

Amandino

AMANDINO S-BVBA

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Article 1 : Definitions

Within these general conditions of sale and supply, the following definitions shall apply:

“Amandino”: Amandino S-BVBA,

a company under Belgian law with its registered office at 9250 Buggenhout,
Brusselmannsstraat 20, entered in the Dendermonde register of companies under
company number BE0830 745 909

or

“Poème Du Chocolat”: Amandino S-BVBA,

a company under Belgian law with its registered office at 9250 Buggenhout,
Brusselmannsstraat 20, entered in the Dendermonde register of companies under
company number BE0830 745 909

Herein after referred to as Amandino, the party indicated in this capacity in the tender, in the order which is finally accepted, in a sales or delivery agreement, or in an invoice, it being understood and agreed that none of the parties specified above shall be liable, or jointly liable, for the obligations of any other party indicated above, unless expressly agreed otherwise in writing.

"customer" or "principal": the party which appoints Amandino, places an order with Amandino or enters into a contract with Amandino;

"products" : the goods and/or services supplied by Amandino.

Article 2. Scope

2.1 All tenders, quotes and/or contracts with Amandino in respect of the supply of goods and/or services, shall be governed exclusively by these general conditions of sale and supply of Amandino, hereinafter referred to as the "conditions".

2.2 The principal acknowledges that, prior to entering into the contract, it has seen the general conditions, which form an integral part of the contract with Amandino, and has accepted them.

2.3 Conditions used by the principal, whatever the nature thereof, whether or not contained in the general conditions used by the principal shall only apply if the said conditions have been expressly accepted in writing by Amandino. In the absence of such express, written acceptance by Amandino, Amandino's general conditions shall always take priority over the principal's conditions.

Article 3 : Formation of the contract

3.1. Amandino is only bound inasmuch as it has accepted the customer's order in writing or by sending its invoice to the customer. The customer is not permitted, in the meantime, to withdraw its order without Amandino's written consent. Tenders from Amandino are only binding upon it if they mention a period of validity and then always subject to harvests, major price fluctuations in the raw materials market, force majeure and misfortune (for example strikes, illness and machinery breakdown). Amandino reserves the right to change the characteristics of its products at any time.

3.2. In the event of unilateral cancellation of an order not yet accepted by Amandino or of cancellation of the contract by the customer, the latter shall, by force of law and without the need for any prior notice, be liable for fixed compensation of 20% in respect of that part of the order or contract up to EUR 100,000 and 5% thereafter, plus all costs incurred by Amandino, without prejudice to Amandino's right to claim compensation for any loss in excess of this amount, where applicable.

Article 4 : Transfer of ownership and risks

4.1. Amandino shall remain the owner of the goods supplied until payment has been received in full and the customer has settled all previous invoices. Amandino shall reserve the right to recover the goods supplied at any time, at the customer's expense. This right shall be exercised by simple letter. The customer shall permit the servants or agents of Amandino to enter on to the customer's premises and repossess the goods at any time prior thereto. As long as payment has not been effected the customer cannot sell, pledge or offer goods as guarantee or collateral security. Should the goods (or any of them) be converted into a new product, whether or not such conversion involves the admixture of any other goods or thing whatsoever and in whatever proportions, the conversion shall be deemed to have been effected on behalf of Amandino and Amandino shall have the full legal and beneficial ownership of the new products, but without accepting any liability whatsoever in respect of such converted goods in relation to any third party, and the customer hereby indemnifies the Seller in relation thereto. In the event of the goods being sold on by the customer, the right to the sales price shall replace the right to the goods supplied. Without prejudice to what is stated above, all risks, of whatsoever kind, shall be transferred to the customer from the time of delivery. For the purposes of applying this article, delivery shall be deemed to have taken place when the products left the buildings owned or leased by Amandino, even if the products have been sold carriage paid.

Article 5 : Price

5.1. Unless agreed otherwise, all our prices are "ex works", in euro and exclude duty, costs and taxes.

5.2. In the event of prices being shown in or pegged against a foreign currency, Amandino reserves the right to review prices, proportional to the change in the exchange rate between the euro and the said currency, at the time of invoicing.

Article 6: Payment

6.1. Unless agreed otherwise, payment must be made in the manner and at the place indicated by Amandino, no later than 30 days from the date of the invoice or any other agreed date, without any discount. Amandino shall nevertheless be entitled, without giving any reason, to demand payment in advance of part or all of the price prior to sending the products.

6.2. Unless agreed otherwise, Amandino export invoices shall be payable in cash. At the same time as its order, the customer shall arrange for an irrevocable letter of credit to be opened, payable at sight confirmed by a Belgian bank.

6.3. In the event of non-payment of the invoice within the period specified, the customer shall be liable, from the due date, by force of law and without the need for any prior notice, for a penalty for late payment on the amount due, of 1% per month or part thereof. The customer shall further be liable, by force of law and without the need for any prior notice, for lump sum compensation of 10% of the amount of any invoice less than or equal to EUR 25,000 (subject to a minimum of EUR 250), or otherwise 5% in all other cases. The costs associated with non-payment of bills of exchange or cheques, as well as other recovery charges are not included within the lump sum and shall be charged to the customer separately.

6.4. In the event of non-payment of a debt due for payment, all other debts shall become payable.

6.5. The customer shall not be entitled to suspend payments in the event of a complaint.

Article 7 : Delivery times

7.1. The delivery times provided are approximate and impose a duty on Amandino to do its best to comply with them, but without failure to honour them giving the customer any right of any kind to obtain compensation and/or to cancel its order, nor shall such failure entitle the customer to exercise any right of any kind to suspend the performance of its (payment) obligations.

Article 8 : Termination by force of law and without the need for any prior notice

8.1. Amandino shall be entitled to terminate the contract by force of law and without the need for any prior notice, with immediate effect, by giving written notification to the customer, in one or more of the following cases:

- where the customer fails to comply with its payment obligations, or fails to do so properly or on time;
- in the event of the customer becoming bankrupt or being placed in liquidation;
- in the event of seizure of the customer's bank accounts or other assets;
- in the event of the customer's loans being called in by the bank or others;
- where the customer sells on, uses as collateral or encumbers with charges, without Amandino's consent, products supplied with reservation of ownership; and
- in the event of the customer's bills of exchange being protested.

8.2. Amandino shall further be entitled, in the circumstances stated above, without any formality and without prejudice to all its rights, to demand guarantees and/or to suspend any outstanding deliveries.

Article 9 : Acceptance, protests

9.1. All claims for apparent defects, missing goods and delivery apparently other than in accordance with the order, shall be reported immediately in writing to Amandino and, no more than two days after delivery of the products to the customer. In the event of this period being exceeded and/or any other failure to comply with the above, it shall no longer be possible to hold Amandino liable, with the exception of deliberate negligence, it being understood and agreed that Amandino cannot, under any circumstances, be held liable for failings on the part of its staff.

9.2. All claims for non-apparent defects shall be reported to Amandino immediately and in writing, no later than eight days after the customer discovers or could reasonably have discovered the defect. In the event of this period being exceeded and/or any other failure to comply with the above, it shall no longer be possible to hold Amandino liable, with the exception of deliberate negligence, it being understood and agreed that Amandino cannot, under any circumstances, be held liable for failings on the part of its staff.

Article 10 : Access

10.1. Amandino shall be entitled and, where necessary, the customer shall guarantee that Amandino is entitled, at any time, alone or accompanied by others, to inspect the installations where the products supplied by Amandino and which are still the property of Amandino, are located. The customer shall inform Amandino, upon first being requested to do so and at any time, in writing, of the location of any product supplied by Amandino and which is still the property of Amandino.

Article 11: Liability

11.1. Amandino shall not be liable in any way to compensate the customer or third parties for indirect loss, including but not confined to: failure to make a profit and increases in administrative expenses arising out of the defective nature of the goods, interruption to the operation or shutdown of the organisation of the customer or a third party as a result of supplying goods other than in accordance with the order or any other delivery not as agreed.

11.2. Except in the case of deliberate negligence on the part of Amandino and without Amandino being liable for errors on the part of its staff, Amandino shall not be liable for any direct loss or damage suffered by the customer or third party. As regards both direct and indirect loss and damage, therefore, the customer agrees to irrevocably and definitively waive any rights of recovery and possible claims it might have against Amandino.

11.3. In the event of Amandino being held liable, Amandino's involvement in the loss shall be limited to EUR 250,000 in the case of each loss and provided the loss has actually been sustained and proven.

11.4. Products may only be returned with Amandino's written consent and in accordance with its instructions.

11.5. Unless agreed otherwise, the costs and risks of products being returned by the customer shall be borne by the customer. Where attendance is required on site, the travel and accommodation expenses of Amandino's staff (as well as those of any subcontractors working for Amandino), together with the costs and risks of transportation and the equipment and tools required shall be borne by the customer, unless agreed otherwise.

11.6. Amandino shall not be liable for :

- loss or damage which is also the result of negligence on the part of the victim or of a person for whom the victim is responsible;

- infringement of patents, licences and/or other third party rights arising out of the use of data provided by or on behalf of the principle;

- loss of or damage, howsoever caused, to raw materials, semi-finished products, models, tools, etc., provided by the principal;

11.7. The customer expressly agrees to hold Amandino harmless and to indemnify it in full for all recoveries by third parties seeking compensation for a loss suffered by them, in those cases where Amandino is not liable under this contract with the customer.

11.8. The customer expressly agrees to hold Amandino harmless and to indemnify it in full for all recoveries by third parties against Amandino pursuant to a breach of the law of 25 February 1991 relating to liability for defective products, or any similar legal provision, whether or not based on European directives on product liability, including recovery actions against Amandino by producers-codebtors held jointly and severally liable.

Article 12 : Intellectual Property

12.1. Any information or documentation sent to the customer shall remain the property of Amandino. It may not be wholly or partially copied or shown and/or sent to third parties, in any form whatever. It may only be used for the purpose for which it was provided. The fact of sending the aforesaid information shall not be interpreted as the issuing or granting of a licence, patent or other intellectual or industrial property right, nor shall the sending of such information imply any guarantee of non-violation of the intellectual or industrial property rights of third parties.

Article 13 : Applicable legislation and jurisdiction

13.1. Belgian law, to the exclusion of any international treaties or other similar regulations relating to the sale of goods and to the exclusion of articles 1641-1648 of the Code Civil, shall be applicable to all tenders, quotes and/or contracts with Amandino.

13.2. In the case of any disputes resulting from or arising out of tenders and/or quotes from Amandino and/or contracts entered into with it, the courts with responsibility for Dendermonde (Belgium) shall have sole jurisdiction. Nevertheless, Amandino reserves the right to bring the dispute before any other competent court, whether in Belgium or abroad.

Article 14 : Interpretation

14.1. Simple mentions of articles in the agreements entered into between the parties and in the general conditions are stated merely for reference purposes and shall not determine, limit or expand in any way the content or interpretation of these conditions. They do not form part of these conditions for any purpose whatever.

14.2. If a clause or part of a clause in these conditions is void or unenforceable or, for whatever reason, non-binding, the other provisions of these general conditions shall continue to apply. If necessary, the parties shall attempt to find a solution and/or a provision which is as close as possible to the clause or part of the clause which has been declared void, unenforceable or non-binding.