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# General Conditions

## Giesen Coffee Roasters B.V.

Industrieweg 15 - NL-7071 CK Uft

Chamber of Commerce for Central Gelderland registration number: 817325621

### Article 1: Applicability

1. These conditions will apply to all offers issued and to all agreements entered into by **Giesen Coffee Roasters B.V.**, hereinafter to be referred to as "Company."
2. The purchaser or the client, as applicable, will hereinafter be referred to as "Buyer."
3. No conflicting terms or conditions will form part of the agreement entered into between the parties unless, and then only: (i) to the extent expressly agreed in writing between the parties and (ii) to the specific transaction involved.
4. In the event of conflict between the contents of a written agreement entered into between Company and Buyer and these conditions, the provisions of that agreement will prevail.
5. In these general conditions "in writing" will include: by email or any other form of communication that may be equated with same given the state of the art and generally accepted standards.
6. The possible inapplicability or enforceability of all or part of any provision of these general conditions will not affect the applicability or enforceability of the other provisions.
7. The applicability of any general - or other - terms and conditions of Buyer or third parties is expressly rejected.
8. These terms and conditions shall also apply to all agreements with Company for the execution of which third parties must be involved.

### Article 2: Agreements

1. Any agreements with Company will be formed at the time of written acceptance by Company of an order made by Buyer by telephone, or email and as soon as Company has commenced the execution thereof.
2. Any additions or amendments to the general conditions or other amendments or additions to the agreement will become binding only after written confirmation thereof by Company.
3. Any order confirmation sent by Company shall be deemed to accurately and completely reflect the agreement.

### Article 3: Offers

1. All offers, discounts, quotations, pricelists, delivery periods, etc. of Company are subject to change, unless they contain a specific time period for acceptance.
2. The prices used by Company as well as the prices stated in the offers, quotations, pricelists, etc., are exclusive of VAT and any other costs. These costs may include (without limitation) packaging, travel expenses, transport costs, packing costs and invoices of third parties engaged, and all of such costs shall be paid by Buyer.
3. If Buyer provides Company any data or information or the like, Company may rely on the correctness and completeness of such data or information and will base its offer thereon.
4. If Buyer does not accept Company' offer, Company will be entitled to charge Buyer for all costs incurred by it in order to make its offer.

### Article 4: Intellectual Property Rights

1. "**Intellectual Property Rights**" means all of Company's present and future copyrights, trademark rights, service mark rights, trade secret rights, patent rights, moral rights, and other intellectual property and proprietary rights recognized in any jurisdiction. Unless agreed otherwise in writing, Company will retain all Intellectual Property Rights, including

without limitation, the copyrights and all property rights in the offers made, designs provided, and software and items delivered by it.

2. The Intellectual Property Rights of this article will continue to vest in Company, irrespective of whether any costs have been charged to Buyer for the creation thereof.
3. Company's Intellectual Property Rights may not be copied, used, or disclosed to any third parties without the express prior written consent of Company. Buyer will forfeit to Company an immediately payable penalty in the amount of EUR 25,000 for any violation of this provision. This penalty may be claimed in addition to statutory or any other damages.
4. On demand, Buyer is to return any data provided to it pertaining to any Intellectual Property Rights within a term set by Company. In the event of violation of this provision Buyer will forfeit to Company an immediately payable penalty in the amount of EUR 1,000 per day until Buyer complies with Company's demand. This penalty may be claimed in addition to any other damages.

#### **Article 5: Delivery, delivery periods and passing of risk**

1. In no event shall delivery periods within which the items are to be delivered be considered to be firm deadlines, unless expressly agreed otherwise in writing between the parties. Therefore, if Company fails, or fails punctually, to perform its obligations under the agreement, it must be given written notice of default and reasonable opportunity to cure any claimed default, with a minimum of 60 days to do so.
2. In the event of delivery in consignments, each delivery or phase will be considered a separate transaction that may be invoiced separately by Company.
3. Delivery will be FCA. The risk relating to the items delivered will pass to Buyer upon delivery at Company's premises in the Netherlands, i.e., the time of offering the items to Buyer or the carrier.
4. The ordered items will be shipped or transported in a manner to be designated by Company, but at the expense and risk of Buyer. Company will not be liable for any damage, of any nature or form whatsoever, relating to the shipment or transport, either caused to the items shipped or otherwise, unless expressly agreed otherwise in writing between the parties.
5. If Company is unable to deliver the items to Buyer for reasons attributable to Buyer, then Company reserves the right to store the items ordered at the expense and risk of Buyer. Company will notify Buyer of the arranged storage, granting a reasonable term within which Buyer is to enable Company to deliver the items, to the extent that there is not a firm deadline or performance has been rendered permanently or temporarily impossible.
6. If, even after expiry of the reasonable term set by Company as provided in the foregoing paragraph of this article, Buyer continues to fail to perform its obligations, then Buyer will be in default and Company will be entitled to terminate all or part of the agreement in writing with immediate effect, without any prior or further notice of default or judicial intervention being required, and without any liability arising on its part to pay damages, costs and interest.
7. The foregoing will not affect Buyer's obligation to pay the price agreed or stipulated or due, as applicable, as well as any storage and/or other costs.
8. Company will be authorized - in respect of performance of Buyer's financial obligations - to require that Buyer pay in advance or provide security before delivering the items.
9. Company will be entitled to deliver the goods cash on delivery. Furthermore, Company will be entitled to ship the items purchased on behalf and at the expense of Buyer.

#### **Article 6: Price change**

1. Company may pass on to Buyer any cost increases that result from factors that are not under the control of Company that occur after entering into the agreement, including without limitation, increases in the cost of raw materials, increases in labor rates, or increases due to any governmental regulatory or legislative changes such as changes in tax rules or customs rules.
2. Payment of the price increase as referred to in paragraph 1 will be made simultaneously with payment of the principal amount or, in the event of payment in instalments, with the final instalment.

#### **Article 7: Force majeure**

1. If Company is temporarily precluded from performing its contractual obligations vis-à-vis Buyer because of factors not attributable to Company and/or a third party/supplier engaged by Company, then Company will be entitled to terminate the agreement or to suspend performance of its obligations for a reasonable period to be determined by Company, without any liability arising on its part to pay damages.
2. Force majeure will include, without limitation, situations where suppliers of Company or carriers engaged by Company fail, or fail punctually, to perform their obligations, as well as weather conditions, earthquake, fire, power failure, pandemic or epidemic, theft or loss of tools or materials, roadblocks, strike, or walkout, governmental orders, and import or export restrictions. Among this is also included the situation in which it is prohibited for Company to trade because of Dutch laws and/or regulations and/or European Union laws and/or regulations and/or any other laws and/or regulations applicable to Company and/or its affiliates. A situation of force majeure also exists if, as a result of one of the aforementioned circumstances, the production of the Company's company comes to a standstill to a large extent.
3. Company will no longer be authorized to suspend performance if the temporary preclusion from performance has continued for a period exceeding six months. After expiry of such term, either party may terminate the agreement with immediate effect, but only for obligations that have not yet been performed. However, such termination shall not affect any existing obligation of Buyer to pay for items that have already been shipped.
4. In the event of force majeure where performance is or becomes permanently impossible, either party may terminate the agreement with immediate effect for such part of the obligations as has not yet been performed.
5. The parties will not be entitled to any compensation of the damage suffered or to be suffered because of a suspension or termination within the meaning of this article.

#### **Article 8: Complaints and returns**

1. Buyer will be under the obligation, immediately upon taking delivery, to inspect the items. Any visible defects, errors, imperfections and/or shortcomings that Buyer discovers are to be noted on the consignment note or the accompanying slip and immediately communicated to Company, or communicated by Buyer to Company within 24 hours of receipt of the items, all immediately followed by written confirmation to Company.

2. Any other complaints are to be reported to Company by registered letter within eight days of receipt of the items, or within eight days of the time at which Buyer could reasonably discover the shortcoming.
3. If the complaints referred to in the foregoing paragraphs are not communicated to Company within the terms set there, the items will be deemed to have been received in good order.
4. Any minor discrepancies in terms of dimensions, weights, quantities, colors, etc. will not be deemed to constitute failure on the part of Company.
5. No complaints may be asserted based on imperfections in natural products if such imperfections relate to the nature and properties of the raw material or materials from which the product is made, as determined in the discretion of Company.
6. Complaints will not suspend Buyer's payment obligations and do not constitute a ground for set-off for Buyer.
7. Company must be given the opportunity to investigate any complaint. If it turns out that the investigation of the complaint requires items to be returned, the return shipment will be at the expense and risk of Company, but only if Company has given its express prior written consent.
8. In the event of any return, items are to be returned in a manner to be determined by Company and in the original packing or packaging. Return shipments will be at the expense and risk of Buyer, unless Company determines that the complaint is valid.
9. If the items have been changed since delivery in terms of nature and/or composition, or all or part of the items have been adapted or processed, damaged or repacked, then Buyer will not have the right to lodge a complaint with respect to any such items.
10. In the event of a valid complaint, the damage will be settled in accordance with the provisions of these general conditions.

#### **Article 9: Liability**

1. Company will discharge its duties in a manner as may be expected of a business in its industry.
2. Notwithstanding any of the provisions of the other paragraphs of this article or in these general conditions, Company' liability - on any basis whatsoever - will be limited to the lesser of the invoice amount, the total contractual amount, or the amount, if any, that may be paid out under Company' insurance policies. Further, under no circumstances will Company be liable for any other damage, including, without limitation, damages resulting from death or personal injury, damage to property, consequential damages, trading losses, or lost profits and/or business interruption loss, as a result of acts or omissions on the part of Company except for such damage arising out Company' willful misconduct.
3. Company warrants the usual normal quality and sound condition of the items or services provided, excluding economic life.
4. If the items delivered show any visible errors, imperfections and/or shortcomings that must have existed at the time of delivery, Company undertakes - at its option - to repair or replace such items at no cost to Buyer. Company's warranty conditions apply only. Any other claim or right of Buyer, for whatever reason, is excluded, including claims based on non-conformity according to Articles 7:17 et seq. of the Netherlands Civil Code [BW].
5. In no event will Company be liable for any damage as a result of misuse of the item, or any use not in accordance with Company instructions or manuals, or for any use other than that for which the item is intended.

6. Company shall never be liable for damage resulting from advice given. Advice shall always be given on the basis of the facts and circumstances known to Company and in mutual consultation, whereby Company shall always use the Buyer's intention as a guideline and starting point.
7. Buyer is responsible for investigating in advance whether the item purchased is fit for the purpose for which it will be used. If the item purchased proves unfit to such purpose, Company will not be liable for any damage suffered as a result.
8. Company will only remedy any defects free of charge which comply with the conditions as stated in its warranty conditions.
9. In the event of occurrence of any such defects, the relevant component parts will be made available free of charge and no labor costs will be charged. The warranty performance means that the product will be restored, free of charge, to the condition it was in before the defect occurred.
10. Any defect is to be promptly reported, the warranty claim will be barred if the defect is not reported by email to the email address [service@giesencoffeeroasters.eu](mailto:service@giesencoffeeroasters.eu) within 48 hours of being discovered.
11. Any replaced component parts will become the property of Company at its option.
12. The right to warranty will not apply in the event the defect or damage was caused by Buyer's negligence or willful misconduct, or if Buyer cannot establish that the product was maintained by Company, or a dealer or agent of Company, in accordance with the maintenance requirements set by Company.
13. The warranty does not apply to any defects or damage that result from transit damage beyond the scope of responsibility of Company, or because of incompetent installation and/or assembly.
14. The warranty will not apply if the defect is caused by repair work or intervention by third parties, other than by or at the direction of Company, or if the product has been altered to include non-original accessories or component parts.
15. In no event will any warranty repair work extend the warranty period or lead to commencement of a new warranty period, except for the component parts used in the repair work.
16. Company's general terms and conditions apply mutatis mutandis to these warranty conditions. In the event of any conflict between the general terms and conditions and the warranty conditions, the warranty conditions will prevail.
17. Company's limitations of liability included in these terms and conditions do not apply in the event of intent and/or deliberate recklessness on the part of Company, its management and/or executive staff.

#### **Article 10: Payment**

1. Payment is to be made in advance of delivery to an account to be designated by Company.
2. Payment in instalments may be agreed between the parties only in writing. In such event payment will be made as follows: 50% of the total price upon order, 50% of the total price no later than 14 days before date of shipping. In the event of cancellation or termination of the agreement by Buyer, before the delivery has been completed, Buyer will still be obliged to pay 50% of the total price to Company.
3. In the event of late payment by Buyer, Company will be authorized to suspend performance of the delivery obligations undertaken vis-à-vis Buyer until payment has been made or proper

security for payment has been provided. The foregoing provision will apply even if Buyer is not in default if Company reasonably suspects that there are grounds to doubt Buyer's creditworthiness or ability to perform.

4. Payments made by Buyer will be applied first to pay any outstanding interest and costs and then to pay past-due invoices which have been outstanding for the longest period of time, even if Buyer states that the payment relates to a later invoice.
5. Irrespective of whether Company has fully rendered its agreed performance, any amounts that may be due by Buyer pursuant to the agreement will become immediately due and payable in the event that:
  - a payment period has been exceeded;
  - Buyer files a bankruptcy or moratorium on payment of debts;
  - Buyer's property or receivables are attached; or
  - Buyer is dissolved or wound up.
6. At Company' option, all or part of the agreement may be terminated, either in combination with a claim for damages or otherwise, upon the occurrence of any of the events stated in paragraph 5 above, or any similar circumstances, without any notice of default or judicial intervention being required.
7. If, on any basis whatsoever, Buyer has or acquires one or more counterclaims against Company, Buyer waives any right to setoff. Such waiver of the right to setoff will also apply if Buyer files for a provisional or definitive moratorium on payment of its debts or is declared bankrupt.
8. If payment has not been made within the agreed payment period, Buyer will pay interest to Company on any past due amount from the date that it was due. Interest will be equal to the higher of 12% per annum or statutory interest. For purposes of computation of interest, part of a month will be treated as a full month.
9. In line with the provisions of the foregoing paragraph, all extrajudicial costs, subject to a minimum of EUR 50, will be due by Buyer to Company if payment has not been made within the agreed payment period. The costs will be computed based on the Netherlands Extrajudicial Collection Costs (Standards) Act [*Wet Normering Buitengerechtelijke Incassokosten*].
10. If Company is successful in legal proceedings, all costs, including without limitation attorneys' fees, incurred by it in connection with such proceedings will be payable by Buyer.

#### **Article 11: Retention of title and right of pledge**

1. Company retains title to all items delivered and to be delivered by it until Buyer has performed all its payment obligations with respect to such items. Such payment obligations will consist of: payment of the purchase price, increased by any claims because of services rendered in connection with the delivery, as well as any claims in respect of damages, if any, on account of Buyer's failure to perform any of its obligations.
2. The items subject to retention of title may be resold by Buyer in the course of its normal business operations. The aforementioned items may not be let, given in use or encumbered in any way for the benefit of a third party, unless Company has given express written permission for this.
3. In the event that Company invokes the retention of title, the agreement concerning such items will be deemed to have been terminated, without prejudice to Company' right to claim compensation of damage, lost profits, and interest. In such event Company may repossess

the delivered items. Company will be entitled to access the goods in order to repossess, or cause third parties to repossess, them, and Buyer, on Company's demand, shall provide its full cooperation in facilitating repossession of the items.

4. Buyer is obligated to promptly to notify Company if any third party makes a claim on items that are subject to retention of title pursuant to this article. In addition, Buyer shall immediately inform the third party concerned in writing of the existence of the (ownership) rights of Company.
5. Buyer shall be obliged to properly insure the items subject to retention of title and to keep them insured against fire, explosion and water damage and against theft and to make the policy of this insurance and the proof of premium payment available to Company for inspection upon first request.

#### **Article 12: Bankruptcy, lack of power of disposition, etc.**

1. Without prejudice to any other provision of these general conditions, the agreement entered into between Company and Buyer will be terminated without any judicial intervention or notice of default being required, at such time as Buyer is declared bankrupt, files for a provisional or definitive moratorium on payment of its debts, becomes the subject to executory attachment, is placed under guardianship or administration, or otherwise loses power of disposition or legal competency in respect of all or part of its assets, unless the receiver or administrator acknowledges the obligations ensuing from the agreement as estate debts.

#### **Article 13: Termination of the agreement**

1. Buyer waives all rights to dissolution of the agreement pursuant to Articles 6:265 et seq. of the Netherlands Civil Code [BW] or any other statutory provisions, unless dictated otherwise by provisions of mandatory law. If Buyer wishes to terminate an agreement when there is no ground for termination because of a default by Company under these general conditions or the specific agreement, the agreement will be deemed to be terminated by mutual consultation. In such event, Company will be entitled to compensation of all costs incurred in connection with the agreement, such as losses sustained, lost profits and other costs incurred.

#### **Article 14: Privacy**

1. Company processes any personal data provided in accordance with the legal requirements and in a proper and careful manner, as laid down in his Privacy Policy.

#### **Article 15: Amendment clause**

1. Company reserves the right to amend these terms and conditions unilaterally and without the consent of Buyer. The amendments shall take effect as soon as they have been notified to Buyer, unless Company notifies Buyer of a later effective date.

#### **Article 16: Applicable law and jurisdiction**

1. The agreement entered into between Company and Buyer will be governed exclusively by, and construed according to, the laws of the Netherlands, without regard to any conflict of law provisions.

2. In derogation of the provisions of paragraph 1 of this article, at the election of Company, the property law consequences of retention of title of items destined for export may be governed by the laws of the country or state of destination.
3. Company and Buyer agree that any disputes will be submitted to the exclusive jurisdiction of the competent court in Gelderland, the Netherlands, unless another court has jurisdiction to hear the dispute pursuant to provisions of mandatory Netherlands law.
4. The applicability of the Vienna Sales Convention, as well as any other international regulations that may be excluded. is expressly excluded.
5. The parties may agree another form of dispute resolution, such as mediation or arbitration.