

General Terms & Conditions of Delivery and Payment

1. Scope of application, deviating terms and conditions of business, future transactions, order of precedence of agreements

- 1.1 The following Terms & Conditions of Delivery and Payment (hereinafter **“Terms & Conditions”**) apply to all our offers and declarations of acceptance, all contracts and all deliveries and other services provided to entrepreneurs, public legal entities and special funds under public law within the meaning of Article 310 (1) of the German Civil Code (BGB).
- 1.2 Our Terms & Conditions apply exclusively. Any conflicting or deviating terms and conditions of business of the customer do not apply unless they have been expressly recognised by us in advance and in writing.
- 1.3 In the case of ongoing business relationships, our Terms & Conditions also apply to all future business transactions, even if they are not expressly agreed again.
- 1.4 Individual agreements with the customer (including individual ancillary agreements, addenda and alterations) and any deviating information in offers/order confirmations shall take precedence over these Terms & Conditions.

2. Writen text form, offers and conclusion of contract, authority to conclude contracts of travelling sales staff and sales representatives, variations, property rights and copyright

- 2.1 All offers and declarations of acceptance, alterations and other ancillary understandings and agreements that are made before or on conclusion of contract must take written or text form (hereinafter referred to together as **“written”**) to become legally valid.
- 2.2 Unless expressly designated or agreed as binding, our offers are non-binding. In particular in relation to price, quantity and delivery period. The customer is bound by his offer for two weeks. An effective contract comes into being only on written confirmation of the offer received by us, at the latest, however, on acceptance of the delivery – notwithstanding 2.1.
- 2.3 Our travelling sales staff and sales representatives do not have any power of representation with respect to the conclusion of contracts. Transactions arranged by them shall therefore take effect only on our written confirmation, at the latest, however, on provision of the goods. As a general rule, any statements and declarations made by our sales staff and representatives concerning the nature of our goods are non-binding. The information is only deemed to have been agreed if it has been provided by us in writing, or it is included in either our own promotional material or, with our approval, in general public promotions (advertising). Under no circumstances should the information be construed as a guarantee of quality, however.
- 2.4 In the context of technical progress and in accordance with changes to health and food legislation, the ordered or delivered goods are expressly subject to variations, in particular with regard to materials and type of packaging, insofar as this is acceptable to the customer.
- 2.5 We retain intellectual property rights and copyright to all documents provided to the customer in connection with placing the order, such as prospectuses, calculations, drawings, plans, etc. These documents must not be made accessible to third parties unless we give our express written consent for this to the customer. If a contract does not come into being, the documents provided must be returned to us immediately.

3. Prices, price changes, order value below EUR 1,500.00

- 3.1 Unless otherwise agreed, goods ordered shall be invoiced at the list prices applicable on the day of delivery.
- 3.2 Unless otherwise agreed, our prices are understood to be in EUROS “EX WORKS” (Incoterms 2020), plus VAT at the statutory rate.
- 3.3 Erfolgt die Lieferung mehr als einen Monat nach Vertragsschluss und wurde keine Festpreisabrede getroffen, können wir die Preise im Falle von Kostenänderungen entsprechend den zwischenzeitlich eingetretenen Änderungen bei Löhnen, Gehältern, Steuern, Frachtkosten, Rohstoff-, Material- und Produktionskosten anpassen. A price increase may not be implemented to achieve additional profit. In the case of a price increase of more than 5%, the customer is entitled to withdraw from the contract.
- 3.4 Unless otherwise agreed, we are entitled to charge the customer an additional flat-rate amount of EUR 25.00 as a low quantity surcharge for orders for delivery with a net value of less than EUR 1,000.00.

4. Delivery, delivery dates and periods, partial deliveries, force majeure, default on delivery, delivery of our own supplies

- 4.1 Sofern von uns nicht anders vereinbart, sind Liefertermine und Lieferfristen unverbindlich. Delivery periods shall begin on conclusion of contract, unless the customer is obliged to provide services in advance. In this case, the delivery period shall commence on receipt by us of the service to be provided by the customer.
- 4.2 Unless otherwise agreed, the minimum delivery period is 5 working days from receipt of the order.
- 4.3 Partial deliveries are permissible and can be invoiced separately if the complete fulfilment of the contractual services is not possible for us as a result of circumstances for which we are not responsible and a partial delivery is reasonable for the customer.
- 4.4 In cases of force majeure or other unforeseeable events, e.g., wars, acts of terrorism, sabotage, piracy, currency and trade restrictions, operational disruptions, official orders, lawful strikes, natural disasters, mis- or under-handvering of raw materials of our products, pandemic, fire etc., which temporarily prevent us, through no fault of our own or attributable to us, from delivering the goods on the binding or non-binding agreed date or by the agreed deadline, these deadlines/dates shall be extended - even during the delay - by the duration of the performance disruptions caused by these circumstances. If a service disruption leads to a delivery delay in excess of four months, either contracting party is entitled to withdraw from the contract. If, as a result of the circumstances specified, delivery becomes impossible or unreasonable in whole or in part, we shall be exempt from our delivery obligation or entitled to withdraw. This is without prejudice to any statutory rights of withdrawal.
- 4.5 In the event of changes in costs as a result of a force majeure event, we may adjust prices in accordance with changes in wages, salaries, taxes, freight costs, raw material, material and production costs that have occurred in the meantime. A price increase may not be implemented to achieve additional profit. In the case of a price increase of more than 5%, the customer is entitled to withdraw from the contract. . In the event of a shortage of raw materials or a failed or reduced harvest, the supplier shall be entitled to make a contractual adjustment with regard to the quality and quantity of the contractual goods to the extent of the harvest failure.
- 4.6 If we do not receive our own supplies at all or they are not delivered on time, we shall not be in default of delivery in respect of the customer, unless we are responsible for the failure of our suppliers to deliver or to deliver on time. Steht fest, dass eine Selbstbelieferung mit den von uns bestellten Waren aus von uns nicht zu vertretenden Gründen nicht erfolgen kann, so teilen wir dies dem Kunden unverzüglich mit und es sind beide Vertragsparteien zum Rücktritt vom Vertrag berechtigt.
- 4.7 The customer may demand delivery from us four weeks after a non-binding delivery date or a non-binding delivery period has elapsed. On receipt of such demand, we shall be in default, insofar as we are responsible for failure to meet the delivery date or delivery period. If, in the case of default of delivery, the customer wishes to withdraw from the contract and/or demand compensation in place of performance, he must set us an appropriate period of grace of at least two weeks from the start of default in writing. It is not necessary to set a period of grace if it can be dispensed with under statutory regulations.
- 4.8 In the event of default of delivery, we shall be liable for compensation claims in accordance with the provisions of section 10. However, the losses caused by the default for which we are liable are limited in cases of minor negligence to 0.5% of the value of the delayed delivery or partial delivery for each full week, up to a maximum of 10% of the value of the delayed (partial) delivery.

5. Transfer of risk, transport insurance

- 5.1 Unless otherwise agreed, delivery of the goods shall be “EX WORKS” (Incoterms 2020). The risk shall be transferred to the customer as soon as the shipment has been handed over to the person providing the transport. If the shipment of goods is delayed for reasons for which we are not responsible or if the customer does not accept the goods promptly, even though they have been offered to him, the risk shall be transferred to the customer on notification of readiness for shipment.
- 5.2 In the case of shipment, we shall take out transport insurance at the request and cost of the customer. We and the shipping company providing delivery must be notified promptly and in writing of any transport damage. The customer shall check the goods promptly on receipt for completeness and correspondence with the delivery paperwork and report any problems promptly; otherwise the delivery shall be deemed to have been accepted.
- 5.3 **Payment terms, acceptance of cheques and bills of exchange, debit notes**

- 6.1 The purchase price is payable within 14 days of invoicing and delivery, unless otherwise specified or agreed. However, even in the context of an ongoing business relationship, we are entitled to make deliveries in whole or in part only against payment in advance. We shall make the relevant condition known at the latest on confirmation of the order.
- 6.2 Bills of exchange and cheques are accepted on account of performance only if they are bankable. Payments using bills of exchange require prior written approval. Any collection and discount charges and any applicable VAT shall be added to the invoice amount.

7. Late payments, liquidated damages; consequences for future deliveries, deterioration in assets, offsetting / retention

- 7.1 If the customer is in default of payment, we are entitled after a reasonable period of grace to withdraw from the purchase contract and claim standard damages amounting to 15% of the net value of the contract. The customer is entitled to prove that we have suffered no losses or smaller losses. This is without prejudice to our right to prove that the losses suffered were higher.
- 7.2 If the customer does not meet his payment obligations arising from an individual purchase agreement, whether in whole or in part, after a reasonable grace period set by us we are entitled to request that future deliveries take place concurrently against payment of the respective purchase price, without prejudice to our other statutory rights.
- 7.3 If it becomes apparent that the financial position of the customer has deteriorated substantially after conclusion of the contract (e.g., by an application to open insolvency proceedings) and our claims for payment are exposed to significant risk as a result, we are entitled to withhold performance until the customer has made the payment or provided security. We may determine an appropriate period of grace in which the customer, at his discretion, shall provide payment or security concurrently with performance. On expiry of the period of grace, we are entitled to withdraw from the contract and / or to demand compensation or reimbursement of expenses if the statutory requirements are met.
- 7.4 The customer is entitled to offset only if his counterclaims are legally established, uncontested or a decision is pending. The customer is permitted to exercise a right of retention only if his counterclaims are legally established, undisputed or a decision is pending, and they arise from the same contractual relationship.

8. Resale of goods

- 8.1 The customer may resell our goods only in unaltered original packaging. We cannot accept liability for defects that arise as a result of the fact that the packaging has been opened or damaged. This is without prejudice to statutory liability under the German Product Liability Act.

9. Complaints about defects, liability for defects

- 9.1 The customer shall inspect the goods promptly on delivery. Obvious defects - including complaints regarding the completeness and correctness of goods delivered and regarding coding in cases in which our goods are marked with the EAN code - must be reported to us immediately and in writing, if possible on our delivery note or transport documents, within seven days of delivery at the latest. Concealed defects must also be reported to us promptly and in writing, at the latest seven days from discovery of the defect. If we do not receive any such notifications, the delivery is deemed to be in perfect condition and approved.
- 9.2 If the customer reports a defect in good time in accordance with 9.1, he has at our discretion a right to rectification of the defect or delivery of a fault-free item free of charge (supplementary performance).
- 9.3 With the exception of compensation claims for defects, claims for defects shall expire twelve months from delivery.
- 9.4 The customer is entitled to pursue compensation claims for defects only insofar as our liability is not excluded or limited by section 10 of these Terms & Conditions. Further claims or claims other than those covered here in section 9 in relation to defects are excluded.

- 9.5 The provisions of section 9 are without prejudice to claims for defects that we have fraudulently concealed or that are covered by a quality or durability guarantee.

10. Liability

- 10.1 We accept liability without limitation for any damage caused by malicious intent or gross negligence. In the case of a breach of a major obligation or an accessory obligation as a result of minor negligence, which puts achievement of the purpose of the contract at risk or the fulfilment of which facilitates execution of the contract in the first place, and on fulfilment of which the customer may rely (hereinafter **“essential accessory obligation”**), our liability shall be limited to damage that is foreseeable on conclusion of contract and is typical of this type of contract. In the case of negligent breach of contractual accessory obligations that are not essential accessory obligations, we do not accept any liability.
- 10.2 The above exclusions and limitations of liability do not apply to fraudulent concealment of defects or to guarantees of quality, to liability for claims by the customer under the Product Liability Act, or to cases of physical injury, damage to health and loss of life of the customer. No change in the burden of proof to the disadvantage of the customer is associated with this.
- 10.3 Where our liability is excluded or limited, this also applies to the personal liability of our legal representatives, employees and vicarious agents.
- 10.4 With the exception of claims based on prohibited actions, the customer's compensation claims for which our liability is limited under section 10 here shall expire in one year, calculated from the statutory start of the expiry period.

11. Retention of title, resale, collection, release of securities

- 11.1 Until all claims under the contract and all other claims that we have acquired subsequently against the customer in direct connection with the goods supplied – whatever the legal basis – have been paid in full, the goods supplied shall remain our property. Furthermore, the goods shall remain our property as goods under retention of title until fulfilment of all other claims which we acquire now or in future against the customer, whatever the legal basis (including all unsettled current account balances). In the case of running accounts, the goods under retention of title shall serve as security for our unsettled account balances.
- 11.2 Insofar as the validity of this retention of title is linked to particular requirements or formal regulations in the customer's country, the customer is required to ensure their fulfilment at his cost.
- 11.3 The customer is entitled to resell and reprocess the goods in the normal course of business. The right to resell and reprocess does not exist if the customer is in default of payment or has stopped his payments not merely temporarily. When resold, the goods under retention of title must be invoiced separately from other goods. As long as we are the owner of the goods under retention of title, we are entitled to revoke the authority to resell them if there is a legitimate material reason to do so. The customer shall assign his claims from the resale of the goods under retention of title against his customers, together with all ancillary rights, to us as security with immediate effect. We hereby accept this assignment.
- 11.4 Any reprocessing or remodelling of the goods under retention of title in the normal course of business is carried out on our behalf and in such a way that we are deemed to be the manufacturer within the meaning of section 950 BGB, without placing us under any obligation. Processed goods are deemed to be goods under retention of title pursuant to section 11 here. In the case of processing, combining or mixing our goods with other goods that are not our property, we are entitled to co-ownership of the new item in the proportion of the value of the goods under retention of title to the other goods at the time of processing, combination or mixture. If the customer acquires sole ownership of the new item, it is agreed that the customer shall grant us co-ownership of the new item in the proportion of the value of the processed, combined or mixed goods under retention of title to the new item, and shall keep this safe for us free of charge.
- 11.5 The customer is entitled to collect outstanding receivables at his own expense and at his own risk himself, until such time as this right is revoked. We may revoke the right to make such collection if there is a legitimate material reason to do so. We are entitled to collect receivables ourselves, but we undertake not to do so as long as the customer duly meets his payment obligations.
- 11.6 If the customer does not meet his payment obligations and if we are therefore authorised to collect the receivables ourselves, the customer shall, on request, provide us with a list of all goods under retention of title, the receivables that have been assigned and the names and addresses of the debtors with the amount of the claims against them. The customer is obliged on request – and we are entitled – to notify the debtors of assignment of the receivables.
- 11.7 If, in the case of a mail order, the goods have been lost or have deteriorated significantly, and our claims against the customer have not yet been fulfilled, the customer may not assert claims for compensation against third parties (including against transport insurance companies) without our express consent. Any claims of the customer for compensation against third parties are hereby assigned to us in advance by way of security. We hereby accept this assignment. The customer may only demand payment to us, and not under any circumstances to himself, as long as he has not completely satisfied our claims. We are not required to send a separate reminder. Should the customer act in breach of this provision, he shall be liable for any damage incurred by us as a result.
- 11.8 As long as the retention of title is in place, any pledge, transfer as security, leasing or other transfer or modification of the goods under retention of title that may affect our security require our prior written consent.
- 11.9 In the case of third party interventions, e.g., enforcement measures, the customer shall notify us promptly, provide us with all information and documentation required to prevent our rights and draw the attention of the third party to our reservation of title.
- 11.10 The customer shall mark the goods under retention of title as our property, draw the attention of third parties to our reservation of title in the event of transfer of his entire goods warehouse as security and exclude the goods under retention of title from the transfer as security by express declaration to this effect.
- 11.11 If the suspension of payments on the customer's part is not merely temporary, he files an application to open insolvency proceedings against his assets or insolvency proceedings have been opened against his assets, the customer is obliged to surrender the goods under retention of title to us immediately. Furthermore, the customer is obliged in the event of a breach of contract, in particular of default of payment, to release the goods under retention of title following a warning.
- 11.12 At the demand of the customer, we are obliged at our discretion either to waive the retention of title or release securities if the customer has settled all of the claims associated with the goods under retention of title or if the realisable value of all the securities granted to us in relation to the retention of title, the transfer of securities and the assignments in advance exceeds the receivables in respect of the customer by more than 10%.

12. Transfer of security rights to third parties

- 12.1 Should a third party (e.g., central settlement office, purchasing association, etc.) pay the purchase price instead of the customer or settle one of the other claims mentioned above, we are entitled, subject to a contrary agreement we are aware of between the customer and the third party, to transfer or assign ownership of the goods sold and the receivables from the resale itself, to the extent of the settlement paid, to the third party, making the third party our successor in title in accordance with the above provisions.

13. Returnable goods and goods subject to a deposit, packaging in reusable containers (large containers)

- 13.1 We retain title to borrowed and pledged goods.
- 13.2 If our deliveries are made in reusable containers, the customer must make these available for collection at the latest within 4 weeks after delivery at the place of delivery in a completely emptied, faultless condition (in particular without defects) and inform us of the provision. The timely provision and notification thereof shall not constitute a claim to collection or payment of storage fees. We reserve the right to make a collection only from a minimum number of 40 E2 boxes on an H1 pallet or 15 H1 pallets.
- 13.3 If the customer does not fulfil the obligation mentioned under 13.2 in due time, we shall be entitled to demand the replacement price after setting a deadline to no avail.
- 13.4 The reusable containers may not be misused and are to be used exclusively for filling with food. The customer is liable for damage, contamination and loss. The receipt report at the time of return to our company or to the cleaning service provider shall be decisive.

14. Exchange and return of Euro pallets, lump-sum compensation

- 14.1 If and insofar as we deliver the goods on undamaged Euro pallets that can be used in high-bay warehouses, these shall be exchanged concurrently for empty, undamaged Euro pallets that can be used in high-bay warehouses.
- 14.2 If no exchange of Euro pallets is made notwithstanding 14.1, the customer shall return the Euro pallets supplied at the latest one month from delivery at his own cost.
- 14.3 If the return is not made within a month of delivery notwithstanding 14.2 or if the customer does not return the pallets to us undamaged and in a condition in which they can be used in a high-bay warehouse, we are entitled to charge flat-rate compensation of EUR 10,00 per Euro pallet. This is without prejudice to our right to pursue further claims and to the right of the customer to demonstrate that we suffered no losses or smaller losses.

15. Filling into customer containers

- 15.1 Filling into containers provided by the customer is only carried out after consultation and only with technically compatible systems. When filling goods into containers provided by the customer, we are not obliged to check the containers for suitability – in particular cleanliness, microbiological stability or cross-contamination of allergens. We accept no liability for damage or defects arising due to unsuitable, defective or otherwise inadequate containers provided by the customer.
- 15.2 **Assignment, place of fulfilment, governing law, place of jurisdiction, arbitration, severability**

- 16.1 The customer is not permitted to assign claims from business transactions with us. This is without prejudice to section 354 a of the German Commercial Code (HGB).
- 16.2 Erfüllungsort ist für alle sich aus dem Vertragsverhältnis ergebenden Rechte und Pflichten unser Geschäftssitz.
- 16.3 Für diese Geschäftsbedingungen sowie die gesamte vertragliche Kundenbeziehungen gilt deutsches Recht unter Ausschluss des UN-Kaufrechts.
- 16.4 Unless we make use of the right to institute an arbitration process as granted to us under 16.5 and provided that the customer is a merchant, a legal person under public law or a special fund under public law, or if he does not have a general place of jurisdiction in Germany, the place of jurisdiction for all disputes arising from this contractual relationship, including for action relating to cheques or bills of exchange, is our registered office. However, we are also entitled to take action against the customer in any other place of jurisdiction. This is without prejudice to statutory regulations about exclusive responsibilities.
- 16.5 In place of proceedings before a normal court in accordance with 16.4, we are also entitled to institute an arbitration process in accordance with the following provisions, which excludes the right to normal legal redress.

- 16.6 Should one or several provisions of these Terms & Conditions be or become invalid, the validity of the remaining provisions is not affected.

16. Arbitration

- 16.7 If the customer pursues claims against us and intends to institute court proceedings, we are entitled to choose between normal court proceedings and an arbitration process within a period of two weeks of receipt of a corresponding written request by the customer. If we do not exercise our right to choose or do not do so on time, the customer is entitled to choose between normal court proceedings and an arbitration process.
- 16.8 In the case of an arbitration process, all disputes shall be decided definitively in accordance with the arbitration code of the Deutsche Institution für Schiedsgerichtsbarkeit e.V. (German Arbitration Institute) (DIS), with the exclusion of the right to normal legal redress. The place of the arbitration process is Munich, the court of arbitration consists of three arbitrators if the disputed amount exceeds EUR 100,000.00, otherwise the court of arbitration consists of one arbitrator. The language of the arbitration process is German.

16.9. Language of the arbitration process

- 16.9.1 Should one or several provisions of these Terms & Conditions be or become invalid, the validity of the remaining provisions is not affected.

16.10. Finality of the arbitration process

- 16.10.1 The arbitration process is final and binding for both parties. It is without prejudice to the right to file an appeal or to request a revision.

16.11. Costs of the arbitration process

- 16.11.1 The costs of the arbitration process shall be borne by the party who loses the case. In the case of a draw, the costs shall be borne equally by both parties.

16.12. Waiver of the right to normal legal redress

- 16.12.1 By entering into this contract, the customer irrevocably and exclusively waives the right to normal legal redress in favour of the arbitration process.

16.13. Waiver of the right to normal legal redress

- 16.13.1 By entering into this contract, the customer irrevocably and exclusively waives the right to normal legal redress in favour of the arbitration process.

16.14. Waiver of the right to normal legal redress

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16.15. Waiver of the right to normal legal redress

- 16.15.1 By entering into this contract, the customer irrevocably and exclusively waives the right to normal legal redress in favour of the arbitration process.

16.16. Waiver of the right to normal legal redress

- 16.16.1 By entering into this contract, the customer irrevocably and exclusively waives the right to normal legal redress in favour of the arbitration process.

16.17. Waiver of the right to normal legal redress

- 16.17.1 By entering into this contract, the customer irrevocably and exclusively waives the right to normal legal redress in favour of the arbitration process.