

WIESENHOF International GmbH - General Terms and Conditions for Sale, Delivery and Payment

1. Application

- 1.1 The following General Terms and Conditions for Sale, Delivery and Payment (hereinafter referred to as "GTC") govern the business relationships of WIESENHOF International GmbH (hereinafter referred to as "WHI") to the extent that these business relationships are maintained with entrepreneurs (natural or legal persons or partnerships with legal personalities who/which act in exercise of their trade, business or profession when entering into a legal transaction). These GTC do not apply to legal relationships with consumers who are not acting on a commercial or self-employed basis.
- 1.2 All deliveries, services and offers of WHI are exclusively made on the basis of these GTC. These GTC shall become an integral part of all contracts concluded by WHI with its contractual partners or customers (hereinafter referred to as "Purchasers"). This shall also apply to future deliveries, services and offers, even if this is not expressly agreed in future business transactions.
- 1.3 The Purchaser's terms and conditions shall not apply, even if WHI has not specifically objected to their application in each individual case.
- 1.4 By placing an order, submitting a correctly completed order form or accepting goods, the Purchaser agrees to these GTC.
- 1.5 If one or more of these GTC is/are or become(s) invalid, the remainder of conditions shall remain unaffected.

2. Contract Conclusion

- 2.1 Any statements by WHI regarding quantity, price, sample and delivery time are non-binding, unless a written and binding offer by WHI is provided which also is declared as such.
- 2.2 All communication between WHI and the respective Purchaser (hereinafter jointly referred to as "Parties") shall be conducted in writing. Fax or e-mail is sufficient for this purpose.
- 2.3 WHI cannot be held responsible for communication errors in faxes or phone calls.
- 2.4 Purchase agreements between WHI and the Purchaser shall be concluded in writing and separately for each individual case. Additions to and amendments of such purchase agreements, including these GTCs, shall only be effective in writing. This written form requirement can only be changed in writing. Section 2.2 applies accordingly.
- 2.5 A purchase agreement shall not be, expressly or by implication, construed as transferring any right or granting any license to conclude further purchase agreements or similar agreements between WHI and the Purchaser.

3. Prices

- 3.1 Prices apply, unless otherwise agreed, in accordance with INCOTERM FCA. They do not include statutory Value Added Taxes (VAT) or costs arising beyond the article specification. These costs shall be borne by the Purchaser.
- 3.2.1 Pallets and all other reusable packaging in which goods are delivered shall remain the sole property of WHI at all times. If the Purchaser fails to return or provide such pallets or other reusable packaging in good condition within 30 days of delivery, the Purchaser shall compensate WHI for such lost or damaged pallets or other reusable packaging.
- 3.2.2 In case of tax-exempt deliveries, the Purchaser is, at WHI's request, obliged to provide the corresponding proof no later than 10 days after loading.

4. Delivery

- 4.1 Delivery dates are, unless otherwise agreed, the shipment dates of the goods from the place of loading.
- 4.2 Deadlines and dates promised by WHI are only approximate, unless a fixed deadline or delivery date has been expressly assured or agreed.
- 4.3 WHI is entitled to make partial deliveries. Details will be determined with the Purchaser.
- 4.5 If successive deliveries have been agreed, the Purchaser is obliged to order the goods in regular, approximately equal time intervals.
- 4.6 WHI shall not be liable for impossibility of or delays in delivery caused by force majeure or by the occurrence of a circumstance that was unforeseeable when the contract was concluded and beyond the control of WHI (e.g. impediments in the procurement of raw materials, insufficient or spoilt harvest, regulations, strikes, lockouts, incomplete and late deliveries by WHI's own suppliers, fire, animal diseases, epidemics and pandemics including administrative measures that are taken to contain animal diseases, epidemics and pandemics, etc.), which WHI is not responsible for. For the duration of the impossibility of or delay in delivery due to force majeure or one of the aforementioned unforeseeable circumstances, WHI is released from the obligation to deliver and/or perform its contractual obligations, provided that WHI has immediately informed the Purchaser about the reason for the impossibility of or delay in delivery in writing. WHI shall immediately reimburse any consideration already received from the Purchaser.
- 4.7 If the circumstances mentioned in section 4.6 lead to a shortage of goods, which results in WHI being able to fulfill some, but not all due delivery obligations to WHI's customers in due time, WHI may choose at its own discretion which delivery obligations will be fulfilled. With regard to the delivery obligations that cannot be fulfilled by WHI according to this section 4.7, section 4.6 applies.
- 4.8 If the Purchaser does not accept the duly offered service and/or delivery, the Purchaser shall be in default in acceptance. In this case, WHI is entitled to resell the goods or store them at the expense of the Purchaser. The Purchaser shall fully indemnify WHI for all losses and expenses incurred, provided that notification and execution of the storage or deposit or notification and execution of the resale have been duly made. A notification of a resale is not required if the goods are subject to spoilage; the same applies if the notification is unfeasible for other reasons.

5. Payment

- 5.1 Payments shall be made without any deductions in accordance with the terms agreed on in the contract. Unless otherwise agreed, the Purchaser has to make advance payments. In this regard, a receipt confirmation from WHI's principal bank shall be decisive, which needs to be obtained one business day before loading.
- 5.2 In the event of non-compliance of the Purchaser with the payment terms or the Purchaser's lack of creditworthiness, WHI is also entitled to withhold further deliveries until all payments due and payable under the respective contractual relationship (including other individual orders for which the same framework agreement applies) have fully been made by the Purchaser.
- 5.3 Purchaser may only declare a set-off against WHI's payment claims or retain any payments due to counterclaims if and to the extent such the counterclaims are undisputed or have been confirmed by a legally binding judgement.
- 5.5 If a debt collector is instructed by WHI due to Purchaser's default of payment, the resulting costs shall be borne by the Purchaser.

6. Retention of Title

- 6.1 The retention of title agreed below serves to secure all current and future claims of WHI against the Purchaser arising from the supply relationship between the Parties.
- 6.2 WHI retains title to the delivered goods until full payment of all secured claims. The goods as well as the goods that, according to the following provisions, replace them and are covered by the retention of title, are hereinafter referred to as "Reserved Goods".
- 6.3 The Purchaser shall store the Reserved Goods for WHI free of charge.
- 6.4 The Purchaser is entitled to process and sell the Reserved Goods in the course of its regular business until an enforcement event in accordance with section 6.9 occurs. Pledges and transfers of ownership by way of security are prohibited.
- 6.5 It is agreed that, if the Reserved Goods are processed by the Purchaser, the processing shall be carried out on behalf and on the account of WHI as manufacturer within the meaning of section 950 German Civil Code (BGB), and that WHI shall gain direct ownership or – if the processing is carried out using materials from several owners or the value of the processed item is higher than the value of the Reserved Goods – co-ownership (fractional ownership) of the newly created item in the ratio of the value of the Reserved Goods to the value of the newly created item. For the event that no such acquisition of ownership by WHI occurs, the Purchaser hereby assigns his future ownership or – in the above-mentioned ratio – co-ownership of the newly created item to WHI as security. If the Reserved Goods are combined or inseparably mixed with other items to form one item and if one of the other items is considered to be the main item, WHI shall, to the extent that the main item is owned by WHI, transfer a pro rata ownership of the main item to the Purchaser in the ratio specified in sentence 1 of this section 6.5.
- 6.6 In the event of a resale of the Reserved Goods, the Purchaser hereby assigns to WHI by way of security the resulting claim against the buyer – for the case of co-ownership of WHI in the Reserved Goods pro rata according to the co-ownership ratio of WHI. The same applies to other claims that replace the Reserved Goods or otherwise arise with regard to the Reserved Goods, for example insurance claims or claims arising from torts in the event of loss or destruction. WHI revocably authorizes the Purchaser to collect the claims assigned to WHI in its own name. WHI may only revoke this authorization in case of an enforcement event.
- 6.7 If third parties take hold of the Reserved Goods, in particular by way of seizure, the Purchaser shall immediately notify them of WHI's ownership and inform WHI thereof in order to enable WHI to enforce its ownership rights. If the third party is not in a position to reimburse WHI for the judicial and extrajudicial expenses incurred in this context, the Purchaser shall be liable for these expenses to WHI.
- 6.8 WHI shall release the Reserved Goods as well as the items or claims replacing them if and to the extent that their value exceeds the amount of the secured claims by more than 50 %. The selection of the goods to be released is at WHI's discretion.
- 6.9 If WHI withdraws from the contract because of a breach of contract by the Purchaser – in particular, default in payment – WHI is entitled to demand the return of the Reserved Goods.

7. Place of Performance, Passing of Risk

- 7.1 The place of performance for all contractual obligations of WHI shall be the place of loading as agreed upon conclusion of the respective contract.
- 7.2 The risk of loss, deterioration and depreciation of the goods to be delivered shall pass to the Purchaser at the latest upon handover of the goods to the Purchaser by WHI or, if the goods are shipped at the Purchaser's request or in accordance with the agreed INCOTERMS, upon handover to the forwarding agent, freight carrier or other third party appointed to deliver the goods.
- 7.3 If the shipment or handover is delayed due to a circumstance for which the Purchaser is responsible, the risk passes to the Purchaser from the time when the goods were ready for shipment and WHI informed the Purchaser thereof.
- 7.4 WHI only takes out insurances covering insurable risks such as theft or damages resulting from breakage, transport, fire and water at the Purchaser's request and expense.

8. Warranty Claims of the Purchaser

- 8.1 Due to the natural quality of raw materials, it cannot be guaranteed that the delivered goods will correspond with the material samples submitted in advance. Such samples are non-binding examples unless WHI expressly guarantees that the quality of the delivered goods corresponds with the quality of a previously provided sample.
- 8.2 The Purchaser has to inspect the delivered goods carefully for conformity immediately after delivery to the Purchaser. The obligation to inspect also includes any characteristics of the delivered goods that are relevant for customs declarations. Complaints regarding the quality or quantity of fresh goods must be communicated by telephone or fax on the day of delivery and confirmed by e-mail or fax within 24 hours. Complaints regarding the quality or quantity of frozen goods must be communicated by telephone or fax by the end of the day following delivery and confirmed by e-mail, fax or any other appropriate means within three business days.
- 8.3 In any case, the complaint must be substantiated in such way that WHI can examine whether the complaint is justified (specification of all details, including labels). The nature and extent of the alleged non-conformity must be clearly stated in the complaint.
- 8.4 The Purchaser shall allow WHI to inspect the goods that are subject to the complaint at the Purchaser's storage location.
- 8.5 Goods that are subject to complaints may only be processed, returned or destroyed with the express prior consent of WHI. If the Purchaser processes, returns or destroys goods that are subject to complaints without the prior consent of WHI, all related costs must be borne by the Purchaser.
- 8.6 Goods which have not been reprimanded in due form and time are deemed to have been approved and accepted.
- 8.7 Complaints do not automatically release the Purchaser from the obligation to pay. The Purchaser is obliged to not withhold any payments until its counterclaims are undisputed or have been assessed in a legally binding judgement.
- 8.8 In the event of a justified complaint made in due form and time, the goods not in conformity with the contract shall be replaced by WHI with goods of the agreed quality. The replacement delivery will be carried out by WHI at no cost to the Purchaser. If WHI fails to replace the non-conforming goods within a reasonable time, the Purchaser is entitled to make use of additional legal rights (depending on the circumstances, e.g. request a reasonable discount or withdraw from the contract). Withdrawal from the contract is excluded if the non-conformities of the goods are minor.
- 8.9 Warranty claims are excluded if the best before date indicated on the respective goods has expired, unless the Purchaser proves that the reprimanded non-conformity with the contract already existed before the best before date expired. In this regard, the parties are in agreement that the delivered goods must have the contractually owed quality only until the best before date and if properly stored by the Purchaser.

9. Further Liability of WHI

- 9.1 WHI is liable for a breach of contractual and non-contractual obligations in accordance with statutory provisions only unless not otherwise provided for in these GTC including the following provisions.
- 9.2 With regard to fault-based liability, WHI shall be liable for damages – irrespective of the legal grounds – only in the case of intent and gross negligence. In the case of ordinary negligence, WHI shall, subject to statutory limitations of liability, only be liable for
 - a) damages resulting from an injury of life, body or health,
 - b) damages resulting from the breach of a material contractual duty (the fulfillment of which is essential for the proper execution of the contract and the compliance with which the contractual partner regularly trusts and may trust); in this case, however, WHI's liability is limited to the compensation of foreseeable damages that typically occur.
- 9.3 The limitations of liability set forth in section 9.2 shall also apply vis-à-vis third parties as well as in the event of breaches of duty by persons (also in their favor) for whose faults WHI can be held responsible due to statutory provisions (e.g. board members, representatives, employees and assistants in performance). They shall not apply if the non-conformity was fraudulently concealed, a guarantee concerning the condition of the goods was provided and/or with regard to claims of the Purchaser under the Product Liability Act.
- 9.4 If the liability does not arise in connection with the non-conformity of any goods with the contract, the Purchaser may only withdraw from the contract if WHI is responsible for the breach of duty. Apart from that and unless otherwise expressly provided for in these GTCs, the consequences of breaches of duties by the Parties shall depend on statutory requirements and legal consequences.

10. Liability of the Purchaser

- 10.1 Unless otherwise agreed and in accordance with the agreed INCOTERMS, the Purchaser undertakes to ensure that the cooling chain and the deep-freeze chain is not interrupted. If the Purchaser reprimands any non-conformity with the contract, he is obliged to store the goods in accordance with the previous sentence until WHI makes a decision in accordance with section 8.5.
- 10.2 In order to protect the name and the reputation of the brand WIESENHOF, the Purchaser is not allowed to forward or resell goods that have been damaged in his own or leased deep-freeze or cooling storages until WHI expressly consents to such forwarding or resale in writing.
- 10.3 The buyer is responsible for compliance with the legal requirements in the country of destination regarding product constitution and quality, storage, packaging, distribution and sale.

11. Limitation

- 11.1 By way of derogation from section 438 para. 1 no. 3 German Civil Code (BGB), the standard limitation period for claims arising from material and legal defects of the delivered goods shall be one year from delivery.
- 11.2 The aforementioned sales law rules on limitation shall also apply to contractual and non-contractual damage compensation claims of the Purchaser arising from the non-conformity of the goods with the contract and breaches of accessory obligations by WHI, unless the statutory limitation period (sec. 195, 199 German Civil Code (BGB)) is shorter in the individual case. Damage compensation claims of the Purchaser pursuant to section 9.2 sentence 1 and 2 (a) and damage compensation claims in accordance with the Product Liability Act shall become time-barred exclusively in accordance with the statutory limitation periods.

12. Data Protection

12. Personal data may only be collected, processed, used or transmitted to the extent necessary for the purpose of the contractual relationship. Further restrictions regarding personal data imposed by the applicable data protection law or these GTC shall remain unaffected by the previous sentence and must be observed. Company data must be treated as confidential.

13. Final Provisions

- 13.1 All disputes arising out of or in connection with these GTC or their validity shall, at the sole discretion of WHI, be finally settled either in accordance with the Arbitration Rules of the German Institution of Arbitration (*Deutsche Institution für Schiedsgerichtsbarkeit e.V.* (DIS)) without recourse to the ordinary courts of law or in state court proceedings. The same applies to disputes arising out of or in connection with all business relationships existing between WHI and the Purchaser on the basis of these GTC. Disputes concerning the validity of this arbitration clause shall be exempted from the aforementioned right of choice.
- 13.2 Upon the request of a Purchaser intending to take (arbitration) action against WHI, WHI shall exercise the right of choice provided for in section 13.1 within 14 days with binding effect. If WHI fails to comply with this in due time, the Purchaser obtains a right of choice with regard to the respective dispute.
- 13.3 If WHI decides in favor of arbitration proceedings or the Purchaser makes such decision in accordance with section 13.2, the arbitral tribunal shall be comprised of three members. The language of the arbitration shall be German.
- 13.4 The venue and the seat of the arbitration, respectively, shall be Visbek/Rechterfeld, Germany.
- 13.5 The contractual relationships shall be exclusively governed by the laws of the Federal Republic of Germany excluding the provisions of international private law and the United Nations Convention on Contracts for the International Sale of Goods dated 11 April 1980 (CISG).