

General Terms and Conditions of Sale of Erlenbacher Backwaren GmbH

Section 1 – General, scope of application

(1) These Terms of Sale (hereinafter referred to as “ToS”) shall apply to all our business relations with our customers (hereinafter referred to as the “Buyer”). However, the ToS shall only apply if the Buyer is an entrepreneur (section 14 of the German Civil Code [BGB]), a legal entity under public law or a public law special fund.

(2) These ToS apply, in particular, to contracts for the purchase and/or delivery of movable items (hereinafter referred to as “Goods”) irrespective of whether we produce the Goods ourselves or buy them from sub-suppliers. The version of these ToS valid at the time of the Buyer’s order or in any case the last version provided to the Buyer in text form (as defined in section 126b BGB) shall form a Framework Agreement for future contracts of the same type and without us having to reference the ToS again in each individual case, unless otherwise agreed to the contrary.

(3) These ToS shall apply exclusively. Deviating, contradictory or supplementary Terms and Conditions of the Buyer (hereinafter referred to as “T&Cs”) shall only become an integral part of the contract if we have explicitly agreed their applicability in writing. This approval requirement shall apply in any case, for example even if we make a delivery to the Buyer without reservation while being aware of the T&Cs of the Buyer.

(4) Individual agreements agreed on an individual basis with the Buyer (including ancillary 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 (as defined in section 126 BGB) in order to be valid.

(6) Any references to the applicability of statutory provisions are for the purposes of clarification only. The statutory provisions shall thus also apply even without such a clarification, to the extent that they have not been directly amended or expressly excluded in these ToS.

(7) Working days within the meaning of these ToS are Monday to Friday, excluding any public holidays which fall on Monday to Friday at the place of performance.

Section 2 – Conclusion of contracts

(1) Our offers are subject to confirmation and are non-binding.

(2) Orders placed by the Buyer for Goods are deemed to be binding contractual offers. We are entitled to accept these contractual offers within 5 working days of their receipt by us, unless otherwise stated in the order.

(3) The acceptance can either be made in writing (for example by an order confirmation) or by delivery of the Goods to the Buyer.

(4) Within Germany, the minimum order value per order and delivery is €1,000 net. A minimum quantity surcharge in amount of € 39 will be added to the invoice

for orders from €1,000 to €1,800 net. The minimum quantity surcharge will not be charged for orders above €1,800 net per order inside Germany. Outside of Germany, the minimum order quantity per order and delivery is €1,800 net. If the order value of €1,800 is not reached, a minimum quantity surcharge of €150 per order will be charged.

Section 3 – Prices

(1) Unless otherwise agreed on an individual basis, our current prices applicable at the time the contract is concluded shall apply. Our prices shall apply ex works plus the applicable rate of value added tax.

(2) The agreed prices include all costs related to the “Green Dot” (“Grüner Punkt”).

(3) In the event of a sale to a place other than the place of performance (section 5 (1)), we shall pay the transport costs ex works and the cost of transport insurance. Any customs fees, charges, taxes and other public duties shall be borne by the Buyer.

Section 4 – Delivery period, defaulting on delivery

(1) The delivery period shall be agreed individually for countries outside Europe or stated by us upon acceptance of the order. If this is not the case, the delivery period shall 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 the timely and orderly receipt of goods from our own suppliers.

(3) If we are unable to observe binding delivery periods for reasons for which we are not responsible (force majeure, non-availability of performance), we shall inform the Buyer hereof without delay while at the same time stating the expected, new delivery period. If performance is not available within the new delivery period, we shall be entitled to rescind the contract in full or in part; we shall reimburse any consideration the Buyer has already provided without delay.

(4) The statutory provisions shall determine when we enter into default. In any case, however, the Buyer must issue a written warning.

(5) If we have defaulted on delivery, the Buyer’s rights to rescind the contract and claim damages in accordance with section 11 of these ToS remain unaffected. Our statutory rights of rescission and termination, as well as the statutory provisions concerning the execution of the contract shall also remain unaffected, excluding the performance obligation (for example impossibility or unreasonableness of performance and/or subsequent performance).

Section 5 – Delivery, transfer of risk, default of acceptance

(1) The delivery is carried out ex works, which is also the place of performance for the delivery and any subsequent performance. At the request of the Buyer, the Goods shall be sent to another destination (sale to a place other than the place of performance). Unless otherwise agreed, we are entitled to determine the method of shipping (in particular, the transport company, shipping channel, packaging) ourselves.

- (2) We shall be entitled to make partial deliveries if
- the partial delivery can be used by the Buyer within the scope of the contractual intended use,
 - the delivery of the outstanding ordered Goods is ensured,
 - no significant additional expenditure or additional costs are incurred by the Buyer as a result of the partial delivery (unless we agree to bear such costs).

(3) The risk of accidental loss and accidental deterioration of the Goods shall pass to the Buyer no later upon handover of the Goods. With a sale to a place other than the place of performance, the risk of accidental loss and accidental deterioration of the Goods and the risk of delay in delivery shall, however, pass with the delivery of the Goods to the carrier, the freight forwarder or any other person or institution responsible for transport. If the Buyer is in default of acceptance, this is deemed equivalent to delivery/handover.

(4) If the Buyer is in default of acceptance, if it fails to provide an act of cooperation or if our delivery is delayed for other reasons for which the Buyer is responsible, we are entitled to request compensation for losses incurred including additional expenditure (such as storage costs). We shall charge a flat rate compensation for this in the amount of 0.5% 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, however no greater than a maximum total of 10% of the agreed net price. The right to provide evidence of higher costs and our statutory rights (in particular with regard to damages and rescission) remain unaffected; the flat rate shall, however, be offset against further monetary claims. The Buyer reserves the right to prove that we did not suffer any losses or substantially less losses than the aforementioned flat rate.

Section 6 – Terms of payment

(1) The purchase price (plus any transportation costs) is due for payment within 14 days from invoicing and delivery of the Goods. However, we are also at any time entitled, even in an ongoing business relationship, to only carry out a delivery or a partial delivery against prepayment.

Unless otherwise agreed, the Buyer shall pay the invoice without discount in cash or by bank transfer. We reserve the right to accept bank acceptances and customer bills of exchange on an individual basis. 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 enter into default without requiring us to send a written warning. In this case our statutory rights apply.

(4) The Buyer is only entitled to offset or to exercise a right of retention if the Buyer's claim is undisputed by us or has been adjudicated and found to exist by res judicata court judgement. In the case of defective delivery, the opposing rights of the Buyer, in particular in accordance with section 10 (6), sentence 2 of these ToS shall remain unaffected. If there are indications after the contract has been concluded that our entitlement to the purchase price is at risk due to the Buyer's lack of financial capacity (such as an application to open insolvency proceedings) then, in accordance with the statutory provisions, we are entitled to without

performance and – after setting a grace period, if applicable – to rescind the contract (section 321 BGB).

Section 7 – Retention of title

(1) We shall retain the title to the sold Goods until full payment of all of our current and future claims from the purchase contract and the ongoing business relationship ("secured claims").

(2) The Goods subject to retention of title may not be pledged to third parties or transferred by way of security before full payment of the secured claims. The Buyer shall inform us without delay in writing if an application is made to commence insolvency proceedings or if the Goods subject to retention of title are seized by third parties (such as attachment).

(3) If the Buyer acts in breach of the contract, in particular with regard to non-payment of the due purchase price, we shall be entitled to withdraw from the contract in accordance with the statutory provisions and to demand the return of the Goods subject to retention of title. In the event that the Buyer has not paid the purchase price that is due for payment, we may only assert these rights if we have previously unsuccessfully set the Buyer a reasonable grace period for payment or if the setting of such a grace period is unnecessary in accordance with the statutory provisions.

(4) Until withdrawal from the contract in accordance with b) below, the Buyer is authorised to resell and/or to process the Goods subject to retention of title in the ordinary course of business. In this case, the following provisions shall apply in addition:

a) The Buyer hereby assigns the claims against third parties that are established from the resale of the Goods or products in full or in the amount of any co-ownership share to us for use as security in accordance with the above paragraph. We hereby accept the assignment. The obligations of the Buyer stated in section 7 (2) shall also apply with regard to the assigned claims.

b) The Buyer shall remain authorised 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, has not defaulted on payment and, in particular, is not subject to an application to initiate insolvency proceedings or has not stopped making payments, and we have not exercised our right in accordance with section 7 (3) having retained the title to the Goods. However, if this is the case, we may demand that the Buyer makes us aware of the assigned claims and their debtors, provides us with all information that is necessary for collection, hands over the relevant documents to us and informs the debtors (third parties) of the assignment. In this case, we shall also be entitled to revoke the Buyer's rights to resell and process the Goods that are subject to retention of title.

c) If the realisable value of the securities exceeds our claims by more than twenty per cent, we shall, upon request of the Buyer, release securities at our discretion.

(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 retention of title.

(6) In the event of the Buyer's insolvency, it is agreed that all securities provided shall also be applicable if the insolvency administrator exercises their right to choose (section 103 German Insolvency Act [InsO]) and chooses to perform the contract. The originally agreed retention

of title or other securities provided may therefore be enforced by us in the event that the insolvency administrator's originally agreed attempt to perform the contract falls through.

Section 8 – Loaned objects

(1) Objects loaned to the Buyer (pallets, refrigerators and freezers, sales aids, advertising material, etc.) shall remain our sole and unconditional property, even if securities have been provided. They may not be pledged, sold, scrapped, rented or hired without our written consent.

(2) The Buyer shall notify us immediately of any attachment or other third-party seizures of 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 to commence insolvency proceedings in relation to the assets of the Buyer.

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

Section 9 – Investigation and reporting obligations

(1) Upon taking possession of the Goods or (in the event of a sale to a place other than the place of performance) upon delivery at the agreed destination, the Buyer shall without delay

a) check the quantities, weights and packaging and record any issues on the delivery note or consignment note and/or the acknowledgement of receipt/confirmation of removal from cold storage, and

b) conduct a random, representative quality check and open the packaging (cartons, bags, tins, plastic wrap etc.) and check the exterior condition, smell and taste of the Goods themselves to an appropriate extent for this purpose.

(2) In the case of defect notifications, the Buyer shall comply with the following formalities and deadlines:

a) Notification shall be made within 5 working days of accepting the Goods, or in the event of a sale to a place other than the place of performance, upon delivery of the Goods to the agreed destination. In the event of a concealed defect, the defect notification must be submitted within 5 working days after the defect has been discovered but, in any event, no later than 2 weeks after delivery or handover of the Goods.

b) The defect notification shall be delivered to us in writing within the aforementioned deadlines. Verbal or telephone notifications are insufficient. Defect notifications submitted to sales representatives, brokers or agents are not valid.

c) The notification must clearly specify the type and scope of the alleged defect.

(3) Issues with quantities, weights or packaging of the Goods are excluded unless any issues have been recorded on the delivery note, consignment note or acknowledgement of receipt as per section 9 (1) a). Moreover, all complaints are excluded as soon as the Buyer has mixed, used or resold the supplied Goods or has started processing or finishing them.

(4) Any Goods where objections have not been raised in accordance with the formalities and deadlines set out above shall be regarded as approved and accepted.

Section 10 – Claims for defects of the Buyer

(1) Unless otherwise agreed to the contrary below, the statutory provisions apply to the rights of the Buyer in the event of material defects and defects in title (including incorrect and short deliveries). The special statutory provisions on the final delivery of goods to a consumer (supplier's recourse pursuant to sections 478, 479 BGB) shall remain unaffected in all cases.

(2) The primary basis of our liability for defects shall be the agreements made concerning the characteristics of the Goods. Such characteristics of the Goods shall be considered to have been agreed where product descriptions that are referred to as such have been provided to the Buyer prior to their order or have been incorporated into the contract in the same way as in these ToS.

(3) In the absence of any agreed characteristics, the existence of defects shall be determined in accordance with statutory provisions (section 434 BGB). We shall, however, not be liable for any public statements and advertising messages given by third parties.

(4) If a valid and timely notification of defects is submitted (see section 9) the Buyer may, at its sole discretion, initially demand subsequent performance by way of remedying the defect (subsequent improvement) or by delivering Goods that are free from defects (substitute delivery). Should the Buyer not inform us of which option they have chosen, we may set them an appropriate deadline in which to do so. If the Buyer fails to make a choice within this deadline, the right to choose passes to us.

(5) We are entitled to make the subsequent performance owed conditional on the Buyer paying the purchase price that is due for payment. However, the Buyer is entitled to retain a reasonable amount of the purchase price proportional to the defects.

(6) The Buyer must allow us the time and opportunity necessary for the subsequent performance owed, in particular, to hand over the rejected Goods for the purpose of inspection. In the event of substitute delivery, the Buyer must return the faulty Goods to us in accordance with the statutory provisions.

(7) The expenses required for the inspection and subsequent performance shall be borne by us if the Goods are actually defective. However, if it is determined that the Buyer's request for defect rectification was unjustified, we may request reimbursement of the costs incurred hereby from the Buyer.

(8) If the subsequent performance has failed, a reasonable grace period set by the Buyer for subsequent performance has expired unsuccessfully or it superfluous in accordance with the statutory provisions, the Buyer may rescind the purchase contract or reduce the purchase price. However, there is no right to cancellation for insignificant defects.

(9) Claims of the Buyer for damages or compensation for wasted expenditure shall only apply in accordance with section 11 and are otherwise excluded.

Section 11 – Other liability

(1) Unless otherwise regulated in these ToS, including the following provisions, we shall be liable in accordance

with the statutory provisions in the event of a breach of contractual and non-contractual obligations.

(2) We shall be liable in tort for losses, on whatever legal grounds, in the event of an intentional act or omission, and gross negligence. We shall only be liable in the event of simple negligence

a) for losses resulting from injury to life, body or health,
b) for losses from the infringement of a fundamental contractual obligation (an obligation, the performance of which actually enables the proper implementation of the contract and upon the observance of which the contractual partner relies and should be entitled to rely); in this case our liability is however restricted to the reimbursement of those foreseeable losses typical for the contract.

(3) The liability restrictions in section 11 (2) shall also apply to losses caused by and for the benefit of people we are responsible for in accordance with the statutory provisions. The restrictions shall not apply insofar as we have fraudulently concealed a defect or have assumed a warranty for the characteristics of the Goods. Furthermore, the restrictions shall not apply to claims of the Buyer in accordance with the German Product Liability Act (ProdHaftG).

(4) The Buyer may only withdraw from or terminate the contract due to the infringement of an obligation that is not a defect, if we are responsible for the infringement of the obligation. The Buyer's free right of termination (in particular in accordance with sections 651, 649 BGB) is excluded. In all other aspects, the statutory requirements and legal consequences shall apply.

Section 12 – Limitation periods

(1) Deviating from section 438 (1) (3) BGB, the Buyer's claims for defects have a limitation period of one year from delivery. If the Goods must be accepted, the limitation period shall commence on acceptance.

(2) The limitation period stated in section 12 (1) shall also apply to contractual and non-contractual claims for damages of the Buyer that are attributable to a defect to the Goods, unless the application of the regular statute of limitations (sections 195, 199 BGB) would lead to a shorter limitation period on an individual basis. However, claims for damages of the Buyer in accordance with section 11 (2) sentence 1 and sentence 2 a) as well as claims of the Buyer in accordance with the German Product Liability Act (ProdHaftG) shall only lapse in accordance with the statutory limitation periods.

Section 13 – Written form, confidentiality, data protection

Where the written form is required by these ToS, this is also deemed complied with if communications are sent by fax or email.

Unless expressly otherwise agreed in writing, information provided to us by the Buyer within the business relationship is not deemed to be confidential.

(3) Insofar as we consider it necessary for our business dealings, we are authorised to store and process the Buyer's data, within the scope of statutory data protection law.

Section 14 – Choice of law, jurisdiction

(1) The laws of the Federal Republic of Germany shall apply to these ToS and the contractual relationship between us and the Buyer excluding all international and supranational legal regulations, in particular the UN

Convention on Contracts for the International Sale of Goods ("CISG").

(2) Exclusive – including international – jurisdiction is vested in the courts responsible for Groß-Gerau. However, we are also entitled to file a claim at the place of performance of the supply obligation or at the place of the Buyer's registered office.

(3) The invalidity of individual provisions of these ToS shall not affect the validity of the remaining provisions. Invalid provisions shall be deemed to be replaced by such valid provisions that are suitable to achieve the commercial intent of the invalid provision to the greatest extent possible.