

# General Terms and Conditions of Supply of Schwarzwaldmilch Group

(October 2021)

## 1. General, Scope of Application

- 1.1 These General Terms and Conditions of Supply apply to all business transactions, contracts and agreements (the "Agreement") between companies of the Schwarzwaldmilch group (hereinafter referred to as "Supplier") with entrepreneurs ("*Unternehmer*") (Paragraph 14 German Civil Code (BGB)), public-sector legal entities or special bodies or funds under public law (hereinafter referred to as "Customer").
- 1.2 Contrary or supplementary terms and conditions of the Customer become an integral part of any Agreement only if and to the extent that Supplier has expressly agreed to their applicability.
- 1.3 Only the German language version of these Terms and Conditions of Supply shall be authoritative.

## 2. Offer and Conclusion of the Contract

- 2.1 All offers submitted by Supplier are subject to change and not binding. All orders placed by Customer shall be deemed to be binding offers to conclude a contract. Supplier may accept such offer to conclude a contract within 10 working days upon Supplier's receipt thereof. Supplier may declare acceptance of such offer either in writing (e.g. by confirmation of the order) or by delivery of the goods to Customer.
- 2.2 Supplier reserves the right to make changes concerning the product (e.g. weights, dimensions or product descriptions) as well as the representation thereof (e.g. drawings and illustrations) provided that such changes do not significantly alter the product(s) or do improve the quality of the product(s) and provided that such changes or deviations are reasonably acceptable to Customer.
- 2.3 Supplier reserves ownership of and copyright in all documents. They shall not be made available to third parties or used for advertising purposes and shall be returned upon request. Documents may only be used in accordance with the Agreement.

## 3. Prices and Payment

- 3.1 Unless otherwise agreed, prices apply ex works and exclude statutory Value Added Tax, and, in the case of export deliveries exclude customs duty, charges and levies. Supplier will not take back the transportation packaging or any other packaging within the meaning of the German packaging regulation (*Verpackungsverordnung*); said packaging shall become the property of Customer.
- 3.2 Prices also exclude deposit for reusable packaging if applicable. Customer is obliged to return reusable packaging upon request of and as detailed by Supplier.
- 3.3 Supplier retains ownership of transport accessories provided by it (e.g. rolling containers, pallets etc). Customer is obliged to return transport accessories upon request of and as detailed by Supplier. In the event that transport accessories are not returned, Supplier may quote Customer for replacement costs less any deposit(s) paid.
- 3.4 If the agreed prices are based on Supplier's price lists and if – according to the agreement or due to circumstances not culpably caused by Supplier – the product(s) are not delivered within four months after the Agreement was concluded, Supplier's price lists applicable at the time of delivery shall apply.
- 3.5 Payment shall be due without deduction upon delivery or upon acceptance of performance ("*Abnahme*"), whichever is applicable. If payment is not so effected, Customer shall be in default ("*Verzug*") 14 calendar days following delivery and the issue of the invoice. Payment shall only be deemed to have been effected on the date of receipt thereof by Supplier, and cheques shall be deemed to be payment only once they have been honoured. In the event of Customer being in arrears with any payments, provided that Supplier shall not be responsible for Customer's suspension of the making of the payment, Supplier shall, without prejudice to any claims for compensation that it may have, be entitled to defer its own contractual obligations until the arrear payments have been effected.
- 3.6 Customer shall not be entitled to set off claims or to withhold payments on the basis of any counterclaims that it may have against Supplier, unless such counterclaims are undisputed or have been confirmed by a competent court or with counterclaims which are reciprocal (*im Gegenseitigkeitsverhältnis*) with the claim of Supplier.
- 3.7 If, after conclusion of the Agreement, Supplier becomes aware of circumstances which are likely to considerably diminish Customer's creditworthiness and which may jeopardise the making of payments by Customer of debts owed to Supplier under any Agreement (including other individual orders subject to the same framework agreement), Supplier shall be entitled to effect outstanding deliveries

or render outstanding services only against receipt of advance payment from or if appropriate security has been provided by Customer.

## 4. Delivery and Delay

- 4.1 Delivery shall be effected ex warehouse (EXW Freiburg/Offenburg, Incoterms 2020), which shall also be the place of performance and any supplementary performance. Upon specific request and at the cost of Customer Supplier shall send the product(s) to a different point of destination (sale by dispatching to a place other than the place of performance ("*Versendungskauf*"). Unless otherwise agreed, the manner of transportation shall be at Supplier's discretion (in particular Supplier may choose carrier, shipping route and packaging).
- 4.2 The delivery dates stated by Supplier are not binding unless the written order confirmation expressly refers to binding delivery dates. Delivery dates indicate the expected date of goods provision to the Supplier. Insofar as dispatch has been agreed, delivery dates refer to the time when the product(s) leave Supplier's warehouse or the time when Supplier notified Customer that they were ready for dispatch.
- 4.3 Supplier shall have the right to perform the delivery partially only if Customer is able to effectively use the goods so delivered for the purposes stipulated in the Agreement, the delivery of the remaining product(s) has been ensured and Customer does not incur considerable additional efforts or cost.
- 4.4 If Supplier is late in effecting a delivery or providing a service, or if, for any reason whatsoever, the making of a delivery or the provision of a service becomes impossible for Supplier, Supplier's liability for damages shall be limited as set out in Clause 8 of these General Terms and Conditions of Supply.
- 4.5 If, at the request of Customer, deliveries are to be effected later than the delivery dates originally agreed, payment shall nevertheless be effected as though the delivery had been made on the delivery dates originally agreed. This shall also apply if Customer fails to accept delivery on the contractually agreed delivery dates. The cost of any necessary storage of the goods as well as other costs incurred by reason of the delay shall be charged to Customer.
- 4.6 Supplier shall not be liable for delay, damage or non-performance of its obligations under the Agreement in the event and to the extent that such delay or non-performance is due to force majeure (e.g. natural catastrophes, war, unrest, pandemics etc.) or other events that could not reasonably have been foreseen at the time the contract was concluded (e.g. business interruptions of all kinds, transport delays, strikes, lawful lock-outs, a shortage of workers, power or raw materials, difficulties in procuring necessary administrative licences, administrative measures or suppliers of Supplier not delivering late, incorrectly or delivering not at all etc.) and for which Supplier is not responsible. Insofar as such events lead to supply of product(s) or services becoming considerably more difficult or impossible for Supplier and such impediment is not only transitional in nature, Supplier shall have the right to rescind the contract. In the event of impediments that remain transitional in nature the deadlines for delivery or performance shall be extended or the delivery or performance dates shall be postponed by the period of the impediment plus a reasonable start-up period. Insofar as Customer cannot reasonably be expected to accept the delivery or performance because of the delay, Customer can rescind the contract by means of a prompt written declaration to Supplier.

## 5. Passing of Risk

The risk shall pass to Customer as soon as the product(s) have left Supplier's warehouse at the latest. The same applies if partly deliveries are made or Supplier has undertaken to provide additional services (e.g. dispatch or installation of goods). If dispatch or delivery is delayed as a consequence of acts or omissions of Customer, the risk shall pass to Customer immediately upon Supplier being ready for dispatch or delivery and Supplier having notified Customer accordingly.

## 6. Reservation of Title

- 6.1 Supplier shall retain title to supplied product(s) Supplier (the "Reserved Product(s)") until all of Supplier's claims arising out of the business relationship with Customer have been satisfied in full, in particular until Customer has settled the account balance.
- 6.2 Customer shall handle, store, maintain and repair the Reserved Product(s) with due care, and insure them at its own cost against fire, water damage, breaking and entering and theft. In case of damages to Reserved Product(s) Customer shall promptly undertake to advise Supplier of same and send the insurance policy to Supplier for inspection upon request. Customer hereby assigns all claims against any insurance company relating to the Reserved Product(s). Supplier accepts the

assignment. In case Customer should be found to have insured the Reserved Product(s) inadequately, Supplier shall have the right but not the duty to insure the Reserved Product(s) at Customer's cost.

- 6.3 Should any Reserved Product(s) become subject to attachment or be otherwise encroached upon by third parties, Customer shall undertake to promptly advise Supplier of same and shall also immediately point out to the third party the Supplier's ownership of the Reserved Product(s).
- 6.4 Customer shall be entitled to sell Reserved Product(s) in the ordinary course of business and so long as Customer is not in default of payment. Reserved Product(s) may not be pledged or title thereto transferred as collateral. As collateral Customer hereby assigns to Supplier all claims that may arise in connection with Customer selling Reserved Product(s) or which result from other legal grounds relating to the Reserved Product(s) (in particular, transfer of ownership, insurance claims, tort, civil offenses or other unlawful acts; the "Assigned Claim(s)"). Supplier hereby accepts said assignment. Supplier hereby authorizes Customer to enforce the Assigned Claim(s) in its own name and for Supplier's account until further notice. If Customer acts contrary to the terms of the Agreement, including defaulting on payment, Supplier shall have the right to demand Customer to disclose said assignment to any third party in the event of which Customer shall undertake to hand over to Supplier all information and documents necessary or serviceable in order to enforce the Assigned Claim(s).
- 6.5 In the event of Customer defaulting payment, Supplier may rescind the Agreement without prior notice and may demand that the Reserved Product(s) be returned. Supplier shall be authorized to sell the returned Reserved Product(s).
- 6.6 Any processing or treatment of the Reserved Product(s) is done on behalf of and for the Supplier. If the Reserved Product(s) are processed, bonded, mingled or mixed inseparably with goods not belonging to Supplier ("Other Good(s)"), the reservation of title shall remain valid and continue in respect of the good(s) thus created ("New Good(s)"). Supplier acquires a co-ownership share in such New Good(s) proportionately to the value (gross invoice value) of the Reserved Product(s). If the bonding or mixing occurs in such a way that Other Good(s) are to be considered as the main object ("Hauptsache"), the Supplier hereby transfers co-ownership to Supplier proportionately in relation of the value of the Products supplied by the Supplier to the value of the new main object (Hauptsache); the Supplier hereby accepts this transfer of co-ownership. Customer shall keep the sole property of Supplier as well as the co-property of Supplier stored safely in the name of Supplier and free of charge. If Reserved Product(s) are resold as an integral part of a New Good, the assignment subject to Clause 6.4 shall apply only in the amount of the invoice value of the Reserved Goods.
- 6.7 If the aggregated value of collateral to which Supplier is entitled under the above provisions exceeds the aggregated claims of Supplier against Customer by more than 10 %, Supplier shall be obliged to release collateral in the aggregated value that exceeds said amount. Supplier may choose which collateral to release.
- 6.8 If the law of the country, in which any delivered goods are located, does not permit or recognise a reservation of title or does so only to a limited extent, Supplier can reserve other proprietary rights in the supplied product(s). Customer shall be under an obligation to cooperate with Supplier in relation to all measures (e.g. registration) necessary to effect the reservation of title or to create such other rights, as may appropriately protect the interests of Supplier in lieu of a reservation of title. Customer shall cooperate in the enforcement of such rights.

## 7. Materials provided by the Customer

- 7.1 The Customer shall ensure that products, ingredients, semi-finished products, consumer goods and declarations provided by him are correct, suitable without reservation, usable and applicable, comply with the intended purpose, the current state of the art and the relevant legal provisions, in particular the relevant food law regulations and product-specific requirements of the food industry, the regulations and guidelines of authorities, professional associations and trade associations; provided ingredients, semi-finished products, consumer goods must be unconditionally marketable and do not induce health hazards. The Purchaser shall prove same by presenting suitable certificates from accredited laboratories before the start of production and at any time during the course of production upon request by the Supplier.
- 7.2 The Supplier shall not examine the suitability and conformity to standards of consumer goods, products and production instructions provided by the customer. The Customer shall fully indemnify the Supplier against claims by third parties in this regard. If the Supplier points out evident deficiencies to the Customer, further processing of the order requires clarification by the Customer. The Customer bears the costs of the delay.

## 8 Damages

- 8.1 Supplier shall not be liable for negligent (einfache Fahrlässigkeit) breach by it of material contractual obligations. Material contractual obligations shall be defined as follows: the performance of such obligations characterize the agreement and is necessary for the proper implementation of the agreement.
- 8.2 In the absence of intentional conduct, Supplier shall be liable only for damage reasonably foreseeable at the time the agreement was concluded.
- 8.3 The foregoing shall neither effect the liability of Supplier under the German Product Liability Act (*Produkthaftungsgesetz*), nor its liability for culpable ("*schuldhaft*") injury to life, body or health. In the event Supplier has issued a guarantee, Supplier shall be liable in accordance with the applicable statutory provisions. t
- 8.4 Claims for damages under Clauses 8.1 to 8.3 above shall be subject to statutory prescription periods.

## 9 Warranty

- 9.1 Customer is obliged to make notice of defects (*Mängelrügen*) within the meaning of sec. 377 German Commercial Code (*HGB*) (i) in case of visible defects within three (3) working days upon receipt of the respective products (ii) in case of hidden defects within three (3) working days upon discovery.
- 9.2 If Supplier's goods or services prove to be defective, Supplier shall be obliged to remedy the defects by, at Supplier's option, either rectifying the defect or by delivering a replacement ("*Ersatzlieferung*"). If Supplier chooses delivery of a replacement Customer is obliged to return the defective product(s) to Supplier in accordance with the statutory provisions. Costs of such supplementary performance ("*Nachertüfung*") by Supplier, in particular costs of transportation, labour and materials shall be borne by Supplier. Customer shall be liable for any increase of costs as a result of the product(s) being located somewhere other than the place of use agreed upon by the parties in the Agreement.
- 9.3 Supplier shall be entitled to make supplementary performance contingent upon Customer paying the purchase price. Customer shall, however, be entitled to withhold such part of the purchase price as is reasonable in proportion to the defect.
- 9.4 If supplementary performance fails, Customer shall be entitled to a reduction of the purchase price or to rescind the contract. There shall be no entitlement to rescind the contract in the case of any defect, which is not essential. In addition Customer may claim damages in accordance with Clause 8. Any other warranty claims are excluded.
- 9.5 Save in the case of bad faith ("*Arglist*") and subject to the provisions of Clause 8.4, all warranty claims shall be subject to a prescription period of twelve (12) months from delivery or, if acceptance is required, from acceptance.

## 10. Information and Technical Advice

Information and recommendations ("Advice") provided by Supplier are not binding and without assuming any liability for such advices unless Supplier has expressly and in writing undertaken otherwise. Customer shall be solely responsible to investigate whether a product is suitable for Customer's particular requirements. Advice provided by Supplier in relation to its product(s) does not constitute any promise as to their suitability for Customer's purposes or as to certain characteristics.

## 11. Retraceability

- 11.1 Insofar as the supplier is obliged by law to ensure retraceability of the goods delivered by him and insofar as the Supplier has affixed information on the volume, quantity, lot numbers, batch numbers or similar markings on the products or their outer packaging, these markings are not to be damaged or rendered unreadable.
- 11.2 The Customer shall fully comply with his obligations of retraceability.

## 12. Choice of Law, Place of Jurisdiction, Place of Performance

- 12.1 Unless otherwise provided or another place of performance results from the nature of an obligation, the place of performance for all of Supplier's and Customer's obligations shall be at the registered seat of the Supplier.
- 12.2 The Agreement as well as these Terms and Conditions shall be governed by the Law of the Federal Republic of Germany; the UN Convention on Contracts for the international Sale of Goods and German private international law shall not apply.
- 12.3 It is agreed, that the place of jurisdiction shall be at the registered seat of the Supplier. In addition, Supplier is entitled to assert its claims at Customer's general place of jurisdiction.

12.4 Even if any individual provisions are void, all remaining provisions of the agreements concluded in accordance with these Terms and Conditions of Supply shall remain binding.