

General Terms and Conditions of Purchase of Sonnländer Getränke GmbH

1. Conclusion of the Contract

1.1 These General Terms and Conditions of Purchase shall apply for all of our orders, also for future orders, regardless of whether these orders are awarded individually or on the basis of framework agreements. Any divergent terms and conditions of purchase of the Supplier shall apply only if we explicitly acknowledge them. Silence on our part with regard to terms and conditions of the Supplier, the acceptance of the delivery, or the payment shall not imply agreement with the Supplier's terms and conditions. If our supplier is not in agreement with this, he must inform us of this fact immediately. In such cases we may withdraw our order without making ourselves liable to any claims of any kind whatsoever against us. We hereby explicitly reject any standard formal reference to own terms and conditions of the Supplier. Any provisions in framework agreements and individual contracts concluded between us and the Supplier shall, if relevant, shall take precedence over these General Terms and Conditions of Purchase.

1.2 Orders and other agreements made in connection with the conclusion of a contract shall be binding only if they are awarded or confirmed in writing by us. Orders or confirmations awarded by fax or electronic data transmission shall equally be deemed to have been made in the written form.

1.3 The Supplier undertakes to send us an order confirmation whenever requested by us.

If the Supplier does not accept our order within three working days, we may revoke the order. Any alterations and/or additions to our order carried out by the Supplier shall be valid only if they have been confirmed by us in writing, by fax or by means of electronic data transmission.

1.4 In the case of purchases of foods and raw materials, the basis for the respective product distribution shall be:

1.4.1. Statutory provisions.

1.4.2. The agreed specifications shall apply for the qualities and attributes.

1.4.2.1. The goods to be delivered were manufactured in accordance with the provisions of German food legislation, i.e. in particular from the eponymous, ripe, healthy, edible fruits which are fresh or kept edible by means of cooling or stored under CO₂ – but not overlaid – and untreated and harvested solely in the period of time which is optimal from a quality standpoint, using the production procedures described in the German Fruit Juice Ordinance (“Fruchtsaftverordnung”).

1.4.2.2. Cellulolytic and/or fully liquefying enzymes shall not be used in production.

1.4.2.3. The goods shall not contain any additives of any kind whatsoever, such as chemical preservatives, sugar of any kind, stabilising agents such as pectin of any kind, antioxidants, L-ascorbic acids (Vitamin C), lemon juice, citric acid, etc., unless this was agreed separately.

1.4.2.4. No raw materials, additives or excipients (e.g. enzymes) from genetically modified organisms (viruses, bacteria, fungi, plants or animals) were used in production.

1.4.2.5. The authenticity of the product is guaranteed in an expert inspection conducted on the basis of the CODE OF PRACTICE. The latest analytical methods, including isotope examination, are applied. The standards established by Stiftung Warentest and Ökotest are already taken into account at this stage; the target is a “very good” appraisal.

1.4.2.6. Any aromas additionally delivered or already returned originate from the eponymous fruit juice or the eponymous pulp and comply with the requirements of German Fruit Juice Ordinance.

1.4.2.7. No residues of heavy metals and/or pesticides exceed those stipulated in the statutory provisions. Residues of plant protection products and other such agents shall be in accordance with the limits set by the German Maximum Residue Limits Ordinance (RHmV).

1.4.2.8. Goods which, in accordance with organic agriculture, are declared as “organic” or “ecological” as per Directive (EC) No. 834/2007, Directive (EC) No. 889/2008 with implementing provisions for Directive (EC) No. 834/2007 as currently amended and the complementary regulations must satisfy the requirements of those ordinances. The residue quantities shall be governed by the requirements of the German natural goods, production and trading association BNN (“Bundesverband für Naturkost Naturwaren, Herstellung und Handel eV”), which are published as the BNN benchmark for chemical-synthetic plant protection and pest control agents and preservatives.

1.4.3. In the event of delivery in tank trucks:

1.4.3.1. The presentation to us of a valid and complete cleaning certificate is the precondition for the unloading of the tanker. If the haulier/forwarder is engaged by us, for example because FCA has been agreed, the copy of the valid and complete cleaning certificate must be conveyed to us before loading.

1.4.3.2. Tankers must be sealed properly after being loaded and the seal numbers must be indicated in the delivery documents.

1.4.3.3. Tankers are unloaded only if they were still sealed on arrival and the respective seal numbers correspond to those in the delivery documents.

1.4.3.4. The delivery of raw goods shall be carried out in tank trucks which have been cleaned impeccably in accordance with food legislation. The quality of cleaning shall comply with the requirements of the EFTCO standard.

1.4.3.5. When deliveries are made, the hygiene stipulations for food shall be complied with. Goods in barrels or drums or other packaging types must be in such a condition that any sample that we take out of a packaging unit must be regarded as representative of the entire delivery; this means, inter alia, that only goods from one charge may be delivered with any delivery.

1.4.4. The delivery must be made in the agreed quality, including the microbiological quality (see recommendation by the German Fruit Juice Federation (Verband der Fruchtsaftindustrie) and the agreed temperature.

1.4.5. In the event of a complaint, the complaint in question shall be announced after it has been assessed.

1.4.6. A full analysis of the delivered goods, conducted by an independent accredited laboratory (Chelab, Eurofins, etc.) shall be made available to us. A “full” analysis means in this case that adherence to all agreed specifications must be the subject matter of the analysis. If we have given notification of further-reaching specifications for the analysis, the analysis must also include these.

1.4.7 If, in the event of a missing cleaning certificate or on other grounds for which the Supplier is responsible, there is a supposition of hidden defects but the Supplier nevertheless wants us to receive the delivery, the precondition for this shall be an analysis at the Supplier’s expense which proves the absence of defects.

2. Engagement of third parties

2.1 The Supplier may assign the execution of our orders or significant parts of our orders, in particular the production of the articles to be delivered, to third parties only with our prior written consent. If the Supplier violates this provision, we shall be entitled to demand 5 % of the value of the goods ordered (our purchase price) from the Supplier as a contractual penalty, unless the Supplier did not act culpably. The Supplier shall provide us with information about the scope of the goods produced by third party companies. We are entitled to have such information examined at the expense of the Supplier on the Supplier’s premises by an auditor /auditing company who/which is sworn to secrecy.

2.2 Our consent as per Item 2.1 can be revoked in writing for good cause at any time with regard to the respective third parties. Good cause shall be deemed to apply when, in particular, the aforementioned articles do not correspond to the prepared product specifications, show quality defects or are not in accordance with the statutory provisions. Good cause shall also apply if the specific delivery quantities and delivery period determined in individual orders are not complied with. The prerequisite of such a revocation shall be that a two-week period with threat of refusal has elapsed abortively.

3. Secrecy

3.1 All of the drawings, plans, illustrations, technical data, calculations, samples and other documents that were handed over to the Supplier for the purpose of executing the order shall remain our – intellectual if applicable – property. They may not be made available to third parties without our written consent, must be secured against inspection or use by unauthorised persons and must be put at our unimpaired disposal again at any time free of charge on request.

3.2 The produce manufactured in accordance with the above documents, and documents prepared in connection with the execution of the order by the Supplier, may neither be forwarded to third parties nor used for any purpose other than those specified in the contract in question.

3.3 The duty to maintain secrecy shall also apply for prices agreed with the Supplier and for other contractual terms and conditions.

4. Compliance with time periods and dates

4.1 Any agreed periods and dates shall be binding. The authoritative measure of whether delivery dates were complied with shall be the deliveries’ receipt at the place of receipt designated in the order; in the case of deliveries involving erection or assembly and of other services rendered on a payment-by-performance basis, our final inspection and acceptance shall be authoritative.

4.2 If it can be foreseen that the dates are not going to be complied with, the Supplier must inform us without delay about this, about the reason for the impediment in question and about the likely length of the delay. This shall not affect any rights of ours in relation to the delay.

4.3 In the event of repeated delays in delivery, we may, after issuing a prior warning, cancel any remaining orders not yet fulfilled by this point in time collectively with immediate effect.

4.4 Premature deliveries and services shall require our prior consent; any costs thereby incurred shall be borne by the Supplier.

5. Partial, excess or short deliveries

5.1 Any partial and/or replacement deliveries shall require our prior written consent.

5.2 We reserve the right to acknowledge excess or short deliveries in individual cases.

5.3 In all other cases, short deliveries, i.e. deliveries containing less than the contractually defined quantity to be delivered, shall entitle us to make covering purchases (also in respect of comparable third-party marks) due to the missing quantities following the fruitless expiration of a reasonable grace period granted for subsequent performance. If we do not make use of this right, we shall be fully entitled to assert the legal rights on grounds of short delivery. In the event of fixed-date transactions, setting a grace period is unnecessary. The Supplier shall bear any costs that result from the above. We shall be entitled to make covering purchases, make an appropriate request to the Supplier, or charge him for the lost gross profit, as we prefer. The latter shall be calculated on the basis of our sale price, adjusted for value-added tax, less our billing-relevant purchase price, multiplied by the missing quantity.

5.4. The calibrated scales in the goods receipt areas shall be authoritative.

6. Transport, passage of risk, prices

6.1 Provided that nothing to the contrary was agreed, the delivery shall be made “delivered duty paid” (DDP) in accordance with Incoterms 2000. We shall specify the place of destination and place of performance separately. We shall not pay any demurrage. Any disposal costs incurred for the packaging shall be borne by the Supplier. The prices are fixed prices. They do not include value-added tax but do include packaging. The delivery shall be made ex works (including unloading), unless the parties to the sales contract make an agreement to the contrary.

6.2 If it is agreed that the delivery is to be made by means of filling receptacles installed on our premises or by means of assembly, or if some other performance to be rendered on a payment by results basis has been agreed, the risk, in derogation from Item 6.1, shall pass on to us upon completion of the final acceptance and approval. If, in derogation from Item 6.1, price setting “ex works” has been agreed, shipments must be dispatched at the lowest costs in each case provided that no particular mode of transportation has been prescribed or agreed. The Supplier shall be held liable for any damage resulting from faulty packaging.

6.3 Any additional costs that result from non-compliance with a shipment regulation or from accelerated transportation necessitated by compliance with delivery periods shall be borne by the Supplier.

6.4 The full order identification must be indicated in all consignment notes, notifications of dispatch, delivery notes, other shipment documents and the invoices.

6.5 If we are entitled to send return consignments, these shall be sent at the Supplier’s expense; with regard to the passage of risk, the provisions of the German Civil Code (BGB) concerning sale by dispatch shall apply mutatis mutandis in the event of return consignments.

7. Notice of defects

We shall indicate any outwardly visible defects to the Supplier within no more than 14 days after delivery, and other defects to him as soon as they are discovered. If we do not find out about a defect until customers complain about it, we shall give notification of it as soon as we are informed by the customer.

8. Invoice, payment

8.1 The invoice must be conveyed to us separately. It shall be in duplicate and must be issued in such a way that it can be checked on the basis of the delivery documents. The invoice must contain the information specified in the order.

8.2 Payment and cash discount periods shall commence upon receipt of a verifiable invoice, but not before the complete and defect-free delivery or the final inspection and acceptance of performances. If nothing to the contrary has been agreed, we shall make payments after these preconditions have been fulfilled within a period of 60 days.

9. Rights in the event of defects

9.1 It is incumbent upon the Supplier to provide defect-free deliveries and performances and ensure the presence of guaranteed characteristics, and he shall vouch for their compliance with all of the requirements stipulated by the relevant statutory provisions in each case and

- in the case of food or raw ingredients intended for food, with the requirements in accordance with Items 1.4.2 to 1.4.4 of these Terms and Conditions of Purchase,

- in the case of other delivered articles, the state of the art and the generally acknowledged technical and occupational-health-related safety regulations issued by public authorities and industry associations.

9.2 If machinery, devices and installations are the content of deliveries, they must comply with the requirements of the special safety regulations for machinery and installations valid at the time of contractual performance and possess a CE marking.

9.3 In the event of defects, we shall be entitled to assert our claims against the Supplier within the limitation periods provided for by law. In such cases we shall be free to choose between subsequent improvement, replacement delivery and new production in accordance with the statutory provisions. The Supplier must compensate us for any loss or damage incurred in the meantime and for the expenses necessitated by subsequent performance.

9.4 If there has been no subsequent performance within a reasonable period, if such performance was abortive or if setting a deadline was superfluous, we may demand cancellation, compensation instead of performance, the refund of wasted expenditure, or a price reduction under the prevailing statutory provisions. Any rights arising from guarantees assumed by the Supplier shall not be affected by this.

9.5 If the Supplier fails to fulfil his duty of subsequent performance within the reasonable period set by us, without having the right to refuse to provide subsequent performance, we shall also be entitled to take the necessary action ourselves at his expense and risk.

10. Product liability, insurance

10.1 If a claim is made against us due to a defect in the item delivered by the Supplier on grounds of producer and/or product liability, he shall exempt us from any producer or product liability resulting from the defect in question, unless he can prove that the defect was neither present nor inherent at the time of the passage of risk (cl. Item. 6).

10.2 Under the same conditions he shall also be held liable for loss or damage that we incur as a result of

precautionary measures of reasonable type and scope against claims asserted on the basis of non-contractual product liability, e. g. as a result of public warnings.

10.3 The Supplier shall additionally exempt us from all materials defect, compensation, and pain and suffering damages claims asserted by third parties, provided that these were caused by the defective products delivered by the Supplier.

10.4 We shall inform the Supplier in good time about the assertion of such damages and/or compensation claims. We shall not make any payments or acknowledge any claims without consulting him first. This, however, shall have no prejudice to our right to assert a claim of our own against the delivering party.

10.5 The Supplier must insure himself adequately against claims that may be made against him on grounds of product liability or as a result of recall costs. He shall be obliged to furnish proof of an enhanced mandatory product liability insurance policy concluded by himself which is for an amount reasonable for the products to be delivered by him, but at least in the amount of € 2.5 million, when so requested by us. If we request this, the policy must be sent to us within four weeks of our initial request being received.

10.6 The contracting partner undertakes to verify the conformity of the product with the provisions of food legislation at his own expense, with his own certificates or with certificates or expert opinions provided by a qualified expert witness whenever we request this.

11. Infringement of third-party trade mark rights

The Supplier shall ensure that no rights of third parties, such as industrial property rights, trademark rights and copyrights, or patents are infringed by our use of his deliveries or performances in accordance with the provisions of the contract. He shall exempt us from all claims which are asserted against us on grounds of infringement of such rights and from any legal defence costs incurred by us, provided that these are reasonable and were actually incurred, and shall do everything reasonable for him to put us in a position to prevent our use in accordance with the provisions of the contract from impairing third parties in any way.

12. Retention of title, assignment, insolvency

12.1 If food or raw ingredients intended for food are the contents of the delivery in question, the following shall apply: any wishes of the Supplier to secure his claims under the contract which diverge from a prolonged retention of title customary on the market shall require an individual agreement with us. If machinery, devices or installations are the content of the delivery, the following shall apply: any wishes of the Supplier for the securing of his claims under the contract which diverge from a simple retention of title customary on the market shall require an individual agreement with us.

12.2 The Supplier may neither assign nor pledge his claims, nor have them collected by third parties, without our prior consent. In the event of a prolonged retention of title for the benefit of the pre-supplier, consent to the assignment of the claim to the pre-supplier is deemed to be granted. Section 354 a HGB shall not be affected by this.

12.3 If insolvency proceedings are instituted for the Supplier's assets or if they are rejected on grounds of insufficient insolvency assets to cover the cost of such proceedings, or if the proper execution of a contract is called into question by the fact that he has ceased his payments more than merely temporarily, we shall be entitled to cancel the contract with immediate effect. The declaration must be made in writing.

13. Place of performance, place of jurisdiction, applicable law

13.1 German courts shall have sole jurisdiction in the international sphere. The place of performance for all deliveries and performances rendered by the Supplier shall be the place of their receipt.

13.2 The place of performance for our payments shall be Rostock. The same shall apply to the place of jurisdiction if the Supplier is a merchant as defined by the German Commercial Code. We may, however, also take legal action against him at his general place of jurisdiction.

13.3 German law shall apply to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).