

Terms and Conditions for the Sale and Delivery of Goods

1 Scope of Application

- 1.1 These Terms and Conditions for the Sale and Delivery of Goods ("Terms") shall govern the delivery of all our products and goods (collectively "Goods"), even if these are executed without reliance on or express reference to these Terms. The buyer acknowledges these Terms when he places the order, at the latest when he receives the Goods. We only acknowledge buyer's deviating terms and conditions, including but not limited to terms and conditions for the purchase of goods, if we have expressly agreed with these in writing.
- 1.2 Any amendment or any collateral agreement must be confirmed by us in writing in order to be effective and shall only apply for the particular case.
- 1.3 Our quotes are entirely without engagement and non-binding. The buyer shall be bound to his orders two weeks after we have received those orders (these represent the offer in a legal sense). These orders are accepted only if we have issued a written acknowledgment of order or are delivering the Goods. We are also entitled to accept only parts of an order or to reject orders altogether without any reason, provided that no delivery obligation was expressly agreed in writing.

2 Qualities

- 2.1 Only the qualities of our Goods that were expressly guaranteed in writing shall be deemed to have been agreed between us. Statements and information contained in advertising materials or similar materials shall expressly not represent guaranteed qualities.
- 2.2 Our Goods shall be treated properly and stored and processed according to the pertinent provisions (e.g. Codex, directives, regulations and the like). The Goods must be stored according to the storage conditions printed on their packing.

In this context, the following expressions shall have the following meaning:

- Keep refrigerated – store in cold rooms or refrigerators at the declared temperature - regularly + 2° C to + 6° C.
- Keep frozen – store in an appropriate freezer or cold room at a temperature of at least - 18° C or lower.

3 Prices

- 3.1 We quote our prices in individual offers pursuant to Incoterms specified therein. The prices quoted in our individual offers or in our price lists are non-binding.
- 3.2 We will charge the price quoted in our price list on the order date or in the case of an individual offer the ultimate price quoted therein, unless expressly agreed otherwise in writing.

4 Performance and Transfer of Risk

If the buyer himself has commissioned the collection and delivery of the Goods or if the buyer instructs us to procure collection and delivery on his behalf, the risk shall transfer to the buyer with the delivery of the Goods to the forwarding agent or carrier, at the latest when the goods leave the factory or warehouse, unless expressly agreed otherwise in writing. If we procure the delivery of the Goods to the buyer or to an address indicated by the buyer at our own initiative and in our own name, the risk will transfer to the buyer or to a recipient nominated by him upon delivery of the Goods, unless otherwise agreed in writing in a particular case.

Unless the buyer has given specific instructions, we will deliver the Goods at our best discretion, but do not warrant for having selected the fastest and least expensive shipping method.

5 Delivery, Delivery Schedule

- 5.1 On-call deliveries shall be deemed called at least one year after placing the order.
- 5.2 Goods are shipped in average packaging which is normally fit for shipment. Unless a specific form of shipment was agreed, we will choose the specific shipment method. The buyer agrees that Goods may be shipped via forwarding agent or postal services (in each case by car, rail, boat or aircraft).
- 5.3 If Goods are exported from Austria to a third country or elsewhere in the Community or if the underlying place of delivery is not located in Austria, the buyer shall complete all formalities and process any paperwork which is necessary for the export and import, as appropriate, of the Goods, and he shall pay all related costs as well as customs clearance costs and taxes and duties as well as additional insurance costs. At the same time, the buyer shall obtain all approvals and consents which are legally necessary for the export of the Goods from Austria and their import into another country. At our request, the buyer will produce these approvals and consents and will issue relevant declarations. The buyer shall inform us in writing if he needs any documents or information in this connection.
- 5.4 If collection from the factory of Goods destined for export (EXW clause or the like) was agreed, the buyer undertakes to provide us within a reasonable period of time with the documents pursuant to Section 7 (4) and 5 UStG (exports to third countries) or Ordinance Federal Law Gazette 401/1996 (exports to the European Community) (e.g. complete CMR consignment letter) which are legally necessary to obtain a tax exemption, or to sign a shipment declaration when he collects the Goods, failing which taxes arising in Austria will subsequently be imposed upon us.

- 5.5 The indicated delivery dates are non-binding. The buyer may exercise his legal rights in case of our non-compliance with delivery dates only if and when we do not deliver the Goods during an at least four-week grace period (for frozen foods) or at least one-week grace period (for fresh produce) granted by written notice. Whenever delivery is impossible due to circumstances outside the parties' control, such as late delivery by sub-suppliers, events of force majeure, unforeseeable business interruptions, government intervention, delays in transport and customs clearance, damage during transport, shortage of energy, materials and raw materials, defective quality of important production parts and labour disputes, the delivery times will be extended as long as that impediment prevails.
- 5.6 Partial deliveries which are possible are permitted. Every partial delivery represents a separate transaction which we may bill separately.
- 5.7 The buyer is obliged to take over the item or service immediately after the buyer was notified that it is available. Should the buyer be in delay in taking over any service or item, he shall be liable to pay storage fees, without prejudice to any other rights we may be entitled to. We are entitled but not obliged to withdraw from a specific contract and also from other contracts and to commit the Goods to any other use, subject to a reasonable notice period of at least 7 days. Alternatively, we may also insist on performance of the contract. If the Goods were shipped to the buyer and the buyer is in default of acceptance, and if we decide to use the Goods otherwise, the costs of returning the Goods to our premises or to another destination of our choice shall be borne by the buyer.
- 5.8 If we take back Goods as a gesture of goodwill, we may charge a reasonable handling fee to the buyer. That fee will be disclosed to the buyer in connection with the return agreement. Return shipments must be made on a delivered basis at the times to be agreed with us in advance.

6 Terms of Payment, Set-off, Billing

- 6.1 Our invoices are payable according to the terms of payment stated on the invoice, regardless of the arrival of the Goods or the date of processing, and in the absence of such information immediately upon receipt of an invoice. We may insist on cash before delivery or proof of corresponding insurance cover. The date of payment shall be deemed to be the day on which we are able to dispose of the money.
- 6.2 In case of late payment, we will charge default interest at a rate of 8% p.a., unless we have incurred higher costs. The costs for reasonable reminders and inquiries, as well as other costs in connection with the collection of such debts, shall be borne by the buyer. We will accept checks as a form of payment only if that was separately agreed, with the buyer having to pay for all charges. We do not accept bills of exchange as a form of payment.
- 6.3 Notwithstanding Section 6.5, the buyer may not withhold payments or set off his own claims against our claims in reliance on warranty claims or other counterclaims. All claims will be due and payable immediately if the buyer is in default with payment, if circumstances become known after the conclusion of the contract which cast doubt on the buyer's creditworthiness, if the buyer stops his payments or if insolvency proceedings are initiated in respect of the buyer by whomever. As a matter of principle, payments received are applied against the earliest liability. We reserve the right to apply payments received also against other liabilities.

We may execute outstanding deliveries and also future deliveries only against cash or advance payment or provision of a guarantee at any time.

- 6.4 The buyer agrees that we may assume the debts of members of the VIVATIS group with debt-releasing effect towards the buyer. We may also set off the buyer's claims against our own claims or against claims of the VIVATIS group.
- 6.5 The buyer may only set off or exercise a retention right in respect of undisputed claims or claims awarded by final and non-appealable judgment.
- 6.6 Whenever the buyer is in default with payment or any other performance, we are entitled to withhold our deliveries until the agreed counter-performance has been made (while preserving the period still allowed for delivery), or to cancel the contract after a reasonable grace period has elapsed, or we may demand damages for non-performance, without prejudice to any other rights we may have. In the latter case, we are entitled to demand and/or to retain the agreed down payment, but not less than 15% of the price, as a minimum penalty. At any rate, in such a case, all outstanding claims will immediately be due for payment and we are entitled to make delivery only in exchange for payment in advance.

7 Reservation of Title

- 7.1 We will retain title to any item purchased and/or the Goods until the purchase price and all related costs and expenses were fully paid. We may collect the Goods even if the buyer is in default with only a portion of a payment.
- 7.2 The Goods for which we have expressed reservation of title may be resold to third parties only in the ordinary course of business, preserving our rights. For this purpose, the buyer assigns to us in advance any and all claims which he may enforce vis-à-vis his customers, along with all ancillary rights, but may collect such claims as long as the buyer is not in default with his obligations owed to us. We hereby accept such assignment.
- 7.3 The buyer undertakes upon our demand to notify the customers for whom the Goods are destined of that assignment and to properly record the assignment in his books and records and to send us proof of the note in his books and records. We may demand from the buyer any information which is necessary to enforce the rights in respect of our reservation of title and to notify the customers for which the Goods are destined of the assignment.
- 7.4 The buyer confirms that he will not and has not agreed on anything contrary to that reservation of title in his terms and conditions or elsewhere, and he will hold harmless and indemnify us in this respect.

8 Force Majeure

- 8.1 If an event of force majeure occurs, we may discontinue our deliveries as long as the impediment prevails, and over a reasonable lead time after it has ceased to exist, or we may withdraw from any part of or the whole contract. If a delivery is more than 3 months late due to force majeure, the buyer may withdraw from the respective part of the contract.
- 8.2 Events of force majeure include, but are not limited to circumstances such as forces of nature (earthquakes, floods, landslides, lightning, frost, hail etc), expropriation, sabotage, fire, strikes, sanctions and government intervention or delays in the supply of energy or major raw materials, as well as other unpredictable events beyond our control.

9 Warranty

- 9.1 We warrant that the Goods are fit for a specific purpose only if that was expressly agreed.
- 9.2 Our Goods may be consumed only until their date of minimum durability and may be put into circulation only until that date of minimum durability, unless otherwise stated. Notwithstanding the above, warranty claims shall be asserted in court within six months after delivery or within four weeks, if the date of minimum durability is more than four weeks after delivery. The same shall apply to hidden flaws.
- 9.3 Complaints regarding the quality of Goods (Section 377 (1) UGB) must be made within 3 business days after delivery; if the date of minimum durability is less than 3 business days after delivery, the complaint must be made on the next business day at the latest.
- 9.4 If the buyer is aware of a shortcoming, he shall notify us pursuant to Section 377 (3) UGB at least 3 business days after he has or should have become aware of it.
- 9.5 The complaint must disclose the type and extent of a shortcoming, the precise name of the item, the date of minimum durability stated on the item, the delivery date, the date and number of the invoice in detail, and the GTIN (Global Trade Item Number) as well as the batch number, if available. The buyer must return to us the labels which are affixed to the Goods or, should that be impossible, send us a corresponding photograph.
- 9.6 If the buyer does not give notice of defects, he loses his right to warranty (Sections 922 et seq Civil Code), to damages for the defect itself (Section 933a (2) Civil Code), and cannot assert error as to absence of defects (Sections 871 et seq Civil Code).
- 9.7 Our warranty is confined to delivering the same kind and quantity of substitute goods or curing defects. If Goods and/or services are provided on the basis of specifications and instructions of the buyer, we only warrant that performance has been made in accordance with the agreed terms. The warranty period shall not commence anew on account of the delivery of substitute goods and/or the rectification of shortcomings.
- 9.8 The buyer will lose its right to enforce warranty claims if he subjects our Goods to inappropriate treatment. Similarly, the buyer will lose his right to enforce warranty claims and we disclaim liability if the Goods were not properly stored and especially if the buyer has not heeded our pertinent recommendations and instructions.

10 Damages

- 10.1 We do not accept liability for simple and simple gross negligence, although we are liable to the buyer for intent or blatant gross negligence on the part of our decision-makers, employees or vicarious agents.
- 10.2 Except in case of intent, we are not liable for indirect damage, consequential damage, lost profit or loss of savings. These limitations of liability do not apply in case of a person's death, bodily injury, damage to health, or in case of liability pursuant to the Product Liability Act.
- 10.3 Any claims of the buyer in reliance on Section 933b of the Austrian Civil Code (ABGB) shall be excluded. All damage claims shall be statute barred, unless enforced in court within 6 months after the eligible party could identify the damage and the damaging party, and no later than within 2 years after the damage has occurred.

11 Trademarks

The buyer may not use our trademarks and signs, except with our express and prior written consent which is valid only in a particular case. The buyer undertakes not to do anything and not to support any action of a third party which could jeopardize the validity of our trademarks and signs. The buyer will not use or apply for registration or assist a third party in using or applying for registration identical or similar trademarks or signs in Austria or abroad. If the buyer becomes aware of any infringement of our property rights by a third party, the buyer shall notify us without delay. We will choose the further course of action at our own free discretion. The buyer shall reasonably assist us in the enforcement of our rights.

12 Governing Law , Place of Performance, Venue

The legal relationship with the buyer and the validity or termination of a contractual relationship shall exclusively be governed by and construed in accordance with Austrian substantive law, to the exclusion of the UN Sales Convention and non-mandatory conflict of law rules. Place of performance in respect of all obligations arising from this Agreement shall be our corporate seat.

All disputes arising out of or in connection with a contractual relationship between us and the buyer, including the question of the valid existence, performance and termination of the contract and its pre-contractual and post-contractual effects, shall be decided by the court having subject-matter jurisdiction for Linz or, at our election, by another court having subject-matter jurisdiction for the buyer, provided that the buyer's registered office is within the EU, in Switzerland or in Liechtenstein.

If the buyer has his registered office elsewhere, all disputes arising out of or in connection with a contractual relationship between us and the buyer, including the question of its valid conclusion, performance and termination and its pre-contractual and post-contractual effects, shall be finally decided according to the rules of arbitration of the International Arbitral Centre of the Austrian Economic Chamber (Vienna Rules) by one arbitrator appointed in accordance with said rules.

13 Other Provisions

- 13.1 Both parties will treat confidential and will not disclose to third parties any sensitive information of the respective other party, including information on recipes, prices, terms of delivery, volumes and the like.
- 13.2 Should authorities sample meat and sausage deliveries for testing reasons, the buyer is obliged to request an official counter-sample from the officials, which he shall send us without delay.
- 13.3 The rights arising from the contract executed with us may not be transferred to third parties, except with our written consent.
- 13.4 Should any provision of these Terms and Conditions for the Sale and Delivery of Goods be legally invalid, this shall not affect the residual provisions hereof and the contracts concluded in reliance thereon. The invalid term shall be replaced by a valid term which closest reflects its meaning and purpose.
- 13.5 The buyer shall notify any change of address in writing. We may send any correspondence or notice to the recent address disclosed in writing.