

Conditions of Purchase of Klaus Böcker GmbH

§ 1 General – Scope

1. Our Conditions of Purchase apply exclusively; conditions of the Seller which are inconsistent with our Conditions of Purchase or which deviate from our Conditions of Purchase shall be void and of no effect, unless we have specifically agreed to their validity in writing. Our Conditions of Purchase shall also apply, if we, with knowledge of the Seller's conditions which are inconsistent with or deviate from our Conditions of Purchase, unreservedly accept the delivery by the Seller.
2. All agreements reached between us and the Seller for the purpose of the performance of this Agreement are laid down in writing in this Agreement. Modifications or additions to this Agreement must be made in writing in order to be valid.
3. Our Conditions of Purchase shall only apply to commercial undertakings as defined in article 14 of the German Civil Code (Bürgerliches Gesetzbuch; hereinafter referred to as: BGB), legal persons under public law or special funds under public law.
4. Our Conditions of Purchase apply to all current and future business relationships with the Seller.

§ 2 Validity of the Conditions of Business (Geschäftsbedingungen) of the Waren-Verein

1. The Conditions of Business (Geschäftsbedingungen) of the Waren-Verein der Hamburger Börse e. V. (hereinafter referred to as: WVB) apply exclusively in the version applicable at the time the contract was concluded, to the extent that they are not changed or supplemented by the following overriding provisions.
2. The WVB can be obtained from the following address: Waren-Verein der Hamburger Börse e. V., Große Bäckerstraße 4, D-20095 Hamburg, or can be accessed via the Internet under <http://www.waren-verein.de>.

§ 3 Delivery

The Seller shall undertake the delivery in accordance with the contractual agreements concerned. This obligation comprises in particular:

1. The delivery of products which conform to the contract and which are of suitable quality in compliance with the respective regulations relating to food production and distribution and labelling regulations of the European Union and the Federal Republic of Germany.
2. The delivery of contractual goods which meet customs requirements; in the case of transactions at a fixed date the delivery shall take place on the exact day.
3. The delivery of the goods in the proper packaging or receptacles and in the agreed trading units as well as size and content of receptacles.
4. The complete presentation of all of the necessary documents accompanying the goods for their circulation, together with their timely sending to us at the Seller's risk.

The aforementioned obligations are primary obligations of the contract in terms of article 17 WVB.

§ 4 Prices

1. The settlement of accounts between the parties takes place on the basis of the quantity of invoiced goods unless the quantity of goods actually delivered is smaller. The quantity of goods actually delivered is fixed by the buyer.
2. The settlement of the account as between the parties takes place on the basis of the contracted prices. This price is binding. After conclusion of the contract in accordance with article 11 WVB, potential price increases according to article 11 para 2 WVB shall only be borne by us, if they fall within our sphere of responsibility or business.
3. We are entitled to set-off rights and rights of retention to the extent of the law.

§ 5 Force majeure

In the case of force majeure, for example, natural disasters, unrest, official measures, disruptions to transport, strikes, lockouts, disruption of operations through no fault of one's own, both in our own undertaking and in the undertaking of the purchaser or his suppliers to the industry, we are entitled to request performance of the contract at an appropriate, later date. If these circumstances last longer than 3 months, we are entitled to withdraw from the contract. The Seller shall not be entitled to make any claims on the grounds of delay in the delivery date. He shall refund without delay any counter performances effected by the Buyer.

§ 6 Inspection of Defects – Liability for Defects

1. The Seller shall only deliver goods which comply with the Code of Practice for the Evaluation of Fruit and Vegetable Juice promulgated by the Association of the Industry of Juices and Nectars from Fruits and Vegetables of the European Union (A.I.J.N.) and the European Fruit Juice Directive. These can be accessed via the Internet under <http://www.aijn.org>.

2. The Seller shall comply with the Code of Labelling/Raw Materials of SGF International e.V., (<http://www.sfg.org>). Furthermore, the Seller shall deliver goods which have been produced in accordance with the hygiene requirements of SGF International e.V.
3. We shall examine the goods in accordance with articles 20 and 21 WVB for any discrepancies in quality and quantity upon delivery of the goods. Our obligation is confined to examining random samples.
4. We are entitled to exercise all statutory rights on the grounds of defects. In every case we are entitled to claim from the Seller removal of the defect or delivery of new goods, the choice between the two being at our discretion. The right to compensation, in particular damages instead of performance remains explicitly reserved. In every case, even without personal negligence, the Seller is responsible for the supplies and services supplied to him by third parties by which he fulfils his contractual obligations against the Buyer.
5. The limitation period for our claims in respect of defects amounts to 24 months, calculated from delivery.
6. The limitation periods for liability for defects are delayed via our written notification of defects.

§ 7 Product Liability – Indemnity – Third Party Liability Insurance Protection

1. In so far as the Seller is responsible for a damaged product, he shall indemnify us from claims for damages from third parties upon our first request, in as much as the cause of the damage lies within the scope of his control and organisation and insofar as he is himself liable vis-à-vis third parties.
2. In line with his liability for claims within the meaning of para 1, the Seller shall also reimburse any expenses in accordance with articles 683, 670 as well as 830, 840, 826 BGB which arise from or in connection with a recall action initiated by us. As far as possible and reasonable, we shall inform the Seller about the content and scope of the recall measures which are to be implemented and give him the opportunity to comment. Other statutory claims remain unaffected.
3. The Seller shall provide product liability insurance with a minimum limit of indemnity set at a lump sum of 2.5 million Euros per personal injury/damage to property. This shall not affect any further claims for damages, to which we may be entitled.

§ 8 Protective Rights of Third Parties

1. The Seller guarantees that in connection with his delivery, no rights of third parties within the Federal Republic of Germany have been infringed.
2. If we are sued by a third party, upon our first written request the Seller shall indemnify us against these claims. Without the consent of the Seller, we are not entitled to make agreements of any kind with the third party, in particular to reach a mutual agreement.
3. The duty of the Seller to indemnify relates to all expenses which necessarily result from us or which are in connection with the claims of third parties.
4. The period of limitation for these claims shall be ten years, commencing with the conclusion of the respective Agreement.

§ 9 Place of Jurisdiction – Place of Performance

1. The exclusive place of jurisdiction for all disputes arising out of or in connection with this Agreement, including any tortious claims, is at our discretion, the Schiedsgericht (Court of Arbitration) of the Waren-Verein der Hamburger Börse e.V. (article 30 WVB) or the court of general jurisdiction in Hamburg. In case the Seller intends to bring a judicial action against us, at the Seller's request, we shall exercise our right to choose the court prior to the beginning of court proceedings within a reasonable period of time, which must be a minimum of 3 business days. If we fail to declare our decision within the set time period, the right to choose passes to the Seller. He shall make his choice without delay and notify us in writing.
2. The place of performance for all claims of the parties arising out of this Agreement is Hamburg.