



# CA FNZ Sales Conditions

Our general terms and conditions, as registered at the Gelderland Court under file no. 48/2016, apply to all deliveries and offers of CA FNZ Holding B.V., as well as of each of its subsidiaries.

## 1. Definitions

### *CA FNZ:*

CA FNZ Holding, registered at the Chamber of Commerce under No. 09087792, as well as each of its subsidiaries.

### *Agreement:*

any multilateral legal act between CA FNZ and the Client.

### *Goods:*

products, materials, (chemical) liquids and substances, gases, devices, models, software and any other tangible items (not being packaging materials).

### *Client:*

any party entering into an Agreement with CA FNZ.

### *Conditions:*

the present CA FNZ Sales Conditions.

## 2. Offer and acceptance

**2.1** These Conditions apply to every Agreement and offer made by CA FNZ.

**2.2** Derogations from these Conditions may only be agreed upon in writing.

**2.3** Any Client's General Conditions, however named, shall not apply.

**2.4** All offers by CA FNZ are non-binding and are subject to revoking by CA FNZ, even if a term for acceptances is part of the offer.

**2.5** The Agreement shall be considered to be concluded at the time of written confirmation thereof by CA FNZ and/or when CA FNZ has commenced its implementation.

## 3. Delivery of Goods

**3.1** If the Agreement between CA FNZ and the Client also includes CA FNZ delivering Goods to the Client, the provisions from this article also apply to that.

**3.2** Delivery of Goods takes place at an agreed place and date.

Unless otherwise agreed transport and shipping shall take place in accordance with, with packaging satisfying what may reasonably be expected based on what is customary in the industry. Should the Client have specific requests regarding transport, shipping and/or packaging, differing from the customary, CA FNZ is willing to satisfy, provided the Client has given preliminary and written approval of paying the additional costs incurred.

**3.3** As soon as the CA FNZ expects any exceeding of the agreed delivery term, he shall give the Client written notice thereof, stating the reason.

**3.4** CA FNZ is entitled to refuse loading or filling the material and/or packaging provided by the Client if, according to CA FNZ, they do not meet the (safety and other) requirements which may reasonably be demanded. If CA FNZ refuses a delivery for this reason, he shall not be liable to the Client.

**3.5** Packaging provided by CA FNZ for the delivery of Goods shall remain property of CA FNZ. The Client shall take proper care of storage and retention of the packaging. The Client is not entitled to use the packaging for other purposes. The packaging shall be returned to the address indicated by CA FNZ as soon as possible.

**3.6** If the Client does not begin taking delivery of the Goods and/or does not continue to do so with convenient speed and/or refuse to take delivery of Goods and/or refuses to sign the consignment note for delivery, CA FNZ is entitled to store the Goods at the Client's risk.

**3.7** After the delivery of the Goods, the Client shall undertake to check them and the packaging without delay. If the Goods and/or the packaging fall short of what has been agreed, the Client shall notify CA FNZ thereof within two business days.

**3.8** The Client is entitled to return the Goods within 8 days upon delivery of the Goods, if the Goods and the packaging are in undamaged condition and the Goods belong to CA FNZ's standard company stock. The Client shall contact CA FNZ within the same aforementioned period to confer about the return shipment. Goods not belonging to CA FNZ's standard company stock (e.g. Goods ordered especially for the Client) cannot be returned, unless CA FNZ's supplier is willing to take these Goods back.

**3.9** Upon receiving the Goods (especially Goods of a chemical



nature) the Client is obliged to strictly observe the instructions given by or on behalf of CA FNZ.

#### **4. Logistical Services**

**4.1** If the Agreement between CA FNZ and the Client also includes CA FNZ providing Logistical Services to the Client, the provisions from this article also apply to that.

**4.2** Tank trucks deployed by CA FNZ shall be emptied at the place of delivery immediately after arrival. Tank trucks provided by the Client shall be made available ready to fill at the location designated by CA FNZ. If the Client does not comply with this obligation, CA FNZ shall charge the waiting hours involved.

**4.3** The consignment note provides authoritative evidence - notwithstanding the Client's swift notice to the contrary - of the condition, amount and weight of the delivered Goods and of the date and place of delivery. The consignment note may be drafted and sent to the Client as an electronic notice.

**4.4** The Client is entitled to give orders regarding the method, place or date of delivery differing from what has been agreed in the Agreement, provided these orders do not hamper CA FNZ's normal business operations. In that case the Client is bound to pay the additional cost involved.

**4.5** In case of national transport, the AVC 2000 provisions apply, unless the Agreement or the Conditions state otherwise. In case of international transport, the CMR Treaty provisions apply, unless the Agreement or the Conditions state otherwise.

#### **5. Warehousing and physical distribution**

**5.1** If the Agreement between CA FNZ and the Client also includes CA FNZ providing warehousing and physical distribution on behalf of the Client, the provisions in this article also apply to the Agreement.

**5.2** CA FNZ shall store, keep, treat, process, sample, look after, pack and repack, split, weigh, fill, quality check etc. the Goods if the Agreement expressly stipulates so. CA FNZ is not obliged to provide other services than established in the Agreement and/or have subsequently been agreed upon.

**5.3** CA FNZ shall take care like a good custodian.

**5.4** If Goods are subject to customs and excise provisions or to tax regulations or other government legislation, the Client shall timely provide all information and documents involved, thus enabling CA FNZ to submit the required statement(s) or to comply with the valid laws and regulations.

**5.5** The Client is entitled to check out and inspect the stored Goods if the Client communicated a request to that effect timely in advance. Access shall be granted during normal business hours and under supervision by a CA FNZ employee. CA FNZ shall only allow access to its premises to the Client's staff and auxiliaries previously registered by the Client and approved by CA FNZ.

**5.6** The provisions from the Physical Distribution Conditions which have been registered at the Amsterdam Court under file no. 177/2000 apply to the Agreement in the occurrence of warehousing or physical distribution, unless the Agreement or Conditions state otherwise. In that case the provisions from the AVC 2000 and the CMR-Treaty shall not apply.

#### **6. Production of Goods**

**6.1** If the Agreement between CA FNZ and the Client also includes CA FNZ producing Goods in accordance with the Client's instructions, the provisions in this article also apply.

**6.2** The Client shall provide the recipe to CA FNZ and CA FNZ is obliged to adhere to the recipe. Any faults and/or defects in the recipe and/or the ingredients provided by the Client and/or packaging materials and/or instructions given by the Client are at the Client's risk and the Client shall indemnify CA FNZ against third party claims.

**6.3** The Client is responsible towards CA FNZ for the correct and timely provision of any information, calculations, licenses, permits, specifications, instructions (and, if applicable, the delivery of ingredients and packaging materials) necessary to produce the Goods.

**6.4** The Client is entitled to check out and inspect the produced Goods if the Client communicated a request to that effect timely in advance. Access shall be granted during normal business hours and under supervision by a CA FNZ employee. CA FNZ shall only allow access to its premises to the Client's staff and auxiliaries previously registered by the Client and approved by CA FNZ.

**6.5** The Client warrants that his recipe and/or the Goods produced therewith do not infringe upon any intellectual or industrial property or any other third party rights and shall indemnify CA FNZ against claims by third parties.

#### **7. Prices and payment**

**7.1** All prices are without VAT. If, within 30 days after concluding



the Agreement, circumstances raising cost price determining factors arise, CA FNZ is entitled to pass them on to the Client.

**7.2** Payment of prices and all else the Client owes CA FNZ shall take place, no later than on the due date, without suspension, discount or offsetting with a claim the Client has against CA FNZ, by deposit or by transfer to an account specified by CA FNZ. The Client may only offset if the claim was established by a court in a judgement which has acquired the authority of a final decision.

**7.3** The payment term is 14 days after the invoice date.

**7.4** Each time an amount due under the Agreement is not paid promptly on the due date, the Client shall owe a fine of 10% of the amount due per calendar month. Each commenced month shall be regarded as a full calendar month.

**7.5** If CA FNZ has one or more claims against the Client which do not directly arise from the Agreement, any payment by the Client shall first be used to settle the aforementioned claims.

**7.6** CA FNZ is entitled to pay any amount the Client owes to another company belonging to the group to which CA FNZ belongs, entirely or partly, to that company on behalf of the Client. CA FNZ is discharged from his obligations towards the Client up to the amount of this payment.

**7.7** In case of a delay in payment of a sum of money, Art. 6:119a Civil Code shall apply.

## **8. Ownership and intellectual property rights**

**8.1** Upon payment the Client shall become owner of the Goods.

**a.** If the Agreement provides for a (partial) advance payment, ownership shall be transferred to the Client after the first instalment in exact proportion; CA FNZ shall mark the Goods as being owned by the Client and store them thus identifiably. In such case, the Agreement shall be valid as a private document.

**b.** If the Agreement provides for storage of Goods owned by the Client, CA FNZ shall mark the Goods as being owned by the Client and store them thus identifiably.

**c.** If the Agreement provides for the delivery of Goods yet to produce, and payment is made before the Goods have been produced, ownership is transferred in advance, at the moment of payment. In such case, the Agreement shall be valid as a private document.

**8.2** All intellectual and/or industrial property rights arising in within the framework of this Agreement shall become property

of CA FNZ and CA FNZ is entitled to have them registered as such.

## **9. Liability**

**9.1** CA FNZ is only liable for damages if he attributable failed to comply with the Agreement and if he is defaulted by the Client immediately, properly and in detail. The Client shall grant CA FNZ a reasonable term to comply as yet with his obligations.

**9.2** CA FNZ is not liable for improper use of the Goods by the Client and/or of application thereof in breach of legal provisions and the Client shall indemnify CA FNZ against third party claims.

**9.3** CA FNZ's liability shall not exceed the net amount charged to the Client by CA FNZ related to the event causing the damage. CA FNZ is, in any case, not liable for whatever indirect or consequential damage, expressly including damage as a result of loss of profit, turnover damage and damage for delay.

## **10. Force majeure**

**10.1** In addition to Art. 6:75 Civil Code, force majeure includes, in any case, factory failure, transport disruptions, strikes, supply stagnation and force majeure on the part of third parties hired by CA FNZ for the implementation of this Agreement, regardless of the foreseeability of these circumstances.

**10.2** If a force majeure occurs on the part of CA FNZ, CA FNZ shall notify the Client thereof as soon as possible and inform the Client about the expected moment of performing the order. CA FNZ is not liable for the effects of the force majeure for the Client.

**10.3** In case of force majeure exceeding 90 days, CA FNZ shall be entitled to terminate the Agreement completely or partially. The Client is not entitled to terminate and/or dissolve the Agreement (completely or partially) in case of force majeure.

## **11. Guarantee**

**11.1** CA FNZ is entitled to request the Client to issue a bank guarantee as collateral for the proper compliance of his obligation from the Agreement, in accordance with a model presented by CA FNZ, to the amount of at least 10% of the value of the Agreement. The validity of the bank guarantee shall continue until six months after the expiry of the Agreement.

**11.2** Until the moment of issuing of the aforementioned bank guarantee to CA FNZ, CA FNZ shall be entitled to suspend his



obligations arising from the Agreement.

**11.3** If the bank guarantee is called and (partially) paid, the Client shall, at first request by CA FNZ, issue a new bank guarantee to CA FNZ which meets the provisions of Art. 11.1.

**11.4** After an upward adaptation of the obligation to pay, the Client shall undertake, at first request by CA FNZ, to issue a new bank guarantee, which meets the provisions of Art. 9.1 and is adapted to the new scale of the obligation to pay.

**11.5** All goods, documents and sums of money of the Client which CA FNZ possesses on behalf of the Client are subject to a lien of CA FNZ for all claims CA FNZ has or shall have against the client. In case of a claim not being paid by the Client, CA FNZ may execute the lien.

## **12. Confidentiality**

**12.1** During as well as after the term of the Agreement the Client and CA FNZ shall keep any information confidential which they - whether directly or indirectly - has obtained from or about each other and which has labelled been confidential or which could reasonably be assumed to be confidential.

**12.2** CA FNZ and the Client shall undertake to take measures to ensure that their staff and potential auxiliaries respect the aforementioned confidentiality.

**12.3** If CA FNZ and the Client, in the process of the implementation of the Agreement, have come to dispose of information or Goods to which the aforementioned confidentiality applies, the party having come to dispose of the information or Goods shall mark these as "property of the other party" and as "confidential". This information and these Goods may only be used on behalf of the implementation of the Agreement. The information and Goods shall be returned at first request and without delay.

**12.4** The parties may not make any public announcement about the Agreement without prior written consent by the other party.

## **13. Termination and suspension**

**13.1** If the Agreement is indefinite, it applies that, after that period has expired, the Agreement shall each time be tacitly renewed by one year, unless one of the Agreement parties issues a written termination by registered mail, taking a six months' notice into account.

**13.2** If the Agreement is indefinite, it applies that it may only be terminated for sufficiently strong reasons, taking a reasonable

notice of no less than six months into account. Sufficiently strong reasons for termination are only assumed in case of compelling circumstances which cannot be undone other than by termination.

**13.3** CA FNZ has the right to terminate the Agreement without judicial intervention with immediate effect, without prejudice to CA FNZ's right to be compensated, if

- a.** the Client does not perform his obligations from the Agreement within the term specified therein; or
- b.** the Client is not, to CA FNZ's judgement, capable to perform his obligations within the term specified therein; or
- c.** if the Client's professional morality or professional integrity are in doubt.
- d.** the Client implements relevant changes in his/her organisation, including changes in the company law framework or control over the company.

**13.4** CA FNZ is entitled to terminate the Agreement extrajudicially with immediate effect if the Client or a third party applies for the Client's insolvency, if the Client is declared bankrupt or if he applies for suspension of payments.

**13.5** If CA FNZ has a due and payable claim against the Client or if CA FNZ has indications that the Client shall not proceed to payment, CA FNZ may exercise the right of retention. This right of retention extends to Goods and documents (in the broadest sense).

**13.6** The Client is not entitled to suspend his obligations on behalf of the Agreement, even if there is a dispute.

## **14. Penalty**

**14.1** Regarding any penalty clause from the Agreement or Conditions, it applies that it shall be due immediately, whether or not the fault can be attributed and without the need of prior default. The penalty is not open to mitigation.

**14.2** CA FNZ may require compliance with the penalty clause as well as of the obligation the penalty clause is connected to; if damages exceed the penalty, CA FNZ is entitled to claim additional compensation.

## **15. General clauses**

**15.1** If two or more (legal or natural) entities have connected as a Client, each of them shall be jointly and severally liable for all obligations from the Agreement.

**15.2** If the Client is a natural person, upon concluding the



Agreement by signing, the Client grants permission to CA FNZ to register the personal data of the Client in a file and process them.

**15.3** Should a clause from the Agreement or the Conditions be declared null and void or be annulled by a judgement with the authority of a final judgement, the other clauses shall remain in full force. The void or annulled clause shall be replaced by a clause which approaches the intention of the previous clause as closely as possible.

**15.4** With this Agreement or these Conditions both parties expressly do not intend to constitute an agency, a partnership, a joint venture or an employment relationship, unless expressly otherwise agreed in writing.

**15.5** Upon termination of the Agreement (for whatever reason) the validity of clauses which are of a continuous nature, like (but not limited to) clauses regarding confidentiality, warranties and (intellectual) property rights shall not be affected.

**15.6** All documentation materials sent on behalf of the offer or any information provided digitally is merely informative and does not bind CA FNZ in any way, unless otherwise agreed in writing.

## **16. Applicable law**

**16.1** Dutch Law applies to the Agreement.

**16.2** Any dispute which can't be settled by friendly consultations shall be settled by the Gelderland Court.