



General terms and conditions for the purchase of goods. Version dated 28 January 2015

1. INTERPRETATION

1.1. In these terms, the following definitions apply:

- 1.1.1. "**Business Day**" means a day (other than a Saturday, Sunday or a public holiday) when banks in the Netherlands are open for business;
- 1.1.2. "**Contract**" means the contract between the Company and the Supplier for the supply of Goods in accordance with these terms;
- 1.1.3. "**Company**" means B.V. Hearthside Food Solutions, R&R B.V., Ros B.V. and/or CDL B.V.;
- 1.1.4. "**Delivery Location**" means the meaning set out in clause 8.2.2;
- 1.1.5. "**Goods**" means the materials/goods set out in the Order;
- 1.1.6. "**Intellectual Property Rights**" means all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;
- 1.1.7. "**Order**" means the Company's written order for the supply of the Goods, as set out in the Company's purchase order form, together with any other documents containing specifications of the Goods to be purchased;
- 1.1.8. "**Supplier**" means the person or firm from whom the Company purchases the Goods.

2. BASIS OF CONTRACT

- 2.1. The Order constitutes an offer by the Company to purchase the Goods from the Supplier in accordance with these terms.
- 2.2. The Order shall be deemed to be accepted on the earlier of the Supplier issuing written acceptance of the Order (within two Business Days) or any act by the Supplier consistent with fulfilling the Order, at which point and on which date the Contract shall come into existence.
- 2.3. These general terms and conditions apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

3. OBLIGATIONS OF SUPPLIER

- 3.1. Supplier is certified for a GFSI recognised scheme and will prior to entering into the Contract provide the Company with a copy of the relevant certificates. If Supplier is not certified, he should provide the Company with an explanation of his quality system.
- 3.2. The Company purchases the Goods based on the agreed specifications in the Order. If Supplier makes any changes to these specifications, the Company should be notified timely and the new specifications need to be agreed on in writing by the Company before delivery will be accepted.
- 3.3. Supplier will sign the Certificate of Compliance and provide the Company with the required documentation regarding current legislation for food packaging. The Company is not responsible for the supplied packaging and consequences of the use of this packaging and Supplier will indemnify the Company from any claims of third parties arising therefrom.
- 3.4. The Company reserves the right to require a minimum standard for the quality of the cardboard and box construction.

4. ORDER HANDLING

Supplier will execute and deliver the Orders as indicated and specified by the Company. As indication normal business hours are considered as follows: Monday to Thursday between 08:00 and 16:30 hours and Friday between 08:00 and 12.00 hours. When date and/or quantity requirements (of Goods ordered) cannot be met, the Company's contact person (as mentioned in the Order) will be notified immediately.



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5. DELIVERIES

- 5.1. Supplier's drivers (and other personnel) will identify themselves on arrival and are not allowed to enter the premises without explicit prior approval from the Company.
- 5.2. Deliveries should be transported in accordance with all relevant EU rules and regulations regarding food safety during transport (including but not limited to regulations (EC) nr. 852/2004 and (EC) nr. 853/2004).
- 5.3. Damage to the premises caused by Supplier will be reported to the Company at expedition immediately. For the avoidance of doubt, Supplier will be liable to pay compensation for these damages to the Company.
- 5.4. Depending on the Goods (raw materials, foil, carton, etc.) the following information needs to be placed on the freight documents:

Raw materials	Foil	Carton/ Labels/ Facility products
product description	product description	product description
net delivery quantity per article in kilos	net delivery quantity per article in kilos	net delivery quantity per article by piece
batch code/ production date	batch code	batch code
HFS order number(s)	production date	production date
HFS article number(s)	HFS order number(s)	HFS order number(s)
best before date	HFS article number(s)	HFS article number(s)
organic remark		
RSPO number		

- 5.5. Every pallet should be provided with an SSCC label. Delivering more than one product on a pallet is only allowed when separately agreed in writing with the Company. In that case, the Goods need to be separated by an extra pallet (or comparable means of separation) between the different Goods. The different Goods that are on the pallet should be clearly indicated by an SSCC label.
- 5.6. Over- and under delivery with respect to folding carton: Supplier is allowed to over- or under deliver up to 10% on Orders with a maximum of 10.000 pieces and up to 5% on Orders with a minimum of 10.000 pieces. Company will not accept shipments above and below these quantities, in which case Company will not be liable for any costs/damages/etc. to Supplier,
- 5.7. Over- and under delivery with respect to foil, labels, other cartons and raw materials: Supplier is allowed to over- or under deliver up to 10%. Delivery less than or more than the quantity of Goods ordered will be in accordance with the terms of clause 9.4 below.

6. PACKAGING

- 6.1. Depending on the Goods (raw materials, foil, carton, etc.), Supplier will state on the packaging the following information:

Raw materials	Foil	Carton/ Labels/ Facility products
product description	product description	product description
batch code/ production date	batch code	batch code
HFS article number(s)	production date	production date
best before date	HFS article number(s)	HFS article number(s)
organic remark		
RSPO number		

- 6.2. Supplier will ensure that packaging is properly closed, clean, dry and without damage.

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- 6.3. Deliveries of the Goods should be made on:
- 6.3.1. In case of raw materials: a plastic pallet or a clean wooden pallet with a cardboard sheet, depending on separate agreements.
- 6.3.2. In case of carton, foil, labels and facility products: a clean wooden pallet with a cardboard sheet.
- 6.4. The maximum pallet height for raw materials, carton and facility products (including pallet) is 2.05 metres. The maximum pallet height for foil (including pallet) is 1.20 metres.
- 6.5. Return pallets should be clearly marked or coded and in a good state (dry, undamaged).
- 6.6. The following specific conditions for foil and labels apply:

Foil
Each roll of foil should have a label on the inside of the kernel with the following details:
<ul style="list-style-type: none"> • product description • batch code • production date • HFS article number • foil type • foil thickness • foil dimensions • identification code mother roll • unique roll code (for traceability) • weight in kilos
<i>Additional conditions:</i>
<ul style="list-style-type: none"> • the minimum weight for a roll of foil is 5 kilos • the maximum weight for a roll of foil is 12 kilos • the maximum diameter for a roll of foil is 330 mm • every roll should be separately packed in transparent plastic • the rolls should be placed on the pallet on their side • the rolls should not have more than 2 joints per reel and each joint should be made of metal detectable tape and should be flagged.

- 6.7. Each roll of labels should have a label on the inside of the kernel with the following details:

<ul style="list-style-type: none"> • product description • batch code • production date • HFS article number • dimensions
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<p>Important note: dimension of the kernel for both labels and foil must be 76 mm and should unwind as shown in the picture.</p> <div style="text-align: center;">  </div>
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7. WARRANTIES & INSPECTION

- 7.1. The Supplier warrants, represents and undertakes to the Company that the Goods (and packaging) shall:



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- 7.1.1. correspond with its description and any applicable specification agreed in writing by the Company;
 - 7.1.2. be of satisfactory quality and fit for any purpose held out by the Supplier or made known to the Supplier by the Company, expressly or by implication, and in this respect the Company relies on the Supplier's skill and judgment;
 - 7.1.3. where applicable, be free from defects in design, materials and workmanship and remain so for twelve (12) months after delivery; and
 - 7.1.4. comply with all applicable statutory and regulatory requirements including without limitation any relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.
- 7.2. The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract in respect of the Goods. The Company shall have the right to inspect and test the Goods (or any part of it) at any time before delivery or completion (as the case may be). If following such inspection or testing the Company considers that the Goods (or any part thereof) do not conform or are unlikely to comply with the Contract (including without limitation the Supplier's warranties, representations and undertakings in clause 7.1, the Company shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance. Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the Goods and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract, and the Company shall have the right to conduct further inspections and tests after the Supplier has carried out its remedial actions.
- 8. DELIVERY OF GOODS**
- 8.1. The Supplier shall ensure that:
- 8.1.1. the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;
 - 8.1.2. each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the Order number (if any), the type and quantity of the Goods (including the code number of the Goods (where applicable)), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
 - 8.1.3. if the Supplier requires the Company to return any packaging material for the Goods to the Supplier, that fact is clearly stated on the delivery note. Any such packaging material shall only be returned to the Supplier at the cost of the Supplier.
- 8.2. The Supplier shall deliver the Goods:
- 8.2.1. on the date specified in the Order or, if no such date is specified, on such date as the Company may notify to the Supplier in writing;
 - 8.2.2. to such location as is set out in the Order or as instructed by the Company before delivery ("**Delivery Location**");
 - 8.2.3. during the Company's normal hours of business on a Business Day, or as instructed by the Company (in accordance with clause 4).
- 8.3. Delivery of the Goods shall be completed on the completion of unloading of the Goods by the Supplier at the Delivery Location.
- 8.4. If the Supplier delivers less than or more than the quantity of Goods ordered, the Company may at its sole discretion accept the Goods, reject the Goods or (in the case of excess delivery of the quantity ordered) reject the excess Goods. Any rejected Goods shall be returnable at the Supplier's risk and expense. If the Company accepts the delivered Goods that are less than the quantity of Goods ordered, a pro rata adjustment shall be made to the invoice for the Goods. If the Company accepts the delivered Goods that are more than the quantity of Goods ordered, the Company will not be charged for the excess delivery.
- 8.5. The Supplier shall not deliver the Goods in instalments without the Company's prior written consent. Where it is agreed that the Goods are delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle the Company to the remedies set out in these terms and conditions.



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8.6. Title and risk in the Goods shall pass to the Company on completion of delivery.

9. COMPANY REMEDIES

9.1. If the Supplier fails to perform his obligations under the Contract (or any part of it), the Company shall, without limiting its other rights or remedies, have one or more of the following rights:

- 9.1.1. to terminate the Contract with immediate effect by giving written notice to the Supplier;
- 9.1.2. to refuse to accept any subsequent performance of the Contract which the Supplier attempts to make. For the avoidance of doubt the Company retains the right to refuse deliveries based on smell, damaged or filthy packaging or deliveries which do not meet the specifications as agreed in any other way;
- 9.1.3. to have the Goods returned to Suppliers on Supplier's costs;
- 9.1.4. to recover from the Supplier any costs incurred by the Company in obtaining substitute goods from a third party;
- 9.1.5. where the Company has paid in advance for the Goods which has not yet been delivered, to have such sums refunded by the Supplier; and
- 9.1.6. to claim damages for any additional costs, losses or expenses incurred by the Company which are in any way attributable to the Supplier.

9.2. Without limiting its other rights or remedies, if any of the obligations of the Contract are not performed by any applicable date, the Company may, at its option, claim or deduct either:

- 9.2.1. one per cent (1%) of the Contract price for each week's delay in delivery by way of liquidated damages, up to a maximum of ten per cent (10%) of the total price of the Goods; or
- 9.2.2. where as a result of the delay any person is entitled to claim from the Company or deduct from any sums payable by the person to the Company any sums by way of liquidated damages, a sum equal to the total amount of liquidated damages claimed or deducted by that person as a result of the delay;

9.3. These terms shall extend to any repaired, replaced or re-performed Goods.

9.4. The Company's rights under this Contract are in addition to its rights and remedies implied by statute and common law.

10. CHARGES AND PAYMENT

10.1. The price for the Goods shall be the price set out in the Order and shall be the full and exclusive remuneration of the Supplier in respect of the supply of the Goods. Unless otherwise agreed in writing by the Company the price for the Goods shall be inclusive of the costs of packaging, insurance and carriage of the Goods and every other cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Goods including, without limitation, the cost of mobilisation, transport, accommodation and subsistence for all personnel engaged by the Supplier in the performance of the Goods. No extra charges shall be effective unless agreed in writing and signed by the Company.

10.2. The Supplier shall invoice the Company on completion of the Goods. Such invoice shall include such supporting information required by the Company to verify the accuracy of the invoice, including but not limited to the relevant purchase order number.

10.3. The Company shall pay any amounts invoiced in accordance with these terms in either 15 days with 1% cash discount or 60 days net to a bank account nominated in writing by the Supplier.

10.4. All amounts payable by the Company under the Contract are exclusive of amounts in respect of valued added tax chargeable from time to time ("VAT"). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Company, the Company shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods at the same time as payment is due for the supply of the Goods.

10.5. The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services, and the Supplier shall allow the Company to inspect such records at all reasonable times on request.

10.6. The Supplier shall not be entitled to assert any credit, set-off or counterclaim against the Company in order to justify withholding payment of any such amount in whole or in part. The Company may, without limiting its



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other rights or remedies, set off any amount owing to it by the Supplier against any amount payable by the Company to the Supplier.

11. INTELLECTUAL PROPERTY RIGHTS

- 11.1. In respect of the Goods and any goods that are transferred to the Company as part of the Contract the Supplier warrants that it has full clear and unencumbered title to all such items, and that at the date of delivery of such items to the Company, it will have full and unrestricted rights to sell and transfer all such items to the Company.
- 11.2. Subject to clause 11.3 the Supplier assigns to the Company, with full title guarantee and free from all third party rights, all Intellectual Property Rights in all things and items created under or arising out of the Contract and the Supplier shall obtain waivers of all moral rights in all such things and items to which any individual is now or may be at any future time entitled under law.
- 11.3. The Supplier shall, promptly at the Company's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as the Company may from time to time require for the purpose of securing for the Company the full benefit of the Contract, including all right, title and interest in and to the Intellectual Property Rights assigned or licensed to the Company.

12. INSURANCE

- 12.1. The Supplier shall arrange a products and public liability insurance with a limit of at least ten million Euros (EUR 10,000,000.00) per claim and ensure that this insurance remains in full force and effect.

13. TERMINATION

- 13.1. Without limiting its other rights or remedies and without any liability towards Supplier, the Company may terminate the Contract with immediate effect by giving written notice to the Supplier if:
 - 13.1.1. the Supplier commits a material or persistent breach of the Contract and (if such a breach is remediable) fails to remedy that breach within seven (7) days of receipt of notice in writing of the breach;
 - 13.1.2. the Supplier suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due;
 - 13.1.3. the Supplier commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
 - 13.1.4. a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Supplier (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier;
 - 13.1.5. the Supplier (being an individual) is the subject of a bankruptcy petition order;
 - 13.1.6. a creditor or encumbrancer of the Supplier attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
 - 13.1.7. an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Supplier (being a company);
 - 13.1.8. the Supplier suspends or threatens to suspend, or ceases or threatens to cease to carry on, all or a substantial part of its business; or
 - 13.1.9. the Supplier (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.
- 13.2. Without limiting its other rights or remedies and without any liability towards Supplier, the Company may terminate the Contract with immediate effect by giving written notice to the Supplier.

14. CONSEQUENCES OF TERMINATION



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- 14.1. On termination of the Contract or any part of it for any reason:
 - 14.1.1. the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination; and
 - 14.1.2. clauses which expressly or by implication have effect after termination shall continue in full force and effect.

15. CONFIDENTIALITY

- 15.1. The Supplier shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Supplier by the Company, its employees, agents, consultants or subcontractors and any other confidential information concerning the Company's business or its products or services which the Supplier may obtain ("**Confidential Information**") and the Supplier shall not use any such information for any purpose other than to perform its obligations under the Contract.
- 15.2. The Supplier may disclose such Confidential Information to its employees, officers, representatives, advisers, agents or subcontractors who need to know such information for the purposes of carrying out the Supplier's obligations under this agreement and as may be required by law, court order or any governmental or regulatory authority. The Supplier shall ensure that its employees, officers, representatives, advisers, agents or subcontractors to whom it discloses such information comply with this clause.
- 15.3. This clause 15 shall survive termination of the Contract.

16. GENERAL

- 16.1. Neither party shall be liable to the other as a result of any delay or failure to perform its obligations under the Contract if and to the extent such delay or failure is caused by an event or circumstance which is beyond the reasonable control of that party which by its nature could not have been foreseen by such a party or if it could have been foreseen was unavoidable. If such event or circumstances prevent the Supplier from supplying the Work for more than two (2) weeks, the Company shall have the right, without limiting its other rights or remedies, to terminate the Contract with immediate effect by giving written notice to the Supplier.
- 16.2. The Supplier shall not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of the Company.
- 16.3. The Company may at any time assign, transfer, charge, subcontract, or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.
- 16.4. Any notice required to be given to a party under or in connection with the Contract shall be in writing and shall be delivered to the other party personally or sent by recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business. Any notice shall be deemed to have been duly received if delivered personally, when left at the address referred to above or, if sent by recorded delivery, at or by commercial courier, on the date and at the time that the relevant delivery receipt is signed.
- 16.5. A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- 16.6. Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.
- 16.7. If a court or any other competent authority finds that any provision (or part of any provision) of the Contract is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- 16.8. If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.



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- 16.9. Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.
- 16.10. A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 16.11. Any variation, including any additional terms and conditions, to the Contract shall only be binding when agreed in writing and signed by the Company.
- 16.12. The Contract shall be governed by and construed in accordance with the laws of the Netherlands and the parties hereby submit to the jurisdiction of the court of Amsterdam, the Netherlands.