heristo aktiengesellschaft
the quality group

Parkstr. 44-46 · 49214 Bad Rothenfelde · Tel.: +49 5424 299–0 · Fax: +49 5424 299–200

General Terms and Conditions of Sale (STATUS AS AT JANUARY 2014)

I. Scope of application

1. The following Terms and Conditions of Sale apply exclusively to all contracts of German companies within the heristo group; varying terms and conditions of contractual partners shall not be recognised as valid unless we have expressly agreed to the applicability of such terms and conditions in writing. Our Terms and Conditions of Sale shall also apply even when we make unconditional delivery in full cognisance of the varying conditions of contractual partners.
2. All agreements of the parties, which they have made in the context of contract negotiations with a view to the execution of the contract, shall be set out in writing.
3. Our Terms and Conditions of Sale shall only apply to companies within the meaning of sec. 310 para. 1 of the BGB (German Civil Code).
4. The most recently amended version of our Terms and Conditions shall serve as a framework agreement for future contracts with the same contractual partners without us having to refer to them again in individual cases. We shall inform our contractual partners immediately should there be any changes to our Terms and Conditions of Sale.

II. Conclusion of contract / Prices

1. Should an order qualify as an offer in terms of sec. 145 of the BGB, we may accept it within 2 weeks.
2. Unless otherwise agreed, our prices are "ex works" excluding packaging.
3. VAT applicable is not included in our prices, but the amount as specified by law is shown separately on the invoice when the invoice is issued.
4. The contractual partner shall bear the costs of the required slaughterhouse equalisation levy in respect of which it is also obliged to register.
5. The determining factor in the calculation of prices is the weight of the goods when dispatched. The price shall not be affected by any natural loss in weight occurring during transportation or interim storage.
6. To the extent that, in a contractual relationship which has as its object the regular delivery of goods by us, a specific price has already been agreed upon at the time of contract signature, we reserve the right to increase prices due to subsequent changes in market prices or costs, such as an increase in taxes, duties, other levies, procurement or inspection costs, freight, handling or storage costs or exchange rate movements. A price increase will be considered only if, after taking all these cost factors into account, an effective increase in cost results. Likewise, we undertake to apply any effective market price decreases or cost reductions to the agreed price. We shall provide evidence to the contractual partner upon request of any cost reductions or increases.
7. Paragraph 6 shall apply to a contractual relationship which has as its object the regular delivery of goods by us in which the goods are only to be delivered four months after conclusion of the contract, or later.
8. If, in terms of the stipulations contained in paragraphs 6 and 7 above, the agreed price increases by more than 5%, our contractual partner is entitled to withdraw from the contract, or in terms of the stipulations under paragraph 6 and in the case of long-term transactions, to terminate the contract on the effective date of the price change.

III. Quality of the goods

1. Samples shall always be considered as average samples. Product-specific quality variations and variations of less than 11% in terms of indications of size and/or volume per unit weight are agreed as an acceptable tolerance.
2. In a contractual relationship which has as its object the regular delivery of goods by us, we reserve the right to make changes to the agreed products, in so far as it concerns changes in production procedures, changes in packaging, changes in the state of technology, or changes in the requirements of the law or the authorities or in recommendations by professional associations or experts, and changes or variations which are considered reasonable when taking into account the mutual interests of our contractual partners.
3. Paragraph 2 shall apply accordingly to a contractual relationship which has as its object the regular delivery of goods by us in which the goods are only to be delivered four months after conclusion of the contract, or later.

IV. Payment

1. The purchase price and amounts for additional services are due and payable to our company immediately, net free of postage and expenses, upon delivery of the goods and receipt of the invoice or an equivalent request for payment. In the case of partial deliveries, this applies to the amount owing in respect of the goods delivered.
2. The deduction of an early payment discount requires a special agreement in writing.
3. Our contractual partner may offset the amount of counterclaims which form part of this synallagmatic contract (i.e. the mutual agreement which constitutes the contract of sale) against outstanding amounts due to us, especially where claims for compensation exist owing to lack of performance on our part. The contractual party is entitled to offset the amounts of such claims against amounts payable as have been legally established, undisputed or acknowledged by us. The contractual party may exercise its right of retention, insofar as the counterclaim relates to the same contractual relationship.
4. Our contractual partner shall be deemed to be in default if it does not pay within 14 days of due date, which is the date of receipt of invoice or equivalent request for payment. Should the date of receipt of invoice or equivalent request for payment be uncertain, the contractual partner shall be deemed to be in default 14 days after the due date stipulated and date of receipt of the goods. The date of payment shall be the date on which the money is received in our account.
5. In the event of a serious breach of contract, such as being in default on partial payments in respect of two consecutive payment dates, we are entitled - even if in receipt of cheques and bills of exchange - to make all amounts outstanding together with interest at the agreed rate accrued to date immediately due and payable, irrespective of the period of payment originally agreed. The above shall not apply if our contractual partner is not responsible for the arrears or serious breach of contract.
6. If it becomes apparent after conclusion of the contract that the settlement of our payment claims is at serious risk due to lack of performance on the part of our contractual partner, we are entitled to make any outstanding amounts immediately due and payable, unless the contractual partner provides adequate collateral security within a reasonable period determined by us.
7. In terms of the provisions of paragraph 6, we may also refuse delivery of the goods until the contractual party has either provided collateral security or settled the amounts outstanding.
8. Should our contractual partner not make any arrangements for the payment of amounts outstanding, we may, at our sole discretion, offset incoming payments against existing claims and secondary claims against it.

V. Delivery

1. The shipment of goods and all associated activities, even if we do assume the shipping costs, shall always be carried out in the name of and at the risk of our contractual partner. The contractual partner is to arrange its own insurance cover.
2. We are entitled, within reason, to effect partial deliveries to our contractual partner, which shall be regarded as partial fulfilment of our obligations.
3. In the event that we are not able to meet contractually binding delivery deadlines for reasons which we are not responsible for (non-availability of goods or services), we shall immediately inform the contractual partner and simultaneously inform them of the anticipated revised delivery date. If the goods are not available within the revised delivery period, we are entitled to withdraw in whole or in part from the contract, and shall immediately refund any payment in respect of such delivery which our contractual partner may already have made. Non-delivery by reason of non-availability of goods or services in this sense includes, in particular, the delayed delivery by our suppliers, if neither we nor our suppliers are at fault, or, in isolated cases, we have not made firm undertakings as regards procurement. Legal claims and rights of our contractual partner shall remain unaffected in this regard.
4. Delays which occur due to the fact that the contractual partner has not supplied us with all the technical or other information required for the delivery shall likewise have the effect of postponing the agreed delivery date or extending the agreed delivery period accordingly.
5. We are liable according to the statutory provisions if the underlying contract is a fixed transaction within the meaning of sec. 376 of the HGB (German Commercial Code), or to the extent that a cessation of interest on the part of our contractual partner in the further fulfilment of the contract by reason of our delay has occurred. In either case, our liability shall be limited to claims for compensation in respect of contractually typical, foreseeable damage.
6. We are also liable according to the statutory provisions should the delay in delivery constitute a wilful or grossly negligent breach of contract on our part, negligence of our representatives or agents of vicarious liability. Should the delay in delivery constitute a grossly negligent breach of contract on our part, liability shall be limited to claims for compensation in respect of contractually typical, foreseeable damage.
7. We are also liable according to the statutory provisions to the extent that the delay in delivery constitutes a culpable breach of material contractual obligations, notwithstanding that in this case too, liability shall be limited to claims for compensation in respect of contractually typical, foreseeable damage.
8. In addition, we shall be liable in the event of a delay in delivery to furnish a lump-sum penalty in the amount of 3% of the delivery value of the goods in default in respect of each complete week of delay, with the total amount of the penalty not exceeding 15% of the delivery value of the goods in default. We retain the right to prove lesser damages.

VI. Default of acceptance

1. Should our contractual partner be in default of acceptance, culpably breach other obligations or delay acceptance of our delivery for reasons of its own, we shall be entitled to demand compensation for the damage incurred by us as a result, including any additional expenses. We retain the right to further claims in this regard.
2. Provided that the requirements of paragraph 1 are fulfilled, the risk of accidental loss or accidental deterioration of the goods passes to our contractual partner, from the point in time at which the partner is advised of such default of acceptance or default of payment.
3. Should deliveries or partial deliveries upon request but without specific delivery dates be agreed upon, and our contractual partner does not retrieve the agreed deliveries or partial deliveries within a customary, reasonable period of time, we may request it to do so. If our contractual partner fails to do so within the reasonable period of time determined by us, we shall be entitled to withdraw from the contract

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and to claim damages.

VII. Treatment of the goods, advertising and product labelling

1. Upon delivery, our contractual partner shall be responsible for compliance with all relevant legal, public authority and public health regulations, guidelines and recommendations on the treatment of the goods - with particular regard to cooling and refrigeration - during loading and unloading, transportation, storage, sorting and packaging as well as during exportation and importation.
2. When taking samples for the purposes of official food inspections, the contractual partner shall, to its own cost, arrange for officially-drawn and sealed crosscheck samples to the required extent, but at minimum, to the required extent deemed appropriate by the inspection authority, such samples to be properly stored and ready for our collection.
3. Unless it has purchased them, the contractual partner is obliged to return to us the empties and reusable packaging and transport material (including Euro boxes, pallets, etc.) received with the goods in a hygienic, properly cleaned condition, or to replace them with corresponding empties of the same type, quality and quantity.
4. Our contractual partner may make public statements about our products and their properties or qualities, especially in the context of advertising or labelling the products, but only in accordance with product information published by us and only as deemed appropriate.
5.The proper statutory foodstuff designation when selling the goods in locations where different trade practices and regulations apply is the responsibility of the contractual partner.

VIII. Retention of ownership

1. We reserve title to the goods until receipt of all payments relating to the business relationship with the contractual partner. Should breach of contract by the contracting party, in particular, default in payment occur, we shall be entitled to take back the purchased goods. The taking back of the purchased goods constitutes a withdrawal from the contract. We shall be entitled to sell the goods, the proceeds of which - minus reasonable costs - will be deducted from the liabilities of the contractual partner.
2. The contractual partner is obliged to treat the purchased goods with the care of a prudent businessman; in particular, it undertakes to insure the goods at replacement value at its own expense against fire, water and theft. The contractual partner is to carry out any maintenance and inspection work required at its own expense and in a timely manner.
3. Should seizure by third parties or other interventions occur, the contractual partner shall immediately notify us in writing so that we can institute legal proceedings pursuant to sec. 771 of the ZPO (German Code of Civil Procedure). If the third party is unable to reimburse us for the judicial and extrajudicial costs of legal proceedings pursuant to sec. 771 of the ZPO, the contractual partner shall be liable for any loss incurred by us.
4. The contractual partner shall be entitled to resell purchased goods in the ordinary course of business; however, it must already have assigned to us all amounts equivalent to the amount of the final invoice (including VAT) of the payment due to us which shall accrue to the partner from the resale to its customers or third-party purchasers, regardless of whether the goods have been resold without or after further processing. If there is a current account relationship in terms of sec. 355 of the HGB between our contractual partner and its customer, the contractual partner shall assign to us in advance any payment due to us from the recognised balance in that account, or the existing causal account balance in the case of its customer's insolvency. Our contractual partner shall be authorised to collect the above-mentioned amounts due, even after their assignment. Our authority to collect a debt ourselves remains unaffected. We undertake, however, not to collect the amount receivable as long as our contractual partner is able to meet its payment obligations from the collected proceeds, is not in default of payment and in particular, has no judicial settlement or insolvency proceedings filed against it. Should this be the case, however, we may require that the contractual partner notifies us of the assigned amounts and the debtors, provides all information necessary for collection, hands over the relevant documents and informs the debtors (third parties) of the assignment.
5. We shall retain the right to processed or converted purchased goods. If the goods are processed together with material not belonging to us, we shall acquire co-ownership of the new item in proportion to the value of the goods purchased from us (final amount of the invoice, including VAT), measured at the time of processing. The same retention of title shall apply in respect of processed products as applies to purchased goods delivered by us.
6. If the goods are inseparably processed and mixed together with material not belonging to us, we shall acquire co-ownership of the new item in proportion to the value of the goods purchased from us (final amount of the invoice, including VAT), measured at the time of mixing. If the mixing is such that the product of our contractual partner is regarded as the primary product, it shall be deemed as agreed that the contractual partner shall transfer proportional joint ownership to us. The contractual partner shall hold the new product in safe custody on our behalf.
7. We undertake to release the securities due to us at the request of our contractual partner to the extent that the realizable value of our securities exceeds the secured claims by more than 10%, the choice of the securities to be released being at our sole discretion.

IX. Defects

1. Claims for defects made by our contractual partner assume that it has fulfilled its inspection and complaint obligations in accordance with sec. 377 of the HGB. Complaints must be made in writing. The contractual partner shall notify us of an apparent or visible defect within 24 hours of delivery in respect of perishable goods, failing which the goods shall be deemed to be approved. If the defect is not immediately apparent, and only becomes apparent later, the contractual partner shall notify us of such defect within 24 hours of discovery in respect of perishable goods, failing which the goods shall be deemed to be approved.
2. Together with the claim for defects, our contractual partner shall inform us where the goods have been since effective transfer of risk to it, so that we can investigate the matter. Upon our request, the partner shall furnish at its own cost all appropriate evidence.
3. Should there be a defect in the purchased goods, we shall be entitled at our discretion to remedy the defect or delivery by supplying a defect-free replacement. We shall bear the costs entailed in replacing defective goods, in particular, transport, travel, labour and material costs, to the extent that these costs do not increase because the goods have been transported to a place other than the original place of delivery.
4. Our contractual partner shall provide at its own cost proper interim storage of any faulty goods, subject to an emergency sale pursuant to sec. 379 paragraph 1 of the HGB. The return requires our prior written consent.
5. If subsequent performance fails, our contractual partner is entitled, at its sole discretion, to withdraw from the contract or demand a discount. If only part of a consignment is defective, the contractual partner shall be entitled to withdraw from the entire contract only if its interest in the rest of the delivery has ceased. The contractual partner shall bear the burden of proof of the cessation of interest in respect of the remaining part of the delivery.
6. Claims of our contractual partner for defects in goods not recently manufactured are excluded, unless we have provided a guarantee for the condition thereof.
7. The limitation period for warranty claims is 12 months from transfer of risk. This does not apply in case of a sale of an item which is usually used in construction and which has caused the defect in question.
8. The limitation period in case of a delivery recourse pursuant to sections 478, 479 of the BGB remains unaffected.

X. Liability

1. Our liability for culpable injury to life, limb, body and health as well as our strict liability resulting from hazardous circumstances (in particular in accordance with the German Product Liability Act) shall remain unaffected by these Terms and Conditions of Sale. Nor does it affect our liability in respect of warranties and guarantees, if a defect covered by these specifically triggers our liability. Otherwise, the following applies:
2. We shall be fully liable for gross negligence and wilful breach of contractual obligations (including gross negligence and wilful breach of contractual obligations by our legal representatives and agents of vicarious liability). If we are not in intentional breach of contract, our liability shall be limited to contractually-typical, foreseeable damage.
3. We also adhere to the statutory provisions, insofar as we are in culpable breach of any material contractual obligation; in this case, however, liability is limited to contractually-typical, foreseeable damage. A material contractual obligation shall be deemed to be an obligation which gives character to the contract and on whose fulfilment one of the parties relies, and considers the purpose of the contract. This includes for example our commitment to deliver goods ordered or provide goods for collection at the agreed time.
4. Any further liability is excluded - irrespective of the legal nature of the asserted claim. This applies in particular to claims for damages from negligence in the conclusion of the contract, other breaches of duty and tort claims for property damage pursuant to sec. 823 of the BGB. This limitation also applies if the contractual partner requires compensation for unnecessary expenses instead of compensation by way of replacement of goods.
5. To the extent that the liability for damages against us is excluded or limited, the same shall apply to the personal liability of our employees, workers, staff, representatives and agents of vicarious liability.
6. None of the above clauses under paragraphs 1-5 intentionally contradict the statutory or case law in respect of burden of proof.

XI. Confidentiality

1. All images, drawings, calculations and other documents and information obtained from us shall be kept strictly confidential. We reserve all rights of ownership, trademarks and copyrights on all documents submitted. Our contractual partner may only use these for the purpose of executing the contract and shall not disclose them to third parties without our written consent; after execution of the contract they are to be returned to us, unless we have expressly waived this condition.
2. The undertaking of confidentiality shall also apply after completion of the contract; it shall expire if and when the knowledge contained in the illustrations, drawings, calculations and other documents has become generally known.

XII. Place of jurisdiction / Place of performance

Place of performance for all obligations under the contract is our registered office, unless stated otherwise in our order confirmation. Whether our contractual partner is

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a merchant, legal person or legal entity under public law or has no general place of jurisdiction within the Federal Republic of Germany, all legal proceedings or disputes arising from the business relationship, including those concerning exchange rates or cheques, shall be dealt with exclusively by the court of local jurisdiction or court of international jurisdiction competent to handle such matters falling within the jurisdiction of the registered offices of our company. We may, however, institute legal proceedings at the court of local jurisdiction applicable to the registered offices of our contractual partner, or to the registered offices of any one of its subsidiaries or branches.

XIII. Language / Applicable law

1. The language of the contract is German. If contract documents are available in other languages, the German version of the contract shall exclusively govern the legal relationship between the parties.

2. Unless our Terms and Conditions of Sale contain special provisions, the law governing the relationships between domestic parties applicable to the jurisdiction of our registered office (German law) shall apply to the exclusion of any foreign law. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is excluded.

XIV. Final clauses / Severability clauses

1. If the contract does not contain agreement on a particular point upon which both parties considered agreement had already been concluded, we shall be entitled to close the loophole in the contract, in accordance with reasonably exercised discretion.

2. Should any individual provision of the contract be or become void, this shall not affect the validity of the contract as a whole. Should any individual provision of the contract for reasons other than those specified in sections 305 - 310 of the BGB be or become void, the parties shall replace the provision deemed void with a valid provision which is closest in meaning for business purposes to the one deemed void. The same applies should any provision of the contract for reasons of sections 305 - 310 of the BGB be found to be or become void, and no appropriate alternative regulation can be found within the German Civil Code.