



## **Standards Terms and Conditions for the Sale of Goods (Export) of the company “PBP Premium Baking Products GmbH”**

### **1. Sphere of Application and Formation of the contract**

- 1.1** The offer, order acknowledgement, order acceptance of sale of any products covered herein today or in the future is conditional upon the terms contained in this document. These conditions will be deemed accepted by the buyer by his order and the latest by taking delivery.
- 1.2** The Standard Terms and Conditions for the Sale of Goods (Export) shall exclusively apply, save as varied by express agreement accepted in writing by both parties.
- 1.3** The standard Terms and Conditions for the Sale of Goods (Export) shall also exclusively apply even if the buyer proposes his own conditional or different terms. Any conditional or different terms proposed by the buyer will not be binding upon the seller unless accepted in writing by the seller.
- 1.4** No order resulting from a quotation or an enquiry shall amount to a binding contract until accepted in writing by the seller. The contents of the contract shall consist of those obligations which are specified in the order acknowledgement of the seller.

### **2. Deliveries**

- 2.1** Data about the time of delivery and the time of performance is given by the best estimation on the basis of the current delivery situation. This information is to be understood as approximate only. A fixed delivery date can only be arranged by express agreement accepted in writing by the seller.
- 2.2** In a case of a fixed delivery date accepted in writing by the seller the seller is not liable for damages resulting from the failure to deliver in so far as such failure is a result of circumstances beyond the control of the seller or which cannot be overcome by the seller using his commercially reasonable efforts, in particular because of natural disasters or other cases of force majeure, governmental interferences or employment disputes. In the case of force majeure as mentioned above, the delivery date will be extended. If the extension takes longer than 20 working days and if the delivery is, due the extended delivery date no longer acceptable to the buyer, the buyer shall be entitled to withdraw from the effected part of the delivery contract.
- 2.3** The delivery time depends upon the exact specification of the order concerning quantity, quality and description. Furthermore the delivery time is dependent upon all necessary licenses being granted and that all documents, payments and security deposits are given to the seller in time.
- 2.4** If the seller is not able to deliver in time because of the reasons mentioned under Point 2.2 Sentence 1 and 2 or due to the other circumstances beyond his control, then he is authorized to store the object(s) being delivered at the risk of the buyer. The resulting costs will be borne by the buyer. The seller is not liable for the results of a delayed delivery due to these circumstances.

- 2.5** If the delivery is not carried out in time, then the buyer's entitlement to exercise his rights under the warranty shall depend on a failure to comply of the seller with an additional period of time of reasonable length for performance fixed by the buyer. The fixed period shall last for at least 10 days. Damages may only be claimed for the buyer if the seller or his representatives intentionally or negligently failed to fulfil the contract. The seller shall nevertheless be held responsible for not fulfilling any further essential contractual obligation. In case of gross negligence or intentional breach of a contractual obligation the Seller shall be liable only for the foreseeable damage that results from the contract. In case of negligent breach of an essential contractual obligation the liability is limited to the value of the delivery.
- 2.6** The seller shall not be obliged to compensate if he can obtain relief in accordance with Article 79 CISG or if he can provide proof that the internal obstacle to performance was neither created by him or an employee in a culpable manner nor has not culpably been cleared by him or an employee.
- 2.7** The Incoterms 2010 shall apply to the interpretation of the commercial contract and shall also include applicable supplements to the Incoterms.
- 3. Dispatch and transfer of risks**
- 3.1** In principle, the risk of loss or of damage to the goods shall pass to the buyer as soon as the delivering object leaves the business premises or the work of the seller or is provided to the buyer there. If the conditions of delivery differ from the conditions as mentioned above, then the rules of the transfer of risk shall apply in accordance with the Incoterms 2010.
- 3.2** The dispatch is carried out at the risk of the buyer provided that this is not otherwise agreed. The buyer shall bear the transportation costs. Insurances will only be concluded on the demand and at the expenses of the buyer.
- 3.3** Partial deliveries are permitted. Delivery cannot be rejected because of the lack of single parts of an order or because of minor complaints concerning the delivered products unless the purpose of the delivered product is considerably impaired.
- 4. Taking delivery and Requirement to notify a defect**
- 4.1** The buyer is obliged to meet the delivery date agreed on for the acceptance of the bought product. On immediate delivery a period of 5 working days for accepting the delivery is regarded as agreed if in doubt.
- 4.2** If the buyer does not accept the delivery in time, the seller is entitled without fixing a period of time to store the objects due at the expense and the risk of the buyer and to require payment of the purchase price. After the expiry of reasonable period of time, the seller is entitled to require compensation instead of the performance and/ or to withdraw from the contract. The obligation to pay compensation does not arise if the buyer is not responsible for the delay.
- 4.3** Costs and damages, particularly also additional freight costs and risks, due to an unauthorized refusal must be borne by the buyer. Returns of delivered goods shall not be accepted without the previous consent of the seller.

**4.4** The buyer shall examine the purchase object within 7 days following delivery by the carrier and shall report any defects to the seller within a further 7 days, provided that such defects are not insignificant. If defects could not be recognized at examination and come to light at a later stage, then the period starts in the time at which the buyer attains knowledge of the defects.

**5. Prices, payment and packing**

**5.1** In principle, the delivery is carried out in accordance with FCA warehouse (Incoterms), incl. the packaging required for the transportation. Delivery and price conditions shall be obtained from the valid price list that applies in each individual case. Customs, consulate charges and other taxes and charges as imposed due to prescriptions being necessary outside the Federal Republic of Germany shall be borne by the buyer.

**5.2** Delivery and calculation of price shall be carried out on the basis of the price list of the seller which is valid on the day of the completion of a contract, save as varied by express agreement in writing. The prices given there do not include freight cost, however they shall include normal packaging costs. Prices also do not include Value Added Tax. Divergent agreements are possible if stated in writing.

**5.3** The purchase price becomes payable on delivery. The purchase price is payable within 14 days of the due date without discount provided that nothing else has been agreed on. Following expiry of this period the buyer shall be in culpable delay of payment. Representatives of the seller are entitled to receive the payments only if they are in possession of an authority given in writing.

**5.4** If the payment is not made in accordance with the due date in the applicable regulations within 14 days after delivery or within the period agreed on, the seller can demand due date interest in the amount of 5 % of the applicable purchase price. As for the rest default interest shall be applied in the amount of 8 % above the main refinancing rate of the European Central Bank (ECB). Claims of further damages are also possible.

**5.5** We accept payment by cheque provided that the amount owed is credited to our bank account. In principle, promissory notes are not accepted. The buyer shall bear the costs of the collection and discounting.

**5.6** If the claims of the seller are endangered by the inefficiency of the buyer, then the seller is authorized to require adequate sureties or cash in advance in amount of the full purchase price. The seller remains authorized to withdraw the contract in accordance with Article 63 and Article 64 CISG or for other legal reasons. The seller can require compensation under the prerequisites of Article 61, Para.1, lit. b CISG. The claim shall also cover the loss of profit.

**6. Warranty**

**6.1** The warranty does not refer to damages which arise after the transfer of risk because of faulty treatment during transportation and storage.

- 6.2** The buyer shall store the products of P.B.P. Premium Baking Products GmbH in clean, dry, air-conditioned rooms. The relative air damp may not amount at most to any more than 65 per cent. The minimum Temperature may not fall under 18 degrees centigrade. The maximum temperature may not – neither short-term – exceed 22 degrees centigrade. P.B.P. Premium Baking Products GmbH products may not be stored with products of other manufacturers if these products may endanger or may impair the quality of the goods. Furthermore to the buyer shall ensure the protection of P.B.P. Premium Baking Products GmbH Products from insect attack (for example moths or beetles) as well as from rodents and from birds.
- 6.3** In principle, only the product specification of the manufacture is regarded as composition of the goods agreed on. The take-over of a durability guarantee or another manner of guarantee must be indicated in writing. Product details, tests and samples only are regarded as product specifications or composition specifications for quality, measurement, weight, taste and colour. These are only approximate opinion pieces and no guarantee is given.
- 6.4** The buyer shall examine the Contract Product within 7 days of receipt from the common carrier for any lack of conformity and give notice in writing of any such damages. Should any non-conformity of the Contract Product only be discoverable later, then the period for notification of the non-conformity shall commence upon discovery. If such notification is not made within a reasonable period of time, then the product is regarded as approved. The one to whose disadvantage it turns out bears the costs of the investigation e.g. for analyses.
- 6.5** If the delivered product is unsatisfactory or the seller has given a guarantee, then the buyer can demand subsequent improvement. The buyer can assert his rights to termination of the contract, reductions or subsequent deliveries only following a fundamental breach of contract only after an expiry of the subsequent improvement period set by the seller. The period must last at least two weeks. If the buyer chooses to terminate the contract he will not be entitled to compensation because of unsatisfactory products unless the seller has taken a guarantee for the composition of the product.
- 6.6** If the product is packed into packing material (foils, bags, glasses etc.) which the buyer has put or obtained, then the buyer is only entitled to make claims under the warranty against the seller if the buyer can prove that these claims would also exist if the packing materials normally used by the seller were used.
- 6.7** Except as set forth in the following (Sec. 6.8 and 6.9), any and all other of the Customer´s claims – for any legal reason whatsoever – are excluded. The Seller shall not be liable for any damage caused by processing of goods with obvious defects. The Seller shall not be liable for any damage to other products, equipment or material than the delivered goods, either. The Seller shall not be liable for lost profit or any other pecuniary loss of the Customer.
- 6.8** The above exclusion of liability shall not apply if the damage results from an intentional breach of the contract or if the Seller has guaranteed the quality of the goods.
- 6.9** If the damage results from gross negligence or a breach of an essential contractual obligation the Seller shall be liable only for the foreseeable damage typical of the contract.

## **7. Liability Limitation**

- 7.1** Except as set forth in Clause 2.5, 2.6 and 6.5 and 6.7 – 6.9 all of Customer´s claims for damages shall be excluded. The discharge from liability or the limitation of liability shall not apply to fatal injuries or other injuries to health of a person.
- 7.2** Clause 7.1 shall not apply to claims pursuant to Product Liability.
- 7.3** To the extent that the limitations of liability according to Sec. 6.8 – 6.9 do not limit the producer´s liability pursuant to Article 823 of the German Civil Code, the liability of the Seller shall be limited to an adequate amount covered by his product liability insurance in accordance with German General Conditions of Product Liability Insurance (AHB).
- 7.4** Clause 7.1 shall not apply if the damage was caused intentionally. If the damage was caused by gross negligence or a breach of essential contractual obligations our liability shall be limited to the foreseeable damage typical of the contract.
- 7.5** The discharged from liability and the limitation of liability shall also apply with respect to the personal liability of persons employed by the Seller in the performance of the contract.
- 7.6** Whilst using raw materials or packing materials provided by the buyer the seller shall not be liable for compliance with legal regulations relating to food (composition of the raw materials, packing, declaration etc.)

## **8. Retention of title**

- 8.1** All deliveries are carried out under retention of title with the following additions.
- 8.2** The delivered goods remain property of the seller (“privileged goods”) until the buyer has paid in full all the claims including the claims arising in future from the business relationship including any outstanding balances owed to the seller. The buyer is obliged to insure the goods (particularly against fire, water, storm, theft, third-party liability etc.) against all possible forms of financial damage. He shall submit his claim in advance from the insurance contracts to the seller who shall accept this assignment.
- 8.3** If the goods are processed or reshaped by the buyer and if processing is done with goods that seller has no property in, the seller shall become co-owner of the goods. The same shall apply if seller´s goods are completely reshaped and mixed with other goods.
- 8.4** The claims of the buyer from the resale of the product concerned shall be assigned to the seller regardless of whether the goods concerned were resold without or after processing and whether it is resold to one or to several buyers. The seller accepts this assignment. The claim assigned serves to protect the privileged seller only to the amount of the value of the privileged goods sold. The assignment of the required purchase price applies only in the amount of the value of the goods concerned in the case that the privileged goods are sold by the buyer together with goods which are different and do not belong to the seller.
- 8.5** The buyer is entitled and authorized to the further disposal of the product concerned only with the stipulation that the purchase price claim changes in accordance with clause 8.4 to the seller. The buyer is not authorized to make other disposals over the privileged goods including their pawning. About every impairment as well as execution measures of third parties into the reservation product or in the claims ceded in advance the buyer has in writing to teach the seller immediately and has to hand over the documents necessary for an intervention.

**8.6** The seller authorizes the buyer to make collection of the money due from the resale whilst retaining the right to revoke this authority. The seller shall not exercise his right to collect moneys due provided that the buyer fulfils his financial obligations to the seller. At the request of the seller the buyer shall provide the details of parties responsible for moneys outstanding and shall inform such debtors of the assignment of these debts to the seller. The seller is authorized to inform the debtors about the assignment from the buyer to the seller.

**8.7** If the value of the assignments granted to the seller exceeds the moneys due to him by more than 20 %, seller is obliged at the request of the buyer to carry out reassignments and release of assignments of his choice. With the full payment of all moneys due to the seller arising from the business relationship the legal right of the claims and the products bought are vested in the buyer outstanding.

**9. Written Form**

Contracts, contract changes and other declarations of intentions necessary by law shall be in writing.

**10. Choice of Law**

The legal relationship of the parties shall be governed by the United Nations Convention of 11 April 1980 on Contracts for the International Sale of Goods (CISG). As far as the CISG doesn't meet any regulations, German law is valid under exclusion of the German international civil law.

**11. Place of Performance, Place of jurisdiction, Salvatory Clause**

**11.1** Place of performance is the seat of the seller in Sassenberg, Germany. Payment place for the product is the seat of the seller in Sassenberg. The parties agree that the place of jurisdiction for all disputes arising from this contract is the court responsible for Sassenberg. Each contracting party also is authorized, however, to bring an action against the other contracting party in the jurisdiction generally applicable to such other contracting party.

**11.2** If one or several of these regulations should be held to be or become ineffective, then the validity of the other regulations through shall not be affected. Instead of the ineffective regulation a regulation becomes effective, which comes closest to the pursued purpose.