

# GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY

## 1. SCOPE

- 1.1. These General Terms and Conditions of Sale and Delivery ("**Terms**") apply to the sale and delivery by Himmerlandskød A/S and its affiliated companies (collectively "**Himmerlandskød**") of goods and/or services (collectively "**Goods**") to a purchaser having ordered and/or taken delivery of the Goods ("**Buyer**").
- 1.2. The Buyer's terms of purchasing, as they may be specified in the Buyer's general purchasing terms; in the Buyer's purchase order; at the Buyer's website, or the like, will not apply to any delivery made by Himmerlandskød, unless expressly accepted in writing by Himmerlandskød.
- 1.3. In case of discrepancies between these Terms and specially agreed terms between the parties, the latter shall prevail if accepted by the management of Himmerlandskød.
- 1.4. Himmerlandskød reserves the right to change these Terms at any time.

## 2. CONCLUSION OF AN AGREEMENT

- 2.1. No binding contract ("**Agreement**") is created until an order orally or in writing has been accepted by Himmerlandskød. Himmerlandskød may at its sole discretion refuse to accept any order placed by the Buyer.
- 2.2. Once the order has been accepted by and an Agreement has been concluded, Himmerlandskød will together with the Goods send a trade document specifying the quantities and purchase price of the Goods. The Buyer will be deemed to have accepted the trade document from Himmerlandskød, including the terms of the Agreement, unless the Buyer within three (3) working days from receiving such trade document notifies Himmerlandskød with any objections.
- 2.3. No order which has been accepted by Himmerlandskød may be cancelled or altered by the Buyer except with the agreement in writing of Himmerlandskød. In such an event the Buyer shall indemnify Himmerlandskød in full against all losses (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by Himmerlandskød as a result of the cancellation or alteration.

### **3. PRICES**

- 3.1. Unless otherwise agreed, all prices quoted by Himmerlandskød are exclusive of any applicable sales tax, value added tax or equivalent tax (“VAT”) which shall be invoiced and paid in addition to the price of the Goods.
- 3.2. If the price of the Goods increases due to documented changes in taxes and duties on goods, tariff rates, import/export duties, currency exchange rates, freight charges (where freight is payable by Himmerlandskød) or other conditions beyond Himmerlandskød's control, Himmerlandskød reserves the right to make price adjustments.

### **4. TERMS OF DELIVERY AND PASSING OF RISK**

- 4.1. All agreed delivery clauses stated in the Agreement are to be interpreted according to the latest version of INCOTERMS, as published by the International Chamber of Commerce in Paris, France, at the time of conclusion of the Agreement. In the event that the parties have not agreed the terms of delivery, the Goods shall be delivered in accordance with the term Delivered At Place (DAP).
- 4.2. The date of delivery set out in the Agreement shall be considered approximate only and cannot be considered a binding or fixed time of delivery. In the event of late delivery, the Buyer shall give Himmerlandskød a written notice of default, which allows Himmerlandskød a reasonable term to fulfil its obligations. If Himmerlandskød exceeds this reasonable term, the Buyer has the right to dissolve the Agreement partially or fully, but only with respect to the undelivered Goods. In such an event, Himmerlandskød shall not be liable for any damage.
- 4.3. Himmerlandskød may deliver the Goods in instalments.
- 4.4. If the Buyer does not take timely delivery of the Goods – or if, where the Buyer is to give delivery instructions, the Buyer fails to give such instructions – Himmerlandskød may at its sole discretion either extend the time of delivery of the Goods, store the Goods at the Buyer's risk and cost until actual delivery, or cancel the Agreement or any part thereof, in either case without prejudice to any other right or remedy available to Himmerlandskød.
- 4.5. The risk of the Goods passes to the Buyer in accordance with the agreed INCOTERM or when the Goods are offered for delivery at the agreed location.

### **5. TERMS OF PAYMENT**

- 5.1. Unless otherwise agreed, the Buyer shall make payment for the Goods in full and cleared funds to the bank account nominated by Himmerlandskød no later than ten (10) days after receipt of invoice and always in advance of delivery.
- 5.2. The Buyer shall not be entitled to withhold any payment or set-off any payment against any outstanding claim on Himmerlandskød, that has not been approved by Himmerlandskød.

5.3. If payment is not made and received by Himmerlandskød on the due date, Himmerlandskød may charge interest on the amount outstanding at the time in question at a rate of 2 % per commenced month from the date of invoice.

5.4. Goods not collected due to delayed payment will be stored and insured at the costs of the Buyer, until final payment has been received by Himmerlandskød.

## **6. RETENTION OF TITLE**

6.1. The Goods shall remain the sole and absolute property of Himmerlandskød until such time as Himmerlandskød has received full payment of the Goods and any other outstanding debt.

6.2. Until such a time as the Buyer becomes the owner of the Goods, the Buyer acknowledges that the Buyer is in possession of the Goods solely as fiduciary agent and bailee for Himmerlandskød and the Buyer will properly store, protect and insure them and keep them on its premises separately from the Buyer's own goods or those of any other person and mark them in such a manner which makes them readily identifiable as the goods of Himmerlandskød.

6.3. The Buyer's right to possession of the Goods shall cease if the Buyer 1) fails to pay any sum payable hereunder, or 2) an insolvency event occurs, as defined by the Danish Insolvency Act, or 3) if Himmerlandskød reasonably believes that any of the foregoing events is likely to occur and notifies the Buyer accordingly.

6.4. Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold), Himmerlandskød shall be entitled at any time to require the Buyer to deliver up the Goods to Himmerlandskød and if the Buyer fails to do so forthwith to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.

6.5. The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of Himmerlandskød, but if the Buyer does so all monies owing by the Buyer to Himmerlandskød shall (without prejudice to any other right or remedy of the Himmerlandskød) forthwith become due and payable.

## **7. NON-CONFORMITY**

7.1. The Buyer must upon delivery inspect the Goods for shortages or any lack of conformity. Visible shortages or any visible lack of conformity must immediately, and no later than three (3) business days from receipt of the Goods, be reported to Himmerlandskød in writing, as the Goods otherwise shall be deemed to conform to the Agreement.

7.2. For any lack of conformity that is not apparent on a visible inspection (hidden defects), the Buyer shall submit written notice to Himmerlandskød no later than one (1) month after delivery of the Goods, but no later than within shelf life.

7.3. If there are any claims regarding shortages or lack of conformity, both parties shall be entitled to demand an independent survey performed by an independent survey company agreed upon by

the parties. If necessary, the Buyer shall assist Himmerlandskød in engaging with an independent survey company.

- 7.4. If loss or damage to the Goods and/or their packaging has visibly occurred during carriage a reservation shall always be registered on the CMR bill of carriage or other consignment note. Reservations must also be notified in writing to Himmerlandskød and the carrier at the time of receipt in the case of visible loss or damage and within three (3) days of receipt in the case of loss or damage which is not apparent.
- 7.5. Any discussions with the Buyer regarding a claim, which has been put forward too late or for which Himmerlandskød is not liable, shall not imply any waiver of Himmerlandskød's right to subsequently allege delay in the Buyer's claim or in any way acknowledge any liability.
- 7.6. If there is any shortages or lack of conformity, Himmerlandskød shall in its sole discretion and as its sole obligation replace the delivery, remedy the defect, or offer the Buyer a proportional price reduction, whereupon the defect shall be deemed to be fully remedied. No other remedies shall be available to the Buyer, including claims for damages of any kind, including in relation to trading loss; loss of profit; and other indirect losses.

## **8. LIMITATION OF LIABILITY**

- 8.1. To the fullest extent permitted by applicable law, Himmerlandskød shall not be liable to the Buyer for any indirect, special or consequential costs, losses, expenses, or damages, including, without limitation, any increased costs of working or damages or losses resulting from late delivery or wasted expenditures, loss of production, loss from business interruption, loss of profit, loss of revenue or business, or damage to goodwill or reputation.
- 8.2. The aggregate liability of Himmerlandskød shall always be limited to the damage proven and cannot exceed the purchase price of the Goods.

## **9. PRODUCT LIABILITY**

- 9.1. The Buyer is obliged to indemnify Himmerlandskød for all costs, losses, liability, injuries and damages which are a consequence of death, personal injury or property damage caused by the Buyer's actions and/or omissions.
- 9.2. Himmerlandskød shall only be liable in case of personal injury and/or property damage if i) such injury/damage is caused by the Goods (documentation is required) and ii) such liability follows applicable, mandatory law. In case of property damage, Himmerlandskød's liability shall be limited to the widest extent possible.
- 9.3. Notwithstanding clause 9.2, Himmerlandskød shall never be liable for indirect, special, incidental, consequential or punitive damages of any nature, including, but not limited to, business interruption costs, loss of profit, loss of goodwill, removal and/or reinstallation costs, procurement costs, recall and withdrawal costs, handling costs, penalties, loss of data, damage of reputation or loss of customers and consumers.

- 9.4. The Buyer shall without undue delay, inform Himmerlandskød in writing, if the Buyer learns of circumstances that may justify product liability on Himmerlandskød.

## 10. SUSPENSION AND DISSOLUTION

- 10.1. At its sole discretion and without prejudice to any other rights under these Terms, Himmerlandskød has the right to suspend fully or partially the (further) performance of the Agreement or to dissolve the Agreement fully or partially, if:
- 10.1.1. the Buyer fails to fulfil one or more of its obligations or if Himmerlandskød has well-founded reasons to fear that the Buyer will fail to fulfil its obligations;
  - 10.1.2. the Buyer has applied for or has been granted a moratorium of payments;
  - 10.1.3. the bankruptcy of the Buyer has been applied for or ordered or if the Buyer has otherwise lost the power to dispose of its assets;
  - 10.1.4. any goods of the Buyer have been seized;
  - 10.1.5. if the Buyer ceases its business or more than 50% of the Buyer's share capital is transferred to a natural person or legal entity which does not own at least 25 % of the Buyer's share capital at the time the agreement to which these Terms and Conditions apply is concluded; and/or
  - 10.1.6. if any share capital is transferred to a natural person or legal entity producing or selling products that compete with Himmerlandskød.
- 10.2. Any right of suspension or dissolution of the Buyer is excluded.

## 11. FORCE MAJEURE

- 11.1. Neither Himmerlandskød nor the Buyer shall be liable for any default or delay in performing its obligations, if caused by an event beyond reasonable control, provided that the affected party gives prompt written notice of any such inability to perform to the other party. Events beyond reasonable control includes - but is not limited to – plagues, epidemics, natural disasters, war, civil war, riots, terror, strikes, lockouts and compliance with any governmental rules or regulations (“**Force Majeure**”).
- 11.2. The affected party shall advise the other party immediately in writing of the occurrence described above. Within seven (7) calendar days after the beginning of the incident, the party shall forward evidence of the incidence.
- 11.3. The obligations and rights of the parties shall be extended on a day-to-day basis for the time period equal to the period of the Force Majeure event. When the Force Majeure event has abated, the parties' respective obligations shall resume. If the circumstances proceed for more than two (2) weeks, each party shall be entitled to cancel the order or part of the order, without this being considered a breach of contract. None of the parties shall have the right to claim compensation of possible losses from the other party due to Force Majeure.

**12. HARDSHIP**

- 12.1. If at any time prior to the performance of an Agreement there has been a substantial change in business, monetary, or commercial conditions beyond Himmerlandskød's control, and as a result of which the Agreement has become excessively onerous for Himmerlandskød, Himmerlandskød may notify the Buyer that it wishes to meet and review the conditions of the Agreement in the light of the changed conditions. The Buyer shall meet with Himmerlandskød to discuss and to negotiate in good faith alternative contractual terms which reasonably relieve Himmerlandskød from such hardship. If no agreement on a mitigation of the events is reached within seven (7) calendar days from the date of Himmerlandskød's request for such meeting, Himmerlandskød shall be entitled to terminate the Agreement. Such termination shall not be considered a breach of contract and any liability is excluded.

**13. INTELLECTUAL PROPERTY RIGHTS**

- 13.1. All intellectual property rights or other property rights to the products, including but not limited to trademarks, copyrights, designs, patents, recipes, labels, packaging, knowhow, etc., is the sole and exclusive property of Himmerlandskød, and the Buyer does not obtain any right, ownership or license to such rights.
- 13.2. The Buyer is not allowed to use Himmerlandskød's intellectual property rights without the prior written consent of Himmerlandskød.
- 13.3. The Buyer shall indemnify Himmerlandskød for all costs and losses suffered by Himmerlandskød due to the Buyer's breach of this clause.

**14. DATA PROTECTION**

- 14.1. The Buyer shall comply with all applicable data protection laws, including but not limited to, the General Data Protection Regulation 2016/679. This includes that the Buyer shall maintain reasonable technical and organizational security measures to protect the personal data of its contractors, employees and other individuals and shall immediately notify Himmerlandskød in the event of a breach of security impacting Himmerlandskød. Further, the Buyer shall at no cost provide reasonable assistance to Himmerlandskød with the remediation, notification and other obligation required under the applicable data protection laws.

**15. GENERAL**

- 15.1. Should any provision of these Terms be held by a court of competent jurisdiction to be illegal, invalid or unenforceable, such provision may be modified by such court in compliance with the law giving effect to the intent of the parties and enforced as modified. All other terms and conditions of these Terms shall remain in full force and effect and shall be construed in accordance with the modified provision.

**16. JURISDICTION AND GOVERNING LAW**

- 16.1. These Terms and all contracts entered into between Himmerlandskød and the Buyer, including any supply of Goods to the Buyer, shall be governed by and construed in accordance with the laws of Denmark, notwithstanding any choice of law or conflict of law provisions specifying other choice of law. CISG (United Nations Convention on Contracts for the International Sales of Goods) shall not apply.
- 16.2. Any dispute between Himmerlandskød and the Buyer regarding the parties' contractual relationship, including these Terms, shall be settled at the city court of Aalborg.
- 16.3. Notwithstanding clause 16.2 Himmerlandskød is entitled, at its sole discretion, to bring any dispute with the Buyer before the competent courts in the country where the Buyer has its registered office.