

# GENERAL TERMS AND CONDITIONS OF SALE FOR PROFESSIONALS

## **1 Purpose**

The purpose of the present general terms and conditions are, on the one hand, to inform any potential professional purchaser of the terms and conditions by which PALMIFRANCE undertakes the sale and delivery of products bought and, on the other hand, to define the rights and obligations of the parties within the framework of the sale of products by the Vendor and Purchaser

These present general terms and conditions refer exclusively to purchases made by professionals of all of the products shown on the PALMIFRANCE NISHIKIDORI MARKET website.

The products are for sale in the following countries : metropolitan France, the United Kingdom, Ireland, Spain, Portugal, Italy, Switzerland, Belgium, Luxembourg, Germany, Holland, Denmark, Liechtenstein, Croatia, Czech Republic, Russia, Poland, Rumania, Greece, Norway, Sweden, Hungary, Bulgaria.

No deliveries nor after sales service is offered outside these countries.

It is the responsibility of every Purchaser to be aware, prior to validating their order on the PALMIFRANCE website, of all the legislative and regulatory norms applicable to the products subject of their order, notably but not exclusively, with regard to the customs, to hygiene and to safety, and to verify the possibility to import, to consume or to use the products in light of these regulations.

The Purchaser prior to their order, states that :

- the purchase of products on the PALMIFRANCE NISHIKIDORI MARKET website has a direct relation with their professional activity,
- they are legally entitled to bind themselves or the legal entity they represent to the present general terms and conditions.

These terms and conditions override any other terms and conditions, notably general terms and conditions of sale, deemed unwritten, unless specifically and formally provided for by PALMIFRANCE.

Taking into account possible changes in its website, PALMIFRANCE reserves the right to change the present general terms and conditions from time to time. These new general terms and conditions will only be applicable to purchases made subsequent to these modifications.

## **2.PALMIFRANCE details**

Nom : PALMIFRANCE

Joint stock company with a Board of Directors and registered capital of € 80.000.

Address : Z.A.C Aeropôle,

140, Rue Georges Guynemer,

44150 ANCEN IS.

S IRET registration n° : 444 789 127 000 32 RCS NANTES

### **3. Site Access**

The Purchaser will make it their business to set-up adequate IT and telecommunication means to access the PALMIFRANCE site.

The Purchaser will bear all telecommunication charges for the access and use of the NISHIKIDORI MARKET site.

### **4. Contract and Orders**

#### **4.1. Prices**

The sale prices of the products offered on the PALMIFRANCE NISHIKIDORI MARKET Internet site, indicated in euros, are those in force on the date the Purchaser places their order.

They are without taxes (H.T), without packaging and collected from our stores. Unless otherwise agreed, the packaging is decided on and prepared by our company.

Value added tax (VAT) applicable on the day of the order will be added and deductions will be made of any price reductions or discounts agreed as special offers.

Should the VAT rate change it will automatically be passed on to the products sold by PALMIFRANCE on its Internet site.

The purchase price invoiced is franco, delivery charges are invoiced in addition to the price of the products purchased.

PALMIFRANCE reserves the right to change the purchase price of the products at any moment. The Purchaser will be informed of this change before any validation of their order.

#### **4.2. Product specifications**

Pursuant to article L. 111-1 of Consumer Law, the Purchaser can, prior to their order, consult the main specifications of the product(s) they wish to order on the NISHIKIDORI MARKET site.

The Purchaser chooses one or more products among the different categories offered on the NISHIKIDORI MARKET site.

The PALMIFRANCE promotional offers are limited to available stocks and subject to supplier availability.

PALMIFRANCE reserves the right to change the mix of its products if supplier constraints require it.

The photographs, graphics and descriptions of the products on offer are not contractual and in no way bind PALMIFRANCE.

#### **4.3. Orders**

Any order presupposes agreement, without limitation and unreservedly, to the present general terms and conditions, which prevail over any other Purchaser document, and notably over any other general terms and conditions, unless there is the prior agreement of PALMIFRANCE.

All documents other than the present general terms and conditions and notably catalogues, prospectus, advertising, notices, are only for information and are non-contractual.

From the moment the Purchaser has validated their order by clicking on the "Validate" icon, they acknowledge fully accepting, and unreservedly, the present general terms and conditions as well as the prices, volumes, colours, weights and quantities of the products they have ordered.

Steps in the ordering process :

- 1) put the products in the basket.
- 2) access an account (existing or new)
- 3) choice of delivery address
- 4) choice of means of payment (if several)
- 5) validation of the order after ticking "I have read and accept the general sales terms "

By clicking on the "Validate" icon together with the identification procedure and the total protection of the messages is equivalent to an electronic signature. This electronic signature has the same value between the parties as a handwritten signature.

The purchase will only be considered as final when PALMIFRANCE sends confirmation of the order by fax or e-mail to the Purchaser.

Once the confirmation has been sent, it is irrevocable, unless a written prior agreement sent by fax or e-mail by PALMIFRANCE states otherwise.

Any fraudulent order or order suspected as such, will be considered as null and void by PALMIFRANCE.

PALMIFRANCE advises the Purchaser to keep this information in a paper or electronic form.

## **5. Payment**

The Purchaser settles payment on order unless there is a written prior agreement with PALMIFRANCE for a payment within 30 days of shipping the merchandise .

All orders are payable in euros.

To settle the order, the Purchaser can avail themselves of the following methods of payment:

- . bank card,
- . cheque (sent by the post),
- : money order,
- . bank transfer (any Purchaser bank charges borne by the Purchaser).

The Purchaser guarantees PALMIFRANCE that they have the eventual necessary authorisation to use the method of payment chosen, when the order is validated.

Any order settled by cheque or money order will only be processed once payment has been received.

At no time can the monies advanced be considered as deposits or instalments.

PALMIFRANCE reserves the right to suspend or cancel any order and/or delivery, of whatever nature and at whatever point in the process, in case of non-payment of any sum due by the Purchaser or in the case of a payment issue or if PALMIFRANCE has special or serious reasons to believe the customer has payment difficulties on the day of the order, or subsequent to it, or if the customer does not present the same guarantees as on the acceptance date of the order. The Purchaser can then at no moment expect any compensation whatsoever.

Late payment penalties of an amount equal to the interest rate applied by the European Central Bank to its latest refinancing plan, increased by TEN (10) points, are applicable by full right to amounts remaining unpaid after a TEN (10) day period following the date of invoice.

Deliveries of any new orders could be suspended in the case of late payment of a previous order and this notwithstanding the provisions of the present.

PALMIFRANCE reserves the right to request, before accepting any order, as part of the procedure, Purchaser accounting documents, notably an operating statement, even estimated, enabling them to evaluate their ability to pay.

Within the framework of the fight against Internet fraud, information concerning the Purchaser's order could be communicated to any third party for verification

## **6.Choice of products**

The Purchaser being fully aware of the products commercialised by PALMIFRANCE and of their specifications, takes sole responsibility in relation to their needs as they have previously determined before any order, for the choice of the product(s) subject of their order. Moreover, the Purchaser alone being aware of the products they have and use, is sole judge of the compatibility of the products ordered with those they use.

The Purchaser is considered as having checked the adequacy of the products ordered with regard to the legislation of their country of residence, notably hygiene and safety and the possibility to import the said products.

It is for the Purchaser alone to decide, if they consider themselves insufficiently knowledgeable, to ask for advice.

## **7.Delivery and reception**

### **7.1. General remarks**

The products ordered are handed to a shipper or transport company responsible for their delivery, or to their postal service, against acknowledgement receipt. In case of absence when delivered by LA POSTE, a document will be left in the Purchaser's letterbox specifying when and where they can collect their parcel.

The Purchaser is required to check, in front of the carrier or postman, the condition of the packaging and its content at delivery.

The products will be delivered to the establishment or address given by the Purchaser on the order form, in metropolitan France, the United Kingdom, Ireland, Spain, Portugal, Italy, Switzerland, Belgium, Luxembourg, Germany, Holland, Denmark, Liechtenstein, Croatia, Czech Republic, Russia, Poland, Rumania, Greece, Norway, Sweden, Hungary, Bulgaria.

By default, invoices will be sent to the e-mail address the Purchaser gave when they registered.

### **7.2. Delivery**

It is the customer's responsibility, in case of damage or shortages, to make all necessary reservations known to the carrier or company which undertook the delivery.

Where the delivery is made by LA POSTE, if the Purchaser has a doubt of whatever nature regarding the condition or content of their parcel, they must apply the Colissimo procedure (notably mentioning the damages, any claims and reservations) and refuse the merchandise by immediately informing the postal service (form 170).

Any product not subject to reservations communicated to the carrier or company which undertook the delivery within THREE (3) days of reception, in accordance with article L. 133-3 of Commercial Law, a copy of which will be sent to our company at the same time, will be deemed as accepted by the customer.

PALMIFRANCE cannot be held responsible for any delivery errors. In this case, any additional cost to send the products to another address will be borne by the Purchaser.

### **7.3 Delivery time**

Delivery times are given for information and as an indication ; they depend essentially on the availability of carriers and the time of arrival of the orders.

PALMIFRANCE does everything in its power to respect the delivery times given when the order is placed, in relation to the professional times given, and to carry out the order, except for a case of force majeure as defined in article 10 hereinafter.

Delivery delays can neither result in any compensation, nor be a reason to cancel the order.

Any delay in relation to the initial delivery time given when the order was placed, cannot justify the cancellation of the Purchaser's order placed and recorded with our Company.

Where a delivery takes place outside metropolitan France, PALMIFRANCE cannot be held responsible for any delay, import issues or seizure of products ordered by the customs of the Purchaser's country of residence based on non-compliance of the said product with the specific norms of the country of delivery.

### **7.4. Replacement of products**

Without prejudice to the measures to be taken by the Purchaser vis-à-vis the carrier as described in article 7.2, in the case of conspicuous defects or shortages, any claim, of whatever nature, relating to the delivered products, will only be accepted by PALMIFRANCE, in writing, sent by registered letter with acknowledgement, within THREE (3) days as provided by article 7.2.

It is for the Purchaser to provide all proof regarding the veracity of the conspicuous defects or shortages noted.

No return of products can be undertaken without the express, written, prior agreement of PALMIFRANCE, obtained notably by fax or e-mail.

Only the carrier chosen by PALMIFRANCE is authorised to undertake the return of the products in question.

When after checking a conspicuous defect or shortage is actually noted by PALMIFRANCE or their representative, the Purchaser can only request replacement of the non-compliant product and/or the goods needed to make up the shortage at the expense of PALMIFRANCE, without claiming any damages or cancelling the order.

Reception of the products ordered by the Purchaser without any reservations covers any conspicuous defect and/or shortage.

Any reservations must be confirmed within the time stipulated in article 7.2 of the present.

Claims made by the Purchaser under the terms and conditions and in accordance with the method described in the present article do not suspend payment by the Purchaser of the merchandise in question.

PALMIFRANCE cannot be held in any way responsible for incidents during transport, destruction, damage, loss or theft, even if it chose the carrier.

Non-compliance of a product ordered with one or several specific norms applicable in the Purchaser's country of residence outside France, cannot be grounds for the return or reimbursement of the order.

## **8. Guarantee against conspicuous and concealed defects**

The products must be checked by the Purchaser on delivery, and any claim, reservation or litigation relating to shortage or conspicuous defects, must be made under the terms and conditions stipulated in article 7.2 of the present. In the case of conspicuous defects, we agree to replace the products once the alleged defects are verified.

The Purchaser must provide all proof regarding the reality of the defect noted, PALMIFRANCE reserves the right to undertake, directly or indirectly, on site reports and checks.

The declaration of defects existing at the moment of delivery and revealed after reception of the products, must be communicated by the Purchaser within THREE (3) days following the date the non-compliance was discovered. No declaration will be taken into account if it is communicated more than THREE (3) clear days after delivery.

No non-compliance proceedings can be started by the Purchaser more than THREE (3) clear days after delivery.

It is expressly agreed that acceptance by the Purchaser of the present general terms and conditions means that after expiration of this time limit the Purchaser no longer has the right to put forward product non-compliance, nor use this in a counterclaim as a defense against any proceedings to collect debt instituted by PALMIFRANCE.

Should these terms and conditions not be respected, PALMIFRANCE responsibility for a concealed defect cannot be questioned.

Product defects and deterioration resulting from unusual storage conditions and/or preservation by the Purchaser, notably in the case of accident of whatever nature, do not give any right to the PALMIFRANCE guarantee.

Under the guarantee for concealed defects, PALMIFRANCE is only required to replace the defective products without charge and the Purchaser cannot make any claim for damages, for whatever reason.

The company guarantees its products against concealed defects, in accordance with the law, practices, jurisprudence and under the terms and conditions defined in the present.

The guarantee subject of the present article only applies to products which have duly become the property of the Purchaser. It is not applicable when the Purchaser has used the products in inappropriate or abnormal conditions.

The present guarantee only applies to concealed defects. The Purchaser being considered as a professional, a concealed defect is one which through a defect in manufacture makes it unsuitable for use and not possible for the Purchaser to detect it before use.

The present guarantee is limited to, except for food products, the SIX (6) first months of use. Non-food products are deemed as used by the Purchaser within the first TWO (2) months of availability. In all cases, the Purchaser must prove the date of the beginning of use of the said products.

The PALMIFRANCE guarantee ends by full right when the Purchaser has failed to warn them of the alleged defect within TWENTY (20) clear days of its discovery.

## **9. Ownership rights**

**PALMIFRANCE REMAINS FULL AND COMPLETE OWNER OF THE PRODUCTS SOLD UNTIL THE PRICE, DELIVERY CHARGES AND TAXES HAVE BEEN CREDITED TO THEM.**

**HOWEVER, THE PURCHASER IS RESPONSIBLE FOR THE PRODUCTS AS SOON AS THEY ARE PHYSICALLY DELIVERED, THE TRANSFER OF OWNERSHIP ENTAILING THAT OF RISK.**

### **10. Force Majeure**

The following are considered as force majeure or fortuitous, events independent of the will of the parties which they can neither avoid nor overcome and so the unexpected appearance postpones the execution of the contractual obligations or makes them almost impossible.

The following are considered as force majeure or fortuitous releasing PALMIFRANCE from its obligation to deliver within the time initially planned, without this list being exclusive : strikes by all or a part of PALMIFRANCE employees or their usual carriers, fire, flood, war, production hold ups due to chance breakdowns, impossibility to receive goods from suppliers, epidemics, bad weather conditions, road blocks, strikes or EDF or GDF power cuts, or breakdowns in supply which are not caused by PALMIFRANCE, as well as any other breakdown in supply caused by PALMIFRANCE suppliers.

In such circumstances PALMIFRANCE will warn the Purchaser by fax or e-mail within TWENTY FOUR (24) hours following the event, the contract being therefore suspended by full right without compensation from the moment the event occurred.

The aforementioned cases are the cases of force majeure for which PALMIFRANCE is not responsible, without it being necessary to examine the way in which they occurred with regard to the terms and conditions detailed in jurisprudence to take advantage of force majeure.

PALMIFRANCE will inform the Purchaser in this case by e-mail or any other means of the impossibility to deliver as planned and the prognostic for resumption of service.

After a THIRTY (30) day period following the occurrence, the contract can be cancelled by the most diligent party, by registered letter with acknowledgement, without either of the parties requiring the granting of damages or compensation of any sort.

When they live outside France, the Purchaser is considered as being fully aware of all the specific norms of their country of residence regarding the subject of their order, notably customs, hygiene and safety. For this reason, PALMIFRANCE cannot be held responsible for should the Purchaser order product which do not comply with one or several norms.

Likewise, PALMIFRANCE cannot be held responsible in any way for delays in delivery, import difficulties or seizure of products ordered at the frontier of the Purchaser's country of residence, due to product non-compliance with specific regulations in the country of delivery.

### **11. Responsibility**

PALMIFRANCE cannot be held responsible for failure to complete the contract should there be a shortage in stock or non-availability of the product due to force majeure mentioned in article 10 above.

Moreover, PALMIFRANCE cannot be held responsible for any indirect damages of whatever nature caused by the purchase of its products.

PALMIFRANCE cannot be held responsible for the loss of any data. It is the Purchaser's responsibility to undertake all necessary file saving.

The NISHIKIDORI MARKET site also contains information from third parties and links to other Internet sites. PALMIFRANCE cannot be held responsible for any damages resulting from the use, access to, or inability to use this third party information, nor the content of other Internet sites.

## **12. Partial non-validity**

If one or more of the stipulations of the present general terms and conditions are considered as invalid or declared as such as a result of the implementation of a law, regulation or following a final judgement of a competent jurisdiction the other stipulations will keep their scope and force.

## **13. Non-withdrawal**

The fact that one of the parties does not prevail itself of a breach vis-à-vis the other party regarding any of the obligations mentioned in the present general terms and conditions cannot be seen in the future as the release of the obligation in question.

## **14. Confidentiality and "Data Protection Act"**

The information collected by PALMIFRANCE when the Purchaser places an order is needed by PALMIFRANCE and its commercial partners to manage the order. In accordance with the "Data Protection Act" n° 78-17 of January 6 1978, the Purchaser has a right of access, modification, opposition and suppression of their data held by PALMIFRANCE.

PALMIFRANCE binds itself not to communicate this information to other organisations or companies without prior permission from the Purchaser.

The Purchaser could receive commercial offers, or be informed of PALMIFRANCE promotional offers. If the Purchaser does not wish to receive these offers, they can inform PALMIFRANCE by letter or by e-mail.

## **15. Applicable law**

Any question with a bearing on the present general terms and conditions as well as the sales they govern, which are not covered by the present contractual stipulations, will be settled by French law except for any other right, and as supplementary to the Vienna Convention on the international sale of goods.

## **16. Governing law**

For the enforcement of the present, the company elects domicile in its head office as stated in article 2 of the present.

Any litigation regarding the enforcement of the present general terms and conditions as well as their interpretation, execution and sales contracts finalised with our Company, or any payment of the price, will fall within the competence of the Tribunal de commerce de NANTES (44) from wherever the order, delivery or payment was made and whatever the method of payment, even if there should be an introduction of third parties or plurality of defendants.

Bills of exchange neither substitute nor depart from this clause of jurisdiction.

The power of jurisdiction falling to the Tribunal de commerce de NANTES (44) is general and applies, whether it be a leading question, a point of law, a main action or an injunction order.

Moreover, where legal proceedings or any other action to collect a debt are instituted by our Company, the summons and legal fees, fees for lawyers and bailiffs and all additional costs will be borne by the Purchaser who has not fulfilled their obligations, as well as those fees linked or resulting from the non-respect of the terms and condition of payment or delivery of the order in question by the Purchaser.