

# General Terms and Conditions

## – Sale for Meat and Convenience Products –

(Last update: December 2022)

### Westfleisch SCE with limited liability

Fridtjof-Nansen-Weg 5a, 48155 Münster, Germany  
referred to hereinafter as "User"

#### 1. scope of application

- (1) The following terms and conditions shall apply exclusively to all legal transactions - including future transactions - between the „user“ (Westfleisch SCE mbH and all companies of the Westfleisch Group, in particular with the companies Westfleisch SCE mbH, Dog's Nature GmbH, WestfalenLand Fleischwaren GmbH, Westfleisch Erkenschwick GmbH, Westfleisch Sales GmbH, Gustoland GmbH) and the „contractual partner“, which relate to the goods defined in para. 2, unless deviating terms and conditions have been expressly acknowledged or agreed in writing.
- (2) All legal transactions concerning the sale of meat or finished products by the user are covered by these conditions. „Meat“ refers to products made of or with raw meat, „finished products“ are all products which have been pre-processed by the user and are intended for direct resale to the end consumer.
- (3) Terms and conditions of the contractual partner or third parties shall not apply, even if the user does not separately object to their validity in individual cases. Even if the User refers to a letter which contains or refers to the terms and conditions of the contractual partner or of a third party, this does not imply any agreement with the validity of those terms and conditions.

#### 2. conclusion of contract

- (1) If the user submits an offer to conclude a contract, he shall be bound by it for one week after the date of the offer, unless the user's offer expressly contains a binding period. The receipt of the declaration of acceptance by the User shall be decisive for timely acceptance. If the contractual partner submits the offer to conclude the contract, the User may accept the offer within 6 weeks of receipt of the offer by the User.
- (2) If contracts are concluded subject to written or telex confirmation, the content of the User's letter of confirmation shall be authoritative unless the contractual partner objects immediately

#### 3. delivery

- (1) Delivery shall be made as soon as possible, unless a specific delivery time or delivery date has been expressly agreed as binding. Great heat, frost or danger of frost absolve the customer from observing the delivery period or delivery date until suitable weather conditions occur. The user shall inform the contractual partner immediately of the occurrence of such events.
- (2) The user is also entitled to make partial performances if this is reasonable for the contractual partner. If delivery on call has been agreed, the contractual partner must call for delivery within a reasonable period of time.
- (3) If the delivery is impossible or excessively difficult within the meaning of § 275 para. 2 of the German Civil Code due to acts of God, official measures, business closures, strikes, extreme weather conditions, animal epidemics or similar circumstances - also in the case of suppliers of the user - the user shall be absolved from the obligation to deliver for the period of the obstacle to delivery and its aftereffect. This also entitles the user to withdraw from the contract if and to the extent that adherence to the contract is no longer reasonable. In the event of non-delivery or insufficient delivery to the User by its upstream suppliers, the User shall be released in whole or in part from its delivery obligations towards contractual partners. This shall only apply if he has taken the necessary arrangements to fulfil his performance obligation and has carefully selected his suppliers. In this case he undertakes to assign his claims against the supplier to the contractual partner upon request. In this case, the contractual partner shall remain obliged to provide consideration in accordance with § 326 para. 3 of the German Civil Code. The user shall inform the contractual partner immediately of the occurrence of the above-mentioned events and the non-availability and, in the event of withdrawal, shall reimburse the contractual partner immediately for the consideration paid.
- (4) Transport cost increases and tariff changes can be added to the payment by the user if the delivery takes place later than one month after conclusion of the contract.

- (5) Risk and liability shall pass to the contractual partner upon delivery. If the goods are dispatched - also from a third location - the risk shall pass to the contractual partner upon transfer of the delivery item (whereby the time at which the transport vehicle leaves the loading ramp shall be relevant) to the freight forwarder, carrier or other third party appointed to carry out the dispatch.
- (6) The dispatch - also within the same place of dispatch - shall take place at the cost of the contractual partner. The User shall select the mode of dispatch unless the Contractual Partner has issued special instructions. At the request of the contractual partner, the user shall take out transport insurance to the extent desired by him at his own expense.
- (7) If goods are delivered to the contractual partner by a forwarding agent commissioned by the user, which are packed in empties of various shapes, the contractual partner is obliged to return the empties to the user in the same number, type and quality. For this purpose, the User or a forwarding agent commissioned by the User shall draw up an overview of the empties accounts, the balance of which must be confirmed by the contracting party. If the contractual partner does not provide any feedback within 5 days of sending the overview, the user shall assume, without further request, that the listed inventory is correct and that it has been tacitly confirmed. This stock is then the basis for further deliveries.
- (8) The agreed transport temperatures must be observed during delivery. If no transport temperatures have been agreed, the generally applicable temperatures shall apply..
- (4) Complaints due to obviously defective or obviously deviating properties of the goods or due to delivery of goods which are obviously different from those ordered can only be asserted by the contractual partner immediately, at the latest however within 24 hours after receipt of the goods or after the defect became obvious.
- (5) In the event of defects in the purchased item which the User cannot remedy, the User shall, at its option, assert its warranty claims against the manufacturers and suppliers for the Buyer's account or assign them to the Buyer. Warranty claims against the User may only be asserted in the event of defects of the object of sale under the other conditions and in accordance with these General Conditions of Sale - with the exception of those arising from injury to life, body or health or from intentional or grossly negligent breaches of duty on the part of the User or his vicarious agents - if the judicial enforcement of the aforementioned claims against the Supplier was unsuccessful or has no prospect of success, for example due to insolvency. During the duration of the legal dispute, the statute of limitations of the respective warranty claims of the contractual partner against the user shall be suspended.
- (6) If the User is liable for warranty in accordance with these General Terms and Conditions, the User shall initially be obliged and entitled to remedy the defect or make a replacement delivery at his choice to be made within a reasonable period of time. In the event of failure, i.e. impossibility, unreasonability, refusal or unreasonable delay of the repair or replacement, the contractual partner may withdraw from the contract or reasonably reduce the purchase price.

#### 4. warranty for defects

- (1) The product quality owed shall be based on the agreed product specifications and the microbiological guideline values in accordance with the „ÜG-QM-126 Konzern“ in its respectively current versions. In all other respects, the legal regulations shall apply.
- (2) The warranty period is one year from delivery. This period shall not apply to claims for damages by the contractual partner arising from injury to life, body or health or from intentional or grossly negligent breaches of duty on the part of the user or his vicarious agents, which shall in each case become statute-barred in accordance with the legal provisions.
- (3) The contractual partner must inspect the goods immediately upon receipt for material defects, e.g. quantity, quality, properties, and is obliged to note any obvious deviations on the receipt. Otherwise § 377 of the German Commercial Code shall apply. Damage during transport shall not entitle the user to refuse acceptance.

- (7) If a defect is based on fault on the part of the user, the contractual partner may only claim damages in accordance with the following conditions.(7) Beruht ein Mangel auf einem Verschulden des Verwenders, so kann der Vertragspartner Schadensersatz nur nach Maßgabe der nachfolgenden Bestimmungen verlangen.

#### 5. liability for damages

- (1) Claims for damages of the contractual partner, on whatever legal reason, in particular due to breach of duties arising from the contractual obligation and tort, are excluded.
- (2) This shall not apply where liability is legally mandatory, in particular in cases of
  - fraudulent intent, intent and gross negligence
  - injury to life, body or health
  - the assumption of a guarantee, e.g. for the existence of a characteristic

- the violation of essential contractual obligations or
  - liability in accordance with the German Act on Liability for Defective Products.
- (3) Claims for damages due to negligent violation of essential contractual obligations shall be limited to the foreseeable damage typical for this type of contract.
  - (4) Insofar as liability is excluded or limited, this shall also apply to the personal liability of the User's employees, staff, representatives and vicarious agents.
  - (5) A change in the burden of proof to the disadvantage of the contractual partner is not associated with the above provisions.

## 6. payment

- (1) Unless otherwise agreed, payment for deliveries and services of the User shall be made without any deduction immediately upon receipt of the invoice. In the case of delivery or performance on credit, the payment term shall be calculated according to the date of delivery and performance.
- (2) Discount charges and collection charges shall be at the expense of the contractual partner; they are due immediately.
- (3) In the case of payment by cheque, the receipt of the cheque by the User shall not apply, but only the value date as payment.
- (4) The contractual partner may only offset such counterclaims that are not disputed by the User or have been legally established.
- (5) The contractual partner may not exercise a right of retention which is not based on the same legal relationship. The cession of claims of the contractual partner against the user is excluded.
- (6) The user may at any time offset his claims or the claims of his affiliated companies or participations within the meaning of § 271 of the German Commercial Code against claims of the contractual partner.

## 7. current account

- (1) All mutual claims arising from the business relationship can, insofar as this is agreed separately, be placed in a current account for which the provisions of §§ 355 ff. of the German Commercial Code apply.

- (2) Interest shall be charged on the user's claims on the current account at a rate of 9 percentage points above the base interest rate.
- (3) The User may issue a balance notification, which shall be deemed a statement of account. The balance shall be deemed accepted if the account holder does not raise objections within six weeks of receipt of the statement of account. The User shall make special reference to this when sending the periodic balance statement. Legal claims shall remain unaffected.

## 8. price fixing

If no other agreements have been made, the user is entitled to determine the price at his own discretion. These prices include the costs incurred for disposal and cannot be claimed additionally from the user. In all cases, the contractual partner is obliged to dispose of the transport packaging at his own cost.

## 9. delay

- (1) The purchase price becomes due immediately if the contractual partner finally refuses payment of the purchase price. The same legal consequence shall occur if the contractual partner is in arrears with an amount exceeding one instalment and if the arrears amount to at least 10% of the total purchase price. In the event of a final refusal to pay the purchase price, the User may refuse performance of the purchase contract even without setting a grace period and demand reimbursement of all costs, expenses and compensation for depreciation.
- (2) During the period of default, the contractual partner shall pay default interest of 9 percentage points above the respective base interest rate. The right to assert further claims for damages shall remain reserved, as shall the right to demand higher interest for another legal reason. The User may demand advance payments, partial advance payments or handover against cash payment.
- (3) In the event of default of acceptance on the part of the contractual partner, the User may store the goods at the expense and risk of the contractual partner at his own premises or at the premises of a third party or exploit them in a suitable manner for the account of the contractual partner, without this requiring notification.
- (4) In the event of default, the user shall be entitled, irrespective of contractually agreed payment terms, to demand immediate payment of all outstanding claims after setting a final payment deadline and to withdraw from the contract.

## 10. extended and extended reservation of proprietary rights

- (1) The reservation of proprietary rights agreed below serves to secure all current and future claims of the User against the contractual partner arising from the supply relationships existing between the contractual partners.
- (2) The goods delivered by the User to the contractual partner shall remain the property of the User until all secured claims have been paid in full. The goods as well as the goods covered by the reservation of proprietary rights and replacing them in accordance with the following provisions shall hereinafter be referred to as „reserved goods“.
- (3) The contractual partner shall store the reserved goods free of charge for the user.
- (4) The contractual partner is entitled to process and sell the reserved goods in the ordinary course of business until the event of realisation (paragraph 10) occurs. Pledges and transfers by way of security are not permitted. In the event of a sale, the User shall be entitled to inform the end customer of the reservation of proprietary rights if the User has a legitimate interest in doing so. In this case, the contractual partner is obliged to provide the user with all information about the end customer and the details of the deliveries.
- (5) If the reserved goods are processed by the contractual partner, it is agreed that the processing is carried out in the name and for the account of the user as manufacturer and that the user directly acquires ownership or - if the processing is carried out from materials of several owners or the value of the processed item is higher than the value of the reserved goods - co-ownership (ownership in fractional shares) of the newly created item in the ratio of the value of the reserved goods to the value of the newly created item. In the event that no such acquisition of ownership should occur at the User, the contractual partner hereby transfers his future ownership or - in the above ratio - co-ownership of the newly created object to the User as security. If the reserved goods are combined or inseparably mixed with other items to form a uniform item and if one of the other items is to be regarded as the main item, the user shall transfer to the contractual partner the proportionate co-ownership of the uniform item in the proportion stated in sentence 1, insofar as the main item belongs to him.
- (6) In the event of resale of the reserved goods, the contractual partner hereby assigns to the user by way of security the resulting claim against the purchaser - in the case of co-ownership of the user of the reserved goods proportionate to the co-ownership share - to the user. The same applies to other claims which take the place of the reser-

ved goods or otherwise arise with regard to the reserved goods, such as insurance claims or claims arising from tort in the event of loss or destruction. The user revocably authorises the contractual partner to collect the claims assigned to the user in his own name. The User may only revoke this direct debit authorisation in the event of realisation.

- (7) The contractual partner is obliged to inform the user immediately of distraints or other impairments of the reserved property.
- (8) The contractual partner shall, at the request of the user, insure the goods belonging to the user to an appropriate extent against the usual risks at his expense and assign the insurance claims to him. The user is also entitled to pay the insurance premiums at the expense of the insurance partner.
- (9) The User shall release the reserved goods as well as the items or claims replacing them insofar as their value exceeds the amount of the secured claims by more than 30 %. The selection of the items to be released thereafter shall be at the discretion of the User.
- (10) If the user withdraws from the contract in the event of conduct contrary to the terms of the contract on the part of the contractual partner - in particular default in payment - he shall be entitled to demand the restitution of the reserved goods.

## 11. performance disturbances which are beyond the sphere of influence of the user/ Acts of God

- (1) If the delivery is made impossible or excessively difficult in the sense of § 275 para. 2 BGB (German Civil Code) due to force majeure, such as in particular war and its consequences, fire damage, floods, strikes, lawful lockouts as well as epidemics and pandemics insofar as a danger level of at least „moderate“ is defined by the Robert Koch Institute, official measures, plant shutdowns, strikes, extreme weather conditions, animal epidemics or similar circumstances - also at suppliers of the User), the User shall be released from the obligation to deliver for the duration of the impediment to delivery and its after-effects. He shall not be liable for impossibility and delay insofar as he is not responsible for these.

This also applies if material shortages and production bottlenecks occur as a result of war, which are not a direct consequence of the war event, but their indirect consequence, such as an expected gas shortage due to the Ukraine War 2022, which may lead to a production restriction for which the User is not responsible.

- (2) The foregoing also entitles the User to withdraw from the contract if and to the extent that it can no longer reasonably be expected to adhere to the contract. In the event of non-delivery or insufficient delivery to the User by its upstream suppliers and associated production restrictions, or in the event of restrictions on the energy required for production, etc., the User shall be wholly or partially released from its delivery obligations towards the contractual partner. This shall only apply if he has taken the necessary precautions to fulfil his obligation and has also carefully selected possible upstream suppliers. In this case, he undertakes to assign his claims against possible suppliers to the contractual partner upon request. In this case, the contractual partner remains obliged to counter-performance in accordance with § 326 para. 3 BGB (German Civil Code). The User shall inform the Contractual Partner immediately of the occurrence of the above-mentioned events and the non-availability and, in the event of withdrawal, reimburse the Contractual Partner's counter-performance immediately.
  - (3) In such cases, the contractual partner shall not have any rights arising from non-delivery, reduced delivery or delayed delivery. The User must notify the contractual partner of the occurrence of force majeure, unless it is obvious. As reasonable contracting parties, the parties shall attempt to mutually mitigate the consequences of force majeure on the basis of the consequences. The corresponding agreements shall be set out in writing. This includes the scope of delivery as well as agreements with regard to agreed prices, which have to take into account the changed conditions, as well as delivery dates, etc., which may have to be changed appropriately, insofar as a continuation of the delivery becomes reasonable as a result.
- (4) Verbal collateral agreements between the contractual partner and the user are not legally binding. They must be in writing in order to be effective.
  - (5) Insofar as the contract or these General Terms of Delivery contain gaps in the provisions, the legally effective provisions which the contracting parties would have agreed in accordance with the economic objectives of the contract and the purpose of these General Terms of Delivery had they been aware of the gap in the provisions shall be deemed to have been agreed to fill these gaps.

### 13. data protection

Westfleisch attaches great importance to data protection. Therefore, our data protection rules apply to all legal relationships, which can be viewed at <https://www.westfleisch.de/datenschutz/>.

The foregoing shall also apply if the fulfilment of all obligations is not possible taking into account employee protection rights.

### 12. place of performance, place of jurisdiction, applicable law

- (1) The business premises of the User's head office in Münster (Westphalia) shall be the place of performance for both parties.
- (2) The place of jurisdiction for all legal disputes arising from or in connection with contracts between the User and the contractual partner shall be Münster (Westphalia), Germany.
- (3) The relations between the User and the contractual partner shall be governed exclusively by the laws of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods of 11th April 1980 (CISG) shall not apply.