

**GENERAL TERMS  
AND CONDITIONS  
for  
N'Joy Seafood Aps**

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## **1. Scope**

- 1.1 Any delivery from N'Joy Seafood Aps ("N'Joy Seafood") is subject to these General Terms and Conditions, being binding on all deliveries between the parties, thus superseding all agreements and customs inconsistent with the contents hereof, including any terms and conditions drafted and submitted by the Purchaser, unless otherwise stated in the order confirmation submitted by N'Joy Seafood.

## **2. Formation**

- 2.1 On the placing of an order confirmation, at the earliest, N'Joy Seafood is bound by any statements or declarations issued by N'Joy Seafood, howsoever described. Until the order confirmation has been communicated to the Purchaser, N'Joy Seafood is entitled to withdraw any such statements or declarations.
- 2.2 Any cancellation or change of a confirmed order on the part of the Purchaser requires a prior written approval from N'Joy Seafood, and the Purchaser shall pay any and all costs incidental thereto. The Purchaser shall indemnify N'Joy Seafood against any loss occurring as a consequence of the cancellation or change, always provided, however, that 10% of the agreed purchase price, exclusive of VAT, will be the minimum amount payable.

## **3. Authority**

- 3.1 No independent persons/companies, e.g. agents, representatives or brokers, are authorised to bind N'Joy Seafood without a prior written agreement to that effect.

## **4. Prices**

- 4.1 Unless otherwise explicitly stated in the order confirmation, all prices are quoted in Danish Kroner and are current prices, exclusive of VAT, other public duties, and packaging.
- 4.2 If the price is quoted in another currency than Danish Kroner, the price will be based on the foreign currency exchange rates applicable on the placing of the order. Consequently, any changes in the exchange rate will entitle N'Joy Seafood to adjust the price accordingly.

## **5. Terms of delivery**

- 5.1 Deliveries are subject to INCOTERMS 2010 EXW, Knivholtvej 2C, DK-9900 Frederikshavn, unless otherwise explicitly stated in the order confirmation. Consequently, the Purchaser shall carry any risk of all costs, including any freight charges, in connection with deliveries from the point of origin stated. The Purchaser undertakes in due time to give notice about the method of dispatch, which the Purchaser wishes to use. Otherwise, N'Joy Seafood is entitled on the Purchaser's account to decide the method and route of dispatch.
- 5.2 The quantity delivered by N'Joy Seafood may vary by 10% upwards or downwards compared to the quantity ordered, with the sole consequence that the price will be adjusted in accordance with the quantity actually delivered.
- 5.3 In case of delay in delivery, N'Joy Seafood undertakes to notify the Purchaser thereof.
- 5.4 N'Joy Seafood is not responsible for delay, unless this has been separately agreed.
- 5.5 Should the Purchaser fail to take delivery on the date of delivery, N'Joy Seafood is entitled to terminate the Agreement and submit a claim for damages. Further, N'Joy Seafood is entitled to sell off or store the products on the Purchaser's account. Any storing of products is at the Purchaser's risk. If kept in a frozen store, the Purchaser shall pay a monthly charge in settlement of the costs actually incurred plus a finance supplement.
- 5.6 Products and packaging may only be returned when agreed upon in writing and, if so, on the Purchaser's account. Pallets, boxes, cases and other containers, which are separately debited, will not be credited.

## **6. Terms of payment**

- 6.1 Payment must be made prior to the date stipulated in the order confirmation and to the account designated in the invoice.

- 6.2 N'Joy Seafood is entitled at any time to demand the provision of adequate security for punctual payment of the amount.
- 6.3 In case of delay in delivery due to the Purchaser's situation, the Purchaser shall pay all amounts due to N'Joy Seafood, as if delivery had been made in time.
- 6.4 Any delay in payment carries an addition of interest of 2% for each month entered into as from the due date and until payment has been effected. On the forwarding of payment reminders, N'Joy Seafood will charge a reminder fee of DKK 400.00 on each overdue payment reminder.
- 6.5 The Purchaser is responsible for the payment of all costs incurring in connection with funds transfers.
- 6.6 The Purchaser's payments must cover interest and costs accrued in priority to the settlement of the principal.
- 6.7 In the event of default in payment, N'Joy Seafood is entitled to claim its collection charges to a legal counsel fully covered, i.e. not only the maximum charges fixed by the Danish Interest Act.
- 6.8 The Purchaser is not entitled to set off the purchase price or any part thereof and is further not entitled to withhold the purchase price on account of a notice of lack of conformity under clause 9.
- 6.9 In case of breach on the part of the Purchaser of one or more of its contractual obligations hereunder, including its obligations under clause 5, N'Joy Seafood is entitled to terminate the agreement, sell the product on the Purchaser's account to any third party and/or submit a claim for damages. N'Joy Seafood is entitled to claim compensation for any loss suffered, including any indirect loss.

## **7. Retention of title**

- 7.1 All products delivered by N'Joy Seafood, both existing and future products, remain N'Joy Seafood' property, until all outstanding accounts originating from the business relations with the Purchaser have been fully settled.

- 7.2 The Purchaser shall keep N'Joy Seafood' products separated from the Purchaser's own or third parties' products, until all N'Joy Seafood' outstanding accounts have been fully settled, and the Purchaser shall further ensure that N'Joy Seafood' products are duly stored, protected, insured and identified as belonging to N'Joy Seafood.
- 7.3 The Purchaser is entitled in the course of its normal course of business to separate and sell N'Joy Seafood' products. If relevant, the Purchaser shall pay a cash amount to N'Joy Seafood in settlement of the value of any separated and resold products or alternatively assign to N'Joy Seafood all outstanding accounts originating from any such resale.
- 7.4 Should the Purchaser act in a way contrary to the provisions of this agreement, N'Joy Seafood will be entitled to withdraw the products concerned, and the Purchaser shall then return all such products. If the Purchaser fails to fulfil its obligation to return products, N'Joy Seafood will be entitled to send for the products concerned on the Purchaser's account.

## **8. Force majeure**

- 8.1 N'Joy Seafood is not liable in damages for any non-performance of its contractual obligations, provided N'Joy Seafood can substantiate that such non-performance is due to circumstances beyond its reasonable control, such as, but not limited to, situations of war, warlike events, fire, strikes, lockouts, bans on exports or imports, embargoes, production standstills, shortages of energy or transport facilities.
- 8.2 Force majeure on sub-suppliers will be considered force majeure on N'Joy Seafood.
- 8.3 In case of a force majeure event, N'Joy Seafood is entitled to extend the time of delivery correspondingly or terminate the Agreement. As soon as any such hindrance has been removed, either Party is bound by the Agreement, unless previously terminated by N'Joy Seafood.

## **9. Duty to give notice and duty of inspection**

- 9.1 The Purchaser undertakes to inspect the product immediately upon receipt thereof.

- 9.2 The Purchaser shall give notice of lack of any conformity to N'Joy Seafood as soon as possible and not later than:
- 9.2.1 Immediately in case of a visible damage or defect;
  - 9.2.2 48 hours upon receipt, if the Product consists of frozen fish, and it is possible to establish the defect by means of an examination or a manual inspection;
  - 9.2.3 120 hours upon receipt, if the Product consists of frozen fish, and it is impossible to establish the defect by means of any other investigation than examination or manual inspection.
- 9.3 All such notices of lack of conformity must be made in writing and must clearly state the nature and extent of the defect.
- 9.4 If the Purchaser fails to observe the above deadlines, the Purchaser's right to give notice of the defect will be forfeited.
- 9.5 The Purchaser shall store the products being allegedly defective in accordance with the following guidelines, until N'Joy Seafood has confirmed receipt of the notice in writing:
- 9.5.1 Frozen fish must be kept in a frozen store at a temperature not above  $\pm 18^{\circ}\text{C}$ .
- 9.6 Upon N'Joy Seafood' receipt of due notice and acknowledgement of the lack of conformity, N'Joy Seafood shall issue a credit note for the defect for which N'Joy Seafood may be held responsible. The Purchaser has no other remedies.

## **10. Product liability**

- 10.1 N'Joy Seafood is only liable for personal injury or property damage caused by the products, provided such injury or damage is demonstrably due to a defect or neglect on the part of N'Joy Seafood in a product delivered by N'Joy Seafood, and provided the said product is demonstrably defective, that the injury or damage is due to the said defect, and that there is a causal connection between the injury or damage and the defect concerned.

- 10.2 N'Joy Seafood assumes no responsibility for any inappropriate storing of the product at the Purchaser's premises or for the Purchaser's incorrect or non-observing treatment or for any consequences of the Purchaser's use of the product for experimental exploitation or the like.
- 10.3 Further, N'Joy Seafood is not liable either for damage to chattels, occurring whilst the product is in the Purchaser's possession, or for damage to products manufactured by the Purchaser, and incorporating the product, and in addition, N'Joy Seafood is not liable for any operating loss, loss of time, loss of profit, loss of earnings, or any other indirect loss.
- 10.4 The Purchaser undertakes to give prompt notice in writing to N'Joy Seafood, if the Purchaser becomes aware of a damage, provided a third party claims that such damage is caused by the product, or if the Purchaser becomes aware of the potential risk that a damage may occur.
- 10.5 If the Purchaser omits to give notice to N'Joy Seafood as stated above, this will not excuse the Purchaser from taking any measure required for preventing the damage from occurring or from mitigating the damage to a minimum.
- 10.6 If N'Joy Seafood is held liable beyond the aforesaid liability, the Purchaser shall indemnify N'Joy Seafood from and against any such liability. The Purchaser undertakes to take out required product liability insurance covering any product liability that may be imposed on the Purchaser. The product liability insurance must be taken out without recourse against N'Joy Seafood.
- 10.7 The Purchaser undertakes to be sued before the same court of law/arbitration tribunal hearing the issue on N'Joy Seafood' product liability.

## **11. Choice of law and venue**

- 11.1 Any dispute arising out of or in connection with deliveries from N'Joy Seafood must be settled in accordance with Danish law without regard to any principles of private international law specifying any other choice of law.

- 11.2 Any dispute arising out of or in connection with deliveries from N'Joy Seafood and/or disputes concerning the existence or validity of a contract must be brought before and finally settled by the ordinary Danish courts of law or by an arbitration tribunal established by the Danish Institute of Arbitration pursuant to the Institute's rules of procedure in force on the commencement of the arbitration proceedings. The proper venue is always N'Joy Seafood' registered office for the time being.
- 11.3 The right to actually decide, whether a dispute should be brought before the ordinary Danish courts of law or an established arbitration tribunal accrues to N'Joy Seafood.
- 11.4 If the Purchaser requests the institution of legal proceedings, N'Joy Seafood is entitled within 14 days upon receipt of such request to decide, whether the dispute should be resolved by the ordinary Danish courts of law or by an arbitration tribunal established by the Danish Institute of Arbitration.
- 11.5 If N'Joy Seafood has not within 14 days given notice of where the dispute should be resolved, the action may be brought before the ordinary Danish courts of law.
- 11.6 When bringing an action before the ordinary Danish courts of law, the first instance for such action will always be N'Joy Seafood registered address for the time being.

