



## **Terms and Conditions of Sale and Delivery of DMK Deutsches Milchkontor GmbH (DMK- Group)**

### **§ 1 Validity of the conditions**

All deliveries and services of DMK Deutsches Milchkontor GmbH as well as DMK Baby GmbH, Humana Vertriebs GmbH, Sunval Baby Food GmbH, DMK Eis GmbH, Euro Cheese Vertriebs-GmbH, Müritz Milch GmbH, Wheyco GmbH, Norlac GmbH as well as the other companies (available at the following link [www.dmk.de/companies-of-dmk-group](http://www.dmk.de/companies-of-dmk-group)) belonging to the DMK Group ("we"/"us"), in particular contracts for the sale and/or delivery of goods, shall be governed exclusively by these Terms and Conditions of Sale and Delivery in the version applicable at the time of the order. These Terms and Conditions of Sale and Delivery shall also apply to future contracts without our referring to them again in each individual case. We will inform the Customer in good time in writing or by e-mail of any changes to the Terms and Conditions of Sale and Delivery.

1. Supplementary or deviating conditions of the Customer shall not apply unless we have expressly agreed to their validity. This requirement of consent shall also apply if we carry out the delivery without reservation in the knowledge of the Customer's terms and conditions of purchase.
2. Individual agreements with the Customer take precedence over these Terms and Conditions of Sale and Delivery.
3. All agreements made between us and the Customer for the purpose of executing a transaction must be recorded in writing, i.e. in written or text form (e.g. letter, e-mail). The same applies to legally relevant declarations and notifications (e.g. setting of deadlines, notifications of defects) made by the Customer after conclusion of the contract.
4. Our Terms and Conditions of Sale and Delivery apply only to entrepreneurs (cf. § 14 BGB [German Civil Code]), legal entities under public law and special funds under public law.

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

1. Our offers are always subject to change and non-binding, unless they are expressly marked as binding or contain a specific acceptance period.
2. The order of the goods by the Customer is deemed to be a binding offer of contract.
3. All contracts are concluded upon receipt of our written order confirmation, at the latest upon delivery of the goods or provision of the service. Our offer (if any), our order confirmation and these Terms and Conditions of Sale and Delivery shall be decisive for the content of the contract. Agreements deviating from this always require our express confirmation.
4. Information on the quality of our goods (e.g. dimensions, colour shades, information on contents and weight, information on taste, labelling and declarations) are only approximately authoritative (cf. Section 5.1), unless usability for the contractually intended purpose requires exact conformity. Furthermore, only those properties and characteristics apply which are stated in the product specifications and/or in our order confirmation. Other or more extensive properties and characteristics shall only be deemed to be agreed properties and characteristics if they are expressly confirmed by us. Due to the natural nature of the raw materials and ingredients, samples are to be regarded as non-binding illustrative examples.
5. Declarations on our part regarding the quality of the goods shall only constitute a guarantee of quality if we have expressly designated them as a guarantee of quality.

## **§ 3 Documents provided**

1. We reserve the sole property rights and copyrights to all documents and data provided to the Customer in connection with the initiation or conclusion of the business transaction, such as offers, cost estimates, performance descriptions, illustrations, drawings, visual samples and materials, specifications, (price) calculations, formulations and calculations – referred to as “information” for short. The Customer may not make this information available to third parties, either as such or in terms of content, disclose it, use it himself or have it used by third parties or reproduce it without our express consent and must return it in full at our request and destroy any copies made if it is no longer required by him in the ordinary course of business or if negotiations do not lead to the conclusion of a



contract (with the exception of the storage of electronically transmitted data for the purpose of the usual data backup).

2. The disclosure of the Customer's documents by us to third parties is permitted solely for the purpose of fulfilling or processing the contract. Any separate confidentiality notes must be agreed in writing. The return of the goods to the Customer requires a written request. We are not subject to any special storage obligations with regard to the documents provided by the Customer.

#### **§ 4 Indemnification in case of infringement of property rights and provision of materials**

1. Insofar as the Customer provides designs, production instructions, specifications for product designs or commodities such as outer packaging etc., labelling or declarations, we shall not be obliged to investigate whether patent rights, licensing rights or copyrights, trademarks or design patents and utility models or other industrial property rights exist with regard to these or whether these are affected. In the event of a claim, of whatever nature, by the owner of an infringed property right, we shall be entitled to indemnification against the Customer. The Customer's indemnification obligation relates to all expenses necessarily incurred by us as a result of or in connection with the claim by third parties, namely but not exclusively the costs of a reasonable legal prosecution.
2. The Customer shall ensure that the products, ingredients, semi-finished products, commodities, production instructions and declarations provided by it are flawless, suitable without restriction, usable and applicable, comply with the intended purpose, the current state of the art and the relevant legal provisions, in particular the relevant food law regulations and product-specific requirements of the food industry, the regulations and guidelines of authorities, professional associations and trade associations; provided products, ingredients, semi-finished products and commodities are marketable without reservation and are harmless to health. The Customer is obliged to prove this to us by submitting suitable certificates from accredited laboratories before the start of production and otherwise at any time during the course of production upon request. The Customer shall indemnify us in full against claims by third parties resulting from non-compliance with the aforementioned obligations, insofar as the Customer is responsible for these. With regard to the suitability and conformity to standards of products, ingredients, semi-finished products, commodities, production instructions and declarations provided by the Customer, we



have no obligation to investigate. We shall point out obvious violations to the Customer without delay. Further order processing requires clarification by the Customer. The Customer shall bear the costs of any delay actions.

## **§ 5 Tolerances/product adjustments**

1. For all specifications given by us, such as dimensions, colour shades, content and weight information, labelling and declarations, etc., the professional and proper tolerances or the tolerances that are justifiable for the intended use shall apply.
2. We reserve the right to make changes to the product or its commodities due to legal requirements, insofar as the subject matter of the contract and its usability are not significantly changed.
3. We also reserve the right to make technically necessary as well as reasonable or expedient changes to the products, their nature and design as well as their accompanying commodities. Insofar as these do not represent significant deviations and the change is reasonable for the Customer, no consent is required from the Customer.

## **§ 6 Delivery, delivery time, force majeure**

1. Unless otherwise agreed, deliveries shall be made ex works (EXW according to Incoterms 2020). If the goods are shipped to the Customer at the Customer's request, the Customer shall bear the transport costs ex works and the costs of any transport insurance requested.
2. Delivery and performance dates are only binding if we have expressly confirmed this in writing. Specified delivery dates indicate the expected date of provision of the goods. A fixed delivery date pursuant to § 286 II No. 1 of the German Civil Code (BGB) or § 376 para. 1 of the German Commercial Code (HGB) must be agreed separately with the Customer and expressly confirmed by us in writing.
3. If the Customer is in default of acceptance or culpably violates other duties to cooperate, we are entitled to demand compensation for the resulting damage, including any additional expenses. For the duration of the Customer's default in acceptance, we shall be entitled to store the delivery items at the Customer's risk and expense. We can also use a forwarding agent or a warehouse keeper for this purpose. During the delay in acceptance, the Customer shall pay us a flat rate of 0.25% of the net purchase price of the goods stored due to the delay in acceptance per



week or part thereof, but in total not more than 2% of the net purchase price of the goods stored due to the delay in acceptance, as compensation for the storage costs incurred without further proof, unless the Customer proves that we did not actually incur any damage or that the damage was significantly lower. If higher storage costs are incurred, we can demand reimbursement of these costs from the Customer against proof. If the Customer refuses to accept the delivery items after expiry of a grace period set for him, remains silent in response to a written request for acceptance, or declares that he does not wish to accept the goods, we may refuse to fulfil the contract and claim damages for non-fulfilment. We are entitled to choose either a flat rate of 20% of the agreed net purchase price as compensation for damages – unless the buyer proves that we have not actually incurred any damage or that the damage is significantly less – or to demand compensation from the buyer for the specific damage incurred. We reserve the right to assert further claims. If the above conditions are met, the risk of accidental loss or accidental deterioration of the object of sale shall pass to the Customer at the time at which the Customer is in default of acceptance or debtor's delay, without any further request for acceptance on our part being required.

4. We shall not be liable for impossibility of delivery or delays in delivery insofar as these have been caused by cases of force majeure or other events which were unforeseeable at the time of conclusion of the contract and for which we are not responsible. If such events make it considerably more difficult or impossible for us to deliver/service and the hindrance is not only of temporary duration, we are entitled to withdraw from the contract. Furthermore, these obstacles shall interrupt our delivery obligation for the duration of their duration (plus a reasonable start-up period) and to the extent of their effect, even if we are already in default of delivery. Cases of force majeure shall be deemed to be unforeseen circumstances and occurrences for which we are not responsible and which could not have been avoided with the due diligence of a prudent businessman and which stand in the way of the performance of the service (e.g. industrial disputes, war, fire, pandemics, transport obstacles, shortage of raw materials, official measures in connection with such events). If, as a result of the delay, the Customer can no longer reasonably be expected to accept the delivery or service, he may withdraw from the contract by written declaration.
5. In the event of a delay in delivery as well as in the event of improper delivery by upstream suppliers for reasons for which we are not responsible, we shall be entitled to extend the delivery period by two weeks. We will notify the Customer of this immediately after becoming aware of it. If the delay in delivery continues and we have informed the



Customer of this without delay, we shall be entitled to withdraw from the contract after two weeks, calculated from the agreed delivery or performance date, provided that we immediately reimburse the Customer for any consideration paid. The foregoing shall only apply if we have entered into a congruent hedging transaction and we have not assumed the procurement risk.

6. In the case of deliveries on call, the goods shall be accepted in quantities distributed as evenly as possible over the term, unless otherwise agreed. Upon expiry of the agreed call-off period, we shall be entitled to deliver the entire remaining quantity immediately. In the event of later acceptance, we reserve the right to invoice at the daily price as well as to additionally charge storage fees or other delay damages in accordance with section 6.3.
7. We are entitled to make partial deliveries if these are reasonable for the Customer. In this respect, the Customer is not entitled to the defence of non-performance of the contract.
8. In the event of further export of the goods by our Customer, we shall not be responsible for the fulfilment of the regulatory requirements for the export and/or further distribution of the goods in countries outside the Federal Republic of Germany (e.g. import restrictions, marketability and/or labelling of the goods), unless expressly agreed otherwise.

## **§ 7 Transfer of risk, acceptance**

1. The Customer bears the risk for all deliveries, even if carriage paid or e.g. FOB or CIF delivery (according to Incoterms 2020) has been agreed. The risk of accidental loss or accidental deterioration shall pass to the Customer as soon as the consignment leaves our warehouse or a third-party warehouse maintained by us. This shall also apply if partial deliveries are made or if we have assumed further services.
2. The Customer shall bear the risk during the return transport of the delivery, insofar as the return transport takes place after a withdrawal on our part due to a breach of duty by the Customer or as a gesture of goodwill on our part.
3. If the goods are ready for dispatch and the dispatch or acceptance is delayed for reasons for which we are not responsible, the risk shall pass to



the Customer upon receipt of the notification of readiness for dispatch.

4. Insofar as acceptance is agreed or in the case of services under a contract for work and services, acceptance shall be decisive for the transfer of risk. The statutory provisions of the law on contracts for work and services shall apply mutatis mutandis to any agreed acceptance, unless otherwise provided for in these Terms and Conditions of Sale and Delivery. A work shall in any case be deemed to have been accepted if we have set the Customer a reasonable deadline for acceptance and the Customer has not refused acceptance within this deadline, stating at least one defect that is not merely insignificant and actually exists – or is at least obvious from an objective point of view.

## **§ 8 Delay in delivery**

1. The occurrence of the delay in delivery shall be determined in accordance with the statutory provisions. If there is no fixed transaction, however, a reminder with a grace period set by the Customer is required in any case.
2. In the event of a delay in delivery, the Customer may demand lump-sum compensation for the damage caused by the delay. The lump sum for damages shall amount to 0.5% of the net delivery value for each completed calendar week of the delay, but in total not more than 5% of the net delivery value of the part of the delivery in delay.
3. We reserve the right to prove that the Customer has suffered no damage or significantly lower damage as a result of the delay.
4. Any further claims and rights of the Customer due to a delay in delivery (e.g. withdrawal from the contract after fruitless expiry of a reasonable grace period granted to us) as well as our statutory rights (e.g. due to impossibility or unreasonableness of performance) shall remain unaffected.
5. The limitations of liability in clause 12 shall also apply to any claims of the Customer arising from delay in delivery.

## **§ 9 Prices**

1. Unless otherwise expressly agreed, prices are quoted ex works including packaging with the exception of loan and exchange packaging and excluding VAT. The statutory value added tax shall be invoiced at the applicable rate. Additional costs for requested express delivery or transport



insurance shall be borne by the Customer.

2. Agreed prices are not binding for repeat orders.
3. In the event of material price increases and wage increases occurring between the submission of the quotation and the placing of the order, we reserve the right to amend the price when confirming the order. We will expressly draw the Customer's attention to the changed prices when confirming the order. The new prices become binding if the Customer does not object immediately.
4. Insofar as the costs of materials, wages, auxiliary materials or statutory levies increase for reasons for which we are not responsible in the period between conclusion of the contract and delivery, if there are more than four months between conclusion of the contract and the agreed date of performance and if the prices have not been expressly agreed as fixed prices, we shall be entitled to increase the agreed price in accordance with the extent of the cost increase in order to compensate for it, disclosing the affected parts of the original calculation and specifically stating the increased cost factors. In the event of a price increase of more than 10% of the agreed price, the Customer is entitled to withdraw from the contract.

## **§ 10 Terms of payment**

1. We are free to invoice our deliveries and services by letter post or electronically.
2. Unless otherwise agreed, all invoices are due for payment 14 days after delivery (in accordance with agreed Incoterms or clause 6.1) without any deduction to an account named by us.
3. Unless otherwise agreed, all payments shall be made in euros.
4. Insofar as the Customer has issued a direct debit mandate (SEPA basic or SEPA corporate direct debit mandate), we shall be authorised to collect the invoice amounts by means of SEPA direct debit. A corresponding notice of the due date of the debit amount will be sent to the Customer by e-mail. The period for pre-notification is reduced to 2 days. If the due date of a collection falls on a weekend, public holiday or bank holiday, the collection will take place on the next possible working day. The Customer warrants to ensure that the account is covered. Costs incurred due to dishonour or





chargeback of the direct debit shall be borne by the Customer as long as the dishonour or chargeback was not caused by us.

5. A payment shall only be deemed to have been made when we can finally dispose of the amount. Bills of exchange and cheques are only accepted on account of performance. All expenses or other costs arising from the collection of bills of exchange or cheques shall be borne by the Customer.
6. If a risk to our payment claims becomes apparent due to the Customer's inability to pay, we shall be entitled – if necessary by setting a reasonable deadline – to make outstanding deliveries only against advance payment or provision of security. The same applies to initial deliveries to a Customer. A risk exists in particular if information from a bank or a business information institute suggests that the Customer is unworthy of credit. The same shall apply if the Customer is in default of payment of at least two invoices without being entitled to retention or set-off. Insofar as the Customer has definitively refused to fulfil the contract, make an advance payment or provide security, we may withdraw from the contract and claim damages for non-fulfilment. The statutory provisions on the dispensability of setting a time limit shall remain unaffected. In the case of contracts for the manufacture of unjustifiable items (individual/special productions), we may declare withdrawal immediately.
7. In the event of default in payment, we shall be entitled, subject to the assertion of a higher claim for damages caused by default, to demand interest in the amount of 9 percentage points above the respective base interest rate and a lump sum for costs of EUR 40.00 (§ 288 para. 2 and para. 5 BGB).
8. Delivery periods running against us shall be extended by the duration of the Customer's default in payment.
9. Offsetting by the Customer is only permissible with an undisputed or legally established claim or a claim arising from the same order (in the case of framework agreements: the same individual order) under which the relevant delivery is made. Any rights of the Customer to charge back or withhold payment are excluded, unless they are based on the same order/contractual relationship. However, in the event of defects in the delivery, mandatory statutory counter rights shall remain unaffected.
10. The assignment of claims against us requires our express consent.
11. All mutual claims arising from the business relationship shall be placed in a current account to which the provisions of §§ 355 et seq. of the German



Commercial Code apply. In the current account, interest shall be paid on the individual debt balances within the framework of § 315 BGB at an interest rate to be determined by us.

## **§ 11 Liability for defects**

1. The statutory provisions shall apply to the Customer's rights in the event of material defects or defects of title, unless otherwise stipulated below. The special provisions for the entrepreneur's recourse in the case of final delivery of the goods to a consumer in the context of a sale of consumer goods (§§ 445a, 445b BGB in conjunction with §§ 474, 478 BGB) shall remain unaffected.
2. Claims for defects on the part of the Customer presuppose that he has complied with his statutory duty to inspect and give notice of defects (§§ 377, 381 HGB). Obvious defects, incorrect deliveries, transport damage and deviations in quantity must be reported immediately after delivery. This also applies to faulty bar coding on the goods. Hidden defects must be reported in writing immediately after their discovery. A notification shall be deemed to be immediate if it is made within 5 days of delivery (in the case of obvious defects) or discovery of the defect (in the case of hidden defects), whereby timely dispatch of the notification shall suffice to comply with the deadline. In the case of perishable foodstuffs within the meaning of § 2 Para. 1 No. 2 of the Food Hygiene Ordinance (LMHV), the time limit is 48 hours.
3. If the goods are defective, we are entitled and obliged, at our discretion, to rectify the defect or to make a subsequent delivery against return of the goods. The Customer may only assert his other statutory rights in the event of defects if he has unsuccessfully set us a reasonable deadline for subsequent performance, we refuse subsequent performance, it fails or is unreasonable for the Customer. If the last Customer in the supply chain is a consumer (§ 13 BGB), it is not necessary to set a deadline if the Customer had to take back our goods from his Customer as a result of their defectiveness or if his Customer reduced the purchase price to him.
4. If the last Customer in the supply chain is an entrepreneur (§ 14 BGB), the Customer's independent right of recourse under § 445a (1) BGB is excluded and, contrary to the statutory provision in § 445a (2) BGB, a deadline must be set for the rights described in § 437 BGB.



5. Claims of the Customer for damages due to the defectiveness of the goods shall only exist in accordance with clause 12.
6. In the event of quality complaints, only the relevant statutory provisions applicable in the Federal Republic of Germany shall apply. An examination of the goods is generally carried out in accordance with DIN ISO or DIN EN ISO, the procedures specified in § 64 LFGB, the VDLUFA method book or, in the case of deliveries from our locations in the Netherlands, additionally in accordance with the NEN methods; and only exceptionally and only if agreed in accordance with other procedures/methods scientifically recognised at international level.
7. Before further processing or resale of goods which are the subject of a complaint, we must be given the opportunity to examine the complaint. We must be given the opportunity to inspect the defects complained of on site in an unaltered condition.
8. Insofar as the Customer complains about defects, he is obliged to store the goods properly, to allow us to inspect the goods and, if necessary, to send us samples. Insofar as the Customer does not comply with this obligation, this shall result in a loss of his claims for defects. If the goods are collected by the Customer or a carrier commissioned by the Customer, the following applies: the printed best-before date can only be guaranteed if the goods are transported and stored properly. If the goods are defective/destroyed before the expiry of the best-before date, we reserve the right to demand proof of proper transport and storage from the Customer.
9. Claims for defects shall become statute-barred within 12 months from delivery or, insofar as acceptance is required or agreed, from acceptance. This period does not apply to claims for damages by the Customer arising from injury to life, limb or health or from intentional or grossly negligent breaches of duty, which are time-barred in accordance with the statutory provisions.
10. No new limitation period shall be set in motion by the subsequent performance unless the subsequent performance is to be regarded as an implied acknowledgement of our obligation to remedy the defect, taking into account all circumstances of the individual case. Moreover, a rectification of defects shall only trigger a new limitation period if it concerns the same defect or the consequences of a defective rectification of defects.



## **§ 12 Limitation of liability**

1. Our liability for damages – irrespective of the legal grounds – shall be limited in accordance with this Clause 12 insofar as fault is involved.
2. In cases of simple negligence, our liability is excluded, insofar as this does not involve a breach of essential contractual obligations. Material contractual obligations are those obligations the fulfilment of which is essential for the proper performance of the contract and on the fulfilment of which the Customer may regularly rely.
3. Insofar as we are liable for damages on the merits in accordance with section 12.2, our liability is limited to damages that were foreseeable for us at the time of conclusion of the contract as a possible consequence of a breach of contract or that we should have foreseen by exercising due care. Indirect damage and consequential damage resulting from defects in the delivery item are also only eligible for compensation insofar as such damage is typically to be expected when the delivery item is used for its intended purpose.
4. The above limitations of liability shall also apply to the liability of our legal representatives, executive bodies, employees and other vicarious agents.
5. In the event of default, the provision on liquidated damages contained in clause 8.2 shall apply as our upper liability limit.
6. Insofar as we provide information or act in an advisory capacity and this information or advice is not part of the contractually agreed scope of services owed by us, this shall be done free of charge and to the exclusion of any liability.
7. The limitations of liability contained in this Clause 12 shall not apply to liability for wilful misconduct, fraudulent concealment of a defect or assumption of a guarantee for quality features. Furthermore, they do not apply to damages arising from injury to life, limb or health or in the event of liability under the Product Liability Act.

## **§ 13 Retention of title**

1. The goods shall remain our sole property until all claims (including all balance claims from current account) to which we are entitled against the Customer for any legal reason now or in the future have been settled; in



the case of payment by cheque or bill of exchange, they shall remain our sole property until they have been honoured.

2. The processing or transformation of our goods by the Customer shall always be carried out for us as manufacturer. If our goods are processed with other items not belonging to us, we shall acquire co-ownership of the new item in the ratio of the value of our goods to the value of the other processed item at the time of processing. Incidentally, the same applies to the product resulting from processing as to our goods delivered under reservation.
3. If our goods are inseparably mixed or combined with other goods not belonging to us, we shall acquire co-ownership of the new item in the ratio of the value of our goods to the value of the other mixed or combined item at the time of mixing or combining. If the other item of the Customer is to be regarded as the main item, it is already agreed now that the Customer transfers co-ownership to us on a pro rata basis. We accept the share transfer. The Customer shall hold our (co-) ownership in safe custody for us free of charge.
4. The Customer is entitled to process and sell the reserved goods in the ordinary course of business as long as he is not in default with his payment obligations towards us. Pledges or transfers by way of security as well as other disposals of the reserved goods which frustrate or impede the security purpose of this reservation of title are not permitted.
5. Claims from the resale of the goods (including all balance claims from the current account), insurance claims as well as claims against third parties due to damage, destruction, theft or loss of the goods are already now assigned to us by the Customer by way of security. We accept this assignment. If we are only entitled to co-ownership of the reserved goods, the advance assignment shall be limited to that part of the claim which corresponds to the share of our co-ownership (based on the invoice value). In the event of resale of the goods, the Customer shall retain title to the reserved goods vis-à-vis his purchasers 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 prohibition of assignment.
6. We revocably authorise the Customer to collect the claims assigned to us for his own account in his own name. This authorisation to collect may be revoked if the Customer does not properly fulfil his payment obligations towards us or if our claims appear to be at risk due to the Customer's lack



of ability to pay.

7. In the event of access by third parties to the reserved goods, the Customer shall point out our ownership and notify us immediately. Our intervention costs shall be borne by the Customer.
8. The Customer is entitled to demand that we release claims to the extent that the realisable value of our securities exceeds our claims to be secured by more than 10%. We select any receivables to be released.
9. In the event that the Customer behaves in breach of contract, in particular is in default with the payment of its claims for remuneration, the Customer shall, at our request, hand over to us a list of all goods subject to retention of title still in its possession as well as a list of the claims assigned to us with the names, addresses of the debtors and the amount of the claims and provide all other information that we require to assert the claims. If the aforementioned prerequisites are met, the Customer shall, at our request, notify his debtors of the assignment of the claims to us. We are permitted to effect this notification to the third-party debtors ourselves. In the event of default in payment on the part of the Customer, we shall be entitled to demand the return of our goods subject to retention of title at the Customer's expense – by handing them over or returning them to us – or, if applicable, to demand the assignment of the Customer's claims for return against third parties. The Customer is obliged to give us possession of the goods and to allow us or our representatives access to the business premises during normal business hours. Our taking back or seizure of the goods subject to retention of title does not constitute a withdrawal from the contract. We are prepared at any time to return the goods taken back to the Customer concurrently with payment of the purchase price.
10. If, in the case of deliveries abroad, the retention of title agreed under the above paragraphs does not fit into the foreign law or requires registration or the like, the Customer already now agrees to agree on a provision in this case which comes closest to the essence of the above retention of title under the local law. If special requirements are necessary (e.g. registration), the Customer will arrange for these at his own expense.

#### **§ 14 Returns/cancellations as a gesture of goodwill**

1. In the event of acceptance of pre-approved returns as a gesture of goodwill (irrespective of any statutory rights of withdrawal), we shall charge – insofar as we have not specified any other fee for this at the latest at the time of



acceptance of the Customer's request for return – 20% of the net order value plus the transport costs.

2. The return of goods as part of a goodwill return shall not be deemed to constitute recognition of a right of withdrawal, defectiveness and the issue of a credit note, even if receipt of the goods has been acknowledged.

## **§ 15 Empties and loading aids**

1. The loading aids provided to the Customer free of charge (e.g. transport containers, cheese crates, pallets of any kind, etc.) shall remain our sole and unrestricted property even if a deposit is made. They are to be returned to us by the Customer immediately after intended use in perfect condition, carriage paid; otherwise we are entitled to charge the Customer the replacement costs. The loading aids may not be filled with other goods or used in any other way; pallets as loading aids are exempt from this regulation.
2. The return of packaging that is not returnable packaging shall be governed by the provisions of the Packaging Ordinance in the version valid at the time of conclusion of the contract as well as any supplementary agreements.

## **§ 16 Data protection**

1. We process personal data that is necessarily transmitted to us by the Customer within the scope of the contract processing in compliance with the provisions of the EU General Data Protection Regulation (GDPR), the Federal Data Protection Act (BDSG) and all other applicable laws.
2. Detailed information and notes on data protection can be found at [www.dmk.de/datenschutz-gp](http://www.dmk.de/datenschutz-gp).

## **§ 17 Compliance**

1. The Customer shall comply with all applicable laws and legal provisions within the scope of the ongoing business relationship and in connection with the goods delivered by us and shall implement and enforce sufficient internal processes and measures for compliance. In addition to the applicable laws and legal provisions on data protection (cf. item 16), this includes in particular compliance with applicable laws and legal provisions



against corruption, against restrictions on competition and against money laundering as well as the applicable trade and export control provisions. The Customer must also comply with the “Ten Principles” of the United Nations Global Compact (available at <http://www.unglobalcompact.org/>) in the areas of human rights, labour, environment and anti-corruption. We would also like to point out that we have undertaken to comply with the DMK Code of Conduct. The currently valid version of the DMK Code of Conduct is available at <https://dmk.de/verhaltenskodex/> and will be made available to the Customer in paper form free of charge at any time upon first request. We expect the Customer to accept the principles of this Code of Conduct as a basis for cooperation.

2. The Customer shall ensure, within the scope of its reasonable legal possibilities, that its employees, vicarious agents and representatives comply with the provisions of this Clause 17 and of the referred Clause 16 and shall be liable for their non-compliance, insofar as the fault can be attributed to the Customer or the Customer itself is guilty of organisational fault in the involvement of employees, vicarious agents or representatives.
3. With regard to the applicable trade and export control regulations, the Customer warrants to the extent legally possible that
  - a. neither the Customer itself nor its employees, vicarious agents or representatives are included in any sanctions lists maintained by the United Nations, the European Union, their respective Member States, the United Kingdom, the United States of America or other states involved in the respective contract and the respective competent government agencies and authorities of the aforementioned states or alliances of states;
  - b. the Customer notifies us immediately in writing if the Customer or any of its employees, agents, representatives or clients or contractors is placed on any of the aforementioned sanctions lists; and
  - c. the Customer does not use the funds, products and services received from us for the benefit of sanctioned persons to the extent that this would result in a breach of applicable sanctions, nor for any other purpose inconsistent with applicable sanctions.
4. With regard to the applicable laws and legal provisions against corruption, the Customer warrants, within the scope of its reasonable legal possibilities, that
  - a. neither the Customer itself nor its employees, vicarious agents or representatives give or accept gifts or other financial or other benefits to or from our employee(s), vicarious agent(s) or representative(s) or other third party/parties entrusted with the performance of deliveries or services on the basis of these Terms and Conditions of Sale and Delivery, insofar as this is





- likely to motivate the recipient of such benefits to behave unfairly. The Customer shall immediately notify us of any requests and claims of such benefits in connection with the performance of deliveries or services on the basis of these Terms and Conditions of Sale and Delivery; and
- b. the Customer notifies us immediately in writing in the course of ongoing business if any person employed by the Customer is a politically exposed person (e.g. a government official, a political party official or a political candidate) or is otherwise entrusted with the assumption of external duties of a governmental or private nature that enable him or her to influence decisions that benefit us or our business.
5. The Customer shall maintain accurate and proper documentation during the ongoing business relationship to enable it to prove that it has complied with all the requirements contained in this clause. Such documentation shall be retained for a period of at least 10 years from the end of the calendar year to which each relates.
  6. In the event of a concrete suspicion of a not insignificant breach of a provision of this clause 17, we shall be entitled, for the purpose of reviewing and, if necessary, verifying this suspicion, to demand that the Customer disclose the documentation to a third party named by us and professionally bound to secrecy, who may, in compliance with and in observance of all mandatory legal requirements, in particular from data protection and antitrust law, inspect, audit and make copies of the Customer's information and documents and transmit the data to us – insofar as legally required only in aggregated and anonymised form. Inspection shall take place to a reasonable extent, at the usual location and during normal business hours. The Customer will cooperate fully and promptly with any inspection or audit by us or on our behalf, including fully and diligently answering our questions and providing any requested documentation (although the Customer's trade and business secrets are regularly excluded from this disclosure obligation).
  7. We may withdraw from all contracts concluded on the basis of these Terms and Conditions of Sale and Delivery, or terminate without notice continuing obligations entered into on the basis of these Terms and Conditions of Sale and Delivery if (i) the Customer or one of its employees, vicarious agents or representatives is included in a sanctions list and we are thereby exposed to the risk of a not insignificant sanction by public authorities; (ii) the Customer or one of its employees, vicarious agents or representatives commits a not insignificant breach of applicable laws and regulations against corruption or other applicable trade and export control regulations and this breach of duty is not remedied within a reasonable period of time



after we have issued a written warning and set a reasonable deadline (a warning and setting of a deadline is not required), if it has been established by a final judgment or other form of final termination of proceedings that the Customer or one of its employees, vicarious agents or representatives is guilty of such a breach); or (iii) the Customer is in serious or persistent breach of this Clause 17 only after the expiry, without remedy, of a reasonable period of time in which to remedy any breach. The Customer shall be liable for all damages and shall fully indemnify and hold us harmless from and against all third party claims arising out of or in connection with the withdrawal or termination; this shall not apply if the Customer is not responsible for the reasons for the termination. Further rights remain unaffected by this.

## **§ 18 Traceability**

1. According to Regulation (EC) No. 178/2002 and the corresponding regulations in the LFGB (German Food and Feed Code) or corresponding future regulations, we are obliged to label and document our goods and their outer packaging through all production, processing and distribution stages for the purpose of traceability. For this purpose, our products are labelled with a batch number or best-before date (and coding) or a lot number in accordance with the Lot Labelling Ordinance. It should be noted that the integrity of this traceability information must not be compromised.
2. The Customer also assures to fully comply with the traceability obligations incumbent on him, to document them accordingly and to keep them.

## **§ 19 Applicable law, place of performance**

1. The business relationship between the Customer and us shall be governed exclusively by German law to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).
2. The place of performance for our deliveries and services (including our obligation of subsequent performance and the mutual obligations of return in the event of withdrawal) is the respective production site of the ordered goods or, in the event of a deviating agreement, the agreed place of performance as notified to the Customer prior to delivery. The place of payment for the Customer is the registered office of our company.



**§ 20 Place of jurisdiction**

1. The exclusive place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship is the registered office of our company. We expressly reserve the right to sue the Customer at his general place of jurisdiction or before another competent court.
  
2. Insofar as the Customer is domiciled in a state which is a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 10 June 1958, we shall be entitled to initiate arbitration proceedings in derogation of the aforementioned provision of clause 20.1. Insofar as we exercise this right, the dispute shall be finally settled by the Court of Arbitration of the Hamburg Chamber of Commerce to the exclusion of the ordinary courts. In this respect, German law shall apply to the content of the legal dispute.

Status July 2022