



General Terms of Sale and Delivery for frozen goods

1. Scope of the terms and conditions

These General Terms of Sale and Delivery shall apply to all deliveries, services and offers, with which Schneefrost Ernst Schnetkamp GmbH & Co. KG appears on the seller's side and the respective buyers which do not have their registered seat in Germany, insofar as these concern entrepreneurs within the meaning of § 14 BGB [German Civil Code] or a legal entity under public law or special assets under public law within the meaning of § 310 Par. 1 BGB. Our General National Terms of Sale and Delivery for frozen goods shall apply to buyers with the registered seat in Germany. Deviating, contradictory or additional terms and conditions or references of the buyer to own, other or supplementary business or purchase terms and conditions shall not apply, these are hereby **explicitly objected** to. Our Terms of Sale and Delivery shall also apply exclusively if we have provided the service without reservation in the knowledge of deviating, contradictory or supplementary business terms and conditions of the customer. Our Terms of Sale and Delivery shall also apply to all future business insofar as it concerns legal transactions of a related kind, even if reference is not made hereto once again or their validity was explicitly agreed.

2. Offer, conclusion of contract, condition of the goods

2.1. Our offers are principally without obligation and non-binding. They are merely to be understood as a request for the submission of an offer by the customer. A contract with us will only be concluded if the buyer receives our **written order confirmation** or we begin with the deliveries or services.

2.2. Decisive for the contents of the contract are our **offer, our order confirmation and these terms and conditions**. All other agreements, including collateral agreements as well as declarations of our field service employees and representatives, will only become effective by our explicit and written confirmation. Declarations on our part concerning the condition and durability of the goods, with which we grant the buyer additional rights irrespective of its statutory claims in a guarantee case, shall only represent a guarantee of condition and durability within the meaning of § 443 BGB if they were explicitly described as a guarantee by us in writing. The agreed condition of our goods shall only include those properties and features, which are stated in our offer or our order confirmation.

2.3. We can accept an order of the buyer, which is to be qualified as an offer for the conclusion of a purchase contract, within **two weeks** by sending an order confirmation or by sending the ordered goods within the same deadline.

2.4. We reserve the right to make changes to the recipes at all times insofar as the product properties are not substantially changed hereby. This will only not apply if explicitly otherwise agreed.

2.5. If customary clauses concerning the type and scope of the delivery are agreed then the Incoterms of the International Chamber of Commerce in Paris in the version that is respectively applicable on the day upon which the contract is concluded shall apply to the interpretation.

2.6. We reserve all property rights and copyrights to all documents handed over to the buyer in connection with the offer such as for example calculations, product descriptions, etc. The documents may only be made accessible to third parties with our explicit and written consent.

2.7. Insofar as the prices in our offers are based on the calculation of certain monthly or annual **minimum quantities**, which are to be purchased by the buyer, we shall clearly point this out in our offer. The buyer undertakes to purchase and pay the minimum quantities agreed for the respective periods of time.

3. Prices and terms of payment

3.1. Insofar as not otherwise explicitly agreed in writing the prices stated by us shall apply including normal packaging plus the respective applicable rate of German value added tax, insofar as this is due. Invoice amounts are due and payable immediately irrespective of possible currency fluctuations. The place of payment is our registered seat. Prices confirmed by us shall only apply with the acceptance of the confirmed quantity. A cash discount reduction requires a special written agreement with us in each individual case. All payments will, irrespective of other disposals of the buyer, always first be offset against interest and costs and only after this against our receivable in the order of their age, beginning with the oldest. The punctuality of the purchase price payment is an essential contractual obligation. In the event of a late payment the supplier is entitled from the due date to request interest in the amount of 9 % p.a. above the base lending rate of the European Central Bank. The right is reserved to assert higher damages.

3.2. Payments by cheque or bill of exchange will only be accepted on account of payment. There is no obligation to accept bills of exchange or cheques.

3.3. An invoice issued by us shall apply for the event of an SEPA direct debit as SEPA -Pre-Notification. In deviation to the generally valid SEPA conditions a Pre-Notification deadline of six days is agreed before the due date.

3.4. For the event of sustainable price increases after conclusion of the contract with raw materials, auxiliary and/or operating supplies we are entitled to make a **price adjustment** insofar as the price increases are due to reasons, which were neither foreseeable for us, nor for which we are responsible, such as e.g. bad harvest, changes in currencies, statutory conditions or other cases of force majeure.

The same shall apply if taxes, customs duties, freight charges, fees or other duties of all kinds, which lead to an increase in our costs for the current delivery and thus influence the goods price, are increased sustainably or newly introduced after conclusion of the contract and insofar as we have no influence on such and/or this increase in costs was not foreseeable for us.

3.5. We are not obliged to procure and/or **bear the costs for permits**, information, proof, licences or other documents no matter of what kind (e.g. customs clearance, taxes, certificates under food law, etc.) or to carry out thus associated acts, which the customer requires or has to take out for the export, transit or the import of the goods into countries outside of Germany. The customer is exclusively responsible for the **compliance with all regulations and provisions** (e.g. marking and registration obligations, etc. of the goods) as well as the payment of the costs ensuing from the compliance with such regulations, etc. and the transport of the goods from Germany.

4. Rights to offset and rights of retention and to refuse service

The buyer is only entitled to offset as well as to exercise a right of retention or to refuse service if its counter-claims are undisputed, have been declared final and binding or are ready for a decision. If the object of purchase is faulty with the passing of the risk, the buyer will however remain entitled to retain a part of the purchase price that is reasonable in the ratio to the defect.

5. Delivery, passing of risk, shipment, packaging

5.1. Our deliveries are carried out from the ramp of our plant in Lönningen (Incoterms 2010) unless otherwise agreed in writing.

5.2. We are principally entitled to make partial deliveries insofar as this is respectively deemed reasonable for the buyer.

5.3. The risk of the accidental loss or the accidental deterioration of the goods shall pass to the buyer no later than with the hand-over. In case of the sale by delivery to a place other than the place of performance the risk of the accidental loss or the accidental deterioration as well as the risk of delay shall pass to the buyer as soon as the goods have been handed over or delivered to a carrier, the freight forwarder or other person or institution determined for the consignment for the shipment, however no later than when the goods leave our plant or our warehouse. If the goods are ready for shipment and if the shipment is delayed for reasons, for which we are not responsible, then the risk shall pass to the buyer with the receipt of the notification of readiness for shipment. This regulation concerning the assumption of the risk shall apply irrespective of who has to bear the costs of the shipment.

5.4. Our **deliveries** (fulfilment of the contract) are subject to the reservation that the fulfilment is **not opposed by any impediments** owing to national or international regulations, in particular export control provisions as well as embargo or other sanctions. Delays owing to export examinations or approval procedures invalidate deadlines and delivery times for the duration of the delays.

6. Delivery, delivery deadlines, impediments to delivery, rights to cancellation

6.1. Delivery and service deadlines are reference times and shall principally be deemed „approximate agreements“ unless we have explicitly confirmed these as binding dates in writing“. The same shall apply accordingly with the naming of delivery dates. Delivery dates describe the departure from the plant of our company, with deliveries free house the day upon which the goods are received by the buyer. Stated delivery deadlines shall begin with the date of our order confirmation. The start of delivery deadlines always presumes the proper fulfilment of the obligations of the buyer. This shall in particular include the seller's obligation to provide the documents stated in Subclause 3.5. and to carry out the possible payments and acts. The same shall apply accordingly with delivery dates. We shall principally not be deemed in default with our delivery or service obligation before the expiry of a reasonable final deadline set for us.

6.2. Cases of **force majeure**, unforeseeable circumstances and incidents, which were not caused by us, which could not have been avoided with the due care and attention of an ordinary merchant, e.g. industrial disputes, war, fire, impediments to transport, shortage of raw materials, official measures, shall interrupt our delivery obligation for the period of their duration and the scope of their effect. Deemed as a case of the non-availability of the service/goods within the meaning of this provision it is in particular also the late self-delivery by our component suppliers if we have concluded a congruent hedging transaction, neither we nor our component supplier is at fault or we are not obliged to procure the goods in an individual case. We undertake to inform the buyer immediately about the occurrence of force majeure or about the late or improper delivery and to inform it at the same time of the expected new delivery date. If the service is not possible either within the new delivery deadline we are entitled to cancel the contract in full or in part, even if we are already in delay with delivery. We will reimburse a possibly already made consideration immediately. Claims for damages of the buyer will not be established from this. If the delivery becomes impossible due to the stated circumstances then we shall be released from the delivery obligation. The same shall apply in the event that it is deemed unreasonable. Claims for damages will principally not be established for the buyer from this case either.



6.3. Should the goods be delivered at the release order of the buyer then the buyer must accept the goods by no later than 3 months after conclusion of the contract. If the buyer does not accept the goods or not in full within this deadline then we are entitled either to invoice the goods due and payable immediately irrespective of the acceptance or after a reminder and the setting of a deadline to cancel the contract or, if a reminder or the setting of a deadline is dispensable by law, to cancel the contract immediately. Further statutory rights, in particular for the self-help sale, shall remain unaffected.

6.4. In case of delivery by us this will be carried out by means of deep-freeze special vehicle with a temperature of **at least minus 18 °C**. We moreover undertake to comply with all further respectively applicable regulations under food law with regard to the handling, the transport and the storage of the goods. From delivery the buyer will guarantee the compliance with the uninterrupted frozen goods supply chain with at least minus 18 °C as well as the compliance with all relevant and applicable regulations under food law. In addition the regulations concerning the assumption of risk laid down in these terms and conditions shall continue to apply.

7. Reservation of title

7.1. The delivered goods shall remain **our sole property** until the full satisfaction of all current and future claims to which we are entitled against the buyer from the respective business as well as the ongoing business relationship. This shall also apply if the claim is entered into a current account.

7.2. The buyer is entitled to resell and re-use the reserved goods in normal business transactions. Each other disposal, in particular pledge or assignment as collateral is not permitted to it. The entitlement shall lapse, also without an explicit revocation, as soon as the buyer is in default towards us with its payment obligation or breaches its other obligation from the agreed reservation of title. We are entitled to take the object of purchase back if the buyer behaves in breach of the contract. The buyer hereby now already assigns all claims, also future ones, from the resale of the goods, no matter whether in an unprocessed or processed condition as well as all further claims of the buyer against third parties for other legal grounds with regard to the reserved goods, including all secondary right to us. We hereby already accept the assignment.

7.3. The buyer is revocably authorized to collect the claims assigned to us for our account however in its own name. This authorization shall lapse if the buyer does not properly satisfy its payment obligations. Upon request the buyer undertakes to announce the **assignment** to its customers as well as provide us the information and hand over the documents, which are necessary in order to assert our rights against the buyer.

7.4. The processing or conversion of the object of purchase by the buyer is always carried out in the name and by order for us. If our goods are processed, converted, inseparably mixed or connected with other objects not belonging to us, we shall acquire the **co-ownership** to the new object in the ratio of the gross invoice value of our goods to the gross invoice values of the other processed object at the time of processing, conversion, mixing or connection. If the other object is to be seen as the main object, it is hereby now agreed already that the buyer shall assign us pro rata co-ownership and keep the object in safekeeping free of charge on our behalf. We accept the share assignment. Incidentally, the same shall apply to the new object as to the goods delivered by us under the reservation of title.

7.5. We undertake to release the collateral to which we are entitled upon request of the buyer insofar as their value exceeds the claims which are to be secured by more than 20 %.

7.6. The buyer will make every effort to support us with all legally admissible measures, which are necessary in order to protect our property in the country of location of the goods. Additional costs incurred hereby shall be borne by the buyer. The buyer will inform us immediately **if risks arise for the reserved objects**. This shall in particular apply to disposals of third parties or official measures. The buyer will at its costs conclude insurance for the delivered goods against the customary risks (e.g. fire, theft or water damages) until the full payment of the purchase price and prove this towards us upon request.

8. Right and obligations of the customer in case of defects

8.1. In case of justified and timely reports of defects the buyer shall be entitled to the rights according to the statutory regulations, however with the **following restrictions**.

8.2. Should, despite all applied care and attention, the delivered goods feature a defect, we will subsequently improve the goods at our choice or deliver substitute goods. The buyer has to always give us the opportunity for the subsequent fulfilment within a reasonable deadline and in particular to make the goods for which a complaint was made available to us for inspection purposes. If the subsequent fulfilment fails the buyer can at its choice request reduction of the purchase price (**reduction**) or cancel the contract. In case of an only insignificant deviation from in the condition of the goods from the agreed condition, the buyer is however merely entitled, at our choice, to the reasonable reduction or subsequent improvement, a cancellation is excluded in this case. A subsequent improvement shall only be deemed as failed with the second fruitless attempt. Our consent is to be obtained previously before a possible return of the goods.

8.3. Irrespective of the following **restrictions** to liability we will be liable within the

framework of the warranty for defects according to the statutory provisions for injuries to life, the body and the health, insofar as these are due to a negligent or wilful breach of duty by us, our legal representatives or our vicarious agents. The same shall apply if a defect was maliciously not disclosed or the defect is covered by a **guarantee of condition** assumed by us. We shall also be liable to an unlimited extent if the defect is due to the breach of essential obligations, the compliance with which only creates the pre-requisites for a concrete fulfilment of the contract at all (**cardinal obligations**), by us or our legal representatives or our vicarious agents. For damages, which are not covered by the afore-mentioned sentences and which were caused by a simple negligent breach the liability will cover the compensation of the foreseeable damages, which are typical for the contract.

8.4. Before the further processing or resale of goods for which a complaint was made we are to be given the opportunity to examine the complaint. In case of a return or further shipment by the buyer it shall guarantee the compliance with the consistent and uninterrupted frozen goods **supply chain (at least minus 18 °C)** as well as the compliance with all other, respectively applicable regulations und food law with regard to the handling, the transport and the storage of the goods. If the goods are not properly stored by the customer, in particular with frozen goods the deep-freezing chain (at least minus 18 °C) interrupted or further regulations under food law not complied with all warranty will cease to apply.

8.5. The **expenses** which are necessary for the purpose of examining and the subsequent fulfilment, in particular the transport, route, labour and material costs will be borne by us if there is actually a defect. However, if it is determined that a request for remedy of defects by the buyer is unjustified we can request reimbursement of the thus incurred costs from the buyer.

8.6. Claims for defects shall become statute-barred in 12 months after the goods have been delivered. The afore-mentioned provision shall however not apply insofar as the law stipulates longer deadlines, thus among others in the event of § 479 Par. 1 BGB (claim for recourse). With an injury to life, the body or the health, with wilful intent or grossly negligent breaches of obligations by us as well as with malicious or grossly negligent failure to disclose a defect or with the assumption of a guarantee of condition the legal statutes-of-limitations shall however continue to apply in any case. The **statutes-of-limitations** of the Product Liability Act shall also remain unaffected.

8.7. The assignment of claims for defects of the buyer against us is excluded.

8.8. The buyer will **examine** the delivered **goods immediately after receipt**. It will in any case lose the right to refer to a breach of contract if it does not report this to us and give a precise description thereof in writing immediately after the time at which it determined, or should have determined, this defect. The buyer will ensure that all evidence is secured after coordination with us.

9. Joint liability, restriction to liability

We shall be liable in any case owing to contract and non-contractual obligations to an unlimited extent according to the statutory regulations in the event of wilful intent and gross negligence as well as for injuries to the life, the body and the health as well as according to the Product Liability Act and in the event of the assumption of a guarantee of condition. With the breach of essential obligations, the fulfilment of which makes the proper execution of the contract possible at all and on the compliance with which the buyer may as a rule rely (cardinal obligations), we shall principally be liable for damages in case of wilful intent and gross negligence to an unlimited extent, with simple negligence however limited to the foreseeable damages that are typical for the contract. In all other cases claims for damages against us, no matter for what legal grounds, are excluded. Insofar as our liability is excluded or limited according to this Subclause 9 this shall also apply to our employees, workers, representatives and vicarious agents, and in particular also to their personal liability.

10. Data storage, place of performance, place of jurisdiction, applicable law, partial nullity

10.1. Our buyers have been informed and declare that they agree that all data relating to them from the business relationship, also personal data are stored by us within the meaning of the Federal Data Protection Act, within the framework of the electronic data processing.

10.2. The place of performance and exclusive place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship between us and the buyer is Lönigen. We are however also entitled to file an action at the general place of jurisdiction of the buyer or at a special place of jurisdiction. The law of the Federal Republic of Germany shall apply exclusively to these General Terms of Sale and to the whole legal relationship between us and the buyer. The application of the uniform UN Convention on Contracts for the International Sale of Goods (CISG) is excluded.

10.3. Should one provision of these terms and conditions or the reached further agreements be or become invalid this shall have no effect on the validity of the contract on the whole. The contractual parties undertake to replace the invalid provision by a regulation that shall correspond with the commercial success or the objective of the contract as far as possible.

Status January 2017