



**DS Smith Tilburg C.V.
(Tilburg)**

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**GENERAL SALES AND DELIVERY CONDITIONS
DS SMITH Packaging Tilburg B.V.**

Registered with the Chamber of Commerce and Industry under number 812239203

Article 1 – Definitions

In these General Terms and Conditions, the following is understood as:

- Vendor: DS Smith Tilburg C.V. B.V., having its registered office in Tilburg;
Purchaser: A counterparty to the Vendor;
Agreement: The Agreement between the Vendor and the Purchaser.

Article 2 – Applicability

- 2.1 These General Terms and Conditions exclusively apply to all offers and agreements under which the Vendor sells and delivers goods and services of any kind. The applicability of exempting provisions, in particular the General Terms and Conditions of the Purchaser, is expressly excluded.
- 2.2 In the event of nullity or voidability of one or more provisions of the General Terms and Conditions, the remaining provisions will remain in full force.

Article 3 – The (conclusion of the) Agreement

- 3.1 All offers, quotations and such by the Vendor are non-binding, unless otherwise agreed in writing.
- 3.2 The Agreement comes into effect when the Purchaser places an order with the Vendor and this order is accepted by the Vendor. An order shall be considered to have been accepted when the Vendor confirms this in writing to the Purchaser or when the Vendor delivers the order to the Purchaser.
- 3.3 Purchaser and Vendor are bound to Agreements concluded by duly authorised persons and by persons whom the Vendor and Purchaser could reasonably assume to be authorised.



Article 4 – Delivery and Risk

- 4.1 All deliveries by the Vendor shall be made *DAP* in accordance with the Incoterms 2020, unless expressly agreed otherwise.
- 4.2 Costs of pallets, platforms, decking and such are at the expense and risk of the Purchaser. The Vendor has the right at all times to reclaim them.
- 4.3 Irrespective of the means of delivery, the goods shall be at the risk of the Purchaser from the time they leave the Vendor's factory, depot or warehouse. The Purchaser may demand that the Vendor takes out transport insurance. The costs of this insurance are borne by the Purchaser.
- 4.4 The Purchaser is obliged to receive the goods upon first delivery at the agreed location/locations at the moment when the Vendor delivers them or has them delivered, or at the moment when they are made available to him in accordance with the Agreement. If the Purchaser defaults, any resulting costs, including costs incurred for storage and handling, will be borne by him.

Article 5 – Delivery Terms

- 5.1 The Vendor shall endeavour to observe delivery terms as far as possible. However, delivery terms are always approximate.
- 5.2 If a delivery term is exceeded, the Vendor has the right, without the liability to pay compensation, to deliver the goods no later than 15 working days after the end of the delivery term. Only if the Vendor has not delivered the goods at the end of this additional (secondary) delivery term, will the Purchaser be entitled to dissolve the Agreement without notice of default or judicial intervention. The Agreement can only be dissolved in writing. If the purchased goods have left the Vendor's factory, depot or warehouse within 15 working days after the end of the delivery term, the Vendor shall be deemed to have observed the agreed delivery term.

Article 6 – Retention of Title and other Securities

- 6.1 All goods delivered at any time by the Vendor remain the property of the Vendor until the Purchaser has paid all receivables due to the Vendor, of whatever nature, to the extent permitted by Article 92 of Book 3 of the Dutch Civil Code, regardless of their maturity, including interest and costs.
- 6.2 Prior to full payment, the Purchaser does not have the right to pledge goods or transfer the possession thereof to third parties, with the exception of goods which are transferred by the Purchaser within the framework of normal business operations. In the event of a breach of this provision, the Vendor has the right to recover all goods delivered by the Vendor from



the place at which they are located, or to have them recovered, without any authorisation from the Purchaser or the Court. In addition, any receivables to be paid by the Purchaser to the Vendor shall immediately be due in full.

- 6.3 The Purchaser is bound to store all goods delivered under retention of title with due care as recognisable property of the Vendor. The Purchaser is obliged to insure the goods for the duration of the retention of title against fire, explosion and water damage and theft, and to make available the policies of this insurance to the Vendor upon first request.
- 6.4 In the event that the Vendor wishes to exercise the rights referred to in Article 6.2, the Purchaser at this time already gives his unconditional and irrevocable permission to the Vendor or third parties designated by the Vendor to enter all of the places where property of the Vendor is (or could be) located and to retrieve that property. Any resulting costs will be borne by the Purchaser.

Article 7 – Force Majeure

- 7.1 The Vendor cannot be held liable in the event that obligations under an Agreement cannot be fulfilled due to force majeure. For the purposes of this Agreement, force majeure is understood to mean any circumstance, including but not limited to, icy conditions, extreme weather conditions, terrorist attacks, flooding, legal restrictions, strikes, government measures, a delay in supply (including the supply of raw materials), export bans, riots, war, mobilisation, transport restrictions and delays, equipment failures, a disruption of the supply of energy and/or materials, import barriers, fire, and all other forms of force majeure that the Vendor, or the Purchaser, could not reasonably be expected to take into account and as a result of which the normal execution of the Agreement cannot reasonably be required by the counterparty.
- 7.2 The Vendor, or the Purchaser, shall notify the counterparty in writing without delay in the event that a force majeure occurs.
- 7.3 In the event of force majeure, the other party shall not be entitled to any compensation.
- 7.4 In the event of force majeure, the parties shall come to an arrangement concerning the execution of the relevant Agreement.
- 7.5 If an agreed delivery time or delivery term is exceeded as a result of force majeure, including any secondary delivery term of 15 working days, the counterparty of the party affected by force majeure shall be entitled to dissolve the Agreement by means of a written statement, contrary to the provisions of Article 7.4. This dissolution does not extend to goods that have already been delivered.

Article 8 – Payment

- 8.1 Payment must be made within 8 days after the invoice date, without any recourse to discount or settlement, in the manner indicated by the Vendor.
- 8.2 Both before and during the execution of the Agreement, the Vendor has the right to recover the cash payment, advance payment or collateral from the Purchaser. If the Purchaser fails to provide the desired security, the Vendor is entitled, without prejudice to other rights, to immediately suspend the further execution of the Agreement and all amounts payable to the Vendor by the Purchaser will be immediately due.
- 8.3 In the event that the Purchaser in any way fails to meet his obligations towards the Vendor arising from the Agreement, in the event of cessation of payments, an application for a suspension of payments, bankruptcy, seizure, assignment of estate or assets, or liquidation of the business of Purchaser, all amounts payable to the Vendor by the Purchaser under any Agreement will be immediately due. The Vendor shall then have the right to reclaim and recover any goods that have not yet been paid, without prejudice to his rights arising from the failure on the part of Purchaser, including the right to dissolve the Agreement.
- 8.4 If any invoice is not paid on time by the Purchaser, the Purchaser shall be in default by operation of law, and all claims by the Vendor shall be immediately due without exclusion, and the Purchaser shall be liable for statutory commercial interest pursuant to Article 6:119a of the Dutch Civil Code plus 3%.
- 8.5 The full extrajudicial costs associated with the collection of an unpaid or partially paid invoice, will be borne by the Purchaser.
- 8.6 All litigation costs incurred by the Vendor, including amounts not awarded by the Court and the full costs of legal assistance, must be reimbursed by the Purchaser, unless the Vendor is ordered to be the only party to bear the litigation costs.

Article 9 – Liability Vendor

- 9.1 The Vendor guarantees to deliver corrugated cardboard in accordance with the applicable standards of the Corrugated Benelux Association as valid at the time the Agreement is concluded. In addition, the Vendor is obliged to comply with the environmental quality standards laid down by the Purchaser insofar as this is feasible according to the latest state of technology at the time the Agreement is concluded.
- 9.2 In the event of late, incorrect or faulty delivery or damage to delivered goods and/or packaging, the Vendor is in no way liable for any damage, except to the extent that there has been deliberate or conscious recklessness on the part of the Vendor or on the part of his managerial subordinates. The Vendor shall never be liable for indirect damage on the



- part of the Purchaser, including but not limited to, consequential damage and/or collateral damage, such as loss of profits or loss of interest.
- 9.3 Without prejudice to the provisions of Article 9.2, the Vendor is in no way liable for damage caused by late, incorrect or faulty delivery or defects in delivered goods and/or packaging, if it is caused by personnel of the Vendor, auxiliary personnel engaged by the Vendor, or business belonging to the same group of businesses (conglomerate) as the Vendor.
- 9.4 A claim by the Purchaser pursuant to this Article 9 shall lapse one year after the date on which the Purchaser suffered the damage or the damage started.
- 9.5 Without prejudice to the provisions of Paragraphs 9.1 to 9.4, the Vendor's liability is limited to a maximum amount per event of 10% of the invoice amount charged by the Vendor to the Purchaser in respect of the relevant agreement.
- 9.6 Information provided by the Vendor with respect to quality, design, dimensions, etc., is given to the best of his knowledge. However, the Purchaser is not entitled to any compensation in connection with said information.
- 9.7 The Vendor shall not be liable for damage to or the loss of goods of the Purchaser or of third parties which have been provided by the Purchaser for the preparation and/or execution of the Agreement, except when the damage was caused intentionally by the Vendor or by the people made responsible for those goods by the Vendor.

Article 10 – Information provided by Purchaser

- 10.1 If goods are produced on the basis of drawings, models, samples or other instructions in the broadest sense of the word provided by the Purchaser, the purchaser fully guarantees that the production and/or delivery of these goods does not infringe upon trademarks, patents, utility or trade models, or other rights of third parties. If a third party objects to the production and/or delivery of above-mentioned goods on the basis of any alleged right, the Purchaser shall indemnify the Vendor against all claims by any third party and the Vendor shall be entitled to immediately cease production and/or delivery and demand reimbursement for the costs incurred as well as compensation from the Purchaser, without the Vendor being liable for any compensation.
- 10.2 The Vendor assumes that any design drawings, work and detail drawings, computer software, models, photographic images, samples, designs, logos, stated dimensions, quantities, patterns, colours, materials, technical specifications and/or other information provided by the Purchaser are adequate, without the obligation for further investigation by the Vendor.

Article 11 – Intellectual Property/Information provided by Vendor



- 11.1 Any design drawings, work and detail drawings, computer software, models, photographic images, samples, designs, logos, stated dimensions, quantities, patterns, colours, materials, technical specifications and/or other information provided to the Vendor by the Purchaser are considered to be an approximate description of the goods. The ownership of the information specified in this article, or any rights thereto, is not transferred to the Purchaser. At the first request of the Vendor, the Purchaser shall return the above-mentioned information to the Vendor at his own expense. The Vendor guarantees that the delivered goods do not infringe upon the intellectual property rights of a third party in the Netherlands at the time of delivery, except that this provision shall not apply to products, specifications, designs, logos, prints, *artwork*, instructions or (other) intellectual property rights provided to the Vendor by or on behalf of the Purchaser.
- 11.2 The Vendor reserves all intellectual property rights with respect to matters used and/or developed by the Vendor within the framework of the execution of the Agreement and for which the Vendor has claimed or can claim copyrights or other intellectual property rights. Any brand name, patent name, trade name, model name or copyright to these matters and/or information as specified in Article 11.1 that is not attributable to the Vendor, shall not be transferred to the Vendor. Notwithstanding the foregoing, none of these matters or information as specified in Article 11.1 may be provided or made available to third parties, whether or not for re-use, without the prior written consent of the Vendor.

Article 12 – Complaints

- 12.1 Any complaint relating to a delivery must be made within eight days after the date stated on the consignment or shipping note.
- 12.2 In the event that a complaint is justified and has been made in accordance with Article 12.1, the Vendor is bound at his own discretion to repair the faulty goods within a reasonable period of time after the Vendor has confirmed the justification of the complaint, or to replace them with other goods in accordance with the order. In that case, the Purchaser shall not be entitled to compensation under any circumstances.
- 12.3 Complaints or disputes, of any nature whatsoever, do not entitle the Purchaser to postpone payment.

Article 13 – Disputes

- 13.1 These General Terms and Conditions, as well as all offers by the Vendor and all agreements between the Purchaser and the Vendor, are governed by Dutch law. The United Nations Convention on Contracts for the International Sale of Goods is expressly excluded.
- 13.2 Disputes that cannot be amicably resolved by the Purchaser and the Vendor will be decided exclusively by the District Court of the registered office or place of residence of the Vendor.
- 13.3 If, in the opinion of one or both parties, the dispute (also) concerns technical issues, the parties may jointly submit the matter for advice to an expert and independent third party. The costs of this advice shall be borne by the unsuccessful party.

Article 14 – Dimensions

- 14.1 Boxes are measured; the inside and the dimensions in millimetres are listed in the following order: length - width - height.
- 14.2 In case of partitions, the number of compartments is listed in the following order: number of layers, number along the length of the box, number along the width of the box.
- 14.3 In case of sheets, the first dimension stated is parallel to the direction of the corrugation; the direction of the corrugation is understood as the direction of one corrugation peak or one corrugated trough.
- 14.4 A deviation in dimensions of no more than + or - 5 mm is allowed in each direction, unless explicitly agreed otherwise in writing.
- 14.5 If the Purchaser asks the Vendor to apply the EAN code to the packaging ordered by him, the Vendor will do so in accordance with the Purchaser's instructions, with due respect for the rules of EAN Netherlands. However, the Vendor is not responsible or liable for the readability of the EAN code or similar codes by equipment that is used by the Purchaser or his customers.

Article 15 – Quality Differences

- 15.1 The Vendor is not liable for deviations in the colour of the printing inks that are used, nor for small deviations in the cardboard. A deviation of up to 8% of the weight in grams of the original components is allowed.

Article 16 – Deviations Ordered Quantity

- 16.1 With regard to the ordered quantity, the following deviations are allowed per quantity: 20% for consignments of less than 1,000 items



15% for consignments of 1,000 to 5,000 items

10% for consignments of more than 5,000 items.

16.2 In the event of strict requirements on quantity, the prices will be increased by 10%.

Article 17 – Plans, Drawings, Models, Proofs, etc.

17.1 Plans, drawings, models, proofs, etc., which are not part of an order, will be charged to the Purchaser.

17.2 The plans, drawings, models, proofs, punching moulds and rams that have been created by the Vendor will remain the property of the Vendor at all times.

17.3 Participation in the costs ensures to the Purchaser that this material will be used only for him until the time when, for one reason or another, it is taken out of circulation.

17.4 Storage of this material can only be guaranteed until one year after the last use.

17.5 Plans, drawings, proofs, films, models, etc., that belong to the Vendor are kept on the premises of the Purchaser at the risk of Purchaser.

Article 18 – Levies

18.1 All levies imposed by or on behalf of the authorities, or arising from regulations that apply to the corrugated cardboard industry or from covenants, will be charged to the Purchaser by the Vendor.