

## **GENERAL TERMS AND CONDITIONS Provisan Nutrition**

### **1. Applicability of General Terms and Conditions**

- a. These General Terms and Conditions shall apply to all offers made by and agreements concluded with ProViSan Nutrition, unless expressly agreed otherwise in writing. The Purchaser's General Terms and Conditions, accompanying orders, confirmations, etc., shall only be applicable if and in so far as they are expressly accepted, in writing, by the Vendor.

### **2. Agreements**

All our offers are without any obligation; agreements shall be deemed to have become effective if and in so far as they are accepted or confirmed, in writing, by telex or by fax, by the Vendor.

### **3. Delivery and delivery periods**

- a. The goods shall be supplied DDP to the Purchaser, unless agreed otherwise. Delivery Terms and Conditions shall apply in accordance with the 1980 ICC Incoterms or any later version.
- b. Delivery periods shall always be deemed by the Purchaser to be approximate delivery periods and never as deadlines, unless expressly agreed otherwise in writing. If it is agreed that payment be made by means of l/c, the delivery period shall not commence until ProViSan Nutrition has received confirmation of the issuing of irrevocable credit.
- c. ProViSan Nutrition shall immediately inform the Purchaser of circumstances which will cause a delay in the delivery. In the event that delivery periods are exceeded, the Purchaser shall not be entitled to cancel the Agreement, refuse to purchase goods from ProViSan Nutrition or claim compensation, unless this has been expressly stipulated in a written agreement. Said compensation shall, under no circumstances, exceed the invoice value of the products ordered, and shall not be payable if a delay in delivery is attributable to force majeure.
- d. The Vendor shall be entitled to execute an order, he has accepted, in successive instalments.
- e. Goods, which have not been purchased by the Purchaser after the delivery period has elapsed, shall be at his disposal and put into storage for his account and risk, without prejudice to the right of ProViSan Nutrition to demand the purchase price for said goods.

### **4. Prices**

- a. Prices relate to goods supplied DDP to the Purchaser, and include packaging. They are based on the price of materials, transport costs, wages, insurance premiums, tax expenses, import duties and other price-fixing factors, current on the day on which the Agreement came into effect.
- b. If the price-fixing factors, mentioned in Clause 4a, increase to such an extent, as a result of exceptional circumstances at the time of concluding the Agreement, that it

would be unreasonable and unfair to let ProViSan Nutrition bear the increase in costs thus incurred, ProViSan Nutrition shall be entitled to make a reasonable and fair increase in the agreed price or prices.

## **5. Payment**

- a. Unless agreed otherwise, the net price shall be paid within 30 days of the invoice date. The Purchaser shall not be entitled to any compensation whatsoever.
- b. If payment is overdue, the Purchaser shall be deemed to immediately be in default, and the Agreement shall be considered to be cancelled, without judicial intervention. In this event, ProViSan Nutrition shall be entitled to charge the Purchaser for not only the principal, but also the statutory interest and all judicial and extrajudicial costs incurred by ProViSan Nutrition in the collection of the principal, without prejudice to other rights to which ProViSan Nutrition is entitled.  
The extrajudicial costs shall be calculated according to the collection rates of the Nederlandse Order van Advocaten (Dutch Order of Solicitors).
- c. In the event that the Purchaser's payment is overdue, ProViSan Nutrition may defer fulfilment of its own obligations until the outstanding payment has been settled.
- d. If it is agreed to make payment by means of l/c, said l/c shall be a straight letter of credit, made out to ProViSan Nutrition. The l/c shall be subject to the Uniform Customs and Practice for Documentary Credits, 1983 Revision, ICC Publication no. 400.
- e. All bank charges shall be for the Purchaser's account, unless agreed otherwise.

## **6. Reservation of ownership**

Ownership of all the goods supplied shall not be transferred to the Purchaser until all the claims, which ProViSan Nutrition has or will have on the Purchaser for whatever reason, have been completely settled.

## **7. Guarantees and complaints**

- a. ProViSan Nutrition shall be obliged to supply goods which comply with the specifications as agreed, in detail, between ProViSan Nutrition and the Purchaser.
- b. The Purchaser shall be entitled, within 5 days of delivery, to inform ProViSan Nutrition, in writing, of any complaints concerning the quality of the products supplied. In the event that said period is exceeded, any claim against ProViSan Nutrition regarding the aforementioned quality of the products supplied shall become null and void.
- c. If the goods supplied do not comply with the specifications mentioned in Clause 7a, ProViSan Nutrition shall be entitled, at its discretion, to either replace or repair the goods in question.  
ProViSan Nutrition shall never be obliged to pay compensation, unless payment of said compensation has been expressly stipulated in writing. It shall, under no circumstances, exceed the invoice value of the goods in question.

- d. Complaints shall not cause payment obligations to be deferred, not even as concerns approved returns.

## **8. Liability**

- a. ProViSan Nutrition shall never be liable for damage, loss, claims made by third parties, fines and/or costs arising for whatever reason, unless the Purchaser proves that said damage, loss, claims made by third parties, fines and/or costs is/are as a result of a deliberate action, a grave fault or serious negligence on the part of ProViSan Nutrition. The liability of ProViSan Nutrition shall, in any event, be limited to the fulfilment of the guarantee provisions, described in Article 7.
- b. The Purchaser shall indemnify ProViSan Nutrition against and compensate ProViSan Nutrition for all costs, damage and interest which might arise for the Purchaser as a direct or indirect result of claims, made by third parties, with respect to incidents, actions or default for which ProViSan Nutrition is liable as a consequence of the provisions laid down above.

## **9. Force majeure**

- a. In the event that the execution of the Agreement is hindered as a result of force majeure, ProViSan Nutrition shall be entitled, without judicial intervention, to either defer the execution of the Agreement or to entirely or partially cancel said the Agreement, without being obliged to pay any compensation.
- b. In this connection, force majeure refers to: any situation which ProViSan Nutrition could not reasonably take into account and as a result of which the Purchaser cannot reasonably expect that the Agreement be executed as normal, as well as war, risk of war, civil war, revolt, strikes, lockouts, transport difficulties, fire and other serious breakdowns at the premises of ProViSan Nutrition or its suppliers in so far as these factors are not covered by the aforementioned situations.
- c. ProViSan Nutrition shall immediately inform the other party if it is faced with force majeure and when this situation has been resolved.

## **10. Industrial property**

- a. Unless agreed otherwise, ProViSan Nutrition shall specifically reserve all the industrial property rights, to which it is entitled, with respect to the products supplied.
- b. The Purchaser shall not be permitted to completely or partially alter the products supplied, or to affix another brand name to them.

## **11. Invalidity**

If it is apparent that, in special cases, one or more provision(s), laid down in these General Terms and Conditions, is/are null and void, the other provisions shall, nevertheless, remain valid, unless the invalidity of the former provisions affects the essence of the Agreement.

## **12. Applicable law**

These General Terms and Conditions and all agreements, which are based thereon and concluded by ProViSan Nutrition, shall be subject to Dutch law, to the exclusion of the

Uniform Law regarding the International Sale of Movable Tangible Assets, the Uniform Law regarding the Drawing up of International Contracts of Sale (The Hague, 1964), as well as to the exclusion of the 1980 Treaty of Vienna with respect to International Sale.

**13. Competent court**

Any dispute - including those which are only considered as such by one party - which arises from or in connection with offers made by or agreements concluded with ProViSan Nutrition shall only be adjudicated by the competent court in the district where ProViSan Nutrition holds its registered offices.

**14. Legitimate language**

Only the Dutch version of these General Terms and Conditions shall be binding for agreements, concluded by ProViSan Nutrition on the basis of said General Terms and Conditions.