

General Delivery and Payment Conditions of Landguth Heimtiernahrung GmbH

1. General provisions

Our deliveries and services are carried out exclusively on the basis of the following terms and conditions. This also applies to all future transactions, even if these terms and conditions are not specifically referred to in an individual case. The terms of purchase or other business conditions of our contract partner (hereinafter referred to as the orderer) are hereby explicitly objected to. We shall not be bound by them even if we do not explicitly object to them upon the conclusion of the contract.

2. Offers and the conclusion of the contract

1. Our offers are subject to confirmation with regard to the delivery quantity, delivery time and price.

2. Assurances with regard to quantities, delivery times and prices shall only be legally binding if we confirm them in writing. A delivery note or invoice shall also be deemed to be written confirmation. Orders brokered by sales representatives are contract offers which require our written confirmation for legally effective acceptance.

3. Prices

1. All prices should be understood as being subject to the addition of VAT.

2. We have the right to pass on to the orderer in a corresponding amount any cost increases with regard to materials, manufacturing, assembly, personnel, delivery or similar resulting from price increases in the interim period.

4. Payment/prohibition of setting off/right of retention

1. Our invoices are due and payable immediately without any deductions. The costs of the transfer of funds shall be borne by the orderer. Incoming payments of the orderer shall be credited in accordance with Article 366.2 of the German Civil Code (*Bürgerliches Gesetzbuch – BGB*).

2. In the event of a delay in making payment, the orderer shall have to pay interest for delay in the amount of 12%, and at least in the amount of the statutory rate of interest for delay in accordance with Article 288 BGB. If the interest rate referred to in sentence 1 exceeds the statutory interest for delay under Article 288 BGB, the orderer shall have the right to provide proof that no losses resulted from the delay or that the resulting losses were not in that amount. If we provide proof of higher losses resulting from the delay, we shall have the right to claim them.

3. If the orderer delays in making a payment, all receivables shall be immediately due for payment, even if have accepted promissory notes by way of payment for their settlement.

4. If a significant deterioration occurs in the orderer's financial position which jeopardises our claim, we shall have the right to demand prepayment or appropriate security. This shall also apply if we only subsequently learn of such circumstances which existed before the conclusion of the contract. If the prepayment or security are not provided, despite a reminder and the setting of a reasonable additional time limit, within the additional time limit, we shall have the right to rescind the contract or demand compensation instead of performance. In the above situations, the payment or provision of security

cannot be made dependent on the return of current promissory notes.

5. Setting off with counterclaims by the orderer is excluded, unless the counterclaims are undisputed or have been established with legally binding effect. The assertion of a right of retention by the orderer is excluded unless it is based on the same contractual relationship or the counterclaims are undisputed or have been established with legally binding effect.

6. Only our employees and representatives with a written power of attorney have the right to collect payments.

7. We have the right without limitation to assign our receivables to third parties.

5. Delivery time/delivery

1. The delivery times specified by us are approximations and are subject to correct and timely delivery by our own suppliers. We shall notify the orderer as soon as possible of any delays in making delivery which arise due to our own suppliers failing to make delivery correctly and on time.

2. In the event of delays in making delivery resulting from events of *force majeure*, riots, strikes, lock-outs, exhaustion of raw materials or operational disruptions for which we are not responsible, including at our upstream suppliers, the delivery time shall be extended by the period until the disruption is eliminated, provided that the disruption affects the production or delivery of the subject of the delivery. We shall notify the orderer of the beginning and end of such impediments as soon as possible. We also have the right, in the event of long-term operational disruptions resulting from an event of *force majeure*, riots, strikes, lock-outs, exhaustion of raw materials or operational disruptions for which we are not responsible or if, through no fault of our own, we do not receive deliveries from our upstream suppliers, to rescind the contract partially or completely to the exclusion of any claims for compensation.

3. Reasonable partial deliveries are permitted.

6. Storage information

With regard to the storage and safekeeping, first and foremost the hygiene regulations (*Verordnungen*) of the individual German states are applicable.

7. Official sampling

In the event of official sampling, a counter sample must be demanded without fail and promptly sent to us or given to our representative in the form provided by the official and officially sealed, for the purpose of our own examination.

8. Marking

Where local or trade practice differs, the correct marking of the goods in the event of the resale thereof shall be the orderer's responsibility.

9. Claims for defects/compensation

1. In the event of justified complaints, we shall render the supplementary performance in the form of repairs or replacement delivery, according to our choice. The orderer shall also be entitled to the further statutory entitlements to rescind the contract or demand a price reduction if the relevant statutory requirements for this are fulfilled. Article 377 of the

German Commercial Code (*Handelsgesetzbuch*) remains unaffected.

2. We, our statutory representatives, vicarious agents and assistants shall only be liable without limitation for compensation for damage if the orderer's claim for compensation:

a) relates to an injury to life, the body or health resulting from wilful misconduct or negligence by us or one of our statutory representatives or vicarious agents; or

b) relates to a breach of obligation resulting from wilful misconduct or gross negligence by us or our statutory representatives or vicarious agents or the fraudulent concealment of a defect; or

c) is based on the German Product Liability Act (*Produkthaftungsgesetz*); or

d) is based on the violation of a guarantee, particularly failure to fulfil a guarantee of quality/characteristics. If the above requirements are not fulfilled, the amount of our liability in the event of a breach of a key contractual obligation resulting from simple negligence shall be limited to the typically occurring and foreseeable damage.

The statutory allocation of the burden of proof applies.

Any more far-reaching claims for compensation for losses are excluded, irrespective of their legal basis.

10. Time limitation for claims for defects

Claims of the orderer relating to defects shall expire by time limitation after one year, unless they are claims for compensation for expenses under Article 478.2 BGB; or

2. the defect results from an intentional breach of obligation by us or our statutory representatives or vicarious agents.

3. the claims are claims for compensation which are not excluded under Section 9.2. In the situations provided for in items 1 to 3, the statutory time limitation periods apply.

The statutory provisions on the suspension, suspension of expiry and recommencement of the time limitation period apply.

11. Retention of ownership

1. We shall retain the ownership title to all goods delivered by us (goods subject to retention of title) until the purchase price has been paid in full. If the orderer is a company, we shall retain the ownership title to all goods delivered by us until all our receivables from the business relationship, including from contracts concluded later (irrespective of the legal basis), have been paid.

2. The orderer shall have the right to resell the goods in the normal course of business, provided that it is not in default in the fulfilment of its obligations towards us and does not cease making its payments. In particular, the following applies:

a. The processing or transformation of the goods subject to retention of title shall be carried out for us as the manufacturer in the meaning of Article 950 BGB, without this giving rise to any obligation for us. As a result of the processing or transformation of the goods subject to retention of title, the orderer shall not acquire the ownership title to the new item in accordance with Article 950 BGB. If the goods subject to retention of title are processed, combined or blended with or

connected to other items, we shall acquire a share in joint ownership of the new item according to the ratio of the invoice value of our goods subject to retention of title to the total value. The provisions applicable to goods subject to retention of title shall apply accordingly to the joint ownership shares that arise in accordance with the above provisions.

b. The orderer hereby assigns to us its receivables from the resale with all ancillary rights on a pro rata basis, including if the goods are processed, combined or blended and we have acquired joint ownership to them in the amount of our invoice value. If the goods subject to retention of title are processed, combined or blended, we shall be entitled from that assignment to an appropriate fraction of the respective claim from the resale according to the ratio of the invoice value of our goods subject to retention of title to the invoice value of the item. For the event that the goods subject to retention of title are sold together with other goods that were not supplied by us, the orderer hereby assigns to us a share of the claim from the resale in the amount of the invoice value of our goods subject to retention of title. For the event that the orderer sells that claim in connection with real factoring, it assigns to us the claim against the factor that replaces it. For the event that the receivables from the resale are subjected by the orderer to a current account relationship with its customer, the orderer assigns to us its receivables from the current account relationship in the amount of the invoice value of the goods subject to retention of title. We hereby accept the above assignments.

c. The orderer shall only have the right to resell the goods if it too reserves the ownership title until payment has been made in full of its receivables from the resale.

d. The orderer shall have the right to collect the claims assigned to us until we revoke that right. The collection authorisation shall expire upon its revocation, which shall occur if the orderer delays in making payment or ceases making payment, in which case we shall be authorised by the orderer to notify the customers of the assignment and to collect the receivables ourselves. The orderer shall be obliged to provide us, at our request, with a precise breakdown of the receivables to which it is entitled, specifying the names and addresses of the customers, the amount of the individual claims, the invoice date etc., and to provide us with all the information and documents necessary for the assertion of the assigned claims and allow us to verify that information.

e. Any amounts that the orderer receives from assigned claims must be kept separately until they are transferred.

3. Neither the goods subject to retention of title nor the assigned receivables can be pledged or assigned for security. We must be immediately notified of any attachments, specifying the attaching creditor.

4. If the value of the security to which we are entitled exceeds our total receivables from the orderer by more than 10%, at the buyer's request we shall be obliged to release it to that extent.

5. The orderer shall safekeep the goods subject to retention of title for us free of charge. It must insure them against the usual risks, such as fire, theft and water damage to the customary extent. The orderer hereby assigns to us its claims for compensation to which it is entitled as a result of damage of the above-mentioned type against insurance companies or

other parties obliged to provide compensation, in the amount of our receivables. We accept that assignment.

12. Place of performance/place of jurisdiction

The place of performance and place of jurisdiction is the location of our registered office.

We shall also have the right to take legal action against the orderer in its general place of jurisdiction.

13. Governing law

The substantive laws of the Federal Republic of Germany are exclusively applicable, to the exclusion of the UN Vienna Convention on Contracts for the International Sale of Goods.

As at August 2008