

# GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY

*These General Terms and Conditions of Sale and Delivery (the "General Terms") are used by Aviko Norden AB and its, from time to time, owned subsidiaries, including 3 N Produkter AB and Smålands Rotfrukter i Jönköping AB, each hereinafter referred to as "Aviko Norden", in respect of sale and delivery of goods (the "Goods") to customers ("Customer").*

## **1. Applicability, etc.**

- 1.1 These General Terms shall apply when the parties have referred to them, such as in offers or order confirmations, or otherwise agreed that they shall apply. Specific provisions shall take precedence over these general terms and conditions.
- 1.2 All offers by Aviko Norden are non-binding, unless otherwise agreed in writing. A Customer order, whether based on an offer or otherwise, requires a written order confirmation by Aviko Norden to become binding.
- 1.3 In the event of conflict between a provision of these General Terms and provisions specifically agreed to in writing, the provisions specifically agreed to in writing shall prevail. The term "in writing" includes letter, e-mail or fax.

## **2. Delivery and delay in delivery**

- 2.1 Delivery shall be made pursuant to the agreed INCOTERM and delivery location ("Delivery Location"). Where no delivery terms have been agreed, delivery shall be made ex works pursuant to the INCOTERMS applicable at the time of execution of the agreement.
- 2.2 Unless otherwise specifically agreed in writing, all delivery times are approximate only. Exceeding the normal delivery time, for any reason whatsoever, shall not entitle the Customer to claims for non-fulfilment of any obligation assumed towards Aviko Norden, including any right to compensation.
- 2.3 When section 2.2 is not applicable in respect of delivery time and Aviko Norden fails to deliver the Goods in due time, the Customer shall be entitled to liquidated damages. The liquidated damages shall be 0.5% of the Agreed Price for each full week of the delay. The liquidated damages shall not exceed 7.5% of the Agreed Price. Where only one part of the delivery is delayed, the liquidated damages shall be calculated on the price of such part of the delivery which the Customer cannot use due to the delay. The Customer shall be entitled to demand payment of liquidated damages when the scope of the delay is known or when the delay entitles the Customer to the maximum liquidated damages for delay. The Customer forfeits its right to liquidated damages where the Customer fails to make a written claim for liquidated damages not later than six months from the date on which delivery was to have taken place.
- 2.4 When the length of the delay is such that the Customer is entitled to maximum liquidated damages pursuant to the preceding section, the Customer shall be entitled to terminate the agreement through written notice of termination to Aviko Norden. Prior to such notice of termination, the seller shall be granted a grace period of not less than one week to deliver the Goods. If the agreement is terminated, the Customer shall be entitled, in addition to liquidated damages for the delay, to liquidated damages in the amount of 10% of the price of the Goods to which the termination relates.

## **3. Packaging**

- 3.1 The disposable packaging is part of the delivered Goods and will not be collected by Aviko Norden.

## **4. Force majeure**

- 4.1 The following circumstances constitute grounds for discharge from liability: war, mobilisation or military draft of a similar scope, terrorism, sabotage, general or local industrial action, fire, flood, natural disaster, requisition, seizure, public authority order, trade restriction, payment restriction or currency restriction, uprising or riot, epidemic, shortage of means of transport, general shortage, insufficient harvest, crop failure, any limitation in the provision of electricity, fuel, or data communications and telecommunications, as well as other similar incidents and any other circumstance over which the seller does not have control. Insufficient harvest or crop failure means the complete or partial failure of harvest of the raw materials and/or consumables required by Aviko Norden, as a result of which Aviko Norden cannot obtain the required raw materials and/or consumables, is unable to do so in good time, or only under more onerous conditions.
- 4.2 Any delay in delivery on the part of any party assisting Aviko Norden in the performance of the agreement which is caused by any such ground for discharge from liability, as well as any other circumstance over which such party does not have control, shall also constitute grounds for discharge from liability.
- 4.3 In the event that grounds for discharge from liability exist, the delivery time shall be extended for as long as is reasonable under the circumstances. Aviko Norden shall be entitled to extend the delivery time notwithstanding that the reason for the delay arose after the end of the originally agreed delivery time.
- 4.4 Either Party shall be entitled to terminate the agreement where performance of the agreement is delayed due to any ground for discharge from liability which persists for more than three months.

## **5. Price, payment and late payment**

- 5.1 The agreed price which is to be paid for the Goods is hereinafter referred to as the "Agreed Price".
- 5.2 All price offers are exclusive of sales tax and delivery and freight charges, unless otherwise specified in writing.
- 5.3 The introduction and/or increase of import duties, levies, sales tax and/or other taxes on (the delivery of) the Goods or any raw materials and/or consumables or any other cost increase occurring after conclusion of the agreement, may be charged to the Customer by Aviko Norden.
- 5.4 Unless otherwise agreed, the Customer shall pay against invoice not later than 10 days after delivery of the Goods. In the event of a dispute regarding a part of the invoice, the part of the invoice that is not in dispute

must be paid in accordance with the applicable payment terms.

- 5.5 Aviko Norden reserves the right to demand payment in advance, if it considers it appropriate, as well as to suspend further delivery as long as payment for previous deliveries is still outstanding. Aviko Norden further reserves the right to require security from the Customer for payments due or to perform further deliveries or otherwise implementing an agreement.
- 5.6 Where the Customer's payment is in arrears, Aviko Norden shall be entitled to interest on arrears on the amount due as from the due date, at the interest rate which applies pursuant to the Swedish Penalty Interest Act. In addition to interest on arrears, Aviko Norden shall be entitled to damages for all loss.
- 5.7 Aviko Norden may terminate the agreement where the Customer fails to make payment within three months of the due date or where it is clear that the Customer will not be able to pay. In the event of termination due to the Customer's arrears in payment, Aviko Norden shall be entitled to damages for all loss in addition to the interest on arrears.

#### **6. Liability for defects and returns**

- 6.1 The characteristics and quality of the Goods shall be consistent with the agreed specifications. Aviko Norden shall not otherwise be liable for the characteristics of the Goods. Aviko Norden shall also not be liable for defects or damage caused by the Customer, e.g. incorrect handling or storage.
- 6.2 Aviko Norden shall only be liable for defects which existed at the time of the delivery and which manifest themselves within best before date marked on packaging.
- 6.3 The Customer shall notify Aviko Norden of any defect without unreasonable delay, however not later than within best before date from the date. The notice of defect shall contain a description of the defect. The Customer's untimely notice of the defect shall result in forfeiture of the right to complain of the defect.
- 6.4 Aviko Norden shall have the right and the obligation to rectify any defects. Aviko Norden shall be entitled to rectify through replacement of the Goods (redelivery). Aviko Norden shall bear the costs of rectification, including the costs of transport.
- 6.5 Returns are only permitted if Aviko Norden has agreed to such in writing in advance or if such returns are executed by or on behalf of Aviko Norden. Unless agreed otherwise in writing, returns are at the expense and risk of the Customer, but permitted returns will be reimbursed by Aviko Norden provided that the defect notification is accepted by Aviko Norden or otherwise upheld.
- 6.6 Aviko Norden shall not be obligated to rectify a defect where doing so would be unreasonably burdensome, particularly in light of the costs of rectification when compared with the significance of the defect and/or the value of the Goods. In such case, the Customer's sole remedy shall be to terminate and/or seek damages for all loss in accordance with the provisions below.
- 6.7 Where the defect is not rectified and there is a material defect, the Customer shall be entitled to terminate the agreement. In the event of such termination, the Customer shall be entitled (i) to a refund of any

purchase price paid; and (b) to damages for all loss not to exceed 20% of the Agreed Price.

#### **7. Limitation of liability**

- 7.1 Aviko Norden shall have no liability beyond that which follows from the preceding sections and the Customer shall not be entitled to remedies due to the Aviko Norden's breach of contract other than those which follow from the preceding sections. This limitation of liability shall not apply where Aviko Norden has committed gross negligence.
- 7.2 Notwithstanding any previous stipulations regarding liability in damages, Aviko Norden shall not be liable for any third-party property damage or personal injury resulting from any defect in the Goods. In the event Aviko Norden incurs liability in damages to any third party due to property damage or personal injury, the Customer shall hold Aviko Norden harmless. This limitation shall not apply where Aviko Norden has committed gross negligence.

#### **8. Confidentiality**

- 8.1 Each of the parties will treat as confidential all information received from the other party that is designated as confidential, or the confidential nature of which should reasonably have been evident (hereinafter referred to as "Confidential Information"). Confidential Information in any event includes the existence, the nature and the contents of the agreement, as well as other business information of Aviko Norden.
- 8.2 The previous section does not apply to Confidential Information which i) is already publicly known, ii) has been independently developed by one party, without the use of the Confidential Information of the other party, iii) was received from a third-party who was under no obligation to keep such information confidential, iv) was already in the possession of the receiving party without an obligation of confidentiality, or (v) the receiving party is forced by competent authorities to disclose, in which case the receiving party will immediately notify the providing party about this.
- 8.3 Confidential Information may only be used within the context of the agreement and may only be copied or reproduced insofar as this is necessary in order for the receiving party to perform its obligations under the agreement.
- 8.4 Each party shall treat the Confidential Information of the other party in the same manner as it treats its own Confidential Information and similar data, and they are at all times required to take the necessary precautions to maintain the confidentiality of such Confidential Information.
- 8.5 The obligations set forth in this confidentiality provision shall remain in force for three years after the end of the agreement.

#### **9. Intellectual Property Rights**

- 9.1 All intellectual property rights which are owned by Aviko Norden or its supplier(s) shall remain the property of Aviko Norden at all times. The Customer shall not in any way acquire any rights of intellectual property in relation to intellectual property rights (the ownership of which is) resting with Aviko Norden or to any information received from Aviko Norden in any form whatsoever.
- 9.2 The Customer is not permitted to change the delivered goods, wholly or in part, or to provide them with a

different brand name and/or packaging, or otherwise to remove or change any indication of copyright, trademarks, trade names or other intellectual or industrial property rights of Aviko Norden, unless otherwise agreed in writing.

- 9.3 The Customer is not permitted to use any name, trade name, trademark, logo or any other reference to Aviko Norden in any external press release, advertising materials, publicity materials or other, without the permission of Aviko Norden.

#### **10. Data privacy**

To the extent personal data relating to the Customer's representatives is being used by Aviko Norden, Aviko Norden's applicable integrity policy apply. The current integrity policy can be found at [avikonorden.se](http://avikonorden.se).

#### **11. Miscellaneous**

- 11.1 Aviko Norden is entitled to deduct any amounts it owes to the Customer from any amount that the Customer owes to Aviko Norden, or to other group members that are part of Coöperatie Koninklijke Cosun U.A. The Customer is not entitled to set off amounts due to Aviko Norden with any amount that Aviko Norden, or any other group member, may be due to the Customer.

- 11.2 Only those amendments and additions to the agreement that are made in writing by the parties are valid.

- 11.3 The agreement and its appendices constitute, unless otherwise explicitly stated, the entire agreement between the parties on all issues to which the agreement relates. The contents of the agreement and its appendices supersede all previous written or oral commitments and undertakings.

- 11.4 If any provision in the agreement shall be held to be illegal, invalid or unenforceable, in whole or in part, such provision or part shall to that extent be deemed not to form part of the agreement but the legality, validity or enforceability of the remainder of the agreement shall not be affected. If any illegal, invalid or unenforceable provision would be legal, valid and enforceable if some part of it were deleted or modified, the provision shall apply with whatever deletion or modification is necessary to give effect to the commercial intention of the parties.

#### **12. Governing law and jurisdiction**

- 12.1 These General Terms and conditions shall be governed by the substantive law of Sweden.

- 12.2 Any dispute, controversy or claim arising out of or in connection with this contract, or the breach, termination or invalidity thereof, shall be finally settled by arbitration administered by the Arbitration Institute of the Stockholm Chamber of Commerce (the "SCC"). The Rules for Expedited Arbitrations shall apply, unless the SCC in its discretion determines, taking into account the complexity of the case, the amount in dispute and other circumstances, that the Arbitration Rules shall apply. In the latter case, the SCC shall also decide whether the Arbitral Tribunal shall be composed of one or three arbitrators

- 12.3 The seat of the arbitration shall be [Helsingborg] and the language to be used in the arbitral proceedings shall be Swedish.

- 12.4 The parties undertake and agree that all arbitral proceedings conducted with reference to the arbitration clause in the previous section will be kept

strictly confidential. This confidentiality undertaking shall cover all information disclosed in the course of such arbitral proceedings, as well as any decision or award that is made or declared during the proceedings. Information covered by this confidentiality undertaking may not, in any form, be disclosed to a third party without the written consent of the parties. Notwithstanding the foregoing, a party shall not be prevented from disclosing such information in order to secure its interests against any other party in connection with a dispute (including an action against an award pursuant to the Swedish Arbitration Act, SFS 1999:116) or if required to do so by law, any applicable stock exchange regulations or the regulations of any other recognized market place or in order to fulfil the reporting obligations of the parties towards their owners or investors.

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