

## General Terms and Conditions of Contract

### § 1 Scope

- (1) These General Terms and Conditions of Contract are exclusively intended for application vis-à-vis enterprises defined in § 310 para. 1 BGB >>*German Civil Code*<<. Any terms or conditions issued by the purchaser deviating from or contrary to our General Terms and Conditions of Contract are deemed to be accepted by us only if and when expressly agreed to in writing.
- (2) Our General Terms and Conditions of Contract shall also be applicable to any future business with the customer.

### § 2 Quotation and Conclusion of Contract

- (1) Our quotation is without engagement. Any binding obligation on our part shall be subject to contract award and after we have checked the production and delivery situation.
- (2) We retain the title to and copyright in respect of illustrations, drawings, calculations and any other documentation provided. Such documentation must not be disclosed to Third Parties unless we have granted the Purchaser an express written approval to this effect. If the Purchaser's order has not been accepted, such documentation shall be returned without delay.
- (3) Tools shall remain our property even will full reimbursement unless otherwise agreed. Any provision of tools by the Purchaser shall be in the form of a loan. Our liability with respect to storage shall be limited to the standard of care in one's own affairs. Unless otherwise agreed, the Purchaser shall be liable for the costs of maintenance and upkeep. We are not obliged to see to insurance cover with respect to the property of the Purchaser. We are entitled to claim rights of retention with respect to the property of the Purchaser.
- (4) The verification of the suitability of the packaging material for its intended purpose besides filling is up to the Purchaser. Furthermore, we are not responsible for interactions with the packaging material or ingredients thereof, which may result from changes in the quality of the filled food.
- (5) Invoices shall in principle be issued for any samples made available to the Purchaser.
- (6) Over-deliveries or short deliveries of up to 5% are possible for technical reasons and do not constitute a breach of contractual obligations. Invoices shall be made out according to the actual delivery quantity.

### § 3 Prices and Terms of Payment

- (1) Unless otherwise agreed in writing, our prices are deemed to be calculated ex Works, without packaging, plus VAT as currently applicable. Packaging costs will be charged separately.
- (2) We retain the right to change our prices on an appropriate basis if and when, after concluding the contract, any decrease or increase in cost arises, particularly due to a change in material prices. Evidence of such decrease or increase will be rendered at the Purchaser's request.
- (3) Cash discounts shall be subject to express written agreement.
- (4) Unless agreed otherwise, the sales price shall be due and payable within 10 days after the date of the invoice. The statutory rules and regulations relating to default in payment shall apply.
- (5) The Purchaser shall be entitled to set off amounts due against his own claims only if and when such claims are confirmed to be legally enforceable, undisputed or acknowledged by us. The Purchaser's right of retention shall be limited to the extent that his counterclaim must be based on the same contractual relationship.
- (6) We shall be entitled to the assignment of claims arising from our business relationships.
- (7) Any and all payments shall be effected, with full discharge of the debtor, to VR FACTOREM GmbH, Ludwig-Erhard-Strasse 30-34, 65760 Eschborn to whom we have assigned our claims including conditional titles.
- (8) In the event that the Purchaser is in default of any payment obligation any and all existing claims shall fall due immediately. We shall be entitled to assert our rights arising under the retention of title – particularly the redemption of goods supplied under such reservation of ownership – without prior withdrawal from the individual sales contract concerned.

### § 4 Delivery

- (1) Commencement of the delivery period indicated by us shall be subject to timely and due fulfilment of the Purchaser's obligations. We reserve the right of defence of non-performance of contract.
- (2) For agreed deliveries on-call, calls must be made within 6 months following conclusion of the contract, unless otherwise agreed. At the end of the above-specified or agreed deadline, we are entitled to deliver the goods even if no call order has been received. In this case, the Purchaser is obliged to accept the goods and provide the agreed consideration. Delivery calls shall not have a delivery deadline after the 7<sup>th</sup> calendar month following conclusion of the contract, unless otherwise agreed.
- (3) In the event that the Purchaser is in default in accepting the delivery of goods or culpably infringes any other duty to cooperate, we shall be entitled to claim compensation for any damage we may suffer therefrom, including additional expenses, if any. We reserve the right to assert claims in excess thereof. Provided the fact that the aforementioned preliminaries have been fulfilled, the risk of any accidental loss or accidental deterioration of the merchandise shall pass to the Purchaser at the time the Purchaser has become in default in accepting the goods, or the situation of a debtor's delay arises.
- (4) In the event of a non-intentional default of delivery or default of delivery not caused by gross negligence on our part, we accept liability for each completed week of default in terms of a lump-sum compensation for default amounting to 0.5 % per week of the value of the goods delivered, however, not exceeding 5 % of the value of the goods delivered.
- (5) The above stipulations shall be without prejudice to any of the Purchaser's further statutory claims and rights resulting from a default in delivery.

### § 5 Passing of Risk upon Dispatch

If and when the goods are dispatched to the Purchaser at the Purchaser's request, the risk of accidental loss or accidental deterioration of the merchandise shall pass to the Purchaser no later than at the time the goods are leaving our works/ warehouse. This provision shall apply irrespective of whether the merchandise is dispatched from the place of performance or who is to bear the freight charges.

## **§ 6 Liability for Defects**

- (1) The Purchaser's right to claim defects shall be subject to the proviso that the Purchaser has duly complied with his obligations of control and complaint as defined under § 377 HBG >>*German Commercial Code*<<.
- (2) In the event that, in spite of utmost care and diligence, the goods delivered have a defect that had already existed at the time of passage of risk we shall, at our discretion, rectify such defects of the goods or supply a replacement provided the notice of defect has been filed within the agreed time limit. We shall always be granted a chance of post-performance within an adequate period of time.
- (3) In the event that such post-performance fails the Purchaser shall be entitled to claim withdrawal or reduction of the purchase price.
- (4) Claims of defect shall be excluded in cases of immaterial deviation from the agreed quality, immaterial encroachment of the goods' suitability or natural wear and tear resulting from nonconforming or careless handling or inappropriate operating facilities, or caused by particular external influences that have not been provided for in the contract.
- (5) Any claims of the Purchaser in respect of expenses required for post-performance, particularly costs of transport, tolls, labour and material, shall be excluded if there is an increase in such expenses because the merchandise delivered by us has subsequently been transported to a place other than the Purchaser's branch office, unless such relocation conforms to the intended use of the goods concerned.
- (6) Any right of recourse asserted against us by the Purchaser shall be accepted only if and when the Purchaser has not entered into agreements with his customer that exceed the claims for defects defined in statutory provisions relative thereto. Moreover and as far as the scope of the Purchaser's right of recourse against us is concerned, Art. 5 shall apply accordingly.
- (7) Claims for defects are deemed to be subject to statutory limitation after 12 months of delivery of the goods supplied by us to our Purchaser.

## **§ 7 Retention of Title**

- (1) We retain title to the goods pending settlement of any and all payments due under the business transaction with the Purchaser (extended reservation of ownership). In the event of the Purchaser's failure to comply with his contractual obligations, particularly in the case of default in payment, we shall be entitled to withdraw the goods. Withdrawing the goods constitutes a rescission from the contract on our part. After withdrawing the merchandise we shall be entitled to use the goods as we may deem appropriate.
- (2) The Purchaser shall be obliged to handle the goods with care. In particular, he shall be under the obligation to provide, at his own cost and expense, adequate insurance coverage, based on the goods' reinstatement value, against theft as well as damage caused by fire and water. Pending passage of title to the goods, the Purchaser shall inform the Supplier immediately in writing in the event that the merchandise has been taken in execution or subjected to any other interference by Third Parties. If and when such Third Party is unable to reimburse the legal fees or out-of-court charges arising from a lawsuit in accordance with § 771 ZPO >>*German Code of Civil Procedure*<< the Purchaser shall be liable to reimburse the financial loss incurred by us.
- (3) The Purchaser shall be entitled to resell the conditional commodity in the ordinary course of business. The Purchaser hereby assigns to the Supplier any and all claims on the Purchaser's part as may arise from the resale of the conditional commodity to the agreed final invoice amount (including VAT).
- (4) We undertake to declassify any collateral to which we are entitled at the Purchaser's request if and when the realizable value of our collateral exceeds the existing debts to be secured by more than 10%. The selection of collateral securities to be declassified shall be incumbent upon us.

## **§ 8 Miscellaneous**

- (1) This contract as well as the overall legal relationship between the parties involved shall be governed by the laws of the Federal Republic of Germany, excluding the United Nations Convention on Contracts for the International Sale of Goods.
- (2) The place of performance and exclusive place of jurisdiction for any and all disputes arising under this contract shall, at our discretion, either be the company's registered office or Frankfurt am Main.
- (3) Any and all agreements entered into by the parties in respect of the execution of this contract are stipulated in writing in this contract.
- (4) If and when individual terms or provisions in this contract are or become invalid or contain a contractual loophole, such deficiency or loophole shall not affect the remaining terms or provisions of the contract.