

General Terms of Sale and Delivery
R. Nöthen & Co. Gewürze GmbH
for contracts concluded with merchants and enterprises,
effective from January 1st 2012

1.

General

1.1

The terms of sale and delivery set out below are valid for all – also future – sales contracts concluded by R. Nöthen & Co. Gewürze GmbH as the Seller. All business conditions, clauses or supplements of the Buyer or a broker are expressly rejected. They become part of the contract only upon written acknowledgement by the Seller. The same applies if upon receipt of a confirmation the Seller does not again expressly contradict or if he effects delivery unconditionally. Supplementarily the INCOTERMS are applicable in their respective prevailing version.

1.2

Statements of avoidance, withdrawals, notices of termination and fixations of a period of time are not valid unless made in writing including a signature and service of the relevant documents as original or by telefax.

2.

Offers, closings and prices

2.1

Verbal offers, commitments, contract amendments and agreements made by employees of the Seller, unless made by managing directors or „procurists“ (holders of special statutory authority), are made without obligation and are not binding. To become binding they must be confirmed in writing. This requirement may only be waived in writing. Only written commitments or closings or those confirmed by telefax or e-mail are binding for the Seller.

2.2

The Seller's specifications, descriptions of the goods and statements referring to the quality as well as information regarding the suitability and applicability of the goods shall not be considered as warranted or guaranteed characteristics.

2.3.

The weight upon departure shall form the basis of the calculation of the sales price.

3.

Delivery and Performance/Time Periods

3.1

If the delivery is delayed, the Buyer is not entitled to damages because of the delay unless such delay has been caused intentionally or by gross negligence. In case of slight negligence the claims for damages are limited to the damages which were typically foreseeable as a consequence of the delay.

3.2

If delivery is delayed by unforeseeable circumstances of any kind, e.g. impediments of transport, damages of machinery, sickness, labor disputes, interruptions of operations or force majeure a reasonable extension of periods is granted. This also applies in the event of such circumstances occurring at a time when the Seller is already in default. The Seller is not obliged to reimburse the Buyer for costs caused by such unforeseeable delays.

3.3

All sales are subject to the Seller himself receiving delivery from his pre-supplier in good order and on time as well as to the safe arrival of the goods to be delivered. The covering contract of the Seller may also contain the self-delivery reservation.

3.4

The Seller is entitled to deliver to the Buyer partial quantities reasonable in the ordinary course of business. The Buyer is obliged to pay for the relative partial quantities. All partial deliveries under a contract shall be regarded as separate transactions.

4.

Payment, Default, Settlement of Accounts / Right to Retention

4.1

In case of default the Seller is entitled to debit interest for delay in an amount of 10% above the basic interest rate fixed by the European central bank from time to time. The Seller is entitled to prove a higher damage.

4.2

The Buyer is not entitled to any set-off or to any right of retention with regard to the claims of the Seller unless the Buyer's counter-claim is not contested or has been assessed by a definite and binding court decision.

4.3

If after conclusion of the contract the Seller becomes aware of circumstances, which make the credit worthiness of the Buyer or the fulfilment of the Buyer's performance duties appear doubtful or if the Buyer has been totally or partially delayed his

duties for cooperation or payment for more than 14 days after fixation of a period of time, the Seller shall be entitled, to postpone the performance of his duties until all outstanding accounts receivable have completely been settled and to demand prepayment of any and all accounts receivable under all contracts concluded with the Buyer including bills accepted by the Buyer.

4.4

If the Buyer does not comply with a legitimate request for prepayment in accordance with No. 4.3 within 5 business days the Seller is entitled to postpone the performance of all contracts concluded and – after giving a grace period of further 5 business days – to refuse the fulfilment of contracts not yet performed and additionally claim damages or withdraw.

4.5

The take-over and the calling of the agreed delivery are primary substantial duties of the Buyer.

5.

Retention of Title and Assignment of Claims

5.1

The goods delivered remain property of the Seller (reserved property) until the Buyer has paid the full sales price as well as all accounts receivable under the mutual business relationship including those arising in the future, not yet due, or conditional accounts receivable as well as possible bill debts.

5.2

The treatment or processing of reserved property goods is done by order of the Seller but without his liability. The property of the newly created product is due to the Seller. If reserved property is treated, processed, mingled, mixed or combined with other goods not belonging to the Seller the joint property of the new product is due to him calculated according to the proportion of the invoice value of the reserved property goods to the invoice value of the other goods utilised at the time of treatment, processing etc. Already now the Buyer transfers his title to joint property in the above mentioned cases to the Seller up to the amount of the invoice value of the reserved property goods. The new merchandise is being stored by the Buyer on behalf of the Seller free of charge.

5.3

Subject to clause 5.7 the Buyer is authorised to sell reserved property goods in the orderly course of business under retention of title, however, he is prohibited from transferring title to the goods as security or from pledging them. The Buyer herewith assigns to the Seller all accounts receivable due to him from the resale of reserved

property goods or products created by treatment, processing, mingling, mixture or combination according to clause 5.2. The same applies, if the merchandise is sold at a total price together with other goods not belonging to the Seller. If following treatment, processing, mingling, mixture or combination because of legal provisions a third party has acquired the property or joint property rights to the goods, the Buyer assigns to the Seller already now and in advance the claims arising against the third party as well. Assignments in terms of this paragraph are always restricted by the amount of the invoice value of the reserved property goods. The Buyer is entitled to collect the assigned accounts receivable until revocation by the Seller which is admissible any time in case of a default of payment of any one claim under the business relationship.

5.4

In terms of the above provisions the value of the reserved property goods is always to be considered as the price the Seller has charged the Buyer for the goods (invoice value).

5.5

Upon request of the Buyer the Seller is obliged, to release security collateral at his choice to the extent that its value exceeds the accounts receivable to be secured by more than 10 %.

5.6

If the Buyer's assistance is required to render the retention of title effective, e.g. for registrations required by the law in the country of the Buyer, the Buyer is obliged to act accordingly. This is a substantial primary performance obligation.

5.7

If the Buyer is in default of payment the Seller is entitled to prohibit the Buyer from selling the reserved property goods or their treatment, processing, combination, mingling or mixture with other goods as well as their removal and to claim the surrender of the reserved property goods or of the treated and processed reserved property goods. The Buyer is obliged to notify the Seller immediately if third parties take hold of goods to which the Seller holds rights according to the foregoing provisions. The same applies to accounts receivable which have been assigned in accordance with the foregoing provisions. Possible costs of intervention are to be borne and to be reimbursed by the Buyer.

5.8

In case of a breach of contract by the Buyer especially in case of default with the payment, the Seller shall be entitled, to claim the surrender of the sold merchandise after he has fixed an adequate period of grace.

5.9

If the Seller exercises his right of retention of title, especially if he claims surrender of the goods, this shall be considered as a withdrawal from the contract. The Seller is still entitled thereafter, to claim damages according to the general provisions irrespective of the withdrawal.

6.

Warranty / Complaints / Risk Assumption

6.1

Goods must be inspected immediately after delivery at the agreed place of delivery inasmuch as this is possible and reasonable.

For the determination of quantities the ascertainment of the respective carriers are regarded as rebuttable evidence, also in the mutual relationship of the parties.

6.2

Inasmuch as defects cannot be discovered upon a commercial and sensorial inspection the Buyer has to draw representative samples for the purpose of examination and to instruct an expert to carry out the inspection and examination.

6.3.1

Provided defects or non conformities can be discovered without experts the Buyer has to notify the Seller immediately of such defects, latest within 3 business days in case of domestic German trade, at the latest within 8 business days after delivery respectively release at the agreed place in case of international transactions. If the employment of an expert is necessary samples have to be submitted to him in domestic German trade within 3, in international trade within 8 business days after delivery. Notifications of defects must be declared to the Buyer within 3 business days after receipt of the results of the analysis, at the latest within 3 weeks from arrival of the goods at the contractual place of destination, unless the expert's examination has taken longer.

6.3.2

To become effective notifications of non conformity must be made in writing or by telefax and contain a definite specification of the individual defects objected.

6.4

Warranty and/or damage claims against the Seller are excluded in case of defects or non conformities which are recognisable or ascertainable by experts if prior to termination of the ascertainment by the Seller the Buyer has touched the goods or parts thereof (except drawing of samples for the purpose of inspection), removed them from the place of inspection, opened, treated, processed or otherwise modified or forwarded them.

6.5

The Buyer is obliged to secure claims of recourse against the respective carrier by registration of claims on time in the transport documents or to state damages or defects otherwise on time in writing and to obtain a confirmation from the driver if possible. If these duties are violated or if the records regarding the complaints are not presented within 2 weeks upon request, the claims of the Buyer based on the concrete complaint shall lapse.

6.6

If payment against documents has been agreed, notifications of defects do not entitle the Buyer to refuse or to delay the taking up of documents and the payment of the purchase price.

6.7

If there is a non conformity of the goods, the Seller shall be entitled to a supplementary fulfilment in his choice by a replacement delivery or by remedy of the defects. In both cases the Seller is obliged, to pay a reimbursement for any necessary expenses, especially the costs of transport and re-transport, the costs of labour and/or material, provided these costs have not been increased by the fact that the sold goods have been transported to another place but the place of fulfilment.

If two or more replacement deliveries or trials for a supplementary fulfilment fail or if the Seller delays the replacement delivery or supplementary fulfilment in an inadequate manner or way, the Buyer shall be entitled to the general legal rights without giving a further period of grace. In cases of a correct replacement delivery or remedy of defects claims for damages are excluded provided these are not costs of the Buyer's in connection with the redelivery or supplementary fulfilment.

7.

Clarification and Limitation of Liability, Limitation of Action

7.1

Any claims for damages out of and in connection with the sales contract shall be handled in accordance with the legal provisions with respect to reasons and amounts, if

- a) they are based on an intentional or gross negligent violation of the contract by the managing directors or the leading employees of a party; in case of non intentional violations of contract the responsibility for damages shall be limited to the typically foreseeable damages;
- b) the Seller's can be blamed because of a culpable violation of fundamental duties under the contract; in such case the liability for damages shall be limited to the typically foreseeable damages;

- c) the Seller has undertaken a special guarantee or has with fraudulent intent guaranteed any characteristics of the merchandise or has fraudulently concealed a defect or
- d) if the Buyer's claims are based on cogent legal provisions, especially the law on product liability or the principles regarding the recourse against an entrepreneur (§ 478 German BGB).

In all other cases the liability of the Seller and his agents or servants, especially of his employees for damages shall depend on a culpable behaviour and be excluded in case of slight negligence or a non-culpable behaviour or omission.

7.2

In as much as the Seller is liable, his liability – except according to 7.1. b)- shall be limited to the damages, which he, considering the circumstances, has known or out to have known as a consequence of the breach of contract.

7.3

All warranty claims and/or claims for damages against the Seller out of and in connection with the concluded contract are time-barred one year latest after the complete or partial delivery of the goods to the Buyer. This shall not be applicable to claims for damages, which are based on a violation of the life, the body, the health or the freedom and under the conditions described under no. 7.1 a), c) and d). If the goods have not been taken over immediately after a notice of release or another information about the possibility of the take over, the prescription period of one year starts from the receipt of the corresponding information by the Buyer.

8.

Place of Performance, Applicable Law, Jurisdiction

8.1

Place of performance for the delivery is the agreed place of delivery or of loading, otherwise the nominated storehouse of the Seller, in case of no other agreement Velbert, for the payment of the sales price: Velbert.

8.2

The law of the Federal Republic of Germany shall be applicable, excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG).

8.3

Any and all disputes out of or in connection with this contract, also with reference to the validity or the termination of the contract, shall be decided by the ordinary courts in Wuppertal. The Seller may also bring action against the Buyer at the place of the Buyer's residence.

