

# GENERAL TERMS AND CONDITIONS OF SALE OF MAGELLAN FOOD INGREDIENTS BV



## 1. GENERAL

1.1 These General Terms and Conditions of Sale (“Conditions”) govern the offering, sale and delivery of all goods and/or services (hereinafter jointly referred to as the “Product(s)”) from or on behalf of Magellan Food Ingredients BV (“MFI”) to customer (“Customer”) and apply to all transactions between MFI and Customer.

1.2 By contracting on the basis of the Conditions, Customer agrees to the applicability thereof in respect of all future dealings, even if this is not explicitly stated.

1.3 In case of conflicting terms, the parties will negotiate in good faith to align on mutually acceptable conditions.

1.4 Any electronic communication between MFI and Customer shall be effective as originals and shall be considered to be a “writing” between the parties. The electronic communication system used by MFI will serve as sole proof for the content and the time of delivery and receipt of such electronic communications.

## 2. QUOTATIONS, ORDERS AND CONFIRMATION

2.1 Unless stated otherwise, quotations made by MFI in whatever form are not binding to MFI and merely constitute an invitation to Customer to place an order. All quotations issued by MFI are revocable and subject to change without notice. Orders are not binding until accepted by MFI in writing (“the Confirmed Order”).

2.2 Price quotations based on estimated or projected quantities are subject to increase if actual quantities purchased during the specified period are less than or more than the estimated or projected quantities.

2.3 Each delivery shall stand as a separate transaction and any failure to deliver shall have no consequences for other deliveries.

2.4 Except as provided for in Article 7.3, any samples supplied to Customer are solely for information purposes and in no way imply any express or implied conditions or warranties of any kind, including as to quality, description, merchantability, suitability or fitness for any purpose. Customer shall be deemed to have satisfied itself as to such matters prior to ordering the Products.

## 3. PRICES

3.1 Prices and currencies of MFI’s Products are as set out in the Confirmed Order. Unless otherwise agreed in writing, MFI’s prices include standard packaging but do not include Value Added Tax or any other similar applicable taxes, duties, levies or charges in any jurisdiction levied in relation to the Products or the delivery thereof (“Taxes”). The amount of any Taxes levied in connection with the sale of Products to Customer shall be for Customer’s

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account and shall either be added to each invoice or separately invoiced by MFI to Customer. If MFI grants a discount, this discount only relates to the delivery specifically mentioned in the Confirmed Order.

3.2 Unless the prices have been indicated as firm in the Confirmed Order, MFI is entitled to increase the price of the Products still to be delivered if the cost price determining factors have been subject to an increase. These factors include but are not limited to: raw and auxiliary materials, energy, products obtained by MFI from third parties, wages, salaries, social security contributions, governmental charges, freight costs and insurance premiums. MFI shall notify Customer of such increase. Customer may terminate the Confirmed Order for the affected Products within 7 (seven) days of receiving notice of the price increase, provided the increase exceeds 5% (five percent) of the original price.

## 4. PAYMENT AND CUSTOMER'S CREDIT

4.1 Unless stated otherwise in the Confirmed Order, payment shall be made on the basis of net cash, to be received by MFI within 30 (thirty) days following the date of MFI's invoice. All payments shall be made without any deduction on account of any Taxes and free of set-off or other counterclaims except for setoffs with uncontested and/or enforceable counterclaims.

4.2 With regard to payment for the Products, time is of the essence. MFI may, without prejudice to any other rights of MFI, charge interest on any overdue payment at 8% (eight percent) per annum from the due date computed on a daily basis until all outstanding amounts are paid in full. All costs and expenses incurred by MFI with respect to the collection of overdue payments (including, without limitation, reasonable attorney's fees, expert fees, court costs and other expenses of litigation) shall be for Customer's account.

4.3 Any complaint with respect to the invoice must be notified to MFI in writing within 20 (twenty) days after the date of invoice. Thereafter, Customer shall be deemed to have approved the invoice.

## 5. DELIVERY AND ACCEPTANCE

Unless stated otherwise in the Confirmed Order, any times or dates for delivery by MFI are estimates and shall not be of the essence. MFI is entitled to deliver the Products as stated in the Confirmed Order in parts and to invoice separately. In no event shall MFI be liable for any damages and/or costs due to delay in delivery. Delay in delivery of any Products shall not relieve Customer of its obligation to accept delivery thereof, unless Customer cannot reasonably be expected to accept such late delivery. Customer shall be obliged to accept the Products and pay the rate specified in the Confirmed Order for the quantity of Products delivered by MFI.

## 6. CANCELLATION

Customer's wrongful non-acceptance or rejection of Products or cancellation of the Confirmed Order shall entitle MFI to recover from Customer, in addition to any other

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damages caused by such action: (i) in the case of Products which reasonably cannot be resold by MFI to a third party, the price of such Products as quoted in the Confirmed Order; or (ii) in the case of Products which can be resold by MFI, damages equal to 50% (fifty percent) of the price for the Products as quoted in the Confirmed Order as liquidated damages.

## 7. EXAMINATION AND CONFORMITY TO SPECIFICATIONS

7.1 On delivery and during the handling, use, commingling, alteration, incorporation, processing, transportation, storage, importation and (re)sale of the Products (the "Use"), Customer shall examine the Products and satisfy itself that the Products delivered meet the agreed specifications for the Products as stated in the Confirmed Order or, in the absence of agreed specifications, to the most recent specifications used by MFI at the time of delivery of the Products (the "Specifications").

7.2 Complaints about the Products shall be made in writing and must reach MFI not later than 14 (fourteen) days from the date of delivery in respect of any defect, default or shortage which would be apparent from a reasonable inspection on delivery, and 7 (seven) days from the date on which any other claim (e.g. hidden defects) was or ought to have been apparent, but in no event later than (i) 6 (six) months from the date of delivery of the Products or (ii) the expiry of the Products' shelf-life whichever is the earlier. Any Use of the Products shall be deemed to be an unconditional acceptance of the Products as of the date of delivery and a waiver of all claims in respect of the Products.

7.3 Disputes about conformity shall be resolved by an independent third-party laboratory agreed upon by both parties, at the requesting party's expense.

7.4 Defects in parts of the Products do not entitle Customer to reject the entire delivery of the Products. Complaints, if any, do not affect Customer's obligation to pay as defined in Article

7.5 Upon receipt of a complaint, MFI is entitled to suspend all further deliveries until the complaints are established to be unfounded and/or refuted or until the defect has been totally cured.

## 8. TRANSFER OF RISK AND PROPERTY

8.1 Risk of the Products shall pass to Customer in accordance with the applicable Incoterm.

8.2 Title to the Products shall not pass to Customer and full legal and beneficial ownership of the Products shall remain with MFI until MFI has received payment in full for the Products, including costs such as interest, charges, expenses etc.

8.3 In the event of termination on the basis of Article 16, MFI shall, without prejudice to any other rights of MFI, be entitled to require immediate return of the Products, or to repossess the Products, for which it may invoke a retention of title.

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8.4 Until payment for the Products has been completed, Customer is entitled to use the Products solely to the extent required in its ordinary course of business, and, to the extent possible, shall: (i) keep the Products separate and in a clearly identifiable manner. (ii) notify MFI immediately of any claims by third parties which may affect the Products

## 9. LIMITED WARRANTY

9.1 MFI solely warrants that on the date of delivery the Products shall conform to the Specifications. If and to the extent Products are in breach with such warranty, as determined in accordance with Article 7, MFI may at its discretion, within a reasonable time, either repair or replace the Products at no charge to Customer or issue a credit for any such Products in the amount of the original invoice price. Accordingly, MFI's obligation shall be limited solely to repair or replacement of the Products or for credit of the Products.

9.2 MFI's obligation to repair, replace, or credit shall be contingent upon receipt by MFI of timely notice of any alleged non-conformance of Products and, if applicable, the return of the Products, in accordance with Article 7.

## 10. LIMITED LIABILITY

MFI's LIABILITY FOR ANY AND ALL CLAIMS FOR DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE PRODUCTS AND THE USE THEREOF SHALL UNDER NO CIRCUMSTANCES EXCEED THE SUM OF CUSTOMER'S PAYMENTS FOR THE PRODUCTS THAT ARE THE SUBJECT OF THE CLAIM. UNDER NO CIRCUMSTANCES SHALL MFI BE LIABLE TO CUSTOMER OR ANY OTHER PERSON FOR ANY KIND OF SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGE OR LOSS, COST OR EXPENSE, INCLUDING WITHOUT LIMITATION, DAMAGE BASED UPON LOST GOODWILL, LOST SALES OR PROFITS, WORK STOPPAGE, PRODUCTION FAILURE, IMPAIRMENT OF OTHER GOODS OR OTHERWISE, AND WHETHER ARISING OUT OF OR IN CONNECTION WITH BREACH OF WARRANTY, BREACH OF CONTRACT, MISREPRESENTATION, NEGLIGENCE OR OTHERWISE. This limitation does not apply to damages caused by MFI's willful misconduct or gross negligence.

## 11. FORCE MAJEURE

11.1 Neither party shall be liable in any way for any damage, loss, cost or expense arising out of or in connection with any delay, restriction, interference or failure in performing any obligation towards the other party caused by any circumstance beyond its reasonable control, including, without limitation, acts of God, laws and regulations, administrative measures, orders or decrees of any court, earthquake, flood, fire, explosion, war, terrorism, riot, sabotage, accident, epidemic, pandemic, strike, lockout, slowdown, labour disturbances, difficulty in obtaining necessary labour or raw materials, lack of or failure of transportation, breakdown of plant or essential machinery, emergency repair or maintenance, breakdown or shortage of utilities, delay in delivery or defects in goods supplied by suppliers or

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subcontractors or any other event beyond the reasonable control of both parties (“Force Majeure”).

11.2 Upon the occurrence of any event of Force Majeure, the party suffering thereby shall promptly inform the other party by written notice thereof specifying the cause of the event and how it will affect its performance of its obligations under the Confirmed Order. In the event of any delay, the obligation to deliver shall be suspended for a period equal to the time loss by reason of Force Majeure. However, should a Force Majeure event continue or be expected to continue for a period extending to more than 60 (sixty) days after the agreed delivery date, either Party is entitled to cancel the affected part of the Confirmed Order without any liability to the other Party.

## 12. MODIFICATIONS AND INFORMATION; INDEMNITY

### 12.1 Modifications and Information

Unless the Specifications have been agreed to be firm for a certain period or quantity of Products, MFI reserves the right to change or modify the Specifications or substitute materials, provided such changes; do not materially adversely affect the quality, safety, or performance of the Products; are reasonably necessary due to regulatory requirements, supply chain disruptions, or improvements in production processes

12.2 Customer must solely rely on its own expertise, knowhow and judgment in relation to the Products and Customer’s Use thereof as well as in Customer’s application of any information obtained from MFI for the purposes intended by Customer. Consultation provided by MFI shall not give rise to any additional obligations. Details and information provided with regard to the suitability and Use of the Products shall not be binding and MFI does not assume any liability based on such consultations. Customer indemnifies MFI for claims arising from Customer’s misuse of the Products or failure to comply with specifications.

## 13. COMPLIANCE WITH LAWS AND STANDARDS

13.1 Customer acknowledges that the Use of the Products may be subject to requirements or limitations under any law, statute ordinance, rule, code or standard, including, but not limited to, all applicable regulations relating to (i) anti-bribery and anticorruption and (ii) international trade, such as, but not limited to, embargos, import and export control and sanctioned party lists (“Laws and Standards”).

13.2 Customer expressly warrants that employees, agents and subcontractor of the Customer shall not directly or indirectly (i) accept, promise, offer or provide any improper advantage to or (ii) enter into an agreement (a) with any entity or person - including officials of a government or a government-controlled entity –, or (b) relating to a product, which would constitute an offence or infringement of applicable Laws and Standards.

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13.3 Customer shall be exclusively responsible for (i) ensuring compliance with all Laws and Standards associated with its intended Use of the Products; and (ii) obtaining all necessary approvals, permits or clearances for such Use.

## 16. SUSPENSION AND TERMINATION

16.1 If (i) Customer is in default of performance of its obligations towards MFI and fails to provide adequate assurance of Customer's performance before the date of scheduled delivery; or (ii) if MFI has reasonable doubts with respect to Customer's performance of its obligations (such as late payment, insolvency etc) and Customer fails to provide to MFI adequate assurance of Customer's performance before the date of scheduled delivery and in any case within thirty (30) days of MFI's demand for such assurance; or (iii) if Customer becomes insolvent or unable to pay its debts as they mature, or goes into liquidation (other than for the purpose of a reconstruction or amalgamation) or any bankruptcy proceeding shall be instituted by or against Customer or if a trustee or receiver or administrator is appointed for all or a substantial part of the assets of Customer or if Customer enters into a deed of arrangement or makes any assignment for the benefit of its creditors; or (iv) in case of non-compliance of Customer with Laws and Standards, then MFI may by notice in writing forthwith, without prejudice to any of its other rights: (i) demand return and take repossession of any delivered Products which have not been paid for and all costs relating to the recovery of the Products shall be for the account of Customer; and/or (ii) suspend its performance or terminate the Confirmed Order for pending delivery of Products unless Customer makes such payment for Products on a cash in advance basis or provides adequate assurance of such payment for Products to MFI.

16.2 In any such event of Article 16.1 all outstanding claims of MFI shall become due and payable immediately with respect to the Products delivered to Customer and not repossessed by MFI.

## 17. WAIVER

Failure, delay or omission by MFI to enforce at any time any provision of the Conditions shall not be construed as a waiver of MFI's right to act or to enforce any such provision. No waiver by MFI of any breach of Customer's obligations shall constitute a waiver of any other prior or subsequent breach.

## 18. SEVERABILITY AND CONVERSION

In the event that any provision of the Conditions shall be held to be invalid or unenforceable, the same shall not affect in any respect whatsoever, the validity and enforceability of the remaining provisions between the parties and shall be severed therefrom. The pertaining provisions held to be invalid or unenforceable shall be reformed to meet the legal and economic intent of the original provisions to the maximum extent permitted by law.

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### 19. LIMITATION OF ACTION

Unless otherwise stated hereunder, no action by Customer shall be brought unless Customer first provides written notice to MFI of any claim alleged to exist against MFI within 30 (thirty) days after the event complained of first becomes known to Customer and an action is commenced by Customer within 12 (twelve) months after such notice.

### 20. GOVERNING LAW AND VENUE

20.1 These Conditions shall be construed and interpreted pursuant to the substantive laws of the Netherlands

### 21. SURVIVAL OF RIGHTS

The parties' rights and obligations shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns. The parties shall ensure that their directors, officers, employees, agents and legal representatives comply with these Conditions. Termination of one or more of the parties' rights and obligations, for whatever reason, shall not affect those provisions of the Conditions which are intended to remain in effect after such termination.

### 22. DISPUTE RESOLUTION

Any dispute arising out of or in connection with these Conditions shall be finally settled by arbitration in Amsterdam, the Netherlands, under the Rules of Arbitration of the Netherlands Arbitration Institute (NAI), and Dutch law shall apply.

### 23. INTELLECTUAL PROPERTY & CONFIDENTIALITY

23.1 All intellectual property rights arising out of or in connection with the Products shall be the exclusive property of MFI.

23.2 MFI has not verified the possible existence of third party intellectual property rights which might be infringed as a consequence of the sale and/or delivery of the Products and MFI shall not be held liable for any loss or damage in that respect.

23.4 Any and all information provided by or on behalf of MFI shall be treated as confidential and shall only be used by Customer for the purpose of all transactions. Disclosing information is only allowed to any of its employees or a third party on a strict need-to-know basis, except in case Customer is required to disclose the information by virtue of a court order or statutory duty, provided that the Customer shall immediately inform MFI and reasonably cooperate with MFI should it seek to obtain a protective order. Customer shall upon demand promptly return to MFI all such information. Customer shall not retain a copy thereof. Customer shall treat the existence of the Agreement as confidential. Customer or its employees will sign a confidentiality agreement upon request.

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## 24. LANGUAGE

Only the English version of these Conditions shall be authentic and shall prevail, in case of inconsistency, over any translation of these Conditions in another language.

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