



Giesen Coffee Roasters B.V. General Conditions

Industrieweg 15
NL-7071 CK Uift

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 the "user".
2. The purchaser or the client, as applicable, will hereinafter be referred to as the "other party".
3. Any derogating conditions will form part of the agreement entered into between the parties only if and to the extent expressly agreed in writing between the parties, and will then only apply to the specific single transaction.
4. In the event of conflict between the contents of the agreement entered into between the user and the other party and these conditions, the provisions of the 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 of all or part of any provision of these general conditions will not affect the applicability of the other provisions.

Article 2: Agreements

1. Any agreements with the user will be formed at the time of an order by telephone and/or by email and as soon as the user has commenced execution activities.
2. Any additions or amendments to the general conditions or other amendments or additions to the agreement will become binding only after written confirmation by the user.

Article 3: Offers

1. All offers, discounts, quotations, pricelists, delivery periods, etc. of the user are subject to contract, unless they contain a term for acceptance.
2. The prices used by the user 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.
3. If the other party provides the user any data etc., the user may rely on the correctness and completeness of such data and will base its offer thereon.
4. If the other party does not accept the user's offer, the user will be entitled to charge the other party for all costs incurred by it in order to make its offer.

Article 4: Intellectual Property Rights

1. Unless agreed otherwise in writing, the user will retain the copyrights and all industrial property rights in the offers made, designs provided, software and items delivered by it.
2. The rights in the data referred to in paragraph 1 of this article will continue to vest in the user, irrespective of whether any costs have been charged to the other party for the creation thereof. These data may not be copied, used or disclosed to any third parties without the express prior written consent of the user. The other party will forfeit to the user 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 damages.
3. On demand, the other party is to return any data provided to it as referred to in paragraph 1 of this article within a term set by the user. In the event of violation of this provision the other party will forfeit to the user an immediately payable penalty in the amount of EUR 1,000 per day. This penalty may be claimed in addition to statutory damages.

Article 5: Delivery, delivery periods and passing of risk

1. In no event may periods stated 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 the user fails, or fails punctually, to perform its obligations under the agreement, it must be given written notice of default.
2. In the event of delivery in consignments, each delivery or phase will be considered a separate transaction that may be invoiced separately by the user.
3. Delivery will be ex works. The risk relating to the items delivered will pass to the other party upon delivery, i.e. the time of offering the items to the other party or the carrier (ex works or warehouse, as applicable).
4. The items ordered will be shipped or transported in a manner to be designated by the user, but at the expense and risk of the other party. The user will not be liable for any damage, of any nature or form whatsoever, relating to the shipment or transport, either caused to the items or otherwise, all unless expressly agreed otherwise in writing between the parties.
5. If it proves impossible to deliver the items to the other party for reasons attributable to the other party, the user reserves the right to store the items ordered at the expense and risk of the other party. The user will notify the other party of the storage arranged, granting a reasonable term within which the other party is to enable the user 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 the user as provided in the foregoing paragraph of this article, the other party continues to fail to perform its obligations, the other party will be in default by the mere expiry of 1 (one) month, calculated from the date of storage, and the user will be entitled to dissolve 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 the other party's obligation to pay the price agreed or stipulated or due, as applicable, as well as any storage and/or other costs.
8. The user will be authorised - in respect of performance of the other party's financial obligations - to require that the other party pay in advance or provide security before delivering the items.
9. The user will be entitled to deliver the goods cash on delivery. Furthermore, the user will be entitled to ship the items purchased on behalf and at the expense of the other party.

Article 6: Price change

1. The user may pass on to the other party an increase in the cost-determining factors that occurred after entering into the agreement.
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 the user is temporarily precluded from performing its contractual obligations vis-à-vis the other party on account of non-attributable failure on the part of the user and/or a third party/supplier engaged by the user, or in the event that a serious cause arises on the part of the user, the user will be entitled to dissolve the agreement or to suspend performance of its obligations for a reasonable period to be determined by the user, without any liability arising on its part to pay damages.
2. Force majeure will include the situation where suppliers of the user or carriers engaged by the user fail, or fail punctually, to perform their obligations, weather conditions, earthquake, fire, power failure, theft or loss of tools or materials, roadblocks, strike or walkout, and import or export restrictions.
3. The user will no longer be authorised to suspend performance if the temporary preclusion from performance has continued for a period exceeding six months. After expiry of such term the user and the other party may terminate the agreement with immediate effect, but only for such part of the obligations as has not yet been performed.

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 as a result of the suspension or termination within the meaning of this article.

Article 8: Complaints and returns

1. The other party will be under the obligation, immediately upon taking delivery, to inspect the items. Any visible defects, errors, imperfections and/or shortcomings that the other party discovers are to be noted on the consignment note or the accompanying slip and immediately communicated to the user, or communicated by the other party to the user within 24 hours of receipt of the items, all immediately followed by written confirmation to the user.
2. Any other complaints are to be reported to the user by registered letter within eight days of receipt of the items, or within eight days of the time at which the other party could reasonably discover the shortcoming.
3. If the complaints referred to in the foregoing paragraphs are not communicated to the user 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, colours, etc. will not be deemed to constitute failure on the part of the user.
5. No complaints can be asserted in respect of 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, all at the discretion of the user.
6. Complaints will not suspend the other party's payment obligation.
7. The user must be given the opportunity to investigate the 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 the user only if the latter has granted its express prior written consent.
8. In any event items are to be returned in a manner to be determined by the user and in the original packing or packaging. Return shipments will be at the expense and risk of the other party, unless the user declares that the complaint is founded.
9. If the items have been changed since delivery in terms of nature and/or composition, all or part of the items have been adapted or processed, damaged or repacked, any right to lodge a complaint will expire.
10. In the event of founded complaints, the damage will be settled in accordance with the provisions of these general conditions.

Article 9: Liability

1. The user will discharge its duties in a manner as may be expected of a business in its industry, but disclaims any liability for damage, including damage as a result of death or personal injury, consequential damage, trading loss, lost profits and/or business interruption loss, as a result of acts or omissions on the part of the user, its staff or any third parties engaged by it, save to the extent resulting from intent and/or wilful recklessness on the part of the user, its board of directors and/or its managerial staff.
2. Without prejudice to the provisions of the other paragraphs of this article, the user's liability - on any basis whatsoever - will be limited to the amount of the net price of the items or services provided.
3. Without prejudice to the provisions of the foregoing paragraphs, the user's liability, if he is nevertheless liable for any damage, will be capped at the invoice amount, or at least the total contractual amount, or at least the amount to be paid out by the user's insurance.
4. The user warrants the usual normal quality and sound condition of the items or services provided; their factual economic life can in no event be warranted.
5. If the items delivered show any visible errors, imperfections and/or shortcomings that must have been there at the time of delivery, the user undertakes - at its option - to repair or replace such items at no cost.

6. In no event will the user be liable for any damage as a result of misuse of the item, use other than in accordance with the user or other instructions of the user, or for any purpose other than that for which the item is intended.
7. In no event will the user be liable for any damage as a result of advice given. Advice will at all times be given based on the facts and circumstances known to the user and in mutual consultation, the intention of the other party always being leading for the user.
8. The other party is responsible for investigating in advance whether the item purchased is fit for the purpose for which it will use the item purchased. If, in retrospect, the item purchased proves unfit to such purpose, the other party cannot hold the user liable for the damage suffered as a result.
9. The term within which the user can be held liable for compensation of the damage established will at all times be limited to twelve months, calculated from the time of establishment of the liability to pay damages.
10. Subject to these conditions, Giesen Coffee Roasters will remedy - free of charge - any defects to Giesen Coffee Roasters that may manifest themselves within 400 roasting hours of first use of the product, subject to a maximum of twelve months. In the event of used products, the foregoing will apply only to defects in Giesen Coffee Roasters that may manifest themselves within 200 roasting hours of the date of first use, subject to a maximum of six months. Component parts will be subject to the same period, however, calculated from the date of the invoice.
11. The warranty will relate only to such defects as are discovered during the warranty period to the extent that such defects are based on defects in material or workmanship. In the event of occurrence of any such defects, the relevant component parts will be made available free of charge and no labour 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.
12. Any defect is to be promptly reported, the warranty claim expiring if the defect is not reported by email to the email address service@giesencoffeeroasters.eu within 48 hours of being discovered.
13. Any replaced component parts will become the property of Giesen Coffee Roasters at its option.
14. The right to warranty will expire in the event of careless use and/or if it cannot be demonstrated that after installation the product was maintained by Giesen Coffee Roasters, in accordance with the maintenance requirements set by Giesen Coffee Roasters.
15. The warranty does not relate to any defects as a result of transit damage occurring beyond the scope of responsibility of Giesen Coffee Roasters, or as a result of incompetent installation and/or assembly.
16. The right to warranty will expire if the defect is caused by repair work or intervention by third parties, other than Giesen Coffee Roasters, within the warranty period, and/or if the product is equipped with non-original accessories or component parts.
17. In no event will any warranty repair work extend the warranty period or lead to commencement of a new warranty period, save for the component parts used in the repair work.
18. The Giesen Coffee Roasters general conditions will apply *mutatis mutandis* to these warranty conditions. In the event of conflict between the general conditions and the warranty conditions, the warranty conditions will prevail.

Article 10: Payment

1. Payment is to be made in advance of delivery to an account to be designated by the user.
2. Payment in instalments may be agreed between the parties. In such event payment will be made as follows: 50% of the total price upon order, 50% of the total price upon delivery.
3. In the event of late payment by the other party, the user will be authorised to suspend performance of the delivery obligations undertaken vis-à-vis the other party until payment has been made or proper security for payment has been provided. The foregoing provision will apply even before the other party is in default if the user reasonably suspects that there are ground to doubt the other party's creditworthiness.

4. Payments made by the other party will always first be used to pay all outstanding interest and costs and subsequently to pay invoices due and payable which have been outstanding for the longest period of time, even if the other party states that the payment relates to a later invoice.
5. Irrespective of whether the user has fully rendered the agreed performance, any amounts that may be due by the other party pursuant to the agreement will become immediately due and payable in the event that:
 - a payment period has been exceeded;
 - the other party's bankruptcy or moratorium on payment of debts has been filed for;
 - the other party's property or receivables are attached;
 - the other party is dissolved or wound up.
6. At the user's option, all or part of the agreement may be dissolved, either in combination with a claim for damages or otherwise, in the foregoing or similar circumstances, without any notice of default or judicial intervention being required.
7. If, on any basis whatsoever, the other party has or acquires one or more counterclaims against the user, the other party will waive the right to setoff. Such waiver of the right to setoff will also apply if the other party 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, the other party will immediately owe interest to the user. Interest will be equal to the higher of 12% per annum or the 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 the other party to the user 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 the user is successful in legal proceedings, all costs incurred by it in connection with such proceedings will be payable by the other party.

Article 11: Retention of title and right of pledge

1. The user retains title to all items delivered and to be delivered by it until such time as the other party has performed all its payment obligations ensuing from any agreement whatsoever vis-à-vis the user. Such payment obligations will consist of: payment of the purchase price, increased by any claims on account of services rendered in connection with the delivery, as well as any claims in respect of damages, if any, on account of failure to perform obligations on the part of the other party.
2. The items subject to retention of title may be resold by the other party only in the course of its normal business operations.
3. In the event that the user invokes the retention of title, the agreement entered into in that respect will be deemed to have been dissolved, without prejudice to the user's right to claim compensation of damage, lost profits and interest. In such event the user may repossess the items delivered. The user will be entitled to access the goods in order, if so desired, to repossess, or cause third parties to repossess, them, and the other party undertakes, on the user's demand, to render its full cooperation in facilitating repossession of the items.
4. The other party will be under the obligation promptly to notify the user if any third parties lay claims to items that are subject to retention of title pursuant to this article.

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

1. Without prejudice to the provisions of the foregoing articles of these conditions, the agreement entered into between the user and the other party will be dissolved without any judicial intervention or notice of default being required, at such time as the other party 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 nor 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. The other party 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 the other party wishes to dissolve this agreement while there is no ground for dissolution on account of failure on the part of the user as set forth in these general conditions, the agreement will be deemed to be dissolved by mutual consultation. In such event the user will be entitled to compensation of all costs incurred for purposes of the agreement, such as losses sustained, lost profits and costs incurred.

Article 14: Applicable law and jurisdiction

1. The agreement entered into between the user and the other party will be governed exclusively by the laws of the Netherlands. Any disputes that may arise as a result of such agreement will also be decided in accordance with the laws of the Netherlands.
2. In derogation of the provisions of paragraph 1 of this article, the property law consequences of a retention of title of items destined for export will be governed by the laws of the country or state of destination if the legal system of such country or state is more favourable for the user.
3. 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 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.