

**General Terms and Conditions HSF Distri Holding B.V., with its registered office in Winterswijk, (version June 2021)**

**Article 1. Applicability**

- 1.1 These General Terms and Conditions will be applicable to any offer, quotation and/or agreement between HSF Distri Holding B.V., and/or all directly or indirectly associated enterprises, jointly and separately to be referred to as: ‘HSF’, on the one hand and Contracting Party on the other hand. These General Terms and Conditions may only be deviated from when expressly agreed between the parties in writing. Contracting Party will mean any (legal) entity that receives an offer and/or a quotation from HSF or has entered into an agreement with HSF or wishes to enter into an agreement with HSF, as well as its representatives and/or authorized representatives.
- 1.2 The (national) sector terms and conditions that are not included in these General Terms and Conditions and the general terms and conditions of Contracting Party are expressly not applicable to offers, quotations and/or agreements between HSF and Contracting Party and are hereby explicitly rejected unless expressly agreed otherwise in writing.
- 1.3 If and insofar an offer, quotation and/or agreement relates to (national or international) transport services, in addition to the concerned General Terms and Conditions, as well as the conditions and/or terms stated in these General Terms and Conditions, the additional transport conditions of the concerned contractor of HSF will be applicable.
- 1.4 If and insofar an offer, quotation and/or agreement relates to (national) transport within the Netherlands, in addition to the concerned General Terms and Conditions, the most recent version of the General Conditions of Transport 2002 (AVC 2002) (registered by the foundation Stichting Vervoersadres with the registry of the court of Amsterdam) will also be applicable. <http://www.sva.nl/sva/vervoerrecht/teksten-downloads/deelmarktcondities>.
- 1.5 If and insofar an offer, quotation and/or agreement relates to international transport, in addition to the concerned General Terms and Conditions, the Convention on the Contract for the International Carriage of Goods by Road (CMR) will be applicable and (additionally) the AVC 2002 referred to under 1.4 of these General Terms and Conditions.
- 1.6 If and insofar an offer, quotation and/or agreement relates to forwarding activities, having air freight activities carried out, customs activities and all other activities, in addition to the concerned General Terms and Conditions, the most recent version (registered by the Netherlands Association for Forwarding and Logistics with the registry of the court of Amsterdam, Rotterdam, Breda and Arnhem) of the Dutch Forwarding Conditions will also be applicable.
- 1.7 If and insofar an offer, quotation and/or agreement relates to warehousing and/or transshipment, in addition to the concerned General Terms and Conditions, the most recent version of the General Conditions of the Association of Dutch Cold-Storage and Freezing Warehouses (NEKOVRI) (registered by NEKOVRI with the registry of the court of Rotterdam) will also be applicable. <http://www.nekovri.nl/>.
- 1.8 If and insofar an offer, quotation and/or agreement relates to sea transport, as evidenced by a bill of lading or any similar document, in addition to the concerned General Terms and Conditions, the Convention for the unification of certain rules of law relating to bills of lading, Hague Visby Rules (most recently amended by protocol of 21 December 1979) will be applicable.
- 1.9 If and insofar an offer, quotation and/or agreement relates to packaging services, in addition to the concerned General Terms and Conditions, the Additional Conditions of HSF will be applicable. Packaging services will include the services as referred to in article 12 of the concerned General Terms and Conditions.
- 1.10 If and insofar an offer, quotation and/or agreement relates to shipments cash on delivery, in addition to the concerned General Terms and Conditions, the Terms and Conditions for carriage of shipments cash on delivery will be applicable (Cash on Delivery Terms and Conditions).
- 1.11 In the event of conflict between one or more provisions of these General Terms and Conditions and the above-stated conditions, these General Terms and Conditions will prevail with the exception of provisions of express requirements of mandatory law.

- 1.12 If and insofar as there is doubt and/or a difference of opinion between Contracting Party on the one hand and HSF on the other hand, about the question which of the terms and conditions stated in this article are or were applicable, HSF will be entitled to decide which terms and conditions are or were applicable.

## **Article 2 Quotations, rates and payment**

- 2.1 Submitted offers and/or quotations are without any obligation and have, unless stated expressly otherwise, a period of validity of one (1) month after the date of the offer and/or quotation issued.
- 2.2 An order placed by a Contracting Party will only become binding to HSF after confirmation in writing by HSF or if the actual execution of the agreement has commenced by HSF or with the approval of HSF.
- 2.3 If and insofar a (written) agreement is formed between HSF and Contracting Party (via electronic means), a digital signature will be equal to a handwritten signature.
- 2.4 All amounts are exclusive of VAT.
- 2.5 Issued rates exclusively include the freight costs from loading to unloading location(s), unless expressly agreed otherwise in writing.
- 2.6 In the event that there is doubt and/or a difference of opinion about the rates that apply to the concerned agreement with Contracting Party, the rates in the quotation submitted by HSF will be decisive. Invoices to a Contracting Party will be considered to have been accepted and agreed by Contracting Party if no objection in writing has been received by HSF within eight (8) days of invoice date.
- 2.7 Each offer and/or quotation will be based on the prices, wages and costs imposed by the authorities or by others, including but not limited to the diesel price, changes in collective agreements and/or taxes/levies. In case of a change of one or more of the aforementioned factors after the agreement has been formed, HSF reserves the right to immediately adjust the rates. In addition, regular indexation of the rates will take place on the 1st of January of the new calendar year. HSF will base the regular indexation on the publications of the Panteia/NEa and/or (to be decided by HSF) Statistics Netherlands (CBS) with respect to the applicable price index figures.
- 2.8 Contracting Party will be under the obligation to pay the amount due to HSF within thirty (30) days of the invoice date. When payment does not take place within this term, Contracting Party will be under the obligation to pay, next to the principal sum, the legal interest pursuant to section 119a Book 6 Dutch Civil Code. By exceeding the payment term, Contracting Party will be in default by operation of law without the requirement of any further notice of default.
- 2.9 In the event that Contracting Party does not meet its payment obligation in full or not timely, Contracting Party will immediately on the commencement of the default be due to HSF a compensation for the extrajudicial collection costs, which amount to 15% of the principal sum due with a minimum of €500.

## **Article 3 Securities**

- 3.1 When Contracting Party fails to fulfil his obligations, HSF will have a retention right with respect to all goods, monies and documents of Contracting Party that it holds for whatever reason and for whatever purpose, such with due observance of the statutory provisions as referred to in the sections 3:290-295 Dutch Civil Code.
- 3.2 HSF can also exercise its retention right with respect to what Contracting Party is still due to HSF in relation to earlier agreements entered into between HSF and Contracting Party.
- 3.3 Before proceeding to fulfil its obligations under the agreement, HSF will always be entitled, whether or not under continued execution of what has been agreed, to require proper security for the fulfilment of the (payment) obligations of Contracting Party, including (but not limited to) a right of pledge on all goods, documents and monies. Refusal by Contracting Party to put up the required security, will give HSF the right to terminate the agreement(s) by notification in writing without prejudice to the right of HSF to compensation for damage, costs and interest.
- 3.4 Without the prior express permission in writing of HSF, Contracting Party will not have the authority to settle mutual claims and debts between Contracting Party and HSF.

## **Article 4 Execution of the agreement**

- 4.1 HSF will have the authority and the right to carry out the contract fully to its sole discretion, provided that - depending on the type of transport concerned - the conditions as referred to in article 1 of these General Terms and Conditions will additionally be applicable. In the execution of the contract awarded, HSF will exercise the care that may be required from a professional carrier.
- 4.2 HSF is authorized to have the contract carried out by a third party.

#### **Article 5 Obligations of consignor**

- 5.1 Contracting Party has to offer the goods in a good condition and if packaged, in a well-packaged condition to HSF. With the transport of foodstuffs, Contracting Party has to offer the goods at the temperature that is allowed by law with respect to the foodstuffs offered. If Contracting Party does not fulfil the aforementioned obligation, HSF will have the right to refuse the goods without being held to compensate any (type of) damage. Contracting Party indemnifies HSF for any possible (consequential) damage as a result of faulty packaging or incorrect temperature.
- 5.2 Contracting Party will be under the obligation to timely supply (have supplied) the documents required for the receipt and/or shipment, as well as instructions including but not limited to the receipt and delivery times of the goods. In case of no (or untimely) receipt, HSF will not be liable for any damage incurred by Contracting Party as a result thereof.
- 5.3 In the event of missing shipment documents prior to the delivery of the goods to HSF, the administration of HSF will be authoritative with respect to the quantity of the goods received by HSF. Furthermore, Contracting Party will in that case not be entitled to make a claim on the grounds of breach of contract, (among others) consisting of alleged loss of shipment.

#### **Article 6 Loading and unloading inspections**

- 6.1 Before the commencement of (refrigerated or frozen goods) transport, HSF must be given the opportunity to inspect the temperature and the quality of the shipment at multiple points, to its own discretion.
- 6.2 In the event that the quality and/or temperature deviate from what is stated on the consignment note and/or other documents related to the shipment, this will be stated on the consignment note.
- 6.3 When HSF or a third party or parties engaged by HSF, does not have, or is not given, the opportunity to inspect the quality and/or quantity and/or the temperature of the shipment, HSF will not be liable for loss of quality and/or quantity nor for temperature differences on delivery of the shipment with respect to the time of loading or with respect to the concerned mandatory allowed temperature for transportation of foodstuffs. Contracting Party indemnifies HSF against any claims by third parties (including but not limited to (administrative) sanctions) imposed on HSF in relation to non-compliance of Contracting Party with the aforementioned obligation and/or non-compliance of the shipment with the legal regulations.

#### **Article 7 Termination of the agreement**

- 7.1 HSF will have the right to partially or fully terminate the agreement with Contracting Party unilaterally and with immediate effect, without the requirement of a prior notice of default, and without judicial intervention, or to suspend its obligations under the agreement, if:
  - a) HSF, after entering into the agreement, has good grounds to fear that Contracting Party will not fulfil its obligations;
  - b) HSF, on or after entering into the agreement, has requested Contracting Party to put up security for the fulfilment of the obligations of Contracting Party and Contracting Party fails to put up security or offers insufficient security, such to the judgment of HSF;
  - c) a request to grant (preliminary) suspension of payment of Contracting Party or a request to become eligible for a statutory debt adjustment under the Debt Management (Natural Persons) Act (WSNP) has been submitted;
  - d) a winding-up petition of Contracting Party has been filed;
  - e) Contracting Party is declared bankrupt or Contracting Party is granted (provisional) suspension of payment;

- f) prejudgement attachment or attachment under the court's decision has been effected with respect to Contracting Party;
  - g) a resolution has been taken to dissolve and/or wind up Contracting Party;
  - h) Contracting Party has died or has been placed under guardianship;
  - i) Contracting Party is in default in any manner with respect to fulfilling its obligations under this agreement.
- 7.2 In the cases stated in article 7.1, all claims of HSF on Contracting Party will be immediately and fully due and payable.

#### **Article 8 Liability**

HSF has entered into an appropriate insurance for the types of services offered by HSF, in accordance with the applicable legislation and regulations and/or conditions referred to article 1 of these General Terms and Conditions. HSF can never be held liable for any damage of a third party or third parties nor for any indirect damage incurred by Contracting Party such as consequential damage, loss of turnover and/or profit.

If applicable, HSF will only be liable for the damage for which HSF receives compensation from the insurance company.

#### **Article 9 Force majeure**

- 9.1 In addition to the meaning by law and/or case law, force majeure will mean (exterior) conditions that impede the fulfilment of the obligation and that may not be attributed to HSF.
- 9.2 Force majeure (if and insofar as such circumstances make fulfilment of the obligation impossible or unreasonably impede it) will include to mean without any limitation in addition to the meaning by law and/or case law:
- a) the failure by a third party or third parties with respect to HSF in the fulfilment of a contract obligation that cannot reasonably be attributed to HSF, as a result of which HSF cannot meet its obligation with respect to Contracting Party;
  - b) strikes;
  - c) traffic jams;
  - d) weather conditions;
  - e) calamities;
  - f) war;
  - g) acts of terrorism;
  - h) measures by the authorities that prevent HSF from fulfilling its obligations timely or properly;
  - i) delay and/or waiting time before, during and/or after customs ensuing from procedures and/or actions by the customs (authority).
- 9.3 During force majeure, the obligations of HSF will be suspended. If the performance is delayed for longer than one month as a result of force majeure, each of the parties will be authorized to terminate the agreement without any obligation for compensation for damages.
- 9.4 HSF will also have the right to invoke force majeure if the circumstance that prevents (further) fulfilment, comes into being after HSF had to meet its obligation.

#### **Article 10 Complaint period**

- 10.1 When Contracting Party is of the opinion that there is lack of clarity and/or there are inaccuracies in respect of an amount invoiced by HSF, this must be stated within eight (8) days after invoicing by Contracting Party in writing, at the risk of forfeiting all rights. The above does not suspend the payment obligation of Contracting Party.
- 10.2 With the exception of the provisions in paragraph 1 of this article, all legal claims of Contracting Party on HSF, ensuing from an agreement that is subject these General Terms and Conditions, will expire after one (1) year from the day following the day on which the goods were delivered or should have

been delivered. In all other cases, the term of one (1) year will commence on the day after the agreement was concluded

#### **Article 11 Website services**

HSF will offer Contracting Party, to the discretion of HSF, the opportunity to make use of the HSF website services. HSF will aim at maximum availability and careful access security. If Contracting Party incurs damage as a result of the non-availability of the website, including but not limited to: - the fact that unauthorized parties have managed to gain access to the data of Contracting Party - incorrectness or incompleteness of the data processing on the website, HSF will only be liable for this damage if and insofar the liability insurer of HSF covers such damage.

#### **Article 12 Packaging services**

- 12.1 Packaging services concern (plastic) crates, pallets, big boxes and/or any other load carriers.
  - 12.2 Packaging services concern all services provided by HSF in respect of Packaging. These include but without any limitation: providing a full-service solution (including balance reconciliation and repairs), rental, cleaning and transport of Packaging.
  - 12.3 The User of Packaging concerns Contracting Party and/or its customer (consignee).
- A.**
- 12.4 The Packaging made available by HSF (if applicable) is and will at all times remain the property of HSF. This means that the ownership right will never be transferred even after payment of any lump-sum payment.
  - 12.5 The Packaging made available by HSF may (in principle) exclusively be transported by HSF.
  - 12.6 The User is prohibited from using the Packaging for other purposes than packaging and/or as load carrier of own food products. Nor is the User allowed to use the Packaging for packaging and/or as load carrier of fragrant products that (may) affect the quality of the Packaging.
  - 12.7 The User is not allowed to encumber the Packaging, to sell it to a third party or third parties, to rent it out or to make it available in any other manner.
  - 12.8 The risk of, among others, damage, loss and/or theft of the Packaging, (irrespective of the cause thereof with the exception of normal tear and wear) from the time that the Packaging has been made available to the User until the time that the Packaging has been returned to HSF will be to the account of the User.
  - 12.9 HSF will never be liable for damage incurred by the User or a third party ensuing from or related to the delivery, cleaning and/or the use of the Packaging.
  - 12.10 The User will be under the obligation to make the Packaging available again in a good condition to HSF after the use thereof. When the Packaging is damaged, the User will compensate HSF to the amount of the replacement value applicable at that time.
  - 12.11 HSF will keep the accounts. Periodical balance reconciliation with the User is part of the HSF method of operation. At the first request thereto by HSF, the User will be under the obligation to cooperate in an inventory at the location of the User. The quantity stated on the balance reconciliation and/or the invoice sent, is considered to be correct. If and insofar the User does not agree with the stated quantity, at the risk of forfeiting all rights, the User must substantiate this with proof to HSF within eight (8) days after the invoice date. The above does not suspend any payment obligation of the User. In case of any dispute, the accounting of HSF will be guiding.
  - 12.12 In respect of Packaging, HSF will set a maximum for the User (and for each location). In case this is exceeded, HSF will be entitled to charge a separate rent against the most recently applicable rental rate per week.
  - 12.13 HSF will at all times have the right to claim back the Packaging from the User in writing if it is not directly needed for transport and/or it is used for other purposes. The User will be obliged to make the

Packaging concerned available to HSF within a term of two (2) working days of receipt of the request in writing by HSF.

- 12.14. If the User does not fulfil the obligations in this article, the User will be due an immediately due and payable penalty to HSF of €10,000 per violation/non-fulfilment, as well as €1,000 per each day that the violation/non-fulfilment continues, whereby a part of a day will be considered as a whole day. The previous is applicable without prejudice to the right of HSF to claim compensation for the damages actually incurred.

If and insofar it concerns (plastic) crates, pallets and/or any other load carrier that is/are the property of a third party or third parties, not being big boxes or block (HSF) pallets, the conditions under B will (also) apply.

## **B**

- 12.15 Standard exchanging of Packaging on loading and unloading addresses is not possible unless previously agreed in writing between Contracting Party and HSF.
- 12.16 HSF will never be liable for damaged, lost and/or mislaid Packaging or for correctly exchanging the Packaging.
- 12.17 HSF keeps no accounts of balances of Packaging of loading or unloading addresses unless this has been agreed in writing.
- 12.18 If HSF exchanges euro pallets, HSF will never be responsible for defect pallets. HSF makes no distinction between A and/or B quality. HSF exchanges what is offered on the unloading address concerned. HSF does not accept any liability whatsoever in this respect. Pallets will be in the designated "pallet box".  
HSF will unload the pallets from the pallet box and will make these available from the ground floor. HSF employees cannot be expected to make these pallets manually available on the loading platform.
- 12.19 Packaging loaded for return, will not be cleaned by HSF unless agreed otherwise in writing. HSF will not be liable and/or responsible for the extent of contamination of the exchanged Packaging. When HSF is ordered to return uncleaned Packaging, HSF reserves the right not to load Packaging that is too strongly contaminated, such to be assessed by the HSF employee.
- 12.20 Because of HACCP regulations it is not possible to load dirty Packaging if there are still products in the loading space.

## **Article 13 Customs services**

### **A.**

- 13.1 HSF may be authorised by Contracting Party to perform customs services (against financial compensation) concerning a consignment. Customs services will include to mean: the mandatory declarations according to customs legislation (Regulation 952/2013/EU), fill in the proper customs documents such as export documents, import documents and NCTS Transit documents, make repayment and/or remission requests and lodge objections in relation to incorrect data in the declaration. When Contracting Party authorizes HSF to perform customs services, HSF will carry out these services at all times in the name of and to the account of Contracting Party. Therefore, HSF will only act as direct representative.
- 13.2 HSF will be authorized to hire a third party or third parties for the actual performance of the customs services.
- 13.3 The assignment for the performance of the customs services will only be formed after HSF has accepted the assignment and after HSF has received and assessed the documentation that is considered to be required. On the basis of the documentation received, HSF will carry out its customer intake and (further) organise the services concerned. Any additions and/or changes in any respect whatsoever may lead to a new customer intake. The transport and or customs services related to these additions and/or changes cannot be carried out during this customer intake. HSF will never be liable for any damage ensuing from a new customer intake.

- 13.4 HSF will never be liable for any (form of) delay that arises during the customs services to be performed. In addition, HSF cannot be held liable for not providing the information and/or documentation provided by Contracting Party or doing so late, or for the incorrectness and/or incompleteness thereof. The above may lead to (without any limitation) to the late or non-performance of the transport / customs services. HSF will not be responsible for (any) ensuing damage.
- 13.5 In addition to the above-stated conditions, the agreement/authorisation between Contracting Party and HSF for acting as (direct) representative will apply in full to all customs services performed or to be performed by HSF

**Unless HSF is authorised for customs services and/or it concerns the transport from a non-EU country to an EU country, the following will apply contrary to the provisions laid down under A.**

**B.**

- 13.6 The responsibility of HSF for customs services is limited to performing actual acts in accordance with the instructions issued by Contracting Party that have been accepted by HSF. HSF will never be responsible for any legal and/or tax consequences and/or financial result of these acts (such as for example inward/outward clearance and/or payment) and will never be liable for the non-performance thereof. The Contracting Party must check the follow-up of the customs procedure(s) itself. If it concerns incorrect or incomplete acts by HSF, HSF must be informed thereof within twenty-four (24) hours after delivery. Any liability will end after that time.
- 13.7 Contracting Party and/or consignee will ensure clearing customs documents themselves. HSF will never be a party whatsoever in this respect. T-1 goods may only be transported as complete consignment unless agreed otherwise in advance. The waiting times for procedures with customs will be invoiced by HSF to Contracting Party. Any additional customs and other costs will be to the risk and account of Contracting Party.

**Article 14 Governing law**

Any agreement and/or quotation between HSF and Contracting Party is governed by Dutch law.

**Article 15 - Dispute settlement**

Any dispute between Contracting Party on the one hand and HSF on the other hand, will, if and insofar the court is competent, be resolved by the Court of Gelderland, location Arnhem.

**Article 16 Replacement clause**

In the event that one or more provisions of these General Terms and Conditions are void or subject to annulment, the other provisions between Contracting Party on the one hand and HSF on the other hand, will remain in full force. The concerned void or voidable provision will be replaced by valid provisions that, in view of the purpose and the intention of the agreement(s) between Contracting Party on the one hand and HSF on the other hand, will as much as possible correspond with the concerned void or voidable provisions.

**Article 17 Language conditions**

In case of versions of these General Terms and Conditions in another language than the Dutch language, the Dutch text will prevail.