

General terms and conditions of Purchase

§1 Application

- (1) These terms and conditions of purchase shall apply exclusively. Differing or contrary terms shall not apply except if expressly agreed upon in writing. Writing in this context includes electronic transmission.
- (2) These terms and conditions of purchase shall also govern all future transactions between the parties and shall also apply if we except delivery despite our knowledge of differing or contrary terms.
- (3) These terms and conditions of purchase shall only apply towards merchants, governmental entities, or special governmental estates in the meaning of § 310 para 1 BGB (German Civil Code).

§2 Offer, Acceptance

- (1) The seller shall be obliged to accept our offers within a reasonable time not exceeding two days. Silence constitutes acceptance according § 362 para I s. 1 HGB (German Code of Commerce).
- (2) Silence referring our letters of confirm towards offers of the seller constitutes acceptance even if we modify these offers.

§3 Prices, Payment

- (1) Prices shall be considered “ex works” to our facilities, including all costs for packaging, except as otherwise expressly agreed upon. The seller has to carry the costs for waste disposal of the packaging material.
- (2) The purchase price is due and payable within 30 days from receipt of the goods, provided the submission of the proper original invoice.

§4 Offset, Retaining

We reserve all rights to offset or retain payment provided by applicable law and by all privities between the parties.

§5 Delivery

- (1) All delivery dates stated in the order or otherwise agreed upon are binding.
- (2) The seller shall immediately inform us of any threatening or existing delay in delivery, the reasons for such delay and the anticipated duration of such delay. The foregoing shall not affect the occurrence of a default in delivery.
- (3) In case of default in delivery we reserve all rights under applicable law. In particular we shall be entitled to demand damage compensation instead delivery or cancelling the contract. We shall also be entitled to our sole decision to demand penalty clause of 0.5 per cent per annum of the value of the delivered goods per finished week, but not more then 5 per cent in total. We impose to ourselves to declare towards the seller the claim of penalty clause latest within 10 working days dated from the acceptance of the delayed delivery.

§6 Liability, Warranty

- (1) We are obliged to examine the delivery according to § 377 HGB (German Code of Commerce) upon possible defaults of quality and quantity with an adequate time period. The reproof is in due time if it has been sent within the period time of shelf life expiration date to the seller, in case of hidden defects from their discovery.

- (2) We reserve all rights and remedies for non-conformity provided by applicable law. We are especially entitled, upon our election, to claim remedy of defects, delivery of conforming goods and compensation of damages.
- (3) Latest within a deadline of 24 hours, in case of imminent danger even earlier, we are entitled, after giving notice to the seller, to remedy the defects on the seller`s cost.
- (4) Warranty claims shall be time-barred after 36 months of the passage of risk.

§7 Loading Record, Temperatures

The Loading Record which has to be signed by the seller is a part of these General Conditions. The goods shall be only accepted by us if the temperature is between 0 ° C and 3,5 ° C for fresh food, for frozen food at minus 18 ° C or colder.

§8 Product Liability, Insurance

- (1) The seller shall, upon first demand, indemnify us and hold us harmless from and against any and all liability or claims of third parties based on the manufacture, delivery, storage or use of the delivered goods. The above indemnification shall not apply if the claim is based on our intentional or grossly negligent breach of duties.
- (2) The seller shall, at all times during the term of this contract, maintain product liability insurance with an adequate minimum insurance amount of 500.000,00 Euro for each single occurrence of personal and property damage. Further damage claims shall remain unaffected.

§9 Warranty of Title

- (1) The seller warrants that the goods are free from rights of third parties and that delivery of the goods does not violate any rights of third parties. The seller shall indemnify us, upon first demand, from any claims of third parties in this regard.
- (2) Claims based on defect of title shall be time-barred pursuant to § 6 Para 4 of these General Conditions.

§10 Unenforceability of Clauses

- (1) In case a clause in these General Conditions with regard to the contract for delivery should be or become unenforceable this shall not affect the validity to all the other clauses or agreements.
- (2) Should any one or more of the clauses of these General Conditions be unenforceable, the parties shall agree on a replacement of clauses that comes as close as possible to the commercial meaning and purpose of the unenforceable clauses.

§11 Application Law, Jurisdiction

- (1) This contract shall be governed by the laws of the Federal Republic of Germany (excluding the Convention on Contracts for the International Sale).
- (2) Place of performance and exclusive place of jurisdiction for all disputes arising out of or in connection with this contract shall be Berlin.