

# LUITEN FOOD

...a taste of the world...

**Wildhandel L.G. Luiten & Zn. B.V.**

**Trading as: LUITEN FOOD**

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**General conditions of sale**

**Article 1 Definitions**

LUITEN:	Wildhandel L.G. Luiten & Zonen B.V. established at Stompwijk, and all its associated undertakings including LUITEN FOOD
CUSTOMER:	the counterpart or potential counterpart to LUITEN
Food law	all legislation applying to the Articles in respect of food safety, including (but not limited to) EC regulation no. 178/2002 of the European Parliament and Council (as amended from time to time or the Regulation or regulations taking its place) and the associated regulations and laws and legislation
Agreement:	the agreement made between LUITEN and the CUSTOMER
Conditions of sale:	these general conditions of sale of LUITEN
Articles:	the articles supplied or to be supplied by LUITEN including (but not limited) meat, game, poultry and related goods.

**Article 2 General**

- 2.1 The Conditions of Sale apply to all offers, Agreements and other legal relations under which LUITEN acts as vendor or potential vendor or supplier of the Articles.
- 2.2 These Conditions of Sale and an Agreement may be departed from only by an express (further) written agreement.
- 2.3 In the event of conflict between the Dutch text of these Conditions of Sale and a translation thereof, the Dutch text will prevail, unless the negotiations, offers and correspondence prior to the Agreement have been undertaken in one of the other languages in which these Conditions are written and if an agreement has been concluded, the Agreement has been written in such other language, in which case the general conditions of sale in the language concerned will apply.
- 2.4 Written for the purposes of the Conditions of Sale also means by fax, e-mail or other electronic medium.

### **Article 3 Offers and the creation of the Agreement**

- 3.1 All offers by LUITEN (also referred as "offers") are made without obligation unless LUITEN has expressly indicated otherwise in writing. An Agreement is created only after LUITEN has confirmed it in writing.
- 3.2 A time limit for acceptance inherent in an offer is not intended to bind LUITEN to the stated period. Article 3.1 continues to apply.
- 3.3 Notwithstanding the provisions of Article 6:225 (2) of the Civil Code, LUITEN is not bound by departures from LUITEN's offer, however slight such departures may be, appearing in the CUSTOMER's acceptance. In such a case, the Agreement will be deemed to have been concluded on the conditions as stated in the offer, except that LUITEN will be entitled at all times to honour one or more (or all) departures.
- 3.4 Unless expressly stated otherwise in the offer, all offers by LUITEN are based on execution of the Agreement in normal working hours and under normal working conditions. If the Agreement is not executed in normal working hours and/or under normal working conditions, the CUSTOMER undertakes to bear any additional expenses connected therewith.
- 3.5 If it should happen that LUITEN has not made a written offer or an order has not been confirmed in writing, the invoice or delivery note despatched by LUITEN will also be regarded as confirmation of the Agreement, notwithstanding the provisions of Article 3.1., to which Agreement the Conditions of Sale apply. The invoice or delivery note together with the Conditions of Sale will be regarded as truly and fully reflecting the Agreement.
- 3.6 LUITEN is entitled at all times to break off negotiations with the CUSTOMER without stating reasons. LUITEN will on no account be liable in damages for breaking off negotiations.
- 3.7 Insofar as he acts in the conduct of a trade or profession, the CUSTOMER waives his right to dissolution or rejection under Article 6:227c (2), Civil Code.
- 3.8 LUITEN is not obliged to enquire of the CUSTOMER or third parties regarding the intended use of the Articles or the circumstances under which the Articles will be used.

### **Article 4 Delivery**

- 4.1 Unless expressly agreed otherwise in writing, all deliveries in the Netherlands will be made carriage paid to destination and all supplies outside the Netherlands DDU place of destination (INCOTERMS 2000). If delivery is agreed on another basis, the CUSTOMER must effect an adequate transit insurance prior to transportation. Notwithstanding the provisions of the previous sentence, the CUSTOMER is obliged in any event to effect the transit insurance within 24 hours after the Agreement has been concluded, unless expressly agreed otherwise in writing.
- 4.2 The CUSTOMER undertakes to accept delivery of the Articles at the point when they are offered to him for delivery. The risk of all Articles passes to the CUSTOMER at the point when they are offered to him for delivery.
- 4.3 Should the CUSTOMER refuse Articles offered to him for delivery, LUITEN will be entitled but on no account obliged to store or procure the storage of such Articles or part thereof at the CUSTOMER's risk and expense. The CUSTOMER undertakes to pay all expenses to LUITEN immediately on request if connected with such storage and associated transportation. LUITEN is entitled but on no account obliged to destroy Articles stored for a CUSTOMER under this article at the CUSTOMER's risk and expenses after LUITEN has held or arranged for the holding of the Articles for two weeks and the CUSTOMER has not yet accepted delivery of such Articles. The above does not affect the CUSTOMER's obligation to pay for the Articles in accordance with the Agreement concluded with the CUSTOMER.
- 4.4 Should an Agreement include a composite statement or quotation, LUITEN will on no account be obliged to deliver part of the Articles included in the Agreement for the corresponding proportion of the price.
- 4.5 LUITEN is entitled at all times to execute deliveries to be undertaken by LUITEN in parts and to invoice such partial deliveries individually.
- 4.6 LUITEN is entitled at all times to have delivery undertaken by third parties.

### **Article 5 Delivery periods**

The delivery periods indicated by LUITEN are purely an indication and on no account strict deadlines. LUITEN will be in default only after LUITEN has been put on notice in writing and LUITEN has in doing so been allowed a reasonable time limit for discharge and this time limit has lapsed without action.

## Article 6 Prices

- 6.1 Unless expressly stated otherwise in writing, all prices are expressed in Euros and these prices are based on delivery carriage paid to destination if the place of delivery is situated in the Netherlands or on DDU place of destination (INCOTERMS 2000) if the place of delivery is situated outside the Netherlands.
- 6.2 Unless expressly indicated otherwise in writing, all prices exclude VAT, import and export duties and any other government levies and taxes.
- 6.3 LUITEN is entitled to charge increases in import prices, auxiliaries, labour, insurance, currency rates and other cost factors relevant to the Agreement that occur after an offer has been made and/or an Agreement has been concluded wholly or partly through to the CUSTOMER. The CUSTOMER is on no account entitled to a reduction in amounts to be paid by the CUSTOMER in the event of a reduction in import prices, auxiliaries, labour, insurance, currency rates and other cost price factors relevant to the Agreement that arise after an offer has been made and/or an Agreement concluded.
- 6.4 Any additional charges resulting from changes to the Agreement (including a change in the Articles to be supplied and the delivery dates) will in all cases be borne by the CUSTOMER irrespective of whether such additional expenses were known when the change was made and/or were notified to the CUSTOMER.
- 6.5 On a further order for Articles that are similar to the Articles supplied (or to be supplied) under an earlier Agreement, the CUSTOMER will not be entitled to delivery of such Articles at the prices stated in the earlier Agreement unless expressly agreed otherwise in writing.

## Article 7 Payment

- 7.1 Unless expressly agreed otherwise in writing, the CUSTOMER will make payment within 8 days following invoice date to the account number(s) indicated in the invoice, or one of them.
- 7.2 Payment by the CUSTOMER will be made exclusively in the currency in which the agreed prices are expressed.
- 7.3 Payment will be made without offset, discount or suspension.
- 7.4 On lapsing of the payment term referred to in Article 7.1, the CUSTOMER will be de jure in arrears, without further notice of default being required. As from his being in arrears to full settlement of the sum due, the CUSTOMER will pay compound interest on the sum payable of 1% per month unless the interest that would be payable but for this provision would have been higher, in which case the CUSTOMER will pay such higher interest. In each case, LUITEN's other rights on the basis of the Agreement, these Conditions of Sale and the law, will remain unaffected.
- 7.5 The CUSTOMER will bear all expenses connected with payment (the putting up of security included).
- 7.6 All LUITEN's receivables become immediately payable on the bankruptcy, suspension of payments or winding up of the CUSTOMER or the CUSTOMER's exceeding the payment term for any of LUITEN's invoices.
- 7.7 All extra-legal expenses, expressly including the costs incurred for the preparation, procurement and despatch of reminders, the conducting or procuring of composition and other negotiations and negotiations in preparation for possible legal proceedings, and all legal expenses that LUITEN incurs as a result of failure by the CUSTOMER to discharge the obligations imposed on the CUSTOMER or to do so in time will be borne by the latter. The CUSTOMER will make good such expenses to LUITEN immediately on request.
- 7.8 Without prejudice to LUITEN's right to demand full payment of the expenses referred to in Article 7.7 and the interest referred to in Article 7.4 and without prejudice to LUITEN's other rights under the Agreement, these Conditions of Sale and the law, LUITEN will in the event of the CUSTOMER's default in any circumstances be entitled to the following sums with regard to collection of LUITEN's receivables, irrespective of the expenses actually incurred by LUITEN:
- |   |     |
|---|-----|
| On the first € 6,500 of the sum due:    | 15% |
| On sums due from € 6,500 to €13,000:    | 10% |
| On sums due from € 13,000 to € 32,500:  | 8%  |
| On sums due from € 32,500 to € 130,000: | 5%  |
| On sums due above € 130,000:            | 3%  |
- 7.9 Payments by the CUSTOMER will be used first to settle the expenses referred to in Article 7.5, 7.7 and 7.8, and subsequently to settle the interest referred to in Article 7.4 and finally to settle that part of the outstanding invoices decided by LUITEN, irrespective of any instructions otherwise by or on behalf of the CUSTOMER.
- 7.10 Should the CUSTOMER fail to discharge any payment obligation or do so in time, LUITEN will be entitled to suspend all or part of its further obligations towards the CUSTOMER, both obligations concerning the same agreement and those concerning other agreements, and/or no longer finally to discharge them. LUITEN will on no account be liable in respect of such suspension or failure of discharge towards the CUSTOMER and the CUSTOMER will make good to LUITEN all loss that LUITEN sustains or will sustain in connection with such suspension and/or failure of discharge.

## **Article 8 Security**

If in LUITEN's opinion there is good reason to fear that the CUSTOMER may not discharge any obligation towards LUITEN (wholly or partly) or not do so in time, the CUSTOMER is obliged immediately on request by LUITEN to put up adequate security for the full and timely discharge of all his obligations towards LUITEN to LUITEN's satisfaction or replace or top up security already lodged. If the said security or additional security is not put up within 7 days after being so requested by LUITEN, all consequences of failure to discharge will take effect immediately and without a reminder being required for this.

## **Article 9 Reservation of title**

- 9.1 All Articles supplied and to be supplied by LUITEN remain LUITEN's property until the CUSTOMER has fully discharged all his obligations in respect of all Articles supplied or to be supplied under the Agreement, these expressly including the CUSTOMER's obligations on account of failure to discharge any such obligations. The consequences in law of property of the said reservation of title for Articles intended for export are governed by the law of the country of destination unless LUITEN indicates otherwise.
- 9.2 The CUSTOMER is not entitled to pledge Articles covered by reservation of title or to encumber them in any other way. These Articles may be disposed of only under normal conduct of a business. The CUSTOMER will immediately advise LUITEN in writing should third parties enforce or establish (or procure) rights to Articles covered by reservation of title (including in this connection also: attachment) or if the CUSTOMER learns or suspects that third parties may enforce or establish such rights.
- 9.3 The CUSTOMER undertakes to insure Articles supplied under reservation of title adequately and keep them insured against all possible risks and to permit LUITEN to inspect the policy concerning this insurance immediately on request.
- 9.4 On failure by the CUSTOMER to perform, LUITEN will be entitled to recover or obtain recovery of the Articles supplied that belong to LUITEN. The CUSTOMER as from now gives his irrevocable and unconditional consent to LUITEN and/or third parties retained by LUITEN to enter all those places where entry is necessary or desirable in connection with the exercise by LUITEN of its rights of title and other rights. All expenses connected with this exercise will be borne by the CUSTOMER.

## **Article 10 Packaging**

The CUSTOMER is obliged to return loan packaging within 14 days following delivery empty and in undamaged state to LUITEN at an address to be indicated by it. The CUSTOMER will bear all costs connected with this obligation (including failure to observe it).

## **Article 11 Inspection and complaints**

- 11.1 The CUSTOMER undertakes to check or procure the checking of the Articles supplied and packaging or the Articles that LUITEN has offered for delivery for any shortages and visible damage and for quality and temperature immediately following delivery or an announcement that LUITEN has offered the Articles for delivery. In the event of shortages or evident defects (including also incorrect temperatures), the CUSTOMER will immediately following delivery of the Articles or notification by LUITEN as indicated above submit a complaint in writing, losing all his rights in connection with such shortages and defects on his failure to do so. Notwithstanding the above, complaints regarding the quality of delivered Articles or Articles offered for delivery must have reached LUITEN within 24 hours following delivery or offer for delivery, failing which the CUSTOMER can no longer submit any claim regarding the quality of the Articles concerned. If defects are not immediately observable, the CUSTOMER will immediately after such defects are discovered so advise LUITEN in writing. Without prejudice to the provisions of the previous sentence, the CUSTOMER will in any event lose all his rights unless he has complained within 8 days following discovery of the defects or the point when he could reasonably have discovered them. On the CUSTOMER's failure to lodge a complaint within the time limits mentioned in this Article 13.1, the Articles will be deemed accepted by the CUSTOMER. Articles regarding which complaints are lodged must be returned to LUITEN at the CUSTOMER's expense unless indicated otherwise by LUITEN.
- 11.2 Without prejudice to the provisions of Article 11.1, the CUSTOMER may in any event make no further claim after he has started wholly or partly to use Articles supplied, has worked on or worked up such Articles, has supplied them to third parties or permitted third parties to use them or has implicitly or explicitly accepted the Articles.
- 11.3 Even in the event of the CUSTOMER having complained in good time, he remains obliged to pay any invoice(s) relating to the Articles and for acceptance and payment of any other Articles ordered (even of the same kind).
- 11.4 Minor discrepancies in weight, measurements, quantity, colour and/or composition of Articles supplied can in no event result in a complaint nor be a reason for compensation and/or price adjustments. In order to determine the weight, dimensions, quantity, colour and/or composition of Articles supplied, the counts, measurements and opinions of LUITEN will prevail.
- 11.5 If a complaint in terms of this Article 11 is found to be established, LUITEN is at its discretion required only to supply the missing part, replace or obtain replacement of Articles to which the complaints refer, or issue the CUSTOMER with a credit note for the Articles, if desired by LUITEN against delivery by the CUSTOMER to LUITEN of the Articles in respect of which the complaint was held established. The CUSTOMER is required to follow LUITEN's instructions in connection with storage or return of Articles.

- 11.6 Without prejudice to the provisions elsewhere in the Agreement or Conditions of Sale, claims based on the assertion that Articles supplied by LUITEN do not comply with the Agreement are statute barred on expiry of 1 year following the date of delivery to the CUSTOMER.

## **Article 12 Food law**

- 12.1 The CUSTOMER guarantees to LUITEN that the CUSTOMER will at all times observe all the provisions of Food law relating to the Articles.
- 12.2 Without prejudice to the provisions of Article 12.1, the CUSTOMER will ensure that the Articles are labelled in accordance with the provisions of the Food law relating to the Articles concerned, including but not limited to the provision that labels may not be misleading, before they are supplied, passed on, distributed, sold, made available to third parties or otherwise leave the custody of the CUSTOMER, unless expressly agreed otherwise in writing.
- 12.3 Without prejudice to the provisions of Article 12.1, the CUSTOMER will ensure that the Articles, after being supplied to the CUSTOMER or after they have been offered to the CUSTOMER for delivery, are stored in accordance with the applicable provisions of Food law, including (but not limited to) the provisions concerning the keeping temperature and maximum keeping period. The CUSTOMER will ensure that the keeping and temperature data are recorded uninterruptedly at all times by apparatus intended and calibrated for this purpose and are laid down in writing and will submit these data to LUITEN immediately on request.
- 12.4 Without prejudice to the provisions of Article 12.1, the CUSTOMER will ensure that the Articles, after being delivered to the CUSTOMER or after they have been offered to the CUSTOMER for delivery, can be traced at all times and the SUPPLIER will provide LUITEN with the data concerning their traceability immediately on request.
- 12.5 Should the CUSTOMER fall short of the obligations imposed on the CUSTOMER under the present Article 12 or be unable to demonstrate by means of written evidence that he has complied with the obligations under the present Article 12, it will be assumed that all damage, costs and losses claimed or sustained in respect of the Articles are the result of the CUSTOMER's failing to discharge the above obligations and the CUSTOMER will hold LUITEN harmless in respect of all damage (expressly including consequential loss).

## **Article 13 Licenses**

The CUSTOMER will ensure that the CUSTOMER has all licences required in connection with the Articles or the supply of the Articles to the CUSTOMER. If and insofar as the authorities must give their consent in connection with the supply of the Articles to the CUSTOMER, the CUSTOMER guarantees to LUITEN that the authorities have given or will give such consent. The CUSTOMER will hold LUITEN harmless in respect of damage that LUITEN sustains in connection with not holding or obtaining the licences and consents concerned.

## **Article 14 Liability**

- 14.1 LUITEN will in no event be liable for any damage, except in the case of wilful act or gross negligence by LUITEN or its company management. LUITEN is not liable for damage caused through wilful act or gross negligence of its subordinates and/or non-subordinates for whom LUITEN is or may be liable by law.
- 14.2 LUITEN will in no case be liable for consequential loss, including in any event all loss of profit, loss sustained, expenses incurred, missed orders, missed savings and inability to undertake marketing or to do so at the desired time, and other promotional activities.
- 14.3 LUITEN's liability is limited at all times to whatever LUITEN has invoiced to the CUSTOMER for the Articles concerned or, in the event of liability based on legal or other transactions and/or failings of third parties, to the sum that LUITEN has received from such third parties. In the event of LUITEN's being insured against the loss for which it is liable, LUITEN's liability will, irrespective of the above, be limited to whatever the insurer pays in the case concerned. LUITEN is not obliged to enforce its rights under any insurance should it be held liable by the CUSTOMER.
- 14.4 LUITEN stipulates all statutory and contractual rights that LUITEN may invoke in defence of its liability also in respect of all those concerned with implementation of the Agreement.

## **Article 15 Force majeure**

- 15.1 Should proper discharge by LUITEN be wholly or partly permanently impossible due to force majeure, both LUITEN and the CUSTOMER will be entitled to dissolve all or part of the Agreement. The CUSTOMER is not entitled to payment of damages in such a case.
- 15.2 Should due discharge by LUITEN be only temporarily frustrated (wholly or partly), the CUSTOMER may dissolve the Agreement only if discharge during a consecutive period of six months is impossible. The last sentence of Article 15.1 will apply.
- 15.3 Force majeure also covers: shortage of supplies and raw materials for the production of Articles, strikes, shortage of labour, failure to observe obligations by LUITEN's suppliers (both direct and indirect), all circumstances that obstruct the normal business of LUITEN and/or its suppliers, transportation problems, import, export and transit bans and

everything covered by force majeure under Dutch law, even if one of the circumstances mentioned above may perhaps have been foreseeable at the time the Agreement was concluded.

- 15.4 If on the occurrence of the force majeure LUITEN has already partly discharged its obligations or can partly discharge its obligations LUITEN will be entitled at any time to payment of the obligations that it has discharged and LUITEN is entitled to separate discharge of the obligations that it is able to discharge and to payment for such obligations, in each case as if a separate agreement had been made.

**Article 16            Applicable law and competent court**

- 16.1 All legal relations between LUITEN and the CUSTOMER are governed in Dutch law, the provisions of the Vienna Sales Convention being excluded.
- 16.2 The competent court at The Hague alone has jurisdiction to consider disputes between LUITEN and the CUSTOMER and to decide thereon, subject to LUITEN's right to submit a dispute to the court with competence at the CUSTOMER's place of residence or establishment.