



General conditions of sale for Milchwerke "Mittellelbe" GmbH

1. Scope and coverage

1.1 These general conditions of sale are applied to the sale of goods, offers, agreements, deliveries and services of Milchwerke "Mittellelbe" GmbH (hereinafter "we/us") to the company within the meaning of § 14 BGB (hereinafter "Purchaser"). They are applied at the time as a framework agreement for future contracts on the purchase and/or delivery of the goods with the same Purchaser, without having to refer to them in each individual case. These General Conditions of Sale do not apply to consumers within the meaning of § 13 BGB.

1.2 These General Conditions of Sale are accepted by the Purchaser when placing an order, no later than on acceptance of delivery.

1.3 Changes or amendments to these conditions are carried out by our management or by our authorised agents. Oral or written statements made by any other persons shall not be binding unless they are confirmed by our management or by a representative with power of representation.

1.4 These General Conditions of Sale apply exclusively. Differing, conflicting or additional terms and conditions of the Purchaser are only part of the contract if their application has been expressly agreed by us. This approval requirement applies unreservedly without exception, for example even in cases where we have carried out delivery in the knowledge of the Purchaser's general terms and conditions of business.

1.5 Even if we agree in accordance with No. 1.4 to the validity of deviating, conflicting or supplementary general terms and conditions of the Purchaser, our conditions agreed in a framework agreement or individual contract with the Purchaser (in particular the provisions regarding the agreement of delivery and payment) take precedence over the terms and conditions of the Purchaser.

2. Offer and Conclusion of Contract

2.1 Our offers are always subject to change, that is, they represent an invitation to the Purchaser to place an order.

2.2 The ordering of goods is considered a binding contract offer.

2.3 The contract is concluded either through our express acceptance of the order of the Purchaser or by the delivery of goods by us to the Purchaser.

2.4 Our written order confirmation is exclusively taken as the declaration of intent for the conclusion of a contract, provided that we grant it. If the order confirmation is delayed with respect to individual services of the order, then in cases of doubt no declaration of acceptance is intended by us in respect of the services which are not specified in the order confirmation.

2.5 Legally binding unilateral declarations and notifications should be handed to us by the Purchaser after the contract (e.g. deadlines, defects, notice of cancellation or reduction), and need to be in written form.

3. Delivery, delivery date, terms of delivery

3.1 Delivery time and service performance information is discretionary and provided on the basis of the delivery situation. The details are to be regarded as approximate, unless carried out with an additional explicitly binding delivery promise for a fixed date. Correct and timely delivery by our supplier remains a requirement.

3.2 If an agreed delivery time cannot be met due to lack of delivery by our supplier, we will advise the Purchaser immediately and notify the new delivery deadline. If, for reasons beyond our control, the revised delivery date cannot be met, we are entitled to withdraw from the contract on the grounds of the unavailability of goods. In this case, we will immediately refund the Purchaser. The statutory withdrawal and termination rights of the Purchaser are not affected.

3.3 The same rights and obligations apply to us if we are prevented from fulfilling our obligations to deliver, directly or indirectly, by force majeure or other unforeseen events over which we have no control. In the sense of section 1, such events are cited as in particular: riot, war, fire, floods, blockades, strikes, lockouts, terrorist, energy and raw material shortages, and regulatory interventions. If the Purchaser can no longer reasonably accept the delay, he may withdraw from the affected part of the supply contract.

3.4 The occurrence of a delay in delivery shall be governed by the statutory provisions. In any case, an official notice by the Purchaser is required.

3.5 Incoterms 2010 shall apply for export deliveries, unless explicitly agreed otherwise.

4. Dispatch and Transfer of Risk

4.1 Unless expressly agreed otherwise, the Purchaser has to collect the goods ex-works at their own expense and risk (obligations according to Incoterm (2010) FCA, we notify our customers of each distribution centre).



4.2 Unless, contrary to section 4.1, in individual cases a dispatch of goods is agreed by us, the following provisions of this paragraph apply 4.2: The dispatch will be shipped ex works, unless otherwise expressly agreed. The Purchaser pays for dispatch expenses. Insurance is taken only on the Purchaser's request and at their expense. We can make the Purchaser's required insurance conditional on the reimbursement of previous insurance premiums by the Purchaser.

4.3 Reasonable part deliveries are permitted. Acceptance of delivery or the collection of the goods cannot be rejected because of the absence of individual parts of an order or for minor complaints about the products delivered, unless the usability of the delivered or collected goods is thereby so seriously impaired that it is not reasonable for the Purchaser to accept them.

4.4 An outside temperature of approximately 20°C requires liquid milk-based collections to be made with a refrigerated transport vehicle to effectively prevent potential spoilage of the product.

5. Acceptance and default of acceptance

5.1 If, with a collection obligation (paragraph 4.1), an "agreement deadline", it means the deadline by which the Purchaser must collect the goods.

5.2 The Purchaser is obliged to accept the goods purchased, and for their acceptance comply with the agreed delivery or collection period. For immediate deliveries a deadline of 5 business days is deemed as agreed.

5.3 If the Purchaser fails to meet this obligation or does not carry it out in a timely manner, without being entitled to refuse acceptance, we are, without the need for a further formal notice, entitled to store the quantities due at the cost and risk of the Purchaser.

5.4 Costs and damages, including additional transport costs and risks, in case of unjustified non-acceptance are at the expense of the refusing Purchaser. Returns of delivered goods will not be accepted without our prior consent if the Purchaser is not entitled to refuse acceptance.

6. Prices and Payment, Packaging

6.1 Unless otherwise expressly agreed, delivery and account charges are based on the valid price list on the date of conclusion of the contract. The indicated prices are ex-works excluding freight, but include normal packaging and are exclusive of statutory VAT.

6.2 The purchase price (plus VAT and, if applicable, agreed additional costs such as for dispatch or insurance, unless they have been agreed in advance) falls due on delivery to or on collection by the Pur-

chaser. The purchase price is payable within 14 days from the due date without any deduction, unless otherwise agreed. After this period, the Purchaser will be in default. Our employees are only entitled to collect payments on our behalf with a written authority.

6.3 If payment is not made within 14 days of delivery in accordance with the foregoing provisions, or within the agreed period, we are entitled to apply interest at the legal rate of at least 5% of the purchase price from the default due date. In addition, default interest shall be calculated from the default date at the statutory rate. The assertion of further damages is reserved.

6.4 The acceptance of cheques is only permitted on account of payment. In principle, bills of exchange are not accepted. The costs of collection and discounting are borne by the Purchaser.

6.5 Our invoices will in principle be subject to German VAT. If the verifiable details of the Purchaser and checks carried out by us have shown that the terms for sales tax exemption are met, the invoice will be issued without German VAT. Should it be found at a later date that the invoices should have been issued with German VAT, we will correct/complete the invoices with the sales tax (and if necessary pay accrued interest) to the competent tax office. The Purchaser must inform us whether a business relationship still exists and compensate the surrendered or unpaid VAT. The same is true with respect to any amount we have paid or are payable for interest, if and insofar as the late payment of VAT is the responsibility of the Purchaser (e.g. because of incorrect information).

6.6 The return of packaging material (bottles, glasses, foils) is only by special arrangement. If the delivery of the products on reusable pallets is agreed, we can for the return of the pallets require a monthly volume-balance settlement between the parties or their agents. Should a consequent balance not be equal in terms of quantity within 14 days after the end of the month, monetary compensation may be required on commercial terms. In the case of the exchange of euro-pallets this can only be carried out according to the UIC 435-2 standard quality levels and the technical rules of the EPA; for otherwise returnable pallets, the quality levels are defined in accordance to DIN.

7. Warranty

7.1 The statutory provisions apply to the rights of the Purchaser for material and legal defects, unless otherwise stated in the following. In all cases, this is without prejudice to the special statutory provisions of the suppliers' recourse in the context of the final delivery of the goods to the consumer.



7.2 The agreed nature of the goods is deemed to be our product description, and is included in the contract.

7.3 The granting of a guarantee within the meaning of § 443 BGB must be explicitly marked as such. For the content of any warranty our written confirmation is essential. Product information, samples or models shall be supplied, unless otherwise expressly agreed, only as product descriptions and quality specifications or only as approximate samples for quality, size, weight, flavour and colour, without the need for a guarantee.

7.4 In the case of collected goods, the printed expiry date on the product can only be guaranteed if properly transported and stored. Should the goods be "spoiled" before the expiry date, we reserve the right to require the Purchaser to provide proof of proper transport and storage.

7.5 For perishable products (i.e. products with a best before date, which expires in less than 4 weeks after delivery) obvious defects as well as over- and undershoots of the contractually agreed quantity or dispatch damage are to be notified to us in writing immediately but no later than within three days and for other products within 10 days after delivery. For hidden defects the written notice of defect should be sent forthwith, but not later than 10 days after discovery (or be made within 3 days of discovery for perishable products). Failing a timely reminder, the goods shall be deemed approved. The cost of the review of a defect notice, such as for analysis, lies with the person to whose detriment it fails.

7.6 If the delivered goods are defective, the Purchaser shall first require non-defective goods (at our choice: replacement of goods free of defects or eliminating the defects in the delivered goods). The Purchaser shall be at liberty to reduce the purchase price or to withdraw from the contract if the repaired delivery is not made.

7.7 If the goods are packed in packing material (films, bags, glasses, etc.) which has been manufactured or procured by the Purchaser, the Purchaser must not warranty claims against it, if and insofar as the cause of the failure is identified as packaging material procured or manufactured by the Purchaser. If there is the possibility that the packaging material is responsible for the specific defect in the case of dispute, the Purchaser must present evidence that the defect was not caused by the procured or manufactured packing material.

7.8 We are entitled to make the subsequent performance dependent on the condition that the Purchaser pays the purchase price. However, the Purchaser is entitled to withhold a reasonable portion relative to the defect.

8. Limitation of Liability

8.1 We are not liable - on whatever legal ground - for simple negligence by us or our companies, representatives, employees, contractors, sub-contractors, fulfilment and vicarious agents to carry out work for damage caused and/or expenses of the Purchaser. This does not apply to claims by the Purchaser for breach of material obligations whose fulfilment makes the proper execution of the contract and on whose fulfilment the Purchaser may therefore trust (cardinal obligations).

8.2 If, in the case of simple negligence by us, our companies, representatives, employees, contractors, sub-contractors, fulfilment and vicarious agents, we are nonetheless liable (as in the case of simple negligent breach of cardinal obligations within the meaning of paragraph 8.1), our potential liability for any damages and/or reimbursement of expenses to the Purchaser, regardless of their legal nature, are limited in amount to the contract-typical, foreseeable damage and expenses.

8.3 The above exclusions, for example the limitations of liability in accordance with sections 8.1 and 8.2, do not apply to any claims for injury of life, body or health, for claims from any of our adopted guarantees and non-waivable claims under the Product Liability Act.

8.4 Insofar as our liability under the foregoing provisions of this section 8 would be or are excluded or limited, the same applies also for any individual liability of our companies, representatives, employees, contractors, subcontractors, fulfilment or vicarious agents.

8.5 Unless expressly agreed otherwise, we are not liable from the contract concluded with the Purchaser to third parties who are not parties themselves. Accordingly, unless included elsewhere without the express agreement of the parties no third party is included in the protective effect of the contract.

8.6 In cases of contract manufacture or use of raw materials and/or packaging materials of the Purchaser, the obligation to ensure compliance with all statutory and legal requirements (especially of food law) in respect of materials and recipes proposed by the Purchaser, packaging designs and declarations made by the Purchaser rests solely on the Purchaser. It shall indemnify us from all third party claims resulting from any failure to comply with such legal provisions in so far as this is the responsibility of the Purchaser.

9. Retention of title

9.1 All deliveries are subject to retention of title with the following extensions. The goods delivered under retention of title, and any replacing them under this section 9, are recognised by the retention



of title and hereinafter collectively referred to as "retained goods".

9.2 The delivered goods remain our property until the Purchaser has paid all future and existing requirements from the business relationship, in particular any current account balance.

9.3 The Purchaser shall store the retained goods for us without charge and is committed to insuring the retained goods in the course of trade and merchantability against insurable damage (especially against fire, water, storm, theft). He assigns his claims under the insurance policies herewith to us in advance. We accept this transfer herewith.

9.4 The Purchaser is entitled to process and sell the retained goods until the event of default in the ordinary course of business. Pledging and assignment are not permitted.

9.5 The acquisition of ownership by the Purchaser of the retained goods in accordance with § 950 BGB in the case of working or processing of the retained goods to a new item is excluded. Any processing performed by the Purchaser in our name and on account for us as a manufacturer means we acquire immediate ownership. In the case of processing with other goods not belonging to us, we acquire co-ownership of the new item in proportion to the value of goods supplied at the time of processing. In the event that no direct acquisition of property by us occurs, the Purchaser shall already have defined future ownership or mentioned in the above ratio joint ownership of the new item as security to us. If the retained goods are mixed with other objects to form a single or inseparable item and is one of the other things to be regarded as the main item, the Purchaser shall, as far as the main item pro rata co-ownership to us of the uniform matter in the corresponding ratio.

9.6 The Purchaser's claims from the resale of the retained goods are necessarily proportionally assigned to us according to the (joint) ownership, and this is irrespective of whether the retained goods - without or after processing - will be sold to one or more Purchaser. We accept this transfer herewith. The assigned claims serve as our security only to the extent of the value of the respective goods sold. In the event that the retained goods are sold by the Purchaser together with other goods not belonging to us, either without or after processing, the assignment of the purchase price claim applies only to the amount of the value of the goods that the other goods are subject to, with the Purchaser concluding the purchase contract or part of the purchase object with the Purchaser. We authorise the Purchaser to collect the claims assigned to us in his own name and for our account. With regards to our own authority to collect, we will not apply it, as long as the Purchaser meets his payment obligations.

9.7 A default event occurs whenever we are entitled to rescind the contract. If the default event occurs we are entitled to demand, at our request, return of the retained goods concerned and/or to collect the claims assigned to us, to the extent claims against third parties in their own name. The Purchaser has to provide us on demand, comprehensive information about the retained goods still available. For the purpose of collecting assigned claims, the Purchaser has to give us all relevant information in this regard (especially about the person of the respective third party debtor and the amount of open assigned claims), all located to us in his possession or property, collect available necessary or helpful documents to provide and display the third party debtors at our request. We are authorised to notify the assignment on behalf of the Purchaser - even the debtors.

9.8 The Purchaser has to inform us immediately or in advance of any impairment and execution activities in the retained goods or the claims assigned and hand over the necessary documents for an intervention in writing. The Purchaser will also immediately advise the third party accessing the retained goods that they are our property.

9.9 In addition to the full payment of all secured claims from the business relationship, the ownership of the subject goods and the claims relating to the resale of the goods are assigned to the Purchaser.

10. Limitation

10.1 Notwithstanding § 438 para. 1 No.3 BGB, the general limitation period for claims arising from defects of quality and title are one year after delivery, unless there is bad faith on our part or it is in the supplier's recourse claims at final delivery to a consumer.

10.2 The foregoing limitation shall also apply to contractual and non-contractual claims for damages of the Purchaser, based on defects in the goods, unless the application of the statute of limitations would result in a particular case in a shorter period. The limitation of the Product Liability Act shall remain unaffected in any case.

11. Assignment and set-off

11.1 We are entitled to assign claims from the business relationship with the Purchaser to third parties.

11.2 We are entitled to offset our claims for payment against the Purchaser of the contract to which these general conditions of sale apply, against payment claims of the Purchaser against us from the same or another legal relationship.



11.3 The Purchaser can offset our claims for payment claims, a contract under these general conditions of sale only undisputed, legally established claims or claims which, although disputed, are ready for a decision or exercise a right of retention or right to withhold performance.

11.4 The Purchaser cannot offset their payment entitlements under the contract, and is subject to the following general conditions against our claims for payment (from the same or another legal relationship) and also exert no retention or right to refuse payment for their own payment claims against claims from us, unless the Purchaser's own claims are undisputed or legally established or denied, but ready for a decision.

12. Privacy Policy

12.1 The Purchaser agrees that data arising from the contract or the contract execution can be collected, processed, stored and used.

12.2 We assure you that the data of the Purchaser will be treated confidentially in accordance with the applicable data protection regulations.

13. Applicable Law

Only the law of the Federal Republic of Germany under exclusion of the conflict of laws applies to the contractual relationship.

The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) and the application of the Uniform Laws on the International Sale of Goods and on the conclusion of such contracts of sale shall be (is) excluded.

14. Fight against 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 (Council Regulation No. 2580/2001 with amendments) with regard to the examination of the lists of names.

15. Place of performance, legal venue and final provisions

15.1 The place of performance is Stendal.

15.2 If the Purchaser is a merchant in the sense of HGB, legal entity under public law or public law special fund or at the time of concluding the contract or the complaint has no general jurisdiction in Germany, the competent court for Stendal is the legal venue for all disputes arising from the business relationship. However, we are entitled to sue the Purchaser at their domicile or residence - for a

contract with a foreign element also in the capital city of the destination country.

15.3 The above choice of legal venue agreement (paragraph 15.2) does not apply to disputes concerning non-pecuniary claims which are allocated to the district courts without regard to the amount in dispute, as well as to actions for which exclusive jurisdiction is justified.

16. Severability

Should one or more of these provisions be or become invalid, the validity of the remaining provisions shall not be affected. Instead of the invalid provision, the parties in this case agree a legally valid provision that comes closest to the purpose of the invalid provision in economic terms.

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