

General Terms and Conditions (GTC)

Valid as of: 01 January 2023

1. Applicability

- 1.1. The following General Terms and Conditions shall apply exclusively to all contracts between Lübecker Marzipan-Fabrik v. Minden & Bruhns (hereinafter referred to as “Lubeca”) and the Buyer [Abnehmer]. Unless consented to by us in writing in each individual case, we do not accept any conflicting, deviating or even merely supplementary general terms and conditions of the Buyer.
- 1.2. No oral side agreements have been made. Any individual agreements deviating from or supplementing our GTC shall be made in writing.

2. Prices

- 2.1. Unless otherwise specified in the contract or the order confirmation, our prices are per 100 kg, including product and transport packaging and shipping costs. Where delivery is made to third countries, any customs duties and other import taxes shall be borne by the Buyer. The minimum purchase volume is 50 kg. For deliveries of less than 100 kg, a surcharge is levied. Extra costs due to express delivery or delivery on a fixed date, or due to any transport insurance or other transport services exceeding the standard, shall be borne by the Buyer.
- 2.2. Cost increases arising after conclusion of the contract due to the energy supply companies exercising their statutory right to price adjustments (e.g., under the German Energy Security Act (EnSiG)), as well as new taxes, charges or levies in connection with purchasing electricity or natural gas, shall entitle Lubeca to adjust their sales price by a reasonable amount. Countervailing cost decreases will be taken into account and netted with the cost increases. The adjustment of the sales price shall entitle the Buyer to withdraw from the contract.
- 2.3. Cost increases arising after conclusion of the contract due to one or several of Lubeca’s suppliers asserting, in a legally effective way, force majeure shall entitle Lubeca to adjust their sales price by a reasonable amount. Countervailing cost decreases will be taken into account and netted with the cost increases. The adjustment of the sales price shall entitle the Buyer to withdraw from the contract.

3. Payment

- 3.1. Payments shall be made only and directly to Lubeca. Payments made to a representative or agent of the Seller shall only be deemed direct payments if a written power of attorney of the Seller, or a receipt issued by the Seller, is submitted.
- 3.2. The terms of payment specified on the invoice shall apply.
- 3.3. Unless otherwise agreed in writing, our receivables shall become due for payment upon issuing of the invoice. If the invoice is not paid once the amount has become due for payment and the invoice, or an equivalent list of payments, was received, we shall be entitled to charge default interest at the rate of nine percentage points above the ECB’s base interest rate. The day the amount is credited to our amount shall be deemed the date of payment. The assertion of a further damage shall not be excluded.

- 3.4. If it becomes apparent, after conclusion of the contract, that our claim for payment is endangered through a lack of ability to perform (including, without limitation, lack of creditworthiness) on the part of the Buyer, we shall be entitled to demand immediate provision of collateral for, or cash payment (without deduction) of, all delivered goods still unpaid, as well as prepayment of any goods yet to be delivered, and to retain any goods yet to be delivered until the related claims are settled. If the Buyer fails to timely comply with our demand for provision of collateral or effecting of payment, we shall be entitled to withdraw from all contracts entered into with the Buyer.
- 3.5. The Buyer may offset against our claims only if his counterclaims are undisputed or assessed in a legally binding judgement. The Buyer shall have no retention right based on any claims that do not originate from the same contractual relationship.

4. Delivery

- 4.1. If it becomes apparent, after conclusion of the contract, that delivery is temporarily impossible or cannot be effected in due time due to force majeure, the obligation to deliver shall be suspended for the duration and to the extent such impediment persists. Force majeure shall be deemed to exist in the case of an externally originating event that is not related to operational or personal circumstances and cannot be prevented even by exercising the utmost reasonable care. This shall, particularly, include epidemics, wars and natural disasters.
- In such case, Lubeca will promptly notify the Buyer of the existence of such impediment to deliver.
- If the Buyer cannot reasonably be expected to accept suspension of the obligation to deliver, he shall be entitled, after expiry of a reasonable time limit to be set by him, to withdraw from the contract. In the cases defined by law under Sections 323 (2), (4) and 326 (5) of the German Civil Code [BGB], the setting of a time limit shall not be required.
- We shall not be responsible for failure of delivery or late delivery due to force majeure. Any right to claim damages or reimbursement of expenses shall be excluded. If performance has already been accomplished partially, the Buyer shall have a right to withdraw from the entire contract only if he is no longer interested in such partial performance.
- 4.2. The delivery of the goods to the Buyer shall be subject to Lubeca having the respective supplies available. In the case of unavailability, the Buyer shall be informed without delay. Lubeca may withdraw from the contract. Any counter-performance already provided by the Buyer shall be reimbursed.
- 4.3. Where special items are ordered for which the final output quantity cannot be precisely predicted, we may deliver +/- 10% of the order quantity with corresponding calculation. This shall also apply to individual partial quantities.
- 4.4. Lubeca shall be entitled to effect partial deliveries. However, the Buyer's right under Section 320 of the German Civil Code to refuse performance in terms of the compensation until complete delivery is made shall remain unaffected. This shall not apply where exercising the right of retention on the grounds that parts of the order are still outstanding for delivery would be unreasonable, given that only a fraction of the original delivery obligation remains to be fulfilled.
- 4.5. Shipment and transport shall in all cases be at the risk and expense of the consignee, even if the shipping costs are borne by us. The risk shall pass upon the goods being handed over to the shipping agent, but not later than the moment they leave our warehouse. If delivery

of the goods is delayed for reasons for which the Buyer is responsible, the risk shall pass already when notification of the readiness for dispatch is given. Unless otherwise agreed with the sender, the mode and route of dispatch shall be determined by us.

5. Conditions for Sales Contracts

- 5.1. Unless otherwise agreed, it is assumed that the contract volume is to be reduced by even monthly quantities over the contract period. The Seller consents to an uneven reduction of the contract volume if any additional costs as may be incurred (e.g., for interim financing and storage) are reimbursed by the Customer.
- 5.2. If the contract period is exceeded, the Seller shall be entitled to demand acceptance of the remaining volume or extend the contract, with any additional costs arising from such extension to be borne by the Customer.
- 5.3. The contract shall be deemed concluded upon oral agreement between the Customer and the seller and shall be confirmed in writing by the Seller. It is in the interest of the Customer to return the countersigned contract confirmation.

6. Time Limit for Inspection and Notification of Defects, Warranty [Gewährleistung]

- 6.1. Any damage to, or shortfall in, the consignments shall be ascertained by the Buyer promptly upon receipt of the goods and must be confirmed by the employee of the delivering transport company. Any claims to that effect shall be reported to Lubeca in writing.
- 6.2. After receipt, the goods shall, in other respects as well, be inspected for conformity with the contract without delay. Obvious defects and wrong deliveries shall be reported in writing and without delay, stating the exact date and number of the delivery note. Hidden defects shall be reported, in the way described above, as soon as they become obvious. Goods claimed to be defective shall be returned without delay, unless a different arrangement is made with Lubeca.
- 6.3. The Buyer shall ensure that the products manufactured by him using the seller's semi-finished products are retraceable in accordance with Regulation EU 178/2002.
- 6.4. The statutory liability for material defects [Sachmängel] shall be limited to delivery of replacement goods free of defects. If the replacement delivery fails or is unreasonable for the Buyer or if Lubeca earnestly and definitely refuses performance, the Customer may reduce the purchase price or withdraw from the contract. Liability for damages is limited in accordance with Clause 6 herein. This shall also apply to claims for reimbursement of expenses.
- 6.5. The goods shall be handled according to the transport and storage conditions set out in the respective product specification. In the case of improper storage - in particular contrary to the requirements of the product specification - or processing or conversion of the goods, the warranty shall be excluded. A warranty is only assumed if the goods are stored and/or processed or converted according to their intended use.
- 6.6. All and any claims derived from the defectiveness of goods, including any claims for damages, shall become statute-barred within one year from delivery of the goods. This shall also apply to any competing congruent claims for damages arising from non-contractual liability. Liability for intentionally caused damage shall be exempt from this rule.

7. Liability

- 7.1. We shall be liable for damages – irrespective of their legal grounds – only in case of intent or gross negligence on the part of our corporate bodies or our agents [Gehilfen].

The foregoing exclusion of liability for ordinary negligence [einfache Fahrlässigkeit] does not apply to material contractual obligations. Material obligations shall be any obligations the fulfilment of which is logically necessary for the achievement of the contractual purpose. This shall include, without limitation, the transfer of possession and ownership in the case of the delivery of goods. This shall not include liability for material defects, except where life, body or health are affected. Liability for breach of material contractual obligations shall be limited to typical and foreseeable damages.

In the event of injury to life, body or health, we shall also be liable for ordinary negligence. Our total liability shall be limited to the maximum cover of our third-party liability insurance, which is currently 10 million EUR. This amount is sufficient to cover typical and foreseeable damages. After consultation with Lubeca and against reimbursement of costs, it is possible to have a higher amount insured through Lubeca.

- 7.2. Liability for damages based on a guarantee [Garantie] assumed by us, as well as liability under the Product Liability Act or any other mandatory liability regulations, shall not be affected by the foregoing provisions.

- 7.3 Except for damages caused by wilful intent, claims for damages arising from contractual liability shall become statute-barred within one year from delivery of the goods.

8. Retention of Title

- 8.1 We retain title to all goods delivered by us until all present or future claims we may have against the Buyer from the business relationship are fully settled. The submission of bills of exchange or other documents by which only an obligation to pay is established shall not constitute payment within the meaning of this provision.

- 8.2 The Buyer may resell or process the goods in the ordinary course of his business. If our ownership of the delivered goods is lost as a result of the resale or for any other legal reason, the claims against third parties arising from the resale shall be transferred to us in the amount of our claim. The contracting parties agree that if our reserved goods are processed, combined, mixed or blended with other goods not belonging to us, the Buyer hereby transfers co-ownership to us in the ratio of the objective market value of the reserved goods to that of the other goods at the time of the processing, combination, mixing or blending, and that the Buyer shall keep these goods for us free of charge. Where the items are in possession of a third party, the Buyer hereby assigns to us his claims – in particular, for surrender of the goods – against such third party, and we hereby accept such assignment. The items of which we obtained ownership or co-ownership according to Subclause 1 and the subsequent provisions shall be deemed as reserved goods in terms of Subclause 1 and the subsequent provisions.

- 8.3 The Buyer hereby assigns to us, by way of security, all his claims from the resale of any reserved goods until all of our present and future claims from the business relationship with him are fully settled. We hereby accept the assignment. The Buyer shall be entitled to collect such assigned future claims in the regular course of his business.

- 8.4 The right of the Buyer to dispose of the items and rights reserved by, or transferred to, us

pursuant to the above provisions shall lapse if the Buyer is, or is expected to be, affected by a financial collapse or if we revoke our consent to the disposal or collection due to the Buyer breaching the terms of the contract (in particular through default of payment) in a way that puts our security interests at risk. If our interests are threatened or impaired through any third-party actions, the Buyer shall inform us accordingly without delay.

- 8.5 In the event of breach of contract by the Buyer, the legal provisions under Section 449 (2) of the German Civil Code shall apply.
- 8.6 We undertake to release any securities due to us at the Buyer's request to the extent that the realisable value of our securities exceeds the claims to be secured by more than 10%.
- 8.7 We expressly do not retain title to any goods delivered against advance payment by the Buyer, irrespective of any previous liabilities as may still exist. Advance payment shall be made exclusively for the respective new order. No offsetting against older, still outstanding claims shall be made.
9. Place of Performance and Venue
The place of performance for delivery and payment is Stockelsdorf; the place of venue is Lübeck.
10. Partial Invalidity
If individual parts of these General Terms and Conditions are invalid or were contracted out, this shall not affect the validity of the remaining conditions. The contracting parties shall replace invalid provisions by such provisions that are legally valid and come closest to the invalid provisions in terms of their meaning, purpose and economic result.

Lübecker Marzipan-Fabrik v. Minden & Bruhns GmbH & Co. KG