



## General Conditions of Sale

Last updated October 17, 2014

### 1. Application of these General Conditions of Sale

- 1.1. All products and services provided by us to entrepreneurs as defined in section 14 of the German Civil Code (Bürgerliches Gesetzbuch – BGB) are subject exclusively to these General Conditions of Sale.
- 1.2. We do not acknowledge any standard business terms of our customers that conflict herewith or vary herefrom except where we expressly consent in writing to the application thereof. Our General Conditions of Sale apply even if we effect performance to the customer without reservations while knowing of terms and conditions of the customer that conflict with or vary from our General Conditions of Sale.
- 1.3. The terms and conditions mentioned in our order confirmations and these General Conditions of Sale take precedence.
- 1.4. These General Conditions of Sale do not apply vis-à-vis consumers as defined in section 13 BGB.

### 2. Offers

- 2.1. Our offers are non-binding. Orders placed by the customer do not become binding on us unless and until we issue written order confirmation or effect delivery, as the case may be.
- 2.2. If Incoterms clauses are mentioned in offers, the Incoterms apply in the then-current version thereof. Unless otherwise agreed, the terms applicable to our offers are “ex warehouse (EXW) Hamburg, Incoterms (in the then-current version thereof).”

### 3. Prices, payment details, setoff and default

- 3.1. Unless otherwise agreed in writing, our prices are understood to be net cash “ex warehouse (EXW) Hamburg, Incoterms (in the then-current version thereof)” after receipt of the invoice, with agreed discounts being permitted to be applied.
- 3.2. Our prices are to be understood as exclusive of value-added tax (VAT) at the statutory rate.
- 3.3. If the customer is in default, default interest at the rate of 9% above the basic rate of interest issued by the German Federal Bank shall apply. In addition, we are entitled to claim a lump-sum payment for default in the amount of € 40 pursuant to section 288 (5) BGB. If the amount of damage or loss sustained due to default is higher, we are entitled to claim the higher amount.
- 3.4. If the customer falls into default or there is a substantial deterioration in the customer's financial circumstances, we are permitted to render all open claims due and payable immediately and to demand items of security therefor.
- 3.5. We are entitled to effect deliveries that are still outstanding only in exchange for advance payment or provision of security if, after entering into the agreement, we become aware of circumstances that may substantially reduce the customer's creditworthiness and payment of our open receivables from the customer is therefor jeopardized.
- 3.6. The customer is not permitted to offset claims of the customer's own against our receivables or to assert rights of retention unless the customer's claims or rights of retention have been established with final, binding legal force or are acknowledged by us or the counterclaim is associated with the goods billed. The customer is free to assert claims that have been excluded by commencing legal proceedings.
- 3.7. Irrespective of the location in which the goods or documents are delivered, the place of payment is Braunschweig.

### 4. Deliveries and transportation risks

- 4.1. All offers and contracts are subject to our receiving correct, complete, and timely delivery from our own suppliers.
- 4.2. Delivery and production time limits are, unless they are expressly agreed in writing as fixed, meant as approximations only and do not constitute fixed deadlines.
- 4.3. The delivery and performance time limits pursuant to subsection 4.2 above shall be extended by the duration of the temporary impediment to performance in cases of force majeure and in the event of other circumstances for which we are not responsible.
- 4.4. In the event of delay or default in delivery, the customer is required to provide us with a reasonable period of at least two weeks to rectify the matter.
- 4.5. Unless otherwise agreed, we are entitled to make partial deliveries that are equivalent to at least 25% of the ordered quantity.

Irrespective of the foregoing, we are permitted to deviate from the agreed overall delivery quantity by up to 10% if the purchase price is adjusted accordingly. In the case of contracts that are handled over a longer period (deliveries upon placement of release orders), each delivery is considered to be a completed transaction. A defective partial delivery or one that is not rendered on time shall have no influence on the portion of the contract that has not yet been executed.

- 4.6. Unforeseen events such as strikes, labor disputes, disruptions in business operations, restrictive actions taken by government agencies, and natural disasters as well as delays in delivery of essential raw materials and components shall extend our delivery time limit by a reasonable amount if and insofar as these impediments demonstrably have a significant influence on production or delivery activities. We are not responsible for these impediments, even if they occur during an existing instance of delay or default.
- 4.7. If the customer fails to place a release order for the ordered goods with us within the agreed time limit or an otherwise reasonable time limit, we are permitted to set a deadline for the customer to rectify the matter and, after this period elapses without producing results, to revoke from the contract and demand damages due to non-performance.
- 4.8. Unless expressly agreed otherwise in writing, we will ship the goods at the customer's expense and risk.

## 5. Retention of title

- 5.1. The goods delivered by us remain our property until the purchase price has been paid in full.
- 5.2. If the customer has paid the purchase price for the goods delivered by us, but further debts arising out of the business relationship with us have not yet been satisfied in full by the customer, we moreover retain title to the goods delivered until such outstanding debts have been paid in full. This also applies if our individual receivables are placed in a current account.
- 5.3. If the customer processes the goods delivered by us, we shall be considered the manufacturer and shall directly acquire sole title to the newly produced goods. If the processing involves other materials, we shall directly acquire joint title to the newly produced goods in proportion to the invoiced value of the goods delivered by us in relation to that of the other materials.
- 5.4. If and insofar as the goods delivered by us are combined or blended with material owned by the customer such that the customer's material is to be considered the main material, it is deemed agreed that the customer transfers joint title to such main material to us in proportion to the invoiced value of the goods delivered by us in relation to the invoiced value (or, in the absence of such a value, the market value) of the main material.
- 5.5. At the same time, it is agreed that the customer will keep safe and insure our property that is subject to retention of title and that serves as security, as well as the goods of which we have sole or joint title arising pursuant to subsections 5.3 and 5.4 hereof, in each case with appropriate labeling thereof, securely, properly, and carefully for us at the customer's own expense.
- 5.6. The customer is entitled to resell the goods of which we have sole or title in the normal and proper course of business as long as the customer complies in a timely fashion with its obligations arising from the business relationship with us.
- 5.7. The customer assigns to us, already at the time of the Parties' entry into the agreement, all receivables arising from the sale of goods to which we have retained title; if and insofar as we have acquired shared ownership in the case of processing, combination, or mixing, the assignment takes place in proportion to the value of the goods delivered by us under retention of title in relation to the value of the new goods sold by our customer to its own customers.
- 5.8. The customer is not permitted to pledge items or transfer them to third parties by way of security. In the event of distraint or other interventions by third parties with regard to our property that is subject to retention of title, the customer is required to notify us without delay so that we can assert and safeguard our rights. If and insofar as the third party is unable to reimburse us for the in-court or out-of-court expenses of pursuing our rights, the customer is liable for the shortfall sustained by us.
- 5.9. At our request, the customer is obligated to provide all necessary information regarding the inventory of the goods owned by us and the receivables assigned to us. The customer is likewise required, at our request, to label the goods owned by us as such and to advise its own customers of the assignment.
- 5.10. In the event of delay or default of payment on the customer's part, the customer is no longer entitled to resell or process the goods that are subject to our retention of title. The customer is required to relinquish such goods to us immediately, provide all information regarding items of security, and surrender the documents in this regard. The costs of asserting and safeguarding our rights shall be borne by the customer. Revocation of authorization to sell or process the goods does not in itself constitute rescission of the agreement. Nothing herein shall affect our right to revoke the agreement and demand damages due to non-performance.
- 5.11. If the value of the items of security to which we are entitled exceeds the claims to be secured by a total of more than 15%, we are obligated, at the customer's written request, to release items of security of our choice in the relevant amount for the customer's benefit.
- 5.12. If the retention of title pursuant to the provisions of this section 5 is not valid pursuant to the laws of the state where our products are located, the valid legal form of security that most closely approximates retention of title in such state is deemed agreed between the Parties. The customer shall, where applicable, take all measures that are necessary for the authorization and maintenance of such a right.

## 6. Claims regarding defects

- 6.1. The intended quality of the goods shall be governed by the contractual agreements. Unless expressly agreed otherwise in writing, however, these do not constitute any representations of characteristics or guarantees.
- 6.2. In the event of sales according to a sample, the sample is considered only to be an approximate indication used to depict the characteristics and nature of the goods. Unless expressly agreed otherwise in writing, the characteristics of the sample are not represented or guaranteed.
- 6.3. In the case of natural products, biologically based fluctuations in shape, color, and structure as well as with regard to the content of active ingredients do not represent a defect unless certain parameters agreed in an individual contract are not met or the quality deviation exceeds the usual scope.
- 6.4. A claim to delivery from a certain harvest exists only if this is expressly agreed in writing.
- 6.5. Shelf life and expiration date information constitute a guarantee only if it is agreed in writing as such.
- 6.6. The customer is required to issue a written complaint to us regarding apparent defects in the goods/services delivered without delay, and in any event within three business days after delivery. If a defect does not become apparent until a later time despite the customer's performing a proper check and inspection of the goods upon receipt, the time limit of three business days applies as from the time at which the customer becomes aware of the defect.
- 6.7. In the event of timely and legitimate complaints, the customer's claims for defects are initially limited, at our discretion, to delivery of a new item or remedy of the defect. If a cure fails, we are permitted to make another attempt to effect a cure.
- 6.8. If we fail to effect a cure, the customer is permitted to reduce the purchase price or, at the customer's discretion, to revoke the purchase agreement. Nothing herein shall affect claims for damages pursuant to section 7 hereof.
- 6.9. If the defect is based on the goods or services provided to us by a third party, the customer's claims are limited to demanding that our claims on the third party be assigned to the customer. Only after the customer has attempted to assert claims on the third party and this process has failed is the customer permitted to assert claims on us.
- 6.10. Warranty claims against us cannot be assigned.
- 6.11. The limitation period for claims regarding defects is one year from the time of delivery of the goods to the customer, except where non-waivable provisions of law require a longer limitation period. The limitation period in the event of recourse to the supplier pursuant to sections 478 and 479 BGB shall be unaffected; it amounts to five years, calculated from the time of delivery of the defective goods to our customer.

## 7. Liability

- 7.1. We are liable for simple negligence in the event of loss of life, bodily injury, or impairment of health as well as violation of obligations whose fulfillment renders the proper execution of the agreement possible in the first place and that the customer can generally trust will be complied with (essential contractual obligations).
- 7.2. In the event of violation of essential contractual obligations through simple negligence, our liability is, however, limited merely to the foreseeable damage or losses typical of the contract, and does not include consequential damages or losses. All further claims of the customer are excluded.
- 7.3. In all other respects, we are liable only for intent and gross negligence.

## 8. Form, applicable law, place of jurisdiction and severability

- 8.1. Unless otherwise provided in writing in these General Conditions of Sale or our order confirmations, all declarations rendered within the scope of the business relationship with the customer require the written form (section 126 BGB). The written form requirement is, however, deemed to be met by compliance with text form (section 126 b BGB).
- 8.2. The place of jurisdiction is Braunschweig. We are, however, entitled to file a legal action against the customer in the location in which the customer has its registered office.
- 8.3. The laws of the Federal Republic of Germany exclusively apply, excluding the provisions of private international law and the United Nations Convention on Contracts for the International Sale of Goods (CISG).
- 8.4. Should individual provisions of these General Conditions of Sale be invalid, such circumstance shall not affect the validity of the remaining provisions.

**Buckton Scott Deutschland GmbH**

**Managing Director:** Christian Hanke

**Registration:** Local Court (Amtsgericht) of Braunschweig, HRB 203317

Bankplatz 1a

38100 Braunschweig

Germany

**INGREDIENTS WORLDWIDE**