

## **General Conditions of Purchase**

### **1. Introduction, Scope of Application for General Conditions of Purchase**

The following General Conditions of Purchase shall apply to all business relations with our business partners and suppliers (hereinafter referred to as "seller") for deliveries and/or sales to **Zeimex Protein GmbH**, Heinrich- Hertz Str. 11- 13, 45657 Recklinghausen, Germany. The General Conditions of Purchase are only applied when the seller is an independent contractor in accordance with article 14 German Civil Code, a legal entity under public law or a special fund under public law.

The General Conditions of Purchase are especially valid for contracts concerning sales and/or deliveries of moveable objects (in the following also: goods) irrespective of whether produced by the seller or bought from sub-suppliers (articles 433, 651 German Civil Code). The General Conditions of Purchase in their current version also apply as master agreement for future contracts concerning sales and/or deliveries of moveable goods with the same seller without us having to refer to them again in each individual case.

These General Conditions of Purchase shall apply exclusively. We do not accept any contrary, deviating or supplementary conditions on the part of the seller, unless we agreed to them expressly in writing. This prerequisite of approval applies in any case, e.g. also if we unconditionally accept the seller's delivery although we know of his adverse or deviating conditions.

Individual agreements with the seller (including subsidiary agreements, additions and amendments) take in any case precedence over these General Conditions of Purchase. A written contract or our confirmation in writing is authoritative for the contents of such agreements.

Legally relevant statements and indications by the seller after conclusion of the contract (e.g. deadlines, reminders, cancellation of the contract) must be in writing in order to be valid.

Indications of the validity of statutory provisions have only a clarifying impact. Even without such a clarification the statutory provisions apply, as far as they are not directly changed or expressly excluded in these General Conditions of Purchase.

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

Our purchase order shall be binding after the seller's confirmation of our order or after a written acceptance of a seller's quotation at the earliest. Apparent errors (e.g. mistakes in writing or arithmetic errors) and incompleteness of the order including the order

documents have to be indicated by the seller for correction respectively completion before accepting the order, otherwise the contract is considered as not concluded.

The seller is required to confirm our order in writing within a 2-day period or to execute it without reservation by sending the goods (acceptance). The seller shall accept this short term as sufficient, as in meat wholesales a short term order confirmation is indispensable to avoid essential economic imponderabilities and losses due to possibly considerable price changes within a very short period of time.

Subject to acceptance by the seller we are allowed to cancel an order without giving reasons.

A delayed acceptance is regarded as new offer and has to be confirmed by us.

### **3. Delivery period and delay in delivery**

The delivery time specified in our order is binding. If the delivery time is not indicated in the order and was not agreed otherwise, it shall be 2 weeks after conclusion of the contract. The seller is obliged to immediately inform us in writing if he is presumably not able to keep the agreed delivery times for whatever reasons.

If the seller does not render his services or does not render his services within the agreed delivery time or defaults on delivery, we shall have the statutory claims for rescission and damages. The regulations in the following paragraph remain unaffected.

The seller defaults on delivery upon expiry of the agreed delivery day or, in case of lacking agreement, upon expiry of the day following 2 weeks on the conclusion of the contract.

If the seller defaults on delivery, we can - apart from further statutory claims - claim liquidated damages to the amount of 0,5 % of the net cost per complete calendar week, but all in all not more than 5% of the net cost of the delayed goods. We reserve the right to provide evidence that the suffered damage is higher. The seller reserves the right to provide evidence that we suffered no damage at all or that the suffered damage is substantially lower.

### **4. Service, Delivery, Passing of Risk, Default of Acceptance**

Without our prior agreement in writing the seller is not authorized to have the owed services rendered by a third party (e.g. a sub-supplier). The seller bears the risk of procurement for his services, unless it concerns an individual production. This has to be agreed separately on conclusion of the contract.

Unless agreed otherwise, the delivery has to be made "free domicile" to the address indicated in the order. If the destination has not been specified and nothing else was agreed, the delivery has to be made to our stock at Germany, 48485 Neuenkirchen. The place of performance is the respective place of destination. (Debt to be discharged at creditor's domicile).

The delivery has to include a delivery note indicating date (of issue and of shipping), contents of the delivery (product code and quantity as well as our order code, i.e. date and no.). If the delivery note is not included or is incomplete, we are not responsible for delays in the processing and payment caused thereby.

Separate from the delivery note the seller has to send a corresponding dispatch note with the same contents.

The risk of accidental damage or theft devolves to us with the delivery at the place of performance. If an acceptance sign-off was agreed, it is decisive for the passing of risk. Besides, in case of an acceptance sign-off the statutory provisions for service contracts are valid. Our default of acceptance equates with delivery or acceptance.

For the occurrence of our default of acceptance the statutory provisions apply. In any case, the seller has to offer his service expressly, if for our action or assistance (e.g. provision of materials) a certain or definable date was agreed. In case of our default of acceptance the seller can claim compensation for his additional expenditure according to the statutory provisions (art. 304 German Civil Code). If the contract concerns an irreplaceable product to be produced by the seller (individual production), the seller is only entitled to additional rights, if we committed ourselves to assistance and are responsible for the failure of assistance.

## **5. Prices and Terms of Payment**

The price stated in the purchase order is binding. All prices include statutory VAT, unless VAT is indicated separately.

Unless agreed otherwise, the price includes all services and ancillary services of the seller (e.g. issue of shipping documents) as well as all additional costs (e.g. proper packing, transport costs including potential transport insurance and liability insurance). The seller has to take back all packing materials on demand.

The agreed price is due for payment within 30 days after complete delivery and service (including an agreed acceptance sign-off, where applicable) and on receipt of a correct invoice. For payment within 14 calendar days the seller will grant a 3% cash discount on the net amount of the invoice.

There shall be no interest payable from the due date. The seller's claim for payment of default interest remains unaffected. For the occurrence of our default the statutory provisions apply. In any case a seller's reminder is necessary.

We are entitled to claim setoff and the right of retention as well as the defense of non-performance within the limits of statutory regulations. We are especially entitled to withhold due payments as long as we have claims against the seller arising from incomplete or default deliveries.

The seller is entitled to claim setoff and the right of retention only for counterclaims that are undisputed or legally recognized.

## **6. 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 seller especially undertakes to keep confidential vis-a-vis any third party all prices and terms of delivery agreed with us.

## **7. Reservation of Title**

The seller can only process, mix or combine materials possibly provided by us on our behalf. If in case of a processing, mixing or combination with materials of third parties their property right persists, we acquire a co-ownership of the new product proportionately to the value of material provided by us.

The conveyancing of the product to us is unconditional and regardless of the payment of the price. Any forms of an extended or prolonged reservation of title are excluded, so that a reservation of title possibly validated by the seller only applies until payment of the product delivered to us and is only valid for this product.

## **8. Bad Delivery**

Unless thereafter agreed otherwise, statutory provisions apply for our claims in case of defects of quality or title (including wrong or faulty delivery as well as incorrect identification and/or medical certificate/food law records, as applicable) and of other

breaches of duty by the seller.

According to statutory provisions the seller guarantees that the product has the agreed specifications on the passing of risk to us. Those product descriptions which - especially by indication or reference in our purchase order - are contract goods or were included in the contract in the same way as these General Conditions of Purchase, are considered as agreement on properties and conditions. In this connection it does not make any difference whether the product description originates from us, the seller or the manufacturer.

Part of the agreed specifications are especially medical certificates or food law records which are necessary or beneficial for sales.

Aberrant from art. 442 section 1, sentence 2 German Civil Code, we shall have an unrestricted right to use the statutory claims for defects, even if the defect remained unknown to us due to gross negligence on the conclusion of the contract.

The statutory provisions (articles 377, 381 German Civil Code) apply for the commercial obligation to examination and notice of non-conformity with the following proviso: our obligation to examine is limited to those defects that are obvious in our incoming inspection under external survey including the delivery forms and in our quality control in form of a sampling (e.g. transport damages, wrong and short deliveries). If an acceptance sign-off is agreed, there is no obligation to examine. For the rest it is essential as to what extent an examination is reasonable taking into consideration the circumstances in individual cases after the regular course of business.

Our duty of inspection, notification and rejection of defects detected at a later time remains unaffected. In any case our notice of defects is regarded as prompt and in time, if it gets to the seller within 7 working days.

If the seller does not meet the obligation to comply with the missing requirements following delivery within an adequate time limit set by us - at our option a cure by either rectification or replacement -, we shall be entitled to remedy the defects ourselves, especially by means of replacement, and to claim reimbursement for any expenditures arising from the defect or to claim an advance payment. If the rectification by the seller fails or is unacceptable for us (i.e. in case of a special urgency, danger for the operational safety or imminent disproportionate damages), a time limit does not have to be set; the seller has to be informed immediately in advance, if possible.

In case of a defect in title and quality we reserve the right to reduce the purchase price or to rescind the contract in accordance with the statutory provisions. Furthermore, we are entitled to compensation for damages and reimbursement of expenses according to the statutory provisions.

## **9. Supplier's Regress**

Apart from the warranty claims, we are entitled to statutory claim for damages within a supply chain (supplier's regress according to articles 478, 479 German Civil Code) without restrictions. We are especially authorized to ask for exactly the kind of supplementary performance (rectification or replacement) by the seller which we owe to our sub- purchaser on an individual basis. This does not affect our statutory right to choose according to article 439 paragraph 1, German Civil Code.

Before we accept or meet a sub- purchaser's claim for defects (including reimbursement of expenses according to articles 478 paragraph 3, 439 paragraph 2, German Civil Code), we will inform the seller about the facts and ask for a written statement. If the statement is not given within an adequate period of time and a joint solution to the problem is not found, the claim for defects accepted by us is regarded as owed to our sub- purchaser. In this case, the seller is obliged to produce proof of the contrary.

Our statutory claims for damages also apply when the product is further processed by us or one of our sub- purchasers (e.g. processing into another product), before it is sold to a consumer.

## **10. Choice of Law and Jurisdiction**

The law of the Federal Republic of Germany shall apply to these General Conditions of Purchase and to all legal relations between us and the seller excluding all international and supranational legal systems, especially the UN convention on contracts for the international sale of goods (UNCITRAL). Premises and effects of the retention of title are subject to the law of the individual whereabouts of the products, as far as according to this the chosen German law is illegitimate or ineffective.

If the seller is a merchant, a legal entity under public law or special fund under public law, the exclusive place of jurisdiction for all claims - also international claims - shall be Bochum, Germany.

We are, however, also entitled to file suit at the place of fulfillment of the delivery commitment, if this deviates from the place of jurisdiction mentioned before.

## **11. Miscellaneous Provisions**

If one or more of these General Conditions of Purchase are or become ineffective, 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.