

General Conditions of Purchase for Milchwerke "Mittelelbe" GmbH

1. Scope

1.1 All orders and Milchwerke "Mittelelbe" GmbH assignments (hereinafter referred to as "we/us") with respect to contractors within the meaning of section 14 of the German Civil Code (Bürgerliches Gesetzbuch/BGB) (hereinafter referred to as "Sellers"), will be based on these general conditions of purchase.

1.2 These general conditions shall apply exclusively. Any deviating, conflicting or additional terms and conditions of the Seller, even if we are aware of them, shall not form part of the contract, even if we do not expressly contradict them. This applies even if other terms are attached to the offer or the order confirmation of the Seller or are referred to therein.

2. Conclusion of the contract

2.1 Offers shall be made in writing and delivered to us free of charge.

2.2 Orders can be placed by our management or by representatives authorised by us especially for this purpose. Verbal or written statements made by other persons shall only be binding for us if they are confirmed by our management or by a representative with power of representation. This also applies to supplements or amendments. We may refuse to accept the delivery and make payment for deliveries that do not take place in accordance with orders in their due form. If there are any ambiguities contained within our order, they must be cleared by means of written queries from the Seller.

3. Delivery time, delivery and delay

3.1 Agreed delivery periods and delivery dates shall be agreed upon with binding effect and must be complied with.

3.2 As soon as the Seller expects not to be able to meet agreed delivery periods or delivery dates, he shall notify us of this in writing without delay, stating the reasons and the expected duration of the delay. However, this notification does not relieve the Seller from his obligation pursuant to the above clause 3.1. Unless we have specifically declared our consent with a determined extension of the agreed delivery times and dates, the newly agreed deadlines and dates shall apply in place of the originally agreed

delivery times and dates, for which, all the provisions of clause 3 shall apply.

3.3 If deliveries are made before the agreed date, we reserve the right to return the goods or to invoice the Seller for the costs incurred by us for intermediate storage of the goods and to amend the invoices accordingly.

3.4 The Seller must take away packaging material from the shipping address free of charge.

3.5 Our safety and conduct rules, shall be brought to the attention of the Seller or his agents in an appropriate manner when entering our factory premises, and they must be observed by these parties. The Seller shall instruct his employees, agents and other agents accordingly.

3.6 In the event that the Seller defaults, we are entitled, to demand a contractual penalty of 0.3% of the agreed purchase price of the delayed goods supplied as minimum compensation, for each working day of the delay, but not more than 5%; further claims for damages for delay in terms of performance or payment of any individually agreed contractual penalty shall not be affected. The Seller reserves the right to prove that we actually suffered any damage at all or only suffered damage at a much lower level caused by the delay than that stated in section 3.6 on paying liquidated damages; if the Seller succeeds in providing this evidence, our claim to pay a penalty shall be reduced in accordance with clause 3.6.

4. Performance, transfer of risk, liability, default of acceptance

4.1 Unless explicitly otherwise agreed, the Seller shall provide the service due themselves in person. We can disagree to the fulfilment of the service due to us by third parties within the meaning of section 267. 1 BGB.

4.2 We shall not be liable for any damage caused and/or for Seller expenses - on whatever legal basis - on the basis of simple negligence on our part or on the part of our institutions, representatives, officers, employees, agents, subcontractors, or agents who carry out work for us. This does not apply to claims by the Seller on the basis of violation of essential duties which only facilitate the proper execution of the contract and the fulfilment of which the Seller can therefore regularly depend upon (cardinal obligations).

4.3 In so far as we are liable for simple negligence caused by us, our bodies, representatives, officers, employees, agents, sub-contractors who carry out work for us or agents nonetheless (as in the case of simple negligent breach of cardinal obligations pursuant to clause 4.2), then our potential liability for any damages and/or compensation claims from the Seller, regardless of their legal nature, shall be limited in amount to contractually typical foreseeable damages and expenses.

4.4 The above liability exclusions or liability limitations in accordance with paragraph 4.2 and 4.3 do not apply to any claims for injury to life, body or health, for claims arising from any guarantees assumed by us and for non-waivable claims under the Product Liability Act.

4.5 In so far as our liability would be excluded or limited to the above provisions in clause 4.2 to 4.4, the same shall apply mutatis mutandis to any separate liability of our employees, agents, officers, employees, agents, subcontractors who carry out work for us or agents due to the same liability claim.

4.6 Unless expressly otherwise agreed, we are not liable for any contracts concluded between the Seller and third parties who are not contracting parties themselves. Accordingly, without the express agreement of the parties no third parties included elsewhere shall be covered by the protective effect of the contract.

4.7 The transport risk shall be borne by the Seller in any case. The risk of loss shall only pass to us when the goods are delivered to the agreed destination.

4.8 A default of acceptance shall be considered to have occurred if we formally ask the Seller for acceptance of the delivery item with an appropriate deadline being set and if the deadline expires fruitlessly. If we are prevented from accepting the delivery due to force majeure or circumstances which we cannot avert despite reasonable care (e.g. labour disputes, interruption of operations), we can refuse to accept the delivery for the duration of the disruption or request delivery at a later date without the Seller being entitled to make claims against us.

5. Prices and Payment conditions

5.1. The value specified in the order shall be binding. Unless otherwise expressly agreed, the delivery price shall include "free of charges for the receiving plant" including packaging.

5.2 Unless expressly otherwise agreed with the Seller, payment shall be made at our discretion, within 14 days of the invoice and goods receipt

with 3% cash discount or within 30 days of the invoice and goods receipt without deduction. If the Seller imparts payment to us (e.g. in his invoice) after a period that is longer than the aforementioned payment and/or discount periods that have been granted, these longer periods shall be decisive.

5.3 Invoices will only be processed and paid by us for IT-related reasons, if they contain the specified order number exactly as it is in our order. As long as there are no appropriate account specifications made by the Seller, the demand for payment shall not be due and we can defer the payment.

6. Quality of the delivery item, quality and acceptance

6.1 In terms of quality of the goods delivered the following shall apply, provided that no product specification is agreed that all deliveries and partial deliveries are to be delivered at the same level of quality and composition, as previously submitted by the Seller and audited by us and we have accepted a sample for (sample). We reserve the right to carry out regular checks upon delivery of the goods to ensure regular monitoring for the benefit of the final consumer.

6.2 The Seller warrants and shall guarantee that the goods delivered by him in all respects correspond with (especially in terms of content, packaging and declaration) the legal regulations in Germany and regulations (including those of the EU law).

6.3 In the case of equipment deliveries, the Seller guarantees in particular that the goods supplied correspond with the law governing technical equipment ("Produktsicherheitsgesetz") including subordinate regulations, the technical rules (e.g. Technical rules for operational safety, accident prevention regulations) and all other relevant provisions. Required protective devices must always be tamper-proof according to the state of the art. The Seller is also responsible for ensuring that the statutory provisions are complied with at delivery and installation. The Seller must take the goods to be delivered to a recognised body (TÜV test institute or equivalent) prior to delivery and remove and attach the test certificate of confirmation. All parts that are necessary for the proper functioning of the system, but are not included in the offer or the delivery will be delivered and installed for us at no extra cost.

7. Certifications

The production facilities in which the Contract Products are manufactured must be notified to us in writing. Each change must be notified immediately and in writing. The production facilities must have the certifications specified by us.

8. Obligation to inspect and submit complaints

Insofar as section 377. 1 to 4 of the German Commercial Code (immediate duty to inspect and issue complaints) is applicable, this shall be done with the proviso that we are committed to the delivery item, to the extent practicable in the ordinary course of business, within a period of two weeks after the delivery by the Seller to investigate and report obvious defects immediately and to notify the Seller of visible defects within one week after the discovery thereof. If a defect only arises later, it shall be sufficient to preserve the notice period for making a complaint, if we inform the Seller within one week after the discovery.

9. Offsetting and Assignment

9.1 We are entitled to offset our claims for payment against the Seller arising from the contract to which these general conditions of purchase shall apply, against claims for payment made by the Seller against us from the same or another legal relationship.

9.2 The Seller can only offset undisputed, legally established or disputed counterclaims which are ready for decision or exercise a right of retention or right of refusal against our claims for payment arising from the contract for which these general conditions of purchase shall apply.

9.3 The Seller cannot offset his payment entitlements arising from the contract, which are subject to these general conditions of purchase, against our claims for payment (from the same or another legal relationship) and may also not claim any right of retention or right to refuse payment for such private claims for payment against claims by us, unless the private claims of the Seller are undisputed or legally established or disputed, but are ready for decision.

9.4 The assignment of claims against us shall only be effective with our written permission.

10. Warranties, rights in case of defects

10.1 We are entitled to the statutory warranty claims in full; we also have the right to choose between rectification and replacement in any case. The Seller shall be obliged to bear all costs required for the removal of defects or delivery of a replacement.

10.2 If the Seller fails to fulfil the obligations accepted with the order confirmation or fails to fulfil them in full, then we shall be entitled to withdraw from the contract in accordance with the conditions specified by law. We reserve the right to also request compensation for withdrawal in addition to withdrawing from the contract.

10.3 Notwithstanding section 438 paragraph 1 no. 3 BGB, we are entitled to three years from the transfer of risk for the general limitation period for warranty claims. If acceptance is intended, the statute of limitations begins to decrease once acceptance has taken place.

11. Liability of the seller; Limitation

11.1 The seller is liable for his negligence and that of his legal representatives and vicarious agents in accordance with the legal provisions, in particular in the case of slight negligence.

11.2 Any shortening of the limitation period with respect to our claims of any kind against the Seller are hereby expressly rejected.

12. Retention of title

Any extension or renewal of retention of title in favour of the Seller is hereby expressly rejected.

13. Infringement of third party rights

13.1 The Seller is responsible for ensuring that the goods supplied by them do not violate any foreign or domestic property rights, of any kind. The Seller is responsible for all damages that may arise from such injury. This shall not apply only if the Seller is not responsible for the copyright infringement.

13.2 If claims are made against us by third parties due to a violation of property rights, the Seller is obligated to indemnify us upon first written request of such claims, so far as he is responsible for the violation of rights.

14. Product Liability

14.1. If the Seller is responsible for damage caused by his product, he is obligated to indemnify us for claims for damages by third parties, as the cause is within his control and organisation and he is personally liable in relation to third parties.

14.2 In this framework, the Seller is also obliged to pay compensation pursuant to sections 683, 670 BGB, arising out of or in connection with third party claims or regulatory actions, including product recalls conducted by us.

14.3 Further claims in our favour shall remain unaffected.

15. Other agreements

15.1. The cost of insuring the shipments shall only be borne by us if the conclusion of insurance contracts and of costs to be covered are expressly agreed by us.

15.2 Packaging shall be reported as returnable packaging on the invoice if they will be reclaimed in accordance with the agreements. If the Seller's returnable packaging is still charged for on the invoice, then this packaging shall be treated as returnable packaging and returned freight prepaid.

15.3 The Seller is obliged to state our order number exactly on all shipping documents, delivery notes and invoices.

15.4 All drawings and documents which we provided to the Seller (e.g. for the production of the goods) or have been prepared by him in accordance with our specifications, shall remain our property and may not be used for other purposes or made available to third parties. They should be given to us at any time on our request.

16. Data Protection

16.1 The Seller agrees that we may collect, process, store and use data arising from this contract or the execution of the contract.

16.2 We warrant that the Seller's compliance with applicable data protection regulations will be treated confidentially.

17. Place of fulfilment, Jurisdiction, Applicable Law

17.1. The place of fulfilment for all deliveries and other services of the Seller shall be the agreed destination.

17.2. If the Seller is a merchant within the meaning of the German Commercial Code, a legal entity under public law or a public law special fund, the exclusive place of jurisdiction for all disputes arising from the contractual relationship with the Seller shall be our registered office. The same applies if the Seller has no general jurisdiction in Germany at the time of concluding the contract or the complaint. We are also entitled to bring proceedings at the place of fulfilment for the delivery obligation. The above clause does not apply to disputes concerning non-pecuniary claims which are allocated to the district courts without regard to the amount in dispute, and for actions for which an exclusive place of jurisdiction is justified.

17.3. The law of the Federal Republic of Germany shall apply for all legal relations between us and the Seller excluding conflict of laws. The provisions of the UN Sales Convention shall not apply.

18. Severability

Should individual provisions of the contract with the contractor including the above conditions of purchase be or become wholly or partially legally invalid then the validity of the remaining provisions shall not be affected. In this case the parties shall agree on an effective provision that most closely approximates the commercial objective intended by the invalid provision to replace the wholly or partially invalid provision.

19. Counter-terrorism

We implement the Regulation against Osama bin Laden, Al Qaeda and the Taliban (Regulation (EC) No. 881/2002 with amendments) and against other terror suspects and organisations (Regulation no. 2580/2001 with amendments) with regard to the examination of the lists of names.

20. Caring for the environment

The supplier shall have procedures in place to secure compliance with the requirements of applicable environmental legislation and regulations. Also, the supplier shall have knowledge of the environmental impacts of its operations, and shall continuously strive to reduce impacts and improve environmental performance in a systematic way. Improvements should cover reduction of energy and water use, emissions and waste as well as the reduction and/or substitution of hazardous chemicals.

21. Protection of animals

If applicable to its business, the supplier shall implement procedures to prevent the mistreatment of all animals, including when they are caught, raised, cared for, transported, and processed.

22. This translation is only a service to our Clients/Purchasers. In case of doubt the General Conditions of Purchase ("Allgemeine Einkaufsbedingungen der Milchwerke "Mittellelbe" GmbH") in the German version are exclusively applicable.