

**GENERAL TERMS AND CONDITIONS OF SALE  
IMEKO DAIRY PRODUCTS B.V.**

**1. Definitions**

- Purchaser: every (legal) person entering into a purchase agreement with Imeko or requests or receives an offer to this end;
- Imeko: the private limited company Imeko dairy products bv and/or one or more companies affiliated with it in a group;
- Agreement: every agreement between Imeko and a Purchaser;
- Force Majeure: force majeure as referred to in section 6:75 of the Dutch Civil Code;
- Products: every object sold, delivered or offered for sale by Imeko;
- GemZu: Gemeenschappelijk Zuivelsecretariaat [*umbrella organisation of Dutch Dairy Trade and other affiliated associations*] in The Hague;
- Written: by letter, fax or electronically.

**2. Applicability**

- 2.1 These general terms and conditions apply to all offers, quotes and deliveries of Imeko and to all (additional) Agreements, including Agreements connected with and/or arising from distribution agreements between Imeko and the Purchaser.
- 2.2 The Agreements between Imeko and a Purchaser are also always governed by the MPC-conditions of GemZU, except where the parties have expressly departed from those.
- 2.3 If and insofar as provisions in an individual Agreement, the MPC-conditions and/or these conditions are inconsistent with each other, the provisions in these general terms and conditions prevail over those in the MPC-conditions and the conditions in the individual Agreement prevail over these general terms and conditions.
- 2.4 Departures from these general terms and conditions only bind Imeko if they are to its benefit and/or if they have been agreed or confirmed in writing by the board of Imeko on its behalf.
- 2.5 Additional and/or deviating conditions - which also includes purchase conditions – from the Purchaser do not form part of the Agreement between Imeko and the Purchaser and are therefore not binding on Imeko, unless Imeko accepts the conditions of the Purchaser, wholly or in part, in writing.
- 2.6 Insofar as these conditions are also drawn up in a different language than Dutch, the Dutch text is decisive in the event of discrepancies.

**3. Offers and formation of agreement**

- 3.1 The offers submitted by Imeko are always subject to contract even if the offer includes a term for acceptance.
- 3.2 Agreements are only formed when Imeko has received the order confirmation signed and stamped by the Purchaser. The order confirmation by Imeko is deemed to reflect the Agreement accurately and completely. Additional agreements and/or changes, made by whoever, are only binding if they have been confirmed by Imeko in writing.
- 3.3 In respect of Agreements and/or deliveries of which, or for which, no written offer or order confirmation is made, the invoice or delivery note from Imeko is, between the parties, also to be viewed as order confirmation, which order confirmation is then deemed to accurately and completely reflect the agreement between the parties. In such case, an Agreement is formed the moment Imeko has commenced with the performance of the Agreement.
- 3.4 Every offer or promise made by a representative of Imeko is only binding insofar as the latter has confirmed this in writing.
- 3.5 If Imeko has agreed a payment security with the Purchaser, the agreements are only formed after Imeko has received a (partial) advance payment and/or after a credit insurance cover and/or bank

guarantee has been received and/or after an irrevocable (confirmed) L/C has been accepted by Imeko in writing.

#### **4. Delivery time and delivery conditions**

- 4.1 The delivery conditions are agreed per transaction. All delivery conditions apply in accordance with Incoterms 2010.
- 4.2 Delivery times are agreed by approximation only and are never strict deadlines. Imeko is not in default in respect of the delivery time until it has been given notice of default by the Purchaser in which the Purchaser allowed Imeko the opportunity to as yet deliver within a reasonable term and Imeko has not complied with this.
- 4.3 If a delivery time has been agreed expressed in time units, the delivery time only commences at the time the applicable Agreement was formed in accordance with the provisions of article 3 and the Purchaser has submitted all the documents requested by Imeko.
- 4.4 Imeko reserves the right to make changes in the compositions of, or to respectively, the Products to be delivered by Imeko if it is compelled to do so by changes in, inter alia, law and/or regulations.
- 4.5 Unless otherwise agreed in writing, Imeko reserves the right to deliver the Products in consignments, in which case the (payment) conditions as set out below also apply to each partial delivery.

#### **5. Taking delivery, purchaser instructions**

- 5.1 The Purchaser is obliged to take delivery of the Products the moment they are delivered to the Purchaser in accordance with the agreed Incoterm.
- 5.2 If the Purchaser does not immediately take delivery of the Products when they are delivered by Imeko, Imeko is in its discretion:
  - I. able to terminate the agreement between the parties;
  - II. able to store the Products for the account and at the risk of the Purchaser until the Purchaser as yet takes delivery of them.All costs arising from the above circumstances, including the costs of storage and any possible lower revenue, are for the account of the Purchaser. The above applies without prejudice to the other rights to which Imeko is entitled.

#### **6. Quality, quantity, inspection**

- 6.1 The Products shall comply with the usual requirements imposed in the sector as regards quality and composition.
- 6.2 Offered samples are indicative only. The Purchaser cannot derive any rights from those as regards the quality and composition of the Products.
- 6.3 Downwards deviations of the delivered quantity of Products vis-à-vis the agreed quantity up to and including 10% do not give the Purchaser the right to refuse the purchase and/or to compensation.
- 6.4 Upward deviations of the delivered quantity of Products vis-à-vis the agreed quantity up to and including 10%, do not give the Purchaser the right to refuse the purchase. If upward deviations are determined, Imeko shall have the right to send an additional invoice to this end, such on the basis of unit prices as agreed by the parties for the delivered Products, or at any rate in proportion to the agreed quantity and price.
- 6.5 The Purchaser is obliged, immediately after taking delivery, to inspect the delivered Products including the packaging for any directly visible defects and/or damage. The Purchaser is obliged to inspect the quantity, quality and composition of the Products immediately, but in any event within 2 weeks of the release of the Products by customs in the country of destination and in any event within 4 weeks after delivery, if and insofar as necessary by means of sample taking.
- 6.6 The Purchaser is, at the risk of forfeiting all rights, obliged to report to Imeko immediately any deviations in the quality, composition and/or quantity of the Product vis-à-vis what had been agreed, but in any event within 4 weeks after the release of the Products by customs in the country of destination and in any event within 6 weeks after delivery.

- 6.7 If Imeko disputes a complaint by the Purchaser, it shall be entitled to have the Products inspected by a recognised laboratory of its choice. The findings of this laboratory are binding between the parties. The costs of inspection are for the account of Imeko if the complaint is found to be justified and for the account of the Purchaser if the complaint is found to be unjustified.
- 6.8 A complaint does not entitle the Purchaser not to comply with his (payment) obligations towards Imeko or to rely on suspension or settlement respectively.
- 6.9 Returning the Products is only permitted after the prior written permission of Imeko, on conditions further to be determined by Imeko. On returning without permission from Imeko, shipment costs as well as the storage costs of the products are for the account and at the risk of the Purchaser.
- 6.10 If in the opinion of Imeko a complaint is justified and expressed within the term set for it, Imeko is only obliged to as yet deliver that which was missing, credit the Purchaser for the relevant invoice amount or replace the delivered Products, this at Imeko's discretion. Imeko is never obliged to pay other costs and/or compensation.

## **7. Prices**

- 7.1 Unless expressly agreed otherwise in writing, all prices are in Euro or US Dollar, exclusive of VAT, import duties and other taxes, levies or rights.
- 7.2 All prices are based on the market conditions at the time of entering into the agreement. Any change in one or more cost-determining factors such as purchase prices (whether or not changed with retroactive effect), turnover tax, raw material prices or production costs occurring after the order confirmation but before delivery, entitles Imeko, at its discretion, to charge an accordingly higher price or cancel the order without the Purchaser being entitled to any compensation in that respect.

## **8. Payment**

- 8.1 If no advance payment has been agreed, payment by the Purchaser shall be without deduction of any discount, bank charges, suspension or settlement in the agreed currency by means of a transfer into a bank account indicated by Imeko within 60 days from the invoice date, unless otherwise stated on the invoice in writing. Payment is only deemed to have taken place when the amount due has been irrevocably credited to the bank account of Imeko.
- 8.2 Imeko is at all times entitled both during or after entering into the agreement, before performing (any further), to demand from the Purchaser that it immediately provides payment security in a form to be determined by the Purchaser, including (partial) advance payment or a L/C. The L/C shall cover the full invoice price and shall be granted immediately after Imeko has confirmed the order. The L/C can be called up to at least 30 days after the agreed delivery period. The L/C shall be subject to the "ICC Uniform Customs and Practice for Documentary Credits, 2007 Revision (UCP 600)". If the Purchaser fails to provide the required security Imeko is entitled, without prejudice to its other rights, to immediately suspend the further performance of the agreement or to terminate the agreement wholly or in part without any notice of default or judicial intervention being required without prejudice to its right to compensation for the loss it has suffered. All that the Purchaser owes Imeko, for whatever reason, becomes immediately due and payable.
- 8.3 Imeko and the Purchaser each bear the transaction costs of their own bank.
- 8.4 Imeko is entitled to suspend the performance of its obligations until such time the Purchaser has complied with all its due and payable payment obligations.
- 8.5 Imeko is entitled to transfer each claim on the Purchaser to a credit insurance company.

## **9. Suspension and termination**

- 9.1 Imeko is entitled to suspend the Agreements in existence between Imeko and the Purchaser to the extent they have not yet been performed, without judicial intervention and without any notice of default being required, within a reasonable term or to terminate the Agreement without any obligation to pay compensation if the Purchaser does not perform the (payment) obligations which arise for the Purchaser from any Agreement entered into with Imeko, or does not perform them on time or properly, or if there

are grounds for fearing that the Purchaser does not perform its obligations, or perform them on time, as well as in the event of bankruptcy or a moratorium of the Purchaser or during the cessation or liquidation of its company, without the Purchaser having any right to compensation in respect of such suspension or termination.

- 9.2 Suspension and termination shall not affect the payment obligation for the already delivered products. In addition, Imeko is then entitled to claim damages, costs and interest from the Purchaser, including loss of profit suffered by Imeko. These claims are immediately due and payable.

## **10. Interest, collection costs**

- 10.1 If the Purchaser does not perform its payment obligation on time and/or does not provide adequate security for the payment within the agreed term the Purchaser is – without any prior demand or notice of default being required – in default and from the commencement of the default owes an interest payment on the due and payable amount equal to the statutory commercial interest for commercial transactions plus 3%.
- 10.2 All costs, both legal and other costs, relating to the collection of the amount due by the Purchaser and that not paid on time, are for the account of the Purchaser. The extrajudicial costs are fixed at minimum 15% of the relevant invoice amount and will be at least € 250,-- per claim.

## **11. Retention of title**

- 11.1 All Products delivered by Imeko to the Purchaser remain the exclusive property of Imeko, also after treatment and/or processing or handling, until the Purchaser has paid all Imeko's claims connected with or relating to products and/or services delivered or to be delivered pursuant to an agreement including interest and costs in full.
- 11.2 The Purchaser may not, conditionally or unconditionally, deliver Products which are subject to the retention of title of Imeko to third parties or offer or encumbered such as security. The Purchaser is nevertheless entitled to sell these Products in the ordinary operation of its business.
- 11.3 The Products which are subject to a retention of title in favour of Imeko, must always be stored separately by the Purchaser from products of third parties and must be indicated or marked in such a way by the Purchaser that the ownership of Imeko can at all times be clearly established.
- 11.4 Products which are subject to Imeko's retention of title must always be made available to Imeko on Imeko's demand.

## **12. Liability**

- 12.1 Apart from where there is intent or gross negligence by Imeko and subject to statutory liability pursuant to mandatory provisions, Imeko is never liable for any loss suffered by the Purchaser. Liability for indirect loss, consequential loss, immaterial loss, trading loss, loss of profit or environmental damage or loss as a result of liability towards third parties is furthermore expressly excluded.
- 12.2 If and insofar as, despite the provisions in article 12.1, Imeko were to be liable, for whatever reason, this liability is limited to the amount equal to the net invoice value of the relevant Products, on the proviso that Imeko shall at most and exclusively be liable up to an amount of maximum € 750.000,-- per incident. A series of connected loss-causing events is for the application of this article deemed to be one event/incident.
- 12.3 The Purchaser indemnifies Imeko against any possible claims by third parties for loss arising in connection with Products or products delivered to this third party by the Purchaser in which the Products of Imeko are processed, unless it is established at law that these claims are the direct result of gross negligence or intent on the part of Imeko and that the Purchaser in addition demonstrates that no blame can be attributed to him.

## **13. Intellectual property**

- 13.1 All intellectual property rights relating to the Products delivered or to be delivered by Imeko, to the packaging of such and/or to the documents to be provided in the context of the performance of the

agreement are exclusively and fully vested in Imeko, except insofar as they are vested in the suppliers of the Imeko.

- 13.2 Unless expressly agreed otherwise in writing between the parties, the Purchaser is not entitled to use the intellectual property rights of Imeko other than with the exclusive purpose of resale of the Products delivered by Imeko.
- 13.3 Unless expressly agreed otherwise in writing between the parties, the Purchaser is not permitted to sell the Products delivered by Imeko to third parties other than in the packaging and under the brand name in which and under which they were delivered by Imeko.

#### **14 Product recall**

- 14.1 In connection with any possible product recall, the Purchaser is for the traceability of the delivered Products obliged to maintain adequate records of its sales activities and purchasers for at least a period of maximum the shelf-life of the sold Products. The records contain at least information on the sale dates, sale numbers, batch numbers and batch specifications and all other information which could be necessary in the context of any possible product recall.

#### **15 Cancellation**

- 15.1 Cancellation of an order by the Purchaser is in principle not possible. If the Purchaser nevertheless cancels an order wholly or in part, as a result of whatever cause, it is obliged to compensate Imeko for all the reasonable costs incurred with a view to the performance of the order (including costs of preparation, storage and such like), without prejudice to the right of Imeko to compensation for loss of profit and other loss. In addition, the Purchaser is obliged to compensate the costs arising from the cancellation.
- 15.2 In the event of cancellation, the Purchaser shall also pay cancellation charges. These are 30% of the principal sum, plus VAT.

#### **16. Force Majeure**

- 16.1 Imeko is not obliged to perform any obligation if it is prevented from doing so as a result of force majeure. In these general terms and conditions, force majeure means all external causes, anticipated or non-anticipated, over which there is no control including but not limited to: impeding government measures, transport difficulties, non or late delivery.
- 16.2 During the period the force majeure continues, Imeko is entitled to suspend the obligations under the agreement. If this period continues for longer than 4 months, both parties are entitled to terminate the agreement without any obligation to pay compensation to the other party.
- 16.3 If at the time of the inception of force majeure Imeko had already partially performed obligations under the agreement or is able to perform those, Imeko is entitled to invoice the already performed or to be performed part respectively, separately. The Purchaser is obliged to pay this invoice as if it were a separate agreement.
- 16.4 If and insofar as delivery in instalments has been agreed, the provisions of this article apply to each delivery term separately.

#### **17. Consequences of nullity or voidability, unregulated, "headings"**

- 17.1 If any provision of these general terms and conditions or an Agreement is null and void or is voided, the other provisions of these general terms and conditions will remain fully in effect and the parties will consult each other to agree new provisions to replace the void or voided provisions whereby the purpose and meaning of the void or voided provisions will be taken into account as far as possible.
- 17.2 If during the term of the Agreement the parties determine that they have not or not sufficiently provided for any facet of their contractual relationship, they are obliged to enter into negotiations with each other in order to put forward their best endeavours to record the not, or insufficiently, provided for facet in a written agreement, all this in the light and spirit of this agreement.
- 17.3 "Headings" above the articles in an Agreement, including these general terms and conditions, are

exclusively meant to ease the reading of the Agreement and these conditions; the headings have no independent or substantive significance.

**18. Applicable law and competent court**

- 18.1 These general terms and conditions and all offers issued by Imeko and all Agreements between Imeko and a Purchaser are exclusively governed by Dutch law.
- 18.2 Any dispute which might arise between Imeko and a Purchaser shall definitively be settled by means of arbitration by the International Chamber of Commerce ('ICC') in accordance with the Arbitration Regulations of the ICC or one or more arbiters appointed in accordance with these Regulations. The language used is Dutch or English. The arbitration shall take place in Zwolle (the Netherlands).

Filed with the Chamber of Commerce Oost Nederland, number 31039141 on 21 March 2013.