

General Terms and Conditions
GUSTO-Basisprodukte für Nahrungsmittel-Produktion
und Vertrieb GmbH & Co. KG

- Status 2009 -

§1 - General

The following General Terms and Conditions shall apply exclusively to all current and future deliveries and services even if not expressly referred to for future business transactions resp. in case of contradictory terms of Purchaser. These deviating terms and conditions shall only apply if confirmed by us.

§ 2 - Subject Matter of Contract

1. Our products may only be used for the intended purpose as stated in the product specifications.

Ingredients and composition of the product result from the product specification.

It should be noted that all information given in the product specification are describing information only and shall not constitute an acceptance of guarantee.

2. An agreement covering product characteristics or intended purpose deviating from information as given in the product specification shall require express confirmation by Supplier.

3. Unless otherwise agreed and if reasonable to Purchaser Supplier is entitled to partial performance.

4. Supplier reserves the right to amend measuring and weight units should this become necessary due to manufacturing reasons or raw material supply and as far as these modifications can be reasonably imposed on the Purchaser.

§ 3 - Prices

Prices of Supplier's offer are non-binding.

§ 4 - Payments

1. Invoices issued by Supplier to Purchaser are due for immediate payment.

2. Purchaser is only entitled to set-off against counterclaims if same are approved by us or are legally enforceable established.

3. Should supplier get notice of circumstances giving reason for serious doubts as to Purchaser's ability to meet financial obligations or as to Purchaser's creditworthiness Supplier shall be entitled - regardless of the term of payment agreed - to demand payment of all open invoice amounts - including deferred amounts - and to effect further delivery to Supplier subject to cash in advance payments or intrinsic securities.

§ 5 – Retention of Title

1. Until full settlement of all – also future – receivables arising from the business relationship, including incidental claims and claims for damages, the goods shall remain Supplier's property.
2. Retention of title remains valid if individual Supplier's receivables get transferred into open account and balance was struck and approved.
3. If goods subject to retention of title get processed by Purchaser into a new movable item processing is undertaken on behalf of Supplier without creating any kind of obligation for the latter. The new item becomes Supplier's property. In the event of processing, mixing or amalgamation with goods that do not belong to Supplier, Supplier shall acquire joint title to the new item in the ratio of invoice value of his reserved title goods versus the total value.
4. Purchaser shall only be entitled to resell or process the retained title goods taking into account the following provisions of paragraph 6 and provided that receivables get transferred to Supplier effectively.
5. Purchaser's authority to resell retained title goods in ordinary course of business or to process these goods shall expire with Supplier's withdrawal in the event Purchaser's financial situation has substantially deteriorated, at the latest, however, in case of cessation of payment or in case of filing for insolvency proceedings against Purchaser's assets.
6. a) Purchaser hereby assigns to Supplier any claim and all ancillary rights resulting from the resale of the retained title goods including possible balance claims.

b) In case goods were processed, mixed or amalgamated and Supplier has gained joint-title ownership amounting to his invoice value, Supplier is entitled to the assigned purchase asking price in proportion to the value of Supplier's title at the goods.

Should Purchaser acquire title at compensation for processing carried out under contract against third parties from processing of retained title goods Purchaser assigns same to Supplier already now up to the extent of the invoice value including all ancillary rights.

c) In case Purchaser has sold the claim within the frame of a real factoring Supplier's claim shall become due with immediate effect and Purchaser assigns the superseding receivable to Supplier and shall transfer proceeds to Supplier without any delay.

d) Supplier hereby accepts the assignments mentioned before.
7. Purchaser shall be entitled to collect the receivables assigned as long as Purchaser discharges its payment obligations. The collection procedure expires with

withdrawal at the latest, however, in case of payment arrears or in the event of substantial deterioration of Purchaser's financial situation.

If this becomes case Supplier is hereby authorized by Purchaser to inform subordinate purchasers about assignments and to collect receivables itself.

8. In case of Supplier's existing collaterals exceeds the secured amount of receivables by more than 20% in total Supplier shall be obliged – at Purchaser's request or at request of a third party affected by the over-collateralisation - to release collaterals in the appropriate value in Supplier's option.

9. Goods subject to retained title resp. Assigned receivables may neither be pledged nor assigned as security. In case Purchaser's property gets seized Purchaser shall inform Supplier immediately and shall indicate the pledges.

10. Supplier is entitled to retake possession in the retained title goods and to dispose of and to satisfy his open claims from the proceeds of sale.

§ 6 – Packaging

If Supplier delivers to Purchaser products stacked on multi-cycle systems e.g. pallets, Purchaser is obliged to return equivalent multi-cycle system units conforming to standards either to the forwarding agent resp. the haulage contractor, or, in the event that carrier is no longer participating in the exchange pool, to buy the multi-cycle system from the forwarding agent or from Supplier at customary prices.

In case Supplier's products are dispatched in multi-cycle packaging (e.g. boxer packs) Purchaser is obliged to handle such packaging with care and to return same to Supplier immediately. Forwarding expenses on Supplier's account.

§ 7 – Delivery Period

1. Observance of delivery periods requires timely receipt of all documents and releases to be provided by Purchaser as well as compliance with all other commitments by Purchaser. In case these requirements are not fulfilled in due time, periods shall be extended accordingly. Same shall not apply in case delay falls within Supplier's responsibility.

2. Force majeure, riots, strikes, lockouts, unpredictable raw material shortage, AUSBLEIBEN of correct and timely self-supply and unintentional disruptions in the ordinary course of business automatically extend the delivery period agreed by the duration of the impediment.

3. Apart of delivery, Purchaser shall be entitled to claim any possible damage resulting from the delay; in the event of slight negligence this claim shall be limited to max. 5% of the purchase price agreed for that part of the delivery that could not be placed into operation to the purpose due to the delay.

4. In the event Supplier does not deliver performance to Purchaser shall be entitled to request an appropriate period for execution of delivery. Should the period expire fruitless Purchaser shall be entitled to withdraw from the contract or to assert

compensation for damages instead of performance; in case of slight negligence by Supplier or Supplier's vicarious agents this claim for damages shall be limited to max 30% of the price of that part of the delivery that could not be placed into operation to purpose due to the delay.

Fixing of a time-limit can be legally superfluous under the provisions of § 281, para 2 BGB.

5. Supplier's limitation of liability as foreseen in paragraph 3 and 4 shall hereby be excluded unless Supplier's liability is compulsory in cases of intent, gross negligence or causing injury to life, body or health.

§ 8 - Requirements for Notification of Material Defects

1. Purchaser must notify Supplier of any apparent defects, delivery of other objects or shortage in quantity in writing immediately, but at the latest within 7 days after goods receipt at place of destination. Notice on hidden defects has to be given in writing immediately following detection of defect.

2. Should Purchaser sell the goods to a customer and the latter gives notice of material defects Purchaser shall be obliged to inform Supplier immediately after customer's notice comes to Purchaser's attention in order to give Supplier the possibility to promptly verify reasonable justification of the notice of material defect.

3. If statutory requirements are fulfilled Supplier shall in addition be liable for claims for damage instead of performance. In case of slight negligent breach of duty by Supplier the right to claim for damage instead of performance shall be limited to the contractual, predictable damage.

4. In case other claims for damage due to material defects are reasonable (other than claims for damage instead of performance) Supplier shall be liable in accordance with the provisions of § 11 of the present terms and conditions.

5. Rights to claim for damage for material defects shall become time-barred 12 months from date of passing of risk.

As far as requirements of § 479 BGB (right of recourse for consumer goods) are fulfilled, the statutory extended periods shall apply.

6. Additional or other claims for damage against Supplier or Supplier's vicarious agents due to material defects shall be ruled out.

§ 10 - Call Orders

In the event of call orders Purchaser is obliged to determine delivery date within timely manner. Unless otherwise agreed call orders shall be called forward within three months. Delivery time for quantities called forward shall be fixed by separate agreement. For the quantities called forward Purchaser shall receive an order confirmation stating delivery date.

If Purchaser does not comply with call forward periods Supplier is entitled to accelerate maturity and to claim for payment and acceptance.

§ 11 - Other Claims for Damages

1. We shall be liable in accordance with statutory requirements and within the limits of statutory regulations:

- for all injuries of life, body and health and
- in accordance with the Product Liability Act and
- in case of wilful deceit, particularly fraudulent concealment of material defects and
- in case of acceptance of guarantee for characteristics of the object and
- in case of damage caused deliberately or due to gross negligence, also if caused by vicarious agents.

2. We shall be liable in accordance with statutory requirements

- in case we have expressly or conclusively taken over a qualified position of trust with regard to prevention of the damage occurred and
- if and as far as a disclaimer or a limitation of liability differs contradictory from essential statutory basic ideas and
- if and as far as a violation of duty is that much essential that achieving the purpose of the contractual obligation is at risk.

In such cases our liability shall be limited to the foreseeable, contract-typical damage.

3. In case damage occurs – without subparagraphs 1 or 2 being applicable – in consequence of slight negligence not based on delay or impossibility of performance claims for damages by reason of neglect of duty as well as claims for damages due to non-consideration of Purchaser's interests, rights and legally protected rights shall be excluded.

In this event we shall also not be liable for claims for damage instead of performance or unavailing expenses in case of less than gross negligence. If the entitlement results from claims for damages instead of performance or reimbursement of expenses due to material defects liability, however, shall remain valid as stipulated in § 9 subparagraph 3 and 4 of the present Terms and Conditions.

§ 12 – Place of Performance / Jurisdiction

Place of Performance for all LEISTUNGEN shall be Supplier's registered place of business. Place of jurisdiction for both parties shall be Bremerhaven and this shall also apply to summary proceedings on bills of exchange and documentary evidence in so far as Purchaser is a merchant.

§ 13 - Applicable Law

The contractual relationship shall be governed by German substantive law, excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG).

§ 14 – Final Provisions

Should individual parts of the present Terms and Conditions be invalid, the validity of the remaining provisions shall remain unaffected.

Please note: This version in the English language is provided for information purposes only. It does - to the best of our knowledge - accurately reflect the German language version of our standard terms and conditions, however, the German language version shall constitute the legally binding agreement.

Bremerhaven, April 2009