

# Untereibe-Frucht Handelsgesellschaft mbH & Co.

## **Standard Terms and Conditions of Sale**

### **1. Scope**

The terms and conditions below apply to this order and to all future transactions with the customer. We will only be bound by conflicting or inconsistent terms and conditions of the customer, e.g. in order forms, order confirmations etc, if we expressly acknowledge such terms and conditions in writing. Our terms and conditions will apply even if we render delivery without reservation despite knowing of conflicting or inconsistent terms and conditions of the customer.

### **2. Written form requirement**

Any oral representations, supplementary or collateral agreements, and terms relating to quality/condition or warranties must be confirmed in writing in order to be valid.

### **3. Offers and quotes**

Offers are subject to change and our quotes are not binding. We are not obliged to deliver goods merely by virtue of sending our price lists, catalogues, brochures, etc.

### **4. Delivery periods and dates, default, impossibility**

Delivery periods and dates are not binding unless they are explicitly stipulated in writing as binding. We are entitled to make part-delivery. The delivery period will be deemed complied with if upon its expiry we have issued the relevant shipment order or notified the customer of our readiness for shipment. The delivery period will be extended accordingly if the customer subsequently requests modifications. In any event, periods will not commence to run until the customer has fully performed all required acts of cooperation and any agreed advance payment has been received. If we are in default, or our obligation to perform is excluded for reasons we are responsible for, or we are entitled to refuse to perform under § 275 (2) or (3) German Civil Code (*Bürgerliches Gesetzbuch*, or "BGB"), then the customer may claim compensatory damages, but only pursuant to the terms of section 11. In any event, the customer must grant us a reasonable grace period, usually at least 3 weeks, before exercising its rights (compensatory damages, rescission of agreement). If the customer is in default of acceptance or breaches other duties to cooperate, then we may claim compensation for any loss or damage sustained by us, including any additional expenses.

### **5. Execution of order**

Unless expressly agreed otherwise, the goods for delivery need only demonstrate the qualities, specifications etc, expressly stipulated in the relevant agreement. Such qualities and specifications will only be deemed subject to warranty if we expressly declare our intention to assume liability for them, regardless of fault, or if such qualities and specifications are explicitly described as such by us. We reserve the right to deviate to a reasonable extent from descriptions and details in our brochures, catalogues or similar sales documentation, and replace components with better components or components of equivalent value, without this giving rise to any rights against us on the part of the customer. Such descriptions and details as well as representations made in advertising do not constitute warranties.

The customer must notify us of all facts relevant to the execution of our delivery. We are not obliged to check the completeness and accuracy of the data, information or other work provided by the customer, unless the individual circumstances of the particular case suggest that such data or information should be checked.

### **6. Force majeure and other impediments to performance**

In the event of *force majeure* and other impediments to our performance or that of our suppliers for which we are not responsible, including but not limited to traffic and operational disruptions, a shortage of materials or energy and strikes or lock-outs, we will be entitled to delay delivery for the duration of the impediment to performance. We will notify the customer without undue delay of the inability to deliver. If performance becomes impossible as a result of an event outside our control, we will be entitled to rescind the agreement.

### **7. Prices**

Deliveries will be invoiced at the prices applicable on the date of delivery. Unless expressly agreed otherwise, prices are agreed ex-works, including packaging, and do not include VAT. We reserve the right to demand reasonable instalments and advance payments.

### **8. Shipment and transfer of risk**

Unless expressly agreed otherwise, shipment will be ex-works at the customer's risk and expense. Unless

elsewhere defined, the place of delivery will be at our discretion. If shipment is delayed through no fault on our part because the customer has agreed to collect the goods, then the risk that the goods will be lost or destroyed will pass to the customer on the date upon which we make the goods ready for shipment. Consignments bearing signs of damage upon arrival may only be accepted subject to reservation. Arrangements must be made for the freight company to assess the damage.

### **9. Payment Conditions**

Payments must be made within 30 days of the invoice date. If payment deadlines are exceeded, we may charge interest at a rate that is 8 percentage points higher than the base interest rate.

If after execution of the agreement we become aware of circumstances suggesting that the customer may be unable to perform, thus jeopardising our claims, we may demand advance payments or security. If the customer defaults on any payment, all of our claims will become due and payable immediately in cash, notwithstanding any time for payment allowed. The foregoing applies even if we have accepted cheques. In any of the above cases, we will be entitled to refuse to make deliveries not already executed or make them contingent upon payment of an advance or the furnishing of security, and for this purpose we will be entitled to set a reasonable grace period and rescind the agreement and/or demand compensatory damages if such grace period expires without result.

### **10. Complaints and claims based on defects**

Complaints based on incomplete or incorrect deliveries or apparent defects must be made without undue delay, but no later than 2 working days after receipt of the goods. Any other defects must be notified without delay, but no later than 2 working days after they are discovered. All complaints must be lodged in writing specifying the invoice and delivery note number. In the case of legitimate and timely complaints, we will rectify the defects by delivering replacement goods. If the defect cannot ultimately be rectified by replacement goods, then the customer may, at its election, demand a reduction of the contract price or rescind the agreement. The customer is precluded from making any further claims. The customer may claim compensatory damages only in accordance with section 11. We assume no liability for defects if the customer or a third party modifies the goods delivered by us. We will not be liable for loss or damage attributable to improper use or incorrect handling, etc.

### **11. Liability**

We will be liable for compensatory damages only in accordance with the following provisions:

In relation to liability on the merits of any claim, we will only be liable (i) for wilful or grossly negligent conduct; (ii) for any negligent breach of a principal contractual duty (*wesentliche Vertragspflicht*); (iii) pursuant to warranties as to condition or quality; (iv) for default; and (v) in cases where the obligation to perform is excluded for reasons for which we are responsible or we are entitled to refuse to perform (§ 275 BGB).

If our liability under the above provisions is based on ordinary negligence (*einfache Fahrlässigkeit*), the quantum of our liability will be limited to damages for contractually typical and foreseeable loss. Any further liability for property damage and pecuniary loss in cases of ordinary negligence is precluded. The above liability provisions will not affect liability for damage resulting from injury to life, limb or health. Where our liability to pay compensatory damages is excluded or limited in accordance with the above provisions, such exclusion or limitation will also apply with respect to the personal liability of our governing bodies, employees and other workers, representatives and vicarious agents, and will also apply with respect to all claims based on tortious conduct (§ 823 BGB), but not to claims under §§ 1 and 4 of the German Product Liability Act (*Produkthaftungsgesetz*).

### **12. Statute of Limitations**

Claims based on defects will become statute-barred one year after commencement of the statutory limitation period. The foregoing does not apply to defects for which the statutory limitation period is 5 years or more. Other contractual claims on the part of the customer based on breach of duty will also become statute-barred one year after the commencement of the statutory limitation period. The above provisions do not affect the statutory limitation period applicable to: (i) loss or

damage resulting from injury to life, limb or health; (ii) other loss or damage caused by a wilful or grossly negligent breach of duty by us, our representatives by operation of law or vicarious agents; (iii) the customer's right to withdraw from the agreement based on a breach of duty for which we are responsible which does not involve a defect inherent in the goods sold; (iv) claims based on fraudulent non-disclosure of a defect or warranties as to condition or quality (§ 444 BGB); (v) claims for reimbursement of expenses as defined in § 478 (2) BGB.

### **13. Retention of title**

Goods delivered by us remain our property until all of the customer's liabilities in connection with the commercial relationship have been settled in full. We must be notified in writing without undue delay of any writs of attachment or other third-party rights that may jeopardise our rights. Such notification must include all details that we require in order to bring an action in opposition to execution of the relevant judgment ("intervening action") in accordance with § 771 of the German Code of Civil Procedure (*Zivilprozessordnung*, or "ZPO"). Any processing or remodelling of our goods by the customer will be exclusively on our behalf. Where our goods are processed with other goods not belonging to us, we will be entitled to co-ownership of the new product, with our interest being proportionate to the ratio of the cost price (calculated at the time of processing) of the other processed goods and the value of our goods as represented by the invoice amount of our goods subject to the retention of title ("retained goods"). The provisions relating to retained goods will otherwise apply *mutatis mutandis* to the new goods. The customer will hold sole or co-ownership rights on our behalf. The customer is authorised to resell our retained goods in the ordinary course of business, provided that he is not in default with his payment obligations to us and there is no prohibition on assignment in force between the customer and its own customers. The customer will assign to us in advance all claims (invoice amount including VAT) arising in this regard against third parties (including any claims in tort or claims under insurance policies), even if disposal of the goods was prohibited under the above restrictions. If we are deemed merely co-owners of the retained goods, then the advance assignment will be limited to the portion of the claim that corresponds with our co-ownership right based on the invoice amount. Notwithstanding this assignment, the customer will remain entitled to recover claims. Upon request, the customer must notify us of all assigned claims together with details of the relevant debtors and provide us with all information and documentation necessary to recover the claims. Upon our special request, the customer must notify the third party debtors concerned that the relevant claim has been assigned to us. The foregoing assignment provisions also apply to processed and remodelled retained goods. We agree to release security at the customer's request if the realisable value of such security consistently exceeds the value of the secured claims by more than 10%. In the case of retained goods, the realisable value will be the estimated value minus one third, and in the case of claims assigned by way of security, the realisable value will be the nominal value minus one third.

### **14. Place of performance, choice of law, judicial forum**

The place of performance and judicial forum for all disputes arising in connection with our contractual relationship is Stade. We are however entitled to sue the customer before any other court of competent jurisdiction. These standard terms and conditions are governed exclusively by the laws of the Federal Republic of Germany; however the UN Convention on the International Sale of Goods does not apply.

### **15. Confidentiality and privacy**

Where either party obtains knowledge of confidential information about the other party in the course of their commercial relationship (particularly technical and trade/business matters), such party shall treat this information as confidential. This duty of confidentiality will survive the termination of the commercial relationship between us and the customer. To the extent appropriate to the order, we are authorised to process or arrange for third parties to process data about the customer in accordance with the applicable privacy law provisions. We are entitled to incorporate the customer's name in a list of customer references. We will consult him in advance in relation to all other references to him.

**16. Miscellaneous**

If any of the above terms are or become invalid, this will not affect the validity of the remaining terms. Any invalid terms will be replaced by terms that most closely reflect the commercial purpose of the agreement, having regard to the adequate protection of both parties' interests.

The customer is not permitted to assign claims against us which arise from the business relationship.

Version 06/2013. These terms and conditions supersede all of our previous standard terms and conditions of sale, delivery and payment.

Untereibe-Frucht Handelsgesellschaft mbH & Co.  
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