

Mestemacher GmbH General Terms and Conditions of Sale

Section 1 General information, scope

(1) Our General Terms and Conditions of Sale ("Conditions of Sale") apply to all agreements concluded after 01/20/2021 that are primarily concluded to govern the delivery of movable goods ("goods") to purchasers with business address located in Germany. Any additional obligations accepted shall not affect the validity of these Conditions of Sale.

(2) Our Conditions of Sale shall apply exclusively; we will not recognise any contradictory conditions of the purchaser or any conditions deviating from our Conditions of Sale or from the law, unless we have expressly agreed to them in writing. If we do not express an objection to the conditions of the purchaser, this shall not be considered approval. Our Conditions of Sale shall even apply if we accept payment from the purchaser without reservation or perform our services without reservation with the knowledge of conditions of the purchaser that contradict or deviate from our Conditions of Sale. Our Conditions of Sale shall apply in the place of any conditions of the purchaser, even if our acceptance of the order is considered an unconditional recognition of the conditions under these conditions, or if we complete the delivery after the purchaser has notified us that their conditions apply, unless we have expressly waived the validity of our Conditions of Sale.

(3) Our Conditions of Sale shall apply only if the purchaser is a company (Sec. 14 BGB - German Civil Code), a legal entity under public law or a public law special fund.

(4) References to the validity of statutory regulations are provided only for the sake of clarification. Even without such clarification, therefore, the statutory provisions apply insofar as they are not directly modified or expressly excluded in these Conditions of Sale.

Section 2 Services, conclusion of the contract and content of the contract

(1) Our offers are non-binding, unless they are expressly designated as binding or contain a certain acceptance deadline. Non-binding in this sense means that we can revoke our offers up to two business days after receiving the purchaser's order.

(2) The order for goods by the purchaser is a binding contractual offer. We can accept this contractual offer within fourteen (14) days after receipt, unless otherwise indicated on the order.

(3) If one of our previous offers was non-binding, then our written order confirmation is required to conclude the contract.

(4) Even before concluding the contract, the purchaser is obligated to inform us in writing if (a) the goods to be delivered are not exclusively suitable for the normal use, or the purchaser assumes that they will be suitable for some specific use, (b) the goods are used under unusual conditions or exposed to unusual loads, (c) the goods are used under conditions that result in special health or safety risks, (d) the goods are used outside of Germany or are to be delivered to customers of the purchaser who are located outside of Germany, or (e) public statements by the manufacturer or other third parties (such as advertising statements) are decisive for the purchaser's decision to purchase.

(5) The information we provide on goods (such as on weights, dimensions, ingredients, and nutritional values) and our images of said goods (such as drawings, figures, and packaging samples) are only approximate, unless use of the products for the contractually intended purpose requires that they match exactly. They are not considered guarantees of characteristics or shelf life for the goods to be delivered by us. Any guarantee to be accepted by us at the time the agreement is concluded shall require an express written confirmation as a "guarantee".

(6) We will remain the owners of the recipes for the goods, as well as of all manufacturer information and associated know-how. The purchaser is prohibited from using this information for any other purpose (such as improving the recipe or further developments).

(7) Customary market deviations and deviations due to legal regulations are permitted insofar as they do not negatively impact the ability to use the product for the contractually intended purpose.

(8) With the exception of acceptance of goods according to Sec. 433 para. 2 BGB, no acceptance of the goods is agreed.

(9) We do not accept any purchasing risk in the sense of Sec. 276 BGB by concluding this agreement, even if we are obligated to deliver goods of a certain class. Furthermore, we accept no guarantee for the goods. In particular, we do not guarantee any minimum shelf life nor provide any shelf life guarantee.

(10) All agreements concluded between us and the purchaser for the purpose of carrying out this agreement at the time it was concluded are recorded in writing in the contract and these Conditions of Sale.

(11) We reserve all rights of ownership and copyright to samples, images, drawings, calculations, and other documents which we provide or disclose to the purchaser. This also applies to written documents that are designated as "confidential". The purchaser requires our express written approval before disclosing these to third parties.

Section 3 Delivery, delivery term, withdrawal in case of default, claims for damages due to default

(1) Unless a different delivery method is agreed, delivery shall be completed EXW Incoterms® 2020 to the delivery address indicated in our document concluding the contract (this is generally our order confirmation, and this is our offer in the case of binding offers) or, if there is no delivery address indicated in our document concluding the contract, then EXW Am Anger 16, 33332 Gütersloh Incoterms® 2020.

(2) Risk shall be transferred at the time of delivery. If the delivery is delayed because we take advantage of our right of retention due to full or partial default of payment on the part of the purchaser, or for any other reason for which the purchaser is responsible, then risk shall be transferred to the purchaser at the latest from the date on which they receive notification that goods are ready for shipment and/or we are ready to complete our services.

(3) All technical questions must be clarified before the delivery term we have indicated can begin. Furthermore, all obligations of the purchaser must be completed properly and in a timely fashion for us to be able to comply with our delivery obligation. We reserve the right to object because the contract is not fulfilled.

(4) Agreed delivery terms shall not be considered the basis of any fixed date of delivery.

(5) We are entitled to complete partial deliveries and services within the agreed delivery terms or by the agreed delivery deadline, if this is reasonable for the purchaser.

(6) If the purchaser requests further changes to the goods after concluding the contract, and if we agree to these changes – although we are not obligated to do so – then the delivery term will be extended. Depending on the order situation, the extension period may be longer than would be necessary simply to implement the change requests.

(7) If we are not able to comply with binding delivery terms or delivery deadlines for reasons for which we are not responsible (service not available), then we are entitled to delay the service by the duration of the interference, and we will inform the purchaser of this promptly and at the same time inform them of the new, projected delivery term or delivery deadline. If the service is still not available within the new delivery term or by the new delivery deadline for reasons for which we are not responsible, then we are entitled to withdraw from the agreement in whole or in part; we will promptly reimburse any return service provided by the purchaser. Non-availability of services in this sense shall include, in particular, situations in which we do not receive deliveries promptly from our suppliers for reasons for which we are not responsible, despite proper congruent coverage (e.g., despite having contractual agreements with our suppliers capable of fulfilling the purchaser's claims in the required quantity, quality, and delivery term). Non-availability of services in this sense shall also include force majeure of a significant length (e.g., with a length of over fourteen (14) calendar days). Strikes, lockouts, official measures, scarcity of energy or raw materials for which we are not responsible, transport bottlenecks or blockages for which we are not responsible, operational interruptions for which we are not responsible (such as due to fire, water, or machine damage) and all other negative impacts that have not been caused by us, based on an objective consideration, are equivalent to force majeure. This Sec. 3 para. 7 of these Conditions of Sale shall not apply if we have accepted a purchasing risk in the sense of Sec. 276 BGB.

(8) If the purchaser falls into default of acceptance, or if the purchaser culpably violates other duties of collaboration, we are entitled to request reimbursement of damages incurred, including any additional expenditures. We reserve the right to assert further claims.

(9) The purchaser is only entitled to withdraw from the agreement due to late delivery and/or failure to complete the delivery if we are in default with fulfilling our primary obligations, or if we have significantly violated legitimate obligations under the agreement in some other manner, and if we are responsible for the breach of duty or default. Even if the performance period is set as a specific date range, a written request to us to complete our services within a reasonable time is always required before we will be considered in default, without waiving any other statutory regulations. Otherwise, the statutory regulations apply to falling into default.

(10) If we are in default of performance under the law and in consideration of the regulations concluded in these Conditions of Sale, and if the purchaser has claims for damages against us due to default, then in case of default of delivery our liability for each complete week of default is limited to 0.5% of the net price agreed with the purchaser for goods that are not delivered or that are delivered late, and a maximum of 5% of the net price agreed with the purchaser for goods that are not delivered or that are delivered late. Claims shall remain unaffected (a) due to intentional contractual violations, (b) due to intentional or grossly negligent contractual violations, (c) due to acceptance of a purchasing risk in the sense of Sec. 276 BGB, (d) due to injuries to life, body, and health, and (e) in the case of liability under the Product Liability Act.

(11) If we bear the risk of transportation, in deviation from Sec. 3 para. 1 of these Con, then the purchaser is obligated to notify the freight forwarder of externally visible losses or damage to the freight at the latest upon delivery by the forwarder, and to sufficiently describe the loss or damage. If the loss or damage is not externally visible, then the freight forwarder must be notified of the loss or damage at the latest within seven (7) days after delivery, with a sufficient description of the loss or damage. This notification must be made in text form. Regardless of the regulations of Sec. 5 para. (4) to para. (6) of these Conditions of Sale, the purchaser is obligated to promptly submit a copy of this notification to us.

Section 4 Prices, payment conditions, and default of payment

(1) Unless otherwise indicated on our document concluding the contract (this is generally our order confirmation, or our offer for binding offers), then our prices shall apply EXW Incoterms® 2020, including packaging.

(2) The purchaser is obligated to pay the full purchase price without discounts by the deadline indicated in our document concluding the contract (this is generally our order confirmation, or our offer for binding offers) or, if no such deadline is indicated, when the invoice is issued to the account indicated by us, free of charge or fees. Receipt of payment in our account is decisive for determining whether the payment was submitted promptly. The agreed price compensates the services which we are obligated to provide. The statutory VAT is listed separately, and must also be paid by the purchaser.

(3) The statutory regulations apply to default of payment. The purchase price is subject to interest during the contract at the applicable statutory interest rate. We reserve the right to assert further default damages. Our claim to the commercial interest on maturity in accordance with Sec. 353 HGB against merchants shall remain unaffected.

(4) The purchaser is only entitled to rights of retention and offsetting if their counter-claims have been established in a court of law, are not disputed by us, or are based on the same contractual relationship.

(5) If the purchaser does not pay invoices which are due, misses any payment deadlines granted, or if its financial circumstances worsen after the contract is concluded, or if we receive information that put the purchaser's credit-worthiness or ability to pay into question, then we are entitled (a) to make the purchaser's remaining debt due for payment and to request advance payment or payment of a security, as a modification to the agreements concluded, (b) to request immediate payment for all of our claims based on the same legal relationship after the delivery is completed, and (c) to lodge an objection due to uncertainty in accordance with Sec. 321 BGB.

Section 5 Purchaser's rights in case of defects

(1) The statutory regulations apply to the purchaser's rights in case of material defects or defects of title (including incorrect or reduced deliveries), unless otherwise agreed in the following. The statutory regulations shall remain unaffected in all cases – even if not specifically listed in the following –

- if the unprocessed goods are sold at the end of the supply chain to a consumer, even if the consumer has processed them further (supplier recourse according to Sec. 478 BGB); however, the regulations of Sec. 478 BGB shall not apply if the defective goods were processed by the purchaser or another company, for instance by installing them in another product.
- in accordance with Sec. 439 para. 2 and para. 3 BGB (reimbursement of expenses for supplementary fulfilment), if the goods sold by us are newly manufactured, unless the claim has expired under these Conditions of Sale.
- in accordance with Sec. 445a BGB (recourse by the purchaser against us if it is responsible for bearing expenses in relation to its customers for supplementary fulfilment in accordance with Sec. 439 para. 2 and/or para. 3 BGB and/or Sec. 475 para. 4 and/or para. 6 BGB), unless the claim has expired under these Conditions of Sale.

(2) Goods are considered materially defective if they deviate notably at the time that risk is transferred from the specifications indicated in our document concluding the contract (this is generally our order confirmation, or our offer for binding offers). The specifications indicated in our document concluding the contract are exhaustive. Goods are considered materially defective if they deviate from the characteristics that are considered customary in Germany, in the case that there are no specifications in our document concluding the contract. Public statements by the manufacturer or other third parties (such as advertising statements) which the purchaser has informed us are not decisive for their purchasing decision shall not be used as grounds for justifying material defects.

(3) Goods are only considered to have a defect of title if they are not free from rights enforceable in Germany at the time risk is transferred. However, if goods are not free from rights enforceable in Germany at the time risk is transferred, and if this is based on instructions from the purchaser, then in deviation from Sec. 5 para. 3 clause 1 of these Conditions of Sale, there is no material defect.

(4) Defect claims by the purchaser require that the purchaser has fulfilled their complaint obligations properly under Sections 377, 381 HGB, in consideration of the regulations in these Conditions of Sale.

(5) The purchaser is obligated to report obvious material defects to us promptly, and at the latest within seven (7) calendar days after goods are delivered. The purchaser is furthermore obligated to promptly investigate the goods after delivery. The purchaser must inform us in writing and promptly of material defects visible during a proper inspection, after it has found the material defects or should have been able to find them. Complaints regarding hidden material defects must be submitted promptly after they are discovered. By way of clarification, an examination is not required for a complaint.

(6) The notification must be sent directly to us in writing. It must be formulated such that we can initiate corrective measures without further inquiries to the purchaser, and can secure recourse claims against our own preliminary suppliers. Furthermore, the complaint must fulfil the statutory regulations. Our employees are not entitled to receive defect notifications or provide warranty declarations outside of our business premises.

(7) The purchaser is requested to initially submit only the external packaging for controlling when asserting warranty claims due to material defects.

(8) If we have been notified promptly of a material defect in the goods, then we are obligated to provide supplementary performance in the form of correcting the defect or delivering a new product which is free from defects, at our discretion. Our right to reject supplementary fulfilment under the statutory conditions shall remain unaffected. Supplementary performance can be completed at our headquarters or the place where the goods are in use, at our discretion. We will not be responsible for any expenses incurred because goods have been moved to a location besides the purchaser's place of business, unless the purchaser has notified us in writing in their order before concluding the contract that goods will be brought to a location other than their place of business, and we have expressly agreed to this. If we send a replacement delivery, the purchaser must return the defective goods to us in accordance with statutory regulations. We are entitled to make the supplementary fulfilment we owe dependent on the requirement that the purchaser must pay the full purchase price due. The purchaser is, however, entitled to withhold a reasonable portion of the purchase price with respect to the defect.

(9) If the goods sold by us are newly manufactured, then – without waiving the statutory regulations or the regulations of these Conditions of Sale, in particular without waiving the objection of unreasonableness in accordance with Sec. 439 para. 4 BGB – we are obligated as part of supplementary fulfilment to reimburse expenses required to remove the defective product and install or attach the repaired or newly delivered defect-free product, in accordance with its type and purpose, if it is installed in another item or attached to another item.

(10) If supplementary performance fails, the purchaser is entitled to request to withdraw from the agreement or reduce compensation in accordance with the law, after setting a grace period and threatening to refuse to accept performance. Based on the specific defect involved, a repair shall be considered failed after the third failed attempt, unless otherwise indicated by the specific type of defect or the other circumstances.

(11) If the purchaser has suffered damages or wasted expenses due to a defect in goods delivered by us, then the regulations of Sec. 6 of these Conditions of Sale shall also apply.

(12) With the exception of the cases regulated in Sec. 5 para. 13 of these Conditions of Sale, any claims by the supplier due to the delivery of defective goods shall expire one (1) year after the start of the statutory limitation period. The expiry suspension of Sec. 445b para. 2 BGB (limitation of recourse claims in the supply chain) shall always remain unaffected.

(13) In deviation from Sec. 5 para. 12 of these Conditions of Sale, the statutory warranty terms apply

- for claims in accordance with Sec. 438 para. 1 no. 1 BGB (claims if the defect affects a material right of a third party based on which the provision of the purchased item can be requested, or another right entered into the land register);
- if the goods are newly manufactured, and are a structure and/or object that has been used as a structure according to its customary intended purpose, and this has resulted in the defect;
- if the purchaser's claims are based on an intentional and/or grossly negligent violation of the contract;
- if a defect is intentionally concealed;
- if a warranty is accepted for the characteristics of the goods;
- if the purchasing risk is accepted in the sense of Sec. 276 BGB;
- for claims resulting from injuries to life, body, and/or health;
- for claims under the Product Liability Act;
- for claims falling within the scope of Sec. 478 BGB (special provisions for company recourse in the case of goods sold to consumers).

The above regulations do not result in a reversal of the burden of proof.

(14) A replacement delivery or repair shall not restart the limitation periods.

(15) Regardless of further statutory regulations, the suspension of the statute of limitations shall end even if the suspending negotiations in the matter are not continued beyond four (4) weeks. In all cases, the suspension of the statute of limitations for claims of the purchaser shall require our express written confirmation.

Section 6 Liability for damages and expenses

(1) Our liability for damages and expenses is based on the following specifications, in addition to the above regulations of Sec. 5 of these Conditions of Sale. Conditional on limitation in accordance with Sec. 5 para. 13, in conjunction with Sec. 5 para. 12 of these Conditions of Sale, the statutory regulations shall remain unaffected in all cases, even if this is not expressly indicated.

- in accordance with Sec. 445a BGB (recourse by the purchaser against us if it is responsible for bearing expenses in relation to its customers for supplementary fulfilment in accordance with Sec. 439 para. 2 and/or para. 3 BGB and/or Sec. 475 para. 4 and/or para. 6 BGB),
- in accordance with Sec. 478 BGB (special provisions for company recourse in the case of goods sold to consumers), unless the defective goods were processed further by the purchaser or another company; and

- our obligation to bear the expenses necessary for the purpose of supplementary performance in accordance with Sec. 439 para. 2 and/or para. 3 BGB, if the goods we have sold are newly manufactured, whereby such a claim requires that the supplementary fulfilment claim under Sec. 439 para. 1 BGB has not yet expired pursuant to these Conditions of Sale.

(2) Our liability for damages or wasted expenses of the purchaser shall apply only if the damages or wasted expenses

- a) were the result of a culpable violation of an obligation, the fulfilment of which makes it possible to properly carry out the agreement, and which the purchaser should regularly be able to expect will be fulfilled (significant contractual obligation), or
- b) were caused by a grossly negligent or intentional breach of duty.

(3) If we are liable in accordance with Sec. 6 para. 2 a) of these Conditions of Sale for violation of a significant contractual obligation, then our liability for damages shall be limited to the typical damages foreseeable at the time the contract was concluded. Sec. 3 para. 10 of these Conditions of Sale applies to default damages.

(4) The liability restrictions set forth above in Sec. 6 para. 2 and para. 3 of these Conditions of Sale shall not apply to liability (a) under the Product Liability Act, (b) due to acceptance of a guarantee for the characteristics of the goods, (c) due to acceptance of a purchasing risk in the sense of Sec. 276 BGB, (d) due to intentional concealment of a defect, (e) for damages resulting from culpable injuries to life, body, or health, or (f) for damages resulting from a grossly negligent or intentional breach of duty.

(5) The purchaser's obligation to reduce damages in accordance with Sec. 254 BGB shall remain unaffected. Any agreement between the purchaser and its customers that increases the statutory liability of the purchaser to its detriment will be considered a violation of this obligation to reduce damages and – if the statutory liability of the purchaser is increased to its detriment – will exclude any claims for reimbursement against us.

(6) We are obligated to pay claims for damages to the purchaser due to the violation of contractual and/or pre-contractual obligations exclusively in accordance with the provisions of these Conditions of Sale. Any recourse to competing bases for the claim, such as culpability at the time the contract was concluded in accordance with Sec. 311 para. 3 BGB, positive contractual violation according to Sec. 280 BGB, or due to tortious claims in Sec. 823 BGB shall be excluded. If liability for damages against us is excluded or limited, then this shall also apply likewise to the personal liability of our committees, employees, purchasers, representatives, or agents.

(7) The above provisions in Sec. 6 of these Conditions of Sale apply conditional on

- Sec. 445a BGB (recourse by the purchaser against us if it is responsible for bearing expenses in relation to its customers for supplementary fulfilment in accordance with Sec. 439 para. 2 and/or para. 3 BGB and/or Sec. 475 para. 4 and/or para. 6 BGB),
- Sec. 478 BGB (special provisions for company recourse in the case of goods sold to consumers); and conditional on
- the expenses to be borne by us for the purpose of supplementary fulfilment in accordance with Sec. 439 para. 2 and/or para. 3, insofar as the goods sold by us are newly manufactured.

as well as for purchaser claims for expense reimbursement.

Section 7 Retention of ownership

(1) Until all of our current and future claims resulting from the agreement are paid (secured claims), we reserve ownership to the goods sold. If the purchaser has not paid in advance or except in cases of a cash purchase in the sense of Sec. 142 of the Insolvency Regulation (InsO), we reserve ownership to the sold goods even for all current and future claims (secured claims) resulting from the ongoing business relationship.

(2) Goods subject to the retention of ownership may not be pledged to third parties or provided as a security until all of the secured claims have been paid. The purchaser must inform us promptly and in writing if a motion is made to open insolvency proceedings, or in case of any other third party access to goods belonging to us.

(3) If the purchaser engages in conduct that violates the contract, in particular by failing to pay the purchase price due, then we are entitled to withdraw from the agreement in accordance with statutory regulations, and to request that goods be returned based on the retention of ownership.

(4) If the purchaser further processes goods subject to a retention of ownership in the normal course of business, then the retention of ownership shall likewise apply to the products produced through combining, processing, or mixing our goods at their full value, whereby we will be considered the manufacturer. If there are any ownership rights of third parties that still exist after the processing, combining, or mixing, then we will receive co-ownership in relation to the invoiced value of the processed, mixed, or combined goods. Otherwise, the same conditions apply for the product produced as for the goods subject to the retention of ownership.

(5) If the purchaser sells goods subject to a retention of ownership in the normal course of business, then the purchaser hereby already assigns any claims it incurs against the purchaser to us by way of security – or the relevant portion of ownership if the seller is a co-owner of the reserved goods. The same applies to other claims that take the place of the reserved goods or otherwise are received with respect to the reserved goods, such as insurance claims or claims resulting from unlawful actions in case of loss or destruction. We hereby accept this assignment. We hereby provide the purchaser with a revocable authorisation to collect the claims assigned to us in its own name. We are entitled to revoke this collection authorisation if the purchaser is in default of payment, if the purchaser does not fulfil its payment obligations to us, or if we assert our right under Sec. 7 para. 3 of these Conditions of Sale.

(6) If the realisable value of the securities exceeds our claims by more than 10%, then upon request by the purchaser we will release securities at our discretion.

Section 8 Place of fulfilment, choice of law and legal jurisdiction

(1) The delivery destination is indicated in Sec. 3 para. 1 of these Conditions of Sale. The place of payment and place of fulfilment for all other obligations resulting from the agreement with the purchaser is Am Anger 16, 33332 Gütersloh. These regulations apply even if services performed are to be reversed. However, we reserve the right to complete supplementary fulfilment at the place where the goods are located.

(2) We and the purchaser agree that the law of the Federal Republic of Germany shall apply, excluding UN Sales law, for these Conditions of Sale and the contractual relationship.

(3) If the purchaser is a merchant, legal entity under public law, or public law special fund in the sense of the German Commercial Code, then the exclusive place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship is our headquarters in 33332 Gütersloh. However, in all cases we are also entitled to file suit at the general place of jurisdiction of the purchaser. Statutory regulations that take precedence, in particular exclusive places of jurisdiction, shall remain unaffected.

Section 9 Miscellaneous

(1) Conditional on Sec. 354a HGB, the purchaser is not entitled to assign its rights against us under the agreement concluded and these Conditions of Sale to any third party without our prior written approval.

(2) Neither a personal or electronic signature is required to fulfil the written form requirement. Notifications via fax or e-mail, as well as all other text forms in accordance with Sec. 126b BGB fulfil the written form requirement in the sense of these Conditions of Sale.

(3) The personal data required to handle the transaction will be stored and treated confidentially in consideration of applicable data protection law regulations.

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