

# General Conditions of Delivery Tjoapack Netherlands B.V July 1st 2016

## 1. GENERAL

1. In these General Conditions Tjoapack shall be: Tjoapack Netherlands B.V., with its registered office in (4879 AC) Etten Leur, at Nieuwe Donk 9.

2. In these General Conditions Client shall be: any natural person or legal entity with whom Tjoapack concludes agreements for the delivery of products and services.

## 2. APPLICABILITY

1. These General Conditions shall apply to all legal relationships whereby Tjoapack acts as (potential) supplier of products and services. These General Conditions shall apply to every order, offer and agreement between Tjoapack and Client in respect of which Tjoapack shall have declared these General Conditions applicable, in so far as parties shall not have departed from these General Conditions.

2. These General Conditions shall apply equally to all agreements with Tjoapack for the performance of which Tjoapack engages the services of third parties.

3. Applicability of any General Conditions used by Client is herewith explicitly rejected, unless parties have agreed otherwise in writing.

4. No departure from these General Conditions shall be permitted, unless agreed otherwise in writing.

5. If Tjoapack concludes agreements with Client more than once then with regard to all subsequent agreements these General Conditions shall each time apply, regardless if these have or have not been declared applicable.

6. If one or several provisions in these General Conditions are void or voided then the other provisions of these General Conditions shall remain applicable.

## 3. QUOTATIONS, FORMATION OF AGREEMENTS

1. All offers and quotations of Tjoapack shall be without obligation, unless the offer stipulates an acceptance period.

2. If a quotation or offer contains an offer without obligation and this offer is accepted by Client then Tjoapack shall have the right to revoke the offer within two days upon receipt.

3. If Client places an order then the agreement shall be formed only after Tjoapack has accepted and confirmed said order in writing, or proceeds to accepted and confirmed said order in writing, or proceeds to implement same.

4. Additions to and changes of orders shall be accepted only if these can reasonably be executed, and shall be binding only after written confirmation thereof by Tjoapack. All ensuing additional costs and expenses shall be for account of Client.

5. Displayed or supplied samples or models shall be merely indicative, without the deliverable product being required to match same.

6. In the event of verbal agreements the invoice shall be regarded as the accurate and complete representation of the agreement, subject to any complaint lodged within 14 days upon invoice date.

7. If a natural person concludes an agreement on behalf of or for account of another natural person, he declares – by signing the contract – to be duly authorized to do so. This person shall be severally liable along with the other natural person for all obligations ensuing from the agreement.

8. Tjoapack shall not be bound by an acceptance that varies from the offer presented in the quotation. In such an event, the agreement shall not be formed in accordance with this varying acceptance, unless Tjoapack stipulates otherwise.

9. A compound price quotation shall not obligate Tjoapack to make delivery of a portion of the products specified in the offer or quotation at a corresponding portion of the quoted price.
10. Tjoapack shall be free, without stating reasons, to refuse an order or part of an order or to subject an order to conditions.
11. Offers or quotes shall not apply to follow-up orders.

#### 4. INTELLECTUAL PROPERTY

1. Without prejudice to the provisions in these General Conditions, Tjoapack reserves the rights and powers attaching to Tjoapack by virtue of intellectual property law and the Auteurswet [Copyright Act].
2. All drawings, samples, models, designs or descriptions shall remain the property of Tjoapack and shall not without prior written authorization be duplicated, resold, manipulated, modified, copied, reproduced, published or disclosed to third parties, unless the nature of the products sold or documents supplied dictates otherwise.
3. All intellectual property rights shall remain attached to Tjoapack.
4. Client shall hold Tjoapack harmless against claims by third parties for reason of infringement of intellectual property rights regarding products that have been manufactured by Tjoapack and services that have been provided by Tjoapack on the basis of the order placed by Client and the specifications described therein.

#### 5. REAL RIGHTS

Client shall never acquire any real right with respect to auxiliary resources such as tools, plates, tooling, moulds and other machine or production components purchased by Tjoapack for the purpose of performing the agreement concluded with Client, such to apply equally when Tjoapack has passed on the costs thereof in whole or in part to Client.

#### 6. ORDERS AND SPECIFICATIONS

1. Client shall be responsible for the accuracy of the data and specifications provided in the order relating to the packaging materials to be used and the labeling and/or coding to be affixed.
2. Client shall be responsible for the timely supply of all requisite information intended to enable Tjoapack to satisfy the obligations ensuing from the agreement. The definition of 'timely' shall be: at least 20 business days prior to the delivery date confirmed by Tjoapack. If this information is provided by Client within said period of 20 business days then Tjoapack reserves the right to invoice all ensuing costs to Client. In such an event, Tjoapack will also communicate to Client a revised delivery date. The definition of 'information' shall be: all data required to produce a complete end product subject to the intended (packaging) conditions and accurate and variable data.
3. In the event of new products and/or changes in packaging materials of existing products, Client shall be responsible for timely and correct supply of the data required to enable Tjoapack to create a Basic Packaging Document (= a Master Document containing all specifications for the materials to be used and operations to be performed by Tjoapack) and prepare artwork. The definition of 'timely' shall be: at least 13 weeks prior to the delivery date confirmed by Tjoapack. If this information is provided by Client within said period of 13 weeks then Tjoapack reserves the right to invoice all ensuing costs to Client. In such an event, Tjoapack will also communicate to Client a revised delivery date.
4. A Basic Packaging Document shall be created at no payment the first time. As from the 2nd modification to be implemented by request of Client, extra costs shall be invoiced for the required modifications.

#### 7. SUPPLY OF BULK AND MATERIALS

1. The bulk medications supplied by Client for packaging shall be shipped to Tjoapack in good order, clearly identified, with clear packing slip affixed, properly sealed and inside hygienic containers. Other materials shall equally be supplied in a properly sealed and clearly identified state. Bulk and materials shall be supplied separately per charge.
2. Special storage conditions, applicability of the Opiumwet [Opium Act], and any toxic or explosive nature of the bulk presented for packaging shall be communicated to Tjoapack prior to invitation to quote or order award.



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3. Client shall supply the bulk presented for packaging, as well as any other materials, carriage paid at the packaging location designated in advance by Tjoapack not later than 30 business days prior to the delivery date confirmed by Tjoapack, unless agreed otherwise in writing and with mutual consent.

4. Tjoapack may invoice storage cost for bulk presented for packaging, as well as any other materials, presented at the packaging location delivered 60 business days prior to the delivery date confirmed by Tjoapack.

5. If checks performed by Tjoapack reveal that bulk and/or other materials supplied by Client are not in good order and/or do not match the specifications as described in the quotation and/or order then Tjoapack shall be entitled to refuse the order. Any resultant costs shall be for account of Client.

#### 8. PLANNING

If the production reserved at Tjoapack cannot proceed according to planning due to cancellation by Client of orders already planned, the untimely supply of bulk and/or other packaging materials and/or the untimely supply of information required for said production then all resultant costs including costs of materials, costs of preparations, costs of idle machine capacity and labor, shall be fully for account of Client.

#### 9. INSURANCE

Client shall adequately insure its bulk and other materials against fire, burglary, theft, mains flooding damage or other damage for the period of storage and processing at Tjoapack as well as during the transports.

#### 10. PRICES

1. All prices shall be ex works, Etten-Leur and, respectively, exclusive of VAT and any extra costs as stated in the quotation and/or confirmation of order.

2. After two months, Tjoapack shall be free to pass on price increases if an increase in statutory or cost price increases in excess of 5% have occurred between the moment of offer/acceptance and delivery.

3. Tjoapack shall be entitled to adjust its prices each year by at least the inflation correction.

#### 11. DELIVERY

1. Delivery times agreed upon with Tjoapack shall be indicative and shall not be deadlines. Simply their expiration shall not produce default. Tjoapack cannot be in default except upon notice of default given by Client in writing.

2. Delayed and/or incomplete supply of bulk and/or materials and/or specifications by Client shall entitle Tjoapack to re-establish the delivery time. In addition Tjoapack reserves the right, if one of abovementioned factors occurs within a period of 13 weeks prior to the delivery date confirmed by Tjoapack, to pass on any resultant costs to Client.

3. Delivery shall be ex works, from the location where the product has been produced.

Transport shall in all circumstances be for account and risk of Client.

4. Loss of Bulk product and other material provided (i) for production batches less or equal than 5.000 which is less than 10% or (ii) for production batches higher than 5.000 tablets which is less than 5% or (iii) for production batches higher than 10.000 which is less than 2,5% or (iv) for production batches higher than 20.000 which is less than 1,5%, is considered acceptable and won't be reimbursed. Tjoapack can never be accounted for higher loss due to poor quality of Bulk product and other material provided. Reimbursement is limited to the order value.

5. If it proves not possible to make delivery to Client of the products for a reason that lies within the control of Client then Tjoapack shall be entitled to put the ordered products in storage for account and risk of Client. The loss incurred by Tjoapack shall be for account of Client.

6. If an order consists of multiple sub-deliveries then each sub-delivery shall be regarded as a separate order. Tjoapack shall be entitled to invoice Client per sub-delivery.

#### 12. PAYMENT

1. Unless contractually agreed otherwise, Invoices of Tjoapack shall be settled within 30 days upon invoice date. All payments shall be credited without any discount or setting off to the account number stated on the invoice. Protests made against the amounts of the invoices shall not suspend the obligation to pay.

2. Tjoapack shall be entitled to charge an advance amount. After payment of the advance amount, Tjoapack will ensure delivery of the products or start of the work.

3. Upon expiration of the payment period stated in sub-clause 1 of this article, Client shall be in default by

operation of law without any defaulting notice being required, and the outstanding claims on Client shall be immediately due and payable in full.

4. The compensation that Client shall owe due to delay in settling an amount shall be 1.5% interest payable per month or a portion thereof, unless the legal interest or the statutory commercial interest is higher, in which case the highest rate shall apply.

The interest over the due and payable sum will be calculated as from the moment that Client is in default until the moment of full settlement of the full sum.

5. Client shall also be obligated to pay the costs entailed in obtaining extra-judicial settlement. The extra-judicial costs shall be 15% of the sum payable, but shall at a minimum correspond to the Orde van Advocaten [Bar Association] Collection Fee Rates, such subject to a minimum of € 350.00. If Tjoapack has incurred higher costs, which were reasonably required, then these shall also be paid. Any reasonably incurred judicial and enforcement costs shall also be for account of Client.

6. Payments shall go first to reduce the costs, then to reduce the interest due and finally to reduce the principal sum and the current interest.

7. Protests concerning submitted invoices shall be communicated in writing to Tjoapack within the agreed upon payment period, with reasons duly stated.

8. In the event of liquidation, (filing for) bankruptcy, admitting Client to statutory debt rescheduling by virtue of the Wet Schuldsanering Natuurlijke Personen [Debt Rescheduling Natural Persons Act], guardianship, attachment or Client's (provisional) suspension of payment, the claims of Tjoapack on Client shall be immediately due and payable.

### 13. COMPLAINTS

1. At the moment delivery is made, Client shall be obligated to verify if the products and services satisfy the terms of the agreement.

2. Complaints shall be submitted to Tjoapack in writing, with reasons duly stated, within 8 days upon delivery having been taken. Upon expiration of this period, Client shall be deemed to have conclusively accepted the products delivered and/or the services provided.

3. In the event of attributable breach of the performance deliverable by Tjoapack, Client shall be entitled to rectification thereof, unless the agreed upon performance became permanently unfeasible. A claim for supplemental damages may be honored up to the sum of the pay-out to be made by the insurer of Tjoapack, and such up to the value of the invoice that Tjoapack sends or has sent to Client.

4. Not a ground for claims shall be a breach resulting from inaccuracy, incompleteness and/or delay with respect to the bulk, other materials and specifications supplied by Client.

### 14. LIABILITY

1. If Tjoapack is liable for direct damage then such liability shall be limited to no more than the sum of the pay-out to be made by the insurer of Tjoapack, and such up to the value of the invoice that Tjoapack sends or has sent to Client.

2. Any claim for consequential loss or other indirect or consequential damage of any nature whatsoever shall be excluded.

3. Client shall hold Tjoapack fully harmless in the event that Tjoapack is held liable regarding any damage or loss for which it is not liable by virtue of the agreement with Client or these Conditions.

4. Tjoapack shall never be liable for:

off-specs, damage events, errors and defects not found in the products that have passed Client's inspections; damage/loss resulting from rejected resources due to non-compliance with environmental protection legislation; damage/loss resulting from use not in compliance with user instructions or product information.

5. Tjoapack shall never be liable for damage/loss arising from advice given. Advice shall consistently be given on the basis of facts and circumstances as they are known at Tjoapack and in mutual consultation, whereby Tjoapack shall consistently assume the intention of Client as guidance.

6. The limitations of liability for direct damage included in these Conditions shall not apply if the damage/loss is attributable to intention or gross negligence on the part of Tjoapack or its subordinates.

7. The provisions in this article shall leave intact Tjoapack statutory/third-party liability pursuant to mandatory provisions.

### 15. CANCELLATION

1. If Client wishes to cancel an order after an agreement with Tjoapack has been formed then Client shall be

invoiced for cancellation charges, such without prejudice to the right to full damages including lost profit, unless parties have agreed otherwise.

2. If in the event of cancellation Client refuses to take delivery of the products already purchased by Tjoapack then Client shall be obligated to pay Tjoapack all ensuing costs.

3. Cancellation shall be made in writing.

#### 16. FORCE MAJEURE

1. Tjoapack shall not be liable for damage/loss arising from a breach in the performance deliverable by Tjoapack that results from circumstances not attributable to Tjoapack as they are neither attributable to a wrongful act on its part nor for its account by Law, legal act or in generally accepted practice, regardless whether the circumstances resulting in the breach were foreseeable at the moment the agreement was formed.

2. In these General Conditions a force majeure situation shall be, in addition to the definitions thereof in Law and case law, all exterior causes, foreseen or unforeseen, over which Tjoapack has no control, such as traffic congestion, power/computer failures, industrial action, factory/office sit-in, export restrictions, accidents, theft, fire, sickness of its staff and delay in the supply by suppliers, but which make that Tjoapack is unable to perform its obligations whether or not on a timely basis. The afore going shall include industrial action at Tjoapack or at the auction.

3. Tjoapack shall be entitled to invoke force majeure also if commencement of the circumstance preventing (further) performance occurs after Tjoapack should have performed its contracted obligation.

4. Parties shall be free to suspend the obligations from the agreement for the duration of the force majeure situation. If the duration of this period exceeds one month then either party shall be entitled to dissolve the agreement, such without obligation to pay damages to the other party.

5. In so far as at commencement of the force majeure situation Tjoapack shall have partially performed its obligations from the agreement or is in a position to do so, and the part that has been or will be performed possesses autonomous value, then Tjoapack shall be entitled to invoice separately for the part that has been or will be performed.

#### 17. SUSPENSION AND DISSOLUTION

1. Tjoapack shall be entitled to suspend or dissolve the agreement concluded with Client with immediate effect, by means of a written communication, without any obligation to pay damages and without prejudice to its further future rights, if:

a. Client is in default and continues to fail in the performance of its obligations from the provisions of the agreement;

b. having concluded the agreement, Tjoapack ascertains circumstances that give it good reason to fear Client's non, untimely or incomplete performance. If there is good reason to fear Client's partial or undue performance then the suspension shall be allowable only in so far as the breach permits;

c. at concluding of the agreement, Client has been asked to pledge security for the performance of its obligations from the agreement and this security has not been pledged or proves inadequate. Once security has been pledged, the competence to suspend shall lapse, unless as a result such pledge was unreasonably delayed.

d. Client is declared bankrupt, files for suspension of payment or in any way in whole or in part loses control of its assets or such a state is imminent;

e. Client finds itself in a force majeure situation so that as a result performance in whole or in part is permanently impossible;

f. Client transfer any rights from agreements concluded with Tjoapack to a third party, without having in advance obtained due written permission.

2. Tjoapack shall furthermore be competent to (cause to) dissolve the agreement, if circumstances occur whose nature is such that performance of the agreement becomes impossible or by the criteria of reasonableness and fairness can no longer be demanded or, as the case may be, if otherwise circumstances occur whose nature is such that unchanged maintenance of the agreement cannot reasonably be expected.

3. If the agreement is dissolved then the claims of Tjoapack on Client shall be immediately due and payable. If Tjoapack suspends the performance of the obligations then it shall retain all its claims by Law and agreement.

4. Tjoapack shall at all times retain the right to claim damages.



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18. RISK TRANSFER / TRANSPORT

1. The risk of physical loss or damage of the products that are the subject of the agreement shall transfer to Client at the moment that legal and/or factual delivery of the products is made to Client, bringing them under the control of Client or of a third party to be designated by Client.

2. If Tjoapack provides transport and/or storage of the products that are the subject of the agreement then such shall occur fully for account and risk of Client.

19. APPLICABLE LAW AND COMPETENT COURT

1. The laws of the Netherlands shall apply to all transactions that are subject to these Conditions. Applicability of the Weens Koopverdrag [CISG] shall be excluded.

2. Disputes between Tjoapack and Client shall be exclusively brought before the competent court in the Municipality where Tjoapack has its registered seat or, such at the discretion of Tjoapack in its capacity of either plaintiff or applicant, before a competent court in the Municipality where Client has its registered seat.

**TJOAPACK NETHERLANDS B.V.**

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