

Standard Terms and Conditions of Purchase
Bergader Privatkäseerei GmbH / D-83329 Waging
Wendelstein Käsewerk GmbH / D-83043 Bad Aibling

§ 1 General – Applicability of these terms and conditions – Power of representation

1. Solely these Standard Terms and Conditions of Purchase apply to our purchase orders.
2. We reject any differing or supplementary terms and conditions of the Supplier. They apply only if we have explicitly acknowledged them in writing. The Supplier's terms and conditions do not apply either if we do not explicitly reject them or accept the delivery of service unreservedly.
3. These Terms and Conditions of Purchase apply only to business persons, legal entities under public law and special funds subject to public law.
4. All agreements and subsidiary arrangements require written confirmation from us in order to be valid. The same applies to subsequent amendments and addenda as well as to verbal agreements.

§ 2 Purchase orders – Offers – Offer documents – Non-disclosure

1. Should the Supplier not accept our purchase order within two weeks of receipt, we are entitled to cancel the purchase order.
2. No remuneration is granted for drawing up offers, projects, etc. or for visits unless explicitly agreed otherwise in writing.
3. Samples, drawings, offer documents and other documents sent to the Supplier by us remain our property. We reserve the right to copyright, which must be used solely for our purchase order. The documents must be returned to us when we so request.
4. The contracting parties undertake to treat in confidence as business secrets all information not in the public domain and documents to which they become privy or are sent under the business relationship.

§ 3 Delivery dates – delay – force majeure

1. The delivery date stated in the purchase order is binding.
2. The Supplier is obliged to inform us promptly in writing if circumstances occur or become apparent to him from which it is evident that the agreed delivery date cannot be met. The Supplier is required to communicate in writing the expected duration of the delay.
3. If a delivery is delayed by force majeure, the Supplier is obliged to perform the delivery or service promptly after the impediment to the performance has been eliminated. We are, however, entitled to rescind the contract if we are no longer able to utilise the delivery or service on account of the delay – including taking economic aspects into consideration.
4. In the event of a delay on the Supplier's part we are entitled to the statutory rights and entitlements. In particular we are entitled, once a reasonable period of grace has expired in vain, to demand compensation instead of performance and to rescind the contract.
5. Advance or part deliveries are inadmissible without our prior consent in writing. Without this consent we reserve the right to return the goods at the Supplier's expense or to store them on our premises at the Supplier's expense and risk until the delivery date.

§ 4 Delivery – Transfer of risk

1. Unless agreed otherwise in writing, all the Supplier's deliveries are made carriage paid to the destination stated in the purchase order, i.e. free of charge to the destination duty paid (DDP in accordance with Incoterms 2010).
2. The Supplier bears the risk of accidental loss or accidental deterioration until the goods are contractually handed over at the destination. The same applies if we assume the freight costs on the basis of a separate agreement.
3. *Force majeure* and other circumstances for which we are not responsible entitle us, other rights and entitlements notwithstanding, to postpone receipt/taking delivery of the goods and the duration of the impediment to performance.
4. Our order number must be clearly visible on the goods delivered. Concurrently with the delivery we must be given a dispatch note with individual weights, order number and order date. In the event of delivery of goods with test certificates, we must have already received these test certificates by the time we receive the trial sample at the destination. The costs thus incurred are borne by the Supplier.
5. The goods must be packaged in such a way that transportation damage is avoided. Packaging materials may only be used insofar as necessary; they must be environmentally friendly.
6. The Supplier is obliged to mark the goods delivered in such a way that the sender and contents are permanently recognisable.

§ 5 Prices – Payments

1. The agreed prices are fixed prices and exclude any additional charges whatsoever. They also include the costs of transport, packaging, insurance, customs duties and statutory Value Added Tax.
2. We will send packaging charged on the basis of a special agreement back to the Supplier at his expense and deduct the full amount from the invoice, unless agreed otherwise in writing.
3. The order number and the numbers of each individual item must be quoted on the invoice. Invoices that are not properly issued are not deemed received by us until such time as they are rectified.
4. Unless agreed otherwise in writing, we make payment within 10 calendar days with a 3% discount, otherwise after 30 calendar days with no discount, calculated from the complete delivery or service and receipt of the properly issued invoice.

§ 6 Set-off – Retention – Assignment – Subcontractors

1. We are entitled to the statutory scope of right of set-off and retention.
2. The Supplier may set off only uncontested counterclaims established in law or ready for judgment against a claim to which we are entitled. The Supplier is authorised to exercise a right to refuse performance or a right of retention only insofar as his counterclaim is based on the same contractual relationship.
3. The Supplier is not permitted to assign claims against us without our prior consent in writing. This does not apply if he has granted his sub-suppliers an extended reservation of proprietary rights in the ordinary course of business.
4. The Supplier is not entitled to pass on the order wholly or in part to third parties (subcontractors) without our prior consent in writing.

§ 7 Reservation of proprietary rights

1. A reservation of proprietary rights on the part of the Supplier is only binding if it is expressly agreed in writing.
2. We are entitled to sell on and process/work goods supplied under reservation of proprietary rights in the ordinary course of business.
3. A reservation of proprietary rights on the part of the Supplier lapses with payment of the price agreed for the respective reserved goods.

§ 8 Quality of the goods – rights and claims in the event of defects

1. The goods supplied must comply with the contractual agreements, in particular the quality and quantities contained in the purchase order and other specifications.
2. In addition the goods supplied must comply with state-of-the-art technology and the pertinent statutory and official regulations as well as the regulations and guidelines of trade associations and professional associations. The goods supplied must be marketable without reservation in Germany and the country of destination stated in the purchase order.
3. The Supplier is obliged to use in his deliveries and services environmentally friendly products and processes insofar as economically and technically feasible.
4. We are obliged to examine promptly the goods supplied insofar as practicable in the ordinary course of business, and to notify the Supplier promptly of any evident defect. If a defect is subsequently discovered, the Supplier must also be notified promptly to this effect. Notices of defects are considered prompt if they are given within two weeks of being discovered unless in an individual case, in particular with perishable goods, a complaint at shorter notice is appropriate.
5. The Supplier cannot claim a breach of the obligation to notify defects if the defect of the goods is due to circumstances of which he is aware.
6. If the goods have defects, we are entitled to statutory entitlements and rights in full. Irrespective of this we are fundamentally entitled to demand that the Supplier rectify the defects or make a replacement delivery. We expressly reserve the right to compensation, in particular to compensation in lieu of performance.
7. If we are exposed vis-à-vis our customers to a recourse against supplier as defined in §§ 478, 479 BGB [German Civil Code], these provisions also apply in the relationship between us and the Supplier. This also applies if the Supplier has supplied us only with raw materials or components of the products sold on by us.
8. After a reasonable deadline set to the Supplier for supplementary performance has lapsed to no avail, further entitlements and rights notwithstanding we are entitled to rectify the defect ourselves or have third parties do so (self-remedy) or procure replacement at the Supplier's expense. Except in the cases provided for in law there is no requirement to set a deadline in urgent cases, especially if the defect jeopardises operational safety or entails the risk of unusually severe loss or damage to us or to third parties and it is not possible to set the Supplier a deadline beforehand. In this case we have to come to an arrangement with the Supplier and, if this is also not possible on account of the particular urgency, promptly after the defect has been rectified to inform the Supplier of the measures taken by way of self-remedy or the procurement of replacement.
9. After a reasonable deadline set to the Supplier for supplementary performance has lapsed to no avail, further entitlements and rights notwithstanding we are further entitled to demand a flat-rate complaint claim of 10% of the purchase price up to a maximum of EUR 500.00.
10. The limitation period for claims relating to defects is 36 months calculated from the contractual delivery of the goods or taking of delivery, unless the statutory provisions provide for a longer limitation period.

§ 9 Industrial property rights

1. Under the provisions of law the Supplier vouches that no third-party rights, in particular industrial property rights, are infringed in connection with the contractual use of his delivery or service.
2. If claims are made against us by a third party for this reason, the Supplier is obliged to indemnify us against these claims at the first written demand. The obligation to indemnify relates to all expenditure we incur necessarily arising from or in connection with the third-party claim.
3. This does not affect further legal or contractual rights and entitlements.

§ 10 Liability – Product liability

1. If the Supplier is responsible for product damage, he is obliged to indemnify us against third-party claims for compensation upon first demand to the extent that the cause is deemed within his domain of control and organisation and he is himself liable in relation to third parties.
2. In this context the Supplier is obliged to reimburse us for expenditure arising from or in connection with a recall conducted by us in accordance with the principles of agency without specific authorisation (§ 683 BGB) or the provisions governing tort liability. We will notify the Supplier of the scope and content of the recall measures to be carried out, insofar as possible and reasonable with regard to the urgency of the measure, and give him the opportunity to comment.
3. The Supplier undertakes to maintain a product liability insurance policy against all product liability risks including the risk of recall of an appropriate amount, and to prove this to us upon request.
4. The Supplier is obliged to conduct state-of-the-art quality assurance appropriate to the scope and nature and to prove this to us upon request. The Supplier will conclude a corresponding quality assurance agreement with us should we deem this necessary.
5. This does not affect further legal or contractual rights and entitlements.

§ 11 Materials provided

1. Materials and parts provided by us remain our property and must be stored separately, marked and managed free of charge. They may be used only for our purchase orders and instructions.
2. The Supplier processes or transforms them on our behalf. If our items are processed with third-party items we acquire co-ownership of the new item in proportion of the value of our item to the third-party items at the time of processing. The same applies in the case of inseparable mixing. If the mixture is such that the Supplier's item is to be regarded as the principal item, it is agreed that the Supplier will transfer proportional co-ownership to us.
3. The Supplier will safeguard the sole ownership or co-ownership on our behalf. § 4 remains unaffected.

§ 12 Applicable law – Place of performance – Translations – Venue

1. These terms and conditions are subject to the law of the Federal Republic of Germany. The applicability of the UN Vienna Convention on Contracts for the International Sale of Goods of 11.04.1980 (CISG) is excluded.
2. The place of performance for all deliveries and services is the destination stated in the purchase order, unless agreed otherwise in writing.
3. If there is a translation of these Standard Terms and Conditions of Purchase in a language other than German, the German version alone is authoritative.
4. If the Supplier is a business person, legal entity under public law or special fund subject to public law or has no general place of jurisdiction in the Federal Republic of Germany, the sole venue for any disputes arising from and in connection with the contract is D-83278 Traunstein, Germany. The public courts have jurisdiction. We are also entitled to file a suit at the Supplier's general place of jurisdiction.