

## **General Sales and Delivery Terms and Conditions of Beutelsbacher Fruchtsaftkellerei GmbH Status Juni 2010 –**

### **I. General**

These General Sales and Delivery Terms and Conditions will apply exclusively to the relationships with our customers, even if reference is no longer made to them in the case of individual transactions and to the extent that nothing else has been agreed upon in writing. The customer recognises these conditions with the issuing of the order, but with acceptance of the goods at the latest. Any contrary conditions of the customer are rejected to the extent that they differ to our disadvantage. Side agreements, changes and additions will require the written form to be effective.

### **II. Conclusion of the Contract**

Our offers are subject to change without notice and are not binding. Orders are accepted bindingly only after written confirmation on our side or through the actual delivery.

Our confirmation of the order will be determining exclusively for the scope of the services owed contractually, whereby the delivery slip will be considered as the confirmation.

Specimens handed over are always typical samples, not output samples, for the delivery.

The special conditions for **remote sales contracts** (see Numbers XI through XIV) will be valid in addition for consumers in the case of contracts which are not concluded between persons present, but rather through the exclusive use of remote means of communication.

### **III. Deliveries, Transfer of Risk**

Delivery deadlines will be binding for us only if we have confirmed them in writing.

The delivery will take place at the risk of the customer. The customer will bear the risk of transport, also in the case of the return of empties. This will also apply, even if the transport is performed by our own works vehicles, unless gross negligence can be proven. We will conclude transport insurance only on express customer request and at the expense of the latter.

### **IV. Force Majeure**

In the case of force majeure and other unforeseeable and unusual circumstances which are not our responsibility – e.g. material procurement difficulties, operational interruptions, strikes, lock-outs, shortage of means of transport, official interventions, difficulties with the supply of power/water, etc. – even if they occur at our suppliers – our delivery deadlines will be extended to an appropriate extent if we are prevented from the timely fulfilment of our obligations. If the deliveries or services become impossible or unreasonable through the circumstances named, we will be freed of our obligations to deliver. If the delivery delay lasts longer than two months, the customer will be entitled to withdraw from the contract. If the delivery time is lengthened or we are free of our obligations to deliver, the customer will not be able to derive any claim to compensation for damages from this.

### **V. Guarantee**

We shall be liable for faults as follows:

Claims for faults between companies require that the customer fulfils its commercial obligations for inspection and complaints, which are due in compliance with § 377 HGB. Immediately after arrival, the customer will have to examine the goods received for the properties, appearance and assured characteristics. Apparent faults are to be reported immediately in writing to the freight driver and are to be confirmed. In addition, all apparent faults are to be complained through written notice to us within an exclusion deadline of one week after the receipt of the goods. Faults which are not discovered within this deadline, even with careful inspection, are to be reported to us in writing immediately after they are discovered. In the case of a delay report, our obligation to provide a guarantee will become null and void. Further legal obligations for examination and complaint will remain unaffected. Should, in spite of all due care and attention, there be a justified complaint or a fault in the EAN Code, improvements or the delivery of substitutes will take place at our choice, subject to complaint of the fault in good time.

The customer will have to give us the time and opportunity to eliminate the fault in accordance with reasonable judgement, especially to make the item or specimen subject to complaint available. Otherwise, the guarantee will become null and void. The delivery of fault-free goods will take place step-by-step against the return of the faulty goods.

An improvement will be considered as a failure after the second unsuccessful attempt if nothing else can be expected, especially because of the nature of the item or fault or other circumstances, such as the obligation of the customer to cooperate. If we let a reasonable deadline placed on us expire without eliminating the fault or delivering a replacement, or if the later improvement or delivery of a replacement is impossible or is refused by us, the customer will have the right to withdraw from the contract or to demand the reduction of the price. Claims to compensation for damages because of non-fulfilment or because of possible consequential damages will be excluded.

Claims of the customer because of expenses necessary for the purpose of later fulfilment, especially transport, distance, labour and material costs, will be excluded to the extent that such expenses are increased because the goods delivered by us are moved afterwards to a place other than the headquarters of the purchaser, unless the movement corresponds to proper use.

For faults caused by improper changes or repair work made by the customer or third parties, our liability will be suspended for these and the resulting consequences.

## **VI. Limitation of Liability**

Claims to compensation for damages because of impossibility, delay and the violation of essential contractual obligations will be restricted to the damage to the contractual object in the case of simple negligence. Any liability for consequential damages will be excluded. Other claims to compensation for damages resulting from deliberate violation of claims, legal incapacity on the conclusion of the contract, illegal actions and other legal reasons will be restricted to cases of deliberate intention and gross negligence.

The conditions of the Product Liability Law will remain unaffected. According to it, we are liable in dealing with users and consumers to the extent that we are the manufacturer in the intention of the Product Liability Law. Any liability in dealing with manufacturers will be excluded.

If our articles are identified with the EAN Code, our liability will be restricted to compensation for damages in the form of exchange or later delivery in the case of faulty coding, provided that the complaint is made in good time in accordance with Number V. of our General Sales and Delivery Terms and Conditions.

## **VII. Empties**

Deposits will be charged for empties delivered in accordance with the current actual deposit rate established by the seller. They must be paid with the invoice for the goods. We will maintain an account for empties.

The purchaser will be obliged to return the empties to the extent delivered in proper condition sorted by type of bottle and/or crate. The amount of the deposit will be reimbursed to the full extent within 90 days after prepaid return. In the case of items delivered free of charge at the same time with similar quantities, we will accept the freight costs for the empties.

The culpably delayed return or payment for the empties will authorise us to deduct a loan charge of € 0.02 per litre or bottle and € 0.15 for crates for each month or fraction thereof after the due date from the amount of the deposit paid or to invoice the amount for the loss of value of the bottles and other containers. Our obligation to accept the returned empties will expire three months after the delivery. In the case of missing empties, we can offset the new procurement price plus value-added-tax against the deposit price paid.

## **VIII. Retention of Ownership**

1. We retain the ownership of any and all objects delivered until the complete payment of any and all demands in the business relationship (goods subject to retention of ownership). This will apply to future deliveries, even if we do not always expressly refer to this.

2. We can demand the handover of the objects delivered if we withdraw from the purchase contract. In the case of behaviour in violation of the contract by the customer (especially payment arrears), we will be authorised to demand the handover of the items. There will be no withdrawal from the contract because of the reclaiming of the things, unless we have declared otherwise expressly in writing.

3. The customer may sell the goods subject to retention of ownership only in usual business transactions under its normal business conditions as long as the customer is not in arrears, provided that the claims from the further sale in accordance with VIII. 4, 5 and 6 are transferred to us. The customer is not authorised to make other dispositions of the goods subject to retention of ownership, unless we issue our written agreement in advance.

4. The claims from the further sale of the goods subject to retention of ownership are already transferred to us now, together with any and all securities which the customer requires for the claim. This will apply independently of whether the item purchased is resold without reworking or after reworking. The assignment of the claims will serve for security to the same extent as the goods subject to retention of ownership. The third party purchaser is to be advised of our retention of ownership and the assignment of the purchase price claim. The name and address as well as the amount of the claim against the third party debtor are to be reported to us.

5. Manufacturing or conversion of the goods subject to retention of ownership will be performed for us as the manufacturer, but without obligation for us. In the case of manufacturing with other goods which do not belong to us, we will be entitled to the co-ownership of the new thing in the proportion of the gross invoice value of the goods subject to retention of ownership to the market value of the other goods manufactured at the time of the manufacturing. If the customer acquires sole ownership of the new thing, the customer already transfers to us now its share of the ownership in accordance with the gross invoice value of the goods subject to retention used. The new things will be preserved with commercial care for us by the customer at no cost.

6. In the case of further sale against cash payment, the proceeds will immediately take the place of the goods, meaning that they will become our property without a temporary ownership established for the other. The handover will be replaced by the fact that the customer holds the amount of money as the safekeeper (§§ 929, 930 in connection with § 868 BGB). The proceeds are therefore to be preserved separately. In the case of mixing, an obligation to provide compensation for damage will be established and in the case of use for other purposes, a criminal action in accordance with § 246 StGB (embezzlement) and/or § 266 StGB (breach of trust) will be established.

7. After such assignment, the customer will also remain authorised to collect the claim. Our authority to collect the claim ourselves will remain unaffected by this. We commit ourselves not to collect the claim to the extent that the customer fulfils its payment obligations.

8. If our claims to payments are endangered through the initiation of compulsory collection procedures, the application for the opening of an insolvency procedure, payment delays or other deterioration of assets, we will be entitled to refuse the further sale of the goods subject to retention of ownership and to request their handover to us and/or to take them back and to enter into the business premises of the customer for this purpose. The customer expressly declares its agreement to this. The repossession of the goods is not a withdrawal from the contract. The regulations of the Insolvency Ordinance will remain unaffected.

If our claims to payment are endangered, we will be able to recall the direct debt authorisation and demand that the customer reveal the claims assigned and the debtors, provide all information necessary for collection, hand over the related documentation and notify the assignment to the debtor.

9. The customer will be obliged to notify us without delay of attachment by third parties to the things delivered subject to retention of ownership, so that we can intervene. The customer will have to advise the court enforcement officer or other third party of our right of ownership and to report this to us in writing with the transmission of the record of seizure. The customer will bear all costs which must be expended to suspend the right of seizure and for the repossession of the object delivered and will have to compensate for all damages which result through the attachment to the thing delivered, to the extent that such costs and compensation for damages cannot be collected from third parties.

If the value of the securities established for us exceeds our claims by more than 20% in total, we will be obliged to release excessive securities at our choice on request by the customer.

### **IX. Prices and Payment Conditions**

1. Our prices are subject to change without notice. Deliveries will take place at the currently applicable net prices ex-works plus the statutory value-added-tax.

2. For deliveries with due dates later than 4 months after the conclusion of the contract, price increases will be permissible if they are based on changes of pricing factors which have occurred unforeseeably after conclusion of the contract. The amount of the price increase must be justified through changes in pricing factors and must be notified to the customer within an appropriate deadline. If the price increases significantly faster than the general cost of living, the customer will be entitled to withdraw from the contract.

3. In the case of payments within 8 days from the date of the invoice, a 2% discount can be deducted from the price of the goods in the case of bottled goods. An essential requirement for the discount is that there must be no remaining old debts or claims on our side against the party making the payment.

4. The invoice will be considered as received three days after the date of the invoice unless the addressee demonstrates a later date. Payments will be in arrears 30 days after the due date and the receipt of the invoice. §§ 188 Para. 1, 193 BGB will apply for the calculation of the deadline. The statutory interest on arrears in accordance with § 288 Para. 1 Sentence 1 BGB will be invoiced. In dealing with an entrepreneur, interest on arrears to the amount of 8% above the current actual basic interest rate per annum will be invoiced (5% above the basic interest rate for consumers). The enforcement of higher damages for arrears is retained.

5. Payments will also be in arrears if the customer has not made payments by a date agreed upon separately. If we must issue payment reminders, we will invoice a set price of € 5,00 per reminder for administration costs.

6. The customer will bear the costs for the payment transaction. Prepayments and downpayments may be required. The customer will have to credit the agreed price at its risk and cost to one of the bank accounts given by us.

7. The issuing of cheques will not be considered as cash payment and acceptance will be made only for the sake of fulfilment, meaning that the debt will be paid only when the cheque is cashed. The costs connected with the cashing of the cheque will be to the burden of the customer.

8. If the customer enters into arrears with payments or if circumstances which are appropriate to reduce the creditworthiness of the customer substantially (especially the suspension of payments, out-of-court settlements with creditors, insolvency), become known to us, we will be entitled to retain still outstanding deliveries or to perform them only against prepayment or the provision of security to the amount of the entire price agreed upon. Furthermore, we can require that goods not yet paid for by the customer be handed over to us without delay at the cost of the customer.

9. The customer will not be authorised to exercise the right of retention against our due payment claim, unless it is based on the same contractual relationship. The customer can offset only undisputed or legally binding claims against our claims.

### **X. Applicable Law, Place of Fulfilment, Place of Jurisdiction**

1. German Law will be applicable exclusively.

2. If the customer is inscribed in the Commercial Register as a businessman, a legal entity under public law or a public law special fund, the place of fulfilment will be Weinstadt.

The same will apply if the customer does not have a general place of jurisdiction in the country or if the customer has relocated his place of residence or usual whereabouts outside of the Federal Republic of Germany after the conclusion of the contract or if his residence or usual whereabouts is not known at the point in time when the petition is raised.

3. The customer is aware and agrees that we store all customer data electronically (§ 26 BDSG).

4. Should some conditions of these General Sales and Delivery Terms and Conditions be or become ineffective, this will not affect the other clauses. The ineffective clause is to be replaced by an effective clause which comes as close as possible to the financial intention of the ineffective clause.

### **Special Conditions for Remote Sales Contracts (only for contracts with consumers)**

#### **XI. Conclusion of the Contract**

The offers of the goods given in the price list are subject to change without notice. If goods are sold out, a contract will not be established. Furthermore, a contract will be established with the acceptance of the goods ordered as well as the receipt of our General Sales and Delivery Terms and Conditions.

#### **XII. Right of Revocation**

If a contract is established on the basis of a written or telephone order, an order by E-mail or by telefax without personal contract negotiations being conducted in advance, the customer will be entitled to a right of revocation (in compliance with § 355 BGB). The revocation does not need to contain a justification and must be made in writing on different permanent data carrier or through the return shipment of the goods within 2 weeks after the conclusion of the contract. Shipment in good time will satisfy compliance with the deadline.

The goods are to be addressed to the following:

Beutelsbacher Fruchtsaftkellerei GmbH  
Birkelstr. 11  
D-71384 Weinstadt

The customer will bear the costs of the return shipment.

2. The customer will have to compensate the value of the deterioration resulting from proper usage of the goods. The customer should therefore inspect the goods thoroughly before making use of them. If a deterioration results through the inspection of the goods, the customer will have no liability in this respect.

#### **XIII. Complaints of Faults**

1. Complaints of faults must be raised without delay after the receipt of the goods. The customer will be obliged to unpack the goods and to check them for their ability to function.

2. In the case of transport damage or theft, documentation of the situation is to be requested immediately from the transport company, the freight office of the receiving railway station or the post office and sent to us. The packaging we use is recognised so that reimbursement is guaranteed in case of damage.

A violation of these obligations can restrict the guarantee rights of the customer.

#### **XIV. Place of Fulfilment**

The place of fulfilment for deliveries and payments for the consumer in the case of remote sales contracts will be the place of residence of the customer.