

# Wijnen Meat

Oss - The Netherlands

## GENERAL TERMS AND CONDITIONS

of: **Wijnen Meat BV**

Wijnen Meat and Wijnen Bacon are registered trade-names of  
Wijnen Meat BV

Chamber of Commerce Oost-Brabant 1605.37.74.0000,  
established and keeping office at 5342 PL OSS at the Longobardenweg 4

### 1. Applicability

1.1 The following General Terms and Conditions apply in particular (i.e. not exclusively) to supply of meat, meat products and other products and to the rendering of related services. In the following "Wijnen Meat" means the party supplying goods or rendering services (so this can be also: Wijnen Bacon or Wijnen Poultry) and "Buyer" the other party to an agreement with Wijnen Meat.

1.2 Wijnen Meat makes offers, accepts orders and more generally concludes agreements exclusively subject to the following General Terms and Conditions, unless it is expressly stated otherwise in writing - and per agreement -, by Wijnen Meat. The present General Terms and Conditions shall also apply to any additional or subsequent agreements between Wijnen Meat and Buyer.

1.3 Wijnen Meat is entitled to change these General Terms and Conditions

1.4 Wijnen Meat shall notify Buyer in writing, of a change as mentioned in article 1.3.

1.5 If Buyer hasn't rejected the proposed change(s) in writing within 14 days dating from the notification mentioned in article 1.4, then Buyer is assumed to have accepted the change(s), upon which the change(s) become a full and integrated part of the General Terms and Conditions applicable between Wijnen Meat and Buyer.

1.6 If Buyer has rejected the proposed changes in writing within the fixed time mentioned in 1.5, then Wijnen Meat is entitled to terminate an agreement immediately, without having to compensate Buyer in any way.

1.7 General Terms and Conditions of Buyer do not apply to Wijnen Meat, unless this has been explicitly and mutually agreed upon.

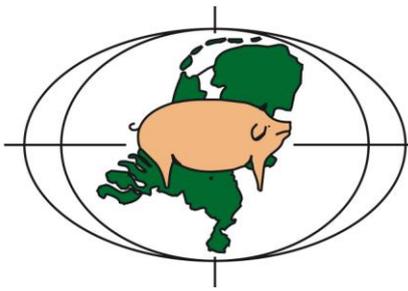
### 2. Conclusion and modification of agreements

2.1 No agreement shall bind Wijnen Meat, not even when an offer has been made by her and accepted by Buyer, until Wijnen Meat has confirmed Buyer's order in writing. When Wijnen Meat's behaviour towards Buyer indicates that an agreement is actually being put in to effect, this shall also be regarded as an order confirmation.

2.2 No modification of and/or addition to an agreement shall bind Wijnen Meat until he has expressly agreed to such modification or addition in writing. When Wijnen Meat's behaviour towards Buyer indicates that the performance of a modification or addition is actually being taken in hand, this shall also have the force of an agreement to such modification or addition.

2.3 Wijnen Meat reserves the right, to withdraw her offer, within three working days of receiving message that the offer has been accepted, and if by this acceptance an agreement of purchase has been established to cancel this purchase.

2.4 Unaffected by what has been stated in the former paragraphs, weight-, size- and price quotations, pictures, drawings etc. in brochures, leaflets, catalogues etc. provided by Wijnen Meat as well as in advertisements placed by Wijnen Meat, models, samples or other examples provided by Wijnen Meat or information otherwise published by or on behalf of Wijnen Meat, never bind Wijnen Meat, but are just meant to give Buyer a general presentation of the products and services to be delivered by or already delivered by Wijnen Meat.



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## 3. General terms for Buyer

3.1 Buyer will act like a good and careful principal towards Wijnen Meat.

3.2 Buyer shall timely provide Wijnen Meat with a full overview of all his wishes as well as all the information required by Wijnen Meat to carry out an agreement.

## 4. Prices

4.1 Unless it is expressly stated or agreed otherwise, all prices quoted in offers or agreed between the parties shall be free agreed place of delivery. VAT and any other levies imposed by the authorities shall be charged separately according to the rate applying to the delivery or service in question.

4.2 All prices quoted by Wijnen Meat are subject to the proviso that Wijnen Meat shall have the right to increase the quoted price by the additional expenses arising for Wijnen Meat from the fact that after the offer was made but prior to the conclusion of an agreement there is a rise in the price-determining elements such as the official market quotations of the goods to be delivered or of the base materials therefor, purchase prices, the cost of transport and storage, packing charges, wages, taxes and social insurance contributions, insurance premiums and the like. In addition, Wijnen Meat shall have the right to increase an agreed price by the additional expenses arising for Wijnen Meat from the fact that in the period lying between the thirtieth calendar day after the conclusion of an agreement and the day of delivery there is a rise in the price determining elements such as purchase price, costs of transport and storage, packing charges, wages, taxes and social insurance contributions, insurance premiums and the like.

4.3 Wijnen Meat may charge expenses arising for Wijnen Meat from an obligation to take back and/or process packing material to Buyer.

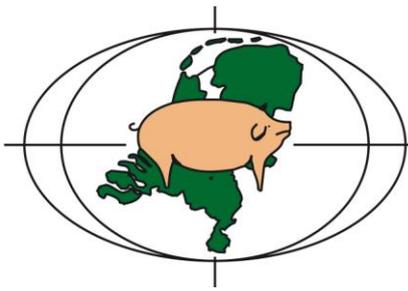
4.4 Reusable packing material (crates for instance) shall remain the property of Wijnen Meat at all times and must be returned to Wijnen Meat by Buyer. If Buyer fails to do so all costs entailed by the replacement of such material shall be charged to Buyer. Wijnen Meat's administration of reusable packing material will be presumed correct unless proven otherwise.

## 5. Payments

5.1 The following provisions shall apply in respect of payments unless a different arrangement has been expressly agreed. On or after delivery Wijnen Meat shall give or send Buyer an invoice stating the amount owing for the delivery or partial delivery. Buyer must pay this amount without any deductions in the invoiced currency unless it has been agreed otherwise, within twenty (20) calendar days of the invoice date and must do so either in cash at Wijnen Meat's offices or by transferring the amount to a bank account designated by Wijnen Meat. Complaints about invoices received must be lodged with Wijnen Meat in writing within fourteen (14) calendar days of the invoice date on pain of forfeiture of the right to bring a claim. In deviation from the provision of second and third sentence Wijnen Meat has the right to require that Buyer pays the amount owing in full or in part before or on delivery, if Wijnen Meat sees reason to do so. Besides, Wijnen Meat also has the right to require that before or on delivery adequate security, in Wijnen Meat's judgement, is given for payment of the amount due. If the advance payment or security, as the case may be, is not received within the period stated by Wijnen Meat, Wijnen Meat shall have the right either to suspend the performance of all Wijnen Meat's obligations under agreement or to cancel an agreement in whole or in part with immediate effect, without prejudice to Wijnen Meat's right to damages.

5.2 In case of seizure to the detriment of Buyer, in case Buyer is granted a moratorium, in case Buyer is subject to insolvency proceedings or if Buyer discontinues his business or part of his business, all moneys owing by Buyer to Wijnen Meat shall become immediately due and payable in full.

5.3 If the amount owing is not paid in time, Buyer shall, through the mere fact of his exceeding the term of payment, owe interest on such part of the amount as is due but unpaid at a rate equal to the legal interest plus two (2) per cent from due date until the day of payment in full. Wijnen Meat shall have the right to suspend performance of all Wijnen Meat's obligations under agreement until full payment of the



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amount due has been received. If the amount due is not paid in full within an additional term stated by Wijnen Meat, Wijnen Meat shall have the right to cancel an agreement in whole or in part, all the above without prejudice to any other rights of Wijnen Meat, in particular Wijnen Meat's right to claim damages.

**5.4** All judicial or extra judicial costs incurred by Wijnen Meat in connection with any failure on the part of Buyer to fulfil his obligations properly shall be entirely for Buyer's account. When payment is not made in time then Wijnen Meat is entitled to invoice the extra judicial debt-collection costs, calculated in accordance with the degressive debt-collection tariff of the Netherlands Bar Association, with a minimum of € 500, such without prejudice to Wijnen Meat's competence to claim the actual damage if this amount is higher.

**5.5** Buyer may not set off any debt due to him from Wijnen Meat against his debt owing to Wijnen Meat, with the exception of debts that have been expressly acknowledged by Wijnen Meat in writing or judgement debts.

**5.6** Buyer does not have any right of retention concerning those goods he has in his possession that are to be handed over to Wijnen Meat.

**5.7** Buyer is not authorised to suspend his liability to pay the goods delivered or services rendered, unless Wijnen Meat has agreed to such suspension in writing.

## **6. Discount and bonuses**

**6.1** If a (payment) discount or bonus arrangement, under whichever denomination, is agreed upon, then this will only be claimable and payable if Buyer has fulfilled prompt and in full all his (payment) obligations resulting from any agreement with Wijnen Meat.

## **7. Deliveries**

**7.1** Delivery periods shall commence each time on the day after the conclusion of an agreement, with the proviso that if Wijnen Meat has demanded prepayment or security for the payment within fourteen (14) calendar days after the conclusion of an agreement, the delivery period shall not commence until such prepayment or security has been received in full.

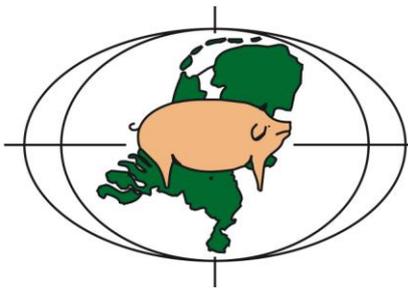
**7.2** The mere fact that the agreed delivery period is exceeded shall not cause Wijnen Meat to be in default. This shall be the case only if Wijnen Meat still fails to deliver within an additional, reasonable period stated to her in writing after the expiry of agreed delivery period due to reasons that are imputable to Wijnen Meat.

**7.3** Buyer may cancel an agreement due to a failure to deliver in time imputable to Wijnen Meat which causes Wijnen Meat to be in default pursuant to the provisions of article 7.2 only to the extent that an agreement has not been carried out yet and to the extent that Buyer cannot in reason be expected to let that part of an agreement stand that has not been carried out.

**7.4** Wijnen Meat is authorised to make partial deliveries and to send partial invoices with respect to those deliveries.

**7.5** Except where it has been or afterwards is expressly otherwise agreed, goods to be delivered shall be delivered at Buyer's warehouse or factory.

**7.6** Buyer is obliged to accept the delivery of the goods. If Buyer fails to accept the delivery of goods destined for and presented to him or fails to do so in time due to reasons not imputable to Wijnen Meat, then Wijnen Meat shall be authorised to sell these goods seven (7) calendar days after their presentation for delivery. The proceeds shall take the place of the goods up to a maximum equal to the agreed purchase price. All costs and any deficiency in the proceeds shall be for Buyer's account. All the above shall not prejudice all and any other rights of Wijnen Meat vis-à-vis Buyer.



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## **8. Extended and comprehensive reservation of ownership**

**8.1** Wijnen Meat reserves the ownership of goods (reservation goods) until Buyer has fully paid the total outstanding debts to Wijnen Meat.

**8.2** Buyer is obliged to store the reservation goods free of charge and to insure them sufficiently at one's own expense.

**8.3** If Buyer processes reservation goods, then Wijnen Meat will be regarded as producer of the new good and obtains its ownership.

**8.4** Buyer can sell the reservation goods within the framework of the normal conduction of his profession or business. Buyer will transfer the debts that originate from this, as to the extent of the total outstanding debts to Wijnen Meat, to Wijnen Meat, who will accept this transfer.

**8.5** Buyer is authorised to collect the transferred debts. If Buyer suspends his payments towards Wijnen Meat, then this authorisation ceases to exist; in case of delay of payment from Buyer to Wijnen Meat the authorisation can be withdrawn.

**8.6** If payments are suspended or delayed in spite of the expiration of a reasonable deferred term of payment or if Buyer is subject to insolvency proceedings, then Buyer is obliged to abandon any command over the goods, the processing of them etc., as well as the collection of the transferred debts. Reservation goods are to be stored immediately, separately and marked as property of Wijnen Meat. Wijnen Meat reserves the right to claim and repossess the reservation goods, as far as this proves to be necessary to cover the outstanding debts. Wijnen Meat-proxies are allowed to enter the rooms where the goods are stored. Buyer transfers his reclamation's towards Third Parties including the rights of entrance for the occasion to Wijnen Meat, who accepts this transfer.

**8.7** On request Wijnen Meat is prepared, to release securities at her own choice, as far as the market value of these securities exceed the outstanding debts by more than 10%.

## **9. Passing of risk**

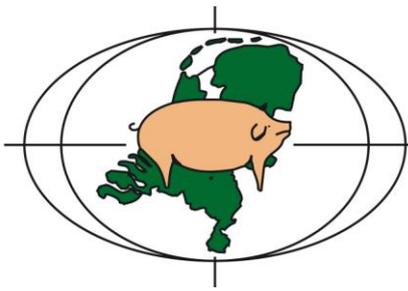
**9.1** Buyer shall bear and continue to bear the risk of damage to, total loss of or partial loss of the goods to be delivered already from the moment of arrival of such goods at the place of delivery. If Wijnen Meat presents goods to Buyer for delivery but Buyer does not accept the delivery for reasons not imputable to Wijnen Meat, any damage to, total loss of or partial loss of such goods shall also be and remain at Buyer's risk from the moment of presentation for delivery.

## **10. Quality; inspection; defects**

**10.1** Goods delivered shall be deemed sound if they meet the statutory veterinary quality standards applying at the time of concluding an agreement and moreover they meet the expressly agreed specifications and are suitable for use expressly stated by Buyer before or at the time of concluding an agreement.

**10.2** Loss of weight through refrigeration or freezing shall not be considered a defect if the loss weight does not exceed one (1) percent. For the purpose of the provision, loss of weight can be proved exclusively by means of an official weightcertificate showing that the goods were weighed on a sound weighing-machine on or immediately after delivery. If the goods to be supplied to Buyer are collected by Buyer himself at Wijnen Meat's business, the Wijnen Meat shall enable Buyer, on request, to weigh these goods or cause them to be weighed in his presence on Wijnen Meat's premises. In the cases referred to in the preceding sentence complaints about weight will be accepted by Wijnen Meat only if the goods were in fact weighed at Wijnen Meat's business

**10.3** Buyer is bound to subject the goods delivered to a thorough and expert inspection as to completeness and soundness immediately after their delivery. Any defects detected on such inspection must be notified to Wijnen Meat either in writing or verbally immediately followed by a written confirmation, in case of non-frozen meat within twenty-four (24) hours and in case of frozen meat within



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seventy-two (72) hours and in case of other goods within 10 calendar days of delivery. When notifying a complaint Buyer must submit an inspection report drawn up by an authorised and independent expert, which confirms the complaint. Non-compliance with these duties of inspection and notification shall result in the extinction of all rights in connection with defects, which could have been detected upon a thorough and expert inspection.

**10.4** On demand and as far as this will still be reasonable, Wijnen Meat shall remedy, free of charge and by supplementation or replacement, any defects which have been notified within the time stated therefor and in the proper manner in accordance with articles 10.2 and 10.3 and also any defects of which Buyer proves that they could not have been detected by him within the terms stated in 10.3 in spite of a thorough and expert inspection and which moreover he notifies as yet to Wijnen Meat in writing within thirty (30) days after delivery of the goods while submitting an inspection report from an independent expert, in the case of non-frozen meat within twenty-four (24) hours of detection, in the case of frozen meat within seventy-two (72) hours and in case of other goods within ten (10) calendar days of detection. If no supplementation or replacement is demanded or if supplementation or replacement is not reasonably possible; Buyer shall merely be credited for the part of the delivery that is defective. However, Wijnen Meat shall only be bound to remedy a defect free of charge or to credit Buyer, as the case may be, if Buyer proves that the defect resulted directly from a fact or circumstance that is imputable to Wijnen Meat. Wijnen Meat shall be authorised to make an own investigation into the nature, extent and cause of any alleged defect. Buyer shall be obliged to provide full co-operation as requested in this connection, under penalty of forfeiting all his rights in connection with the defect. Wijnen Meat is not obliged to take back defective goods, but if so requested Buyer shall immediately put any goods that have been replaced at Wijnen Meat's disposal.

**10.5** Defects that are imputable to Wijnen Meat shall not constitute valid ground for Buyer to cancel an agreement unless Wijnen Meat, even after receiving a written demand to such effect, still fails to remedy the defects in an acceptable manner within a term that is reasonable considering all the circumstances while Buyer cannot in fairness be expected to maintain an agreement.

## **11. Liability in damages**

**11.1** Wijnen Meat is only responsible towards Buyer on the ground of an imputable shortcoming or on the ground of an unlawful action, for damage, which is the typical and foreseeable result of the imputable shortcoming. For that purpose damage like loss of profit, company damage and/or indirect damage of the Buyer and Third Party damage will be left out of account.

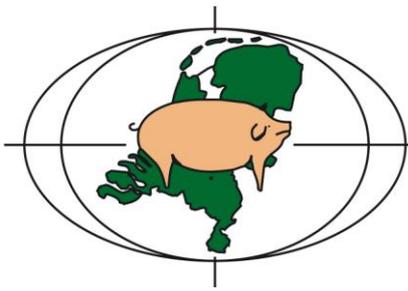
**11.2** Except for intent or gross culpability Wijnen Meat is not responsible for unlawful behaviour of those, whether or not employed, who are working for Wijnen Meat, or those who are involved by Wijnen Meat to carry out an agreement.

**11.3** In all cases any responsibility of Wijnen Meat will be limited to the total amount invoiced relating to this matter, or (as far as this is higher) to the amount of the benefit relating to this matter that Wijnen Meat received from its insurance company.

**11.4** Buyer indemnifies and holds Wijnen Meat harmless from all and any claims for damage resulting from unlawful actions of employees, subordinates or third parties who are somehow involved in carrying out an agreement.

## **12. (Not) Imputation of failure**

**12.1** If Wijnen Meat fails to meet any obligation towards Buyer this shall not be imputable to Wijnen Meat, i.e. this shall not constitute a breach of contract if such failure results from a circumstance which is unusual for or unforeseen by Wijnen Meat, such circumstance shall in any case include following, at any rate to the extent that Wijnen Meat is not to blame therefor: war or similar situation, riot sabotage, fire, lightning stroke, explosion, discharge of hazardous substances or gasses, power failure, serious operational breakdown, illness of employees on an unusual scale, strike, sit-down strike, blockade, boycott, shortage of raw materials, transportation impediments, government measures including bans on imports, exports, transits, production or deliveries, non performance or late performance by a third



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party involved by Wijnen Meat in the performance of an agreement, including any of Wijnen Meat's suppliers, the occurrence of animal diseases.

**12.2** If Wijnen Meat is temporarily unable to (properly) carry out an agreement due to circumstances not imputable to her, the mutual obligations in connection with that part of an agreement that has not been carried out yet shall be suspended. Temporary inability to (properly) carry out an agreement is defined as the inability to carry out an agreement during thirty (30) more or less consecutive calendar days. After this period either party may cancel the agreement with due observance of the provision of paragraph 12.3

**12.3** If part of an agreement cannot be carried out at all or not be carried out properly by Wijnen Meat due to circumstances not imputable to Wijnen Meat, this agreement may be cancelled with respect to such part only.

**12.4** If Wijnen Meat has concluded agreements relating to equal or similar goods with more than one Buyer and Wijnen Meat is unable to carry out all these agreements due to circumstances not imputable to Wijnen Meat, Wijnen Meat shall be authorised to use Wijnen Meat's own discretion in deciding which parts of these agreements Wijnen Meat carries out and to what extent.

### **13. Applicable law; mediation; court of competent jurisdiction**

**13.1** These General Terms and Conditions and all agreements with Wijnen Meat including their conclusion are governed exclusively by the law of the Netherlands. The United Nations Convention on the International Sale of goods of 11 April 1980 shall not apply.

**13.2** The parties agree to submit all disputes about or in connection with an agreement including its conclusion to mediation pursuant to the Rules of the Netherlands Mediation Institute (Stichting Nederlands Mediation Instituut) in Rotterdam, before such disputes are submitted for resolution by the competent judge as provided below.

**13.3** The mediator's task is to analyse with the parties the disputes, which have arisen in order that the parties may come in good faith to a resolution and mutually confirm the resolution by written. This good faith entails that the parties not commence any legal action before the mediation procedure pursuant to the preceding clause has been attempted and for a period of thirty (30) days from the date that the mediator is appointed, unless the mediation procedure has been terminated earlier.

**13.4** The mediation procedure is strictly confidential in nature. Parties shall not be bound in any subsequent court proceedings by any positions taken or statements made during the mediation procedure.

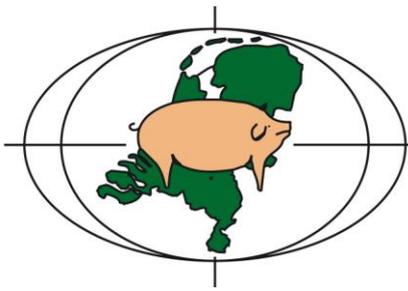
**13.5** When it has appeared impossible to solve a dispute about or in connection with an agreement including its conclusion with the help of mediation then this dispute shall be submitted exclusively to the jurisdiction of the competent court within the district in which Wijnen Meat is established. Wijnen Meat is authorised, however, to submit disputes to another competent Dutch or foreign court.

**13.6** If a stipulation of the General Terms and Conditions in hand is in conflict with any legal regulation of binding law, now or later on, then the remaining General Terms and Conditions will apply, as far as they are not declared irrelevant by Wijnen Meat.

**13.7** The headings of the articles of the General Terms and Conditions in hand have no independent meaning and parties cannot derive rights from these headings.

### **14. Various**

**14.1** With respect to agreements involving the transportation of goods outside the territory of the Netherlands, the latest valid version of "INCOTERMS" adopted by the International Chamber of Commerce at Paris shall have supplementary application to the effect that any trade used by the parties



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shall be interpreted in accordance with the latest valid version of “INCOTERMS” as far as this will be compatible with the present General Terms and Conditions.

**14.2** Both concerning a concluded agreement and concerning the fulfilment of an agreement Wijnen Meat is entitled to put another in Wijnen Meat's place.

**14.3** The Dutch version of the General Terms and Conditions is the authentic and valid text of the General Terms and Conditions and shall prevail in case of discrepancy with the present text.

Deposited at the Chamber of Commerce Oost-Brabant in November 2005.

Oss, Novembre 2005