

Terms and Conditions

Section 1. GENERAL SCOPE OF APPLICATION, COMPLEMENTARY TERMS AND CONDITIONS

(1) General Terms and Conditions (GTC) apply to all contracts between Bratzler & Co. GmbH (hereafter: Seller) and commercial customers (Buyers). The terms and conditions also apply to future transactions, even if they are not expressly included again.

(2) Deviating general terms and conditions of the Buyer do not apply, even if they are not expressly objected to.

(3) Contracts or other agreements shall become binding only upon the written confirmation of the Seller. A deviation applies only on an individual basis and does not affect the validity of the other conditions.

(4) For business dealings with buyers/sellers having their head office outside the Federal Republic of Germany, the terms and conditions for fresh edible horticultural products (EEC) - COFREUROP for short - shall apply in addition to these conditions.

Section 2. OFFER; RESERVATION OF SELF-DELIVERY

(1) All offers are non-binding. These are subject to prior sale, provided that an offer submitted by the Seller in writing does not constitute a fixed offer in individual cases.

(2) The goods sold are not always available in any quantity and quality on the market; these are subject to seasonal fluctuations. Orders are executed by the Seller are subject to self-delivery, unless the Seller is responsible for non-delivery. If ordered goods are not available to the Seller, the latter is obliged to inform the Buyer immediately that the goods are not available. Payments already made by the Buyer must be reimbursed immediately.

Section 3. PRICES, PAYMENT TERMS

(1) All prices named by the Seller are net, subject to statutory VAT, which is indicated on the invoice.

(2) Invoices are payable within 30 days of receipt of the goods without any deductions. Deviating payment terms must always be in writing.

(3) For deliveries in EU Member States outside the Federal Republic of Germany, the delivery is exempt from VAT, provided that the Buyer provides a VAT identification number. Otherwise, the respective rate of VAT is charged.

(4) Checks and bills of exchange shall only be considered as payment when redeemed; all related costs and expenses shall be borne by the Buyer. The submission of bills of exchange requires the express consent of the Seller. Bills of exchange and other considerations are only accepted upon explicit agreement.

(5) In the event of default of payment, the prevailing base interest rate as a minimum shall be payable to the Seller from the time of default. The interest rate for remuneration claims is eight percentage points above the base interest rate. If the Seller is able to prove a higher amount of damage was caused by the default, the Seller is entitled to claim such amount. Likewise, all costs associated with the collection of the Seller's claims shall be borne by the party who was or is in arrears with the payment.

(6) For each reminder (with the exception of the first reminder), a lump sum fee of € 10 will be charged.

(7) The Buyer is not entitled to offset counterclaims with claims by the Seller or to assert a right of retention unless the counterclaims are undisputed or legally established.

(8) The Seller is entitled to assign the claims against the Buyer arising from the business relationship to third parties at any time.

(9) If the Buyer defaults on the Seller with any

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(partial) payment obligations or if circumstances arise which give rise to doubts as to his/her solvency (e.g. the initiation of enforcement proceedings, or the filing of an application or the opening of insolvency proceedings) all existing claims by the Seller against the Buyer are immediately due for payment.

(10) The solvency of the Buyer is assumed for all transactions. If the Buyer does not fulfil his/her contractual obligations in a timely manner, the Seller may refuse delivery or demand a security deposit.

Section 4. LABELING OF THE GOODS

(1) The Buyer is obliged to inspect the packaging and labelling for completeness and correctness in accordance with the statutory provisions upon acceptance of the goods.

This applies in particular to self-service packaged goods and if a shop sales price is used by the Seller on the instructions of the Buyer.

(2) In the case of legitimate objections to the price, there is only an obligation to re-price; any further liability is excluded.

Section 5. COMPLAINTS

(1) If the acceptance of the goods by the Buyer is agreed at the time of dispatch, then defects that can be determined by proper inspection must be reported at the latest at the time of acceptance.

(2) If the case in paragraph 1 has not occurred, defects of the goods at the time of arrival at the Buyer must be notified as soon as he/she has been informed of the arrival of the goods and their availability for unloading (unloading right). In that case, the following applies:

a) Defects which can be detected by appropriate

inspection before the start of unloading must then be reported.

b) Defects which, despite proper inspection, can only be determined during unloading, must then be reported. The unloading must be stopped immediately. Unloaded goods must be paid in full; this shall not apply to goods unloaded only for the purpose of the inspection.

c) The complaint must always be made immediately. In any case, a complaint must be made within 4 hours for highly perishable and perishable goods, for other goods within 12 hours from the right of unloading or declared availability for unloading by the deliverer. If the right of loading or declared availability to unload occurs at an inopportune period, the period of notice shall commence only from the time at which the examination of the goods is reasonable, taking into account local and customary practice.

(3) Inspection of the contents of the vehicle shall not affect the quality and appearance of the loaded goods. In the case of complaints concerning general consignments, the goods must still be in the packaging container.

(4) The preceding paragraphs shall not apply to defects which cannot properly be detected either in the case of the unloaded consignment (in the cases of para. 1 and 2 a) or during unloading (para. 2 b) (hidden defects). Hidden defects must be reported immediately as soon as they can be determined using economically and operationally reasonable measures.

(5) The complaint must be made to the Seller in writing or by fax. At the same time, defects ascertainable before or during unloading must be asserted to the delivering carrier and noted on the loading documents.

(6) The complaint must contain:

- a) detailed and precise description of the defect,
- b) the number of the vehicle or the registration number of the goods vehicle,
- c) disclosure of the place of departure,

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d) disclosure of any further facts showing that the goods delivered and the goods complained of are identical.

The details in b) and c) can only be requested if they are shown on the dispatch note or the accompanying documents.

(7) If the Buyer or his representative has bought or accepted the goods after inspection, any claim is excluded.

(8) In addition to para. 1 to 6, the Buyer must comply with his/her duty to examine and notify pursuant to Section 377 HGB (German Commercial Code).

(9) With regard to quality and quantity defects, the departure weight is decisive. The customary commercial travel loss shall be borne by the Buyer.

(10) Insofar as there is a defect in the goods for which the Seller is responsible, the Seller is initially obliged to withdraw from the contract, excluding the Buyer's right to a reasonable reduction of the selling price or supplementary performance, unless the Seller is entitled to refuse supplementary performance due to the statutory provisions. In the case of supplementary performance, the Buyer must grant the Seller a reasonable period for supplementary performance. The supplementary performance will be affected by delivery of new goods.

If the supplementary performance has failed, the Buyer may, at his/her discretion, demand a decrease in the purchase price (reduction) or withdraw from the contract. The remedy shall be deemed to have failed with the second unsuccessful attempt, unless further remedy attempts are reasonable on the basis of the object of the contract and are reasonable for the Buyer.

(11) The warranty claims of the Buyer expire one year after delivery of the goods to the Buyer, unless the Seller has fraudulently concealed the defect; in this case the legal provisions shall apply.

Section 6. RETENTION OF TITLE

(1) The delivered goods remain the property of the Seller until all obligations of the Buyer arising from the business relationship have been fully met. A pledge and security transfer by the Buyer prior to transfer of ownership is prohibited.

(2) A resale is only permitted to resellers in the ordinary course of business and under retention of title until full payment has been made.

(3) In the event of resale, the Buyer hereby assigns his future claims from the resale against his customers to the Seller as a precautionary measure. The Seller shall accept this assignment.

(4) At the request of the Seller, the Buyer is obliged to report the transfer of claims and to provide the Seller with all information necessary for the enforcement of the claim, in particular to name his/her respective customers and to expressly refer these to the existing retention of title in the case of credit sales. He/she is further prohibited from agreeing to a prohibition of assignment of the purchase price claim with his/her buyer.

(5) In the case of seizure or other interventions by third parties, the Buyer must immediately inform the Seller in writing so that the Seller can file a claim in accordance with Section 771 ZPO (Code of Civil Procedure). Insofar as the third party is not in a position to reimburse the Seller for the court and out-of-court costs of a claim in accordance with Section 771 ZPO, the Buyer is liable for the loss incurred by the Seller.

(6) The Seller may revoke the right of resale if the Buyer discontinues his payments, if bankruptcy, settlement or insolvency proceedings have been filed, if the Buyer must make a sworn statement of his financial circumstances or in case of insolvency. In these cases, the Seller is entitled to demand the return of the reserved goods from the Buyer. To ascertain

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ownership, the Seller must at all times be permitted the necessary access to the storage rooms.

(7) The right to segregation and substitutional segregation according to Sections 47, 48 of the Insolvency Act is reserved by the Seller.

(8) For the case of further processing in accordance with Section 950 BGB (German Civil Code), the Buyer transfers ownership of the items produced in this way to the Seller in accordance with Section 930 BGB, for which he takes these items into safekeeping.

The same applies to the case of combining or mixing with regard to the co-ownership of the blended or mixed goods.

(9) Provided that the Buyer processes or transforms the goods, this processing or transformation takes place for the Seller. Accordingly, the Seller becomes the direct owner of the newly produced item. Should this not be possible for legal reasons, the Seller and the Buyer agree that the Seller shall at any time of processing or transformation become the owner of the new item in the proportion of the value of the processed, converted or combined reserved goods to the value of the new object.

(10) The Buyer hereby now assigns claims from the sale of the new object to the Seller. The assignment shall only apply in the amount corresponding to the value of the processed, converted or combined reserved goods charged by the Seller plus a surcharge of 10%. The Buyer hereby assigns the first-ranking portion of the claim to the Seller; the Seller shall accept these assignments.

(11) The Seller undertakes to release the securities to which the Seller is entitled at the request of the Buyer to the extent that the realisable value of her securities exceeds the claims to be secured by more than 20%. The choice of the securities to be released is the responsibility of the Seller.

(12) If the Seller's goods are resold together with

other items, without an individual price being agreed for the goods, the Buyer assigns to the Seller, with priority over the remaining claim, the part of the total price claim which corresponds to the value of the delivered goods plus a surcharge of 10%. Until revoked, the Buyer is entitled to collect the assigned claims.

Section 7. PACKAGING

(1) The Buyer only receives loaned packaging for the transport of the purchased goods. Empty containers must be returned within three days. For non-returned packaging, the equivalent value of equivalent packaging must be paid.

(2) In accordance with the provisions of the transport packaging, the Buyer must return the transport packaging to the Seller at the place of delivery of the goods in accordance with the delivery procedure. At the time of return, the transport packaging must be in a condition that permits its recycling according to the Packaging Ordinance.

(3) Pallets delivered with the goods shall be exchanged on delivery by transferring an equal number of pallets of the same type and quality to the carrier. Otherwise, a return of pallets will be at the expense of the Buyer.

Section 8. FINAL PROVISIONS; PLACE OF PERFORMANCE, PLACE OF JURISDICTION

(1) The contractual relationship is subject exclusively to German law with the exception of the UN Convention on International Sale of Goods (CISG).

(2) Unless otherwise stated in the order confirmation, the place of business of the Seller is the place of performance for the delivery for both parties, and for the sale of goods ex warehouse, the place where the warehouse is located. The place of performance for

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(3) The place of jurisdiction is the registered office of the Seller. This also applies to legal actions in document and bills of exchange procedures as well as to measures that serve to ensure guarantees. However, the Seller is entitled to take legal action against the Buyer at his place of residence.

(4) Should provisions of these terms and conditions be or become invalid or void, the validity of the contract and the validity of the remaining terms and conditions shall remain unaffected. Under such circumstances, the parties shall, in keeping with the law, agree upon another clause, which will come economically closest to the ineffective or void clause. The same shall apply if an omission becomes evident in the contract.

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