



General Terms and Conditions of Otto Beier Waffelfabrik GmbH

1) Preamble

- a) These General Terms and Conditions (AGB) are the basis of requests, orders and purchase contracts subsidiary to individually agreed written agreements. Only the individual written agreements and these General Terms and Conditions apply to contracts and agreements with Otto Beier Waffelfabrik GmbH. The application of possible purchasing terms and conditions of clients is expressly excluded.
- b) The parties agree that the purpose of the business activities between the parties is the acquisition of goods in the commercial sector.
- c) As a basis of the contract of purchase, both supplier as well as client accept the terms and conditions stipulated in this contract.
- d) Terms and conditions that are conflicting or deviating from the supplier's General Terms and Conditions are not valid.

2) Offer and conclusion of the contract

- a) The supplier's offers are subject to alteration and non-binding, if they are not expressly marked as binding.
- b) The placing of an order to the supplier constitutes a binding contractual offer. The client is bound towards the supplier by the offer until the expiry of the 14th working day following the day after the receipt of the offer by the supplier.
- c) The offer of the client is only deemed as accepted by the supplier when the supplier has confirmed acceptance to the client in writing. The contract is only formed with the written confirmation (fax, letter or e-mail).

3) Prices and payment

- a) All prices stipulated by the supplier are quoted net and in EURO, which are payable in addition to the statutory turnover tax.
- b) Costs for packaging and shipping, insurance as well as other public and private fees, in particular also license fees shall be borne by the client.
- c) The payments are made in accordance with a separate agreement between the client and the supplier. Insofar as no other written agreement is made, all invoices are due for payment 14 days after receipt of the invoice net without deductions. A discount deduction is not permitted.
- d) If the client fails to pay by the due date, the outstanding amounts shall be subject to interest from the day they are due, with 9 % p.a. above the respective base interest rate; the ability to assert higher interests and other damages in case of default shall remain unaffected. The supplier may charge the client 10 euro for each reminder.
- e) The supplier shall have the right to provide deliveries only against payment in advance, if after the order is made, he becomes aware of circumstances that raise doubts as to the creditworthiness of the client and that jeopardise the client's payment of the supplier's outstanding receivables.
- f) If the client fails to provide payment despite it being due and the supplier has set an appropriate time limit for payment, the supplier shall have the right to terminate the contract and to bring a claim for compensation due to non-fulfilment. The deadline is not necessary if the client declares seriously and finally that he shall not fulfil his obligations arising from the contract. The supplier can demand 25 % of the agreed contract amount by way of damages. The client is free to prove that the amount of damage suffered is lower. The supplier's right to assert a claim for higher damages remains reserved.
- g) The recipes used represent the intellectual property of the supplier. They will not be disclosed or passed on to the client.

4) Set-off and right of retention

The client shall only have a right to set-off and a right to retention, if his counterclaims have been stated as legally binding or undisputed.

5) Delivery conditions

- a) The deliveries are made ex Supplier's warehouse, insofar as not otherwise agreed in writing.
- b) The delivery dates specified by the supplier are subject to change, unless a specific date as expressly been agreed in writing as "guaranteed delivery period".
- c) Compliance with the obligation to deliver requires the timely and proper fulfilment of the client's obligations to cooperate. We reserve the defence of non-performance of the contract.
- d) The supplier shall not be liable for impossibility of delivery or for delay in delivery, insofar as these are caused by force majeure or other events that were not foreseeable at the time of the conclusion of the contract. While these obstacles are present, the supplier shall be released from his obligation to perform. The delivery periods shall be extended by the duration of the disruption. Force majeure applies, for example, if there are shortages of raw products, or if the raw materials do not correspond to the quality requirements or the statutory limits have not been met.
- e) The supplier has the right to make partial deliveries, to the extent that this is reasonable for the client.
- f) Excess or short deliveries up to 10 % of the amount ordered by the client are permitted. Excess or short deliveries above this must be agreed with the client.

6) Transfer of risk, shipping, packaging, obligations under the German Packaging Act (Verpackungsgesetz, hereinafter VerpackG) and comparable provisions outside the Federal Republic of Germany

- a) The shipping method and the packaging are subject to the obligatory discretion of the supplier, insofar as no other separate written agreements have been made.
- b) The risk shall transfer to the forwarder, freight carrier or other third party appointed for the execution of the shipment no later than at the handover of the goods to be delivered. Should the dispatch or handover be delayed due to circumstances whose cause lies with the client, the risk shall transfer to the client from the day the delivered goods are ready to be dispatched and the supplier has notified the client of this. The client shall bear the costs of the storage.
- c) If the supplier applies one or more trademarks of a nationwide system within the meaning of Section 3 paragraph 16 VerpackG (e.g. "Der Grüne Punkt") or of another provider (e.g. "Resy") to the products/packaging on behalf of the client, the client shall be deemed to be the user of the trademark(s) and shall therefore pay the costs directly to the provider. In this case, the client shall be responsible for the fact that a corresponding trademark usage contract has been concluded between him and the supplier in each case and that he fulfils his obligations under the VerpackG. The same applies to trademarks of other suppliers (e.g. FSC and PEFC) on the products/packaging. If the client violates the provisions of the VerpackG or licensing obligations and a claim is made against the supplier as a result, the client shall be obliged to reimburse the supplier for all costs incurred and damages suffered in this connection.

d) As a manufacturer and distributor of transport packaging, sales packaging, returnable packaging and reusable packaging that does not typically accumulate as waste at private end consumers (including households) after use, the supplier is entitled under Section 15 paragraph 1 sentence 4 VerpackG to conclude agreements with the client as the subsequent distributor in the supply chain or final consumer, insofar as the latter is not a private household (i.e. also so-called comparable sources of waste within the meaning of Section 3 paragraph 11 sentences 2 and 3 VerpackG), on the place of return of such packaging and the costs of disposal. In this respect, it is agreed between the supplier and the client that the return of such packaging within the scope of the site disposal by the final distributor or the end consumer by means of handover to the local disposal company shall be carried out without costs for the supplier. If the client is not a final distributor or end user, but an intermediate distributor, it is the client's responsibility to ensure, if necessary, that it makes agreements with subsequent distributors and/or end users (excluding households) on the place of return of such packaging and the costs of disposal. If, contrary to these agreements with the client, claims are made against the supplier in respect of the return and/or recovery of and/or the costs incurred for transport, sales, reusable and returnable packaging produced or distributed by the supplier, which does not typically accrue as waste with private end consumers after use, the client shall be obliged to reimburse the supplier for all costs incurred and damage suffered in this connection.

e) The application of markings and notices on products/packaging which are placed on the market by the client outside the Federal Republic of Germany and which are required under the applicable local law shall be the sole responsibility of the client. If the client violates this provision and a claim is made against the supplier as a result, the client shall be obliged to reimburse the supplier for all costs incurred and damages suffered in this connection.

7) Retention of Title

a) The delivered goods remain the property of the supplier until the full payment of the purchase price.

b) Where reserved objects are processed, combined and mixed by the client with other objects, the supplier shall have co-ownership of the new object in the proportion of the invoice value of the reserved objects to the value of the remaining objects.

c) If the combination or mixing is made in such a way that the client's object is to be considered as the main object, it is agreed that the client shall transfer proportional co-ownership to the supplier. The client has an obligation to store the sole or joint property free of charge for the supplier.

d) In the event of the resale of the supplied goods, the client assigns here and now by way of security to the supplier the claims against third parties arising from this.

8) Warranty

a) The client has a duty as a trader, to examine the delivered goods for defects immediately after arrival. Further, the client has a duty to check the delivery for labelling upon delivery.

b) Apparent defects must be reported to the supplier in writing within 7 calendar days from the handover of the goods, precisely specifying the defect. Latent defects that emerge later must be reported within 14 days of discovery of the defect.

c) Claims for defects shall become time-barred after 12 months from the delivery of the goods to the client.

d) Where defects arise, the supplier can, at its own discretion, remove the defect (rectification) or arrange a replacement delivery. For this purpose, the client shall place the defective goods or the sample of the goods at the disposal of the supplier, insofar as this is necessary.

e) The warranty shall lapse if the client modifies the supplied goods or has it modified by a third party without the supplier's consent and the removal of the defect is therefore impossible or unreasonably difficult. In any event, the client shall bear the additional costs of the removal of the defect that occur due to the modification. This restriction does not apply to the supplier's liability due to wilful conduct, for guaranteed characteristics, due to injury to life, body or health or according to product liability law.

9) Liability

a) The supplier shall not be liable in the event of simple negligence, where it is not a breach of an essential contractual obligation. Essential contractual obligations are obligations the fulfilment of which is a prerequisite for the proper performance of the contract and on the observance of which the client regularly relies and may rely.

b) Insofar as the supplier is liable for compensation in principle, such liability is limited to damages that the supplier did, at the time the contract was concluded, foresee as a possible consequence of a breach of contract, or which it should have foreseen by applying due care and attention. Indirect damages and consequential losses as a result of defects in the supplied goods are not eligible for compensation.

c) These restrictions do not apply to the supplier's liability due to wilful conduct, for guaranteed characteristics, due to injury to life, body or health or according to product liability law.

10) Quality management

a) The supplier shall carry out analyses and tests at its discretion within the context of quality management. Should a client want a special analyses or test, this will only need to be carried out subject to prior written agreement. The costs for the additional analyses and tests shall be borne by the client.

b) If the raw materials do not correspond to the quality requirements or the statutory limits have not been met, this can lead to delays in delivery. If the client is requesting processing despite the unsatisfactory quality of the raw materials, the client shall notify the supplier of this in writing (letter, fax, e-mail). In this case, the client shall be fully liable for the use of the raw material. The client shall release the supplier from any possible claims by third parties in connection with the use of the raw material.

c) For prepacked goods (consumer goods), the supplier shall carry out a final inspection by way of metal detection. If the client wants a separate control, this will only need to be carried out if agreed subject to prior written agreement. The costs for the additional control shall be borne by the client.

11) Declaration and labelling

a) The design, layout, declaration, mandatory labelling, claims, graphic presentation (images, logos etc.) and so forth of the product as well as of the packaging of the product shall be the responsibility of the client.

b) The client is solely accountable and responsible for all information on the product or packaging. The client shall ensure that the respective legal provisions in the sales territories are complied with and that the information, texts, images and logos on the product and on the packaging are lawful and do not prejudice the rights of third parties.

c) Licence fees or other payments in connection with the design of the products or of the packaging, with texts or images (logos etc.) are the responsibility of the client.

d) The client shall release the supplier from any possible claims by third parties in this connection.

12) Indications of origins

The supplier is at liberty to change the suppliers of raw materials and the origins of the raw materials. The supplier shall notify the client of any change of suppliers or origins of raw materials, if as a result changes arise that are subject to labelling.

13) Production

a) The client is aware during the production, the use of "rework" (materials still remaining after processing), whether in liquid or solid form, is standard during production. If the client does not want "rework" to be applied, he must notify the supplier of this in advance at the time of placing the order. The exclusion of "rework" during production leads to a price increase of approximately 5 % of the order value, as "rework" must be disposed of and more materials need to be used.

- b) The client agrees that possible excess production can be sold by the supplier, if the client does not wish to accept the same.
- c) The supplier can produce gluten-free goods. The supplier produces gluten-free goods in a gluten-free production period. Gluten-free goods can be delivered exclusively corresponding to the gluten-free production periods and successful test for gluten. The client hereby agrees with this. Enquiries regarding these delivery periods can be made by the client at any time. The supplier reserves the right to amend the gluten-free production periods with regard to their duration.
- d) Should the client request a product sample prior to placing an order, he shall bear the costs for the production and systems tests. The amount of these costs shall be provided upon request.
- e) The minimum order quantity with packaging film is 10,000 units per product. A quantity release must be provided in writing 8 to 12 weeks prior to the start of production.
- f) If a client is requesting the processing of raw materials, which are exclusively required for his product, these shall be purchased by the supplier only for this client. Should this raw material not be utilised during the course of the production due to the conduct of the client, the client shall render compensation for its value, regardless of any other compensation claims.

14) Place of performance; place of jurisdiction; applicable law

- a) If the client is an entrepreneur, trader or a legal entity under public law, the place of jurisdiction shall be the regional court competent for Cham in Upper Palatinate having jurisdiction for such cases. The place of performance shall be the registered office of the supplier in Miltach, insofar as not otherwise agreed in writing.
- b) Any possible disputes arising from the business relations are exclusively subject to the applicable law of the Federal Republic of Germany, under exclusion of the principles of conflict of laws. The provisions of the UN Convention on International Sale of Goods shall be excluded.

15) Final provisions

- a) Amendments or additions to these General Terms and Conditions must be made in writing. This shall also apply to the cancellation of the written form requirement.
- b) Insofar as the contract and these General Terms and Conditions contain gaps or omissions, to fill such gaps or omission, such legally effective provisions shall be deemed as agreed, which the contractual partners would have agreed upon with respect to the economic objectives of the contract and the purpose of these General Terms and Conditions, if they had detected the gap or omission.

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