

# General terms and conditions of purchase

of *Mestemacher* GmbH

## (Status: December 2015) 1. Scope of application

The General Conditions of Purchase (AEB) apply to all purchases and orders of *Mestemacher* GmbH (Principal). They apply exclusively. Conflicting or deviating terms and conditions of the supplier (Agent) will not be recognised unless the validity is expressly agreed in writing. We are not bound by the general terms and conditions of the Agent, even when we do not expressly object to them.

## 2. Orders / Offers

Quotations from suppliers (Agents) must be submitted in writing and free of charge. Our orders are only legally binding when made in writing; written form is also required for changes and additions to orders already placed. When the delivery cannot be delivered on time or on schedule, in whole or in part, the Agent is obliged to inform us immediately. In this case, a contract is only concluded with our written consent. The order is only effective when the agreed conditions are met. Changes to the framework agreement - such as lot size or delivery time - must be confirmed in writing by the Principal to become effective.

The Agent is obliged to accept or reject our order within a period of 3 days after placing the order. We are entitled to reject all order confirmations received from the supplier after expiry of this period and to revoke our order.

When, after conclusion of the contract, we become aware of facts which, in accordance with due commercial judgement, allow us to conclude that our claim to performance is endangered by the supplier's lack of performance, we shall be entitled to withdraw from the order placed. These facts include, in particular, overindebtedness or cessation of payments, or the opening of insolvency proceedings against the assets of the supplier, as well as a production delay in performance on the part of the Agent.

## 3. Invoicing, transfer of risk

The proper invoice must contain our order data (order number, internal order number, material number and order date) and be sent to the postal address stated in the order. It must not be enclosed with the shipped goods. The goods are delivered at the Agent's risk. Additional quantities are not remunerated, shortfall quantities are to be credited.

## 4. Delivery dates

Our delivery dates mean dates of receipt at the place of performance and are binding. When a delivery date is determined based on the calendar, it is a fixed date. When a calendar week is mentioned, delivery must take place by the last working day of the week on Friday at the latest.

Early deliveries require our consent. When the delivery is not made within the deadline, the Agent has to prove that he or the forwarders/transport companies engaged by him are not at fault. When the Agent is in default, we may, at our discretion, demand subsequent performance, damages for delay, damages instead of performance or, while maintaining the claims for damages, withdraw from the contract.

Furthermore, we are entitled to waive the service and to make a covering purchase at the expense of the Agent. In this case, the Agent has to compensate possible additional costs and the damage caused by delay.

## 5. Payment

The purchase price becomes due after the Agent has provided the service in accordance with the contract and received the invoice. The time of receipt results from our inbox stamp. Unless otherwise specified in individual contracts or orders, payment shall be made net within 30 days with a 3% discount.

Any assignment of claims against us to third parties is only permissible with our prior written consent.

## 6. Shipping / Packaging / Disposal

Shipment is carriage paid, including packaging (for third countries including customs clearance) to the shipping address stated on our order.

## 7. Product liability

Insofar as the Agent is legally responsible for product defects or damage caused by defective products, he is obliged to indemnify us against claims for resultant damages by third parties upon first request. In this context, the supplier (Agent) is also

obliged to reimburse us for any expenses arising from or in connection with a recall action carried out by us or arising from an appropriate legal defence. We will inform the Agent of the content and scope of the recall measures to be implemented as soon as this is possible and reasonable for us and give him the opportunity to comment.

The Agent must take out and maintain extended product liability insurance with a minimum sum insured of € 10 million for the duration of the business relationship. When the business relationship only extends to packaging materials, a minimum sum insured in the amount of € 5 million is sufficient. The Agent is obliged to provide us with a corresponding proof of cover on first request.

## 8. Quality requirements

Since no incoming inspection with regard to quality can take place upon delivery, we are exempt from the immediate obligation to inspect and give notice of defects. The supplier (Agent) is obliged to comply with our specifications. For purchase according to sample, the specification arises from the sample. The specified characteristics are guaranteed.

It is the Principal's responsibility to inspect the goods for any deviations in quality and quantity within a reasonable period of time. **The quality test is carried out with coarse senses, without chemical or microbiological analyses.** The notice of defect shall be deemed timely if it is sent within a period of 5 working days, calculated from receipt of the goods or, in the case of hidden defects, from discovery. Hidden defects can also be claimed if they only occur or are detected during production or due to complaints from our customers regarding the finished products.

We do not recognise any conflicting inspection or testing obligations.

In the case of machines, apparatus, vehicles and other technical objects, the relevant statutory DIN and accident prevention regulations must be observed and - to the extent customary - verified by test certificates. We shall only inspect the above products for external defects.

## 9. Warranty

Deviations from the specification, the requirements and the delivery quantities are considered defects. When a delivery of similar goods in a partial quantity shows an accumulation of defects, we can complain about the entire delivery. In the event of defects, we shall be entitled, at our discretion, to demand subsequent performance (rectification of defects or replacement delivery) and, after the occurrence of default, withdrawal from the contract, reduction of the purchase price, compensation for damages or reimbursement of futile expenses. Compensation also includes damages due to delay in performance, the necessary incidental costs (§ 439 par. 2 German Civil Code), consequential damage caused by a defect as well as recall costs, even in the case of preventive defence against damage.

The right to give notice of defects and to assert warranty claims and rights is not excluded by payments already made. Therefore, even unconditional payments do not constitute approval of defects.

In the event of imminent danger or special urgency, we are entitled to remedy defects ourselves at the supplier's expense.

## 10. Delivery Instructions / Terms of Delivery

### 10.1. The supplier's (Agent's) delivery notes must contain the following information:

- Mestemacher GmbH order number, *contract number, order number*
- delivery quantity *and delivery unit (PE/VE)*
- Article description *and references to certificates*
- Mestemacher GmbH BSW number

This information must also appear on the invoicing. The exact delivery date must also be stated on the delivery notes.

**10.2. Euro pallets that satisfy, at least, class B, in accordance with the application recommendation of the Gütegemeinschaft Paletten e.V. are accepted as loading aids.** When reference is made to deliveries with plastic pallets (H1) for inquiries or in agreements, this must be observed without exception. When a delivery is made on not agreed pallets, then Mestemacher GmbH is entitled to refuse the acceptance of goods. In the responsibility of damage reduction and avoidance of production losses, Mestemacher GmbH can repack the goods on agreed pallets upon acceptance of the delivery. The expenses/costs arising here are invoiced to the supplier (Agent).

All pallets must be labelled appropriately and satisfy the basic conditions of a food processing industry, in addition to these standards. The basic dimensions of the pallet must not be exceeded by the load, nor by security measures or labelling.

The load on the pallet must be secured with non-coloured, adaptive-free stretch film. The upper pallet edge must be included in the stretch up to a maximum of 2 cm; fork clearance must be guaranteed.

**10.3. The pallets must be delivered sorted and batch-clean, i.e. no different material numbers may be loaded on one pallet.**

For every pallet that does not meet the requirements, the acceptance of the delivery can be refused at Mestemacher GmbH's choice or the supplier (Agent) can be made liable for costs that result from subsequent processes.

**10.4. The pallet factor of all packaging materials agreed with *Mestemacher GmbH* must be strictly observed for all deliveries.**

The delivered pallet quantity must be identical with the pallet quantity ordered by Mestemacher GmbH. The delivery quantity must correspond to the order quantity. No partial deliveries will be accepted. Only one delivery may be made per order.

All differences between order and delivery must be agreed with Mestemacher GmbH before delivery. When no coordination (and an associated order change) takes place, Mestemacher GmbH will refuse the acceptance of goods or invoice the additional expenditure.

**10.5. Safety, environmental protection**

For the safety and health of employees, the protection of the environment and the transport of hazardous goods, the relevant laws, ordinances and regulations, including the rules of the employers' liability insurance association, must be observed.

Internal safety instructions must be strictly followed. For hazardous substances, the safety data sheets must be submitted at the latest with the first delivery. Safety defects on vehicles and equipment or irregular behaviour always entitle us to refuse acceptance.

**10.6. Entering factory premises, production halls**

The rules of conduct of Mestemacher GmbH apply to drivers of forwarding agencies, raw material suppliers or other suppliers and service providers.

## 11. Tools, forms, artwork

Tools, moulds, artwork, technical drawings or similar produced on our behalf shall become our property at the time of completion. They are to be marked by the Agent as our property, stored, maintained and serviced free of charge, insured and stored separately.

Our property may only be produced for us. Our property is to be surrendered to us at any time on our request and only to be destroyed after consultation with Mestemacher GmbH. When the production costs have not yet been settled (amortisation), the handover ensues step by step against settlement of the outstanding residual claim.

## 12. Disclosure obligation

Food law applies to our products. The Agent is obliged to provide us with all available information for the products supplied by him that serve the production of baked goods, which we need to fulfil our legal labelling, documentation and information obligations towards the authorities and consumers (including toxicological and health assessment). The provision of this information is an essential secondary obligation.

## 13. Code of conduct for Agents

The Agent is obliged to comply with the laws of the applicable legal system(s). In particular, he will not participate actively or passively, directly or indirectly in any form of bribery, violation of the fundamental rights of his employees or child labour.

He will also assume responsibility for the health and safety of its employees in the workplace, comply with environmental protection laws and promote and demand the best possible compliance with this Code of Conduct from its Agents. When the Agent culpably violates these obligations, the client is entitled to withdraw from the contract or to terminate the contract without prejudice to further claims.

When the breach of duty can be remedied, this right may only be exercised after a reasonable deadline for remedying the breach of duty has expired without result.

## 14. Foreign trade law

On request, the Agent is obliged to name the country of origin of the goods and to hand over the certificates of origin required for export. He is liable for the correctness of his information. When we do not receive the necessary export permit, we are entitled to withdraw from the contract.

## 15. Non-disclosure

The Agent is obliged to keep secret all business and trade secrets that have become known to him in the context of the business relationship, especially all information that concerns the products of Mestemacher GmbH such as recipes, drawings, drafts and the like and to not make them accessible to third parties.

Regardless of the duration of this cooperation, the confidentiality obligation shall also apply for the period thereafter and in particular in the event that the parties come to the conclusion that they will refrain from future cooperation, no matter the reasons for this. The Agent shall, to the extent permitted by employment law, impose the present confidentiality obligations on all employees involved in this project, and he shall have their knowledge of this obligation confirmed by their own signature.

For each case of infringement, the Agent undertakes to pay a contractual penalty to Mestemacher GmbH in the amount of 15% of the order sum, at least €10.000.00. The assertion of claims for further damages remains unaffected by this.

## 16. Retention of title

We accept the reservation of ownership of the Agent according to § 449 German Civil Code in the simple and extended form.

## 17. Rights of use and industrial or intellectual property rights

Mestemacher GmbH is exclusively entitled to the results from delivery or performance of any kind that have arisen during the fulfilment of our order. The above applies regardless of whether the results are subject to intellectual and / or industrial property rights. The assignment of the rights to the results at the time of delivery or service to Mestemacher GmbH is included in the price of the order.

The supplier (Agent) grants Mestemacher GmbH all rights of use to the results and partial results of the deliveries or services, and above all the rights to present and future representations and reproductions of any kind on any media, the rights of use, distribution, commercialisation, translation, modification, insertion, processing, use and adaptation of the mentioned results and / or partial results, for the worldwide use of these rights for their entire duration without limitation or restriction.

The supplier (Agent) undertakes not to oppose the industrial and / or intellectual property rights of Mestemacher GmbH, insofar as these are necessary for the use of the results and/or partial results from the ordered services. The supplier (Agent) is liable for the fact that the execution of the delivery or service does not infringe any industrial property rights of third parties.

Any licenses or other payments for the use of third-party industrial property rights shall be borne exclusively by the supplier (Agent). The supplier (Agent) is liable to ensure that no patents or industrial property rights of third parties are infringed by the delivery, use. The supplier (Agent) indemnifies us from all claims of third parties that are asserted due to such an infringement.

## 18. Other

Regulations in framework or individual contracts take precedence over the General Terms and Conditions of Purchase. The assignment of claims against us is only permissible with our consent. Should any provision of the GPC be invalid, this shall not affect the validity of the contract and the remaining General Terms and Conditions of Purchase.

The law of the Federal Republic of Germany shall apply exclusively. The supplier (Agent) declares his revocable consent to the processing of personal data provided in compliance with statutory provisions.

The place of performance for deliveries and services is our respective plant address. For merchants and legal entities under public law, Gütersloh is agreed as the exclusive place of jurisdiction. For legal disputes from the supply contracts concluded with Mestemacher GmbH, the ordinary courts at the general place of jurisdiction of the buyer are exclusively responsible. The jurisdiction of arbitration courts is excluded.