

HAWA Hamburger Waren- und Lebensmittelhandelsges. mbH

GENERAL TERMS AND CONDITIONS OF PURCHASE

1: General

(1) These General Terms & Conditions of Purchase (GTCP) apply to all present and future deliveries and services rendered to HAWA Hamburger Waren- und Lebensmittelhandelsges. mbH (hereinafter: HAWA) as purchaser as against all business partners and suppliers (hereinafter: the Seller), provided that the latter is a business operator, a legal person under public law or a special fund under public law. It shall not be necessary for the GTCP to be referred to in each individual case.

(2) These GTCP shall apply with exclusive effect. Seller's General Terms & Conditions (GTC) which differ from or are in conflict with or supplement these GTCP shall only become an integral part of a contract if and to the extent that their applicability is expressly approved in writing by HAWA for each individual transaction by an executive director or person authorized to represent HAWA. This approval requirement shall apply in every case; in particular also in the event of HAWA accepting goods without demur while aware that Seller's GTC are of differing effect.

(3) Declarations and notices of legally material effect which the Seller is required to deliver to HAWA after conclusion of a contract shall only be effective if in written or text form. This shall not affect the right of the contracting parties to make informal agreements at later date by way of individual arrangements.

2: Conclusion of contract

An order of HAWA shall only have binding effect if it was placed in written or text form or confirmed by HAWA in written or text form.

3: Delivery

(1) The delivery time stated by HAWA in the order shall have binding effect. If the delivery time is not stated in the order and has also not been agreed in other form, delivery must be made within reasonable time, taking the procurement of the goods and the time required for transport into consideration.

(2) If the Seller does not render performance, or not within the agreed time of delivery or if it defaults on delivery, our rights shall be those defined in statute law, without prejudice to the rights defined in this section 3. HAWA shall not be obliged to fix an additional period of time as per section 323 para. 2 No. 2 BGB (German Civil Code) if HAWA marked the time of delivery to be "fix" in the order confirmation or during the negotiations or indicated otherwise that the compliance with the agreed time of delivery is of importance for HAWA.

(3) If the Seller defaults on delivery HAWA shall be entitled to require payment of a contractual penalty of 0.25% of the net price per calendar day, whereby the total must not be more than 5% of the net price of the goods delivered late. Payment of the contractual penalty may be demanded in addition to performance and as the minimum amount of the damages owed by the Seller under the relevant provisions of statute law; this shall not affect the right to assert further claims for damage or loss. The Seller shall be permitted to submit evidence that HAWA has incurred no damage or loss or a substantially lower damage or loss. If the contractual performance is accepted late, HAWA shall assert the claim for the contractual penalty not later than the time of final payment.

(4) The procurement risk in the case of indeterminate obligation and the sale of fungible goods shall be borne by the Seller.

(5) Except where specified otherwise in the contract, delivery shall be made to the place stated in the order. The point of destination shall in each case also be the place of contract performance (debt to be discharged at creditor's domicile).

(6) The risk of accidental perishing and accidental deterioration of the goods shall pass to HAWA as of hand-over at the place of performance.

(7) The delivery must be accompanied by a delivery note stating the content of the delivery by article type and quantity as well as HAWA's order and lot numbers. If there is no delivery note or the delivery note is incomplete, HAWA shall not be responsible for any resulting delays in processing and payment.

(8) The relevant statutory provisions shall determine whether HAWA is in default with acceptance of delivery. The Seller must however expressly offer its contractual performance if a specific or specifiable calendar date has been agreed for an act or measure of cooperation by HAWA.

(9) If the delivery has involved the use of reusable packaging or reusable transport containers, the Seller must place these at HAWA's disposal on a loan basis. The return of these items shall be at the Seller's risk and expense.

4: Prices and terms of payment

(1) The price stated in the order shall have binding effect. The Seller shall not be entitled to raise the price after conclusion of contract, in particular not in the case of part deliveries or deliveries on call.

(2) Except as otherwise agreed in an individual case, the price shall include the Seller's entire contract performance and additional services and all additional charges (e.g. due and proper packing, transport and insurance costs, customs duties). On request the Seller must accept the return of packing material. All prices shall include statutory value added tax except where this is declared separately.

(3) The agreed price shall be due for payment within 30 calendar days as from complete delivery, contract performance and receipt of a correct invoice. The Seller shall grant HAWA 1% cash discount on the net invoice amount for payment within 14 calendar days.

(4) No interest shall be charged as from due payment date. The relevant statutory provisions shall determine whether there has been default on payment, with the exception that a written reminder by the Seller shall be necessary in every case.

(5) HAWA shall be entitled to assert rights of offsetting, withholding of payment and the defence of unfulfilled contract to the extent allowed by statute law. HAWA shall in particular be entitled to withhold due payments in cases where HAWA still has claims against the Seller on grounds of incomplete or faulty contract performance.

(6) The Seller shall have a right of offsetting or withholding performance only in the case of counter-claims which are undisputed or have been established at law.

5: Retention of title

(1) Processing, mixing or combining (further processing) of items provided shall be carried out by the Seller for HAWA. The same shall apply to the further processing of delivered goods by HAWA, which shall in such cases be deemed to be the manufacturer and shall acquire title to the product not later than the time of further processing, subject to the provisions stipulated in statute law.

(2) Title to the goods shall be transferred to HAWA without fail and irrespective of payment of the price. If however HAWA accepts an offer of transfer of title that is conditional on payment of the purchase price, the Seller's right to retention of title shall lapse at the latest as of payment of the purchase price. HAWA shall be authorized to resell the goods in the course of correct and proper business operations even before payment of the purchase price, or alternatively subject to an extension of the retention of title, stipulated by the Seller, either simple or until the time of resale, the resulting claim being assigned in advance. All other forms of retention of title shall be excluded, in particular title retention which is expanded, passed on to a third party or prolonged to include the time of further processing.

6: Warranty

(1) HAWA's rights in case of defects of quality or title of any kind and in the event of other breaches of obligations by the Seller shall be as defined in the relevant statutory provisions, except where otherwise determined below.

(2) The Seller shall in particular be liable for ensuring that the goods have the agreed properties and condition at the time of transfer of risk to HAWA. The product specifications which - in particular through description or reference in HAWA's order - form an integral part of the particular contract shall be deemed to constitute the agreement on the properties and condition. It shall in this context be immaterial whether the product specifications come from HAWA, the Seller or a prior seller.

(3) HAWA shall also be entitled, without restriction, to assert claims for defects if, owing to gross negligence, HAWA is still unaware of the defects at the time the contract is concluded.

(4) The obligation on the merchant to inspect and complain shall be as defined in statute law subject to the stipulation that HAWA's obligation to inspect shall be restricted to defects which become manifest during a check on the outward condition of incoming goods and on the delivery documents and during a quality inspection applying the spot check procedure. HAWA shall not be obliged to defrost frozen goods for the inspection of goods. Irrespectively of the time of transfer of perils HAWA shall be entitled, but not obliged to perform a pre-shipment inspection through its employees or a surveyor. If it has been contractually agreed that HAWA shall collect the goods or if the goods are transhipped or re-forwarded by HAWA and the Seller was aware or should have been aware of the possibility of transhipment or re-forwarding, the inspection shall take place only at the point of destination. In other respects the decisive point shall be the extent to which the requirements of correct business operations make an inspection practicable in the light of the circumstances of the individual case. Particularly the term to inspect the goods shall not commence as long as the goods are in custody of third parties, who are not part of the supply chain (e.g. carrier, freight forwarder, authorities). In every case the complaint (notice of defect) shall be deemed to be in due time and without delay if it reaches the Seller within 5 working days after the inspection took place or should have taken place at the latest.

(5) If a defect complained of subsequently proves not in fact to exist, HAWA shall be responsible for the reimbursement of testing and rectification costs only if HAWA determined, before the costs were incurred, that no defect was present or, owing to gross negligence, failed to determine same.

(6) Factual, extra-judicial findings of a sworn expert or a recognized surveyor's company with regard to the quantity, condition and quality of the goods shall be binding on the parties in accordance with the provisions of sections 315 ff. of the BGB (German Civil Code), even if no separate agreement on an arbitration opinion has been concluded. Findings by public authorities in the context of official inspections shall be likewise binding on the parties.

(7) If the Seller fails to fulfil its supplementary performance obligation - at HAWA's option, by remedying the defect (rectification) or by the delivery of faultless goods (replacement delivery) - within a reasonable deadline set by HAWA, the latter may remedy the defect itself and require the Seller to compensate it for the necessary expenses incurred for the purpose or to advance the necessary sum. If the supplementary performance by the Seller is unsuccessful or not acceptable to HAWA within reason, no deadline shall need to be set; the Seller shall be informed without delay of such circumstances.

(8) Furthermore HAWA shall be entitled, under the relevant statutory provisions, to reduce the purchase price or withdraw from the contract in case of a defect of quality or title, and shall have a right to payment of damages and reimbursement of costs.

(9) The Seller's liability shall exist without limits and without objective restriction to specific types of damage or loss or specific forms of culpability except when the limitation of liability is based on mandatory statutory provisions.

8: Sale of consumer goods

Inside a supply chain with a consumer as the final buyer, HAWA shall be entitled to assert, without restriction, not only claims on grounds of defects but also the claims for recourse defined in statute law. In particular HAWA shall be entitled to require precisely the type of supplementary performance (rectification or replacement delivery) which HAWA owes its own customer in any individual case, without being restricted to this specific type of rectification. This shall also apply if the goods have been processed further before their sale to a consumer. Section 6 (9) shall apply accordingly.

9: Product liability

(1) The Seller must indemnify HAWA against the claims of third parties which are asserted on grounds of a product defect insofar as the cause is located in the Seller's area of organization and control and insofar as the Seller is itself liable towards third parties.

(2) As part of its obligation to indemnify the Seller must also reimburse HAWA for expenses incurred through measures to reduce damage or loss, in particular expenses resulting from a product recall, without prejudice to claims of greater extent under statute law.

(3) Section 6 (9) shall apply accordingly.

10: Statute of limitations

(1) The reciprocal claims of the contracting parties shall become time-barred in accordance with the relevant statutory provisions except as otherwise determined below.

(2) The general period of limitation for claims under warranty shall be 3 years as from the transfer of risk. Claims on grounds of defects of title shall in no circumstances become time-barred thereafter as long as a third party - in particular because of the lack of limitation - can still assert its rights against HAWA.

(3) In cases where HAWA is also entitled to non-contractual claims for damages on grounds of a defect, such claims shall be subject to the standard statutory period of limitation except when the application of the periods of limitation defined in statutory sales-law results in a longer period of limitation in an individual case.

11: Governing law and courts with jurisdiction

(1) These GTCP and all legal relations between HAWA and the Seller shall be governed by the law of the Federal Republic of Germany. The international standardized law, in particular the United Nations Convention on the Sales of Goods (CISG) is excluded. The conditions and effects of retention of title shall be subject to the law applicable at the particular location of the matter in cases where the selection of German law as the governing law is impermissible or ineffective.

(2) If the Seller is a business operator, a legal person under public law or a special fund under public law, the courts in Hamburg shall have exclusive - including international - jurisdiction for all disputes which may arise from the contractual relationship.

Explanatory Note

This General Terms and Conditions are translated from German language. In event of any conflict between English and German version the German version shall prevail.