

General Terms and Conditions of Sale and Delivery, last updated: July 2016

§ 1 General, Scope of Application

(1) These General Terms and Conditions of Sale (GTCS) apply to all business relationships between

a) **Elsdorfer Molkerei und Feinkost GmbH** or

b) German companies affiliated with a)

and our customers ("Buyer"). These GTCS only apply if the Buyer is an entrepreneur as defined in § 14 of the German Civil Code (BGB), a legal entity organised under public law, or a special public fund.

(2) These GTCS apply in particular to contracts for the sale and/or delivery of merchandise ("goods"), without respect to whether we manufacture the goods ourselves or purchase them from suppliers (§§ 433, 651 German Civil Code). Unless otherwise agreed, the GTCS shall, in the version valid at the time when an order is placed by the Buyer or in any case, in the version last made publicly available to him/her as a framework agreement also for identical types of contracts in the future, without our having to make specific reference to them in each individual case.

(3) Our General Terms and Conditions of Sale (GTCS) shall apply exclusively. Any differing, conflicting or additional general terms and conditions of the Buyer shall become a part of any contract only to the extent to which we expressly agree. This requirement of consent shall apply in every eventuality, for example also if we agree without reservation to make a delivery in full knowledge of the Buyer's General Terms and Conditions.

(4) Any individual agreements made with the Buyer in individual cases (including additional or supplementary agreements or amendments to these terms) shall always take precedence over these General Terms and Conditions of Sale. A written contract or our written confirmation shall be definitive for the content of such agreements, subject to evidence to the contrary.

(5) Legally relevant declarations and notifications that are delivered to us by the Buyer after conclusion of contract (e.g. deadlines, notice of defects, declaration of withdrawal or reductions) require the written form to be effective.

(6) Any references to the applicability of statutory provisions only serve for purposes of clarification. Even without such clarification, the statutory provisions apply, unless directly modified or expressly excluded by these GTCS.

§ 2 Conclusion of Contract

(1) Our offers are non-binding and subject to confirmation. This also applies if we have provided the Buyer with catalogues, technical documentations (e.g. drawings, plans, costings, calculations, references to DIN standards), other product descriptions or documents – also in electronic form – to which we reserve ownership rights and copyrights.

(2) By placing an order for goods, the Buyer is making a binding offer to enter into a contract. Unless the order provides otherwise, we are entitled to accept this contract offer within 14 days after its receipt by us, unless there is no other provision to the contrary included in our individual offers.

(3) This acceptance may be declared to the Buyer either in writing (e.g. by an order confirmation) or through the delivery of the ordered goods to the Buyer.

§ 3 Delivery Deadline and Delivery Delay

(1) The delivery period is individually negotiated or specified by us upon accepting the order.

(2) If we cannot meet binding delivery deadlines for reasons that are beyond our control (non-availability of delivery), we will notify the Buyer immediately and simultaneously indicate the expected new delivery deadline at that time. If delivery cannot be made by the new delivery deadline, we are entitled to withdraw from the contract in whole or in part; any payments already made by the Buyer will be refunded immediately. Such non-availability of delivery in this sense shall apply especially if our supplier is late in making his/her delivery to us, if we have made a congruent transaction to cover our expected orders and if neither our supplier nor we are responsible for said delay, or if we are not otherwise obliged to procure the delivery in the particular instance.

(3) The occurrence of our delivery delay is determined based on statutory provisions. In any case, however, the Buyer must first issue us a reminder. If we are in default of delivery, the Buyer may demand lump-sum compensation for his/her damages. The lump-sum compensation shall equal 0.5% of the net price (order value) for each completed calendar week of delay up to a maximum of 5%, however, of the order value of the delayed goods. We reserve the right to provide documentation that the Buyer has not incurred any damage or considerably lower damage than the above lump sum.

(4) The Buyer's rights pursuant to § 8 of these GTCS and our legal rights, especially in case of an exclusion of delivery obligation (for example, due to delivery or supplementary performance being impossible or unreasonable), shall remain unaffected.

§ 4 Delivery, Transfer of Risk, Acceptance, Default of Acceptance

(1) Delivery is made from our warehouse, which is also the place of performance for delivery and for any supplementary performance. At the Buyer's request and expense, the goods shall be shipped to another destination (shipment sales). Unless otherwise agreed, we are entitled to determine the type of shipment (in particular, the transport company, shipping route and packaging) ourselves. We are also entitled to make part shipments if this is reasonable for the Buyer.

General Terms and Conditions of Sale and Delivery, last updated: July 2016

(2) The risk of accidental loss and accidental deterioration of the goods shall pass to the Buyer no later than upon handover. In the case of shipment sales, the forwarding of goods, the risk of accidental loss or accidental deterioration of the goods or the risk of delay is transferred to the Buyer with the delivery of the goods to the forwarding agent, to the freight carrier or to any other person or agency in charge of delivery or shipment. If acceptance has been agreed, this is definitive for the transfer of risk. In other respects, for any agreed acceptance of goods, the statutory provisions of service contract law shall apply. Handover or acceptance shall be deemed rendered if the Buyer is in default of acceptance.

(3) If the Buyer defaults in acceptance, fails to cooperate, or in case our delivery is delayed for other reasons for which the Buyer is responsible, we are entitled to demand compensation for the resulting damages, including additional expenses (e.g. storage costs).

§ 5 Force Majeure

Force majeure of any kind, in particular unforeseeable production, traffic or shipping disturbances, fire damage, floods, unforeseeable shortages of labour, energy, raw materials or auxiliary materials, strikes, lockouts, official orders from government authorities or other obstacles for which the party obligated to perform is not responsible, which lead to production, shipment or acceptance of good to be delayed, prevented or deemed unreasonable, shall exempt the party from the obligation of delivery or acceptance for the duration and scope of the disruption. Both parties have the right to withdrawal in case delivery and/or acceptance are delayed by more than eight weeks due to the disturbance.

§ 6 Prices and Terms of Payment

(1) Unless no other arrangements have been made in an individual case, our prices in effect at the time the agreement is concluded shall apply, specifically ex warehouse, subject to statutory value-added tax.

(2) For shipment sales (§ 4 para. 1), the Buyer shall bear the transportation costs from our warehouse and the cost of any shipping insurance cover desired by the Buyer. Where necessary, we shall invoice the Buyer for transportation costs actually incurred in an individual case. Any duties, fees, taxes and other government levies are payable by the Buyer.

(3) The purchase price is due and payable within 14 days from invoicing and delivery and/or acceptance of the goods, unless other payment terms are stated on the invoice. We are entitled at any time, however, even within the scope of an ongoing business relationship, to carry out delivery, in part or whole, only against advance payment. We shall declare a relevant proviso no later than upon order confirmation.

(4) Upon expiry of the above-mentioned payment deadline, the Buyer shall be in default. The purchase price shall accrue interest at the applicable statutory default interest rate for the duration of the delay. We reserve the right to assert

additional default damages. Towards mercantile traders, our right to charge interest on mercantile transactions from the date of maturity of such claims (§ 353 German Commercial Code (HGB)) shall remain unaffected.

(5) The Buyer is not entitled to the right of offset or retention unless his/her claim is legally binding by court order or undisputed. In case of delivery defects, the Buyer's counterclaims, especially those in accordance with § 8 para. 6 sentence 2 of these GTCS shall remain unaffected.

(6) If it becomes apparent after the contract is concluded that our claim for the purchase price is at risk due to the Buyer's insufficient ability to make his/her payments (such as through the filing of a petition to open insolvency proceedings), we are entitled to withhold the delivery of our goods and services in accordance with statutory provisions and, possibly after the expiry of any deadline set, to withdraw from the contract (§ 321 German Civil Code). For contracts made for the manufacture of unique items (custom manufacturing), we may declare withdrawal immediately; the statutory provisions concerning the expendability of a deadline shall remain unaffected.

§ 7 Retention of Title

(1) We shall retain title on all goods sold until full payment of all present and future claims under the purchase contract and all ongoing business transactions (secured claims).

(2) The goods subject to retention of title may not be pledged or assigned as collateral to third parties until full payment of the secured claims is received. The Buyer must notify us immediately in writing if an application for the opening of insolvency proceedings has been filed or to the extent that third parties have access (e.g. liens) to the goods belonging to us.

(3) If the Buyer acts in breach of the terms of the contract, in particular by failing to pay the purchase price due, we are entitled to withdraw from the contract in accord with the statutory provisions and demand return of the goods on the basis of our retained title and of withdrawal. If the Buyer does not pay the purchase price due, we may assert these rights only if we have previously set the Buyer an appropriate deadline for payment to no avail or if setting such deadline may be waived according to statutory provisions.

(4) Subject to revocation in accordance with (c) below, the Buyer is entitled to resell or further process the goods under retention of title in the ordinary course of business. In this case, the following provisions shall also apply:

(a) The retention of title shall extend to all products resulting from processing, mixing or combining of our goods at their full value, whereby we shall be considered the manufacturer. If retention of title remains concerning processing, mixing or combining of third-party goods, we shall acquire co-ownership in proportion to the invoice value of the processed, mixed or combined goods. In addition, the resulting product shall be subject to the same provisions applicable to goods delivered under retention of title.

General Terms and Conditions of Sale and Delivery, last updated: July 2016

(b) Pursuant to the aforementioned paragraph, the Buyer shall already assign to us as security the entirety or the amount of our estimated portion of co-ownership of his/her receivables against third parties arising from the resale of the goods or product. We accept the assignment. The Buyer's obligations in para. 2 above shall also apply with respect to the assigned claims.

(c) In addition to us, the Buyer shall remain entitled to collect these claims. We oblige not to collect the receivable as long as the Buyer fulfils his/her payment obligations towards us, there is no defect in his/her performance ability, and we do not assert retention of title by exercising a right pursuant to paragraph 3. If this is the case, however, we are allowed to demand that the Buyer notify us of the assigned claims and their debtors, provide all information required for collection, hand over the relevant documents and inform the debtors (third parties) of the assignment. In this case, we are also entitled to revoke the authority of the Buyer to resell and process the goods under retention of title.

(d) If the realisable value of the securities exceeds our claims by more than 10%, at the Buyer's request we shall release the securities at our discretion.

§ 8 Claim for Defects of the Buyer

(1) The statutory provisions shall apply to the Buyer's rights regarding material and legal defects (including wrong and short delivery as well as incorrect assembly or faulty assembly instructions), to the extent that no other provisions have been agreed upon. However, the special statutory provisions for final delivery of goods to a consumer (supplier recourse according to §§ 478, 479 German Civil Code) shall remain unaffected in all cases.

(2) Above all, the basis for any claim for defects shall be the agreement regarding the condition of the goods. Designated product descriptions (also from the manufacturer) provided to the Buyer prior to his/her placing the order or included in the contract in the same manner as these GTCS shall be deemed an agreement on the condition of the goods.

(3) To the extent that no condition has been agreed upon, the statutory rule shall apply in judging whether or not a defect exists (§ 434 para. 1 sentence 2 and 3 German Civil Code). However, we assume no liability for public statements of the manufacturer or other third parties (e.g. advertising statements).

(4) The warranty claims of the Buyer require that he/she has observed his/her statutory requirements to inspect and give notice of defects (§§ 377, 381 German Commercial Code). If any defect is discovered during the inspection or at a later time, we are to be notified in writing without delay. The notification shall be deemed immediate if it is sent to us within 3 work days, whereby duly sending off the notification is sufficient to meet the deadline. Irrespective of this obligation of immediate inspection and notification, the Buyer shall send the seller written notice of all apparent defects

(including wrong deliveries and short deliveries) within 3 work days of receipt of delivery, whereby duly sending off the notification is again sufficient to meet the deadline. If the Buyer fails to carry out the proper inspection and/or provide proper notification of defects, we exclude liability for any defect of which we are not notified.

(5) If the delivered item is defective, the Buyer has the choice of demanding remedy of the defect as supplementary performance (rectification) or delivery of a defect-free item (replacement delivery). Should the Buyer fail to declare which of these rights he/she chooses, we reserve the right to set him/her a reasonable time limit to do so. If the Buyer fails to state his/her choice within the time limit, the right to choose shall be passed on to us when the time limit expires.

(6) We are entitled to make the supplementary performance conditional on the payment of the purchase price due by the Buyer. However, the Buyer is entitled to retain a reasonable portion of the purchase price relative to the defective part of the delivery.

(7) The Buyer shall allow us the necessary time and opportunity to render any supplementary performance owed by us and shall in particular hand over the defective goods in question for inspection. In the case of a replacement delivery, the Buyer shall return the defective goods as required by law. Supplementary performance involves neither de-installation of the defective item nor re-installation if we were not originally obliged to complete installation.

(8) We shall bear the expenses necessary for inspection and supplementary performance, in particular, transport, travel, labour and material costs (but excluding: de-installation and installation costs), if a defect is indeed present. Otherwise we may demand reimbursement from the Buyer for the costs incurred due to unjustified demands for remedy of defects (in particular inspection and shipping costs), unless the lack of defects was not apparent to the Buyer.

(9) In urgent cases, e.g. when operational safety is jeopardised or to avoid disproportionate damage, the Buyer has the right to self-remedy of the defect and to demand compensation for expenses objectively required. We are to be informed without delay, if possible in advance, of any self-remedy of defects. The Buyer's right to self-remedy of defects does not exist if we would be entitled to refuse the relevant supplementary performance in accordance with the statutory provisions.

(10) The Buyer may withdraw from the contract or reduce the purchase price if the remedy fails or if a reasonable deadline for the remedy set by the Buyer expires unsuccessfully or is not required according to statutory provisions. No right to withdrawal exists, however, if the defect is negligible.

(11) Claims from the Buyer for claims for damages or reimbursement for futile expenses incurred shall exist only as specified in § 8 and are otherwise excluded.

§ 9 Other Liability

(1) Insofar as not otherwise stipulated in these GTCS, including the following provisions, we assume liability according to the statutory regulations in case of a breach of our contractual and non-contractual duties.

(2) We shall only be liable for compensation for damages – irrespective of their legal grounds – in case of intent or gross negligence in connection with fault-based liability. In case of simple negligence, we are liable, subject to a more lenient standard of liability according to statutory provisions (e.g. for due diligence in our own affairs), only for

- a) Damages resulting from injury to life, body or health;
- b) Damages resulting from the substantial violation of an essential contractual obligation (an obligation that must be fulfilled in order to enable the proper performance of the contract and the fulfilment of which is and can be relied on by the contractual partners on a regular basis). In this case, our liability is nevertheless limited to compensation for foreseeable and typically occurring damage.

(3) The limitations of liability resulting from para. 2 also apply to breaches of duty by or for the benefit of persons whose negligence we are liable for according to statutory provisions. They do not apply if we have fraudulently concealed a defect or have assumed a guarantee for the condition of the goods and the Buyer for claims under the Product Liability Act.

(4) In case of any breach of duty unrelated to a defect, the Buyer shall only be entitled to withdraw from or terminate the contract if we are responsible for the breach of duty. The Buyer's free right of termination (in particular according to §§ 651, 649 German Civil Code) is excluded. The legal requirements and legal consequences shall additionally apply.

§ 10 Limitation of Claims

(1) § 438 para 1 no. 3 German Civil Code notwithstanding, the general limitation period for claims from material and legal defects shall be one year from the date of delivery. If acceptance has been agreed, the limitation period begins with acceptance.

(2) In the event that the goods involve a building or an object normally intended to be used for a building and has caused its defectiveness (building material), the limitation period in accordance with the statutory provision is 5 years from delivery (§ 438 para. 1 no. 2 German Civil Code). Other special legal provisions relating to limitation shall also remain unaffected (in particular § 438 para. 1 no. 1, para. 3, §§ 444, 479 German Civil Code).

(3) The above periods of limitation based on Sales Law also apply to any contractual and non-contractual claims for damages made by the Buyer based on a defect in the goods, unless the application of the normal statutory limitation period (§§ 195, 199 German Civil Code) would result in a shorter limitation period in the specific instance. Claims for

damages by the Buyer pursuant to § 8 para. 2 sentences 1 and 2 (a) or according to the Product Liability Act shall lapse solely upon expiry of the statutory limitation periods.

§ 11 Place of Performance and Court of Jurisdiction

(1) The laws of the Federal Republic of Germany, excluding international uniform law, in particular the United Nations Convention on Contracts for the International Sale of Goods, shall apply to these GTCS and the contractual relationship between us and the Buyer.

(2) If the Buyer is a merchant as defined in the German Commercial Code, a legal entity under public law, or a special public fund, the exclusive – also international – jurisdiction for any disputes arising directly or indirectly under this contract shall be our headquarters in Elsdorf, Germany. The same applies if the Buyer is an entrepreneur as defined by § 14 German Civil Code. However, we are also entitled in all cases to bring suit at the place of performance of the delivery obligation pursuant to these GTCS or an overriding individual agreement at the Buyer's general place of jurisdiction. Overriding statutory provisions, especially for exclusive competent jurisdictions, shall remain unaffected.