

General Terms and Conditions of Business of Meyer Gemüsebearbeitung GmbH

§ 1. Scope

- (1) Deliveries, services and offers of Meyer Gemüsebearbeitung GmbH (hereinafter referred to as "**Contractor**") shall be made exclusively on the basis of these General Terms and Conditions of Business ("**GTC**"). These are an integral part of all contracts concluded between the seller and his contract partners (hereinafter referred to as "**Contractee**") with regard to deliveries or services offered by him, provided that the buyer is not a consumer. It also applies to all future deliveries, services or offers to the Contractee, even if they are not again separately agreed.
- (2) Terms and conditions of the Contractee or of a third party shall not apply. Even if the Contractor makes reference to a letter which contains or refers to terms of business of the Contractee or a third party, this shall not constitute an agreement with the validity of such terms of business. General Terms of Business of the Contractee shall only be regarded as a contractual component if they have been expressly accepted in writing by the Contractor.
- (3) In addition to these conditions, the relevant statutory provisions, commercial practices, guidelines and provisions of the respective trade association in the current valid version shall apply insofar as they do not deviate from the following conditions and unless otherwise agreed.

§ 2. Offer and conclusion of contract

- (1) Offers made by the Contractor and cost estimates are always free and non-binding. Orders placed by the Contractee shall be binding for the Contractor only if he has confirmed these in writing. Contracts shall be concluded only by a written order confirmation from the Contractor, which has to be effected within one month, or by acceptance of the object of purchase by the Contractee.
- (2) Upon conclusion of a verbal or telephone purchase agreement, the content of the letter of confirmation shall be decisive unless the Contractee objects to this immediately.
- (3) Details given by the Contractor regarding the object of purchase or service (e.g. weight, dimensions, use), as well as representations of the same (drawings and pictures), are only approximate, unless the usability for the purpose of the contract presupposes exact conformity. They are not guaranteed characteristics, but descriptions or designations of the delivery or service. Commercial deviations are permissible insofar as they do not impair the usability for the contractually intended purpose.

§ 3. Prices and payments

- (1) The prices quoted are, unless otherwise stated in euros, prices ex-works plus additional ancillary services, statutory VAT and delivery costs, as well as other fees and ancillary costs, in particular customs duties and other public levies and taxes.
- (2) The Contractor reserves the right, in the case of contracts having an agreed delivery period of more than 4 months, to increase the prices according to cost changes, in particular as a result of collective agreements or material price changes of his suppliers. In the same way and to the same extent, he is obliged to reduce the price immediately in the event of cost reductions. Cost increases and reductions are thereby offset. The Contractor shall inform the Contractee in writing of a corresponding change in prices at least 4 weeks in advance. He then has the right to terminate or withdraw from the contract as of the date on which this price change comes into effect.
- (3) Unless otherwise agreed, the remuneration is payable without deductions within 10 days of delivery or acceptance of the goods and receipt of invoice. If the Contractee fails to pay within the above payment period, he shall be in default without further warning. Interest is to be paid on the amount of the remuneration during the default period at the applicable statutory default interest rate. The Contractor reserves the right to assert further default damages.
- (4) The offsetting against counterclaims by the Contractee or the retention of payments on the basis of such claims shall only be allowed insofar as the counterclaims are undisputed or legally established.

- (5) The Contractor is entitled to deliver or perform any outstanding deliveries or services only against prepayment or security if, after conclusion of the contract, he becomes aware of circumstances which could substantially reduce the creditworthiness of the Contractee and by which payment by the Contractee of outstanding claims of the Contractor from the respective contractual relationship (including from other single orders for which the same framework contract applies) will be jeopardized.

§ 4. Delivery and delivery period, Force Majeure

- (1) Unless otherwise agreed, delivery is ex-works in accordance with Incoterm 2010 EXW. If, contrary to these terms, the Contractor carries out delivery of the goods himself on the basis of a contractual arrangement with the Contractee, the German General Freight Forwarding Conditions 2017 – ADSp 2017 shall apply in addition to these GTCs.
- (2) Specified delivery times are non-binding unless specifically agreed otherwise.
If the despatch of the performance object by the Contractor has been agreed, delivery periods and delivery dates shall refer to the time of handing over to the freight forwarder, carrier or other third party charged with the transport.
- (3) The Contractor may – without prejudice to his rights arising from default on the part of the Contractee – demand an extension of delivery and performance periods or postponement of delivery and performance dates by the period during which the Contractee fails to meet his contractual obligations towards the Contractor.
- (4) The Contractor shall not be liable for impossibility of delivery or delivery delays, insofar as these are caused by force majeure, weather-related limitations or other events unforeseeable at the time of conclusion of the contract (e.g. operational disruptions of all kinds, transport delays, strikes, legal lockouts, shortage of labour, energy or raw materials, difficulties in procuring necessary regulatory approvals, official measures, or missing, incorrect or late deliveries by suppliers), for which the Contractor is not responsible. If such events make the delivery or performance substantially more difficult or impossible for the Contractor and the hindrance is not only of temporary duration, the Contractor is entitled to withdraw from the contract. In the case of hindrances of a temporary nature, the delivery or performance period shall be extended or the delivery or performance dates shall be postponed by the period of the hindrance plus an appropriate start-up period. If, as a result of the delay, the Contractee cannot be reasonably expected to accept the delivery or performance, he may withdraw from the contract by immediate written notice to the Contractor, unless the goods have already been loaded or shipped. The Contractor shall be entitled to invoke the provisions of this paragraph only if he notifies the Contractee immediately after becoming aware of the hindrance.
- (5) The Contractor shall be entitled to partial delivery and partial performance, unless the partial delivery or partial performance is unreasonable for the Contractee.

§ 5. Transfer of risk, Acceptance

- (1) The risk of accidental loss and accidental deterioration of the delivery item shall pass to the Contractee upon handover. If the Contractor is obliged to despatch the delivery item, the risk passes to the Contractee at the latest with the handover of the delivery item (whereby the commencement of the loading process is decisive) to the freight forwarder, freight carrier, or other third party designated to execute the shipment. This also applies if partial deliveries are made or the Contractor has taken over other services (e.g. despatch/shipping). In the case that the despatch or the handover is delayed as a result of circumstances for which the Contractee is responsible, the risk shall pass to the Contractee from the day on which the Contractor is ready to despatch and has indicated this to the Contractee.
- (2) Storage costs after transfer of risk shall be borne by the Contractee. In the case of storage by the Contractor, the storage costs are based on the currently valid price list and charged per elapsed week. The right to assertion and evidence of additional or lower storage costs remains reserved. Further individual services will be invoiced to the Contractee upon agreement and according to the effort involved.
- (3) The consignment shall be insured by the Contractor against theft, breakage, transport, fire and water damage or other insurable risk only at the explicit request of the Contractee and at his expense.

§ 6. Warranty

- (1) The statutory provisions for the right of the Contractee to a warranty for defects apply, unless otherwise stipulated in the following. The warranty period shall be determined by the minimum durability date of the goods delivered by the seller.
- (2) The goods delivered are to be carefully inspected immediately after delivery to the Contractee or the third party designated by him. They shall be deemed approved if the Contractor does not receive a written complaint regarding obvious defects or other defects which were recognizable in an immediate and thorough inspection within seven working days after delivery of the delivery items or otherwise within seven working days after discovery of the defect or after the date on which the defect was recognizable by the Contractee during normal use of the delivery item and without closer examination.
- (3) The contractor is entitled to make the owed supplementary performance subject to the condition that the Contractee makes payment of the due remuneration. The Contractee is, however, entitled to withhold part of the remuneration appropriate in proportion to the defect.
- (4) The Contractee shall allow us the time and opportunity necessary to perform the supplementary performance, in particular to hand over to us the rejected goods for inspection purposes. In the case of a replacement delivery, the Contractee is to return the defective item to us in accordance with statutory provisions.
- (5) The expenses necessary for the purpose of inspection and supplementary performance, in particular transport, travelling, labour and material costs, shall be borne by the Contractor in the case that a defect actually exists. Otherwise, the Contractor may claim reimbursement from the Contractee for expenses incurred (in particular test and transport costs) resulting from the unjustified request for rectification of a defect, unless the lack of defect could not be detected by the Contractee.
- (6) Claims for damages or reimbursement of fruitless expenditure shall also exist only in the case of defects in accordance with § 7 and are otherwise excluded.

§ 7. Liability

- (1) The Contractor's liability for violation of contractual and non-contractual obligations shall be governed by statutory provisions, unless otherwise stated in these GTCs.
- (2) Subject to the following paragraphs, the Contractor's liability for damages – irrespective of the legal grounds – shall be limited to deliberate and grossly negligent breach of duty on the part of the Contractor, his performing agents and vicarious agents.
- (3) In the case of simple negligence, the Contractor shall be liable subject to a milder liability standard pursuant to statutory provisions (e.g. due diligence in his own affairs), only
 - (a) for damages resulting from injury to life, body or health,
 - (b) for damages resulting from a not inconsiderable breach of a fundamental contractual obligation (an obligation, the fulfillment of which is essential for the execution of the contract and on which the contract partner regularly relies and may rely. In this case, however, his liability is limited to compensation for foreseeable, typically occurring damage.
- (4) The limitation of liability resulting from para. (2) shall not apply insofar as the Contractor has maliciously concealed a defect or has assumed a guarantee for the quality of the goods and for claims of the buyer under product liability law.

§ 8. Retention of Title

- (1) All deliveries are executed exclusively under retention of title. The good delivered by the Contractor to the Contractee shall remain the property of the Contractor until full settlement of all secured claims.
- (2) The Contractee shall be entitled to process and sell the goods under reservation (hereinafter referred to as "reserved goods") in the normal course of business until the assertion of retained ownership pursuant to para. (7). The Contractee shall here and now assign to the Contractor as security the full amount of all claims arising from the resale, or any other legal reason, of the reserved goods. The Contractor shall accept the assignment. The Contractee shall grant the Contractor revocable authority to collect the claims receivable assigned to the Contractee for his account in his own name.
- (3) If the reserved good are processed by the Contractee, this shall be performed in the name and for the account of the Contractor. The Contractor shall directly acquire the property or – in the case that the processing consists of substances of several owners or the value of the processed items is higher than the value of the reserved goods - the co-ownership (fractional ownership) of the newly created product/item in the proportion of the value of the reserved goods to the newly created product/item. For the case that no such acquisition of ownership on the part of the Contractor should occur, the Contractee shall here and now transfer his future property or – in the above mentioned relationship – fractional ownership of the newly-created product/item to the Contractor as security.

- (4) In the case that the reserved goods are combined to form a new single item or inseparably mixed with other items that are not our property, and if one of the other items is to be regarded as the main item, the Contractor shall, inasmuch as the main item is the property of the Contractor, transfer co-ownership of the single item to the Contractee proportionally in the ratio referred to in sentence 1. Otherwise, ownership of the new item shall apply in accordance with para. 3.
- (5) In the event that third parties obtain access to the reserved goods, in particular by attachment, the Contractee shall immediately point out to the third parties that these are the property of the Contractor and inform the Contractor thereof, in order to enable him to enforce his property rights. Insofar as the third party is not in the position to reimburse the Contractor for judicial or extrajudicial costs arising in this connection, the Contractee shall be liable to the Contractor.
- (6) The Contractor shall, on demand, release the reserved goods and/or any other items or claims in lieu at his discretion, insofar as their value exceeds the amount of the secured claims by more than 50 %.
- (7) In the case that the Contractor withdraws from the contract due to a breach of contract by the Contractee– default of payment - he is entitled to demand the surrender of the reserved goods without delay (enforcement event).

§ 9. Packing/Empties

- (1) Delivery takes place in “lost” packaging or, by special agreement, in returnable packaging.
- (2) In the case of delivery in returnable packaging, including pallets of all kinds, the quantity delivered must be immediately exchanged for returnable packaging and/or pallets in a perfect and clean condition. If this is not possible, the Contractee is obliged to return the returnable packaging to the Contractor within one month after delivery at his own expense. Otherwise, the Contractee may be invoiced by the Contractor for the returnable packaging or a reasonable rent may be requested. The returnable packaging delivered by the Contractor may not be filled with other goods or otherwise utilized.

§ 10. Copyrights

We reserve our property right and copyrights on illustrations, drawings or other documents. They may neither be used by the customer, in particular for advertising purposes, nor made available to third parties without our consent, and shall be returned to us immediately upon request.

§ 11 Other provisions

- (1) Should individual provisions of these general terms of sales and delivery be or become invalid, this shall not affect the validity of the remaining provisions. In lieu of the ineffective provision, the agreement between the contracting parties is deemed to be agreed upon which, from an economic point of view, corresponds to the ineffective provision in the most legally permissible manner.
- (2) The place of performance and jurisdiction for all disputes arising directly or indirectly from this contract or in connection with this contract shall be Twistringen – insofar as a court of law can be effectively agreed between the parties.
- (3) For these conditions and all legal relationships between us and the customer, the Law of the Federal Republic of Germany applies to the exclusion of the UN Sales Convention.

Twistringen, 15 March 2017