

Article 1 General

1. These conditions apply to every quotation, offer and agreement between Food Cabinet BV, referred to below as the 'User', and a Client to whom the User has declared these conditions applicable, insofar as the parties have not varied from these conditions expressly and in writing.
2. These conditions also apply to agreements with the User, the performance of which requires the User to involve third parties.
3. These general conditions are also written for the User's employees and its management board.
4. The applicability of the Client's purchasing or other conditions is expressly rejected.
5. If one or more provisions of these general conditions are at any time fully or partially void or voided, the other provisions of these general conditions remain fully applicable. The User and the Client will then consult to agree on new provisions to replace the void or voided provisions, considering the aim and purpose of the original provisions as much as possible.
6. If any ambiguity exists regarding the interpretation of one or more provisions of these general conditions, they must be interpreted 'in the spirit' of these provisions.
7. If a situation arises between the parties that is not covered in these general conditions, this situation will be assessed in the spirit of these general conditions.
8. If the User does not always require strict compliance with these conditions, this does not mean that the provisions of these conditions do not apply, or that the User would to any extent lose the right to require strict compliance with the provisions of these conditions in other cases.

Article 2 Offers and quotations

- 1 All the User's offers and quotations are without obligation unless the offer sets a deadline for acceptance. If no acceptance deadline is set, no rights can be derived from the offer or quotation in any way if the product to which the offer or quotation relates is no longer available in the meantime.
- 2 The User cannot be bound by its offers or quotations if the Client can reasonably understand that the offers or quotations, or any part of them, contain an obvious error or oversight.
- 3 Unless stated otherwise, the prices mentioned in an offer or quotation exclude VAT and other government levies, as well as any costs to be incurred for the purpose of the agreement, including travel and accommodation, shipping and administration.
- 4 If the acceptance varies from the proposal made in the offer or quotation (whether on minor or major points), the User will not be bound by it. Unless the User indicates otherwise, the agreement will then not be concluded in accordance with this varying acceptance.
- 5 A combined quotation does not oblige the User to execute part of the order at a corresponding part of the quoted price. Quotations or offers do not apply automatically to future orders.

Article 3 Contract term; execution periods, transfer of risk, performance and amendment of the agreement; price increases

1. Unless the nature of the agreement dictates otherwise or the parties explicitly agree otherwise in writing, the agreement between the User and the Client is entered into for an indefinite period.
2. If a period has been agreed or specified for performing certain work or delivering certain goods, this is never a strict deadline. If a period is exceeded, the Client must therefore give the User a written notice of default. The User must be given a reasonable period in which to still perform the agreement.
3. The User must perform the agreement to the best of its knowledge and ability and in accordance with high standards, all based on the state of knowledge at the time.
4. The User may have third parties perform certain work. The applicability of Articles 7:404, 7:407(2) and 7:409 of the Dutch Civil Code is expressly excluded.
5. If the User or third parties hired by the User perform work for the purpose of an order at the Client's location or a location designated by the Client, the Client must provide the facilities reasonably required by those workers free of charge.
6. Delivery occurs ex works from the User. The Client must take delivery of the goods when they are made available to them. If the Client refuses to take delivery or fails to provide information or instructions required for delivery, the User may store the goods at the Client's risk and expense. The risk of loss, damage or depreciation passes to the Client when the goods are made available to them.

7. The User may perform the agreement in several phases and invoice the part thus performed separately.
8. If the agreement is performed in phases, the User may suspend performing those parts belonging to a subsequent phase until the Client has approved the results of the preceding phase in writing.
9. The Client must ensure that all information, which the User indicates is necessary or which the Client should reasonably understand is necessary for performing the agreement, is provided to the User in time. If the information required for performing the agreement has not been provided to the User in time, the User may suspend performing the agreement and/or charge the Client for the additional costs resulting from the delay according to its usual rates at that time. The execution period will not start until after the Client has made the information available to the User. The User is not liable for damage, of any nature, because it has relied on incorrect and/or incomplete information provided by the Client.
10. If it becomes clear while performing the agreement that it is necessary to amend or supplement the agreement to perform it properly, the parties will promptly adapt the agreement in consultation. If the nature, scope or content of the agreement changes – whether or not at the request or on the instructions of the Client or the competent authorities, etc. – and the agreement changes in qualitative and/or quantitative terms as a result, this could have consequences for what the parties originally agreed. This could also increase or decrease the originally agreed amount. The User will quote prices in advance as much as possible. An amendment to the agreement can also change the originally specified period of execution. The Client accepts the possibility of amending the agreement, including a change in price and period of execution.
11. If the agreement is amended, including by means of a supplement, the User may perform the agreement only after the authorised person at the User has approved the amendment and the Client has agreed to the price and other conditions stated for the performance, including the time to be determined for performance. Failure to perform or to not immediately perform the amended agreement does not constitute a breach of contract by the User and is not a ground for the Client to give notice of termination or to cancel the agreement.
12. The User may refuse a request to amend the agreement without being in default if this could have qualitative consequences, quantitative consequences, or both, for example for the work to be performed or goods to be delivered in that regard.
13. If the Client fails to properly fulfil their obligations towards the User, they will be liable for all damage caused directly or indirectly to the User as a result.
14. If the User agrees with the Client on a fixed fee or fixed price, the User may still increase this fee or price at any time, without the Client being entitled to terminate the agreement for that reason, if the price increase results from a statutory or regulatory power or obligation or is caused by an increase in the price of raw materials, wages, etc. or on other grounds that could not reasonably have been foreseen when the agreement was concluded.
15. If the price increase other than as a result of an amendment to the agreement exceeds 10% and occurs within three months of entering into the agreement, only a Client entitled to invoke Part 5, Section 3 of Book 6 of the Dutch Civil Code is entitled to terminate the agreement by means of a written statement unless:
 - the User is still willing to perform the agreement based on the original arrangements;
 - the price increase results from a statutory power or obligation incumbent on the User;
 - it has been stipulated that delivery will occur more than three months after the conclusion of the agreement; or
 - it has been stipulated for the delivery of an item that this will occur more than three months after the purchase.

Article 4 Suspension, termination and early notice of termination of the agreement

1. The User may suspend fulfilment of its obligations or terminate the agreement, if the Client does not comply, does not comply in full, or does not comply in time with their obligations under the agreement; if, after the agreement has been concluded, the User becomes aware of circumstances that give it good reason to fear that the Client will not fulfil their obligations; if, when concluding the agreement, the Client was asked to provide security for the fulfilment of their obligations under the agreement and this security is not provided or is insufficient; or if, because of a delay by the Client, the User can no longer be expected to perform the agreement under the originally agreed conditions.

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2. The User may also terminate the agreement if circumstances arise of such a nature that performing the agreement is impossible or if other circumstances arise of such a nature that unaltered maintenance of the agreement cannot reasonably be required of the User.
3. If the agreement is terminated, the User's claims against the Client become immediately due and payable. If the User suspends fulfilment of its obligations, it retains its claims under the law and agreement.
4. If the User proceeds with suspension or termination, it will in no way be obliged to compensate for any resultant damage and costs.
5. If the termination is attributable to the Client, the User will be entitled to compensation for damage, including costs, incurred directly and indirectly as a result.
6. If the Client does not fulfil their obligations under the agreement and this failure justifies termination, the User may terminate the agreement immediately and with direct effect with no obligation on its part to pay any compensation or indemnification, while the Client must pay compensation or indemnification because of their breach of contract.
7. If the User terminates the agreement early, the User will, in consultation with the Client, arrange to transfer the work still to be performed to third parties unless the termination is attributable to the Client. If transferring the work involves additional costs for the User, these costs will be charged to the Client. Unless the User states otherwise, the Client must pay these costs within the period specified for that purpose.
8. If the Client is liquidated, petitions for or is granted a moratorium on the payment of debts, petitions for or is declared bankrupt, their assets are attached – if and insofar as the attachment has not been lifted within three months – they enter into debt restructuring or another circumstance occurs as a result of which the Client can no longer dispose freely of their assets, the User may terminate the agreement immediately and with direct effect or cancel the order or agreement, with no obligation on its part to pay any compensation or indemnification. In that case, the User's claims against the Client will become immediately due and payable.
9. If the Client cancels all or part of a placed order, the work that was performed and the goods ordered or prepared for it, plus any related supply and delivery costs and the working time reserved for performing the agreement, will be charged in full to the Client.

Article 5 Force majeure

1. The User need not fulfil any obligation towards the Client if it is prevented from doing so because of a circumstance that is not its fault, and for which it is not accountable by law, a legal act or according to generally accepted standards.
2. Besides the definition of force majeure in legislation and case law, it is defined for the purpose of these general conditions as all external causes, foreseen or unforeseen, over which the User cannot exercise any influence, but which prevent the User from fulfilling its obligations. This includes strikes in the User's company or at third parties. The User may also invoke force majeure if the circumstance preventing performance or continued performance of the agreement occurs after the User should have fulfilled its commitment.
3. The User may suspend its obligations under the agreement during the period of force majeure. If this period lasts longer than two months, either party may terminate the agreement with no obligation to pay compensation to the other party.
4. If the User has already partly fulfilled its obligations under the agreement or will be able to fulfil them when the force majeure occurs, and independent value can be attributed to the part fulfilled or still to be fulfilled, the User may invoice the part already fulfilled or still to be fulfilled separately. The Client must pay this invoice as if it were a separate agreement.
5. Additional provisions may be included in the offer. These provisions form an integral part of these general conditions and are thus binding.

Article 6 Payment and collection costs

1. Unless the User states otherwise in writing, the Client must always pay within 14 days of the invoice date, in the manner specified by the User, and in the currency invoiced. The User may invoice periodically.
2. If the Client fails to pay an invoice on time, they will be in default by operation of law. The Client must then pay interest at the rate of 3.5% per month unless the statutory rate is higher, in which case the statutory rate is payable.

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Interest on the amount due will be calculated from the moment the Client is in default until the moment they pay the full amount due.

3. The User may allocate the Client's payments first to reduce the costs, then to reduce the interest that has fallen due and, lastly, to reduce the principal and the accrued interest. The User may, without being in default as a result, refuse an offer of payment if the Client designates a different order for allocating payment. The User may refuse settlement of the principal in full if this does not include the interest that has fallen due, accrued interest and collection costs.
4. The Client may never set off the amount they owe to the User. Objections to the amount of an invoice do not suspend the payment obligation. If the Client may not invoke Section 6.5.3 (Articles 231 to 247, Book 6 of the Dutch Civil Code), they are also not entitled to suspend payment of an invoice for any other reason.
5. If the Client is in breach or default of their obligations, or of fulfilling them in time, all reasonable costs incurred to obtain fulfilment out of court are payable by the Client. The extrajudicial costs are calculated based on customary Dutch collection practice, currently the calculation method according to the Voorwerk II report. However, if the User has incurred higher collection costs that were reasonably necessary, the actual costs incurred qualify for reimbursement. Any judicial and enforcement costs incurred will also be recovered from the Client. The Client will also owe interest on the collection costs due.

Article 7 Retention of title

1. The goods delivered by the User under the agreement remain the User's property until the Client has properly fulfilled all obligations under the agreement(s) concluded with the User.
2. The goods delivered by the User, subject to the retention of title under paragraph 1, may never be resold or used as a means of payment. The Client is not authorised to pledge or otherwise encumber any item subject to the retention of title.
3. The Client must always do everything that can reasonably be expected of them to safeguard the User's ownership rights. If third parties attach the goods delivered under the retention of title or wish to establish or assert rights to them, the Client must inform the User of this immediately. The Client also undertakes to insure and keep the goods delivered under retention of title insured against fire, explosion and water damage, as well as against theft, and to present the policy of this insurance to the User for inspection immediately on request. If the insurer pays under the insurance, the User will be entitled to these funds. Insofar as necessary, the Client undertakes towards the User to cooperate in advance with everything that might be or prove to be necessary or desirable in that context.
4. If the User wishes to exercise its ownership rights as referred to in this article, the Client gives unconditional and irrevocable permission in advance to the User, and third parties to be appointed by the User, to enter all places where the User's property is located and repossess it.

Article 8 Warranties, investigations and complaints, prescription period

1. The goods to be delivered by the User meet the customary requirements and standards that can reasonably be set for them at the time of delivery and for which they are intended during normal use in the Netherlands. The warranty mentioned in this article applies to goods intended for use in the Netherlands. For use outside the Netherlands, the Client must verify whether the goods are suitable for use there and meet the conditions imposed on them. In that case, the User may set other warranty and other conditions for the goods to be delivered or work to be performed.
2. The warranty mentioned in paragraph 1 of this article applies for one month after delivery unless the nature of the delivered goods dictates otherwise or the parties have agreed otherwise. Unless stated otherwise, if the warranty provided by the User concerns an item produced by a third party, the warranty is limited to that provided by the producer of the item.
3. Any form of warranty ceases to apply if a defect has occurred because of or arises from careless or improper use of an item, use after its best-before date, improper storage or maintenance by the Client or third parties, or if the Client or third parties, without the User's written consent, have made changes or tried to make changes to the item, attached other items to it that should not have been attached to it, or processed or treated it in a manner other than prescribed. The Client is also not entitled to claim against the warranty if the defect was caused by or is the result of circumstances beyond the User's control, including weather conditions (including, but not limited to, extreme rainfall or temperatures), etc.

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4. The Client must examine the delivered items, or have them examined, immediately when the goods are made available to them or the relevant work has been performed. In doing so, the Client must examine whether the quality and quantity of the delivered items corresponds to what has been agreed and meets the requirements that the parties have agreed in this regard. Any visible defects must be reported to the User in writing within seven days of delivery. Any hidden defects must be reported to the User in writing immediately, but in any case no later than fourteen days after their discovery. The report must contain as detailed a description of the defect as possible to enable the User to respond adequately. The Client must give the User the opportunity to investigate a complaint or to have it investigated.
5. If the Client complains in time, this does not suspend their payment obligation. In that case, the Client also remains liable to purchase and pay for the other items ordered and for the instructions they have given the User.
6. If a defect is reported later, the Client is no longer entitled to repair, replacement or compensation.
7. If it is established that an item is defective and a complaint about this has been filed in time, the User will, at its discretion, replace or arrange for the replacement of the defective item within a reasonable period of receiving it back, or, if returning it is not reasonably possible, of written notice of the defect from the Client, or pay compensation in lieu to the Client. If the User opts for replacement, the Client must return the replaced item to the User and transfer ownership of it to the User unless the User specifies otherwise.
8. If it is established that a complaint is unfounded, the costs incurred, including the User's costs of investigating the complaint, are payable in full by the Client.
9. After the warranty period expires, all costs of repair or replacement, including administration, shipping and call-out charges, will be charged to the Client.
10. Contrary to the statutory prescription periods, the prescription period of all claims and defences against the User and the third parties whom the User involves in performing an agreement is one year.

Article 9 Liability

1. If the User is liable, this liability is limited to the provisions of this article.
2. The User is not liable for damage, of any nature, that has arisen because it has relied on incorrect and/or incomplete information provided by or on behalf of the Client.
3. If the User is liable for any damage, its liability is limited to a maximum of twice the invoice value of the order, or to the portion of the order to which the liability relates.
4. The User's liability in any case is always limited to the amount paid by its insurer in the relevant case.
5. The User is liable for direct damage only.
6. Direct damage exclusively means the reasonable costs incurred to determine the cause and scope of the damage, insofar as its determination relates to damage within the meaning of these conditions, any reasonable costs incurred to have the User's defective performance conform to the agreement, insofar as it can be attributed to the User, and reasonable costs incurred to prevent or limit damage, insofar as the Client demonstrates that these costs have resulted in limiting direct damage as referred to in these general conditions. The User will never be liable for indirect damage, including consequential damage, loss of profits, missed savings and loss due to business interruption.
7. The limitations of liability in this article do not apply if the damage has been caused by the intent or gross negligence of the User or its managerial staff.

Article 10 Indemnity

1. The Client indemnifies the User against any third-party claims for damage in connection with performing the agreement whose cause is attributable to parties other than the User. If the User is held liable by third parties on that basis, the Client must assist the User both in and out of court and immediately do all that can be expected of them in that case. If the Client fails to adopt adequate measures, the User may do so itself without giving the Client a notice of default first. All resultant costs and damage that the User and third parties incur are entirely at the Client's expense and risk.

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Article 11 Intellectual property

1. The User reserves its rights and powers under the Copyright Act (*Auteurswet*) and other laws and regulations governing intellectual rights. The User may use the knowledge it gains while performing an agreement for other purposes, provided that no strictly confidential information of the Client is disclosed to third parties in the process.

Article 12 Applicable law and disputes

1. Only Dutch law applies to legal relationships to which the User is a party, even if an obligation is fully or partially performed abroad or if the party involved in the legal relationship is domiciled abroad. The applicability of the Vienna Sales Convention is excluded.
2. The court in the User's place of business has sole jurisdiction to take cognisance of disputes unless the law prescribes otherwise. Nevertheless, the User may submit the dispute to the court with jurisdiction under the law.
3. The parties will approach court only after making every effort to settle a dispute by agreement.

Article 13 Source and amendment of conditions

1. These conditions have been filed with the Amsterdam Chamber of Commerce.
2. The most recently filed version or the version that applied when the legal relationship with the User was established always applies.
3. The Dutch text of the general conditions is always decisive for their interpretation.