

## **Peter Kölln GmbH & Co. KGaA**

### **General Terms and Conditions of Sale (*Allgemeine Lieferbedingungen*)**

#### **1. Area of Application**

- 1.1 These Terms and Conditions shall be applicable to all deliveries of products and services of Peter Kölln GmbH & Co. KGaA, Elmshorn, vis-à-vis entrepreneurs within the meaning of § 14 para. 1 German Civil Code (BGB) and legal public law entities or public special funds within the meaning of § 310 para. 1 German Civil Code. They shall apply exclusively; we reject any terms and conditions of the customer to the contrary or deviating from our terms and conditions, unless we have expressly consented to their validity by email, fax letter or letter (in the following “text form”).
- 1.2 Our terms and conditions shall apply even if we effect delivery to the customer without reservation with knowledge of terms and conditions of the customer to the contrary or deviating from our terms and conditions.
- 1.3 These terms and conditions of delivery shall also apply – in their current version, as amended / changed from time to time – to future transactions with the customer in an ongoing business relationship and to similar future contracts, without us having to refer to them again in each individual case. These terms of delivery are updated regularly. The latest version, as published on our website '[www.peterkoelln.de](http://www.peterkoelln.de)', shall apply.

#### **2. Offers - Documents - Conclusion of Contract**

- 2.1 Our offers, including our price lists, are not binding to us, unless otherwise stated in our order confirmation or otherwise expressly declared by us in text form. Our offers apply to the country of destination to which the products shall be delivered.
- 2.2 Contracts for the delivery of goods shall only come into effect with our order confirmation in text form, with the acceptance of our binding offers by the customer in text form, or with the delivery of our goods or services in accordance with the order confirmation sent by us to the customer. Deviations from our binding offers must be confirmed by us in text form to become effective. However, contracts concluded by our sales representatives shall become effective in any case when we deliver the goods.
- 2.3 Specifications in our offers / order confirmations are only performance descriptions and not guarantees; they apply with customary tolerance deviations, unless otherwise expressly agreed with the customer in individual contracts or if usability for the contractually intended purpose excludes tolerance deviations.
- 2.4 We reserve title and all property right to and/or the copyright in illustrations, drawings,

calculations or other documents including the outfit of our products. With the exception of product design in packaging of ready to sale products, these documents must not be made available to third parties by the customer. This particularly applies to documents marked as “confidential“. The passing on such documents to third parties requires our express prior consent in writing.

- 2.5 Contracts shall become only binding through our written order confirmation, through written acceptance of our binding offers by the customer or through delivery of our products or services. Any deviations from our offers must be confirmed by us in text form.

### **3. Prices and Terms of Payment**

- 3.1 Our price lists apply within the period stated therein but are subject to changes at any time. We are entitled to adjust our prices provided that the period between the conclusion of a contract and the delivery date exceeds four weeks as contractually agreed upon.
- 3.2 Unless otherwise agreed in text form, all products shall be delivered “FCA“ (Incoterms 2020). If agreed, the warehouse in Dissen (Germany) – or for orders from Austria our warehouse in Wels (Austria) - shall be deemed to be the FCA plant for oils and fats and oat drinks. For all other goods FCA Elmshorn applies. Our prices include the usual packaging of the goods, which is safe for transport. Freight costs will be charged additionally, but we will carry out the transport within Germany and Austria ourselves free of charge if the net value of the delivery is more than € 500.00. The selection of the mode of shipment is at our equitable discretion.
- 3.3 Unless otherwise agreed in text form, all prices and remunerations are in Euro (€). All our prices are offered as net amount, i.e. without statutory turnover tax (value added tax), which must be added to all prices and remunerations. Any rebates and cash discounts on our prices require our express consent in text form.
- 3.4 Our invoices shall be paid within 14 days of the invoice date unless other payment periods are specified in our offers or order confirmations. We are entitled to demand advance payment or a reasonable down payment before delivery for goods or services if it becomes apparent to us after conclusion of the contract that our purchase price claim is jeopardized by the customer's threatening inability to pay. This applies in particular if the customer temporarily stops payments or enters into restructuring negotiations with creditors.
- 3.5 The customer shall have a right of set-off only if his counter claims have been recognised by declaratory judgement, have not been contested or have been acknowledged by us. The customer shall be entitled to exercise a right of retention or a right to refuse performance only if the same conditions have been fulfilled and, in addition, his counter-claim against us is based on the same contract.

3.6 If we are obliged to make advance deliveries and circumstances come to our knowledge after the conclusion of the contract, which indicate a substantial deterioration of the customer's financial situation, we may demand, at our equitable discretion, either sufficient security within a reasonable period of time, or payment on delivery. If the customer does not meet this request, we shall be entitled, subject to further statutory rights, to rescind the contract.

3.7 If the customer defaults on his payment obligations, we shall charge the statutory default interest of 9 percentage points p.a. above the respective base interest rate for the period of default.

#### **4. Delivery and Delivery Period**

4.1 Delivery periods are non-binding unless a calendar date for delivery has been agreed upon. Deviations from agreed delivery dates that are customary or not caused by our own negligence do not constitute an event of default. The delivery period shall begin with the dispatch of the order confirmation, but not before the customer has provided the documents, permits and releases to be contractually obtained by him. The customer shall provide all permits required for transport and, if applicable, export; this is a prerequisite for the start of transport.

4.2 The delivery period / the delivery date shall be deemed to have been complied with if the goods to be delivered have left the factory or readiness for dispatch has been notified before its expiry.

4.3 We shall not be liable for delays in delivery due to force majeure or unforeseeable circumstances beyond our control such as interruptions of operations, such as strikes, lock-outs, general lack of means of transportation, epidemic or pandemic events, difficulties in procuring raw materials and energy, terrorist acts or orders imposed by the authorities. Any delivery period agreed upon shall be extended by the period of obstruction plus an appropriate start-up time. If the obstruction lasts longer than one month, the customer and we shall be entitled, at the end of an additional period of time of reasonable length to be set, to rescind the contract with regard to the part not yet performed. In this case, damage claims are excluded.

4.4 If we do not receive deliveries from our supplier on time although we have placed identical orders with reliable suppliers, we will be released from our obligation to perform towards the customer; if delivery is excluded permanently, we are entitled to withdraw from the contract. We are obliged to inform the customer immediately about an unavailability of deliveries and will immediately reimburse any consideration paid by the customer in case of our withdrawal from the contract.

4.5 In the event of our default in delivery, the customer shall be entitled to rescind the contract after an additional period of time of reasonable length granted in writing to us has expired without results. In addition, the customer shall be entitled to claim damages

for non- performance, if any, only if we caused the default intentionally or by gross negligence or by a breach of our material obligations (obligations of which fulfilment the customer may rely upon). In each case, our liability shall be limited to the foreseeable damage in the event of damage caused by our negligence.

- 4.6 The limitations on liability pursuant to § 4.3 above shall not apply if a transaction for delivery by a fixed date where the date is of essence was agreed upon or if the customer may legitimately assert that he is no longer interested in performing the contract because of our default. In these cases, our liability shall be limited to the typical, foreseeable damage unless we intentionally caused the delay in delivery.
- 4.7 Our obligation to deliver in time is contingent on the proper and timely performance of the customer's obligations.
- 4.8 The customer's obligation to accept the products ordered constitutes a material contractual obligation. Therefore, in the event of the customer's delay in acceptance we shall particularly be entitled to set a final acceptance period and, after this final period has expired without results, to claim damages for non-performance and rescind the contract. If the customer breaches his obligations to co-operate for reasons for which he is responsible we shall be entitled to claim compensation for the damage suffered by us, including any additional expenses. In the event of the customer's delay in acceptance the risk of accidental loss or accidental deterioration of the products will pass to the customer at the time when he defaults in taking delivery.
- 4.9 We are entitled to effect part deliveries if these are not opposed to any noticeable and legitimate interests of the customer.
- 4.10 Any loading devices, e.g. interchangeable European pallets, containers, etc., have to be returned in exchange. Any damage caused to, or the loss of, any such devices shall be borne by the customer, unless he is not responsible for any such damage or loss. If the customer defaults in returning loading devices for more than three months we will assume total loss unless evidence to the contrary is furnished by the customer.
- 4.11 Unless otherwise agreed upon in the contract, we are not liable for the compliance with national regulations and laws abroad. If the goods are delivered at the request of a customer for import into a country other than Germany or Austria, the following applies:
- It is the responsibility of the customer to comply with the laws or regulations applicable to the import of the goods into the country of destination and to pay any applicable customs duties. This also applies if the customer collects the goods or has them collected by a freight forwarder.
  - The customer is responsible for all taxes, airport charges, delivery or collection costs and other costs and charges incurred in delivering the goods to the country of

destination, unless they are part of the agreed price.

- The customer is responsible for inform us in text form and within a reasonable period of time before the delivery date (in order to allow us sufficient time to deal with these matters) of the necessary markings, certificates and/or import documents required for the delivery of the goods to the country of destination. The customer is also responsible to check markings, certificates and/or import documents issued by us to ensure that they comply with the requirements and regulations of the country of destination.

4.12 The customer shall inform us in writing and in good time before conclusion of the contract about the country of destination of the delivered goods as well as about all regulations and laws of this country deviating from German law. The customer shall bear any costs incurred in this connection and shall be liable for any consequences of incorrect or incomplete statements.

## **5. Passing of Risk; Place of Performance**

5.1 The transfer of risk shall be FCA according to Incoterms 2020. The place of delivery and performance for oils, fats and oat drinks shall be D-49201 Dissen (Germany) or A-4600 Wels (Austria), for all other goods Elmshorn, unless otherwise stated in the order confirmation.

5.2 At the express request of the customer (in text form), we will cover deliveries by transport insurance; the costs incurred in this respect shall be borne by the customer.

## **6. Warranty**

6.1 The warranty rights (warranty claims) of a merchant presuppose that he inspects the items delivered, or services performed, immediately upon receipt and gives notice in text form of any visible defects without undue delay after carrying out the inspection, or of hidden defects without undue delay after their discovery, specifying the defect at the same time (§ 377 German Commercial Code (HGB)). This shall also apply to contracts for work and services. Defects which are recognisable during an incoming goods inspection must be notified to us within five working days of delivery, at the latest. Our liability for defects in goods which the customer does not immediately and properly examine and/or whose defects he does not report is excluded in accordance with the statutory provisions. Insofar as deficiencies in the number of items or weight are already noticeable upon delivery according to the aforesaid duties of inspection, the customer shall make a complaint to the freight forwarder about these deficiencies upon the acceptance of the products and shall have the complaint attested.

6.2 Before the customer may enforce further claims or rights (rescission of contract, reduction in purchase price, damages or reimbursement of expenses), we shall first be given the opportunity to effect subsequent performance within a reasonable period of time, unless we have given any guarantee to the contrary. Should subsequent

performance fail despite at least two attempts, should it be impossible or unacceptable for the customer, or should we refuse subsequent performance, the customer may rescind the contract or reduce payment. § 7 below shall apply to the enforcement of damage claims or claims for reimbursement of expenses.

- 6.3 If we are responsible for a defect of our products or services, we shall be entitled, at our option, to either repair or substitute the delivered items or services.
- 6.4 Warranty rights are excluded in cases of mere slight deviations from the customary quality, or the quality agreed upon, or in case of an insignificant impairment of usability of the delivered items.
- 6.5 Payments made by the customer in the event of defects may only be retained to a reasonable extent, relative to the reduction in value of the goods caused by the notified defect. Furthermore, rights of retention shall only exist if the customer's counterclaims have been legally established, are undisputed or are recognised by us.
- 6.6 In case a customer, for reasons that are not attributable to us, wrongfully notifies defects for which we are not responsible, we shall be entitled to charge to the customer's account reasonable expenses incurred by us for remedying the delivered items and/or determining the defects.
- 6.7 We may charge to the customer's account the additional costs of the expenses necessarily incurred for the purpose of subsequent performance, particularly transport charges, travelling expenses, cost of labour and materials insofar as expenses have increased as a result of taking the delivered item to a place other than the delivery address by the customer.
- 6.8 The customer's rights of recourse in the case of the purchase of consumer goods (§ 478 BGB) are excluded in respect of agreements between the customer and his buyers, which go beyond the customer's statutory claims for defects. The customer must inform us in good time about claims for defects of his buyers so that we are in a position to fulfil these claims of the buyers instead of the customer at our discretion.
- 6.9 Warranty rights (remedies on breach of warranties) will become statute-barred 12 months after the commencement of the statutory limitation period unless we caused the defect intentionally or by gross negligence or fraudulently concealed the absence of a defect. The same shall apply to any guarantees given that are binding on us unless these provide anything to the contrary. As regards the limitation periods for remedies exceeding two years by virtue of the German statutory law, the statutory limitation periods shall be applicable. These limitation periods shall also apply to consequential and indirect damages caused by a defect. If, as a result of our defective delivery, subsequent performance is required, the limitation period between the notification of defects and subsequent performance will only be suspended but will not restart.
- 6.10 In addition to the above provisions of this Clause 6, the following shall apply to claims

from defects of title:

- a. Unless otherwise expressly agreed, we shall only be obliged to effect deliveries free of any rights of third parties in the country of the delivery address.
- b. In the event of a violation of intellectual property rights of third parties for which we are responsible, we may, at our option, either obtain an adequate right of use for the agreed or expected use at our expense and assign this right to the customer, or transform the delivered items or redeliver the same so that the intellectual property right is not infringed, or replace the delivered items provided that the agreed or expected use of the delivered items is not thereby impaired. If this is impossible for us, or if we refuse subsequent performance, the customer shall be entitled to assert his statutory rights and claims. § 7 below shall apply to damage claims and claims for reimbursement of expenses.

## **7. Damage Claims**

- 7.1 Damage claims and claims for reimbursement of expenses based on defects of the delivered products and services shall be excluded insofar as we cannot effect subsequent performance for reasons beyond our control. Damage claims for defects and for consequential damage under warranty claims (remedies) shall be excluded unless the defect was caused by our gross negligence or wilful misconduct.
- 7.2 Damage claims for violation of a durability guarantee given by us or third parties (§ 443 para. 2 German Civil Code) for which we are liable shall be excluded unless the violation was caused by our own fault.
- 7.3 In all other respects, damage claims and claims for reimbursement of expenses (hereinafter referred to as “Damage Claims”) of the customer – irrespective of the legal grounds –, particularly for violation of duties under and in connection with the obligation, from violation of mutual confidence upon or prior to the conclusion of a contract, or tort shall be excluded. The above exclusion of liability shall not apply to claims of intent or gross negligence, in case of a guarantee for the existence of a certain quality (quality guarantee) or in the event of a negligent breach of a material contractual obligation (the fulfilment of which the customer may rely on). In the event of our negligence our liability shall be limited to the typical, foreseeable damage. The statutory provisions of the German law shall apply with regard to any violation of life or in the event of personal injury or injury to health, and to claims based on §§ 1, 4 German Product Liability Act (*Produkthaftungsgesetz*). In no event shall our liability exceed the statutory claims. The provisions in this Clause 7 shall not constitute any changes to the statutory burden of proof.

## **8. Reservation of Title**

- 8.1 We shall retain title to the delivered items until receipt of all payments owed by the customer to us under all existing contracts in the business relationship to the customer.

In the event the customer acts in breach of contract, particularly defaults in payment, we shall be entitled to take back the item delivered, in particular after expiry of an additional period of time of reasonable length. After taking back the delivered item, we shall be entitled to realise the same; the realisation proceeds shall be set off against the customer's liabilities, less reasonable costs of the realisation. The provisions of the German Insolvency Code (*Insolvenzordnung*) relating to realisation shall not thereby be affected.

- 8.2 The customer is obliged to handle the delivery items carefully. In particular, he is obliged to insure the same sufficiently at his expense at the reinstatement value against damage caused by fire, water and theft.
- 8.3 The customer shall immediately inform us in writing of attachments and any other interference by third parties. The customer shall be liable to us for any court and out of court costs of any action which may be necessary pursuant to § 771 German Code of Civil Procedure (*Zivilprozessordnung*), i.e. a third party appeal.
- 8.4 The customer is entitled to resell the delivery item in the ordinary course of business; however, he herewith already assigns to us all claims to the amount of the invoice sum total (including value-added tax) accruing to him from the resale against his customers or third parties, irrespective of whether the delivery item has been resold without or after having been processed. The customer shall be authorised to collect this claim even after assignment. However, we shall be authorised to collect the claim ourselves if the customer does not perform his obligations to pay from the collected proceeds, defaults in payment or has filed a petition for the institution of insolvency proceedings or such a petition has been filed or payments have ceased. In such cases, we may demand that the customer states which claims have been assigned and their debtors, furnishes all the information necessary for the collection, hands over the appurtenant documents and notifies the debtors (third parties) of the assignment. However, it will not be possible for us to collect the claim if the German Insolvency Code precludes this.
- 8.5 Any processing or transformation of the delivered item by the customer shall always be carried out on our behalf. If the delivered item is processed with other items not belonging to us, we shall acquire joint title to the new object proportionally to the value of the delivered thing to the other processed items at the time of the processing. In all other respects, the provisions applicable to the items delivered with a reservation shall also apply to the thing resulting from the processing.
- 8.6 We undertake, at the customer's request, to release the securities to which we are entitled also to the extent that the value of our securities exceeds the claims to be secured by more than 20%. Selection of the securities to be released shall be incumbent on us.
- 8.7 In the event of cross-border deliveries, the following shall apply after the delivery items



having crossed the German border: If the items were delivered prior to payment of all amounts owed by the customer under the contract, we will retain title to the delivered items until payment has been effected in full insofar as this is admissible according to the law by which the delivered items are governed. If the aforesaid law does not permit a reservation of title but allows us to reserve other rights to the items delivered, we may exercise any rights of this kind. The customer is obliged to assist us with any measures which we may take for the purpose of protecting our title to the items delivered or any other right to the items delivered replacing such title.

## **9. Special Termination and Withdrawal Rights**

9.1 Notwithstanding any other contractual or statutory rights, we shall be entitled to terminate a contract for good cause with immediate effect or to withdraw from the contract if

- a. the customer is in default with due payments in a considerable amount for more than two calendar months;
- b. the customer commits a material breach of its contractual obligations towards us and, if the breach can be remedied, does not remedy it within a reasonable period of at least 14 calendar days to be set by us in text form;
- c. the customer or a third party applies for opening of insolvency proceedings over the customer's assets and such application is not withdrawn within 30 calendar days as from application or the court refuses opening of insolvency proceedings for lack of assets;
- d. the customer ceases its business operations or threatens to cease them or announces them to third parties, unless the customer immediately provides us, at our request, with sufficient security for existing and, if applicable, future payment claims arising from orders placed; or
- e. the customer tolerates in his supply chain human rights risks within the meaning of Section 2 of the German Supply Chain Due Diligence Act (*Lieferkettensorgfaltspflichtengesetz*), in particular is responsible for / tolerates child labour or inhumane working conditions in his production plants or his supplier companies or does not comply with social insurance obligations at home or abroad, or disregards / violates the occupational health and safety obligations applicable under the law of the place of employment, provided this behavior increases the risk of accidents at work or creates work-related health risks.

9.2 Notices of termination, regardless of which party, must be in text form to be effective. If the applicable law prescribes written form, the written form shall apply.

9.3 A termination of the contract for good cause shall not affect those rights and claims

against the customer that already exist at the time of termination.

#### **10. Place of Jurisdiction**

10.1 Elmshorn (Germany) shall be the sole place of jurisdiction for all disputes arising from or in connection with the agreement provided the customer is a merchant. However, we are entitled to sue the customer also at the court having jurisdiction at his registered seat.

#### **11. Applicable Law, Severability**

11.1 The legal relations between the parties shall be exclusively governed by German law, to the exclusion of the United Nations Convention on Contracts for the International Sale of Products (UNCITRAL/CISG).

11.2 Should individual provisions of this contract or of these general terms and conditions be invalid, the validity of the other provisions shall not thereby be affected.

- Version of November 2023 -