



I. Schmidt Handelsgesellschaft m.b.H

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Terms & Conditions of Sale and Supply I. Schmidt Handelsgesellschaft m.b.H

1. Applicability of these Terms & Conditions

The following Terms & Conditions of Sale and Supply or if agreed in our sales contract, the rules and conditions of the Warenverein der Hamburger Börse e.V. All other Terms & Conditions, particularly those laid down by the contracting parties, require our written approval in order to be valid.

2. Offers and confirmation of orders

In principle, our offers are non-binding unless expressly agreed otherwise. All contracts require our written confirmation in order to be effective. In case of instantaneous supply of goods, our invoice itself is regarded as confirmation of a sale even though it follows a delivery. The contents of the confirmation of a contract are assumed to be acceptable if no objections are raised promptly against the letter of confirmation.

3. Delivery and terms of delivery

We reserve the right of recourse to correct and prompt deliveries by our suppliers. In the event of "*force majeure*", especially in case of regulatory measures (e.g. import licenses, quotas), shortfall in harvest or inadequate catch, shortage of raw material, drought, floods, stoppage of shipping, fire hazards or non-delivery or deliveries behind schedule by our other vendors (for no fault of ours), including in the event of other hindrances to deliveries, for which we are not accountable, we reserve the right, according to our choice, to defer carrying out the contract or to withdraw from the contract while taking the concerns of the seller duly into account, where any claims by the contracting party for damages are ruled out.

Unless otherwise stated, the given delivery dates are non-binding. Difficulties in delivery or failure to deliver normally by the stipulated date entitle the purchaser only after inconclusive expiry of a reasonably extended date of delivery, which he shall intimate to us in writing, to withdraw from the contract and, if only partial quantities are affected, only in respect of the relevant partial quantity, unless delivery of the other partial quantity is of no interest to the purchaser. In addition to this, we reserve the right, in the above-mentioned situations, to modify the quantity of supply reasonably. In such case, the purchaser is not entitled to withdraw from the contract.

4. Change in cost, indication of purchaser's VAT ID

Additional charges accruing after conclusion of the contract, such as customs levies and changes in export levies, increase of rates for VAT or freight charges or increase of charges for negotiated disposal of packaging material etc. entitle us fully or partially to additionally bill the same to the purchaser, according to our choice, or also to withdraw from the contract, if such increase exceeds 10% of the net value of the order.

In the case of sales in the other regions of the EU, the purchaser is committed to indicate his VAT ID immediately after signing the contract and to confirm in writing that the purchase is intended for his enterprise. If the purchaser fails to provide the VAT ID or indicates the same incorrectly or uses the VAT ID fraudulently he shall be accountable to the seller also for payment of the VAT at the rate stipulated by the German legislation regardless of other claims.

5. Obligation of verification and notice of defects, limitation of liability for defects, curtailment of statute of limitations concerning claims for defects

The goods must be inspected immediately on delivery within the scope of commercial practice where minor deviations (+/- 10%) of the ordered quantities are permissible. Other obvious and minor defects, wrong deliveries and quantity-related errors must be countersigned by the haulage contractor on the consignment documents immediately on receipt. In case of large-scale defects and any other defects in the supply of fresh and deep-frozen goods and semi-finished products intended for subsequent industrial processing, the same must be reported to us in writing directly on receipt; at the same time, verbal or telephonic message must be conveyed to us. Large-scale defects, wrong deliveries and quantity-related errors in the case of finished or semi-finished preserved foodstuffs must be reported to us in writing within 3 working days. If, due to unforeseen circumstances, we cannot be reached, the purchaser shall make due efforts to engage the services of a sworn and independent claims agent. Also hidden defects must be reported in writing immediately on their detection and identification. If the normal obligation of complaint or report disregarded, the goods are deemed approved.

In case of a defective delivery, the purchaser may only demand initially a supplementary performance in order to remedy the defects. We reserve the right of option in regard to the relevant manner of supplementary performance by way of removal of defects (improvement) or replacement where we shall be permitted to change from one method to another in every renewed attempt of supplementary performance.

The purchaser is only entitled to withdraw from the contract or to request for reduction in the sale price due to defects if a supplementary performance fails or we fail to meet the reasonably extended delivery date, which the purchaser shall intimate to us in writing, regarding the supplementary performance without redress. The supplementary performance is deemed to have failed only after the unsuccessful third attempt if we have insisted on a third attempt. The purchaser is also entitled to the aforementioned if we fail to meet another reasonably extended date given to us by the purchaser in writing, warning us of possible rejection of supplementary performance without replacement or redress or, if the supplementary performance is impossible or we deny it.

In the event of a corrective action, we are committed to bear all expenses incidental to such corrective action, provided it has not resulted in cost escalation due to the fact that the delivered goods are found in a location of their use other than the one indicated at the time of signing the contract. For the purpose of corrective action, the purchaser shall accord adequate time and opportunity to us at our discretion. In the event of supplementary performance by way of a replacement delivery, the purchaser shall return on demand the defective goods at our expense. Replaced goods shall become our property.

Claims for defects cannot be made on the basis of damage to goods resulting from faulty or negligent handling, exposure to extreme conditions, unsuitable processing etc. and, due to conditions that are not presumed as per the contract where such damages cannot be ascribed to us.

Mere indication of a minimum expiry date for the goods cannot be construed as guarantee within the meaning of Article 443 of the German Civil Code.

If statutorily permissible, our obligation of restitution of damage, for whatever legally tenable reasons it may be, particularly resulting from tort liability shall be limited to the net invoice value of the directly affected quantity of our goods. This shall not apply to such situations where we compensate unlimitedly in accordance with imperative legal provisions (e.g. product liability law, risk to human health and life or physical injury) or due to premeditation or gross negligence. In all such cases where, at the most, we are incriminated of gross negligence, barring gross infringement of a contractual obligation by us, our liability shall be limited, depending on the extent and gravity, to the damage suffered by the purchaser and foreseeable at the time signing the contract as a possible consequence of an infringement of the contract. The damage is deemed unforeseeable, especially, if the purchaser is liable to a third party for damages or compensation and, if he has not ruled out his own liability in a legally permissible manner through a contractual agreement with the third party. Damages in the form of foregone profits shall cover only such profits which the purchaser would have made with our supplies, but not additionally such profits which the purchaser has foregone in respect of a hedging transaction; because he could have otherwise profitably utilized the performance that has been used for the hedging transaction.

In the case of third party claims on the purchaser, where the purchaser intends to have recourse against us, he shall inform us immediately and comprehensively and involve us in the negotiations concerning such claims and provide us the opportunity to actively fend off such claims or, as the case may be, to settle matters satisfactorily for him. If the purchaser fails to fulfill these obligations, he shall bear the

burden of proof in the case of recourse that his service obligations to the third party would not have been less even without our involvement and that he has performed his obligation of extenuating the damage to the maximum measure. This also applies to expenses which the purchaser incurs to settle or prevent such claims in respect of the third party.

Warranty claims by the purchaser shall lapse after one year following the delivery of goods with the exception of claims for compensation.

6. Insurance

In principle, supplies addressed to the purchaser are only insured on his explicit request in writing. In the case of "freight paid" sales or in accordance with INCO Terms 2000 CPT the purchaser shall bear the insurance expenses. In the case of "free delivered" sales or also CIP as per INCO-Terms 2000 the seller shall bear the expenses for insurance. In the case of "ex warehouse" or "ex quay" sales or also FCA as per INCO-Terms the risk of transportation is on the purchaser on collection.

7. Payments, purchaser's counter rights, damage due to delays, and denial of delivery

Unless otherwise agreed, the invoices are due for payment on receipt at net value without discounts. Cheques are only acceptable for settlements. Bills of exchange are basically ruled out. Eventual claims shall not affect the due date of the purchase price.

Only unchallenged or legally tenable demands or counter rights entitle the purchaser to offset or retention.

When failing to comply with the agreed payment period an interest rate of 8% above ECB interest rates will be charged on the relevant amount while we reserve the right to claim further damage.

If, following conclusion of the contract, justified doubts arise about the credit worthiness or paying capacity of the purchaser (especially in the event of suspension of commercial credit insurance, dishonoring of bills of exchange or cheques or legal enforcement) or, if he is largely in default of payments, we are entitled to shorten the deadlines for payment for subsequent invoices, defer supplies or to cancel orders. Furthermore, we are entitled to only perform concurrently against an earlier payment of the purchase price or to withdraw from the contract.

8. Right of ownership

We reserve the right of ownership of goods supplied until complete settlement of all our claims, to which we are entitled to as a result of the business transaction with the purchaser (including outstanding demands on the current account) and, even if the goods are being processed further. The purchaser is entitled, until revocation, to sell the goods, the ownership of which is still reserved, in the normal course of business. If the goods subject to retention of title are intermingled or joined with other movable goods

not belonging to us, we shall acquire co-ownership of the value proportionately. In the event of further processing or restructuring, the same is accomplished on our behalf without obligations for us so that we become the manufacturers. In the event of resale of reserved goods (including those in proportionate co-ownership by us), the purchaser shall assign hereby to us all his present and future claims, to which he is entitled to in this connection, against his purchasers; in the case of sale along with other objects that do not belong to us, the said claims of the purchaser shall be assigned to us at the proportionate value on a priority basis.

Until revoked, the purchaser is empowered to withdraw the assigned outstanding amount in his name. The purchaser shall provide to us at any time on demand details regarding the outstanding amounts assigned as security and names of his debtors along with copies of invoices duly signed and dated by the purchaser attesting: "Assigned to I. Schmidt Handelsgesellschaft m.b.H" and, as the case may be, indicating the amount of assignment.

We shall release the above securities according to our choice, if their value does not exceed transiently the nominal amount of our open demands including interest by more than 20%.

We shall be allowed to revoke the permission of sale as per Sec. 2 and the empowerment of withdrawal as per Sec. 3 and to disclose the assignment of demand in pursuance of conditions as specified in the last paragraph of No. 7.

If, in respect of the above, reference is made to the value of the goods, it shall be the gross value of our invoice or the net individual value pertaining to the reserved goods as declared therein plus the proportionate charges and the VAT. If, in respect of the above, we acquire the rights proportionate to the value, our share corresponds to the portion of our reserved goods according to the value of the goods in proportion to the goods belonging to the purchaser or the third party as per the purchased value of the goods with the purchaser and, in the case of further processing and reconstruction, plus the additional actual costs incurred by the purchaser. In accordance with the release clause, assigned demands shall be valued at 75% of the nominal value, reserved goods and co-owned portions at their inherent or attributed value of the goods.

9. Written form, statute of limitations, limitation of assignment

If a written form is prescribed in the Terms & Conditions it shall mean a paper print (letter, fax, telegram). The text or electronic formats only fulfill the requirement of written form, if we are made aware of the relevant message also verbally and we have confirmed the receipt of such message at least through a return message and the message only refers to modalities of the contractual transactions pertaining to a previously concluded contract; however, this does not apply to such conditions of the contract that were stipulated to be printed on paper or a clause in these Terms & Conditions is referred to.

Unless otherwise stated in these Terms & Conditions, the statute of limitations is applicable. A restraint on limitation of claims made by us is, however, only effective through negotiations on it, if and when our contractual obligations in question are found to be uncontestable, acknowledged in writing or legally tenable.

Claims, particularly claims for defects, resulting from or concerning the sales contracts entered into by us may only be assigned with our prior consent in writing.

10. Supplementary Conditions for Product Certification - IFS Broker

As an IFS broker-certified company, we only purchase goods from GFSI-certified producers. In exceptional cases, however, a non-GFSI-certified producer can be used. This happens with a previous sample approval by our customer and/ or the disclosure of the producer to our customer.

11. Applicable laws, place of performance and jurisdiction

For all our contracts German law is applicable.

In the event of a dispute resulting from or concerning business transaction, to which the above Terms & Conditions are applicable, the place of performance and sole jurisdiction shall be Berlin.

The only deviation from that is if one of the parties is a person/entity based in Russia or Belarus, both parties may take legal action at the place of respondent. The foregoing shall also apply in the event that the validity of the above provision or the inclusion of these Terms & Conditions in the contract is disputed.

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