution of the Contract if and insofar Dietz Cacao Trading B.V. is not liable therefor towards Customers according to the provisions stipulated by Art. 13 hereof.

#### **Article 15: Force Majeure**

- 15.1. The Parties hereto shall be exempted from their contractual obligations if respective fulfillment is prevented by circumstances beyond their reasonable control and they are not responsible for legal acts or conditions applied to transactions by virtue of law.
- 15.2. In addition to what law and legislation define, "Force Majeure" hereunder shall also include any and all external foreseeable and non-foreseeable events beyond Dietz Cacao Trading B.V.'s reasonable control, which keep Dietz Cacao Trading B.V. from fulfilling

its obligations hereunder, including industrial actions in Dietz Cacao Trading B.V.'s plants.

15.3. Customer's compensation claims shall be excluded for cases of Force Majeure. Any offsetting of compensation with Dietz Cacao Trading B.V.'s outstanding claims shall generally be excluded.

15.4. In the event circumstances of Force Majeure lead to the exceeding of agreed deadlines and/or dates, Customer shall be entitled to terminate the respective Contract in writing. However, suchlike cancellation shall not include Goods already delivered or customized Goods. Customer shall be obliged to pay Dietz Cacao Trading B.V. for suchlike Goods in compliance with the provisions stipulated by Article 7 hereof.

#### **Article 16: Applicable Law & Disputes**

16.1 Unless provided otherwise by law, any and all disputes hereunder shall exclusively be settled by the competent courts at Dietz Cacao Trading B.V.'s registered office.

16.2 Any and all legal relations between Dietz Cacao Trading B.V. and Customer shall be subject to Dutch law. The Vienna Convention on the Law of Treaties shall explicitly be excluded, unless agreed otherwise by the Parties hereto.

#### **Article 17: Filing Location**

17.1. The present GTC have been filed with the office of the court administration of 's-Gravenhage under the reference number 8/2014 AL.

17.2. Valid shall be the latest version filed and/or the version valid at the Contract's conclusion. The number of the present General Terms & Conditions is: V1.140312.