

# General Terms and Conditions of AVO-Werke August Beisse GmbH

## 1. general - scope of application

- 1.1 Our deliveries, services and offers are made exclusively on the basis of these terms and conditions. Deviating or conflicting conditions of the customer, which we do not expressly acknowledge, are not binding for us, even if we do not expressly contradict them and make deliveries, services and offers without reservation.
- 1.2 All agreements made between us and the customer for the purpose of executing this contract are set out in writing in this contract.

## 2. conclusion of contract

- 2.1 The contract is only concluded with our order confirmation. The order originating from the client is a binding offer. We are entitled to accept this offer by order confirmation within 2 weeks. For orders with a goods value of less than EUR 100.00 net, we will charge a flat-rate freight fee of EUR 9.95 to cover the transport costs.
- 2.2 If the processing of an order exceeds a period of 4 months, we shall be entitled to adjust the prices stated in the order confirmation to the extent that the costs on which the calculation is based (in particular wage and salary increases, materials, general business costs, etc.) have increased or decreased. In this case, the client is entitled to withdraw from the contract if a price increase of more than 8% per year has been recorded since conclusion of the contract.
- 2.3 If after the order has been placed, necessary additional work emerges which was not identifiable at the time the contract was concluded, we shall be entitled to invoice this additionally. If the surcharge exceeds 10% of the total price, the customer shall be entitled to withdraw from the contract unless he has been informed by us beforehand of the unscheduled price increase and has not objected to this in writing.

## 3. terms of payment

- 3.1 The invoice shall be issued on the day of delivery, partial delivery or readiness for delivery (debt to be collected, default of acceptance). Subject to the following provisions, payment of the invoice amount shall be made within 30 calendar days of the invoice date without deduction. A discount deduction will only be granted after prior agreement. The statutory regulations on the consequences of default in payment shall apply. The payment of shipping (freight, customs, postage) and packaging costs is due immediately after receipt of the invoice without deduction. If the customer settles our claims on the basis of a direct debit authorisation, we shall use this in the direct debit procedure - in future, at the latest from 01.02.2014, in the SEPA direct debit procedure. AVO will inform the customer of the impending debit in advance (pre-notification). This notice must be sent at least 5 calendar days before the due date.
- 3.2 Bills of exchange shall only be accepted after special agreement and on account of performance without granting a discount. Discount charges and other costs shall be borne by the customer.
- 3.3 In the case of larger orders, corresponding interim invoices may be issued or partial payments requested in accordance with the work performed.
- 3.4 In the event of default in payment or deferment of payment, default or deferment of payment interest shall be payable in the amount charged to us by the banks for credit interest. This does not exclude the assertion of further damages caused by default.
- 3.5 In the case of bank transfers and cheques, the day on which the credit note is received by us shall be deemed to be the date of receipt of payment.
- 3.6 If the customer is in default of payment with an already due payment obligation under the contract, we shall be entitled to demand immediate payment of the remaining debt, which is to be settled later in the normal course of events.

## 4. right of retention, set-off

- 4.1 We shall be entitled to refuse the performance incumbent upon us until the customer has effected the counter-performance or provided security for it, if it turns out after the conclusion of the contract that the economic situation of the customer has become so difficult that there are justified grounds for fearing that the customer will not fulfil a substantial part of his obligation, e.g. if insolvency proceedings or judicial or extrajudicial composition proceedings have been applied for against the customer.
- 4.2 The customer may only offset against a claim which is undisputed, has been declared final and absolute or has been acknowledged by us. He shall not be entitled to exercise rights to refuse performance or rights of retention to this extent.

## 5. delivery time, delivery

- 5.1 Our delivery dates are target dates and not fixed dates, unless this is expressly agreed in writing.
- 5.2 Compliance with our delivery obligations further presupposes the timely and proper fulfilment of the customer's obligations. The defence of non-performance of the contract remains reserved.
- 5.3 If, after confirmation of the order, the customer requests changes to the order which affect the production period, a new delivery period shall commence, namely only upon confirmation of the changes.
- 5.4 Force majeure, labour disputes, unrest, official measures and other unforeseeable, extraordinary circumstances beyond our control or that of our suppliers shall result in a new delivery date being agreed with the customer.
- 5.5 We are entitled to make partial deliveries (advance deliveries) insofar as this is reasonable for the customer.

## 6. delay in delivery

- 6.1 If the customer claims damages in cases in which the delivery has become culpably impossible for us or we are in default, the following shall apply: We shall be liable in accordance with the statutory provisions if the delay in delivery is due to an intentional or grossly negligent breach of contract for which we are responsible. A fault of our representatives or vicarious agents is to be attributed to us. Insofar as the delay in delivery is not due to an intentional breach of contract for which we are responsible, our liability for damages shall be limited to the foreseeable, typically occurring damage.
- 6.2 We shall also be liable in accordance with the statutory provisions insofar as the delay in delivery for which we are responsible is based on a culpable breach of an essential contractual obligation; in this case, however, the damages shall be limited to the foreseeable, typically occurring damages.
- 6.3 If a transaction for delivery by a fixed date has been expressly agreed in writing, we shall be liable in accordance with the statutory provisions within the meaning of § 286 II 4 BGB or § 376 HGB. We shall also be liable in accordance with the statutory provisions if, as a result of a delay in delivery for which we are responsible, the customer is entitled to assert that his interest in further performance of the contract has ceased.

## 7. assumption of risk, dispatch

- 7.1 Unless otherwise stated in the order confirmation, delivery "ex works" is agreed.
- 7.2 Shipment shall be at the expense and risk of the Customer. The risk shall pass to the customer as soon as the consignment has been handed over to the person or institution carrying out the transport or has left our works for the purpose of dispatch. If the goods are ready for dispatch and if dispatch or acceptance is delayed for reasons for which we are not responsible, the risk shall pass to the customer upon receipt of notification that the goods are ready for dispatch.
- 7.3 Unless otherwise agreed, the route and means of shipment shall be at our discretion.

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- 7.4 The delivery will only be transported at the request and expense of the customer.
- 8. packaging**  
Packaging material will be charged at cost plus value added tax and, unless required by law, will not be taken back. Insofar as we have to take back packaging materials - in particular transport packaging - the customer shall bear the costs of the return transport of the transport packaging.
- 9. delay in acceptance**  
9.1 If, after expiry of a reasonable period of time set by the customer, the customer does not carry out acceptance, refuses acceptance or previously declares seriously and definitively that he does not wish to accept acceptance, we may withdraw from the contract or claim damages for non-performance.  
9.2 If the customer is in default of acceptance or culpably violates other obligations to cooperate, we shall be entitled to demand compensation for the damage incurred by us in this respect, including any additional expenditure. We reserve the right to assert further claims.  
9.3 If the conditions of 9.2 are met, the risk of accidental loss or accidental deterioration of the purchased item shall pass to the customer at the time at which the customer is in default of acceptance or debtor's delay.
- 10. complaints, liability for defects**  
10.1 The customer shall in any case check the conformity of the delivered goods with the contract as well as the preliminary and intermediate products sent for correction.  
10.2 Warranty claims of the customer presume that he has properly fulfilled his obligations to inspect and give notice of defects according to § 377 HGB (German Commercial Code), insofar as § 377 HGB is applicable.  
10.3 Complaints due to obvious defects must be made immediately within a preclusive period of one week after receipt of the goods; otherwise the delivered goods shall be deemed to be free of defects and approved in accordance with the contract. The possibility of verification must be ensured by us.  
10.4 Defects in part of the delivered goods shall not entitle the customer to complain about the entire delivery unless the partial delivery is of no interest to the customer.  
10.5 In the event of a defect in the object of purchase, the customer shall be entitled, at his option, to subsequent performance in the form of rectification of the defect or delivery of a new defect-free object. In the event that the defect is remedied, we shall be obliged to bear all expenses required for the purpose of remedying the defect, in particular transport, travel, labour and material costs, insofar as these are not increased by the fact that the object of sale has been taken to a place other than the place of performance.  
10.6 If the supplementary performance fails, the customer shall be entitled, at his option, to withdraw from the contract or demand a reduction of the purchase price.  
10.7 We shall be liable in accordance with the statutory provisions insofar as the customer asserts claims for damages based on intent or gross negligence, including intent or gross negligence on the part of our representatives or vicarious agents. Insofar as we are not accused of intentional breach of contract, liability for damages shall be limited to the foreseeable, typically occurring damage.  
10.8 We shall be liable in accordance with the statutory provisions insofar as we culpably breach an essential contractual obligation; in this case, however, our liability for damages shall be limited to the foreseeable, typically occurring damage.  
10.9 Insofar as the customer is entitled to a claim for damages instead of performance, our liability shall also be limited within the scope of 10.6 to compensation for foreseeable, typically occurring damages.
- 10.10 Liability for culpable injury to life, limb or health shall remain unaffected. This also applies to mandatory liability under the Product Liability Act.  
10.11 Unless otherwise agreed above, liability shall be excluded.  
10.12 The limitation period for claims based on defects is 12 months, calculated from the transfer of risk.  
10.13 The limitation period in case of delivery recourse according to §§ 578, 579 BGB remains unaffected; it amounts to 5 years calculated from delivery of the defective item.
- 11. retention of title**  
11.1 The seller retains title to the goods until all claims of the seller against the buyer arising from the business relationship, including future claims from contracts concluded at the same time or later, have been settled. This shall also apply if individual or all claims of the Seller have been included in a current account and the balance has been struck and acknowledged.  
11.2 If, in connection with the payment of the purchase price by the Buyer, a bill of exchange liability of the Seller is established, the retention of title and the underlying claim from deliveries of goods shall not expire before the payment of the bill of exchange by the Buyer as drawee.  
11.3 The customer is entitled to resell the object of sale in the ordinary course of business; however, he hereby assigns to us all claims in the amount of the final invoice amount (including value added tax) of our claim which accrue to him from the resale against his customers or third parties. If the reserved goods are sold unprocessed or after processing with objects which are exclusively the property of the purchaser, the purchaser hereby assigns the claims arising from the resale in full to the seller. If reserved goods are sold by the buyer - after processing/combination - together with goods not belonging to the seller, the buyer already now assigns the claims arising from the resale in the amount of the value of the reserved goods with all ancillary rights and rank before the rest. The seller accepts the assignment. The purchaser is authorised to collect these claims even after assignment. The seller's authority to collect the claims himself remains unaffected; however, the seller undertakes not to collect the claims as long as the buyer duly fulfils his payment and other obligations. The seller can demand that the buyer informs him of the assigned claims and their debtors, provides all information necessary for collection, hands over the relevant documents and informs the debtors of the assignment.  
11.4 Any processing or treatment of the reserved goods shall be carried out by the Buyer on behalf of the Seller without any obligations arising for the latter. If the reserved goods are processed, combined, mixed or blended with other goods not belonging to the Seller, the Seller shall be entitled to the resulting co-ownership share in the new item in the ratio of the value of the reserved goods to the other processed goods at the time of processing, combination, mixing or blending. If the Buyer acquires sole ownership of the new item, the contracting parties agree that the Buyer shall grant the Seller co-ownership of the new item in proportion to the value of the processed or combined, mixed or blended goods subject to retention of title and shall keep them in safe custody for the Seller free of charge.  
11.5 The customer is only entitled and authorised to resell the reserved goods if the claim from the resale is transferred to us. The customer is not entitled to other remuneration for the reserved goods (e.g. pledging, transfer by way of security). If the customer is in default of payment, he shall be obliged, at our request, to notify the third party customer of the assignment for payment to us and to disclose the necessary information and documents.  
11.6 A lien in favour of the supplier shall be created on all raw materials of any kind handed over by the customer upon handover in order to secure all present and future claims of the Supplier arising from deliveries of goods.

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11.7 If the value of the existing securities exceeds the claims to be secured by more than 20%, the seller shall be obliged to release the securities at the buyer's request.

## 12. total liability

12.1 Any further liability for damages than provided for in § 10 is excluded - irrespective of the legal nature of the asserted claim. This applies in particular to claims for damages arising from culpa in contrahendo, other breaches of duty or tortious claims for compensation for damage to property pursuant to § 823 BGB (German Civil Code).

12.2 The limitation in accordance with clause 12.1 shall also apply insofar as the customer demands useless expenses instead of performance instead of a claim for damages.

12.3 Insofar as our liability for damages is excluded or limited, this shall also apply with regard to the personal liability for damages of our employees, workers, staff, representatives and vicarious agents.

## 13. material procurement

13.1 Material procured by the customer, regardless of its type, shall be delivered to us free of charge in perfect condition. Receipt shall be confirmed without assumption of warranty for the correctness of the quantity and quality designated as delivered. In the case of larger items, the costs associated with the payment or weight check and the storage expenses shall be reimbursed.

13.2 The client shall bear the risk of processing the material provided by him. We shall be entitled to reject material if it appears to us from the outset to be unsuitable for the execution of the order.

13.3 In the event of employment or loss of the material provided by the customer, we shall only be liable if we or our vicarious agents have acted with intent or gross negligence.

13.4 We do not assume any warranty for spice mixtures according to recipes provided by the customer with regard to their compatibility under food law.

## 14. periodic work

Contracts for regularly recurring services can only be terminated properly with a notice period of three months to the end of a month, unless otherwise agreed. The right to termination without notice for good cause remains unaffected.

## 15. place of performance, place of jurisdiction

15.1 Place of performance/manufacture is Belm.

15.2 The place of jurisdiction for all disputes arising between the parties from the contractual relationship shall be Osnabrück, provided that the client is also a registered trader.

## 16. other

16.1 Verbal ancillary agreements have not been made. All agreements are laid down in writing in this contract. Oral agreements require the written form to be effective.

16.2 The law of the Federal Republic of Germany shall apply; the UN Convention on Contracts for the International Sale of Goods shall not apply.