

## General Terms and Conditions of Sale of frischli Milchwerke GmbH ("frischli") for Export Countries

### 1. Scope of Application

These General Terms and Conditions of Sale shall apply to all our supplies and services rendered to our customers, also with regard to future business. Any conditions of the customer which deviate from these shall only have effect if we have expressly consented to them in writing. These General Terms and Conditions of Sale shall be deemed accepted at the latest when the customer takes delivery of our goods.

### 2. Offer, Conclusion of Contract

Our offers shall be non-binding and subject to confirmation. We generally accept or reject any orders or commissions in text form no later than 14 days after receipt. The contract comes into force upon receipt of our written order confirmation, however at the latest upon handover of the goods to the customer.

### 3. Prices, Supply Quantities

Our prices shall be non-binding and subject to confirmation. The purchase price for the goods shall be calculated on the basis of the agreed quantity at the prices applicable at the date of delivery, unless expressly otherwise agreed.

### 4. Provision of Goods

We will make the goods available for collection from ramp at Rehburg-Loccum at the agreed delivery date (day and time). FCA Rehburg-Loccum (INCOTERMS 2010) shall be deemed agreed. The customer shall be obligated to take delivery of the goods made available within the stated period.

### 5. Delivery, Export

5.1 On request of the customer and at its cost, we can send the goods to a different place. Unless otherwise agreed, we are entitled to determine the manner of shipment (in particular, transport company, routing, packaging) by ourselves.

5.2 If the customer makes an intra-Community supply to an EU Member State other than Germany, the customer shall be obligated to issue a confirmation of arrival meeting the requirements of Section 17a of the German Value Added Tax Implementing Ordinance, as amended (*Umsatzsteuerdurchführungsverordnung/USTDV*). By issuing this document, the customer confirms that the goods have been received in one of the remaining areas of the European Union. The confirmation of arrival shall be returned to us within 30 days after handover of the goods. If the document is not returned within the aforementioned period, VAT shall be subsequently invoiced.

5.3 Unless delivery and service periods have expressly been agreed on as binding, they shall be non-binding and subject to confirmation.

5.4 Shipment shall be made carriage forward. Any costs for freight, express delivery, air freight and insurance shall be borne by the customer.

5.5 The risk of accidental loss of the goods shall pass to the customer

a) on handover of the goods to the forwarder, freight carrier or any other person instructed to perform delivery of the goods if delivery by made by our vehicles or the vehicles commissioned by us;

b) on handover of the goods to the customer or its driver if the customer collects the goods or has them collected by vehicles used on its behalf.

### 6. Payment Arrangements

6.1 The goods will be supplied against invoice if the customer has full cover of the purchase price through the credit insurance used by frischli. The purchase price shall be due and payable by the payment deadline agreed. Payment shall not be deemed received before we can definitively use the amount.

6.2 If the purchase price cannot be covered by the credit insurance used by frischli, the goods shall be supplied against payment in advance.

### 7. Default in Payment, Prohibition on Set-off, Rescission

7.1 If the customer is in default with payment we are entitled to demand default interest of eight (8) percentage points above the basic interest rate for the period of delay.

7.2 The customer shall only be entitled to a set-off if its counterclaim is undisputed or has been ascertained finally and absolutely. The customer shall not be permitted to exercise a retention right resulting from any earlier or other business relating to the on-going business relation.

7.3. Should any circumstances arise which reduce the creditworthiness of the customer, we may rescind from the contract or terminate it without notice.

### 8. Customer's Default of Acceptance

8.1 If the customer is in default of acceptance, we may rescind from the contract or demand compensation on the grounds of non-fulfilment of the contract after setting a grace period of fourteen (14) days.

8.2 In the event of late acceptance, a higher current price may be invoiced to the customer. We are entitled to charge a flat rate compensation of 5% of the net turnover lost without the

need to provide further evidence. The customer may prove that no damage or minor damage was actually incurred. This shall not affect claims for compensation over and above this.

### 9. Warranty

9.1 The goods are to be carefully inspected by the customer or the third party commissioned by it after delivery without delay. This especially refers to any damage to the packaging. The customer shall be obligated to take samples. The goods shall be deemed accepted unless the customer reports any defects in writing no later than five working days after delivery of the goods or otherwise no later than five working days after discovery of the defect or at any earlier time at which the defect became recognisable to the customer during normal use of the goods without any detailed inspection.

9.2 We are entitled to examine the goods about which complaint has been made for defects. The customer shall be obligated to retain the goods for this purpose. In addition, the customer shall be obligated to grant us access to the goods during normal business hours and in the presence of a claims agent. If the customer's request for removal of defects proves to be unjustified, the customer shall be obligated to reimburse any costs incurred thereby.

9.3 We do not assume any warranty for damage caused by faulty or negligent treatment. We shall not be liable for any assurance of quality unless we have expressly warranted certain properties of the goods in writing.

9.4 If the goods are defective, we are entitled, at our choice, to subsequently fulfil the contract by either removing the defect (remedy) or supplying defect-free goods (subsequent delivery). Subject to the circumstances of the individual case, we are entitled to make three attempts of subsequent fulfilment. Furthermore, the statutory provisions shall apply to the rights of the customer in the event of defects in quality and/or title (including wrong delivery and shortage in delivery).

### 10. Liability

10.1 Unless otherwise agreed, the following exclusions and limitations shall apply to our liability, regardless of its legal foundation and without prejudice to the other statutory preconditions for a liability claim; these exclusions and limitations of liability shall also apply to our employees, vicarious agents and any other third party we use to perform our contractual duties.

10.2 Where we have caused any damage by intent or negligence, we shall only be liable towards our customer with regard to costs incurred. We shall not reimburse any lost profits. Should our insurance company reimburse, as the case may be, more than the incurred costs asserted by the customer, such higher amount paid shall be deemed our maximum liability.

10.3 If delays in delivery are caused by the fact that we ourselves do not receive timely or proper deliveries from our supplier, we shall not be responsible for this if we have carefully selected such supplier and have placed our order with it in due time so that timely delivery could be expected. The same shall apply to delays in service if we have carefully selected the sub-contractor and commissioned it in due time so that timely delivery could be expected.

### 11. Limitation Period

The general limitation period for any and all claims made by the customer owing to defects in quality and/or title shall be one (1) year from the customer taking delivery of the goods. This shall not apply to the cases mentioned in 10.2 and 10.3. If acceptance has been agreed, the limitation period begins to run on acceptance.

### 12. Force Majeure

We shall not assume any liability for an event of force majeure which makes it substantially more difficult for us to render contractual services, which temporarily impedes proper fulfilment of the contract or which makes this impossible. An event of force majeure shall be deemed all circumstances which cannot be foreseen or influenced by us and the customer and which arise after conclusion of the contract, including but not limited to failure of milk deliveries owing to TBC, FMD in the milk catchment area, epizootic diseases, natural disasters, war and other military conflicts, piracy, port blockages, operational disruptions, delays in raw material deliveries, average, and any form of industrial action.

12.2 If we are hindered from fulfilling the contractually agreed obligations by an event of force majeure, this shall not mean a breach of contract and the contractually agreed periods shall be prolonged in accordance with the duration of the impediment. The same shall apply if certain services are performed by third parties and such services are rendered to us with delay owing to an event of force majeure.

### 13. Place of Jurisdiction, Applicable Law

13.1 Place of performance for all supplies and services shall be Rehburg-Loccum.

13.2 If both contractual parties are businessmen, the Verden/Aller Regional Court shall be exclusively competent for all disputes arising directly or indirectly out of this contractual relationship. However, we shall also be entitled to file a claim against the customer at its general place of jurisdiction.

13.3 These General Terms and Conditions of Sale shall exclusively be governed by the laws of the Federal Republic of Germany, excluding the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG).

13.4 The definitive version of these General Terms and Conditions of Sale for export countries shall be the German version.

#### **14. Severability**

Should one or more provisions in this agreement be or become invalid in whole or in part, or should there be a lacuna in this agreement, this shall not affect the validity of the remaining provisions of this agreement. The parties undertake to replace the invalid provision by a valid one which reflects in form, content and measurement as closely as possible the spirit and economic purpose intended by the parties by the invalid provision. The same shall apply in the event of a lacuna. To the extent that the economic purpose of this agreement can only be achieved through additional agreements, the contractual parties hereby undertake to enter into such agreements without undue delay.

Status as of 9 July 2015