

# GENERAL TERMS AND CONDITIONS OF PURCHASE AND DELIVERY

## Article 1 Applicability

1.1 Unless otherwise agreed in writing by the Parties to the contract, the present general terms and conditions of purchase and delivery (the "Conditions") shall regulate, as the exclusive applicable Conditions, all orders, present and future, placed by Berrymark. Declarations to the contrary or general business conditions issued by the Seller shall be invalid, whether or not expressly objected to. Seller's conditions of sale are hereby expressly excluded for all business operations between Buyer and Seller, whenever and in whatever form they are communicated, even if they determine the opposite and even if they have been provided at a later date. The receipt by Berrymark of Seller's conditions of delivery, deviating from these Conditions, shall not be deemed an objection of the Seller to these Conditions.

## Article 2 Orders and Deliveries

2.1. Orders shall be deemed accepted by the Seller according to the present Conditions unless expressly refused in writing by the Seller within a period of 3 days. For the avoidance of doubt, all orders placed by Berrymark orally, by telephone or by wire shall be confirmed in writing by the Seller within a period of 8 days from placing of the order.

2.2. In the event of uncertainty on the part of the Seller regarding specifications, quantities, packaging, quality, period of delivery, etc. the Seller shall be obliged to contact Berrymark forthwith to obtain any missing information, the Seller being liable for any loss resulting from non-compliance with this requirement.

2.3. The Seller hereby undertakes to supply commercial quality and, in the case of food, perfectly healthy and safe products. The supplied products shall be absolutely faultless and must fully comply with the applicable regulations on food products in the EU and worldwide. Unless otherwise agreed in writing, the quality criteria contained in the quality specifications for raw food issued by Berrymark shall apply. For more detailed information see article 4.

2.4. Any particular quality the Seller has expressly undertaken to supply must actually be supplied. Deliveries that do not comply with the above conditions shall not be accepted by Berrymark. In the event of refusal due to non-conforming quality, Berrymark shall be entitled to terminate the Contract without prior warning and without granting a period of grace, the Seller in this event being obliged to indemnify Berrymark for any loss the latter may have suffered due to the non-conforming delivery (e.g. cost of quality checks, purchase of goods in replacement, loss of profit, etc.).

2.5. The Seller shall be obliged to fully comply with the agreed terms and dates of delivery which shall be considered fixed dates. In the event of delays in delivery, Berrymark shall be entitled to terminate the Contract without prior warning and without granting a period of grace or delivering notice demanding delivery to the Seller, the Seller in this event being obliged to indemnify Berrymark for any loss the latter may have suffered due to the delay (e.g. purchase of goods in replacement, loss of profit, etc.).

2.6. The transport risk shall be borne by the Seller. This provision shall also apply in the event of deliveries being collected from the premises of the Seller or transported by a forwarding company on behalf of Berrymark or his customer. Except in the event of temperature problems at arrival of the goods, if it is registered on the CMR that the goods were loaded at max -18°C, these risks are under the responsibility of the transport company.

2.7. The risk of weight loss of raw food shall be borne by the Seller who shall invoice to Berrymark only the weight determined on Buyer's premises. This provision shall also apply to purchase ex loading station.

2.8. Unless otherwise agreed in writing, the Seller shall bear the cost of transport to the place of receipt on Berrymark's premises. If freight costs are charged to Berrymark's account the products shall be shipped in the cheapest and safest way. Unless otherwise agreed in writing, the Seller shall be required to cover the transport risk by a suitable insurance to be taken out at his own cost. Specific delivery instructions issued by our customs and transport department shall be binding.

2.9. Documents, samples, recipes, etc. handed over to the Seller by Berrymark shall remain property of Berrymark and shall be returned free of charge to Berrymark as soon as the Seller no longer needs them. Such documents, samples, recipes, etc. shall not be disclosed to third parties at any time during or after performance of the respective Contract. The production of the copies thereof shall always require prior approval of Berrymark. The Seller shall be liable for any loss suffered due to non-compliance with this provision.

## Article 3 Compliance with the Law on Food Products and Packaging Requirements

3.1. All products supplied by the Seller shall fully comply in every respect with the relevant provisions of Belgian law on food products, the relevant provisions issued by EU regulations, as well as the relevant provisions and guidelines issued by FDA, FSANZ and other worldwide food safety regulations in the version valid at that time. In the case of discrepancies between the limits and standards established by different provisions, the stricter provision shall prevail.

3.2. For organic foods, the pesticide residue limits are zero.

3.3. The heavy metal limits established by European law and FDA regulations shall apply. In the case of discrepancies between the limits, the stricter provision shall prevail.

3.4. Radioactivity limits: max 50 Bq/kg.

3.5. The packaging shall protect the organoleptic properties and other quality characteristics of the product. Additionally, the packaging shall protect the product against microbiological or any other kind of impurification. The packaging shall be designed in such a way that the passing on any odour, taste, color, chemical, physical or any other characteristics alien to the nature of the product from the packaging to the product is prevented throughout the entire processing and distribution period up to the final selling and processing of the product. Additionally, the packaging shall protect the product, as far as practicable, against loss of humidity, accumulation

of warmth due to the effects of radiation and, if applicable, leakage. The packaging shall not contain any staples, brittle glue plugs or other loose components that might result in impurification of the product during production process. Cans and barrels shall not be indented or deformed in any other way.

## 3.6. Labeling.

Except otherwise provided in a particular purchase contract, every packaging unit must be provided with the following information:

- Product name
- Country of origin
- Best Before Date
- Lot number
- Net weight

Missing labels, incorrect labels shall be placed or replaced at Berrymark's premises and the cost for it shall be deducted from the invoice value of the goods.

## Article 4 Warranty

4.1. The examination report produced in the laboratory of Berrymark shall be the valid basis for the quality determination and quality acceptance and shall be binding upon the Seller. In the event of justified doubt regarding such an examination report on the part of the Seller, the seller shall be entitled, with the approval of Berrymark to cause at his own expense, the quality of the delivered products to be determined by an expert in the laboratory of Berrymark.

4.2. If the delivered products fail to meet the agreed or normally expected product characteristics, Berrymark shall be entitled, at his own discretion, to terminate the Contract without prior warning and without granting a period of grace, to demand a reduction of the purchasing price or to require delivery of conforming products within an additional period to be granted. However, Berrymark shall also be entitled to remedy forthwith or cause to be remedied forthwith by a third party any shortcoming of the delivered product at cost of the Seller. Berrymark shall be entitled to refuse payment until all shortcomings of the delivery are remedied. Additionally, Berrymark shall be entitled to demand damages for non-performance, if delivered products fail to meet the agreed or promised quality or are impaired by any kind of defect.

4.3. Berrymark shall be entitled to give written notice of visible defects within a period of 4 weeks from the date of receipt of the respective delivery. In the event of hidden defects, Berrymark shall be entitled to submit complaints for an unlimited period of time before as well as after processing of the delivered goods.

## Article 5 Payment and Place of Performance

5.1. Original invoices shall be provided with the order number of Berrymark and shall be mailed by regular post to the address of Berrymark immediately after dispatch of the corresponding delivery.

5.2. If orders are delivered in full compliance with the Contract and that invoices are issued in due time, Berrymark shall make payment within 60 days after the date of receipt of the invoice. In the event of payment by Berrymark within 10 days after receiving the invoice, a discount of 3% shall be deducted from the price.

5.3. Berrymark shall be entitled to set off its debt with any claims on the Seller.

5.4. The Seller shall not be entitled to assign any claim on Berrymark to third parties.

5.5. The place of performance of payment shall be Sint-Truiden. The place of performance of deliveries shall be the place of delivery indicated in the order.

## Article 6 Disputed and Applicable Law

6.1. Any contractual relations between the Seller and Berrymark, including these terms and conditions, are governed by Belgian law (without application of the conflict of law rules thereof). The United Nations Convention on Contracts for the International Sale of Goods (the Vienna Convention of 11 April 1980) does not apply to the Agreement.

6.2. All disputes between the Seller and Berrymark shall be adjudicated by the competent court in the district of Hasselt (Belgium), which shall be exclusively competent.

## Article 7 Severability

7.1. In the event that parts of the present Conditions are found to be invalid in whole or in part, the remaining parts of the Conditions shall nevertheless remain in full effect. Any invalid provision shall be replaced by the valid provisions that best meets the economic intentions of the invalid provision. The present general conditions represent the full contract between the Parties.

## Article 8 Confidentiality

8.1. The Seller shall keep confidential the existence, nature and substance of the agreement, along with other corporate information and shall not disclose or use any information regarding that without the written permission of Berrymark.