

# **General conditions of sale, delivery and payment (GST)**

## **1. General; Scope**

Provided that nothing shall be agreed to the contrary, following provisions shall exclusively apply to all of our deliveries and services. When placing the order, however, when accepting the products or services at the latest, the customer shall accept such conditions. Possible adverse conditions of purchase or other general terms and conditions of the buyer shall be objected herewith. Supplementary agreements, amendments, and additions shall be in writing in order to be effective.

## **2. Conclusion of contract; Price**

Orders only shall be accepted by means of our confirmation in writing or execution.

Our offers and prices shall be subject to confirmation. The minimum amount of an order may not be less than EURO 5000.00 (net invoice value).

## **3. Payment, setting off, and retention**

Our invoices shall be due within a period of 30 days as of the date of invoice. In case of payment by crossed cheque, we must receive such crossed cheque two banking days prior the expiration of the payment term indicated above. The right of refusing cheques and bills of exchange shall be expressly reserved. The acceptance of such only shall take place on account of payment and without any guarantee for a punctual presentation and protest. Discount and bill charges shall be borne by the buyer and shall be due and payable immediately.

In the event that the payment terms shall not be met, default interest to the amount of 5 % p.a. above the respective base rate of the European Central Bank shall be payable. The enforcement of a higher damage shall be reserved.

In the event of an essential reversal of the buyer's financial situation or in the event that poor financial circumstances shall be made known to us, then all of our claims – also in the event of deferment and irrespective of possibly accepted bills – shall be due immediately. Without prejudice to further claims for damages, we shall have the right to resign from the contract if the buyer shall not pay the purchase price in advance within a period of 7 days following an appropriate request or if the buyer shall not provide guarantee for it.

The buyer only may offset undisputed or legally determined claims. The right of retention shall be excluded.

## **4. Delivery; Passing of risk**

Delivery dates and delivery periods only shall be binding for us by our confirmation in writing.

In the event of force majeure and other unforeseeable unusual circumstances which we are not responsible for (e.g. war, blockade, fire, strike, lockout, breakdown, transportation interruption, lack of raw materials / auxiliary materials, problems in energy supply and water supply or official interventions) – also if such shall occur to the pre-supplier – we shall be entitled to extend the delivery period appropriately or to terminate the contract in whole or in part. As far as possible, we shall immediately inform the customer about the occurrence of such events. In the event of a prolongation of the delivery time, or if we shall be released from our delivery obligations, the buyer shall not have any claims for damages.

We shall be entitled to make partial deliveries. Partial deliveries only shall entitle the buyer to terminate from the entire contract, if the buyer shall be able to provide evidence that the partial performance of the contract shall not be economically usable. In the event of crop failures or reduced crops of the ingredients intended for our products we shall be entitled to reduce the agreed quantities delivered in such a ratio of the actual deliveries of the ingredients to the planned quantities of the ingredients.

In the event that we shall exceed agreed delivery dates or delivery times, the buyer - with the exception of short selling – only shall be entitled to withdraw from the delayed part of our services following the expiration of an extension of 3 weeks at least set by the buyer.

The compensation of a damage caused by delay in the event of slight negligence shall be excluded, otherwise limited to the typical damage foreseeable at the time of the completion of the contract.

The delivery shall be on buyer's risk. The risk shall pass at the storage location Carl Kühne KG (GmbH & Co.) with the loading on own or foreign means of transportation of our choice.

## **5. Returnable packaging**

Returnable packaging shall remain our sole property. In the event that the return shall not take place within a period of six months following delivery, we shall be entitled to refuse a later taking back and to require compensation instead. The same shall apply in the event of damages or loss of the returnable packaging.

In the event that delivery shall take place on Euro pallets, the respective replacement value shall be charged.

## **6. Warranty; Customer's complaints; EAN code**

The buyer shall be obliged to inspect the products immediately on receipt, to report possible losses and damages to the forwarding company, to have it confirmed and to submit the confirmation to us immediately. Damages – also with regard to possible incorrect EAN coding of individual containers – shall be reported in writing within a preclusive period of 1 week on receipt of the products – with regard to so-called hidden defects after damage assessment. Our receipt of the customer's complaint shall be relevant. In the event that a buyer shall report us a defect of our delivered products

or the EAN code indicated above, we only shall be obliged to substitute delivery with the return of the rejected goods. In the event that we shall refuse a substitute delivery or such shall fail, the buyer may have the right of cancellation of the sale or reduction at buyer's option. A right of compensation because of non-performance or because of possible consequential damages shall be excluded, except in cases of intentional or gross negligence.

The regulations of this section shall apply correspondingly, if a product was delivered other than contractually agreed.

## **7. Retention of title and assignment in advance**

We shall remain the owner of the delivered products until the payment of all claims that shall be due or will be due to us or to one of our affiliated companies. The regulation indicated above shall apply independently of the legal justification, and therefore the respective outstanding balance claim from a possible improper or actual current account shall be included in this regulation. Processing or alteration of the goods subject to retention of title shall be performed for us as manufacturer; however, without any obligation for us. In the event that the buyer shall combine our products with other goods not belonging to us, we shall be entitled to co-ownership of the newly manufactured article as a portion of the gross invoice value of our goods subject to retention of title relative to the market value of the new article at the time of processing. If the buyer shall acquire the sole ownership in the new product, then the buyer shall grant us now co-ownership in the new product in accordance with the proportion of the gross invoice value of the used goods subject to retention of title.

The buyer shall maintain the new products with due diligence on our behalf but free of charge for us.

The buyer only shall be entitled to processing of the delivered goods or the products resulting from processing in the ordinary course of business under the agreement of a transferred and/or extended retention of title.

The buyer herewith shall assign all claims with subsidiary rights to us that shall result from the sale or any other use of the goods subject to retention of title. In the event of a sale or any other connection with goods to which rights of third parties may exist, only the part amount corresponding to the gross invoice value shall be assigned to us. The assigned claims shall secure all the claims in accordance with such paragraph 7, first section.

The buyer shall be entitled to the collection of assigned claims. In the event of stoppage of payments, application or opening of insolvency proceedings, court-supervised or out-of-court composition proceedings or any other financial collapse of the buyer, we shall be entitled to revoke the direct debit authorisation and may require that the buyer shall inform us about the assigned claims and debtors, give all details necessary for the collection, provide related documents and inform the debtor about the assignment. The same conditions shall entitle us to revoke the resale and/or processing of the goods subject to retention of title and to collect the goods subject to retention of title immediately and to have free access to the premises and storerooms of the buyer for this purpose as well as to use the products indicated above at our

choice. For our part, additional rights shall not to be affected by the taking of the goods subject to retention of title.

The buyer shall inform us immediately about interventions of any third party to the goods subject to retention of title or the assigned claims. The buyer has to refund us the costs resulting from the defence of the interventions of any third party.

In the event that the value of the security at our disposal shall exceed our claims by more than 20 %, we shall be obliged, upon request of the buyer, to release exceeding securities upon our discretion.

## **8. Liability**

We only shall be liable for damages, in particular because of delay, non-fulfilment, poor fulfilment or offence – with the exception of assured characteristics – in the event of intent or gross negligence.

Provided that we shall negligently breach a fundamental contractual obligation, our liability to pay damages for property damages or bodily injuries shall be limited to the sum insured of our liability insurance.

The liability for gross negligence shall be limited to the damage usually and typically foreseeable for such events.

As far as the requirements of the facts shall be met, we shall be liable to users and consumers. Liability to producers shall be excluded.

## **9. Place of performance; Applicable law; Court of jurisdiction and partial nullity**

Place of performance for deliveries shall be the respective seat of our distribution facility. Place of performance for payments shall be Hamburg, Germany.

German law shall apply under the exclusion of the application of the Viennese UNCITRAL Agreement on Contracts for the International Sale of Goods from 11th April 1980.

The place of jurisdiction for all disputes arising from the business connection, including all claims resulting from cheques and bills, shall be – provided that the buyer is general merchant, body corporate organised under public law or public separate estate – at our discretion Hamburg, the place of our respective distribution facility or courts competent for the buyer's place of business.

Provided that against all expectations one or several provisions of the regulations indicated above shall be or shall become ineffective, it shall be agreed to replace such relevant provision by a regulation that corresponds to the meaning of the invalid provision as closely as possible.

## **10. Data processing**

Your data will be saved by data processing (§ 3, Data Protection Act) (BDSG)

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