

## **General Conditions of Sale**

### **1. Preliminary note, Scope of application for the General Conditions of Sale**

The following General Conditions of Sale solely apply for all contracts on the delivery and/or sale of goods by **Pro Food GmbH**, Heinrich- Hertz Str. 11- 13, 45657 Recklinghausen, Germany (hereafter: seller), which are declared as accepted by the buyer through placing order with the seller, also for future dealings, even if the validity of our general terms and conditions was not expressly declared, as long as this was done once in the Business relationship between buyer and seller before.

In ongoing business relations these conditions shall apply also for all future dealings, provided that no other provisions have been agreed expressly.

Any aberrations from these general conditions of sale and delivery are subject to an explicit agreement. The unconditional delivery, acceptance of payment or any other silence about aberrant conditions of purchase by the customer shall not be regarded as acceptance of such conditions by the seller. Aberrant conditions of purchase shall not be accepted, they are expressly contradicted. Orders which are confirmed with aberrant conditions of Purchase become invalid, even if seller doesn't expressly place a veto against them. Aberrant conditions of Purchase only become valid, if they are explicit declared as accepted in written form through the seller.

### **2. Conclusion of Contract**

The seller's quotation is subject to change regarding price, quantity, delivery time and delivery facilities.

The buyer's order is binding up to the seller's confirmation or execution of the order. The order confirmation has to be effected within an adequate period of time.

In case of a written order confirmation, any additional agreements have also to be fixed in writing. Any deviation from this formal condition has to be fixed in writing.

The buyer is expressly pointed out to the effect of a commercial confirmation letter. As long as the recipient of such a confirmation letter does not disagree, the contents of the confirmation is binding for the buyer, even without a separate declaration of the buyer.

### **3. Price, Payment, Default of Payment, Buyer's Rights**

Unless agreed otherwise and in writing, the price is indicated free ex stock in 48485 Neuenkirchen, Germany/ NRW, in customary packing, i.e. excluding freight, non-

standard packing and transport insurance. The price does not include any applicable VAT.

In case of a carriage free delivery, any increase in freight rates after the conclusion of contract shall be at the expense of the buyer. Possible empties have to be returned to the seller immediately on delivery. If this is not possible for the buyer, the seller shall be entitled to charge the empties to the buyer at the original price.

If the price is influenced after conclusion of a contract by changes in tax law, import rules or tariff regulations, the seller is entitled to change the price subsequently to the extent of the influence.

Invoices are payable in full immediately on receipt. Performance is only fulfilled after irrevocable credit on the seller's bank account.

Drafts and cheques shall only be accepted on express agreement and only on account of performance. Charges for drafts or cheques shall be to the account of the buyer.

Beginning with the occurrence of default, default interest of 8 percentage points above the applicable prime rate of the European Central Bank shall be charged. The seller is entitled to claim any additional damage caused by delay.

If the buyer is in default with settling a claim or a part payment, the seller shall be entitled to refuse any further delivery without specific announcement, until the buyer has settled all claims of the seller or has paid in advance for further deliveries. Will due payments of the buyer to the seller, become delayed or overdue, all outstanding debts become due with immediate effect.

Incoming payments shall first liquidate costs, then interest and finally the principal claim. In case of more than one claim, the oldest shall be liquidated first.

The buyer shall only be entitled to the right to set off or to retain, if his claims are legally established or accepted by the seller.

The seller is legitimated to transfer a title to insurance benefits from its business connection to a third party.

#### **4. Secrecy**

We reserve property rights and copy rights on price calculations, product descriptions and other documentation. Such documentation is to be used exclusively for contractual performance and has to be returned to us after completion of the contract. The documentation has to be kept secret against third parties, even after completion of the

contract. This confidentiality agreement only expires when the knowledge contained in the documentation has become public.

The buyer especially undertakes to keep confidential vis-a-vis any third party all prices and terms of delivery agreed with us.

## **5. Delivery and Passing of Risk**

According to the seller's choice delivery shall be carried out ex stock Neuenkirchen or directly ex stock or domicile of the pre-supplier. If not agreed especially and in writing otherwise, the delivery shall be at customer's risk and expense by a mode of transportation chosen at the seller's own discretion. No liability shall be assumed for damage or loss during the transport. The seller is not obliged to insure against any transport risks.

When a date of acceptance was agreed and this date has expired without the buyer having accepted the delivery, the buyer is in default of acceptance even without a reminder. In case of a default of acceptance, the risk of incidental deterioration or loss shall pass over to the buyer with the occurrence of the default of acceptance.

If the buyer does not accept the delivery or does not call off the goods within agreed or adequate periods of time, the seller is entitled to charge the buyer for the goods and deliver them only on receipt of an advance payment after having set an adequate deadline without success. The storage of the goods until the acceptance shall be charged to the buyer. Additional rights of the seller, particularly the cancellation of the contract and the right to claim further damages, remain unaffected.

The agreed period of delivery shall start on receipt of the order confirmation, but not before the receipt of documentation to be provided by the buyer and not before receipt of an agreed advance payment. The delivery shall take place at the agreed date, but a period of 10 working days past this date has to be accepted by the buyer, if the delivery is from one domestic location to another domestic location. If the delivery is from abroad and/or to abroad, the buyer shall accept a period of up to 20 working days.

If the seller is in default with a delivery, the buyer - after having set an adequate deadline without success - is only entitled to either withdraw from the contract or to claim his damages for non-performance, excluding any further requirements. In case of a claim for non-performance, it is restricted to a maximum of 10 % of the contract price for the delayed delivery, unless the default was caused by gross negligence or intent of the seller. In case of a violation of essential contractual obligations (see no. 8 for this term) causing the default, this restriction shall not apply. In this case, however, the seller is only liable to costs up to the amount of the foreseeable damages.

Excess quantities or shortage of quantities common for the concerned goods shall be accepted by the buyer and shall be included in the invoice by the seller.

## **6. Force Majeure and Similar Impediments to Performance**

In case of force majeure, such as epizootic diseases, imposition of import or export bans, war, revolution, overthrow, discontinuation or obstruction of navigation, etc. as well as in case of a strike at the own company or a shortage of raw materials or nonperformance of the pre-supplier (provided that the seller is not culpably responsible for the nonperformance), the seller is entitled to put off the delivery until a reasonable time after the elimination of the obstacle or to withdraw from the contract either fully or in part without the buyer being entitled to claim for damages.

If after conclusion of the contract the tariff regulations and/or subsidies and/or export subsidies are changed and if these changes directly or indirectly affect the contractual relationship, especially the expenses of the seller, the seller is entitled to ask for an adjustment of the delivery terms and/or the price. If the buyer rejects this adjustment, the seller shall be entitled to withdraw from the contract.

If in case of a postponement of the delivery date the delivery is demonstrably no longer of interest for the buyer, he shall be entitled to withdrawal. The seller shall be obliged to inform the buyer immediately if the delivery cannot be made or cannot be made completely for the reasons mentioned before.

## **7. Reservation of Title**

The seller shall reserve property rights on the delivered goods until complete payment of all his claims arising from the business relationship with the buyer. If the buyer according to contractual agreement pays by cheque or draft, these rights of the seller remain unaffected until the complete and irrevocable payment of the cheque or draft.

The buyer shall be allowed to process or treat the goods subject to reservation of title within the common business. The seller shall be entitled to the property of the new goods in their individual condition of processing. If his goods subject to reservation of title are processed, treated, mixed, blended or combined with others that do not belong to him, he shall be entitled to the co-ownership of the new product at the ratio of the invoiced price of the goods subject to reservation of title to the invoiced price of the other goods. The buyer shall transfer in advance his rights of co-ownership to the seller with the acceptance of the goods in any of the cases mentioned before. The seller shall accept the transfer of ownership.

The buyer shall be entitled to sell the goods subject to reservation of title owned or co-

owned by the seller within the common business, he is not entitled to pledge or assign as security. With the acceptance of the goods the buyer in advance assigns any claims arising from resale of the goods subject to reservation of title or the goods resulting from processing, treating, mixing, blending or combining to the seller. This shall also apply, if the goods are sold at a lump sum price together with other goods that do not belong to the seller. The seller shall accept the transfer of rights. If according to statutory regulations a third party has a right of ownership or co-ownership and/or any claims resulting from processing, treating, mixing, blending or combining, the buyer shall also with the acceptance of the goods assign any claims against the third party in advance to the seller.

Assignments of claim and conveyances in terms of the previous paragraphs shall only be effected up to the amount of the invoiced price of the goods subject to reservation of title.

The buyer shall be entitled to collect the assigned claims. This may be cancelled at any time by the seller. However, the buyer shall be obliged to collect the assigned claims to the amount of the invoiced price for the goods subject to reservation of title to a business account with a credit balance or which is within the credit line and is not pledged and to forward them immediately to the seller to liquidate the invoice of the goods subject to reservation of title.

The seller shall be obliged to release on demand of the buyer the securities at his option he is entitled to according to the previous regulations insofar as their value does not exceed the claims to be secured by more than 10%.

In case the buyer's co-operation is necessary for the validity of the reservation of title, for example with registrations necessary according to the legislation of the buyer's country, the buyer shall be obliged to take such action.

In case the buyer is in delay of payment, the seller shall be entitled to enjoin him from disposing of the goods subject to reservation of title either completely or, according to his choice, in part, for example only for sale or the further processing, etc. In such case the seller is furthermore entitled to demand the delivery of the goods subject to reservation of title. If the goods subject to reservation of title are processed, treated, mixed, blended, merged or connected with other goods, the seller shall be entitled to demand the delivery to a trustee; the buyer shall be obliged to hand over to the seller information on every co-owner of the goods subject to reservation of title including name or company name, address and proportion of co-ownership.

In case the buyer has an objective precondition for the obligation to file for insolvency, he shall be obliged to refrain from any disposition of the goods subject to reservation of title without a corresponding request. The buyer shall be obliged to inform the seller immediately of the actual stocks of goods subject to reservation of title. In this case the

seller is furthermore entitled to demand the delivery of the goods subject to reservation of title. If the goods subject to reservation of title were processed, treated, mixed, merged or combined with other goods, the seller is entitled to demand the delivery to a trustee. The buyer is obliged to inform about any co-owner of the goods subject to reservation of title including name or company name, address and the proportion of co-ownership. The same applies analogously to claims that have been assigned to the seller according to the previous paragraphs. In addition the buyer has to communicate to the seller without special request names and addresses of all debtors as well as a copy of the documents proving the claims.

## **8. Liability for Defects/Warranty/Obligation of Delivery**

Excluding all other claims for performance, warranty or compensation, no matter what kind they are and for whatever legal ground and subject to the regulations of no. 8 the seller shall guarantee as follows:

A normal loss of weight during transportation shall not be regarded as fault, the weight at the time of dispatch shall always be relevant for invoicing. A loss of weight as of passing of risk shall be at the expense of the buyer.

The buyer shall be obliged to check incoming goods for defects immediately, i.e. within 24 hours after delivery at the latest or when opening the goods within this period of time, no later than 2 hours after opening the vacuum package or any other package. For frozen goods a visual examination shall not be sufficient. The buyer shall be obliged to defrost samples to check the quality.

Noticeable defects have to be denounced to the seller immediately in advance by telephone, i.e. within 24 hours after detecting the defect, and in writing/via e-mail or fax at the same day. In addition, the buyer shall be obliged to inform the seller already about any reasonable suspicion of a not only completely irrelevant defect, even if additional examinations have to be made to verify the suspicion. A violation of one of these secondary obligations will lead to a liability for damages on the part of the buyer. In addition, if the buyer is a merchant, a violation of these obligations to examine and notify shall result in the goods being regarded as accepted. Furthermore, in case a buyer who is not a merchant, violates these obligations, possible warranty claims shall be excluded, if the seller on his part is unable to hold the pre-supplier liable for the damage.

In case of transport damages the buyer shall be obliged to guarantee claim for damages against third parties. A notice of defect in time to the carrier and a consultation of a representative of the carrier shall be unconditionally necessary for an ascertainment of damage.

The processing and/or reshipment of the goods on the part of the buyer shall mean an exclusion of any claims for damage.

If according to the previous regulations a liability for defects has to be admitted on its merits, the buyer is entitled to either rectification of defects or replacement delivery at the seller's option. If the buyer returns the goods for this reason, he shall be obliged to ensure for adequate package and secure transport. The buyer shall bear the risk of damage or loss during the transport. A rectification of defects or a replacement delivery after a notice of defects shall only be a gesture of goodwill without any further claims on the part of the buyer resulting thereof, unless the seller has expressly accepted the deficiency of the goods.

In case a rectification and/or replacement delivery fails at least twice, the buyer shall be entitled to adequately reduce the purchase price or to withdraw from the contract. However, a withdrawal from the contract shall be excluded, if the defect is insignificant. If a return of goods due to a complaint of the buyer shows that the complaint was made wrongly, the seller shall be entitled to charge the expenses for transport and package as well as an adequate compensation for the examination of the goods to the buyer. This adequate compensation shall be at least 50,00 €, but no more than 20 % of the merchandise value.

The seller is only obliged to take back goods, if he is allowed to do so according to the import regulations of the country of dispatch. If it is not possible to take back the goods, the buyer shall be charged with the disposal fees.

The buyer shall be obliged to treat returned goods correctly and in accordance with the regulations of the country of dispatch. An incorrect handling or storage or transport not in accordance with EC regulations on the part of the buyer shall exclude the seller's obligation to take back the goods.

The warranty period is one year beginning from delivery date. This shall also apply to any other claims based upon a deficiency of the goods. Possible rights of recourse of the buyer according to article 478 German Civil code remain unaffected.

## **9. Seller's Liability**

Liability for compensation claims of any kind against the seller and his legal representatives and other servants within and without the guarantee, especially with damages that do not occur at the delivery item itself - i.e. due to a violation of contractual secondary obligations, faulty advisory service, fault on conclusion of the contract or unlawful act - is excluded, unless the seller has violated intentionally or grossly negligent an essential contractual obligation. In this context an essential contractual obligation is any obligation whose fulfillment is necessary for the correct performance of the contract and on whose adherence the buyer can regularly rely.

However, a liability for gross negligence of the seller's servants, as far as they are not chief executives, shall be limited to damages that might be typically predicted. This restriction of liability does not apply to the violation of essential contractual obligations in terms of the previous paragraph.

The foregoing restrictions of liability and liability exclusions shall not apply for a liability according to the product liability law or in case of liability for damages arising from impairment of life, physical injury or impairment of health.

## **10. Miscellaneous Provisions**

The place of performance is 48485 Neuenkirchen, Germany/NRW, unless agreed otherwise in the order confirmation.

Place of jurisdiction for all business disputes with merchants, public corporations or special funds under public law and persons who do not have a national place of general jurisdiction, shall be Bochum, Germany/NRW. However, the seller shall also be entitled to file a suit at any other legal place of jurisdiction that is justified for the buyer.

The law of the Federal Republic of Germany, particularly the German civil and commercial code shall solely apply to these General Conditions of Sales excluding the UN Commission on International Trade Law (UNCITRAL).

If one or more of these General Conditions of Sale are or become inefficient, this shall not affect the effectiveness of the other provisions. The parties agree to replace the ineffective clause by one which comes nearest to the commercial purpose of the ineffective provision.