

## General Terms and Conditions of Pit Süßwaren- und Nahrungsmittelfabrik Hoffmann GmbH & Co KG (hereinafter "Pit") - Business Clients

### 1. Scope of Application

- 1.1 The General Terms and Conditions below apply to any and all deliveries and services rendered by Pit. They will also form the contractual basis for future legal transactions, even if such are not explicitly agreed upon again.
- 1.2 The client's terms and conditions shall not apply, even if Pit has not explicitly objected to them. These General Terms and Conditions shall be deemed to be accepted by the client upon receipt of the delivery or service at the latest, and the latter waives the applicability of their own terms and conditions; Pit accepts, in advance, that the client waives their own terms and conditions.

### 2. Offer and Conclusion of Contracts

- 2.1 Offers shall always be non-binding. A contract shall be deemed to be concluded when Pit sends an order confirmation in writing or by fax or – if no such written or fax confirmation is sent in individual cases – upon commencement of the performance of the service or the delivery of the goods by Pit.
- 2.2 Employees of Pit are not authorised to make oral side agreements or oral undertakings which go beyond the contents of the written contract.

### 3. Prices

- 3.1 The prices for Pit's deliveries and services are generally set out in the order confirmation. The prices specified in the order confirmation are binding. Goods deliveries will be made for the prices set out in the price list applicable on the day of contract conclusion, unless the client received an order confirmation in writing or by fax and unless otherwise agreed in individual cases.
- 3.2 Prices are stated ex works, including normal packaging and plus the value added tax at the legal rate and plus any costs for shipping, unless otherwise agreed in individual cases.

### 4. Delivery Dates and Periods

- 4.1 Delivery dates and periods, which can be agreed on bindingly or non-bindingly, shall be made in writing to be effective. Delivery periods will generally commence upon sending the order confirmation: but, if Pit needs material to be provided by the client in order to perform the service, the delivery period will not commence prior to Pit receiving the material.
- 4.2 Pit shall not be responsible for delays in delivery and service caused by force majeure and based on events which hinder Pit essentially and not only temporarily from performing the delivery – this includes, in particular, delivery difficulties of Pit's pre-suppliers, strike, lock-out, orders from authorities, etc., even if they occur with Pit's suppliers or their sub-suppliers – even if the delivery periods or dates were bindingly agreed. They will entitle Pit to postpone the delivery or service for the duration of the disturbance, plus an adequate start-up phase or to withdraw from the contract, in full or in part, regarding the non-fulfilled part. In such cases, the client may request Pit to make a declaration within a period of two weeks, whether Pit will make the delivery within an adequate grace period or will withdraw from the contract.
- 4.3 If the delivery is delayed by more than one month beyond the promised delivery date, due to the disturbance, the client may withdraw from the non-fulfilled part of the contract, after an adequate grace period was specified, unless the delivery is notified as ready for shipment until the end of such grace period.
- 4.4 In all cases of a delay of a delivery or service caused by force majeure or based on events specified in item 4.2 or in case Pit or the client withdraw from the contract pursuant to item 4.2 or 4.3, claims for damages on the part of the client shall be excluded, insofar as Pit promptly notifies the client about the disturbance.
- 4.5 If Pit is in default of a delivery or service, in full or in part, the client's claim for a compensation for the default shall be limited to 0.5 % of the net price for each complete week of the delay, however to a total of 5 % of the price of the deliveries and services affected by the delay. If the client withdraws from the contract pursuant to the legal provisions due to the delay caused by Pit, and if the client asserts claim for damages against Pit instead of the service, Pit's total liability shall be limited to 10 % of the net price of the delivery or service. Any claims going beyond that shall be excluded, unless the delay was caused by intent or gross negligence on the part of Pit.

4.6 Reasonable partial deliveries or partial services by Pit shall be permitted.

4.7 Precondition for a compliance with the delivery and service obligations of Pit shall be that the client fulfils their obligations properly and in due time.

4.8 If the client is in default of receipt, Pit shall be entitled to request compensation for the damage incurred by them; upon occurrence of a default of receipt, the risk of an accidental deterioration or accidental loss shall be transferred to the client.

### 5. Transfer of risk

The risk shall be transferred to the client as soon as the shipment was handed over to the forwarder, freight carrier or any other person performing the transport or if such has left the company or warehouse for the purpose of being shipped. If the shipment is delayed at the client's request, the risk shall be transferred to them upon notification that the goods are ready for shipment.

### 6. Warranty

6.1 Pit warrants that the deliveries and services comply with the contractual agreements regarding scope, contents and quality. The products will be delivered, in particular, free of defects in manufacturing and material.

6.2 The client must inform, in writing and in detail, about defects of the delivery or service as well as complaints about the completeness of a delivery or service immediately, however not later than within one week after receipt. Defects which cannot be detected within this period, even during a careful inspection, shall be notified to Pit, in writing and in detail, immediately after having been detected. Precondition for a warranty on the part of Pit is, in addition, that the client provides Pit with the option to verify the complaint of defects. Sec. 377 of the HGB [German Commercial Code] shall remain unaffected by the above conditions.

6.3 If the client is entitled to warranty claims, they shall initially only be entitled to the right of rework. Pit shall be entitled to choose between rework and new delivery. If the rework fails after an adequate period or if it proves impossible, the client may, at their choice, reduce the remuneration under the legal preconditions or withdraw from the contract.

6.4 The client's warranty claims will become statute barred within one year after the delivery.

6.5 Only the direct clients shall be entitled to claims for warranty and such cannot be assigned.

### 7. Liability

7.1 Pit will be liable for damages

- in case of damage caused by an injury of life, body or health arising from the violation of duties on the part of Pit, any legal representative of Pit or any of their vicarious agents,
- for other damage which was caused by an intentional or grossly negligent violation of duties on the part of Pit, a legal representative of Pit or any of their vicarious agents,
- under the German product liability act.

7.2 In case of a violation of material contractual duties (cardinal duties), the fulfilment of which only enables the performance of the contract or on the performance of which the client may rely, Pit will be liable for any negligence, however only up to the amount of the damage which is foreseeable and typical for the contract. The liability for claims for lost profit, saved expenses, those arising from claims for damages of third parties and other indirect and consequential damages shall be excluded.

7.3 Otherwise, claims for damages shall be excluded, regardless of the type of the violation of a duty, including tort.

### 8. Retention of Title

8.1 The goods delivered by Pit shall remain Pit's property, until full payment of any and all claims arising from the business relationship, including ancillary claims. The retention of title shall also continue to apply if individual claims of Pit are included in an ongoing invoice; the goods subject to retention of title shall then serve to secure any claims for balances of Pit.

8.2 The client shall be entitled to sell the goods subject to retention of title in the normal course of business, where the claims resulting from the sale, including the ancillary claims, will be transferred to Pit according to the sentence below. The claims arising from the re-sale or any other legal reason

(insurance, tort) regarding the goods subject to retention of title (including any and all balance claims from current account) will be assigned by the client, already as of now, in full, to Pit, to serve as collateral; Pit accepts the assignment. Pit revocably authorises the client to collect the claims assigned to Pit for the account of Pit in their own name. Pit may revoke the right for re-sale of the goods subject to retention of title and the above direct debit authorisation if the client fails to comply with the payment terms, the same shall apply in case of protests against bills of exchange or cheques.

8.3 If the value of the collateral existing in favour of Pit exceeds any and all claims of Pit against the client by more than 10 %, Pit must release the collateral at the request of the client or any third party impaired by the over-collateralisation, at the choice of the client or the third party.

8.4 Goods subject to retention of title or the assigned claims must neither be pledged nor transferred as collateral to third parties. If third parties access the goods subject to retention of title or the assigned claims, in particular, in case of seizure, the client shall be obliged to inform about the property of Pit and shall notify Pit immediately in writing. Insofar as the third party is unable to reimburse to Pit the court or out-of-court fees incurred by Pit in this connection, the client shall be liable for such.

8.5 If the client fails to comply with the payment terms or in case of protests against the bills of exchange or cheque, Pit shall be entitled to request the surrender of the goods subject to retention of title. The taking back of goods subject to retention of title shall only be deemed as a withdrawal from the contract, if Pit explicitly declares such withdrawal.

### 9. Payment

9.1 The client shall pay the invoices of Pit within 30 days after the invoice date without any discount, unless otherwise agreed.

9.2 Despite contrary provisions of the client, Pit shall be entitled to set off the client's payments, initially, with the latter's older debts and will inform the client about this type of set-off. If costs and interest have already arisen, Pit shall be entitled to initially set off the payment with the costs, then with the interest and lastly with the main debt.

9.3 Any payment shall only be deemed to be made when the relevant amount is credited on Pit's bank account. In case of cheques, the payment shall only be deemed to be made when the cheque has been cashed.

9.4 If the client is in default of payment, in full or part, Pit may request the payment of default interest on the outstanding amount at the legal default rate. Any rights of Pit going beyond the above under the legal default provisions shall remain in full force and effect.

9.5 The client shall only be entitled to any right of set-off, retention or reduction, even if claims for defects or counter-claims are asserted, if such counter-claims have been found to be effective by a court or are undisputed.

### 10. Export

Customs, taxes, charges and duties which arise in case of cross-border deliveries, shall be borne by the client, unless otherwise agreed in individual cases.

### 11. Written Form Clause, Applicable Law, Place of Jurisdiction, Severability

11.1 Amendments and supplements of contracts between the parties shall be made in writing to be effective. The same shall apply to any waiver of the written form requirement.

11.2 These Terms and Conditions and the entire legal relation between Pit and the client shall exclusively be governed by the laws of the Federal Republic of Germany. The provisions of the UN Convention on the International Sale of Goods shall not apply.

11.3 The exclusive place of jurisdiction for all disputes arising, directly or indirectly, from the contractual relationships shall be Stephanskirchen, Germany.

11.4 If any provision hereof or any provision in other agreements is or becomes ineffective, the other provisions or agreements shall remain in full force and effect.