

GENERAL TERMS OF SALE AND DELIVERY DO-IT

DO-IT B.V., DO-IT Food Ingredients B.V. and DO-IT Consumer Products B.V.

Article 1: Definitions

in these general conditions the following terms will have the following meanings:

1. "DO-IT": DO-IT B.V., DO-IT Food Ingredients B.V. and DO-IT Consumer Products B.V.
2. "Terms": These General Sale Conditions.
3. "Buyer": Shall entail anyone who purchases goods and/or services from DO-IT or concludes a different agreement with DO-IT.
4. "Goods": All the goods to be sold and/or to be delivered by DO-IT to the Buyer in the sense of section 3:2 of the Civil Code.
5. "DCC": Dutch Civil Code
6. "Termination": In Dutch: 'opzeggen'.
7. "To set aside": In Dutch: 'ontbinden'.
8. "Consequential Loss": Means, inter alia, loss of profit, loss of business, loss of use, loss of production, loss of contract or economic loss or any other indirect or consequential losses or damages.

Article 2: Applicability

1. All quotations issued by and all agreements reached with DO-IT regarding the sale and delivery of Goods and/or services rendered by DO-IT are exclusively subject to these Terms.
2. Applicability of the general terms used by the Buyer is hereby explicitly rejected.
3. Deviations from these Terms may be agreed only in writing and shall apply only once they have been explicitly confirmed to Buyer in writing by the legally authorized representative of DO-IT.
4. DO-IT reserves the right to amend these Terms at any moment. These amendments shall be applicable from the moment they have been first communicated or uploaded on our website. With agreements concluded previously, the Terms shall continue to apply that were in effect on the day that the agreement was concluded.
5. If any provision in these Terms is declared null and void by a court or arbitral tribunal with jurisdiction or otherwise regarded as non-binding, that provision shall be interpreted in such a manner that the conflict or invalidity is reversed. The other provisions in these Terms shall remain fully in effect.

Article 3: Quotations

1. All quotations by DO-IT to the Buyer are entirely free of obligation and apply only for the duration of the period of validity. After acceptance they may be revoked by DO-IT within five days.
2. Any offer by DO-IT is subject to (timely) deliverability and/or availability of the Goods. DO-IT shall in all cases be entitled to modify the specifications as indicated in its quotations.
3. If DO-IT sends the Buyer a sample for approval, the Buyer will have five business days following receipt of the sample to approve it in writing. If no written response is forthcoming from the Buyer within this period, the quotation from DO-IT or the engagement entrusted to DO-IT shall lapse.
4. DO-IT applies a minimum amount of €1,000 per order. An administrative fee of €22.50 shall be invoiced for orders below this amount.

Article 4: Conclusion of agreements

1. An agreement with DO-IT is concluded, only if DO-IT has confirmed the agreement in writing by an authorized person.
2. With respect to the content of the agreement between parties, only what is stated concerning the agreement in the sales confirmation and in the Terms shall be decisive.

Article 5: Rates

1. Rates indicated on quotations and rate charts of DO-IT do not include taxes and other levies. DO-IT is entitled to charge taxes, import duties, levies and other taxes imposed by the authorities whether or not known at the time the agreement was concluded.
2. The rates in quotations are based on the Incoterm stipulated in DO-IT's sales confirmations. In the absence of such stipulation the rate is based on the EX Works value.
3. In the event of changes to rates (charged by vendors to DO-IT) and/or (other) factors that determine prices, such as exchange rates, wages, taxes, import and export duties, expenses, freight and the like change after an offer from DO-IT or an order from the Buyer, DO-IT shall in all cases be entitled to adjust the rates in accordance with and with regard to the mandatory provisions in this case, regardless of whether DO-IT could have foreseen the change at the time of the offer or the order. DO-IT shall notify the Buyer of stated changes the moment that such changes become known to DO-IT.
4. The rate changes meant in the previous section do not entitle the Buyer to terminate or set aside the agreement in any way.
5. Any leaflets, rate charts or other data issued by DO-IT are merely indicative and not binding to DO-IT.
6. The packaging is not included in the rates and may be charged separately by DO-IT.

Article 6: Payment

1. Payment of invoices is due within seven days of the invoice date, unless explicitly agreed otherwise in writing. Payment is to be deposited or transferred to a bank account indicated by DO-IT, in Euros and including VAT. The settlement date indicated on the bank statements of DO-IT shall be decisive in determining the date of payment.
2. The Buyer is not entitled to any discount and/or set off and/or suspension.
3. If the amount due according to the invoice is not paid on time, the Buyer shall be in default, without any demand or prior notice of default being required, and shall owe DO-IT the statutory commercial interest pursuant to Article 6:119a DCC from the date the invoice becomes payable to DO-IT.
4. Claims from DO-IT against the Buyer, on any ground whatsoever, are in any case payable immediately and in full and without any notice of default or announcement in the following cases:
 - if the Buyer fails to meet any obligation (or fails to do so on time) arising from any agreement concluded with DO-IT
 - if the Buyer has been declared bankrupt or has applied for bankruptcy or a suspension of payments, or if the Buyer has suspended payments
 - if the Buyer requests a debt rescheduling arrangement or is declared subject to a debt rescheduling arrangement or has requested to be placed in receivership
 - if any of his Goods have been seized
 - if the Buyer dies, is being wound up or states that he will discontinue or has discontinued his operations
 - upon the transfer of his business or part thereof, including merging the company in one that is to be established or already exists or (partial) transfer of control in the company;
5. In the cases mentioned at (4), DO-IT is entitled to suspend without any notice of default or judicial intervention all current agreements between the Buyer and DO-IT or to demand payment in cash for them, even it was agreed otherwise, or to set aside agreements entirely or in part, as well as to retrieve Goods supplied immediately, without DO-IT being required to provide any compensation for damages or guarantee and without prejudice to its other rights, such as the right to compensation for damages.

6. DO-IT may at any moment settle by virtue of an agreement with the Buyer anything that is due on demand or otherwise against whatever the Buyer owes it or companies affiliated with it.
7. All – actual – legal and other costs (of proceedings) incurred by DO-IT, arising from or relating to incorrect or untimely fulfilment of obligations by the Buyer including but not limited to court costs and reasonable lawyers fees, shall be entirely at the expense of the Buyer.
8. DO-IT shall in all cases be entitled to demand security from the Buyer, at the discretion of DO-IT, for compliance with its (future) financial obligations toward DO-IT. If and as long as the Buyer refuses or is unable to provide security, DO-IT shall be entitled to suspend fulfilling its obligations or to terminate (the) agreement(s) immediately, without being required to pay any compensation for damages.

Article 7: Retention of title and transfer of ownership

1. All Goods to be and already supplied by DO-IT shall remain the exclusive property of DO-IT, until the Buyer has fulfilled all his obligations toward DO-IT with respect to the corresponding previous and subsequent Goods supplied by DO-IT, activities performed or yet to be performed, as well as regarding the (future) claims by DO-IT against the Buyer due to (future) failure by the Buyer to fulfil his commitments toward DO-IT.
2. The Buyer is not entitled to encumber the Goods in any way at all or to remove them in any other way from recovery by DO-IT, until ownership has been transferred.
3. The Buyer is required to treat Goods that have been supplied subject to retention of title with care and to retain them as identifiably the property of DO-IT, until ownership has been transferred to him.
4. The Buyer is required to insure the Goods at his own expense, for the duration of the retention of title, against loss or damage and to present the policies for these insurances to DO-IT for review at its first request.
5. If the Buyer is negligent in complying with his payment obligations to DO-IT, or if DO-IT has reason to fear that he will fail to fulfil these obligations, DO-IT shall be entitled to retrieve the Goods supplied subject to the retention of title immediately. After they have been retrieved, the Buyer shall be credited for the market value, which under no circumstances may exceed the original purchase price, less the cost of retrieval and any damages that DO-IT suffers as a consequence of taking the Goods back.
6. If DO-IT reclaims Goods as its property supplied according to this provision, Buyer shall indicate to DO-IT where the Goods are located and shall grant DO-IT access at any time to its sites and/or buildings to inspect the Goods and/or to enforce the rights of DO-IT.
7. If the Buyer makes a new item from Goods supplied by DO-IT that are subject to retention of title, the Buyer is in doing so operating at the instructions of DO-IT, and the Buyer will hold the new item for DO-IT.
8. The 'Verlängerter Eigentumsvorbehalt'-clause ('extended retention of title'-clause) set out on the final page of these Terms applies in respect of DO-IT's delivery of Goods to Buyers in Germany.

Article 8: Supply and delivery times

1. The Buyer is required to take receipt of the Goods that DO-IT presents to him.
2. Unless agreed otherwise in writing, delivery shall be EX Works (Hermesweg 7, 3771 ND Barneveld, Netherlands) pursuant to the Incoterms 2020. DO-IT shall notify the Buyer that the Goods are ready. The Goods are deemed to be delivered and the risk shall pass to the Buyer when ready for despatch. In the event of decertification, by Skal or by any other national or international control body with the authority to decertify goods, after the aforementioned delivery of the Goods, such event and the consequences thereof are for the risk and account of the Buyer. Measures taken by Skal or such other control body to block and/or inspect the Goods after such delivery and the consequences thereof are also for the risk and account of the Buyer.
3. The Buyer is required to take (or arrange for) receipt of the Goods to be supplied to him within five businessdays upon receipt of DO-IT's notification in Clause 8.2.

4. If the Buyer fails to take receipt of the Goods, DO-IT shall be entitled to store the products at the expense and risk of Buyer (if the storage facilities of DO-IT accommodate this). DO-IT shall be entitled from fourteen days after the term of delivery has lapsed to set aside the agreement, without prejudice to the right of DO-IT to compensation for damages and the right of DO-IT to sell the products to third parties.
5. The method of packaging shall be determined by DO-IT. DO-IT shall not take back the packaging.
6. DO-IT shall always be entitled to deliver in sections, which sections may be invoiced separately. The Buyer is required to pay all partial deliveries as provided in Clause 5 of these Terms.
7. Stated delivery times of Goods or services are never to be regarded as strict deadlines for DO-IT, unless agreed otherwise in writing. Exceeding the delivery times will not entitle the Buyer to (partially) set aside the agreement, unless the exceedence lasts for more than six weeks. Insofar the Buyer suffered damage, Buyer will be entitled, without prejudice to the stipulations in Clause 11, to a maximum compensation of 15% of the purchase price.
8. The delivery time shall commence only after the agreement has been concluded, DO-IT is in possession of all data and materials necessary to start carrying it out, and any payment, to the extent required from the Buyer upon concluding the agreement, has been made.

Article 9: Inspection and complaints

1. The Buyer is required to inspect the quality and quantity of the Goods or services upon delivery. Any defects relating to the quality or quantity are to be reported in writing within 24 hours of delivery, listing the nature and scope of the complaints. The Buyer accepts DO-IT's quality analysis certificate(s) at inter alia loading of the sea vessel or other mode of transport at origin as full and final for quality. No counterevidence will be permitted. Other complaints must in any case reach DO-IT within four business days after the Goods have been received. Without any timely and written notice, the Goods delivered or the services are deemed in conformity with the sales agreement, and complaints about them shall be forfeited and barred.
2. DO-IT and the Buyer shall regard the quantities indicated on the consignment notes or other (transport) documents as accurate.
3. The Buyer is required upon request from DO-IT to return to DO-IT the allegedly defective Goods within five business days after sending the complaint and at its own expense and risk, packaged in the same manner as by DO-IT.
4. Submitting a complaint shall never be any ground for suspending or to set off payment obligations the Buyer has toward DO-IT or to set aside (the) agreement(s).
5. The Buyer, after discovering any defects, may no longer use or sell that item, except after receiving written permission to do so from DO-IT. Should the Buyer do so nonetheless, complaints shall not be accepted.
6. If a complaint is deemed justified by DO-IT, DO-IT shall supply substitute Goods or services, if such is possible, or, if that is not possible in the sole opinion of DO-IT, the Buyer shall be credited the amounts invoiced to him. DO-IT shall not be required to perform other services or to pay compensation for damages.
7. DO-IT shall not be required to supply substitute products or to reimburse the invoice value, if the defective products have not been provided to DO-IT on time, and/or the Buyer has not strictly observed the instructions for storing the products delivered, either causing spoilage or having made it possible and/or as a result of which the accuracy of the complaints expressed by the Buyer can no longer be investigated.
8. If a complaint is deemed by DO-IT to be unfounded, the Goods returned shall be destroyed at the discretion of DO-IT, unless the Buyer requests DO-IT in writing to return the Goods to it. The Goods shall be returned to the Buyer at its expense and risk.

Article 10: Obligations of the Buyer in general

The Buyer guarantees that he:

1. Shall advertise the brands of DO-IT only in a manner that has been approved in writing by DO-IT.
2. Shall refrain from making negative statements about the name, brands and products of DO-IT.
3. For each violation or failure to comply rigidly with the obligations stated in this clause, the Buyer shall pay a penalty not eligible to be reduced or offset of € 10,000 (in words: ten thousand euros) and in such case shall accept that DO-IT has the right to terminate or set aside (a) concluded purchase agreement(s) and/or to exclude the Buyer from additional delivery of Goods and/or services, all with the right to compensation for damages, without prejudice to the right of DO-IT to demand compliance at a later date, together with compensation for damages or otherwise.

Article 11: Liability and indemnification

1. Except in cases of intent or conscious recklessness on the part of its directors, DO-IT is not liable for any damage that the Buyer or a third party might suffer as a consequence of the Goods supplied or services rendered by DO-IT. DO-IT shall never be liable in tort or for Consequential Loss arising from the Goods not being in conformity with the agreement, recall(s) arisen at the Buyer or third parties, delayed, incorrect or incomplete delivery of the Goods or services concerned.
2. In the event that it is established by the competent court or arbitral tribunal that DO-IT, despite the provision in the previous section, is liable for any of the damages meant there, its liability shall at any rate be limited to the amount that its Insurance would pay out or, if there is no insurance cover, for whatever reason at all, to the invoice value of the Goods or services it provided that relate to its liability but to a maximum amount of € 50,000.00.
3. The Buyer shall indemnify DO-IT from any claims by its agents, including its employees or representatives, and/or third parties, concerning damage for which DO-IT has excluded and/or limited liability towards the Buyer.

Article 12: Implementation by third parties / Transfer of rights

1. DO-IT shall be entitled to make use of services rendered by third parties in carrying out the agreement.
2. DO-IT may at any time transfer its rights and/or duties arising from the agreements with the Buyer entirely or in part to a third party or offer them as security in some way, for which the Buyer already grants permission in such an event.
3. The Buyer is not authorized as meant in (2) above, pursuant to Article 3:83 (2) DCC.

Article 13: Force majeure

1. Force majeure on the part of DO-IT shall in any case entail: any circumstance beyond its control that impedes fulfilment of the obligations to which these Terms apply, permanently or temporarily to the extent not already included in the previous description, force majeure shall similarly include: bans on transport, government measures including import and/or export restrictions and acts of Skal or any other national or international control body in respect of establishing the organic status of the Goods, material change in organic regulations and/or applicable law, change of licence of said control body, industrial actions, sit-down strikes, absenteeism due to sickness of staff, epidemics or pandemics, transport problems, turmoil, acts of war, fires, water damage, defective machinery, interruptions in the power supply, sales prohibitions, sudden substantial increase in the price of energy or raw materials, anything at DO-IT or at its vendors as well as breach of contract by the suppliers of DO-IT that renders DO-IT unable to (continue) fulfil(ling) its obligations toward Buyer.
2. If in the view of DO-IT the force majeure is temporary, it is entitled to suspend carrying out the agreement until the circumstance causing the force majeure no longer occurs. If the force majeure situation lasts for more than sixty (60) days, both parties will be entitled to set aside in writing the agreement in full or in part, without being obliged to pay compensation for that reason.
3. If in the view of DO-IT the force majeure is permanent, it is entitled without any judicial intervention to adapt the agreement, to set aside entirely or in part or to terminate it immediately, without being required to provide any compensation for damages to the Buyer.

4. If DO-IT has already fulfilled part of the agreed obligations at the start of the force majeure situation, it shall be entitled to invoice the deliveries performed separately and in the interim, and Buyer is required to pay this invoice, as if it concerned a separate transaction.

Article 14: Intellectual and/or industrial ownership rights

1. All intellectual and/or industrial ownership rights, of both DO-IT and its vendors, on all Goods supplied or services rendered, shall be retained by DO-IT. The Buyer agrees not to violate or infringe upon these rights in any way, directly or indirectly, through use or in other respects, and acknowledges DO-IT as the entitled party in the matter.

Article 15 – Compliance

1. The Buyer accepts that on the basis of applicable regulations or upon request of a(n) (inter)national control body such as Skal or the Netherlands Food and Consumer Product Safety Authority (NVWA) DO-IT may be obliged to furnish information or to identify the Buyer and to verify the identification. The Buyer shall fully cooperate in this respect. DO-IT will record and keep the required data in accordance with applicable regulations.

2. The Buyer accepts that the said duty to provide information prevails over the applicable privacy rules.

Article 16: Termination

1. Termination by the Buyer of an agreement concluded with DO-IT is possible only with consent from DO-IT. If DO-IT consents to the Termination, the Buyer shall owe DO-IT a contractual penalty of 25% of the invoice value (including VAT) forthwith.

Article 17: To set aside or termination of the agreement

1. DO-IT shall be entitled to set aside the agreement in whole or in part or give notice to terminate the agreement if there are good reasons to fear that the Buyer is not able or prepared to meet its contractual obligations towards DO-IT. Clause 6.4 of these Terms provides a (non-exhaustive) list of examples of such reasons.

2. Should DO-IT set aside the agreement, it will be entitled without any warning or notice of default or judicial intervention being required to demand full payment of any amount that the Buyer owes DO-IT, all without prejudice to the right of DO-IT to compensation for damage and to suspend performance of its obligations with immediate effect as per Clause 6.5 of these Terms.

Article 18: Set off

1. DO-IT shall in all cases be entitled to set off all claims from the Buyer against DO-IT with a monetary value against claims from DO-IT and companies that are in any way affiliated with DO-IT with the Buyer.

2. If the Buyer is in any way part of a group of companies, the Buyer shall also be considered in the sense of this clause as all companies belonging to that group in any way.

Article 19: Time limits

1. All claims on DO-IT will be time-barred one year after the agreed date of delivery.

Article 20: Applicable law and jurisdiction

All legal relationships following from or relating to these Conditions or the Agreement(s) will be governed exclusively by Dutch law. Applicability of the CISG (United Nations Convention on Contracts for the International Sale of Goods) is excluded explicitly. Any disputes following from or relating to these Conditions or the Agreement(s) between Do-It and the Buyer will be settled exclusively by the Court of Rotterdam, the Netherlands, if the Buyer's registered office is situated in the European Economic Area (EEA) and by means of UNUM Arbitration (<https://unum.world/>) in Rotterdam, the Netherlands, under applicability of the UNUM Arbitration Rules, if the Buyer's registered office is not situated in the EEA. Regardless of the above provisions of this article, Do-It is always free to submit disputes as referred to above to the competent court of the country in which the Goods are located or will be located – in case they are transported – or the competent court of the country in which the Buyer is established

Verlängerter Eigentumsvorbehalt

- (i) DO-IT behält sich das Eigentum an der Ware bis zum Eingang aller Zahlungen aus dem Kaufvertrag vor. Die Verarbeitung oder Umbildung der Ware erfolgt stets für DO-IT als Hersteller, jedoch ohne dass hieraus Verpflichtungen für DO-IT resultieren. Wird die Ware mit anderen, DO-IT nicht gehörenden Gegenständen verarbeitet, so erwirbt DO-IT das Miteigentum an der neuen Sache im Verhältnis des Wertes der Ware zu den anderen verarbeiteten Gegenständen zur Zeit der Verarbeitung. Erlischt das (Mit-)Eigentum DO-ITs durch Verbindung, so wird bereits jetzt vereinbart, dass das (Mit-)Eigentum an der einheitlichen Sache wertanteilmäßig (Rechnungswert) auf DO-IT übergeht. Der Käufer verwahrt das (Mit-)Eigentum DO-ITs unentgeltlich. Die Ware, an DO-IT (Mit-)Eigentum zusteht, wird im folgenden als Vorbehaltsware bezeichnet.
- (ii) Der Käufer ist berechtigt, die Vorbehaltsware im ordentlichen Geschäftsgang zu verarbeiten oder zu veräußern, solange er nicht mit seinen Zahlungsverpflichtungen in Verzug ist. Verpfändungen oder Sicherungsübereignungen sind unzulässig. Die aus dem Weiterverkauf oder aus einem sonstigen Rechtsgrund (Versicherung, unerlaubter Handlung) bezüglich der Vorbehaltsware entstehenden Forderungen gegen Dritte tritt der Käufer bereits jetzt sicherungshalber im vollen Umfang an DO-IT ab. DO-IT ermächtigt den Käufer widerruflich, die an DO-IT abgetretenen Forderungen für dessen Rechnung im eigenen Namen einzuziehen. Diese Einzugsermächtigung kann nur widerrufen werden, wenn der Käufer seinen Zahlungsverpflichtungen nicht ordnungsgemäß nachkommt.
- (iii) Bei Zugriffen Dritter auf die Vorbehaltsware wird der Käufer auf das Eigentum des DO-ITs hinweisen und diesen unverzüglich benachrichtigen.
- (iv) Bei vertragswidrigem Verhalten des Käufers – insbesondere Zahlungsverzug – ist DO-IT berechtigt, die Vorbehaltsware zurückzunehmen oder ggf. die Abtretung der Herausgabeansprüche des Käufers gegen Dritte zu verlangen. In der Zurücknahme der Vorbehaltsware sowie in der Abtretung der Herausgabeansprüche an DO-IT liegt kein Rücktritt vom Verträge.
- (v) DO-IT verpflichtet sich, die ihm zustehenden Sicherheiten auf Verlangen des Käufers insoweit freizugeben, als der Wert der Sicherheit die zu sichernden Forderungen um 20% übersteigt. Für die Bewertung des Sicherungsgutes ist, auch soweit es be- oder verarbeitet worden ist, der Kaufpreis maßgebend. Die Bewertung abgetretener Forderungen erfolgt zu deren Nennwert.