



## **Terms and conditions of sale and supply of DMK Deutsches Milchkontor GmbH**

### **1. Scope of application**

1.1 These terms and conditions of sale and supply apply exclusively to all current and future transactions for the supply of goods and services, advisory services and other ancillary services. Terms and conditions of purchase of the customer are hereby expressly excluded. Supplementary or deviating conditions of the customer shall only apply if they have been expressly acknowledged by us in writing. To be effective, the waiver of the written form requirement must be made in writing.

1.2 These terms and conditions shall be deemed accepted at the latest upon receipt of our goods and services.

1.3 Our terms and conditions of sale and supply only apply to businesses, public legal entities or public-law special funds within the meaning of Article 310 (1) of the German Civil Code (BGB).

### **2. Offer, conclusion of contract, quality of our goods**

2.1 Our offers are subject to change and non-binding.

2.2 Unless otherwise agreed, orders shall be placed in writing or by email. We do not accept any liability for errors attributable to unclear or ambiguous orders or failure to transmit orders.

2.3 All contracts are concluded upon receipt of our written order confirmation, and at the latest upon handover of products and/or the provision of services. The content of the agreement is based on our quotation, order confirmation and these terms and conditions of sale and supply. To be effective, any alternative arrangements must be expressly confirmed by us in writing. Communication by email is sufficient to satisfy the written form requirement.

2.4 If an order is cancelled, we are entitled to charge a flat fee of up to 20% of the total value of the underlying order. This covers our claim for liquidated damages against the customer and a processing fee. This fee shall be reduced if the customer can prove that we did not incur any loss or damage or that the actual loss or damage we incurred was lower. We are entitled to charge a higher fee if we can prove that the actual damage or loss incurred was higher. The cancellation of orders for goods made to customer specifications or promotional



products is excluded.

2.5 We sell i.a. products that are manufactured and adapted to customers' specific needs and requirements. The customer hereby agrees to accept the ordered and confirmed quantities without reservations. The right to return goods is excluded.

2.6 Only the characteristics and features specified in our product specifications and/or the order confirmation shall be deemed to have been agreed between us and the customer. Any additional characteristics or features shall only be deemed agreed if expressly confirmed by us in writing.

2.7 Any declarations we make regarding the characteristics or features of the goods shall only be construed as a quality guarantee if we expressly referred to it as such in writing.

### **3. Provided documents**

3.1 We retain intellectual property rights and copyright to all documents provided to the customer in connection with the quotation or order placement, such as performance specifications, illustrations, drawings, other samples and illustrative materials, specifications, calculations - hereinafter referred to in short as "information". The customer may only disclose these documents to third parties with our express written consent. Under the German Copyright Act, we are entitled to add our copyright notice in a form customary in the industry.

3.2 We shall not disclose documents of the customer to third parties for purposes other than the performance of the contract. Any specific confidentiality notices must be agreed in writing. We shall only return documents to the customer upon a written request. We are under no obligation to store the documents provided by the customer.

### **4. Indemnification against infringement of intellectual property rights**

4.1 Where the customer provides us with designs, manufacturing instructions, specifications for product designs or consumables such as secondary packaging, etc., labels or declarations, we are under no obligation to check whether there are any patents, licenses or copyrights, trademarks or design and utility models or other industrial property rights attached to these items and whether these may be infringed. The customer shall indemnify us against any claims due to infringement of intellectual property rights asserted against us by the respective rightsholders. The customer's indemnification



obligation shall extend to any necessary expenses incurred by us as a result of or in connection with the third-party claim, including but not limited to reasonable legal defence costs.

4.2 The customer shall ensure that the products supplied by him, the ingredients, semi-finished products, consumables and declarations are free of defects and fully suitable and usable for the intended purpose and comply with the latest technology standards as well as the relevant legal provisions - in particular, the relevant food legislation and product-specific requirements of the food industry, regulations and guidelines issued by the public authorities, professional bodies and trade associations; the supplied ingredients, products, semi-finished products, consumables are marketable in every respect and are considered safe. The customer shall furnish proof by providing us with relevant certificates from accredited laboratories before the start of production and at any time during production upon request. We are under no obligation to check whether the consumables, products and manufacturing instructions supplied by the customer are suitable for the intended purpose or conform to required standards. The customer shall indemnify us in full against third-party claims. We shall notify the customer promptly of obvious violations. We will only continue to process the order, after this has been clarified by the customer. The customer shall bear the cost associated with any resulting delays; see Section 7.

## **5. Tolerances/ product adjustments**

5.1 Any records forming a part of the quotation, such as samples, illustrative materials, illustrations, drawings and material samples, including those shown in catalogues, flyers, on the website, etc., shall not be construed as agreed characteristics of features and, therefore, do not give rise to any claims.

5.2 Any specifications we provide, such as dimensions, colour hues, content and weight specifications, labelling and declarations, etc., are subject to customary industry-specific variances and tolerances as well as tolerances that are justified given the intended use of the product.

5.3 We reserve the right to modify products or related consumables, in particular, to comply with legal requirements to the extent that the contract item or its usability are not substantially altered.

5.4 We, furthermore, reserve the right to make technically necessary and meaningful or beneficial changes to products, their characteristics and design, as well as related consumables.

The customer's consent is not required for changes that are not material in nature.



## **6. Delivery, transfer of risk**

6.1 Unless otherwise agreed, all deliveries are ex works (EXW under Incoterms in their most recent version). If the goods are ready to be dispatched, and the delivery or acceptance is delayed for reasons beyond our control, the risk will be transferred to the customer upon receipt of the dispatch advice.

6.2 If the goods are shipped to a location requested by the customer, the risk of accidental loss or accidental deterioration of the goods is transferred to the customer upon dispatch, at the latest upon leaving the factory (FCA under Incoterms in their most recent version). This applies irrespective of who bears the freight costs or whether the goods are shipped from the place of performance.

## **7. Delivery dates, force majeure**

7.1. Any delivery or performance dates quoted are only binding for us if they have been expressly confirmed as such in writing. Any dates quoted for delivery of the goods are estimates only. Pursuant to Article 286 II No 4 of the German Civil Code (BGB) or Article 376 of the German Commercial Code (HGB), for a delivery date to be binding, it must be agreed separately with the customer and expressly confirmed by us in writing.

7.2 We shall only commence delivery when all the technical issues have been cleared, we have received the specifications from the customer, and the customer has fulfilled all his obligations under the contract in a timely manner. The customer shall promptly check the specifications shown in the order confirmation. The clarification of all details is required. The delivery dates will be moved accordingly. If the order is changed, the delivery dates will change accordingly. We reserve the right to refuse/suspend performance.

7.3 If the customer is in default of acceptance, or if he breaches any other duties to cooperate for reasons within his control, we will be entitled to demand compensation for any damage incurred as a result, including any additional expenses. We are entitled to store the contractual item at the risk and expense of the customer for the period of the delay. We are entitled to use a forwarding agent or storage facility for this purpose. During the period of delay, the customer shall pay us a flat rate of 1% of the purchase price for each commenced week (but not more than 5% in total) as compensation for the incurred storage costs and without the need for formal proof, unless the customer can prove that the actual damage we suffered was lower. We are entitled to charge the customer higher storage costs if we can prove that the actual costs incurred were higher. If the customer fails to accept the contractual items after the end of a grace period offered, fails to respond to written requests for acceptance, or states that he has no intention to accept the goods, we are entitled to refuse performance of the agreement and claim damages for breach of contract. We are entitled to demand either liquidated damages of 20% of the agreed purchase price - unless the customer can prove that the actual loss or damage was lower - or compensation for the actual damage incurred from the customer. We reserve the right to assert further claims. If the above requirements are met, the risk of accidental loss or deterioration of the purchased item is transferred to the customer on the day he falls behind with acceptance or payment without us having to make an additional formal acceptance request.

7.4 In cases of force majeure, we shall suspend our delivery obligations for the duration of the disruption and to the extent of the effect thereof, even if we are already in default of delivery. Events that qualify as force majeure are unforeseen circumstances or occurrences beyond our control, which could not have been avoided by exercising due care of a prudent businessman (e.g. industrial action, war, fire, transport disruption, shortage of raw materials, actions of public authorities).

7.5 In case of delivery delays or problems with deliveries from our primary suppliers, we are entitled to postpone the delivery dates by two weeks. We shall notify the customer as soon as we become aware of the situation. If there are ongoing delivery delays or problems with deliveries from our primary suppliers, and we have notified the customer of this situation promptly, we are entitled to cancel the contract after two weeks from the date specified to the customer as the delivery or performance date. At the same time, we shall promptly refund any payments already made by the customer.

7.6 Unless otherwise agreed, in the case of on-demand deliveries, the quantities of the goods accepted must be spread as evenly as possible over the relevant period. We are entitled to dispatch the outstanding quantity immediately upon the end of the agreed period for on-demand delivery. In the case of delayed acceptance, we reserve the right to charge market rates as well as additional storage costs or delay damages as laid down in Section 7.3.



7.7 We are entitled to make partial deliveries insofar as this is reasonable for the customer. The customer's right to refuse/suspend performance is excluded in this case.

## **8. Delayed delivery**

8.1 In case of default in delivery, we are liable for demonstrable loss or damage caused by the delay, and we shall pay delay damages equal to 0.5% of the net value of the delivery but not exceeding 5% of the value of the portion of the total delivery which has been delayed.

8.2 We are entitled to reduce our liability for delay damages if we can prove that the customer did not incur any loss or damage or that the actual loss or damage incurred as a result of the delay was substantially lower. The customer is entitled to seek higher damages if he can prove that the actual loss/damage incurred was higher.

8.3 Any further claims and rights of the customer on the grounds of a delayed delivery are excluded.

8.4 In the case of a default of delivery, the customer's right to cancel the unfulfilled part of the agreement is only then not excluded if we fail to fulfil our delivery obligations despite being given an adequate grace period by the customer. If we are prevented from honouring our delivery obligations for reasons outside our control and we notify the customer promptly, we are entitled to request the delivery date be postponed.

8.5 The limitations of liability set out in Section 12 apply mutatis mutandis to claims due to delayed delivery.

## **9. Prices**

9.1 Unless expressly agreed otherwise in writing, prices are quoted ex works including packaging and exclude returnable packaging and VAT. If the customer requests express shipping or transport insurance, the additional costs of these services shall be borne by the customer.

9.2 Agreed prices are not binding on us as regards repeat or subsequent orders.



9.3 Should the cost of labour or materials increase between the quotation date and the date the order is placed, we reserve the right to adjust the prices in the order confirmation. The new prices will become binding if the customer does not promptly object to them.

9.4 If the costs of materials, wages, auxiliary materials or regulatory charges increase for reasons beyond our control between the conclusion of contract and delivery, we will be entitled to increase the agreed price accordingly to compensate for the increase in costs after we have provided the customer with details of the affected parts of the original calculation and the increased cost factors.

## **10. Terms of payment**

10.1 We are entitled to send invoices for our goods and services, at our discretion, either by post or by electronic means.

10.2 Unless otherwise agreed, all invoices are payable in full to a bank account we have specified within 14 days of the date of supply (see Section 10.3).

10.3. If there is a supply of goods which are transported or dispatched by us or the customer or a third party on our or the customer's behalf, the place of supply of the goods shall be treated as being the place where the transport or dispatch to the customer or a third person on his behalf begins. The date of delivery shown in our invoices is the date on which the dispatch or transport of the supplied goods begins (date of supply).

10.4 Unless otherwise agreed, all payments must be made in EUR.

10.5 If the customer completes a direct debit mandate (SEPA basic or SEPA corporate mandate) we will be authorised to collect invoice amounts through SEPA. We shall send the customer a direct debit notification by email every time the invoice amount is due. The pre-notification period shall be shortened to 2 days. If the payment due date falls on a weekend, holiday or bank holiday, the amount will be debited on the next working day.

The customer hereby undertakes to ensure that sufficient funds are available in his bank account to cover the outstanding payments. The costs of failed direct debit collections or reversal charges shall be borne by the customer, provided we are not responsible for these costs or charges.

10.6 A payment shall be deemed to have been made when we have cleared funds at our disposal. Bills of exchange and cheques are only accepted subject to clearance. By accepting cheques or bills of exchange, we do not assume any responsibility for protesting or presenting the cheque or bill of exchange





on time. Any expenses incurred in connection with the collection of cheques or bills of exchange shall be borne by the customer.

10.7 If it becomes apparent that our payment claims are at risk due to the deterioration in the customer's financial position, and we have already delivered our goods and services, we are entitled to declare all claims arising from the entire business relationship immediately due. This also applies if we have already accepted bills of exchange or cheques. We are also entitled to make outstanding deliveries only against advance payment or a collateral. We consider our payment claims to be at risk if a credit check on a customer obtained from a bank or an agency comes back negative. The same applies if the customer is in arrears with at least two invoices, without being entitled to withhold or set off payment. We are also entitled in this case to set the customer a reasonable period of time during which we will supply any outstanding goods and services only against advance payment or collateral. If this grace period passes to no effect, we will be entitled to cancel the contract and claim damages for breach of contract. We are not required to offer a customer a grace period if the customer stops making payments or becomes insolvent.

10.8 If the customer defaults on payment, we will be entitled to charge interest at a rate of 9 percentage points above the respective base rate of interest (Article 288 (2) BGB). This is without prejudice to our right to seek higher delay damages.

10.9 The customer may only set off undisputed or legally established claims or claims based on the principle of reciprocity in contracts within the meaning of Article 320 et seq of BGB.

Where the customer is not able to set off claims, he will be entitled to exercise the right to withhold payment if his counterclaim is based on the same contractual relationship.

10.10 The customer may only assign claims against us to third parties with our express consent.

10.11 All reciprocal claims arising from the business relationship shall be deposited into an account as provided for by Article 355 et seq of the German Commercial Code (HGB). Any debit balances on the current account shall accrue interest to be specified by us pursuant to Article 315 BGB.

## **11. Complaints /guarantee**

11.1 Any complaints regarding visible defects, delivery errors and deviations in quantity must be made promptly in writing after receipt of the goods. This also applies to barcoding errors. Hidden defects shall be reported to us promptly in





writing after being identified but no later than within 3 days after discovery.

11.2 A deviation from the agreed quality is not considered to be a material defect, if it is only a minor defect and the goods are consistent with the type and quality of the goods ordered. The same applies to variations in quantities, binding quantities to the extent we are not expressly entitled to make partial deliveries.

11.3 Claims for damages due to defective goods are excluded unless the defect is attributable to intentional or grossly negligent conduct on our part, on the part of our statutory representatives or vicarious agents, or the defect has been maliciously concealed, or it is covered by a quality guarantee under which the customer can make a claim for damages as provided for by the warranty certificate.

11.4 In the case of legitimate claims for defects made by the customer in a timely manner, we are entitled, at our discretion, to rectify the defect or to offer supplementary performance against return of the goods. The customer is entitled to exercise his other statutory rights only if he has set us a reasonable period for corrective action at no avail, the corrective action has failed, another attempt at corrective action is no longer reasonable for the customer, or we have refused to take corrective action. The customer is not required to set a period for corrective action in the case of a purchase price reduction or cancellation where the customer had to take the goods back from the consumer due to defects or where the consumer has reduced the purchase price.

11.5 Complaints about quality are exclusively governed by the relevant statutory provisions applicable in the Federal Republic of Germany. As a general rule, goods shall be inspected according to the procedures stated in Article 64 of the German Food, Consumer Goods and Animal Feed Code (LFGB) or the VDLUFA manual; other, scientifically recognised procedure/methods shall be used only exceptionally and when agreed.

11.6 We shall be given an opportunity to review the complaint before the goods that are the subject of the complaint can be further processed or resold. The customer shall give us the opportunity to inspect the defective goods in the original condition on site.

If the customer complains about defects, he shall store the goods properly and allow us to examine the goods or send us samples, where applicable. Failure to comply with these obligations will result in the loss of the customer's warranty rights.

11.7 We cannot guarantee that all products will be available at all times.

11.8 Warranty claims are subject to a limitation period of 12 months from the transfer of risk. This applies mutatis mutandis to claims for consequential damages, provided no claims in tort are made.

## **12. Limitation of Liability**

12.1 Limitation of liability does not apply to damage suffered as a result of injury to life, body or health or claims under the German Product Liability Act.

12.2 In the case of a breach of material contractual obligations, we are liable for damage as a result of intent or gross negligence without limitations; in the case of simple negligence, our liability is limited to foreseeable, typical damage.

12.3 In all other cases, claims for damages on whatever legal basis are excluded (including claims in tort), unless they are the result of an intentional or gross negligent breach of contractual obligations on our part or on the part of our statutory representatives or vicarious agents. In the case of gross negligence, our liability is limited to foreseeable, typical damage.

12.4 The exclusion or limitation of our liability set out in the preceding paragraphs applies mutatis mutandis to the liability of our vicarious agents, statutory representatives and senior employees.

12.5 If we have granted certain rights to the customer in case of defects as part of the quality guarantee, these rights will remain unaffected by the aforementioned limitations of liability.

### **13. Retention of title**

13.1 We retain title to the supplied goods until all our current and future claims against the customer on whatever legal basis (including any outstanding balances arising from open account arrangements) have been settled in full or until the funds have cleared in the case of payments by cheque or a bill of exchange.

If the customer processes or transforms our goods, this is always done on our behalf. If our goods are processed with other items not belonging to us, we will acquire joint ownership of the new item in proportion to the relationship between the value of the original goods and that of the other items processed at the time of processing. In all other respects, the same provisions shall apply to items produced as a result of processing as to our goods delivered under the reservation of title.

13.2 If our goods are inseparably mixed or combined with other items not belonging to us, we acquire joint ownership of the new item in proportion to the relationship between the value of our goods and that of the other items mixed or combined at the time of mixing or combining. If the mixing is carried out in such a manner that the customer's item can be regarded as the main item, it is hereby agreed that the customer shall transfer the proportionate joint ownership to us. We hereby accept the transfer. The customer shall preserve the (joint) ownership on our behalf free of charge.

13.3 The customer is entitled to process the goods subject to retention of title in the ordinary course of business, as long as he is not in default of payment. Any attachment of goods or transfer of ownership by way of collateral is not permitted. In an abundance of caution, the customer hereby assigns to us any claims arising from resale of the goods (including any outstanding balances on open accounts), insurance claims as well as claims against third parties due to damage, destruction, theft or loss of the goods. We hereby accept the assignment. Where we only acquire a share in the reserved goods, the advance assignment is only restricted to a part of the claim which is equal to the share of our ownership (based on the invoice value). When the customer resells the goods, he shall retain title to the goods in relation to his customers until the purchase price has been paid in full. The customer is not entitled to resell the goods to third parties if the purchase price claim from the resale is subject to a non-assignment clause.

13.4 We authorise the customer revocably to collect the claims assigned to us in the name and for the account of the customer. This direct debit authorisation can be revoked if the customer fails to meet his payment obligations under the contract or our claims are put at risk due to the deterioration in the customer's financial position. The customer shall provide us with a list of debtors of the assigned claims upon request.



13.5 In case of attempts by third parties to seize the goods subject to retention of title, the customer shall inform the third party that the goods are reserved and notify us immediately. The costs of our intervention shall be borne by the customer.

13.6 The customer is entitled to ask us to release the collateral provided to us if the value of the collateral exceeds the claims to be secured by more than 10%. We are entitled to select the collateral to be released.

13.7 If the customer is in arrears with payment, we reserve the right to demand return of the reserved goods- by handing the goods over or by sending them back to us - at the customer's expense without the need to set a grace period, or where applicable, demand the assignment of the customer's restitution claims against third parties. If we recover or seize the goods subject to retention of title, this shall not be construed as cancellation of the contract. We are prepared to hand the recovered goods back to the customer at any time against payment of the purchase price.

13.8 If, in the case of international deliveries, the aforementioned retention of title under Section 7 is not valid under the respective foreign law, the retention of title clause shall be reworded in a manner that is compatible with the foreign law and approximates as closely as possible the provisions set out in Section 7.

## **14. Returns**

Unless otherwise agreed, the returns of delivered goods are excluded. If goods are returned, this shall not be construed as acceptance of the cancellation of the order, defects or basis for a credit note even if the receipt has been acknowledged.

## **15. Empty containers and loading aids**

Any loading aids provided to the customer free of charge (e.g. transport containers, cheese boxes, pallets of any type, etc.) remain our sole and unlimited property even if a deposit is paid. After the intended use, the customer shall return them to us carriage paid in a good state of repair; failing that, we are entitled to charge the customer for the cost of replacing them. The loading aids may be used with other goods or for any other purpose.



## **16. Data protection**

Where we process or store personal data in connection with the business transactions, this is done in compliance with applicable laws and regulations.

## **17. Traceability**

To ensure traceability of our products, we are required under Regulation (EC) No 178/2002 and the German Food, Consumer Goods and Animal Feed Code (LFGB) and any future regulations to label and document our goods and its secondary packaging at all stages of production, processing and distribution. The labels of our products contain a batch number as well as volume, quantity and lot information. It is important to note that this information must remain intact in order to ensure the traceability of the goods.

The customer also hereby undertakes to ensure full compliance with traceability obligations and to document and store goods accordingly.

## **18. Applicable law, place of performance, severability**

18.1 This agreement is governed exclusively by the laws of the Federal Republic of Germany to the exclusion of the UN Convention on the Sale of Goods (CISG) and the Private International Law Act (PILA).

18.2 Unless a different place of performance is agreed with and communicated to the customer prior to dispatch, the sole place of performance for our goods and services is the respective production facility of the ordered goods. The place of payment for the customer is the registered office of our company.

18.3 If any provision of these terms and conditions of sale and supply or other agreements are or become invalid, the validity of the remaining provisions and agreements will not be affected or impaired thereby. The parties agree to replace the invalid provision with a valid provision which approximates as closely as possible the economic intent of the invalid provision. This applies mutatis mutandis to any omissions from the agreement.

18.4 These terms and conditions supersede and replace any previous terms and conditions of sale and supply.



## **19. Place of jurisdiction**

19.1 The sole place of jurisdiction for any disputes arising from the contractual relationship between the parties, whether directly or indirectly, is the registered office of our company. We expressly reserve the right to bring an action against the customer at his general place of jurisdiction or before any other competent court.

If the customer has its seat in a country that has ratified the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 10 June 1958, we are entitled, by way of derogation from Section 19.1 above, to initiate arbitration proceedings. If we exercise this right, the dispute shall be settled in the last instance by the Arbitration Court of the Hamburg Chamber of Commerce without recourse to the ordinary courts of law. In case of any legal dispute, the Laws of the Federal Republic of Germany will apply.

## **20. Change of terms**

We reserve the right to adapt the above terms and conditions to reflect changes in legislation, case law or market conditions.

Therefore, the version of the terms and conditions of DMK Deutsches Milchkontor GmbH valid at the time of entering into the contract will apply.

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