

GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY

1. General

- 1.1 These general conditions apply to all offers, orders, transactions, agreements and deliveries to which Holiday Ice B.V. is a party, as well as to the performance thereof, unless expressly agreed otherwise in writing.
- 1.2 The applicability of terms and conditions used by the counterparty, if any, is hereby rejected, unless otherwise agreed in writing. If, in the latter case, there is a conflict between these terms and conditions and the terms and conditions applied by the counterparty, the present terms and conditions will prevail.
- 1.3 The "counterparty" in these general terms and conditions means: every natural person or legal entity who has entered into or wants to enter into an agreement with Holiday Ice B.V. and, in addition, its representative(s), authorised representative(s) and legal successor(s).
- 1.4 Any additional arrangements or changes made subsequent are only binding on Holiday Ice B.V. if confirmed by Holiday Ice B.V. in writing.
- 1.5 If one or more provisions of these general terms and conditions should at any time be wholly or partially void or voided, the other provisions of these general terms and conditions will remain fully applicable. Holiday Ice B.V. and the counterparty will in that event enter negotiations to agree new provisions to replace the void or voided ones, taking into account as much as possible the purpose and meaning of the original provisions.
- 1.6 If ambiguity exists regarding the interpretation of one or more provisions of these general terms and conditions, the interpretation will be made "in the spirit" of these provisions.

2. Offers/quotations

- 2.1 All offers and quotations, in any form whatsoever, are without obligation, unless otherwise agreed in writing, or unless the quotation stipulates a deadline for acceptance.
- 2.2 Holiday Ice B.V.'s written offers expire if they are not accepted in writing within the period stated in the agreement. Acceptance by e-mail will also be deemed to be written acceptance, provided this e-mail is electronically signed.
- 2.3 An offer or quotation will also expire if the product to which the offer or quotation relates is no longer available.
- 2.4 Holiday Ice B.V. cannot be held to its quotations or offers if the counterparty should reasonably understand that the quotation or offer, or any part thereof, contains an evident mistake or clerical error.
- 2.5 If the acceptance (whether or not on minor points) differs from the offer included in the quotation or the offer, Holiday Ice B.V. is not bound by it. The agreement will in that event not be concluded in accordance with this different acceptance, unless Holiday Ice B.V. states otherwise.
- 2.6 If at the request of the counterparty a specific product/service is offered and the counterparty subsequently does not wish to use these products and/or services, Holiday Ice B.V. may charge the counterparty the costs associated with the offer.

3. Prices

- 3.1 All prices are exclusive of VAT, transport costs, import duties, taxes, (governmental) levies

and other rights, unless otherwise agreed in writing.

- 3.2 All prices are based on the contract price/price list in force at Holiday Ice B.V. at the time of delivery, unless otherwise agreed in writing. All prices are furthermore based on delivery ex works or at the place of storage of the products, or on the basis of another agreed INCO-term.
- 3.3 If a price was not expressly agreed upon at the conclusion of the agreement, the price stated in the price list or circular in force at the time when the order was placed will apply.

4. Price increases

- 4.1 Holiday Ice B.V. may increase the agreed price of products yet to be delivered, if after the offer is made or after the agreement is concluded the costs of raw or auxiliary materials, expressed in the currency of the agreed price, are increased.
- 4.2 Raw and auxiliary materials include: electricity, goods procured by Holiday Ice B.V. from third parties, wages, salaries, social security contributions, government charges, freight charges and insurance premiums.
- 4.3 If pursuant to this article a price increase occurs of more than 5%, the counterparty may terminate the agreement by registered letter for the part not yet performed until two weeks after it has been informed by Holiday Ice B.V. about the price increase.

5. Agreement

- 5.1 The agreement between the parties is concluded by the (timely) written acceptance of the offer/quotation.
- 5.2 Any further arrangements or amendments regarding the agreement concluded between the parties will only be binding if the further arrangements or amendments are confirmed in writing by both parties.
- 5.3 Upon or after concluding the agreement, but before (further) performance, Holiday Ice B.V. may demand the counterparty to provide financial security. If this security is not provided, Holiday Ice B.V. may terminate/rescind or suspend the agreement.
- 5.3 Any special requirements imposed by the counterparty on the goods to be delivered which differ from the normally applicable requirements, must be agreed separately in writing.
- 5.4 The counterparty shall provide Holiday Ice B.V. with all information and documents required for a correct performance of the agreement.

6. Content of the agreement

- 6.1 The agreement concluded between the parties will include an undertaking by the counterparty to purchase a certain quantity of products from Holiday Ice B.V. during an agreed period of time and an undertaking by Holiday Ice B.V. to deliver those products each time on demand to the counterparty.
- 6.2 The minimum order quantity is one pallet per product, or as otherwise agreed in writing.
- 6.3 The counterparty is obliged to take delivery of the agreed quantity of products within the agreed period, and in any case within six months after the end of the contract. If the counterparty does not comply with this obligation, the counterparty will be charged storage costs for the relevant period.
- 6.4 "Products" mean ice cream and/or other food products that meet the agreed product specifications.

7. Consignment

- 7.1 "Consignment" means an agreement for the transfer of ownership of certain products under the condition precedent that the counterparty succeeds in selling the products within an agreed period of time.
- 7.2 A consignment agreement is entered into for the duration agreed in the agreement.
- 7.3 The management and storage risk of consignment items rests at all times with the counterparty.
- 7.4 If the consignment products are not sold by the last day of the agreed period, they will be deemed to be retained by the counterparty for purchase, and these will be charged to the counterparty immediately. Any storage costs will be payable by the counterparty.
- 7.5 Consignment products not sold in time may only be returned to Holiday Ice B.V. upon Holiday Ice B.V.'s request. The costs of returning the products will be payable by the counterparty. If the products are returned, further to the above, in incomplete and/or damaged condition, the counterparty is in default and Holiday Ice B.V. is entitled to compensation.

8. Cancellation

- 8.1 The counterparty may only (partially) cancel the agreement to the extent that products and any product-specific packaging/packaging materials and product-specific raw materials have not yet been produced and/or no costs have been incurred, and subject to a 10% cancellation fee. If products and any product-specific packaging/packaging materials and product-specific raw materials have already been produced and/or costs have already been incurred, Holiday Ice B.V. is entitled to full payment thereof.

9. Delivery/delivery terms

- 9.1 All products are delivered ex works or ex storage, unless otherwise agreed in writing. The products will be at the expense and risk of the counterparty from the moment of delivery.
- 9.2 Delivery takes place on the delivery date agreed between the parties.
- 9.3 Holiday Ice B.V. will not be in default by the mere exceeding of the agreed delivery time and the counterparty will not be entitled to any compensation as a result. In that case, however, the counterparty will be entitled to demand that delivery takes place within a reasonable period of time as yet, failing which, other than if due to force majeure, the counterparty may unilaterally cancel the sales order by registered letter for the part not yet performed. The counterparty does not have this right if it is itself in default.
- 9.4 The counterparty is obliged to ensure that sufficient personnel is present and that loading and unloading facilities are available at the delivery address. If and insofar as the counterparty fails to provide this, Holiday Ice B.V. may store the goods at the expense and risk of the counterparty.
- 9.5 Holiday Ice B.V. may at all times demand advance payment (either prior to production and/or prior to delivery) or to demand security in the form it desires.
- 9.6 Return shipments are only permitted if Holiday Ice B.V. has expressly agreed to this in writing.
- 9.7 The procedure regarding deliveries by Holiday Ice B.V. is as follows:

Holiday Ice B.V.'s products are seasonal and as a result of weather conditions an unpredictable purchase pattern can occur, with peaks and troughs. Nevertheless, Holiday Ice B.V. aims at achieving a 98% delivery reliability. To achieve this, the following should be considered:

- Holiday Ice B.V. may print the agreed annual volume in terms of packaging in one batch. Printed quantities may vary \pm 10%;
- Holiday Ice B.V. may produce up to 70% of the agreed annual volume in the preseason (November to April);
- Holiday Ice B.V. must have received the order for regular products at least 15 working days prior to the delivery date;
- Holiday Ice B.V. must have received the order for the agreed promotional actions or (special) promotional products at least 10 weeks before the delivery date;

Moreover, it is necessary to make an annual forecast, divided into 12 months, for each product. This annual forecast is made in close consultation between the counterparty and Holiday Ice B.V.. If so desired, this annual forecast can be adjusted by mutual agreement by the buyer every first week of a calendar month, whereby the change will as a rule have effect from to the next month(s).

10. Complaints

- 10.1 If the goods delivered by Holiday Ice B.V. noticeably differ from the agreement, e.g. if fewer goods are delivered than ordered or if the goods are damaged, the counterparty must submit a complaint immediately upon delivery and state the defects (or have these stated) on the transport document to be signed upon receipt and/or the delivery note, failing which the goods shall be deemed to have been received in proper condition.
- 10.2 Complaints in connection with other defects must be submitted in writing immediately after the counterparty has detected or reasonably should have detected them, but within two weeks after delivery date at the latest. The counterparty must immediately hand over to Holiday Ice B.V. the goods about which a complaint is made. If the complaint is justified, the costs of handing over the goods will be payable by Holiday Ice B.V. If a complaint is not justified, the costs are payable by the counterparty.
- 10.3 Holiday Ice B.V. is not obliged to accept complaints for as long as the counterparty has not handed over the products to Holiday Ice B.V..
- 10.4 If a complaint is not submitted in time, the counterparty loses any claims it may have against Holiday Ice B.V. and the delivery is deemed to have been accepted unconditionally. If the counterparty submits a timely complaint and proves that the defects already existed at the time of delivery, Holiday Ice B.V. will only be obliged to provide the counterparty with a replacement shipment. Instead of making a replacement shipment Holiday Ice B.V. may, at its own discretion, either refund the amount already paid for the goods concerned or credit the counterparty for the amount charged for these goods.
- 10.5 Complaints submitted by telephone must be confirmed in writing within the time limits for making complaints referred to in this article.
- 10.6 All complaints must be accompanied by supporting documents, samples, specification of production numbers, and any other unique characteristics relevant to the shipment.

- 10.7 No right of complaint exists if the nature, composition or packaging of the products is altered by the counterparty or by third parties.
- 11. Differences, tolerances, composition and weight**
- 11.1 The products to be delivered will comply with the so-called reference sample and meet the agreed product specifications.
- 12. Payment**
- 12.1 All payments are due within thirty days of the invoice date, unless otherwise agreed in writing.
- 12.2 Any disputes between the counterparty and Holiday Ice B.V. regarding the quality or relating to complaints submitted by the counterparty for other reasons do not entitle the counterparty to suspend payment.
- 12.3 If the counterparty fails to pay an invoice in time, the counterparty will be in default by operation of law and will owe Holiday Ice B.V., in accordance with this article, the statutory commercial interest within the meaning of Article 6:119a of the Dutch Civil Code, plus the variable rate of the European Central Bank on the basis of refinancing interest, without any notification to that effect being required. Interest on the due and payable amount will accrue from the moment the counterparty is in default until the moment the full amount due is paid.
- 12.4 If the counterparty defaults on his payment obligations or fails to (timely) fulfil its obligations, all reasonable costs incurred to obtain satisfaction out of court will be payable to the counterparty. The extrajudicial costs will be calculated on the basis of what is customary in Dutch collection practice, in accordance with the Extrajudicial Collection Costs (Fees) Decree (*Besluit vergoeding voor buitengerechtelijke incassokosten*). However, if Holiday Ice B.V. has been forced to incur higher costs for collection which were reasonably necessary, the actual costs incurred will be charged. Any judicial and enforcement costs incurred will also be recovered from the counterparty. The counterparty will also owe statutory interest on the collection costs due.
- 12.5 Holiday Ice B.V. is entitled to apply the payments made by the counterparty first to settle the costs, then to settle the interest that has fallen due and finally to settle the principal and the accrued interest.
- 12.6 Holiday Ice B.V. may, without being in default as a result, refuse an offer of payment if the counterparty indicates a different order for the allocation of payment. Holiday Ice B.V. may refuse full repayment of the principal sum if it does not include the interest fallen due and the current interest and collection costs.
- 12.7 The counterparty may in no event set off the amount it owes Holiday Ice B.V. with anything it is owed by Holiday Ice B.V.
- 13. Risk**
- 13.1 The risk of damage and loss of the goods delivered and of any resulting damage passes to the counterparty immediately upon delivery.
- 14. Retention of Title**
- 14.1 Holiday Ice B.V. retains title to all goods delivered and to be delivered by Holiday Ice B.V., no matter when, until the counterparty has properly fulfilled all obligations under the agreement with Holiday Ice B.V., and has paid any other claim as referred to in Article 3:92(2)
- of the Dutch Civil Code. However, the counterparty is entitled to resell or process the goods as part of its normal business operations, unless Holiday Ice B.V. states in writing that the counterparty must immediately make these goods available to Holiday Ice B.V.
- 14.2 Upon the request of Holiday Ice B.V. the counterparty will create a pledge within the meaning of Article 3:239 of the Dutch Civil Code for the benefit of Holiday Ice B.V., on any claims against third parties arising from the sale of goods delivered by Holiday Ice B.V.
- 14.3 The counterparty must always do everything that may reasonably be expected of it to secure the ownership rights of Holiday Ice B.V.
- 14.4 If third parties have goods delivered under retention of title attached, or wish to establish or assert rights to them, the counterparty is obliged to notify Holiday Ice B.V. of this immediately.
- 14.5 If Holiday Ice B.V. wants to exercise its ownership rights as referred to in this article, the counterparty now for then gives its unconditional and irrevocable consent to Holiday Ice B.V. and to the third parties appointed by Holiday Ice B.V. to enter all those places where the belongings of Holiday Ice B.V. are located and to repossess these goods.
- 15. Protection of rights**
- 15.1 Any special recipes developed by Holiday Ice B.V. remain the property of Holiday Ice B.V. and may not be reproduced or imitated by or on behalf of the counterparty without Holiday Ice B.V. written consent.
- 16. Duty of care**
- 16.1 The counterparty will treat the delivered goods with the required care at all times and may not perform any actions that could affect the quality or safety of the goods/products or the reputation of Holiday Ice B.V. or its brands.
- 17. Liability**
- 17.1 If any liability rests on Holiday Ice B.V., this liability will be limited to what is stipulated in this provision.
- 17.2 Holiday Ice B.V. is not liable for any loss or damage, of any kind, caused because Holiday Ice B.V. relied on incorrect and/or incomplete data provided by or on behalf of the counterparty.
If Holiday Ice B.V. is liable for any loss or damage, Holiday Ice B.V.'s liability will be limited to one time the net invoice value of the order to which the liability relates.
- 17.3 The liability of Holiday Ice B.V. will in any event always be limited to the amount paid out by its insurer in any given case. Holiday Ice B.V. can only be held liable for direct damage.
- 17.4 Direct damage is exclusively understood to mean the reasonable costs incurred to determine the cause and extent of the damage, insofar as the determination relates to damage within the meaning of these terms and conditions, any reasonable costs incurred to bring the defective performance of Holiday Ice B.V. in line with the agreement, insofar as this performance may be attributed to Holiday Ice B.V., and the reasonable costs incurred to prevent or mitigate the damage, provided that the counterparty demonstrates that these costs have in fact resulted in a mitigation of direct damage as referred to in these general terms and conditions.
- 17.5 Holiday Ice B.V. will in no event be liable for indirect damage, including consequential damage, lost profits, missed savings, loss of sales, loss of goodwill and damage due to business interruption.

- 17.6 The counterparty agrees to indemnify Holiday Ice B.V. against any third-party claims for damage relating to the goods delivered by Holiday Ice B.V. or otherwise relating to the agreement concluded between the counterparty and Holiday Ice B.V.
- 17.7 Net invoice value means the amount invoiced for the goods not delivered properly, less packaging costs, before VAT and after deducting any discounts and freight charges.
- 18. Force Majeure**
- 18.1 Holiday Ice B.V. is not obliged to fulfil an obligation towards the counterparty if it is prevented from doing so due to a circumstance beyond its control and that is not attributable to it by virtue of the law, a legal act or generally accepted opinion.
- 18.2 In addition to its legal definition and the definition in case law, force majeure in these general terms and conditions includes all foreseen or unforeseen external causes that are beyond the control of Holiday Ice B.V. and which prevent Holiday Ice B.V. from fulfilling its obligations, such as but not limited to: war, threat of war, civil war, state of siege, signs or threat of fall-out, crop failure, riots, revolution, unrest, wilful damage, fire, water and smoke damage, flooding, exceptional weather conditions, sabotage, strikes, occupation, lockouts, illness of an irreplaceable employee, transport problems, import and export restrictions, government measures, breakage or defects in machinery of a special nature and specifically manufactured for the product, disruptions in the supply of energy, disruptions in the supply or provision of raw materials, non-performance by suppliers from whom Holiday Ice B.V. procures all this, both within the undertaking of Holiday Ice B.V. and that of third parties from which Holiday Ice B.V. is required to acquire the necessary materials or raw materials wholly or in part, as well as in storage or during transport - whether or not under its own control - and furthermore all other causes occurring through no fault of or that are not for the risk of Holiday Ice B.V.
- 18.3 Holiday Ice B.V. may suspend the obligations under the agreement during the period of force majeure. If this period lasts more than three months, both Holiday Ice B.V. and the counterparty may rescind the agreement, without any obligation to compensate any damage suffered by the other party. The rescission applies only in respect of the part of the agreement that is not yet performed. Rescission must take place by written notice sent by registered mail to the other party.
- 18.4 Insofar as Holiday Ice B.V. has already partially fulfilled its obligations under the agreement at the time the force majeure event occurs, or will be able to fulfil them, and independent value can be attributed to the fulfilled part or to the part that can still be fulfilled, Holiday Ice B.V. may charge the fulfilled, or yet to be fulfilled, part separately. The counterparty is obliged to pay this invoice as if it were a separate agreement.
- 19. Suspension, rescission and premature termination of the agreement**
- 19.1 Holiday Ice B.V. may suspend performing its obligations or rescind the agreement (wholly or in part) if:
- the counterparty fails to fulfil its obligations under the agreement, or fails to do so in full or in time;
 - circumstances come to the attention of Holiday Ice B.V. after the agreement is concluded giving cause to
- fear that the counterparty will not fulfil its obligations;
 - the counterparty was requested to provide security for the fulfilment of its obligations under the agreement upon concluding the agreement, and this security is not provided or is insufficient;
 - due to delays on the part of the counterparty, Holiday Ice B.V. can no longer be expected to perform the agreement at the originally agreed conditions.
- 19.2 Upon rescission of the agreement Holiday Ice B.V.'s claims on the counterparty become immediately due and payable. If Holiday Ice B.V. suspends fulfilment of its obligations, it retains its claims under the law and agreement.
- 19.3 If Holiday Ice B.V. proceeds to suspend or rescind the agreement, it will not in any way be obliged to compensate any damage and costs incurred as a result in any way.
- 19.4 If the rescission can be blamed on the counterparty, Holiday Ice B.V. will be entitled to compensation of all directly and indirectly incurred loss and damage, including costs.
- 19.5 If the counterparty does not comply with its obligations under the agreement and this non-compliance justifies rescission, Holiday Ice B.V. may rescind the agreement immediately and with immediate effect, without any obligation on its part to pay any compensation or indemnification, while the counterparty is obliged to pay compensation or indemnification for breach of contract.
- 19.6 In case of liquidation; (a request for) suspension of payment; bankruptcy; attachment - if and insofar as the attachment has not been lifted within three months - levied against the counterparty; debt restructuring, or another circumstance due to which the counterparty is no longer able to dispose of its assets, Holiday Ice B.V. may rescind the agreement immediately and with immediate effect, or cancel the order or agreement, without any obligation on its part to pay any damages or compensation. In that event all claims of Holiday Ice B.V. become immediately due and payable. The products, including the specific raw materials, auxiliary materials and packaging materials, which have already been completed but which have not yet been paid for by the counterparty, will become available for sale to third parties. The counterparty may in that event no longer assert any rights in respect of the completed products, including the specific raw materials, auxiliary materials and packaging materials.
- 20. Disputes**
- 20.1 All legal relationships to which Holiday Ice B.V. is a party are governed exclusively by Dutch law, even if an obligation is wholly or partially implemented abroad or if the party involved in the legal relationship is domiciled there.
- 20.2 The competent court in the district of Noord-Nederland, location Leeuwarden, has exclusive jurisdiction to take cognisance of disputes, unless the law mandatorily prescribes otherwise.