

# General Terms and Conditions of Sale- - Vion Food Group, Germany -

## I. General

1. The following terms and conditions ("Vion GTC") are an integral part of every contract a third party enters into with affiliated companies of Vion Food Group ("Vion") having their seat in Germany. However, the Vion GTC only apply for third parties which are considered undertakings (sec. 14 BGB).
2. The Vion GTC also apply, in their respectively latest version, to any follow-up contracts without that being explicitly stated or agreed upon when those follow-up contracts are entered into.
3. The Vion GTC apply exclusively; Vion does not accept any conditions contradictory or deviating from the Vion GTC except Vion has explicitly agreed to it in writing. The Vion GTC also apply when Vion executes an order of a Buyer knowing that this Buyer's conditions are contradictory to or deviating from the Vion GTC.

## II. Offers, Purchase Orders

1. All offers of Vion are – in particular, without limitation with regard to quantity, price and delivery time - always subject to change.
2. Vion is entitled to accept purchase orders submitted by Buyer within 8 calendar days after their receipt. Acceptance may either be made by virtue of an order confirmation (at least in text form) or by virtue of delivery of the goods. In the latter case the invoice as submitted by Vion shall be considered as confirmation.
3. Guarantees regarding state or durability are only deemed as warranties if and to the extent they are explicitly marked as such. The same applies for any assumption of a procurement risk.

## III. Prices, Weights

1. Subject to the following regulations in this Sec III prices of Vion do not include any value added tax (VAT) being applicable at the date of delivery.
2. To the extent that the goods purchased by the Buyer are delivered in another EU Member State, the Buyer is required to provide Vion with the requested evidence to prove that the goods have reached the EU Member State of destination. The evidence must be provided to Vion no later than the 10th day of the month following the month in which the goods were delivered. If Vion does not receive the evidence from the Buyer within the stipulated period or the evidence provided does not meet the requirements set by statutory VAT law, Vion is entitled to charge the VAT on the delivered goods to the Buyer.
3. If, due to modifications of statutory provisions, between conclusion of contract and delivery additional or increased duties and/or taxes – in particular without limitation, regarding tariffs, variable export/import levies or currency adjustments - incur, Vion is entitled to raise the agreed purchase price accordingly. The same applies to any inspection fees.
4. Decisive for Vion's purchase price calculation shall be the weight as determined upon loading. Customary weight shrinkage occurring during transport shall be within Buyer's sole responsibility. Any weight differences going beyond must be notified immediately in text form at assumption of the goods and must be specified on the accompanying documents when the goods arrive at Buyer.

## IV. Quantity, Quality, Labelling

1. Vion is always entitled to deliver up to 10 % more or less of the quantity agreed upon. Any delivery of a quantity up to 10 % less than agreed is not considered as material defect.
2. The quality of the goods should be in accordance with trade practice, if not agreed differently in writing in an individual case.
3. Goods are in any case not deemed as packaged and labelled for the final consumer within the meaning of food labelling laws.

## V. Dispatch, Delivery

1. The goods are always carried uninsured and in any case at Buyer's risk. This also applies with regard to carriage-paid delivery and regardless which kind of transport is used. Transport insurances are only entered into on Buyer's express request. Any costs arising therefrom are at Buyer's sole account.
2. Except agreed otherwise, Vion is entitled to determine any details of shipment (place of dispatch, carrier, kind of transport and transport company as well as packaging) to the best of Vion's judgement without assuming any liability for fastest and cheapest carriage.
3. If Buyer provides the means of transport, it is responsible for its timely provision. Vion must be notified of any eventual delay in due time. Costs arising therefrom are borne by Buyer. If Buyer picks up goods at Vion's plant or instructs a carrier to collect them, such delivery is always "free carrier" (FCA, Incoterms 2020). Vion ensures that the respective goods are put on the carrier and – if and to the extent Buyer or his carrier provides appropriate fastening and securing material in sufficient quantity and quality – also ensures transport safety. Buyer or his carrier are solely responsible for ensuring operational safety.
4. Vion is entitled to partial deliveries if acceptable for Buyer.
5. Any delivery commitment of Vion is always subject to its own duly and correct supply with goods .
6. Stated delivery and unloading times are always not binding unless otherwise expressly agreed in writing.
7. Delivery impediments due to force majeure or because of unforeseeable events for which Vion cannot be held liable for exempts Vion for the duration and extent of their effects from its contractual obligations., Such events include, in particular, without limitation, operational disruptions, e.g. due to the fact that Vion can no longer maintain production in its premises due to epidemics/pandemics, strikes, lockouts, governmental orders, subsequently effected cessation of export or import possibilities as well as Vion's reservation in relation to its own supply with goods pursuant to Sec. V para. 5 above.
8. If - without occurrence of any delivery impediment as stated in Sec. 5 para. 7 above - a delivery or unloading time is exceeded, Buyer grants Vion in text form a reasonable extension of at least 2 weeks. If Vion does not observe such extension time as well, Buyer is entitled to withdraw from the respective contract. However, it is not entitled to claim for damages for reasons of non-fulfilment or default, unless Vion is liable for intent or gross negligence.

## VI. Duty Examination and Notice of Non-Conformity

1. Upon receipt of the goods at the agreed destination or, in case of self-collection upon their take-over, Buyer is obliged to immediately, but in any case prior to any further processing,
  - (a) inspect them in terms of quantity, weights and packaging and to note any complaints in relation thereto on the delivery note 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 in terms of apparent condition, smell and taste, whereas at least samples of frozen goods must be defrosted.
2. When making a complaint about eventual material defects, Buyer must observe the following formal requirements and time limits:
  - (a) Any complaint must be submitted by the end of the working day that follows the delivery day of the goods to the agreed destination or their take-over. In case of a complaint about a hidden defect, which, despite of a properly made initial inspection pursuant to Sec. VI para. 1 (b) above, has remained unidentified at first, the following applies in deviation from the aforesaid: The complaint must be submitted by the end of the working day that follows the day on which the defect was detected, however, at the

# General Terms and Conditions of Sale- - Vion Food Group, Germany -

latest within 2 weeks after the delivery of the goods or their take-over.

(b) Buyer must submit a detailed complaint to Vion in text form within the terms set forth above. A notice of defects by phone is not sufficient. Complaints made towards commercial agents, brokers or dealers are not relevant.

(c) Any complaint must clearly state type and extent of the asserted defect.

(d) Buyer must keep the non-conforming goods at the place of investigation available for inspection by Vion, its suppliers or experts appointed by Vion. Buyer must store frozen goods at a temperature of the store of -21°C or colder. Vion is entitled to receive evidence for a consistent cold chain.

3. Any complaints in terms of quantity, weights and packaging of the goods are excluded, provided that the note on the delivery ticket/freight bill or counterfoil as required pursuant to Sec. VI para. 1 (a) above is missing. Further, any complaint is excluded as soon as Buyer has mixed, re-dispatched or resold the delivered goods or has started to treat or process them.
4. Goods complained about in non-compliance with formal requirements and time limits are considered approved and accepted.

## VII. Warranty, Limitation of Liability

1. In case of complaints submitted in compliance with formal requirements and time limits as well as substantially justified, Buyer has the right to claim for faultless delivery within an adequate period of time. Vion has the right to decide if it cures the defect or makes a substitute delivery. Only if the defect could not be cured or the compensation delivery failed or was unacceptable and the defect is not immaterial, Buyer may rescind the contract or reduce the purchase price according to statutory provisions. Buyer is only entitled to claim damages for defects in accordance with the following clauses:
2. Buyer has no further rights or claims. In particular, Vion is not liable to Buyer for compensation for non- or malperformance or for reimbursement of expenses which Buyer made relying upon receipt of the goods, unless a warranty for the state of the goods Vion delivered was assumed or Vion acted wilfully or grossly negligently. Any damage claims are further limited to the foreseeable and typically arising damage.
3. The aforementioned limitations of liability do not apply in case of statutory liability without fault, in particular in accordance with the Product Liability Act, in cases of physical damage or loss of life, however to the extent Vion is acted at least negligently.
4. Generally, only the product description of Vion or the producer, respectively, are considered as characteristics of the goods. Public comments, appraisals or advertising of the products are not considered as characteristics of the goods. Any given best-before date is only made in order to comply with statutory requirements and shall not be considered as warranty regarding to or agreement on characteristics of the goods.
5. Any claims for material or legal defects are time-barred 12 months after transfer of risk. Any claims for wilful breaches, tortious acts, lack of guaranteed characteristics, acceptance of a procurement risk as well as personal damages are time-barred in accordance with statutory provisions.
6. Any kind of processing of goods delivered from Vion by Buyer is considered a refinement of the goods and not covered by sec. 439 III BGB. §§ 445a, 478 BGB remain unaffected.
7. Any further liability not provided for in the preceding sections of this Sec. VII is – irrespective of the nature of the raised claim - excluded. The preceding limitations of liability also apply to any representatives, employees, agents or vicarious agents of Vion.

## VIII. Payment

1. Purchase price claims by Vion are generally due “net cash” without any deduction within 7 calendar days after the date on the respective invoice, provided however, no other payment term was agreed in writing. If Vion issues an adjusted invoice for a delivery to a Buyer in another EU Member State (Sec. III 2), the payment term starts in this case with the date on the respective adjusted invoice.
2. Vion only accepts bill of exchanges or cheques if agreed in the individual case and only in lieu of payment.
3. If the amount invoiced has not been settled within 14 calendar days after the date of delivery, Vion is entitled to charge statutory interest rate for delay without necessity of submission of a specific warning notice. This does not refrain Vion from proving higher damages. Buyer hereby entitles Vion to directly collect outstanding receivables with which Buyer is in delay for payment.
4. If Buyer is no longer able to conduct its business properly, in particular, without limitation, if seizures, liquidity crunches or even stoppage of payments occur or if an insolvency procedure has been applied for, Vion is entitled to demand from such Buyer immediate payment of all due or not yet due receivables Vion has against Buyer. The same applies when Buyer is in default with its payments to Vion or other circumstances become known, which cause Buyer's credit worthiness to appear doubtful. Additionally, in such case Vion may require advance payments or collaterals or may withdraw from the respective contract.
5. Buyer is only entitled for set-off, retention or reduction if the counter claims Buyer asserts have been established as final by a court or expressly been acknowledged by Vion.
6. Vion may at any time declare a set-off with its own receivables or with receivables of its affiliated entities and participations within the meaning of sec. 271 HGB (Vion Food Group) against receivables of Buyer. This applies to receivables of participations to the extent they have been assigned to the respective seller in advance.

## IX. Retention of Title

1. Vion retains legal title to all goods delivered by Vion until Buyer has settled all of Vion's receivables arising from the business relationship- including any balances from current accounts.
2. Buyer is entitled to resell goods delivered by Vion. This, however, does not apply to the extent Buyer is no longer able to run its business operations properly (Sec. VIII para. 4). Vion is further entitled to revoke Buyer's authorisations to resell, if Buyer is in default with the performance of its duties and, in particular, with its payments or if other circumstances become known, which cause Buyer's credit worthiness to appear doubtful.
3. Sec. IX para. 2 above applies accordingly to Buyer's right to process the goods delivered by Vion. By processing such goods, Buyer does not receive full title to the fully or partially processed products; processing is made free of costs and exclusively for Vion's account as producer within the of sec. 950 BGB. To the extent Vion's retention of title extinguishes for whatever reason Buyer and Vion agree that any title to the goods are transferred to Vion, that Vion accepts such transfer and that Buyer remains keeps the products free of charge as custodian.
4. If goods of Vion sold under retention of title are processed or mixed with goods owned by third parties, Vion acquires joint ownership to the new products or the mixed stock. The extent of such joint ownership derives from the proportion between the invoice value of the goods delivered by Vion and the invoice value of the remaining other goods.
5. Goods to in which Vion acquires ownership or joint ownership pursuant to the preceding Sec. IX para. 3 and 4, are considered, as well as goods Vion delivered under retention of title pursuant to preceding Sec. IX para. 1 goods subject to retention of title within the meaning of the following provisions.
6. Buyer hereby assigns to Vion in advance all receivables from a further sale of the goods subject to retention of title.

# General Terms and Conditions of Sale- - Vion Food Group, Germany -

Receivables from a further sale also include those receivables of Buyer based on other legal grounds against its purchasers or third parties (in particular, without limitation tort law receivables and claims against insurers) and further including all balances from current accounts as well as receivables against a bank having opened or confirmed a letter of credit in favour of Buyer's (=reseller). Vion hereby accepts such assignment. To the extent that goods subject to retention of title are processed products or mixed stock, wherein, apart from the goods delivered by Vion, only such goods are included, which either belonged to Buyer or had been delivered to her by third parties under a so-called ordinary retention of title, Buyer hereby assigns to Vion the entire receivable from the resale of the goods. Otherwise, i.e. upon coincidence of advance assignments to Vion and to other suppliers, Vion is entitled to a fractional part of the disposition, namely according to the proportion of the value of the goods invoiced by Vion and the value of the other processed or mixed goods.

7. To the extent Vion's receivables are, because of the aforementioned assignments respectively retentions, certainly secured by more than 110 % (one hundred ten per cent), any surplus of the outstanding debts respectively the goods subject to retention of title are within the discretion of Vion, upon Buyer's request, released to Buyer.
8. Buyer is authorised to collect outstanding debts from the resale of goods. Such authorisation for collection gets void, if Buyer is no longer maintaining its business operations properly (Sec. VIII para. 4). Vion is further entitled to revoke Buyer's authorisation to collect debts, if Buyer is in default with the performance of its duties or, in particular, without limitation, with any payments to Vion or if other circumstances become known that cause its credit worthiness to appear doubtful. Should such authorisation to collect debts becomes void or be revoked, Buyer must inform Vion, upon Vion's request, about all debtors of the assigned receivables without delay and must provide Vion with all information and documents necessary to collect those debts.
9. In case of third party access to Vion's goods subject to retention of title or outstanding debts assigned to Vion, Buyer must inform them about Vion's ownership/right and must inform Vion without delay. Any costs of intervention are borne by Buyer.
10. In case of any breach of contract, in particular, without limitation, in case of a payment default, Buyer is, upon Vion's first request, obliged to handover any of Vion's goods subject to retention of title which are still in Buyer's possession and further to assign to Vion all potential claims for return against third parties in relation to Vion's goods subject to retention of title. Any takeback or seizure of Vion's goods subject to retention of title by Vion is not deemed to be a withdrawal from the respective contract.
11. With regard to the scenarios as mentioned in Sec. VIII para. 4, Vion may request from Buyer to notify Vion about the receivables as incurred by the resale and as assigned to Vion in accordance with Sec. IX para. 8, as well as about the debtors thereof. Subsequently, Vion may in its sole discretion disclose the respective assignment.

## X. Empties

If not agreed differently, Buyer must return to Vion empties (crates, pallets, hooks, etc.) in same type, quantity and value as Buyer has received for the purposes of delivery. Empties must be returned cleaned and in accordance with all hygiene law regulations. Should Buyer not be able to return such empties upon delivery of Vion's goods, Buyer must take care, without delay and at its own costs, to balance the empties' account (obligation to provide, DDP). To the extent Vion and Buyer have empties' accounts, Buyer must check the balances of those empties' accounts submitted by Vion immediately upon receipt. If Buyer does not object to them within 14 days in text form, the balances of the empties' accounts as submitted by Vion are deemed to be confirmed by Buyer. If Buyer is in default with the return of empties, Vion may, apart from a default loss after

having set a reasonable extension period refuse the return and may request from Buyer damages in cash.

## XI. Licensing of Packaging Materials

To the extent Buyer put packaging on the market which is subject to system participation Buyer must assure that Buyer (i) has been registered in accordance with the statutory requirements of packaging law with the *Zentrale Stelle* or an equivalent body under any foreign jurisdiction and (ii) has licensed all packaging subject to system participation properly, unless Vion is obliged to license the packaging because Vion is responsible for putting the packaging on the market or based on an individual agreement.

## XII. Final Provisions

1. Place of performance for the delivery of goods is the respective place where the goods have been dispatched.
2. Venue for all disputes out of or in connection with the respective contractual relationship is the seat of Vion, if the Buyer is entrepreneur, a public legal entity or a special public fund or if Buyer does not have a place of general jurisdiction in Germany. Vion is also entitled to sue the Buyer at its general place of jurisdiction.
3. The law of the Federal Republic of Germany applies exclusively. Any international laws of sales, in particular, without limitation, the United Nations Convention on the International Sale of Goods (CISG) do not apply.
4. If a provision of these GTC is invalid, the remaining provisions of these GTC remain unaffected. Any invalid provision will be replaced by a valid provision that comes as close as possible to the economic purpose pursued by the Parties with the invalid provision.

**Status: 25/03/2020**