

GENERAL TERMS OF SALE AND DELIVERY

The general terms and conditions of Sin Wah Foods B.V. (Chamber of Commerce number 17178172), to be referred to in these terms and conditions as "Sin Wah Foods", with offices in (5651 GK) Eindhoven on the Mispelhoefstraat 35 – 37.

1. DEFINITIONS

1. Sin Wah Foods: the party that sells products for buyers according to these conditions.
2. Buyer: the natural or legal person on whose behalf Sin Wah Foods sells products in accordance with these conditions and/or who Sin Wah Foods is negotiating with about such an agreement.
3. Agreement: any agreement between Sin Wah Foods and the buyer.
4. Products: the products and/or equipment to be supplied by Sin Wah Foods.

2. APPLICABILITY

1. These general terms and conditions apply to all offers, quotations, agreements, deliveries, activities and services of Sin Wah Foods.
2. The applicability of the buyer's general terms (of purchase), in any form, is specifically ruled out.
3. Deviations from, exceptions or additions to these general terms and conditions are only legally binding if they have been specifically accepted in writing by Sin Wah Foods and are only applicable to the offer and/or agreement in which they are made.

3. QUOTATIONS AND PRICES

1. The quotations made by Sin Wah Foods are entirely without obligation and should be considered as a complete package. Quotations are valid for 15 days after the date on the quotation, unless stated otherwise.
2. Unless stated otherwise, all quotations are subject to price changes.
3. Offers and samples are and remain the property of Sin Wah Foods and may not be passed on to third parties for inspection or multiplication without written permission from Sin Wah Foods. These items must be returned immediately following a request by Sin Wah Foods.
4. Unless stated otherwise, our prices:
 - a. are stated in Euros (currency), any exchange rate fluctuations will be passed on to the customer;
 - b. exclude Value Added Tax (VAT);
 - c. are based on the purchasing prices, wages, wage costs, transportation costs and all other costs applicable at the time of submitting the quotation;
 - d. are based on delivery from the warehouse or other storage facility of Sin Wah Foods;
 - e. include import duties, other taxes, levies and rights for deliveries within the European Union.
5. In the event of any changes in purchasing prices, Sin Wah Foods has the right to pass these changes on immediately. The buyer is entitled to cancel the agreement if a price increase greater than 10% occurs. This cancellation should take place within 7 days after the buyer has taken note of the price increase.

4. ESTABLISHMENT OF THE AGREEMENT

1. An agreement between Sin Wah Foods and the buyer is established for every order, unless the nature of the agreement specifies otherwise or if the parties have a specific, written agreement to the contrary.
2. An agreement can only be established once a quotation has been signed and returned and/or approval has been given by e-mail and/or the order is confirmed by Sin Wah Foods. The start of the actual implementation by Sin Wah Foods can also signal the establishment of an agreement between Sin Wah Foods and the buyer. An agreement can be established in writing and by e-mail.
3. The content of the order includes everything agreed upon between the buyer and Sin Wah Foods and is determined by - among other things - the products and/or deliveries described in the quotation.

4. Inaccuracies or alleged (by the buyer) inaccuracies in the order confirmation by Sin Wah Foods must be announced in writing by the buyer within 7 days of the date of this confirmation. Following this deadline, the buyer is deemed to concur with the way in which the agreement or the order confirmation has been recorded in writing.
5. Any agreements or changes made at a later stage, as well as verbal agreements and/or promises made on behalf of Sin Wah Foods will only be legally binding for Sin Wah Foods if they have been confirmed in writing by Sin Wah Foods.
6. For activities and/or deliveries where it is not possible to send a quotation or order confirmation due to the nature and extent of the activities, the order confirmation can be deduced from the fact that the activities have started and/or receipt of the delivery has taken place.
7. During or after entering into the agreement, Sin Wah Foods is entitled to demand security from the buyer that both the payment obligation and other obligations will be met before making any (further) deliveries.
8. Sin Wah Foods is entitled to reject an order and will inform the buyer in such cases.

5. PAYMENT AND COSTS

1. Sin Wah Foods applies a payment period of 30 days to its invoices, unless another specific written agreement is in place.
2. Sin Wah Foods can demand (partial) payment of the invoice by a buyer before Sin Wah Foods delivers the products to the buyer.
3. Payment by the buyer will take place without any discount or offsetting, in any form, unless a specific written agreement to the contrary is in place.
4. If the buyer fails to pay the invoice to Sin Wah Foods in a timely manner, then the buyer has legally defaulted, without this requiring any announcement, warning or notice of default from Sin Wah Foods. In that case, the buyer owes Sin Wah Foods the statutory default interest (in accordance with article 6:119a of the Dutch Civil Code) from the date of default, with a partial month being counted as one month.
5. Any payments made by the buyer will always firstly be used to cover all costs and interest already owed and secondly to cover payment of the oldest payable invoices, even if the buyer states that the payment relates to a later invoice.
6. Sin Wah Foods is entitled to compensation by the buyer for all costs associated with the collection of its debt(s). Sin Wah Foods is entitled to outsource any claims regarding an unpaid invoice to a third party for debt collection with immediate effect. All (extra)judicial expenses incurred in the process of debt collection will be payable by the buyer. The extrajudicial costs will be based on the Dutch Extrajudicial Collection Costs Regulation Act and the accompanying decree.
7. Sin Wah Foods is entitled to suspend all deliveries in said agreement until such time as the buyer has fulfilled the obligations towards Sin Wah Foods.
8. Sin Wah Foods can transfer all claims resulting from the agreement to its credit insurer, in which case the credit insurer will be responsible for the collection of any outstanding debt(s).

6. DEADLINES / DELIVERIES AND DELIVERY TIME

1. Unless agreed otherwise, the deliveries will take place from the Sin Wah Foods warehouse.
2. The buyer must check the delivery and the packaging immediately upon delivery for any shortages or visible damage.
3. Any shortages of or damage to the delivery and/or the packaging of the delivery that is present at the time of delivery must be stated by the buyer on the delivery slip and/or the shipping documents.
4. If any defects are detected in the form of faulty equipment or verifiable inadequate workmanship, Sin Wah Foods will ensure that the obligations in accordance with the agreement are met as soon as possible.
5. The buyer is obliged to offer his full cooperation in the delivery of the products agreed upon in the agreement with Sin Wah Foods. The buyer will also default without warning if the buyer fails to collect the delivered products following the first request, or - if delivery at the buyer's address was agreed upon - if the buyer refuses to take receipt of the delivered products.

6. If the products are not collected by the buyer within 7 days or within another specified period, then the buyer shall be in default by operation of law and Sin Wah Foods is legally entitled to suspend its obligations in the agreement without notice of default and either invoice the buyer for the purchased products and demand payment, or terminate the agreement. If an invoice is issued, then the products will be stored at Sin Wah Foods or by a third party at the expense and the risk of the buyer. All resulting costs will be invoiced to the buyer, in addition to the purchasing price. If the agreement is terminated, the buyer will owe Sin Wah Foods compensation that at least covers the loss incurred.
7. The buyer has a purchase obligation if the products ordered by the buyer have been produced or purchased specifically for the buyer. In such cases, the buyer cannot cancel the order or refuse to take receipt of the delivery.
8. Sin Wah Foods is entitled to stagger the deliver, with separate invoices.
9. If Sin Wah Foods requires details from the buyer in order to execute the agreement, then the implementation period will not start before the buyer has provided Sin Wah Foods with the full and correct details.
10. The specified delivery times are an approximation and can never be considered as a firm date.
11. Sin Wah Foods is not obliged to offer any compensation for failure to meet the delivery time. If Sin Wah Foods repeatedly fails to meet the delivery deadline, the buyer can issue a written notice of default, stating a final (reasonable) delivery deadline. Once this reasonable deadline has expired, the buyer has the right to terminate the agreement in writing, unless Sin Wah Foods cannot be held accountable for the cause of the missed deadline.

7. TRANSPORT / RISK

1. The transport costs shall be borne by the buyer, unless a different written agreement is in place between both parties.
2. The risk of all direct and indirect damage related to the products sold to and/or to be delivered to the buyer will transfer to the buyer at the start of the process of loading the products for transport to the buyer or to a location specified by the buyer, unless and insofar as a different written agreement is in place. The risk of loading and unloading and the transportation of the products shall be borne by the buyer at all times.
3. In principle, the transport of the products will always be at the expense of the buyer, even if the carrier demands a clause on the waybills, shipping addresses, etc. stating that all damage during transport will be billed to and is at the risk of the shipping party.

8. CANCELLATION

1. If the agreement (order) is cancelled due to causes on the side of the buyer, then the buyer is obliged to pay compensation for all reasonable costs incurred by Sin Wah Foods, as well as compensation for all financial consequences incurred by Sin Wah Foods as a result of non-implementation of the agreement. The compensation will amount to at least 25% of the agreed price, without prejudice to the right of Sin Wah Foods to demand full compensation from the buyer.
2. If the products are not in stock, then the buyer will be informed about his/her order from 7 days after placing the order. In such cases, the buyer is entitled to cancel the order without charge within 5 days of this notification by Sin Wah Foods.

9. SUSPENSION AND TERMINATION OF THE AGREEMENT

1. Sin Wah Foods has the right to suspend the implementation of the agreement until further notice or to terminate parts or all of the agreement if one of the following situation(s) occur(s). The aforementioned does not require a notice of default or judicial intervention, nor is Sin Wah Foods obliged to pay any compensation or offer any guarantee in the event of:
 - a. failure by the buyer to meet the obligations listed in the agreement(s) with Sin Wah Foods in a reasonable, timely and/or complete manner;
 - b. reasonable doubt about whether the buyer will be able to meet the obligations resulting from the agreement(s) with Sin Wah Foods;
 - c. bankruptcy of the buyer, suspension of payment, debt write-offs or debt restructuring, liquidation or partial or complete takeover of the buyer's company.

10. RETENTION OF TITLE

1. All products delivered by Sin Wah Foods and still located with/under the buyer will remain the property of Sin Wah Foods until such time as full payment has been received of all amounts owed by the buyer to Sin Wah Foods, as well as any relevant claims due to failure to honour the agreement(s), including interests and costs.
2. The buyer is obliged to store the products that have been delivered under retention of title with due caution and - where possible - in a manner that they are recognisable as property of Sin Wah Foods. With regard to these products, Sin Wah Foods will receive a non-possessory pledge, for which the buyer shall now for then grant irrevocable authorisation and for the value of the then (still) outstanding debts.
3. The buyer is allowed to use or resell the products as part of his/her normal business operations, but may not pledge the products as security or use the products to settle a claim from a third party.
4. Sin Wah Foods is at all times entitled to remove (or arrange removal of) the delivered products - based on the stipulations in this article - from the buyer or the buyer's representatives, if the buyer fails to meet his/her obligations. The buyer will grant full cooperation in this matter.
5. The buyer is prohibited from pledging the products and/or encumbering them in any other way for the benefit of a third party.

11. WARRANTY

1. The buyer is obliged to check all delivered products immediately upon delivery/receipt of the products.
2. By signing for receipt of the delivery, the buyer confirms that the received order was complete (correct numbers) and that the products were in good order (e.g. not damaged).
3. Any warranty claims should be submitted in writing to Sin Wah Foods within 8 days after delivery of the products. Any claims submitted after the above mentioned deadline or in any other manner will be rejected by Sin Wah Foods. The right to claim for warranty expires after this period of 8 days.
4. The products for which a warranty claims have been submitted must be returned in the condition in which they were received by the buyer. Therefore, the products should be unopened if they are being returned.
5. Warranty claims do not entitle the buyer to suspend payment of the contested part of the receivables.
6. If the buyer has submitted a warranty claim in accordance with the above mentioned information and the warranty claim is justified, then Sin Wah Foods' sole obligation is to replace or repair the delivered products to which the warranty claim pertains at the expense of Sin Wah Foods.
7. The costs of the return shipment fall to the buyer.
8. The delivered products can only be returned if a warranty claim has been submitted in accordance with this article due to a default in the delivered products and if the warranty claim is considered legitimate by Sin Wah Foods.

12. LIABILITY

1. If Sin Wah Foods is liable for any damages, then this liability of Sin Wah Foods is specifically limited to the amount that will be paid out by the liability insurer. If the insurer refuses to pay the claim, then the liability of Sin Wah Foods is limited to a maximum amount of € 2,500. It is assumed that the buyer has adequate insurance to cover any higher amounts.
2. Sin Wah Foods can never be liable for indirect damages in the broadest sense of the word, which includes consequential damages, damage due to delays, damage in the form of loss of profit and immaterial damage, even in the case of intent or deliberate recklessness on the part of Sin Wah Foods.
3. Sin Wah Foods is not liable to pay reimbursement for any damages if the buyer has defaulted on any obligations towards Sin Wah Foods at the time that the event that caused the damage occurred. The stipulation listed above does not apply in the case of intent or deliberate recklessness on the part of Sin Wah Foods in the execution of the agreement.
4. If Sin Wah Foods initiates a so-called product recall for safety reasons, then Sin Wah Foods will cover the costs associated with such a recall, provided that the buyer follows the instructions given by Sin Wah Foods in a timely and correct manner.

13. FORFEITURE OF RIGHTS

1. The buyer must inform Sin Wah Foods in writing about any damage that has occurred as soon as possible, but no later than within 14 days after the damage has occurred or became evident. Damage not reported by the buyer within this period will not be eligible for reimbursement.
2. The option for the buyer to bring legal action or submit a claim against Sin Wah Foods with regard to or as a result of any agreement expires or lapses after a period of one year has passed after the buyer became aware of or could have become aware of any reason for such an action or claim.

14. INDEMNIFICATION

1. Buyer shall indemnify Sin Wah Foods from all claims by third parties as a result of damage suffered by such third parties following the application or use of the results of the deliveries from Sin Wah Foods by the buyer, or by another party granted access to that result by the buyer, except in the case of intent or deliberate recklessness on the part of Sin Wah Foods.

15. CONVERSION

1. If any clause listed in these conditions - and applicable to the buyer - is declared null and void, then this clause will be replaced by a clause as close as possible to its original purport without forming a contradiction to the law. In such cases, the validity of the other stipulations in these terms and conditions remains unchanged.

16. APPLICABLE LAW

1. All transactions and agreements to which these terms and conditions apply and the resulting legal relationships shall be governed solely by Dutch Law.
2. The applicability of the Vienna Sales Convention is excluded.
3. With regard to the explanation of International Commercial Terms, the "Incoterms" as drafted by the International Chamber of Commerce in Paris (I.C.C.) apply.
4. All disputes resulting from or relating to an offer, order or agreement from or with Sin Wah Foods shall be settled exclusively by the Court of Oost-Brabant, with due regard for the authority of the Chamber of the Sub-District Court, located in Eindhoven.

17. FINAL PROVISIONS

1. Sin Wah Foods is authorised to make changes to these general terms and conditions. These changes come into effect at a time specified by Sin Wah Foods.

2. Sin Wah Foods will send the buyer a copy of the amended terms and conditions as soon as possible.
3. The Dutch text of the General Terms and Conditions shall always prevail.