



General Terms and Conditions of Sale of erlenbacher backwaren gmbh

§ 1 General, application

(1) These General Terms and Conditions of Sale (hereinafter called "TOS") shall apply for all our business relations with our customers (hereinafter called "Buyer"). However, the TOS shall apply only if the Buyer is an entrepreneur (§ 14 German Civil Code [BGB]), a legal entity under public law or a public law special fund.

(2) These TOS particularly apply to contracts for the purchase and/or delivery of movable property (hereinafter called "Goods") irrespective of whether we produce the Goods ourselves or buy them from sub-suppliers (§§ 433, 651 German Civil Code [BGB]). Unless otherwise agreed, these TOS shall apply in the version valid at the time of the order of the Buyer, respectively in the last version announced to the Buyer in writing as a framework agreement for future contracts of the same type and without us having to refer to these again in each individual case.

(3) These TOS shall apply exclusively. Diverging, adverse or additional terms and conditions of the Buyer (hereinafter called "TC") shall only and insofar become an integral part of the contract as we have explicitly agreed to their validity in writing. This approval requirement shall apply in any case, for example also if we, with the knowledge of the TC of the Buyer, carry out the delivery to him without reservation.

(4) Individual agreements reached in an individual case with the Buyer (including collateral agreements, supplements and amendments) shall in all cases have precedence over these TOS. In the absence of comprehensive evidence to the contrary, a written contract or our written confirmation is decisive for the content of such agreements.

(5) Legally relevant declarations and notifications, which are to be submitted after conclusion of the contract (e.g. setting of deadlines, reminders, notifications of defects, termination, withdrawal), require the written form in order to be valid.

(6) References to the validity of statutory regulations shall only have clarifying significance. Therefore, the statutory regulations shall also apply without such a clarification insofar as they are not directly changed or are explicitly excluded in these TOS.

(7) In these TOS, Working Days are Monday to Friday, provided that they are not public holidays at the place of performance.

§ 2 Conclusion of contracts

(1) Our offers are without obligation and non-binding.

(2) The order of goods by the Buyer is deemed as a binding contractual offer. Insofar as not otherwise derived from the order, we are entitled to accept this contractual offer within 5 Working Days after its receipt by us.

(3) The acceptance can either be declared in writing (e.g. by order confirmation) or by delivery of the goods to the Buyer.

(4) The minimum order quantity per order and delivery is € 500 net. in Germany and € 1.000 net. outside of Germany. If the minimum order quantity is not reached, we reserve the right to charge a minimum quantity surcharge depending on the place of delivery.

§ 3 Prices

(1) Insofar as not otherwise agreed in an individual case, our actual prices which respectively apply at the time of conclusion of the contract shall apply. Our prices shall apply ex warehouse or ex works plus the applicable rate of value added tax.

(2) The agreed prices include all costs linked to the "green dot" ("Grüner Punkt").

(3) In case of sale by delivery to a place other than the place of performance at the Buyer's request (§ 5 (1)), the costs of transport from the warehouse and of the transport insurance shall be borne by us. Any customs, charges, taxes and other public duties shall be borne by the Buyer.

§ 4 Delivery period, delay in delivery

(1) The delivery date is agreed individually for countries outside Europe, or stated by us with the acceptance of the order. If this is not the case, the delivery date will be approx. 10 working days from conclusion of the contract throughout Germany and Europe.

(2) Our delivery obligation shall at all times be subject to timely and orderly receipt of the goods from our own suppliers.

(3) Insofar as we cannot observe binding delivery deadlines for reasons for which we are not responsible (force majeure, non-availability of the service), we shall inform the Buyer hereof immediately and at the same time inform him of the expected, new delivery deadline. If the service is not available within the new delivery deadline, either we shall be entitled to cancel the contract in full or in part; we will immediately reimburse any consideration of the Buyer already provided.

(4) The occurrence of our delay in delivery is determined according to the statutory regulations. In this case, however, a reminder by the Buyer is necessary.

(5) If we are in delay with delivery, the Buyer's rights to rescind the contract and demand damages according to § 11 of these TOS remain unaffected. Our statutory rights to cancellation and termination and the statutory regulations concerning the processing of the contract, with an exclusion of the service obligation (e.g. impossibility of service and/or subsequent performance or if these are deemed unreasonable), also remain unaffected.

§ 5 Delivery, passing of risk, delay in acceptance

(1) The delivery is carried out ex warehouse which is also the place of performance for the delivery and any claims for defects. At the request of the Buyer, the goods shall be sent to another place of destination (contract of sale involving the carriage of goods). Insofar as not otherwise agreed, we are entitled to determine the type of shipment (in particular transport company, shipment route, packaging) ourselves.

(2) We shall be entitled to make partial deliveries if

- a) the partial delivery can be used by the Buyer within the scope of the contractual intended use,
- b) the delivery of the outstanding goods is secured,
- c) no significant additional work and expenses or additional costs are incurred for the Buyer (unless we agree to bear such costs).

(3) The risk of accidental loss and accidental deterioration of the goods shall pass to the Buyer by no later than when the goods are handed over. With a contract of sale involving the carriage of goods the risk of accidental loss and accidental deterioration of the goods and the risk of delay shall however pass with the delivery of the goods to the carrier, the freight forwarder or the other person or institution determined to carry out the shipment already. It is deemed equivalent to the handover or acceptance if the Buyer is in default with the acceptance.

(4) If the Buyer is in default of acceptance, if it fails to provide an act of assistance or if our delivery is delayed for other reasons for which the Buyer is responsible then we are entitled to request compensation for losses incurred including additional expenses (e.g. storage costs). For this we shall charge a flat rate compensation in the amount of 0.5 per cent of the agreed net price per Working Day (beginning with the delivery deadline or – in the absence of a delivery deadline – with the notification that the goods are ready for shipment), but a maximum total of ten percent of the agreed net price. The proof of higher damages and our statutory claims (in particular compensation, termination) remain unaffected; the flat rate is however to be offset against further monetary claims. The Buyer reserves the right to prove that we did not suffer any damages at all or only substantially less damages than the aforementioned flat rate.

§ 6 Terms of Payment

(1) The purchase price (plus any transportation costs) is due and payable within 14 days from invoicing and delivery of the goods. However, we are also, even in an ongoing business relationship, entitled at any time to execute a delivery or a part thereof only against prepayment.

(2) Unless otherwise agreed upon, the Buyer is obliged to pay the invoice without deduction in cash, by bank transfer or by direct debit. The acceptance of notes and customer bills of exchanges shall be reserved by us in individual cases. Bills of exchange, checks and direct debits are only deemed to constitute payment once credited to our bank account. Discount charges and other costs shall be borne by the Buyer.

(3) Upon expiry of the payment period, the Buyer shall be in default without need of a payment reminder from us. In the event of default of payment we are entitled to statutory claims.

(4) The Buyer is only entitled to offset or to exercise any rights of lien or retention to the extent its claim is undisputed or has been finally adjudicated upon by the courts. In the case of defects to the delivery the counter-rights of the Buyer, in particular according to § 10 (6), sentence 2 shall remain unaffected.

(5) If there are indications after conclusion of the contract that our entitlement to the purchase price is at risk through insufficient ability of the Buyer to pay (e.g. by an application for opening of insolvency proceedings) then, according to the statutory regulations, we are entitled to refuse service and – if applicable after setting a deadline – to cancel the contract (§ 321 German Civil Code [BGB]).

§ 7 Reservation of title

(1) We reserve the right to the property of the sold goods until the full payment of all of our current and future claims from the purchase contract and a current business relationship (“secured claims”).

(2) The goods subject to reservation of title may neither be pledged to third parties, nor assigned as collateral before full payment of the secured claims. The Buyer must inform us immediately in writing if and insofar as there are any accesses of third parties to the goods that belong to us.

(3) In the event of conduct by the Buyer that is in breach of the contract, in particular with regard to nonpayment of the due purchase price, we are entitled to cancel the contract according to the statutory regulations and to request that that the goods be handed over owing to the reservation of title. In the event that the Buyer does not pay the due purchase price, we may only assert such rights if we have previously set the Buyer a reasonable period for payment without result or if the setting of such a period is unnecessary according to the statutory regulations.

(4) Until revocation according to lit. b) below, the Buyer is authorized to resell and/or to process the goods that are subject to reservation of title in proper business transactions. In this case the following provisions shall apply in addition.

a) The Buyer hereby now already assigns the claims against third parties that are established from the resale of the goods or product in total or in the amount of our possible co-ownership share to us as collateral, according to the aforementioned paragraph. We hereby accept the assignment. The obligations of the Buyer stated in § 7 (2) shall also apply in view of the assigned claims.

b) The Buyer shall remain authorized to collect the claim in addition to us. However, we undertake not to collect the claim as long as the Buyer meets its payment obligations towards us, is not in default of payment and, in particular, is not subject to an application to initiate insolvency proceedings or have payments suspended, and we have not asserted our right of reservation of title by exercising a right in accordance with § 7 (3). However, if this is the case, we can request that the Buyer informs us of the assigned claims and their debtors, provides all information which is necessary for the collection, hands over the relevant documents and informs the debtors (third parties) of the assignment. In this event, we shall also be entitled to revoke the Buyer’s rights to resell and/or process the goods that are subject to reservation of title.

c) If the realizable value of the collateral items exceeds our claims by more than twenty per cent, we shall,



upon request of the Buyer, release collateral items at our choice.

(5) We are entitled to enter the storage facilities of the Buyer in person or through representatives in order to check the status of the goods subject to reservation of title.

(6) In the event of the Buyer's insolvency, all securities provided shall also be applicable if the insolvency administrator exercises his right to choose (§ 103 German Insolvency Act [InsO]) and chooses fulfillment of the contract. The originally agreed reservation of title or other securities provided may therefore be enforced by us in the event of the originally selected performance of the contract, within the scope of the option right of the bankruptcy receiver being abortive.

§ 8 Loaned objects

(1) Objects loaned to the Buyer (palettes, refrigerators and freezers, vending devices, advertising material) etc.) shall remain our sole and unconditional property, even if the Buyer has provided security to us. They may not be pledged, sold, disposed, rented or hired without our written consent.

(2) The Buyer shall notify us immediately of any mortgaging, pawning or other access on the part of a third party to the loaned objects and of any damage to or destruction of the same and shall compensate us for or shall bear any cost incurred in enforcing our ownership rights. The same applies upon initiation of a compulsory sale procedure or when an application is filed for the opening of insolvency proceedings in relation to the assets of the Buyer.

(3) The Buyer shall return the loaned objects to us in cleaned condition immediately after purposive use. The Buyer shall have no right of retention with regards to the loaned objects.

§ 9 Duty to inspection and objection

(1) Upon taking possession or (in case of a sale by delivery to a place other than the place of performance) upon delivery at the agreed destination, the Buyer shall immediately

a) check quantities, weight and packaging and record any objections thereto on the delivery note or consignment note and/or the acknowledgement of receipt/warehouse removal note of the cold storage, and

b) conduct a quality check representatively on a spot-check basis and, for such purpose, open the packaging (cartons, bags, tins, foils etc.) and check the shape, smell and taste of the goods itself.

(2) In the case of a notice of defect, the Buyer shall comply with the following procedures and deadlines:

a) The notification shall be made within 5 Working Days after taking possession of the goods or (in case of a sale by delivery to a place other than the place of performance) upon delivery of the goods. In the event of an objection to a hidden defect, the objection must be raised within 5 Working Days after the defect has been discovered but in any event by no later than 2 weeks after delivery or takeover of the goods.

b) The detailed notice shall be delivered to us in writing within the aforementioned deadlines. Any verbal or

telephone notice shall not be accepted. Any notice to sales representatives, commission agents or vicarious agents shall not be valid.

c) The notice must clearly specify the kind and amount of the alleged defect.

(3) No objections with regard to quantities, weight or packaging of the goods shall be possible unless a note has been placed on the delivery note or a consignment note or a receipt of acknowledgement in accordance with § 9 (1) lit. a). Moreover, any right to object shall cease to exist, when the Buyer has mixed, used or resold the goods delivered or shall have started its processing.

(4) Any goods for which objections shall not have been raised in accordance with the procedures and deadlines set out above shall be regarded as approved and accepted.

§ 10 Claims for defects of the Buyer

(1) The statutory regulations shall apply to the rights of the Buyer in case of defects of quality and title (including false and shortfall in delivery) insofar as not otherwise determined below. The special provisions on final delivery to a consumer (supplier recourse §§ 478,479 German Civil Code [BGB]) shall remain unaffected at any time.

(2) The primary basis of our liability for defects shall be the agreement made concerning the quality of the goods. Such a specification of goods shall be considered to have been agreed where product descriptions that are referred to as such have been provided to Buyer prior to its purchase order or have been incorporated in the agreement in the same way as these TOS.

(3) In the absence of any agreed specification of the goods, the existence of defects therein shall be determined in accordance with statutory provisions (§ 434 (1) sentences 2 and 3 German Civil Code [BGB]). We shall, however, not be liable for any representations made to the public by third parties.

(4) In the event of a valid and timely notice of defects (see § 9) the Buyer can, at its sole discretion, initially demand us to provide subsequent performance by remedying the defect (subsequent improvement) or delivery of faultless goods (substitute delivery). Should the Buyer not tell us which of the two rights he chooses, we may set the Buyer an appropriate deadline to do so. If the customer fails to make a choice within this deadline, the right of choice passes to us.

(5) We are entitled to make the owed subsequent performance dependent on the fact that the Buyer pays the due purchase price. However, the Buyer is entitled to retain a part of the purchase price that is reasonable in the ratio to the defect.

(6) The Buyer must give us the time and opportunity that are necessary for the owed subsequent performance, in particular to hand over the goods for which a complaint was made for purposes of inspection. In the event of substitute delivery, the Buyer must return the faulty object to us according to the statutory regulations.



(7) The expenses that are necessary for the purpose of inspection and subsequent performance shall be borne by us if there actually is a defect. However, if it is determined that a request for remedy of a defect by the Buyer is unjustified, we can request reimbursement of the costs incurred hereby from the Buyer.

(8) If the subsequent performance has failed, or a reasonable deadline that is to be set by the Buyer for the subsequent performance has expired unsuccessfully or it is dispensable according to the statutory regulations, the Buyer can cancel the purchase contract or reduce the purchase price. However, no right to cancellation exists with an insignificant defect.

(8) Claims of the Buyer for damages or reimbursement of fruitless expenses shall only exist according to § 11 and are incidentally excluded.

§ 11 Other liability

(1) Insofar as not otherwise derived from these TOS, including the following provisions, we shall be liable according to the relevant statutory regulations in case of a breach of contractual and non-contractual duties.

(2) We shall be liable for damages – no matter for what legal grounds – in case of willful intent and gross negligence. With simple negligence we shall only be liable

a) for damages from injury to life, body or health,

b) for damages from the breach of an essential contractual duty (obligation, the satisfaction of which only enables the proper execution of the contract at all and with which the contractual partner relies and may as a rule rely on its compliance); in this case our liability is however limited to the reimbursement of the foreseeable, typically occurring damages.

(3) The liability restrictions that can be derived from § 11 (2) shall also apply to damages caused by our employees, workers, representatives and vicarious agents. The restrictions shall not apply insofar as we have maliciously failed to disclose a defect or have assumed a guarantee for the condition of the goods. Furthermore, the restrictions shall not apply to claims of the Buyer according to the German Product Liability Act (ProdHaftG).

(4) The Buyer can only cancel or terminate the contract owing to the breach of a duty that does not consist of a defect, if we are responsible for the breach of duty. A free right of termination of the Buyer (in particular according to §§ 651, 649 German Civil Code [BGB]) is excluded. Incidentally, the statutory pre-requisites and legal consequences shall apply.

§ 12 Statute of limitations

(1) Notwithstanding § 438 Par. 1 No. 3 German Civil Code (BGB), the general statute of limitations for claims from defects of quality and title is one year from delivery. Insofar as an acceptance has been agreed, the statute of limitations shall begin with the acceptance.

(2) The statute of limitations as indicated in § 12 (1) shall also apply to contractual and non-contractual claims for damages of the Buyer that are due to a defect to the goods, unless the application of the

regular legal statute of limitations (§§ 195, 199 German Civil Code [BGB]) would lead to a shorter statute of limitations in an individual case. However, claims for damages of the Buyer according to § 11 (2) sentence 1 and sentence 2 lit. a) as well as claims of the Buyer according to the German Product Liability Act (ProdHaftG) shall become statute-barred exclusively in accordance with the statutory provisions.

§ 13 Written form, confidentiality, data protection

(1) The written form required according to these TOS is also deemed complied with if communications are sent by facsimile or e-mail.

(2) Unless specifically agreed otherwise in writing, information provided to us by the Buyer within the business relationship is not deemed as confidential.

(3) Insofar as we consider it necessary for the handling of the business, we are entitled to store and process the Buyer's data in electronic form, to the extent permitted by data protection laws.

§ 14 Choice of law and place of jurisdiction

(1) The law of the Federal Republic of Germany shall apply to these TOS and all legal relations between us and the Buyer under the exclusion of all international and supranational (contractual) legal regulations, in particular the UN Convention on the International Sale of Goods ("CISG").

(2) Exclusive – also international – place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship is Groß-Gerau. However, we are also entitled to file an action at the general place of jurisdiction of the Buyer.

(3) The invalidity of any provision of these TOS shall not affect the validity of the other provisions. Invalid provisions shall be deemed to be replaced by such valid provisions that shall be suitable to implement the economic purpose of the deleted provision to the greatest extent possible.