

General Conditions of Sale DeutscheBack GmbH & Co. KG

Update: June 2009

1. Relevant Conditions; Applicability

1.1 The following conditions of sale shall exclusively apply to all our deliveries and services unless otherwise expressly agreed in writing. They shall further apply without express agreement to all future business between the parties as well as if we are aware of a purchaser's conditions which are contrary to or which differ from our conditions of sale and complete the delivery or service without reservation. Contrary terms and conditions of the Purchaser shall only be valid if they have been expressly confirmed by us in writing.

1.2 Our conditions of sale shall only apply to business transactions with business entities (as defined in German Civil Code Article 14, BGB), legal public entities and trusts governed by public law.

2. Responsibility for Food and Labelling Regulations; Packaging Materials

2.1 We shall manufacture the product in accordance with German Food Law.

2.2 The Purchaser shall provide us with requirements under labelling law for the packaging and labelling of products for distribution in the EU and for a future sales market to be agreed between the parties to the contract. The responsibility for compliance of labelling with the respective statutory provisions and regulations lies with the Purchaser so far as these have been provided to us by the Purchaser.

2.3 The design of the packaging as well as the release of the final artwork shall remain the concern of the Purchaser. The Purchaser is exclusively responsible for the correctness of the packaging and labelling design under the statutory provisions for food labelling. The stocks of packaging materials shall remain our property.

3. Conclusion and Content of the Supply Agreement

3.1 Our offers are always made subject to confirmation unless we specify a binding validity period. A supply agreement shall first come into being when we expressly confirm in writing the Purchaser's written order or we make the delivery without a separate confirmation. For the content of the supply agreement our confirmation of order shall be decisive; for deliveries without a separate confirmation of order our delivery note shall serve as the confirmation of order.

3.2 Oral declarations shall not be binding in any case.

3.3 The requirement of written form shall be satisfied by transmission using fax or electronic means.

3.4 All statements, in particular those contained in our offers and brochures or statements made in the context of our advice and information, give only approximate values and are not guarantees or specifications of conditions unless otherwise expressly stated in our confirmation of order. To the extent that there are no limits on permissible variations stated in the confirmation of order, and that no expressly acknowledged Purchaser specifications are given, variations which are customary in trade are permitted. Any public statements, promotion or advertising by us or third parties do not constitute any specification of conditions of the goods. If however the Purchaser is entitled to a warranty claim or claim for damages, then **Clause 7** shall apply.

4. Delivery and Passing of Risk

4.1 Where delivery periods and delivery dates are not expressly referred to in the confirmation of order as binding, the Purchaser can set us a reasonable deadline for delivery two weeks after the expiry of these delivery periods and dates. We shall be in default in the first instance upon the expiry of this further deadline. Delivery periods shall not begin to run until the Purchaser has fulfilled its possible contribution or payment obligations.

4.2 In the case of delayed delivery or the impossibility of delivery we are only liable for damages in accordance with **Clauses 7.4** and **7.7**. The damages for compensation that we must pay thereafter are limited to 0,5% of the value of the item to be delivered or part thereof for each full week of delay up to 5% of the value of the delayed delivery or part.

4.3 In the event of a force majeure such as operational disturbances, transport delays, industrial action, in particular strikes or lock-outs, as well as non-delivery, incorrect or delayed deliveries by our own suppliers (self supply reservations) and other hindrances to services which have not been caused by us, we can postpone the delivery for the duration of the hindrance and a reasonable start-up time. To the extent that a continuing hindrance is anticipated, or these events continue longer than three months, we are entitled to rescind the contract in whole or in part. In this case, the Purchaser is not obliged to provide its consideration or consideration in part and shall immediately receive back any payments that have already been made by him; he shall not be entitled to any claims for compensation.

4.4 We shall be entitled to make partial deliveries. The place of performance is always Ahrensburg.

4.5 If delivery on demand is agreed, **Clause 4.7** shall apply correspondingly when demands for deliveries are not made in due time.

4.6 All sales are calculated ex works Ahrensburg. Shipping and transport shall always be at the risk of the Purchaser. The risk shall be transferred to the Purchaser, also in the case of partial deliveries, as soon as the shipment has been handed over to the transport company - irrespective of whether it belongs to one of our companies or is a third party - or for the purpose of the shipment the item has already left our works, insofar as **Clause 4.7** is not applicable.

4.7 Transfer of risk shall also take place in default of acceptance by the Purchaser. Storage costs shall be borne by the Purchaser after transfer of the risk. Without prejudice to our further claims we are entitled to charge storage costs at a flat rate of 0,5% of the amount of the invoice for each month or at the amount of the actual damages, unless one of the parties can prove higher or lower damages.

5. Prices; Payment

5.1 Our prices are calculated inclusive of standard packaging costs, but are exclusive of the respective statutory value added tax.

5.2 Unless otherwise agreed in writing, all shipping costs are to be borne by the Purchaser. These shall include any freight tariffs and duty rates that are valid on the day of the delivery and other charges payable on the shipment.

5.3 The Purchaser is not entitled to reduce our claims to counter claims or to exercise a right of retention unless the counter claims or right of retention have been acknowledged by us in writing or legally ascertained.

5.4 The payment conditions shall be ascertained in the respective contracts.

5.5 If periods for payments are exceeded we shall charge interest at 8 percentage points above the respective basic interest rate of the European Central bank per annum, unless we can prove higher damages.

5.6 If there are justifiable doubts as to the Purchaser's ability to pay, in particular, payment arrears, subject to further claims, we may cancel payment targets granted as well as deliveries with advance payment or make concessions dependent upon other securities.

5.7 The Purchaser is not entitled to assign to any third parties claims arising out of this contract without our written consent.

6. Retention of Title

6.1 All products delivered shall remain our property (retained goods) until the Purchaser has settled all claims existing and arising after the conclusion of the contract.

6.2 Any treatment or processing of the retained goods shall take place with ourselves as manufacturer within the meaning of § 950 BGB, without any obligation on our part. Treated and processed goods shall be deemed retained goods. If the Purchaser carries out any treatment, processing, combination or mixing of the retained goods with goods from another source to make a new item or mixed item respectively, we are entitled to co-ownership in proportion to the invoice value of the retained goods at the time of delivery as against the value of the other processed or mixed goods. The part that is co-owned shall be deemed to be retained goods.

6.3 If the retained goods are combined with other things and one of the things which belongs to the Purchaser can be regarded as the principal thing within the meaning of § 947 BGB, it is hereby agreed that a co-owned part in proportion to the invoice value of the retained goods as against the value of the principal thing shall be assigned to us and the Purchaser shall preserve it for us free of charge. The part that is co-owned shall be deemed to be retained goods.

6.4 The Purchaser must preserve any retained goods for us. Upon request at any time in the place of storage, we shall have the possibility of carrying out stock taking and sufficient labelling. The Purchaser shall inform us without delay of details of any distraint or derogation of our rights by third parties so that we may use all legal means to prevent this from happening.

6.5 The Purchaser may only sell the retained goods in the normal course of business under his normal conditions and under an agreement as to a retention of title to the extent required by us, if it is guaranteed that the Purchaser's claims under this further sale are assigned to us in accordance with **Clauses 6.6** to **6.8**.

6.6 The Purchaser hereby assigns to us any claims arising out of the further sale of the retained goods, as well as in the context of works contracts or contracts for the delivery of chattels that are to be manufactured or produced together with all ancillary rights. These shall serve to the same extent to our security for the retained goods. The Purchaser is only entitled to assign claims to third parties with our prior written consent.

6.7 If the Purchaser sells the retained goods together with other goods which were not supplied by us, the assignment of the claims arising out of the further sale shall only be up to the value of the invoice value of our retained goods at the time of the delivery. In the case of the sale of goods in which we have co-ownership rights pursuant to **Clause 6.2** and **6.3** respectively, the assignment of claims shall only be up to this co-owned share.

6.8 If the assigned claim is included in an ongoing invoice, the Purchaser shall hereby transfer a portion of the balance in an amount corresponding to this claim, including the final balance, to our current account.

6.9 Until cancellation, the Purchaser is entitled to make any claims arising out of further sales pursuant to **Clauses 6.5** to **6.7**.

6.10 If the Purchaser fails to fulfil its obligations under this contract or other contracts with us or if we become aware of circumstances which reduce his credit worthiness, then (a) we may prohibit the further sale, treatment, processing as well as mixing or combination of the retained goods with other goods; (b) we can withdraw from this contract; then the Purchaser's right of possession in the retained goods shall expire and we can demand the retained goods; we are then entitled to enter onto the Purchaser's premises and take possession of the retained goods at the Purchaser's cost; (c) the Purchaser shall inform us on demand of the name of the debtor of the claims that have been assigned to us; (d) we are entitled to cancel the direct debit authorisation that was granted.

6.11 If the value of the security provided to us exceeds the aggregate of our secured claims by more than 20%, we are obliged to release security of our choice to this extent at the request of the Purchaser.

7. Warranty/Liability; Inspection for Defects

7.1 The Purchaser must carefully inspect the goods without delay after their arrival at the destination point, in particular as to condition and quantity, even if examples or samples have been previously sent. If cases, boxes or other containers are sent random inspections shall be carried out. The delivery is deemed to be approved if no notification of defects is received by us in writing with an exact description of the defect within 10 days of arrival of the goods at the destination in the case of obvious defects and within 10 days of discovery in the case of defects which are not recognisable upon inspection.

7.2 Damages in transit must be notified to the carrier without delay; in such cases the notification obligations according to the German Freight Forwarder's Standard Terms and Conditions [ADSp] shall apply.

7.3 For notifications of defects which are justified and made in good time, we shall provide at our option post performance in the form of rectification or replacement delivery. If we fail to do so we shall incur liability under the statutory warranty provisions. For all claims for compensation that the Purchaser is entitled to due to or in connection with defects in the delivered goods **Clauses 7.4** to **7.7** shall apply.

7.4 For any claims for damages made by the Purchaser based on whatever legal grounds, amongst others, delay, defective delivery, breach of duties arising out of an obligation or breach of duties arising from the contractual negotiations, an action in tort, product liability duty (except for liability pursuant to product liability legislation), we shall only be liable in cases of deliberate intent or gross negligence. Liability for slight negligence is excluded unless as a result essential contractual obligations are breached, where the fulfilment of such obligations first facilitates the due performance of the contract and where compliance with such obligations is something upon which the parties to the contract regularly rely. In this case however, we are only liable for foreseeable and typical damages at the time of the conclusion of the contract. This limitation shall not apply to any loss of life, bodily injuries or injuries to health suffered by the Purchaser. Any personal liability on the part of our legal agents, vicarious agents and members of the company for damages caused to you through slight negligence is excluded.

7.5 We are not liable insofar as we have manufactured or packaged the products in accordance with specifications given by the Purchaser and do not know and should not have known by means of other products developed by us that this would cause the products to be defective.

7.6 At our request, the Purchaser is obliged to pursue at first all claims which come into question against our pre-suppliers. For this purpose, we are obliged to assign to the Purchaser any possible warranty or compensation claims that we have against our pre-suppliers. If the claim made against our pre-supplier remains unsuccessful, the Purchaser is entitled to make a claim against us pursuant to this **Clause 7** to the extent that the Purchaser assigns back to us the claims for defects that we assigned to him.

7.7 All warranty claims by the Purchaser are subject to a limitation period of one year calculated from the beginning of the statutory limitation period. This shall not apply if we have fraudulently concealed the defect or if our strict liability for compensation pursuant to **Clause 7.4** is applicable.

8. Applicable Law / Jurisdiction

8.1 The dealings between us and the Purchaser shall be governed by the laws of the Federal Republic of Germany. The UN Convention on the International Sale of Goods (CISG) as well as other, including future, cross-national or international conventions shall not be applicable even after their adoption by German law.

8.2 Jurisdiction for all disputes in connection with delivery transactions shall be at our discretion either Ahrensburg or the registered office of the Purchaser, for claims by the Purchaser jurisdiction shall exclusively be Ahrensburg. Statutory provisions on exclusive jurisdiction shall remain unaffected.

8.3 Insofar as these conditions of sale are invalid in whole or in part, the remainder of the contract shall remain valid and the statutory provisions shall apply.

DeutscheBack GmbH & Co. KG

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General Conditions of Purchase Deutsche Back GmbH & Co. KG

Update: June 2009

1. Relevant Conditions; Applicability

- 1.1 Our following conditions of purchase shall exclusively apply to all deliveries and other services of supplier unless otherwise expressly agreed in writing. Any of the suppliers' conditions which are contrary to or which differ from our conditions shall not be recognised unless they have been expressly accepted by us in writing. This shall also apply if we are aware of a supplier's conditions which are contrary to or which differ from our conditions of purchase and accept the supplier's delivery without reservation. The supplier acknowledges our conditions of purchase in its acceptance of the order.
- 1.2 Our conditions of purchase shall also apply without express agreement to all future business with the supplier.
- 1.3 Our conditions of purchase shall only apply to business transactions with business entities (as defined in German Civil Code Article 14, BGB), legal public entities and trusts governed by public law..

2. Ordering

- 2.1 For the extent of the supplier's contractual obligation our written order shall be decisive. It shall contain a full description of the goods to be supplied as well as a price and binding delivery date.
- 2.2 We shall remain bound by our written order for seven (7) days after the date of the order. Any confirmations of orders which are received after this period shall be deemed as new offers and shall require our written acceptance. Confirmation of orders by the supplier must be made in writing.
- 2.3 The requirement of written form shall be satisfied by transmission using fax or electronic means.

3. Prices; Conditions of Payment

- 3.1 The prices specified in the order shall be binding. The prices stated are net prices without value added tax. Unless otherwise agreed in writing the prices shall include all transport or despatch costs as well as packaging. Any arising stamping costs, discounts or other charges shall be borne by the supplier. Transportation and despatch respectively shall be at the risk of the supplier.
- 3.2 Unless otherwise agreed in writing, we shall pay the purchase price at a discount of 3% if it is paid within 14 days calculated from delivery and receipt of the invoice, or the net purchase price if payment is made within 30 days of receipt of the invoice. The supplier is obliged to provide on all invoices the respective parts ordered and its supplier number as well as our purchase contract number or order number. If this is not complied with, we shall not be responsible for any resulting delays in payment.
- 3.3 The supplier is not authorised to assign any claims against us to a third party unless we give our express written consent.
- 3.4 We shall be entitled to any rights of retention or set-off by virtue of statute or contractual agreement.

4. Conditions of Delivery; Delayed Delivery

- 4.1 Unless otherwise agreed in writing, all deliveries from the supplier must be made to the „DDP agreed and nominated place of delivery“ in accordance with the version of INCOTERMS 2000 (International Commercial Terms) which is in force at the time of the order.
- 4.2 The supplier is only authorised to make partial deliveries or fulfil partial services with our express written consent.
- 4.3 The delivery time stated in the order shall be binding and any specified periods of delivery shall start to run from the date of the order. If the supplier realises that he is not in a position to meet the delivery date, we must be informed of this in writing without delay.
- 4.4 The supplier is obliged to indicate on all despatch papers and delivery certificates the respective part ordered and its supplier number as well as our purchase contract number and order number. Should the supplier fail to do this, we shall not be responsible for any resulting delays.
- 4.5 The place of performance for all supplies made shall be the agreed place specified in the order for the delivery of goods.
- 4.6 In the event of delay to the deliveries we are entitled to our statutory claims, in particular interest for delay at 8% above the then basic interest rate of the European Central Bank. Furthermore, we shall be entitled to claim compensation for each full week of delay in the amount of 1% of the net sum up to a maximum however of 10% of the net sum. Proof of a higher or lower level of damages by the parties is permitted.
- 4.7 In the event of a force majeure such as war, transportation or operational disturbances, industrial action, currency disturbances or other hindrances to delivery for which we are not responsible, we are entitled to require performance at a later date or to set a reasonable new deadline for services after the expiry of which we are able to withdraw from the contract in whole or in part without any claims for compensation arising on the part of the supplier. The supplier must inform us in writing without delay of any events of force majeure.
- 4.8 The supplier is not entitled to assert any rights of disclaimer of service or rights of retention unless such rights have been acknowledged by us in writing or legally ascertained.

5. Retention of Title

Any extended right of retention on the part of the supplier – in particular the retention of title in the delivered goods until the full satisfaction of all requirements under the entire business arrangement - shall be excluded. In particular any processing of the goods within the meaning of § 950 BGB shall not be undertaken for the benefit of the supplier.

6. Quality Assurance

The delivered goods must comply with the latest technical standards set out in the then current national and international statutory provisions, regulations and directives from the authorities and professional organisations and trade associations as well as the specifications and quality requirements contained in the order. The supplier is obliged to point out to us in writing any possible limitations on use and declarations of obligation for the delivered goods.

7. Guarantee; Inspection for Defects

- 7.1 The supplier guarantees that the delivered goods comply with the sample and/or the contractual agreements. If no specific criteria as to quality have been agreed then the goods must be of usual commercial quality. Any specifications as to quality or quantity as well as other specifications contained in the order must be strictly observed.
- 7.2 The supplier further guarantees that the delivered goods are in all respects, though especially as to composition, construction and labelling, free of defects, and that the goods are freely marketable in Germany and/or the country specified in the order,, and that the distribution of the goods neither breaches legal regulations nor encroaches on the rights of third parties, in particular trademark rights and distribution relationships.
- 7.3 We are entitled to make any statutory claims for defects without limitation.

7.4 Insofar as immediate inspection of the delivered goods is practicable in the due course of business, we shall inspect the goods following delivery to agreed place of delivery without delay. Defects which are identified during the said inspection must be notified directly after the end of the inspection. Defects which were not identifiable during the inspection must be notified directly after their discovery. Notice of defects can be made in writing or orally.

7.5 The supplier agrees that the inspection of goods may be carried out on a sample basis as far as this corresponds to the nature and extent of the delivery as well as to the usual course of business..

7.6 The supplier cannot claim a breach of the obligation on our part to notify defects if the defect in the goods arises from circumstances of which the supplier is aware or of which it is only unaware owing to gross negligence

8. Products with Date Stamps

For products which show or must show a date stamp as to their shelf life (minimum shelf life date, consumption date etc.), the remainder of the shelf life - which means the time during which the purchaser makes the product available for marketing, calculated from the day after the arrival of the product - must be at least 80% of the entire shelf life (the period between manufacture and the given date). Deliveries of goods which do not fulfil this requirement are deemed defective.

9. Recall, Warning and Other Statutory Product Safety Measures

- 9.1 If the supplier is obliged under statutory safety provisions to inform the relevant authorities of an indication that the goods could endanger the health or security of people and/or objects or that the goods do not comply with other requirements for duly placing the product on the market, the supplier must inform us in writing of the same without delay.
- 9.2 If a warning, recall or other such measure ordered pursuant to statutory product safety provisions is issued in relation to the goods, or the supplier or earlier supplier or a manufacturer issue such a measure, the supplier is liable to us for any resulting damages including the costs for the withdrawal of the goods, as far as the supplier is responsible for the reason behind the measure.
- 9.3 If we issue a warning, recall or other necessary measure pursuant to statutory product safety provisions, the supplier shall be given the opportunity to make any prior comments provided this appears practicable and reasonable particularly in view of the urgency of the measure. The supplier is liable to us for any damages arising from the measure including the necessary costs for the implementation of the measure, as far as the supplier is responsible for the reason behind the measure.
- 9.4 If any actual or alleged health risks are made public, especially in the media, advising against the purchase or use of the goods or products of a comparable kind or products with comparable constituents, we are entitled to cancel any orders that have not yet been delivered as well as to return any goods already delivered upon reimbursement of the purchase price. The right to cancel and to return goods can be exercised within one month of the warning being made public for the first time. Further claims on our part due to defective goods shall remain unaffected.

10. Traceability

The supplier shall guarantee the continuous and complete traceability of the goods delivered by him pursuant to the legal requirements then in force (in particular EC Regulation No. 178/2002, as well as future regulations). In addition to the goods themselves, the requirement of traceability also applies to their constituents (ingredients/raw materials, additives/auxiliary substances), the time of manufacture/production, the packaging materials as well as the characteristics of the manufacturing process. Where required, such as in cases of an official letter or a customer complaint, the supplier is obliged to provide us on demand with any necessary information relating to the good.

11. Certificates of Origin

If required by us for the possible export of goods within and outside Europe, the supplier is obliged to make available to us without delay and free of charge, any necessary or appropriate documents or declarations (declarations of origin, health certificates, etc).

12. Liability; Indemnity

- 12.1 The supplier shall indemnify us on first demand from all third party claims that are made against us arising out of breaches of obligation, breaches of trademark rights or interference by the supplier to other third party rights, if and to the extent to which the supplier is similarly obliged to us in the internal relationship. The supplier shall reimburse us for any necessary expenses arising from or in connection with the claim by the third party.
- 12.2 If a producer's liability claim is made against us due to a fault in the goods delivered by the supplier, the supplier shall indemnify us on first demand from the producer's liability resulting from the fault insofar as the cause of the fault is within the supplier's field of control and organisation and if the supplier is liable externally. The supplier is obliged to maintain an extensive product liability insurance policy; any further claims for compensation that we have shall remain unaffected.
- 12.3 In the context of its liability for events of damage under **clause 12.2** the supplier is also obliged pursuant to §§ 683, 670 BGB or pursuant to §§ 830, 840, 426 BGB to reimburse any possible expenses arising from or in connection with any recall action implemented by us. Insofar as it is practicable and reasonable, we shall inform the supplier of the content and extent of such recall measures and shall give him an opportunity to make any comments. Our other statutory rights shall remain unaffected.

13. Confidentiality

The supplier shall regard the full contents of our order as a business secret and shall treat it as confidential.

14. Applicable Law; Jurisdiction

- 14.1 The dealings between us and the supplier shall be governed by the laws of the Federal Republic of Germany. The UN Convention on the International Sale of Goods (CISG) as well as other, including future, cross-national or international conventions shall not be applicable even after their adoption by German law.
- 14.2 Jurisdiction for all disputes in connection with delivery transactions shall be at our discretion either Ahrensburg or the registered office of the supplier, for claims by the supplier jurisdiction shall exclusively be Ahrensburg. Statutory provisions on exclusive jurisdiction shall remain unaffected.
- 14.3 Insofar as these conditions of purchase are invalid in whole or in part, the remainder of the contract shall remain valid and the statutory provisions shall apply.

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