

General Conditions of Sale, Delivery and Payment of QFOOD GmbH, Freiburg i. Br.

May 2019

1. Scope

- 1.1 These General Terms and Conditions of Sale, Delivery and Payment of QFOOD GmbH (hereinafter also "**we**") apply to all present and future business relationships with entrepreneurs (§ 14 German Civil Code (BGB)), legal entities of public law or special bodies or funds under public law (hereinafter referred to as "**Purchaser**").
- 1.2 Deviating or supplementary terms and conditions of the Purchaser shall only become part of the contract if and insofar as we have expressly agreed to their applicability.

2. Offers and Conclusion of the Contract

- 2.1 Unless otherwise expressly stated, our offers are non-binding. The order of the goods by the Purchaser is considered a binding offer. Orders and other agreements, in particular oral subsidiary agreements and assurances, are subject to our written confirmation (incl. e-mail, fax).
- 2.2 The Purchaser may not transfer his contractual rights to third parties without our express consent.
- 2.3 We reserve the right to make changes to any information contained in an offer or other contractual document relating to the subject matter of the delivery or service (e.g. dimensions, weight and performance data or illustrations and dimensional drawings) insofar as the delivery or service item has not changed significantly or has improved its quality and the changes or deviations are reasonably acceptable for the Purchaser.
- 2.4 Product samples are considered as non-binding illustrative pieces. In case of deviations in the production method or minor deviations, e.g. such as in terms of color, the Purchaser is not entitled to assert any warranty claims.
- 2.5 We reserve the ownership and copyright in all documents provided by us and made available to the Purchaser (such as cost estimates, drawings, plans, data, and aids). They may not be made accessible to third parties or duplicated or used for advertising purposes without our express consent. These documents shall be returned at our request. Any copies made must be destroyed if they are no longer required by the Purchaser in the ordinary course of business or if negotiations do not lead to the

conclusion of a contract. Excluded from this obligation is the storage of electronically provided data for the purpose of conventional data backup.

3. Prices and Payment Terms

- 3.1 Unless otherwise stated in the order confirmation, our prices are made in Euro "EXW Freiburg i.Br." plus VAT, installation, commissioning and packaging, plus export duties plus customs duties and fees and other public charges, in accordance with Incoterms ® 2010. The packaging cannot be returned to us.
- 3.2 Invoices are, unless otherwise stated in the order confirmation or invoice, payable upon receipt without any deduction. Purchaser will be in default 30 calendar days after delivery and invoicing without necessity of a reminder. After that, the outstanding amounts are subject to 9 % interest p.a.; the assertion of higher interest rates due to statutory provisions and claims of further damages in case of default remains unaffected. Irrespective of any other claims for compensation, we shall be entitled to defer our own contractual obligations in the event of payment arrears for which we are not responsible until the arrears of payments have been made.
- 3.3 In the event of Purchaser defaulting payment of any invoice, all invoices for all deliveries made/services rendered by us shall become due for payment within fourteen days. In this case we shall also be entitled to require advance payments or security for future orders. Section 321 BGB shall remain unaffected.
- 3.4 Offsetting counterclaims of the Purchaser or the retention of payments due to such claims shall only be permitted if the counterclaims are undisputed or have become final and absolute, or in the case of reciprocity of these claims with our claims.
- 3.5 Insofar as the agreed prices are based on our list prices and delivery is not to take place until more than four months after conclusion of the contract, the list prices applicable at the time of delivery shall apply.
- 3.6 In the case of deliveries made in partial deliveries according to agreements or the nature of the item, we shall be entitled to demand a partial payment for each partial delivery in proportion to the total order volume.

4. Delivery and Delay

- 4.1 Unless otherwise stated, delivery shall be made "EXW Freiburg i.Br." which is also the place of performance (section 9.1), in accordance with Incoterms® 2010. Upon request and at the expense of the Purchaser, the goods will be sent to another destination (consignment purchase). If another delivery condition is agreed, this is always based on Incoterms® 2010 as well.
- 4.2 Unless expressly stated in writing as binding, details of delivery times are not binding. If shipment has been agreed upon request and expense of the Purchaser (delivery purchase), delivery periods and delivery dates refer to the time of transfer to the carrier, forwarder or other third party commissioned with the transport.
- 4.3 If, after conclusion of the contract, the Purchaser requests a later delivery date than the one which had been agreed upon, payment shall be made as if the delivery was carried out on time on the original delivery date.
- 4.4 Partial deliveries are permissible if the partial delivery can be used by the Purchaser within the scope of the contractual purpose, the delivery of the remaining ordered goods is ensured and the Purchaser incurs no significant additional expenses or additional costs.
- 4.5 If the Purchaser is obliged to accept the goods or services, this must be done immediately on the agreed acceptance date, or alternatively within one week after notification of readiness for acceptance by us. The Purchaser may not refuse acceptance in case of a non-material defect.
- 4.6 If the Purchaser is in default of acceptance or culpably violates other obligations to cooperate, we shall be entitled to withdraw from the contract and / or claim liquidated damages of 1 % per completed week of delay, but no more than 5 % of the order value due to non-performance. Both contracting parties reserve the right to prove higher or lower damages.
- 4.7 We are not liable for impossibility of delivery or delays in delivery, as far as they are due to force majeure (e.g. natural disasters, war, riots) or other unforeseeable events at the time of conclusion of the contract (e.g. breakdowns of all kinds, delays in transport, strikes, legitimate lockouts, lack of manpower, energy or raw materials, difficulties in obtaining necessary regulatory approvals, regulatory action or the lack of incorrect or untimely supply from upstream suppliers) which we are not responsible for. If such events make the delivery or service significantly more difficult or

impossible for us and cannot be foreseen that we can provide our services within a reasonable period – at the latest within 2 months – we are entitled to withdraw from the contract. In the case of obstacles of a temporary duration, delivery or service periods shall be extended or the delivery or service dates shall be postponed by the period of the hindrance plus a reasonable ramp-up period.

5. Warranty

- 5.1 If our deliveries or services prove to be defective, we are obliged to remedy the defects at our discretion by rectifying the defect or providing replacement. The expenses required for the purpose of supplementary performance, in particular transport, labor and material costs, are borne by us; this does not apply if the costs increase because the delivery item is located in a place other than the place of intended use.
- 5.2 We are entitled to make the subsequent performance owed by us dependent on the Purchaser paying the due purchase price. However, the Purchaser is entitled to retain a part of the purchase price that is appropriate in relation to the defect.
- 5.3 If the defect is based on a faulty third-party product, we are entitled to assign our warranty claims against our supplier to the Purchaser. In this case, the Purchaser can only assert warranty claims against us if the judicial enforcement of the aforementioned claims against the supplier or manufacturer of the defective third-party product was unsuccessful or – for example, due to insolvency – hopeless.
- 5.4 The warranty shall not apply if the Purchaser changes the delivery item or has it altered by third parties without our consent and as a result the elimination of the defect becomes impossible or unreasonably more difficult. In any case, the Purchaser has to bear the additional costs incurred by the change to remedy the defect.

6. Liability, Statute of Limitations

- 6.1 We shall be liable in accordance with the statutory provisions for any culpable breach of material contractual obligations by us, i.e. contractual obligations, the performance of which characterize the contract and which are necessary for its proper performance. For all other breaches of contract, we shall only be liable if damage has been caused intentionally or through gross negligence by one of our legal representatives, an employee or another vicarious agent.

- 6.2 Insofar as we are not responsible for intentional behavior, we are only liable for typically occurring foreseeable damage.
- 6.3 Liability under the Product Liability Act remains unaffected; this also applies to liability for culpable injury to life, body or health. When assuming a guarantee, we are liable in accordance with the statutory provisions.
- 6.4 Unless otherwise stipulated above, claims for damages against us for breaches of duty are excluded.
- 6.5 Insofar as our liability is excluded and limited, this also applies to the personal liability of our legal representatives, employees and other vicarious agents.
- 6.6 Claims for damages according to the above section 6.1 to 6.3 expire within the statutory periods. The limitation period for claims for defects according to § 438 section 1 No. 3 German Civil Code (BGB) is – except for intent and subject to section 6.7 – 12 months and starts from delivery or, if acceptance is required, from acceptance.
- 6.7 A claim for damages for breach of the obligation to supplementary performance acc. to § 437 No. 1, § 439 German Civil Code (BGB) exists only if, during the 12-month limitation period acc. to section 6.6 both (i) the Purchaser demands supplementary performance, and (ii) we have violated our supplementary performance obligation.

7. Information and technical advice

Our information and recommendations are made without obligation and with the exclusion of any liability, unless we have expressly and in writing committed to provide information and recommendations. Whether a product is also suitable for the special applications of the Purchaser, the Purchaser has to examine in own test series. Our information does not constitute a condition of our products.

8. Retention of title

- 8.1 Goods delivered by us shall remain our property until full fulfillment of all our claims arising from the entire business relationship with the Purchaser (current account reservation).

- 8.2 The Purchaser is obliged to keep the goods delivered under retention of title at his own expense, to maintain and repair them and to insure them against fire, water damage, burglary and theft.
- 8.3 In the case of garnishment or other access by third parties to the reserved property, the Purchaser shall notify us immediately in writing.
- 8.4 The Purchaser is entitled to sell the reserved goods in the course of a proper business transaction, as long as he is not in default of payment. Pledges or transfers of ownership of the reserved goods are inadmissible. The Purchaser hereby already assigns the accounts receivable that arise out of the resale or for some other legal reason (in particular but without limitation any transfer of title to the end customer, any insurance case or any tortious act) concerning the reserved goods to us in full as security – in the case of co-ownership of the reserved goods pro rata according to the co-ownership share. We accept said assignment. We revocably authorize the Purchaser to collect the claims assigned to us for his account in his own name. If the Purchaser behaves in breach of contract – in particular if he has defaulted on the payment of a claim for payment – we may require him to disclose the assignment and to provide us with the information and documents necessary for the collection of the claim.
- 8.5 In the event of breach of contract by the Purchaser, in particular in the event of default of payment, we shall be entitled, after setting a reasonable deadline, to reclaim the reserved goods at the expense of the Purchaser.
- 8.6 If the reserved goods are combined with other objects, the reserved property shall continue to be in the newly arising object. We thereby acquire a co-ownership share in the ratio of the value of the reserved goods (invoice value) to the value of the new item. If one of the connected items is to be regarded as the main item, the Purchaser transfers co-ownership to us in proportion of the value of the goods delivered by us (invoice value) to the value of the new item.
- 8.7 The Purchaser stores the new item free of charge with regard to our co-ownership share. If the reserved goods are resold as part of the new item, the advance assignment agreed in accordance with section 8.4 shall only apply in the amount of the invoice value of the reserved goods.
- 8.8 If the law of the country where the delivered items are located does not allow for retention of title or only in a restricted format, we shall reserve the right to retain other rights to the delivered goods. The Purchaser shall cooperate with all required

measures (e.g. registration) to realize the retention of title or other rights in place of retention of title and to protect these rights.

9. Jurisdiction, Place of Performance and Applicable Law

- 9.1 Place of fulfillment for all obligations of us and the Purchaser is Freiburg i. Br., unless otherwise specified.
- 9.2 German law applies, excluding the UN Sales Convention (CISG).
- 9.3 The place of jurisdiction shall be Freiburg i. Br. In addition, we are entitled to assert our claims at the general place of jurisdiction of the Purchaser.