

1. General

All products and services supplied to our retail and wholesale customers are subject to these terms and conditions. Contrary terms of the customer will not be incorporated into the contract on our acceptance of the order, even if relating to matters not governed by these terms. Where a basic agreement exists between ourselves and the Buyer, these terms and conditions shall apply both to this agreement and to individual orders.

2. Contract conclusion

All our offers are non-binding. The Buyer's orders shall be binding on the Buyer. Contracts and other agreements and their amended versions shall only be valid if confirmed by us by letter, fax or email. For orders – even if accepted by our representatives – and agreements, the content of our confirmation shall be exclusively applicable, unless an objection is made in writing by the recipient within 24 hours of receipt. This applies in particular to orders and agreements made verbally or by telephone. Provided no other written confirmation is issued by us, the invoice shall serve as order confirmation. Oral side-agreements shall not be binding on us.

3. Place of performance and delivery times

Our deliveries are subject to the Incoterms as applicable when the contract is concluded. Unless otherwise agreed upon or otherwise stated in our catalogue, our deliveries are made “ex works”; this also applies to deliveries “carriage paid”, free to domestic or foreign destination. We are entitled, though not obliged, to insure consignments on behalf and for the account of the Buyer. Storage costs after the passing of risk shall be assumed by the Buyer. Should dispatch be delayed for reasons under Buyer's control, the risk passes to the Buyer with the readiness for shipment notification. The carrier must be notified immediately by the Buyer of any losses or damage in transit, irrespective of the party bearing the shipping costs. Instalment deliveries must be accepted and paid for. Quality variations in an instalment shall not entitle the Buyer to refuse to take delivery of the rest of the agreed quantity. Unless expressly agreed otherwise, delivery dates and periods apply ex factory and are non-binding. In the event of acts of God, and particularly in case of strikes or lockouts and/or other circumstances beyond our control – even if they occur at our sub-suppliers' – the delivery period shall be extended appropriately, if we are prevented from carrying out the delivery. If such circumstances render the delivery or service impossible or unreasonable to accept, we shall be released from our delivery obligation. Should the delay last longer than one month, both we and the Buyer shall be entitled to withdraw from the contract. In the event of a delay for which we are responsible, our liability for delay damages shall be limited to a maximum of 0.5 % per week, but a maximum in total of 5 % of the gross value incl. VAT of the late consignment. Damage claims by the Buyer in these cases are excluded within the limits of the liability clause in Section 9.

4. Prices

The prices quoted by us in catalogues and price lists are non-binding. Unless otherwise agreed in specific cases, prices are subject to the applicable statutory VAT and any foreign duties or taxes incurred.

5. Terms of payment, set-off and right of retention

Payment is requested on the due date indicated in our invoice. The Buyer shall only be entitled to offset payments with counter-claims or to withhold payments provided the counter-claims are undisputed or have been established with legally binding effect. Should a significant deterioration in the Buyer's financial circumstances occur or be expected to occur in future for objective reasons which does not come to our knowledge until after conclusion of the contract, we are entitled to demand cash pre-payments for future deliveries, or temporarily refuse delivery and invoice the goods on notification of readiness for shipment.

6. Reservation of title

The goods supplied by us shall remain our property until such time as all our accounts receivable from the business connection with the customer are paid in full, including future accounts not arising until after delivery. Our reservation of title shall continue to apply if the reserved goods are transferred to other containers or subdivided without blending or other processing. If the buyer processes the reserved goods, processing is done free of charge for us as manufacturer. In the event of the reserved goods being combined, blended or processed with other goods/matters, we shall acquire a proportionate share in the ownership of the newly created item. Should the Buyer fail wholly or partially to meet his obligations, we shall be entitled to demand the immediate return of the supplied goods without prejudice to our claims, especially to claims of performance. The same applies in case of a significant deterioration in the Buyer's financial circumstances. The Buyer shall only be entitled to resell the reserved goods within the framework of proper business activity. The Buyer hereby assigns to us the claims accruing to him from the resale including any current account balance claim. We hereby accept this assignment. The Buyer shall only be entitled to collect the account assigned to us until such time as we may revoke it. We may make use of this power of revocation if the Buyer fails to comply with his payment obligations in the business relationship with us or if circumstances come to our knowledge which are likely to significantly reduce the Buyer's creditworthiness. If the marketable value of the securities held exceeds the total receivables from the Buyer by a total of more than 10 %, we shall be obliged, at the Buyer's request, to release securities at our option.

7. Observance of specifications and duty of information

In using the supplied products, the Buyer shall at all times observe our instructions in the contractual documents and product specifications together with the applicable legal regulations and official directives. In each instance of processing and/or resale, the Buyer shall ensure the observance of the applicable legal regulations, particularly those of a health or food-related nature, regarding the comprehensive labelling and identification of products. If the Buyer violates the above obligations and we are consequently claimed on for damages by a third party, the Buyer undertakes to indemnify us from all claims of this nature including the costs of legal defence, provided the Buyer has been notified immediately of such a claim. It is Buyer's obligation to be informed in time on the document requirements for the importation of goods applicable at the place of delivery and to timely submit us these requirements. All costs for procuring the import documents, their certification and/or legalisation shall be paid by the Buyer. Expenses for an interim storage of goods caused by a delayed availability of the required import documents are also for Buyer's account. We are not liable for any delay in delivery and/or any non-delivery because of import documents missing or not being available in time.

8. Warranty Rights

The Buyer is obliged to carry out an appropriate inspection of the supplied goods without delay at his expense, and to notify us in writing of any defects or short consignments. The notification of visible defects or short consignments shall be subject to a time limit of one week from delivery. Hidden defects must be reported to us immediately on discovery. Origin, leaf grade, volume, and other details of the composition of the supplied item are for specification purposes only; they are not to be understood as warranted characteristics forming the subject of a warranty of qualities. Public advertising statements/product details from a third party or ourselves are not the subject of the contractual product specification. Warranty claims by the Buyer shall be limited to remedy of defects or replacement claims, the choice of which lies with us. If the remedy attempts or replacement delivery fail or if they do not lead to success within a reasonable period of time, the Buyer has the right to either withdraw from the contract concerning the delivery in question or reduce the purchase price. Claims by the Buyer for remedy of defects are time barred to one year, unless defects have been caused by intent or gross negligence or in case of a liability on our part pursuant to the product liability act. Further claims, particularly for damages, shall only apply as stated in the provisions of Section 9.

9. Liability

Our contractual or tortious liability for damages of whatever kind (including consequential damages such as loss of profit) is excluded. This exclusion shall not apply to any damage caused by intent or gross negligence on our part, or in cases of mandatory liability under product liability laws. In case of ordinary negligence the exclusion does not apply to damages arising from a material breach of contract on our part, whereby in this case liability shall be limited to contract-typical damage foreseeable by the Seller. A material breach of contract is a violation of those duties which must necessarily be fulfilled for a performance of the contract and which the Buyer ordinarily relies on and may rely on. Further, the exclusion does not apply in case of ordinary negligence to damages related to loss of life, personal injury or health damage. Damage claims by the Buyer due to ordinary negligence on the Seller's part are excluded unless legally asserted within a period of three months following rejection of the claims by us or our insurers. The above liability exclusions and limitations shall also apply to our liability for representatives, personnel or vicarious agents as well as to the personal liability of our representatives, personnel and vicarious agents.

10. Place of performance, legal venue, applicable law

The place of performance for deliveries and payments shall be Reinbek, near Hamburg. Any disputes relating to the quality of the goods supplied by us shall be settled by the arbitration court of the Hamburg Chamber of Commerce or Hamburg arbitration rules. Both parties are however at liberty to bring the matter before the ordinary law courts. The sole place of jurisdiction shall be Hamburg. German law shall apply exclusively under exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).

Additional remark:

The above text is a translation of seller's German Terms and Conditions for commercial customers. In case of discrepancies, the German text prevails.

Updated: 04/2019