



GENERAL TERMS AND CONDITIONS OF SALE SPADEL SA

1. DEFINITIONS

GTCS: these general terms and conditions of sale;

Customer(s): any natural or legal person acting in a professional capacity who contacts the Seller for a price quote, places an order with the Seller and/or purchases Products from the Seller;

Party/Parties: the Seller and/or the Customer;

Product(s): the products the Seller offers, distributes or sells pursuant to a specific commitment to purchase given by the Customer;

Seller: Spadel SA, with registered office at Avenue des Communautés 110, 1200 Brussels (BE), CBE 0405.844.436 (RPM [Register of Legal Entities] Brussels FR).

2. SCOPE OF THE GENERAL TERMS AND CONDITIONS

The GTCS apply to any and all sales of Products to Customers. Where relevant, they replace any earlier versions of the general terms and conditions of sale applicable between the Parties.

The Seller reserves the right to amend, adapt and revise the GTCS at any time, with the proviso that, if the Seller does so for any outstanding orders, it will need to have a valid reason to do so. The amended general terms and conditions will apply immediately.

Except in case of negotiated agreements, duly accepted and signed by the Seller, placing an order implies Customers' unconditional acceptance of the GTCS, to the exclusion of any other documents, such as the general conditions of purchase or any other standard contracts Customers may issue. Without prejudice to the provisions of paragraph 2 of this article, deviations from the GTCS will not be valid unless they have been explicitly agreed upon between the Parties in writing.

3. ORDERS AND DELIVERIES

3.1. Ordering process

To be taken into account, Customers shall place their orders in writing and as follows:

- By email: spadelccd@spadel.com
- Via the Seller's EDI
- By phone: +32 (0)2/702.38.48

To be taken into account, the orders shall specify:

- the Customer's desired collection or delivery date, allowing for a minimum lead time of two working days in case the order was placed before 11:00 A.M. and three days in case the order was placed after 11:00 A.M.;
- the quantity and type of Products needed;

The order shall be deemed to have been accepted as of the date the Seller issues the order confirmation.

Accepted orders are deemed to be binding on Customers and can no longer be changed: Customers cannot change or cancel an order without the Seller's written and prior agreement. Such an agreement does not alter the fact that Customers are obliged to compensate the Seller for any costs incurred and losses suffered. The Seller's loss will be estimated at minimum 15 % of the total price or at the total financial value of the order, without prejudice to its right to prove that its loss was greater or to demand that the order is executed.

In cases where Customers are allowed to change their order, the initial order shall be deemed cancelled and the change will constitute a new order setting new delivery or collection times in motion.

The Seller at all times reserves the right to decline, suspend, cancel, reduce or split up any orders that are inconsistent with the ordering terms set out above, seem abnormal, were placed in bad faith or exceed production capacity, and in particular:

- Any orders that do not respect the lead times specified in the GTCS;
- Any speculative stockpiling orders (i.e. if the number of Products ordered exceeds the average of the Products ordered during the previous year by 20 % or if other circumstances reasonably point to speculation) so as to prevent production shocks and overstocks which are detrimental to Product quality. In that scenario, the Seller reserves the right to limit the volumes ordered to optimised quantities, for instance on the basis of the Customers' purchase history;
- In cases where Customers fail to meet any one of their obligations and the issue has not been remedied after they were issued with formal notice.

3.2. Offer / availability

Products are always offered within the limits of availability and the stocks. Where Products ordered, be it standard or on special offer, become wholly or partly unavailable, the Seller undertakes to notify Customers thereof in writing and within a reasonable and adequate period of time, and to make every effort to fulfill the order as quickly as possible. In that case, Customers will have the option of asking the Seller to change the order or to cancel it. The Seller will not be liable for a late fee or a cancellation fee.

3.3. Delivery terms

Except with the Seller's prior written agreement, products are delivered DDP to the agreed address, in accordance with the most recent version of the INCOTERMS ©.

The collection or delivery dates mentioned on the Seller's order form are given for information purposes only and merely amount to a best endeavours obligation. Fraud or serious negligence excepted, delays in delivery cannot give rise to any form of compensation.

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Any Customer who refuses collection or delivery of its order for whatever reason will be liable for the costs occasioned by this refusal of collection or delivery, and, in particular, for the costs associated with the preparation, waiting time, Products returns, storage costs or a new delivery.

4. RATES / PRICES

The rate gives the unit price of the Products in euro, excluding tax, fees, contributions and levies. Customers shall also cover any taxes, fees, contributions or levies the Products or their packaging are subject to (a. o. litter tax, packaging levies, contribution to the Fost Plus "Green Dots"). Any increase in the VAT rate or in any other tax, fee, contribution or levy between the time of ordering and the date of delivery shall be borne by the Customer.

The specificities of the Products' production are such that the rate can be revised at any time. For justified reasons (such as a significant and unforeseeable increase in production costs), the Seller reserves the right to amend its rate for outstanding orders. Customers will be informed of the new rate no less than two (2) months before it comes into effect. In the event of an exceptional increase in the price of raw materials, energy or various taxes, the Seller may have to reduce that time limit. Orders placed between the date at which a price increase is announced and the date at which it comes into effect cannot exceed 10 % of the average of the individual orders placed during the 12 months preceding the date at which the rate increase is announced.

The rates applicable to orders placed are those in effect on the date of delivery.

5. PAYMENT TERMS

Invoices are issued with each consignment of Products. Invoices are payable at thirty (30) calendar days as of the invoice's date of issue, by bank transfer into the bank account indicated.

The Seller reserves the right to request payment in cash or in advance on any pro forma invoices for future collections, more specifically in the case of an objective (feared) deterioration in a Customer's actual or presumed financial situation (for instance, a credit ranking from an independent agency) or if a Customer is in arrears.

Where relevant, the payments received will first be allocated to the interest and damages due, and then to the principal of the oldest overdue invoice.

The Parties shall strictly comply with the provisions of the Act of 18 September 2017 on the prevention of money laundering and terrorist financing and the limits on the use of cash.

Any invoices settled late shall automatically and without prior notice be subject to interest at the rate set out in article 5 of the Act of 2 August 2002 on combating late payment in commercial transactions. Furthermore, any late payment shall render the Customer concerned liable for a flat-rate indemnity of 10 % of the overdue amount invoiced, with a minimum of EUR 150, without prejudice to the Seller's right to claim a higher amount for the loss sustained.

Any invoices Customers settle late shall render all the unpaid or partially settled invoices payable.

Where a Customer fails to settle its invoice in due time, the Seller also reserves the right to suspend the execution of any current orders and contracts and the Seller shall be released from all its obligations vis-à-vis the defaulting Customer until all the overdue invoices are settled.

On no account shall any sums which the Seller owes give rise to the suspension of payment of the invoices issued or give rise to a set-off or a reduction in an invoice.

Any complaints, whatever the reason, about an invoice shall be sent to the Seller, by recorded delivery, within fifteen (15) calendar days of the date of the invoice in question. After this deadline, complaints will no longer be admissible.

6. MONITORING CONFORMITY OF THE PRODUCTS

The Product characteristics are as defined in the Seller's specifications or business proposal. These characteristics are the benchmark against which any potential Product non-conformities are assessed. Photographs, diagrams, drawings or videos depicting the Products are not binding on the Seller. In terms of the accuracy and exhaustiveness of the Product information, the Seller is bound by a best endeavours obligation only. On no account can the Seller be held liable for any obvious clerical errors or misprints.

Customers are obliged to check the quantity of the Products delivered, including the apparent condition of the Products at the time of collection or delivery and, in the event of damage caused during transport or of the Products being inconsistent with the delivery note, to accurately note down their reservations on the delivery note and to notify the Seller thereof in writing explaining the reasons for their refusal within a period of eight (8) calendar days. Furthermore, Customers shall also notify the Seller in writing of any hidden defects within eight (8) calendar days of their discovery. Complaints that do not comply with these formalities are not admissible.

In the event of a Product non-conformity, reported within the aforementioned time limit and confirmed by the Seller in writing, the Seller may, at its sole discretion, decide, in writing, on the basis of satisfactory proof (inter alia photographs of any damage discovered at the dock will be requested), if the Products in question must be returned or destroyed. In cases where products are to be returned or destroyed, Customers may, at the Seller's choice, have the non-conform Product(s) replaced free of charge or obtain a refund, to the exclusion of any indemnity or damages. If it is decided to destroy the Product(s), the Seller must be supplied with a certificate of destruction before the price of the Product(s) and the destruction costs are reimbursed. Complaints do not suspend Customers' obligation to pay.

As Customers are the only one responsible for order management and stock policy, the Seller will not accept any complaints or returns associated with unsold Products, regardless of the reason for the overstock.

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7. LIABILITY

Without prejudice to the other provisions of the GTCS in relation to the Seller's liability, the Seller shall only be liable for:

- the non-performance of any essential undertakings, subject matter of the contract, cases of force majeure and fault/negligence of the Customer or a third party excepted;
- fraud, gross negligence or wilful misconduct.

On no account can the Seller be held liable vis-à-vis Customers or any third party for financial losses, such as, in particular, a loss of profit, loss of orders, loss of reputation, loss of interests and, in general, for any indirect and/or non-material damage (consecutive or otherwise) Customers or any third party sustained because of a defect in or a loss of use of the Product(s) or because of the Seller's execution, poor execution or non-execution of its contractual obligations, and this, even in cases where the Seller was aware of the possible occurrence of any such damage.

The Seller can only be held liable vis-à-vis Customers for any direct damage and personal injuries and, with the proviso and subject to the applicable mandatory statutory provisions, that the Seller's overall and cumulative liability in the context of or associated with an order or a contract, whatever the reason, shall never exceed 30 % of the amount of the order or the contract in question.

Customers shall waive any and all claims/applications based on extra-contractual liability against the Seller and its affiliated and associated companies, including against its respective directors, executives and personnel (whether on the basis of an employment contract, or as a contractor) involved in the performance of the contract, irrespective of the specific cause of the damage.

The provisions of this article do not affect the mandatory rules which cannot be departed from.

8. FORCE MAJEURE / UNPREDICTABILITY

Neither Party can be held liable for the non-performance or the late or partial performance of any one of its obligations if that non-performance, late performance or partial performance is due to a situation of force majeure, i.e. any event beyond that Party's control or any other exceptional circumstance it could not reasonably avoid or overcome, and which delays or prevents the performance of its obligations.

Shall inter alia be regarded as situations of force majeure on the part of the Seller:

- The requisition of packaged water by the authorities;
- Industrial accidents at the production site;
- Social unrest, strikes of any kind by the workforce, or public transportation;
- Natural disasters, flooding, drought or any other weather events;
- A drop in the availability of the water sources associated with a geological event;
- Destruction affecting all or part of the systems, machinery breakdowns, fire;
- And, in general, any events or factors beyond the Seller's control, hampering and/or stopping supplies and/or collection and/or draw-off, bottling, or any other stage of the production process or that of its suppliers, service providers, and/or subcontractors, and genuinely preventing the Seller from loading the Products, object of the order.

Situations of force majeure automatically suspend the obligations of the Party affected if the event in question prevents the performance, under normal conditions, of its undertakings, without the other Party being entitled to any form of compensation.

Where the performance of any one of either Party's obligations is delayed, in full or in part, for more than sixty (60) calendar days due to a situation of force majeure, either Party will, if no amicable settlement can be reached, ipso jure and without being entitled to compensation, have the option of terminating the contract, in whole or in part, by recorded delivery to the other Party. Termination does not affect the payable debts between the Parties on the date of termination.

The Parties explicitly renounce the application of article 5.74 of the Civil Code (the doctrine of unforeseeability).

9. RETENTION OF TITLE CLAUSE / TRANSFER OF RISKS

The Products are sold under retention of title and remain the property of the Seller until the sales price, in principal and incidentals, has been settled in full. Any invoice that remains unsettled by its due date, whether in full or in part, entitles the Seller to ask that the unpaid Products are returned. In the event of a claim, the Products in stock at the Customer concerned will be deemed not to have been paid for.

However, the transfer of risks to the Products takes place at the moment the entire consignment is unloaded as the Customer's site or at the delivery point the Customer indicated.

Until the sales price has been settled in full, Customers are not permitted to pawn the Products or to encumber them with any other security interest. Customers shall immediately notify the Seller in writing of any seizure of its Products. The Seller may exercise its right of ownership over the resale price in cases where a Customer sells on any Products before they have been paid for in full.

10. STORAGE CONDITIONS

The Products are agri-food products that meet the applicable food products legislation.

Responsibility for the safety of food products rests with the Seller and with the Customer who sells the Products.

In consequence, Customers must adhere to the applicable rules and good hygiene practices when it comes to the transport, storage and the distribution of Products.

Customers are not permitted to cause deterioration in the quality of the Products, whether in terms of their content or packaging, so that they are delivered to their own customers as they were loaded by the Seller.

Furthermore, to avoid any damage to the brand image, Customers undertake to abide by the following storage and handling instructions:

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- Customers undertake to store any Products that are particular sensitive to sunlight, heat, frost, humidity and odours out of the sun, in a clean environment, away from humidity, frost and heat (maximum internal Product temperature is 35 °C);
- The Products must be stored away from strong smelling products such as detergents, tyres, fuels or other HPC products that may have a direct impact on the spoilage of the Products and their quality;
- The packs must be protected at all times even if the Products are unpacked when the pallets are opened;
- Lorries and warehouses must be suited to the transport and storage of foodstuffs and packaged mineral water and must be airtight, clean, maintained, protected against vermin and free from odours;
- Food products must be kept away from non-food products and, in particular, from hazardous products. Customers undertake that none of the Products will at any time come into contact with or be in the vicinity of chemicals, fuels, mineral oils, fats, tyres, perfumed products, cosmetics, detergents, etc. In the event of physical, chemical or biological contamination caused, inter alia, by toxic or corrosive gases, odours, vapours, fumes, soot, dust, humidity, insects, protective measures must be taken;
- Measures must be taken against the risks of malevolence;
- Precautions must be taken when handling Products with carts or forklifts to prevent them getting damaged.

Customers undertake to fully indemnify the Seller against any claims from a third party if the Seller is held liable by any such third party because of non-compliance with the aforementioned obligations.

11. PROTECTION OF INTELLECTUAL PROPERTY RIGHTS

Solely the Seller is and remains the owner of the trademark rights, the trade names, domain names, business secrets and any other intellectual property right associated with the Products. As such, any promotional or marketing campaign featuring the Products which Customers or a third party are planning shall require the Seller's prior and written consent.

Furthermore, any use by Customers of any one of the Seller's trademarks, a business name, a domain name, a logo, a sign or any other intellectual property right associated with the Products shall require the Seller's prior and written agreement.

Customers undertake not to challenge the Seller's trademarks, or to register, anywhere in the world, a trademark containing the name of the Seller's trademarks, or any other trademark, logo or sign that is similar to the Seller's trademarks, thereby creating a risk of confusion.

Customers also undertake to immediately notify the Seller of any act of unfair competition, of any illegal market practice and of any intellectual property infringement it may discover. Customers shall not bring any legal action against the third party committing such wrongful acts without the Seller's prior and written consent.

Without prejudice to the rights of third parties, the Seller shall retain full ownership of any and all inventions, formulations, recipes, compositions, processes, plans, diagrams, etc. the Seller developed prior to or in the course of execution of the order or the contract concluded with a Customer.

12. CONFIDENTIALITY

Customers undertake to keep any information and technical and commercial data (the "Information") contained in any document or on any data carrier the Seller supplied as part of its proposal or in relation to the order (including formulations, recipes, compositions, processes, plans, diagrams, etc.) strictly confidential and not to disclose it, in whole or in part, to anyone other than their own employees who have a need to know for the purposes mentioned in this article, except with the seller's prior written agreement or on the basis of a statutory obligation. Customers are not entitled to use the information for any reason other than an internal assessment of the proposal or the order.

This obligation of confidentiality incumbent on Customers shall remain in effect for three (3) years as of the date at which (i) the contract with the Seller comes to an end or (ii) the order was delivered.

13. QUALITY ISSUES AND CRISIS MANAGEMENT

In the event of an issue associated with the quality of the Products or a complaint from a consumer, the Customer in question shall contact the Seller without undue delay and provide it with a detailed description of at least the following elements: the issue encountered, the quantity of the Products involved and all the traceability elements. The Products in question shall be kept by the Customer concerned.

Customers undertake to communicate their crisis management procedure to the Seller upon the Seller's first request.

In the event of a withdrawal or a recall of a batch of Products, the Seller:

- shall make every effort to provide the Customer concerned with the exact details without undue delay to ensure that the quantities collected by the consignee can be identified;
- undertakes to cover the actual costs of the return, to the exclusion of any (flat-rate) damages that clearly exceed the actual prejudice the Customer sustained.

In the event of a sensitive complaint or a crisis at the Customer's or a consumer, the Customer needs to contact the Seller at +32 87 79 41 11 without undue delay.

14. PERSONAL DATA

In its relationship with Customers involving natural persons, the Seller may have to process personal data within the meaning of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data ("GDPR").

The Seller acts as the controller. It shall scrupulously comply with the provisions of the GDPR.



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The Seller processes the personal data for the purposes and reasons described in its privacy policy which has been published on the Spadel website [Privacy policy | Spadel](#).

Data subjects have a right of access, rectification, erasure of the data relating to them and to object to their processing for legitimate reasons, in the cases described in the [Privacy policy | Spadel](#).

To exercise these rights, a signed and dated request, with a recto/verso copy of the identity card of the person exercising his rights shall be sent by post to the address: Avenue des Communautés 110, 1200 Brussels, or by e-mail to the address: privacy@spadel.com.

15. MISCELLANEOUS PROVISIONS

Where any condition or provision of the GTCS is declared null and void, unlawful or unenforceable, the other provisions and conditions will remain in full force and effect. The Parties shall meet to replace the provision or condition in question to the extent permitted by applicable law with a provision that has the same or comparable effect or by a provision that as closely as possible approximates the economic purpose initially covered.

In no case shall the agreements or sales between Parties create a partnership.

Under no circumstances shall any one provision or right under these GTCS be waived without a written declaration signed by the Party. Any waiver of a provision, condition or a right granted under the GTCS shall not be construed as a waiver of any other right, provision or condition.

16. APPLICABLE LAW AND JURISDICTION

The GTCS and any sales made by the Seller are governed by Belgian law. The application of the provisions of the United Nations Convention of 11 April 1980 on Contracts for the International Sale of Goods, as amended, is expressly excluded.

In the event of dispute, solely the courts of the place of the Seller's registered office shall have jurisdiction unless the Seller decides to seize another competent court, more specifically, the court of the place of the Customer's registered office or of the place where the Products were loaded.