

General Conditions of Sale & Delivery

- VION Food Group, Germany -

I. General

1. The terms and conditions as stated hereinafter shall be integral part of the Contract concluded with us.
2. Our General Conditions of Sale & Delivery shall, in their respectively latest release, also be applicable to any follow-up business without necessitating such fact to be stated or agreed upon explicitly when concluding such follow-up businesses.
3. Counter confirmations, counter bids or other references of the Buyer by citing her/his General Terms & Conditions are objected herewith. Deviating terms and conditions of the Buyer shall not apply, unless confirmed by us in writing.
4. The Buyer shall not be allowed to assign any claim arising from legal transactions concluded with us, unless explicitly approved by us.

II. Offers, Purchase Orders

1. Our offers, especially in terms of quantity, price and delivery time, shall always remain subject to change without notice.
2. Purchase orders issued by the Buyer shall not be deemed as accepted, unless they are confirmed by us in writing. In the event that we should not especially confirm in writing a contract concluded verbally or by telephone, the invoice as submitted by us shall be considered as confirmation thereof.
3. Guarantee of state or of durability shall not be valid, unless confirmed by us expressly in writing. This shall also be valid in case of acceptance of a procurement risk.

III. Prices, Weights

1. Our prices shall be understood not to include the value added tax being applicable at the date of delivery.
2. If, due to modifications in legal provisions, between contract conclusion and delivery additional or increased public contributions, especially in terms of custom fees, variable export/import levies or monetary compensatory amounts are incurred, we shall have title to raise accordingly the purchase price agreed upon. The same shall apply in relation to investigation fees.
3. With regard to purchase price calculation, the weight as determined upon loading shall be of the essence. Customary weight shrinkage occurring during transport shall be at Buyer's sole account.

IV. Quantity, Quality, Labelling

1. We shall, in any case, be entitled to deliver up to ten (10) percent more or less of the quantity agreed upon.
2. The goods' quality shall be governed by the mercantile custom, unless, in the individual case, otherwise agreed upon and confirmed by us in writing.
3. The goods shall not be deemed as packaged and marked in conformity with the food labelling laws for the final user.

V. Dispatch, Delivery

1. In case that delivery term agreed upon is other than EXW from our distribution centre, the goods shall be carried uninsured and on Buyer's risk. This shall also apply in relation to carriage-paid delivery and regardless of the means of transport used. Transportation insurances shall be concluded on Buyer's express request only. Any expense arising therefrom shall be at Buyer's sole account.
2. In the absence of a deviating agreement in writing, the place of dispatch, the carrier as well as the means of transport shall be chosen by ourselves and to the best of our judgement without assuming any liability for fastest and cheapest carriage.
3. Should Buyer provide the means of transport, so he shall be responsible for its timely provision. We shall be notified of any possible delay in due time. Costs arising therefrom shall be borne by Buyer.
4. We shall be entitled to reasonable partial deliveries.
5. Our delivery commitment shall always remain subjected to our own supply with goods being effected in due time and properly.
6. The stated delivery and unloading times shall always be deemed as not binding, unless otherwise expressly agreed upon in writing.
7. Delivery impediments due to force majeure or because of unforeseeable events that are out of our control, including, among others, breakdowns, strike, lockout, Government ordinances, subsequently effected cessation of export or import possibilities as well as our reservation in relation to our own supply with goods pursuant to subparagraph 5 above, shall, for the duration and extent of their effects, exempt us from the obligation to observe delivery and unloading times agreed upon.
8. If, in the absence of delivery impediment as stated in subparagraph 7 above, a delivery or unloading time is exceeded, the Buyer shall grant us in writing a reasonable extension of time amounting to two (2) weeks at least. If we do not observe such extension time as well, then Buyer shall be entitled to withdraw from Contract. However, he shall not be entitled to assert claims for damages for reasons of non-fulfilment or default, unless we are liable because of intent or gross negligence.

VI. Obligation to Investigate and to Lodge Complaints

1. Upon receipt of the goods at the destination agreed upon or, in case of self-collection upon their take-over, Buyer shall be obliged to immediately
 - (a) inspect them in terms of quantity, weights and packaging and to note any complaints in relation thereto on the delivery ticket or counterfoil/disbursement slip of the cold store; and
 - (b) make, at least by representative samples, a quality test and to open the packaging (cartons, bags, tins, foils, etc.) in reasonable numbers and to check the goods themselves in terms of apparent order and condition, smell and taste, whereas frozen goods should be defrosted by samples at least.
2. When complaining about possible defects, Buyer shall observe the forms and terms as stated hereunder:
 - (a) The complaint shall be submitted by the elapse of the working day that follows the inbound delivery of the goods to the destination agreed upon or their take-over. In case of complaining about a hidden defect, which, despite of a properly made initial inspection pursuant to subparagraph 1(b) above, has remained unidentified at first, the following shall apply in deviation from the aforesaid:

The complaint shall be submitted by the elapse of the working day that follows the date of defect detection, however, within two (2) weeks after the delivery of the goods or their take-over at the latest.
 - (b) The detailed complaint shall be forwarded to us in writing, by telegraph, telex or fax within the terms set forth above. A notice of defects by phone shall not suffice. Complaints expressed towards commercial agents, brokers or dealers shall be void.
 - (c) The complaint shall clearly exhibit the type and extent of the asserted defect.
 - (d) Buyer shall be obliged to keep the non-conforming good at the place of investigation available for inspection by our suppliers or appraisers authorised by us. The customer is obligated to store frozen goods at a temperature of at least -22°C.
3. Complaints in terms of quantity, weights and packaging of the goods shall be excluded, provided that the note on the delivery ticket/freight bill or counterfoil as required pursuant to subparagraph 1(a) above is missing. Besides, any such complaint shall be excluded as soon as Buyer has mixed, re-dispatched or resold the delivered goods or started to treat or process them.
4. Goods complained about in non-compliance with form and term shall be considered as approved and accepted.

VII. Warranty, Limitation of Liability

1. In case of complaints being submitted in compliance with form and term as well as substantially justified, Buyer shall be entitled to claim faultless delivery within an adequate period of time. We shall be entitled to decide if we remove the defect or make a substitute delivery. The buyer shall be entitled to rescission of contract or reduction of price according to the law if the removal of defects or the compensation delivery have failed, were unacceptable or the defect shall not be harmless. This shall not affect § 478 of the German Civil Code. The buyer shall be entitled to claim damage compensation in accordance with the following clauses.
2. Buyer shall not be entitled to any further rights or claims unless the goods delivered by us are lacking a property expressly warranted by ourselves or we are liable because of intent or gross negligence. These claims are limited to typical and foreseeable damages.
3. This limitation of claims does not apply in case of legal liability without responsibility, e.g. on the basis of the Product Liability Act, and in the case of physical damage or loss of life.
4. Public comments and advertising of products shall not be considered as a description of quality.

5. Warranty claims shall become time-barred upon expiration of a 12 month period after bearing the risk. This shall also be valid for the defect of title. Claims arising as a result of wilful or intentional breaches, tortious act, lack of a guaranteed characteristics, acceptance of procurement risk and culpable damage to life, body or health shall become time-barred in accordance with legal regulations under this Agreement.
6. In case a customer of the buyer asserts claims based on a defect of a good which already existed at the time of the delivery of the good, §§ 478, 479 BGB (German Civil Code) shall be applied.
7. Any other liability expressly provided for above in section VII. shall be excluded in all legal cases. The limitation of liability mentioned above shall apply to our representatives, employees, agents or any affiliate.

VIII. Payment

1. Our purchase price receivables are "net cash" in principle and payable without any deduction immediately upon receipt of the invoice, provided that there is no other period of payment agreed upon in writing.
2. All bank charges involved in the transfer of payments in our favour caused outside Germany are to be carried by the applicant. Amount to be received net corresponding to the total invoice amount, without any deductions.
3. Should the amount invoiced not be settled within ten (10) calendar days as of the date of delivery or at other due date, we shall have title to charge penal interest in the amount proven, however, in an amount being eight (8) per cent above the ECB fixed key interest rate without requiring the submittal of a specific demand for payment.
4. If Buyer is no longer able to conduct his business in proper manner, especially if there are orders of attachment, cheque or bill protests effected, or liquidity crunches or even stoppage of payments occurring, or if he has applied for a conciliation procedure before or out of court or for a payment in accordance with the Insolvency Act, we shall be entitled to make our outstanding accounts arising from the business relation payable promptly, even if we had accepted drafts or cheques beforehand. The same shall apply when Buyer is in default with his payments in our favour or other circumstances become known, which cause her credit worthiness to appear doubtful. Additionally, in such case we shall have title to require advance payments or collaterals or to withdraw from Contract.
5. Buyer shall only be entitled for appropriation, retention or reduction, if the counter claims as asserted by him are legally approved or expressly acknowledged by us.
6. We can at any time charge up our claims or the claims of our connected enterprises and participations under the terms of § 271 HGB (VION FOOD GROUP) against claims of the buyer. This applies to claims of participations as far as these have been assigned to the seller before.

IX. Retention of Title to Ownership

1. The goods delivered by us shall remain our property until Buyer has settled all our debt claims arising from the business relationship, even those which may be due to balance demands from account current as well as from refinancing or acceptor bills.
2. Buyer shall be entitled to sell the goods delivered by us. However, such title shall not be applicable, if Buyer is no longer able to maintain proper operation of his business (see section VIII, subparagraph 4 above). Apart from that we shall be entitled to revoke Buyer's authorisations to sell, if he defaults with the performance of his duties and, especially, with his payments to us or if other circumstances become known, which cause his credit worthiness to appear doubtful.
3. With regard to Buyer's right to process the goods delivered by us, the above subparagraph 2 shall apply accordingly. By processing such goods, Buyer shall not acquire any ownership in relation to the fully or partially manufactured products. Processing shall be free of charge and exclusively in our favour and capacity as manufacturer pursuant to § 950 of the German Civil Code (BGB). Should our retention of title to ownership become void because of any circumstances whatsoever, though, the Buyer and we, already now, agree that the ownership in the products, including their processing, shall be transferred to us and that we accept such conveyance and that Buyer shall remain the products' depositary free of charge.
4. If our conditional commodities are processed with goods being under third party ownership yet or mixed in separately, then we shall acquire co-ownership in the new products or mixed stock. The extent of such co-ownership shall be derived from the proportion between the value invoiced in relation to the goods delivered by us and the value invoiced in relation to the remaining commodities.
5. Goods, in which we acquire ownership or co-ownership pursuant to subparagraphs 3 and 4 above, shall be considered, as well as our goods delivered by retention of title to ownership pursuant to subparagraph 1 above, to be conditional commodities as contemplated by the provisions set forth hereunder.
6. Buyer shall, already now, assign to us any claim arising out of selling the conditional commodities. Claims arising from such selling shall also include the claim towards the Bank that, within the framework of such selling, opens or confirms a letter of credit in Buyer's favour (= reseller). We herewith accept such assignment. In the event that the conditional commodity is a processed product or a mixed stock, wherein, apart from the goods delivered by us, only such items are incorporated, which either belonged to Buyer or had been delivered to him by third parties under the so called ordinary retention of title to ownership, Buyer shall assign to us the entire claim arising from the selling of the goods. Otherwise, i.e. upon coincidence of advance assignments to us and other suppliers, we shall have title to a fractional part of the disposition, namely in accordance with the proportion as given between the invoiced value of our goods and the invoiced value of the other goods processed or mixed.
7. As far as our claims are, because of the afore explained assignments or retentions, secured by more than 110 % (one hundred ten per cent) without any doubt whatsoever, the surplus of the outstanding accounts or conditional commodities shall, upon Buyer's request, be released at our discretion.
8. Buyer shall be authorised to collect the accounts outstanding in relation to the selling of the goods. Such authorisation for collection shall become void, if Buyer is no longer maintaining his business operations properly (see section VIII, subparagraph 4). Moreover, we shall be entitled to revoke Buyer's collection authorisation, if he defaults with the performance of his duties or, especially, with his payments to us or if other circumstances become known that cause his credit worthiness to appear doubtful. Should such collection authorisation become void or be revoked by us, Buyer shall notify us, upon our request, the debtors of the assigned claim without any delay and to provide us with such documents as they are necessary to obtain the information required.
9. In case of third party access to our conditional commodities or outstanding accounts assigned to us, Buyer shall undertake to point out our ownership/right and to inform us without any delay. The cost of intervention shall be borne by Buyer.
10. In the event of any behaviour being contrary to the Contract, especially in case of payment default, Buyer shall, upon our first request, be obliged to surrender any of the conditional commodities being in his possession yet and to assign to us any possible surrender claims as they may exist towards third parties in relation to such conditional commodities. The recovery as well as the attachment of the conditional commodities by us shall not be deemed a withdrawal from the Contract.
11. In respect of the cases mentioned in section VIII, subparagraph 4, we may require Buyer to notify us the claims as incurred by the resale and assigned to us in conformity with section IX, subparagraph 8, as well as the debtors thereof. Then we shall be entitled to disclose the assignment at our discretion.

X. Empties

- Buyer shall be obliged to return to Seller empties (Euro boxes, pallets, Euro hooks, etc.) in such same type, quantity, and value as he has received them upon delivery of the goods. In this connection, empties shall be returned in cleaned condition and in conformity with the regulations set forth in the laws on hygiene. Should Buyer not be able to return such empties upon delivery of our goods, he shall, without any delay and on own account, care for balancing the empties account (debt to be discharged at creditor's domicile). Should Buyer default with the return of the empties, we also may, apart from a default loss after granting a reasonable extension period, refuse the return and require Buyer to compensate the damage in cash.

XI. Recycling of Sales Packaging by way of Industry Solution (§ 6 Para. 2 VerpackV)

1. The buyer confirms, to be a collection point treated equally to private households according § 3 Para. 11 sentence 2 and 3 VerpackV and that he joins and takes part of the Industry Solution ordered by us in view of all goods delivered by us and all accumulated packages by the buyer after 1st of January 2015.
2. Number 1 does not apply, if and to the extent the buyer expressly (in written or text form) contradicts his participation to the Industry Solution.

XII Final Provisions

1. Place of performance for goods delivery shall be the respective place of dispatch.
2. Exclusive place of jurisdiction for all disputes arising out of or in connection with this contract shall be Düsseldorf. We are entitled to sue the buyer at his general place of jurisdiction. This shall only apply in respect of entrepreneurs, legal entities under public law, special public funds and buyer who don't have a place of general jurisdiction in Germany.
3. The law of the Federal Republic of Germany shall apply exclusively. International law of sales shall be excluded. This shall expressly also be applicable to the use of United Nations' Agreement on Contracts pertaining to the International Sale of Goods (CISG).
4. The ineffectiveness of individual provisions of these General Conditions of Sale & Delivery shall not affect the effectiveness of the others. Ineffective provisions shall be deemed replaced by such effective stipulations that are eligible to fulfil the economic intention of the void provision as closely as possible.
5. We have saved data about the buyer in conformity with Data Protection Law.

Released: 17/02/2015