

GENERAL TERMS AND CONDITIONS OF DELIVERY AND PAYMENT OF CONCORP B.V.

1 Offers

- 1.1 These General Terms and Conditions – to the exclusion of the general terms and conditions of the Customer – apply to all offers issued by Concorp and to all agreements entered into by Concorp with a Customer, in respect of products to be supplied and/or additional services to be provided by Concorp (hereinafter referred to as “the Products”). The terms and conditions of purchase of the Customer shall never apply.
- 1.2 In these General Terms and Conditions, the following shall be taken to mean:
- Concorp: Concorp International, Concorp Brands and all the companies associated with them that refer to these General Terms and Conditions;
- Customer: the party with whom Concorp has entered into an agreement or to whom Concorp has sent an offer. Any reference to trade terms will be considered as referring to the Incoterms 2010, unless otherwise notified in writing by Concorp.
- 1.3 The Dutch text of these General Terms and Conditions shall prevail over any translation thereof. The specialist terms employed in the foreign language are only translations and do not intend to adopt the legal dogmatic status of the law of the country of the foreign language in question.
- 1.4 Verbal offers and undertakings shall only be binding upon Concorp after and in as much as they have been confirmed in writing by Concorp. All offers from Concorp, in whatever form, shall be valid for a period of thirty days and are non-binding unless otherwise stated in writing. The price list of Concorp may specify a compulsory minimum order size for certain Products.
- 1.5 An agreement between Concorp and a Customer shall only be established through written confirmation by Concorp of the order, within eight days following receipt of the order, or after Concorp has started the implementation of the agreement. If only an invoice is sent, this invoice will be considered as fully and correctly reflecting the agreement and this invoice shall also be viewed as confirmation of the order or agreement. The provisions above also apply in respect of changes and/or additions to existing agreements.
- 1.6 Concorp is at all times authorised to make changes to the Products to be supplied, in order to improve these Products (exclusively at the judgement of Concorp) or to comply with any government requirement.

2 Prices

- 2.1 Unless otherwise stated in writing, the prices of Concorp will be in euro and excluding VAT.
- 2.2 Concorp reserves the right to alter prices after establishment of the agreement but before the date of delivery in the event of a substantial rise in the prices of cost price factors such as raw materials and wage costs, or in the event of government measures that cause substantial price rises.
- 2.3 Without prejudice to the stipulations in article 2.2, Concorp shall at all times be entitled to alter its prices taking account of a period of notice of three months, which alterations shall also apply to any framework agreement with the Customer in which agreements are laid down for multiple deliveries of Products by Concorp to this Customer over a specified longer period.

3 Payment

- 3.1 Unless otherwise indicated in writing by Concorp, payment must take place within 21 days following invoice date by transfer of the outstanding amount to the bank account specified in the invoice. The date of payment shall be the date on which the amount is deposited into the bank account. The Customer is not authorised to demand set-off.
- 3.2 Timely payment is essential. Following expiry of the payment term, the Customer shall ipso jure/ automatically be in default, and from that date shall owe interest of one percent per month on the outstanding invoice amount. Any volume discounts awarded will expire due to non-timely payment.
- 3.3 Concorp is at all times entitled, before undertaking (further) performance, to demand sufficient security or full or partial prepayment, or to send products cash on delivery.
- 3.4 If the customer falls short in complying with one or more of its obligations, all reasonable costs for obtaining extrajudicial fulfilment shall be for the account of the Customer. Concorp is authorised to fix these costs at 15 percent of the amount payable. The provision in this paragraph is without prejudice to all other rights accruing to Concorp on the basis of law or these General Terms and Conditions.
- 3.5 Any complaints about invoices from Concorp must have been received by Concorp within one week following invoice date. In default thereof, the invoice shall be considered as having been approved.

4 Delivery

- 4.1 Unless otherwise indicated in writing by Concorp, delivery of Products will take place ex works/ex warehouse. If it is agreed that delivery will take place at the premises of the Customer, the Customer is required to ensure unloading facilities.
- 4.2 The Products shall be for the account and risk of the Customer from the moment of delivery, even if ownership of the Products has not yet been transferred to the Customer.
- 4.3 Delivery times indicated by Concorp shall not be deadlines. Specified delivery dates shall also not be deadlines. Concorp will make the maximum effort to deliver the Products on the specified date or taking account of the specified delivery times. In the event of late delivery, Concorp must be held in default, whereby Concorp will be given a reasonable period of at least 14 days to still comply with its obligations. If this extended period is exceeded, the Customer shall only be authorised to dissolve the agreement in respect of the Products still not yet delivered at that moment. Concorp shall under no circumstances be liable for losses as a consequence of the exceeding of the specified delivery term except in the event of deliberate action or gross negligence on the part of the management of Concorp under the Articles of Association.
- 4.4 Concorp shall be entitled to extend the delivery time stated in the agreement or to extend the delivery date stated therein to a later date if and in as much as the Customer is in default of any obligation in respect of Concorp arising from one or more other agreements entered into with Concorp.
- 4.5 Default shall ipso jure be considered as existing on the part of the Customer if the Customer is unwilling and/or unable to purchase the Products from Concorp on the agreed delivery date. In that case, Concorp shall be entitled to invoice the Products in question. In the event of non-timely payment, Concorp shall be entitled to dissolve the agreement in question and any other agreements not yet (fully) implemented. Unless otherwise agreed in writing, the Customer shall not be entitled to impose additional demands on Concorp in respect of (the codes etc. on the packaging of) the Products and the way in which the Products must be offered to the carrier of the Customer.

5 Inspection of the Products and Complaints

- 5.1 Upon delivery, the Customer must immediately check the delivered Products and the packaging of the Products for visible defects and shortcomings. These shortcomings must have been reported to Concorp, specified and in writing, within 2 working days following delivery. In the event of refrigerated Products, this notification period is 24 hours. The Customer must report defects not visible upon delivery to Concorp, in writing, within 5 working days following their discovery but under all circumstances within 5 working days after the Customer could reasonably have discovered the defects. This possibility for complaint will expire if the shortcoming can be attributed to the Customer.
- 5.2 If the complaints are reported on time and prove to be well-founded (Pick and Mix Products exclusively in sealed, original packaging) Concorp is exclusively required, at its own discretion, to replace the Products in question free of charge or to credit the purchase price, without being required to pay any further compensation.

- 5.3 The Products of Concorp are suitable for consumption up to at least the Best Before date. A complaint following expiry of the Best Before date will under no circumstances be honoured if it emerges that Concorp has complied with the national agreement on Best Before date (1/3 industry – 2/3 trade).
- 5.4 The Products about which a complaint is made must be kept by the Customer for inspection or examination by Concorp. At the first request of Concorp, the Customer will return the Products to Concorp.
- 5.5 The liability of Concorp in respect of losses as a consequence of a shortcoming in compliance with the agreement is restricted to the obligation to replace or credit if relating to a defect in the delivered Product, and to payment of the purchase price in other cases. Concorp shall under no circumstances be liable for consequential losses which in all cases will be considered as including trading losses, losses due to business interruption and/or loss of profit by the Customer. These restrictions will not apply if and in as much as the losses are a direct consequence of deliberate action or gross negligence on the part of the management of Concorp under the Articles of Association.
- 5.6 Any right to compensation, replacement of Products and/or delivery of the missing Products, on whatever grounds, and the right to dissolution of the agreement shall expire in the event of non-timely reporting in accordance with paragraph 1 of this article or within six months following delivery. The entitlement as intended in the previous sentence shall also expire if the Customer is in default in respect of Concorp as concerns the timely and/or full compliance with any obligation of the Customer arising from one or more other agreements entered into with Concorp.

6 Reservation of ownership

- 6.1 Concorp reserves the ownership of the Products delivered and to be delivered to the Customer until full payment has been received for all delivered Products and any claims from Concorp due to attributable shortcomings by the Customer in complying with any purchase agreement with Concorp.
- 6.2 As long as the ownership of the delivered Products has not been transferred to the Customer, the Customer may not pledge the Products or award any right to those Products to a third party. The Customer is permitted to sell and to deliver the Products delivered subject to reservation of ownership in the framework of normal business practice. The Customer is required to ensure the delivered Products against fire and water damage and theft, and to store those Products under optimum climate conditions.
- 6.3 If the Customer falls short in complying with any obligation in respect of Concorp, or Concorp has good reason to fear that the Customer will fall short in complying with its obligations, Concorp is authorised to take back the Products delivered subject to reservation of ownership for the account of the Customer, without prejudice to the right of Concorp to further compensation and other rights awarded to Concorp in law.

7 Intellectual property

- 7.1 By placing an order, the Customer accepts the exclusive right of Concorp in respect of the trade and domain names used by Concorp, the copyrights, the labels applied to the (packaging of the) Products, the word, service and/or figurative marks, slogans and logos, and the related rights of Concorp (the ‘IP rights’).
- 7.2 The Customer is exclusively entitled to promote and to sell the Products making use of the brand names, logos and slogans employed by Concorp, and will not remove and/or alter the codes and type indications applied by Concorp.
- 7.3 The Customer will not use or deposit any other brands, trade names and/or logos that could be associated by an end user / consumer with the IP rights of Concorp. The Customer is not permitted to alter the Products or the packaging of the Products.
- 7.4 If a supplier of Concorp starts or threatens to start legal proceedings against Concorp on the basis of an (alleged) violation of one or more of its intellectual property rights, and as a consequence thereof Concorp decides to halt the distribution and promotion of the Product in question, on request, the Customer will halt promotion, sale and delivery of the Products in question, immediately.

8 Force Majeure

- 8.1 If Concorp falls short, non-attributably, in complying with its obligations (force majeure), Concorp shall not be liable in respect of the Customer, and its obligations will be suspended, in as much as compliance is not permanently impossible. If the period in which compliance is not possible due to force majeure lasts or is expected to last more than two months, both Concorp and the Customer are authorised to dissolve the agreement in question, without in that case any obligation to compensation arising. Force majeure affecting Concorp as intended in this article shall for example arise in the event of strike, lack of raw materials, stagnation at suppliers (also if in the case of suppliers, there is an attributable shortcoming in respect of Concorp) and transport problems.

9 Dissolution and suspension

- 9.1 If the Customer fails to comply with one of its obligations in respect of Concorp, or if Concorp fears that the Customer will not comply with its obligations, and the Customer is not able at the first request of Concorp to provide sufficient security for the compliance with its obligations, if the products of the Customer are seized, if the Customer requests a moratorium, is declared bankrupt or in some other way loses power to dispose of its capital, Concorp shall be entitled to suspend (further) implementation of all agreement(s) entered into with the Customer, or to fully or partially dissolve this (these) agreement(s) without prejudice to the right of Concorp to additional or alternative compensation. Every right of suspension of the Customer in these cases is excluded.

10 Applicable law and disputes

- 10.1 The agreement between Concorp and the Customer is subject to Dutch law. The effect of the Vienna Sales Convention (United Nations Convention on Contracts of the International Sale of Goods) is expressly excluded.
- 10.2 All disputes between Concorp and the Customer will be settled by the District Court in Breda (The Netherlands). This provision is without prejudice to the authority of Concorp, if and in as much as the dispute relates to unpaid invoices of Concorp, to bring the dispute before the court which without this provision would be competent, except if another court is competent according to mandatory statutory provision, or if Concorp decides to submit its legal claim to the court competent in the place of establishment of the Customer. In this latter case, that court will also settle any counterclaim from the Customer relating to the same dispute between the parties. In addition, both Concorp and the Customer are entitled to institute interlocutory proceedings before the court competent in the establishment location of the other party.
- 10.3 If at the moment of the dispute between Concorp and the Customer no bilateral or multilateral treaty applies concerning the mutual recognition and execution of court decisions, Concorp shall be unilaterally entitled to submit its claim against the Customer to the Netherlands Arbitration Institute in Rotterdam (www.nai-org.nl) according to the rules then applicable at that Institute. The arbitration location shall be Rotterdam. The judgement of the arbitration will be passed according to the rules of law. The procedural language shall be Dutch, or at the request of the Customer, English.