

General terms and conditions of purchase

of *Mestemacher GmbH*

(Date: November 2018)

1. Scope of application

The General Conditions of Purchase apply to all purchases and orders of *Mestemacher GmbH* (client). They apply exclusively. Conflicting or deviating terms and conditions of the supplier will not be recognised unless the validity is expressly agreed in writing. We shall not be bound by the supplier's General Terms and Conditions of Business, even if we do not expressly object to them or if we accept the supplier's deliveries despite being aware of the supplier's deviating General Terms and Conditions of Business.

Regulations in framework or individual contracts take precedence over the General Terms and Conditions of Purchase. Such contracts must be in writing.

2. Orders / Offers

Quotations given by the supplier must be submitted in writing and free of charge. The supplier shall be bound to the quotation for at least 14 working days after submission. Our orders are only legally binding when made in writing; changes and additions to orders already placed must also be made in writing. If the delivery cannot be delivered on time or on schedule in whole or in part, the supplier is obligated to inform us immediately. Its notification constitutes a new offer and requires our acceptance. In this case, a contract is only concluded with our written consent. All changes to the conditions of the contractual relationship, in particular changes to the framework agreement - such as lot size or delivery time - require written confirmation from the client in order to be effective.

The supplier is obligated to accept or reject our order within a period of 3 days after placing the order. A delayed acceptance constitutes a new offer and requires our acceptance. We are entitled to reject all order confirmations received from the supplier after expiry of this period.

If, after conclusion of the contract, we become aware of facts that, in accordance with due commercial judgement, indicate that our performance claim is endangered due to the supplier's lack of ability to performance, we shall be entitled to withdraw from the order placed. These facts include, in particular, over-indebtedness or suspension of payments or the opening of insolvency proceedings against the assets of the supplier as well as a delay in performance on the part of the supplier.

3. Prices / Invoicing / Payment

Unless otherwise agreed, the agreed prices are net prices and are free domicile (DAP/DDP), including packaging and transportation costs as well as freight and customs duties, plus value added tax.

Invoice payments shall be due after correct performance of services and 60 days after receipt of invoice. The time of receipt is determined by our inbox stamp.

Unless otherwise specified in individual contracts or orders, payment shall be made within 30 days with a 3% discount or net within 60 days without a discount.

Correct invoices 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. If one or more details are missing from the invoice or if it was sent with the shipped goods and our processing is delayed as a result, the aforementioned payment periods shall be extended by the period of delay. Additional quantities shall not be reimbursed, shortage quantities are to be credited.

In the event of default in payment, we shall owe default interest in the amount of five percentage points above the respective base interest rate in accordance with Section 247 of the German Civil Code (BGB).

4. Shipment

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

The goods are shipped at the risk of the supplier. The risk of accidental loss and accidental deterioration shall only be transferred to us at the agreed place of performance. The place of performance for deliveries and services is our respective plant address.

5. Delivery dates

By 'delivery dates' we mean dates of receipt at the place of performance and these dates are binding. If a delivery date is determined by a calendar, the date is fixed. If a calendar week is specified as the delivery date, delivery must be made by the last working day of the week i.e. Friday at the latest.

Early deliveries require our written consent. If the supplier is in default, we shall be entitled to statutory claims without limitation, in particular the rights to withdrawal and damages.

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

6. Quality requirements / Defect investigation

The supplier is obligated to deliver only goods that comply with the agreed product specification and the properties specified therein. For purchase according to sample, the specification is determined by the sample. The specified characteristics are guaranteed.

The supplier shall inform the client immediately if circumstances become known to it that give reason to doubt the quality, safety, or organic quality of the products delivered. Such circumstances shall be deemed to exist in particular if the state investigation offices, a publicly appointed expert, express doubts about the marketability, fitness for consumption, health safety, or organic quality in customer complaints, complaints by non-governmental organisations, or consumer protection associations.

The client shall be responsible for inspecting the goods for any deviations in quality and quantity within a reasonable period of time. The quality test is always carried out with chemical or microbiological analyses. The complaint shall be deemed to have been made in good time if it is sent within 3 working days of receipt of goods in respect of obvious defects and within 7 working days of discovery in respect of hidden defects. Hidden defects may also be claimed if they only occur or are detected during production or as a result of complaints from our customers regarding the finished products.

We do not recognise any conflicting inspection or testing obligations.

For machines, apparatus, vehicles, and other technical objects, the relevant statutory DIN and accident prevention regulations must be complied with and, where customary in the trade, documented by test certificates. We shall only inspect the above products for external defects.

7. Warranty

The client is entitled to the statutory claims for defects in full. In the event of defects, the client shall be entitled, at its 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 for damages also includes damages due to delay in performance, the necessary incidental costs (Section 439 para. 2 German Civil Code), consequential damage caused by a defect as well as recall costs, even in the case of preventive defence against damage.

If a delivery of similar goods in a partial quantity shows an accumulation of defects, we may complain about the entire delivery.

The right to submit a complaint about 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.

We shall be entitled to remedy the defect ourselves at the supplier's expense if the supplier has not remedied the defect within a reasonable period set by the client. If a risk of delay or special urgency exists, the client is not required to set a deadline before it can remedy the defects itself.

The limitation period for warranty claims is 2 years unless the law provides for a longer warranty period.

8. Product liability

Insofar as the supplier is legally responsible for product defects or damages caused by defective products, it is obligated to indemnify us against claims for resultant damages by third parties upon first request. In this context, the supplier is also obligated to reimburse us for any expenses incurred as a result of or in connection with a recall action carried out by us or as a result of an appropriate legal defence. We will inform the supplier of the content and scope of the recall measures to be implemented - as soon as this is possible and reasonable for us - and give it the opportunity to comment.

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

9. Packaging

The supplier is only permitted to use and deliver packaging and packaging materials that comply with food safety regulations and meet the requirements of regulation (EC) no. 1935/2004 and - insofar as applicable - regulation (EC) no. 10/2011, as well as any other applicable regulations. The supplier must, on its own initiative, provide the client with the relevant certificates of conformity.

If the supplier is obligated by law or this contract to participate in a collection and recycling scheme for the products delivered to the client under this contract, it, as the distributor of the contractual products, bears sole responsibility for the conclusion of a contract to participate in a collection and recycling scheme, and must pay any fees arising from the participation of the contractual products delivered to the client in a collection and recycling scheme. The client bears no responsibility for this waste-related product responsibility. In the case that the client is required to pay any fees relating to the disposal of contractual products, the supplier must assume these costs upon request and exempt the client from any claims.

10. Delivery regulations / Delivery conditions

10.1. The supplier's delivery notes must contain the following information:

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

This information must also appear on the billing document. 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. If reference is made to deliveries with plastic pallets (H1) in enquiries or agreements, this must be observed without exception. If a delivery is made on non-agreed pallets, then Mestemacher GmbH is entitled to refuse the acceptance of goods. Mestemacher GmbH is responsible for minimising damage and avoiding production losses and may repack the goods on agreed pallets upon acceptance of the delivery. The expenses/costs incurred in doing so shall be borne by the supplier.

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, security measures, or labelling.

The load on the pallet must be secured with non-coloured, adhesive-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 each pallet that does not meet the requirements, the acceptance of the delivery may be refused at the discretion of Mestemacher GmbH or the supplier may 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 to 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. If no coordination (and an associated order change) takes place, Mestemacher GmbH will refuse the acceptance of goods or invoice the additional costs.

10.5. Safety, environmental protection

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

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 improper behaviour always entitle us to refuse acceptance.

10.6. Entering factory premises, production halls

For drivers of forwarding agents, raw material suppliers, or other suppliers and service providers, the rules of conduct of Mestemacher GmbH apply, which are provided to the company upon registration.

11. Tools, moulds, printing templates

Tools, moulds, printing templates, technical drawings etc. produced on our behalf shall become our property at the time of completion. They are to be marked as our property by the supplier, to be stored, maintained, and serviced free of charge, and to be 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. If 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 supplier is obligated to provide us with all available information for the products delivered by it that we require to fulfil our legal obligation to provide information, labelling, documentation, and information to the authorities and consumers (including toxicological and health assessments). The provision of this information is considered an essential secondary obligation.

13. Code of conduct for Agents

The supplier is obligated to comply with the laws of the applicable legal system(s). The supplier confirms that in connection with this order it did not participate in agreements contrary to anti-trust law, made no improper contributions to the employees of the client, and that it has no knowledge of child labour or forced labour in the manufacture of the goods. It will not participate actively or passively, directly or indirectly, in any form of bribery, violation of the fundamental rights of its employees or child labour.

It 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 suppliers. If the supplier culpably violates these obligations, the client is entitled to withdraw from the contract or to terminate the contract without prejudice to further claims.

If 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 client is obligated to name the country of origin of the goods and to hand over the certificates of origin required for export. It is liable for the correctness of its information. If we do not receive the necessary export permit, we are entitled to withdraw from the contract.

15. Non-disclosure

The client is obligated to keep secret all business and trade secrets that have become known to it in the context of the business relationship, in particular 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.

Irrespective 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 supplier shall, to the extent permitted by employment law, impose the present confidentiality obligations on all employees involved in this project, and it shall have their knowledge of this obligation confirmed by their own signature.

For each case of infringement, the supplier is obligated 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

The supplier's retention of title shall only apply in the event that it relates to the client's payment obligation for the respective delivery of goods to which the supplier retains the title. All other forms of retention of title are excluded, in particular extended or prolonged retention of title.

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 performance to Mestemacher GmbH is included in the price of the order.

The supplier 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 is obligated to not 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 is liable for ensuring 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. The supplier is liable for ensuring that no patents or industrial property rights of third parties are infringed by the delivery, use, and exploitation of its services. The supplier hereby indemnifies us from all claims of third parties that are asserted due to such an infringement.

18. Choice of law and jurisdiction

These General Terms and Conditions of Purchase and the contractual relationship between the supplier and the client shall be governed exclusively by the laws of the Federal Republic of Germany at to the exclusion of the UN Convention on Contracts for the International Sale of Goods.

For merchants and legal entities under public law, Gütersloh is agreed as the exclusive place of jurisdiction. For legal disputes arising from the supply contracts concluded with Mestemacher GmbH, the ordinary courts at the general place of jurisdiction of the client are exclusively responsible. The jurisdiction of arbitration courts is excluded.

19. Privacy / Miscellaneous

The supplier hereby declares its revocable consent to the processing of personal data provided in compliance with statutory provisions.

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.