

## **General Standard Terms and Conditions**

### **General Terms of Sale Apollo Milchprodukte GmbH**

#### **§ 1 General; Scope of Applicability**

1. All and any business is subject to our Standard Business Conditions only; any contradictory or such terms of the supplier other than our Standard Business Conditions we will not accept unless we had previously accepted them in writing. Our Standard Business Conditions shall also be applicable in such cases where we have fully executed the delivery though we were aware of terms being not in line with our terms.
2. Our Standard Business Conditions are applicable towards business firms (hereinafter called: customer). Businessman in the sense of the General Terms of Sale are any natural person or legal entity or any other partnership having legal capacity we shall do business with and who act in the exercise of a commercial or any independent professional activity.

#### **§ 2 CONTRACTS**

1. Our offers are without engagement.
2. When ordering a commodity the customer hereby declares that he wants to buy the commodity ordered. The customer will be given a written confirmation of acceptance of his order. Any information whatsoever given on the telephone by our staff does not constitute a guarantee or other promise to perform.

3. Any contract is made subject to the correct and timely delivery through our suppliers and forwarding agents. This is applicable only in case that we are not responsible for the non-delivery and in particular in case of any congruent covering transaction with our supplier. We shall inform the customer immediately about any performance which cannot be realised. Any monies already paid shall be refunded without delay.
4. In case of any follow-up business we will inform our customer, if we are not able to deliver the commodity at the price originally agreed upon.

### **§ 3 Prices – Terms of Payment**

1. Unless otherwise agreed upon our prices are “EXW” in line with Incoterms 2000 plus legal value added tax (VAT).
2. Whenever we accept any changes in the order, the customer will have to bear ensuing additional costs. The customer has to announce in writing any changes at once, but within 7 days at the latest, before the date of delivery. Any changes requested will have to be confirmed in writing by us.
3. Unless otherwise agreed upon payment will have to be made without any deductions to our account. The customer shall not have the right of making any deductions for the disposal of packing material, in particular packing material necessary for the transport.
4. The customer will undertake to effect payment 14 days after he has received the commodity. After such period without payment having been effected the customer will be in default in payment. The customer has to pay interest on the monies owed in the amount of

8% above the basic interest rate. We reserve the right to claim and prove a higher damage caused by the delay.

5. The customer has a set-off claim only in case his counterclaims were finally established or such counterclaims were acknowledged by us. The customer can exercise a right of retention only in case his counterclaim is derived from the same contract.
6. Payment by way of bills of exchange and cheques are only accepted, if this had been especially agreed upon before. Any payments made by bills of exchange or cheques shall be deemed as effected only at the time their respective value has been credited with our account.

#### **§ 4 Time of Delivery**

1. The time of delivery shall commence at the time the confirmation of order has been sent off, but not earlier than all necessary documents and approvals and the like have been provided by the customer and he has made a first payment as agreed upon. Furthermore it is the proper and timely fulfilment of all obligations on the part of the customer which is the prerequisite for our meeting the delivery. The right of objection from non-fulfilment of the contract remains unaffected.
2. The time of delivery shall be deemed met, if the delivery or the readiness to deliver was communicated before such time has expired. This includes as well part deliveries as long as they are admissible.

3. The time of delivery will be extended accordingly in case of labour conflicts, in particular in case of strikes and lockouts or other unforeseeable events beyond our influence as far as such circumstances have a significant impact on the finishing or the dispatch of the commodity of the delivery. This is also applicable, if such circumstances have affected any sub-supplier. The above mentioned circumstances cannot be held against us though they may have arisen during an already existing delay. In any urgent cases we shall as soon as possible notify the customer about the beginning and the termination of such impediments.
4. Our customer shall not assume any right of damages when the delivery time was not met. Any right of retention shall be excluded.
5. If delivery was postponed at the request of the customer, he will be charged with all arising costs for storing if any. Further claims – in particular damage claims – remain unaffected. If the customer will not take in our commodity within the period of time stipulated, he shall be obliged without any previous notification to make up all ensuing damages. We shall also have the right in such case to sell the commodity to any third party.

#### **§ 5 Transfer of Risks – Costs for Packing**

1. When the commodity has been transferred the risk of incidental transition and incidental deterioration of the commodity shall devolve upon the customer, in cases where the goods have to be dispatched this risk shall devolve upon the forwarding agent, the carrier or upon such person entrusted with the dispatch of the commodity.

2. If the dispatch of the commodity was delayed for reasons caused by the customer, the risk of incidental transition and incidental deterioration shall devolve upon the customer as of the day the commodity was ready for dispatch.
3. Any packing materials for transport purposes and other packing materials necessary under existing packing regulations shall not be taken back, except for reusable pallets. The customer has the responsibility to see to their proper disposal and do so at his own expenses.
4. As far as this is wished for by the customer, we shall provide transport insurance for the delivery, all and any costs arising from such insurance will have to be borne by the customer.

#### **§ 6 Liability in Case of Defects**

1. Any claims raised by the customer on account of defects are conditional to the customer having properly met his liabilities of examination and objection.
2. All and any deliveries received have to be examined immediately. All and any objections – also with a view to qualities guaranteed, have to be made available with us within 24 hours. In case liquid products like milk, yoghurt, cream and the like are concerned, any such objections have to reach us already 6 hours after receipt of the commodity, but at any rate before such commodity was drawn off, processed or passed on to other parties. If samples of the commodities are taken, one additional sample has to be taken for us. Such sample has to be kept appropriately and we have to be informed on the taking of a sample without delay.

3. Any deliveries objected to have to be stored and treated in the proper fashion. Deliveries may be sent back only with our previous approval.
4. As far as the customers will pass on the commodity directly to his own customers, he shall be responsible for the observation of the stipulations in the sense of the preceding regulations.
5. In case the objection raised was justified, we shall give a credit note of our choice or we shall provide replacement in the form of a delivery free from any defects. If such replacement should prove to be defective as well, the customer shall have the right to demand either withdrawal or reduction in price whatever he may opt for. If the customer has opted to withdraw from the contract in case the replacement was also defective, he shall not have any additional damage claim on account of such defect. If the customer has opted for damages in case the replacement was also defective, the commodity shall remain in his possession provided this is acceptable for him. The damage claim in such case shall be limited to the difference between the purchase price and the actual value of the defective commodity. This shall not become applicable, if we have caused the violation of the contract in bad faith.

#### **§ 7 Provision of Reservation of Ownership**

1. We reserve the ownership of the commodity until the time all payments under the contract have been completed. In case the customer fails to comply with what the contract provides for, in particular his failure to effect payment in time, we have the right to take back the commodity. Our taking back the commodity does not constitute a withdrawal from the contract unless we have explicitly communicated this in writing. However, a withdrawal from the contract shall always be given in case the commodity was attached

by us. After we have taken back the commodity, we have the right of using it and the proceeds received by us from such new business shall be offset – less the appropriate costs for the new use - against the arrears of the customer.

2. The customer has to inform us in writing and without delay in case of any attachments or other interventions launched by third parties, so that we can raise a claim pursuant to § 771 ZPO (Civil Code of Procedure). As far as the third party is not able to refund to us the legal and out of court costs of a statement of claim pursuant to § 771, the customer has to bear any loss we had.
3. The customer has the right to sell the commodity purchased in the course of his normal business, however, he shall already now assign to us any claims up to the invoiced final amount (including VAT) of our claim, which he shall obtain from selling the commodity to his customers or to any other third party irrespective of the fact whether or not the commodity was sold with or without any processing. The customer shall be entitled to enforce such claim even after the assignment. Our right to enforce such claim ourselves shall remain unaffected. However, we undertake to dispense with the enforcement of such claim as long as the customer shall meet his financial obligations from the proceeds obtained and is not late in paying and in particular has not filed any application for insolvency proceedings or has stopped to pay at all. But if this happens, we can demand from the customer to disclose to us the claims assigned and their debtors and provides to us all and any necessary details and documents thereof and also informs the debtors (third parties) about the assignment.
4. The processing or alteration of the commodity for the purposes of the customer will always be carried out by us. If the commodity is

combined with some other objects not belonging to us, we shall acquire the co-ownership in the new commodity to an extent of the value of the commodity (invoiced final amount plus VAT) relative to the value of the other objects at the time of such processing. As for the rest the same shall apply for the new commodity processed what was applicable for the commodity delivered.

5. In case the commodity we have provided are inseparably combined together with some other commodity, which do not belong to us, we shall acquire the co-ownership in the new commodity at a ratio equal to the value of the commodity purchased (invoiced final amount plus value added tax) relative to the value of the other commodity combined at that time. If the commodities are combined in a way that the commodity of the customer must be designated as the main commodity it shall be deemed as agreed upon that the customer shall transfer to us proportional co-ownership; it shall be the responsibility of the customer to keep for us the sole ownership or the co-ownership whatever may apply.
6. In order to secure our claims the customer shall also assign to us the claims he shall obtain against a third party from the connection of the commodity purchased with a real estate
7. We do undertake to release such securities in our favour at the request of the customer in so far as the realisable value of our securities shall exceed by more than 10% the claims to be secured; the choice of the securities to be released shall remain with us.

## **§ 8 Revocation of Contract - and Damages**

1. In case after finalisation of the contract it should become evident that the payment of the purchase price is jeopardized on account of inability to pay or by delay of payment, we shall have the right to demand a security proportional to the performance already completed.
2. Should the customer fail to comply with such demand within a reasonable time, we shall have the right to cancel the contract. Any further going claims – in particular to claim any rights of retention - remain unaffected.
3. The customer is obliged to inform us immediately as soon as he becomes insolvent or insolvency proceedings have been opened upon his property.

## **§ 9 Limitations of Liability**

1. In case of any minor and negligently caused contractual violations our liability shall be confined to the foreseeable, typical and immediate average damage based upon the kind of commodity. The same shall apply, if such minor violation was caused by our legal representatives or agents. We shall not compensate in case of minor and negligently caused violations of insignificant contractual obligations.
2. Any further claims raised by the customer – for whatever legal grounds – shall be excluded. In case we shall negligently violate any essential duty under the contract, our liability for material damage or damage to persons shall be limited to the extent of our

product liability insurance. The aforementioned release from liability shall not be applicable in case the damage was caused with intent or by gross negligence.

3. Any damage claims raised by the customer on account of a defect shall be barred by limitation one year after the commodity was delivered. This shall not apply when we may be blamed with bad faith.

### **§ 10 Ownership Rights-Copyrights-Law of Trademarks**

1. All and any documentations, in particular specifications, calculations, descriptions, advertising materials and brochures remain our property. We reserve the copyright of such materials, and these materials must not be accessible to others without our prior consent.
2. Our customer has the right to advertise with our brand-mark and for such purpose make use of all materials we let him have or which are detailed above only as long as we do not contradict such advertising use.

### **§ 11 Final Provisions**

1. The laws of the Federal Republic of Germany shall be applicable. The provisions of the UN-Purchasing Law(CISG) shall be excluded.
2. As far as the customer is a businessman, a legal entity of public law or of special funds under public law the exclusive place of

jurisdiction shall be our business seat. However, we have the right to sue the customer also at the court competent at his business seat.

3. The customer is allowed to transfer the rights from any contract with us to third parties only when he has been given our written and explicit consent. At any rate we shall not refuse to give our approval to such extent contrary to good faith.