

# **General Terms and Conditions for Delivery and Payment of the Bakery Pflieger October 2009**

## **1. Validity of Conditions**

- 1.1. All deliveries, services, offers and contracts of purchase of the bakery Pflieger are subject to these terms and conditions. The bakery Pflieger only contracts to their own (these) terms and conditions. All contracting partners declare that if using their own terms and conditions, in case of doubt will always have to abide by these general terms and conditions, even if not contradicting with the terms and conditions of the contracting partners.
- 1.2. All general terms and conditions, which contradict with these terms and conditions, are legally void and cannot be regarded accepted. All changes and variations of these terms and conditions are only valid if confirmed by the bakery Pflieger in writing. Silence of the bakery Pflieger does not constitute acceptance concerning variations of the terms and conditions at the contracting partner's options.
- 1.3. All food products of the bakery Pflieger are regarded as contract goods, including all forms of baking mixtures.

## **2. Offers, Order-confirmations, Writing**

- 2.1. All offers can be subject to change. Cost estimates, price lists, documents like illustrations, statements of costs, etc. are legally non-binding until explicitly confirmed in writing.
- 2.2. Conclusions of a contract can only be accomplished by the written offer-confirmation of the bakery Pflieger. Changes or additional agreements are non-binding for the bakery Pflieger. Costs produced by changes or terminations of contracts (cancellations, annulments) have to be paid by the contracting partner.  
All specification of our products, particularly weight, durability as well as technical specifications is without non-committal. Any use, particularly the passing on and duplication of products and know-how must be confirmed by an authorized salesperson of the bakery Pflieger.
- 2.3. All comments of a salesperson or the manufacturer, or of any other third-party involved, particularly in advertisements and in information, which have been added to the product, are only subject to the contract if it has been confirmed in writing in the contract and only if this is also referred to in the offer.
- 2.4. For any additional order the principal's written confirmation has to be obtained. If the principal does not agree with these conditions, the bakery Pflieger is entitled to charge for all the accomplished work by then and disclaim any further performance of the contract.

## **3. Official Authorization**

- 3.1. If an official authorization (e.g.: import or export licenses, exchange control permit) is necessary for the performance of the contract, respectively the delivery of contracting goods of the bakery Pflieger, the contracting partner has to organize them

contemporaneously. If he fails to do so, the contracting partner has to face all consequences and the bakery Pflieger is entitled to withdraw from the contract.

- 3.2. In such a case, the contracting partner of the bakery Pflieger must replace all costs and claims resulting from the failure, including profit losses, regardless of whether the bakery Pflieger exercises its right to withdraw from the contract.

#### **4. Reservation of Proprietary Rights**

- 4.1. All contracting goods remain property of the bakery Pflieger until all financial or otherwise agreed obligations of the contracting partner resulting from the general terms and conditions for sale and delivery are completely fulfilled. Hence the bakery Pflieger is entitled to collect the delivered goods without prior claim or use of court.

The contracting party is urged to aver and fund the bakery Pflieger's reservation on proprietary rights if there are recourses by a third party.

The purchaser is obliged to conserve the value of the reserved goods (the goods delivered by the bakery Pflieger have to be stored properly so that they shall not be damaged) and is further obliged to immediately contact Pflieger bakery, in case a third party claims properties of the bakery Pflieger. The contracting partner is also entitled to explicitly label the contracting goods as his property. The principal is not allowed to remove those labels, particularly specification plates.

- 4.2. As an act on safeguarding all claims on insurances are conveyed to the bakery Pflieger and the insurance company has to be informed by the contracting partner.

By reclaiming the objects of purchase, the contracting partner is not able to cancel the contract. It does not disengage the contracting partner of its obligations, particularly not the payment owed.

In line with the reservation of proprietary rights on the part of the bakery Pflieger, all kinds of resale, pledging, converting and safeguarding claims as well as all other forms of disposition to contracting goods are forbidden.

The bakery Pflieger is entitled to make use of the reclaimed goods at the expense of the contracting partner, the profit less the costs for utilization have to be credited against the contracting partner.

- 4.3. The contracting partner is liable for all disadvantages, which are caused by claiming of reservation of proprietary rights of the bakery Pflieger, including his own disadvantages.

The contracting partner is obliged to send a complete list of all the still existent goods subject to reservation of ownership as well as a complete list of the claims to third parties to the bakery Pflieger, as soon as the contracting partner has stopped all his payments and immediately after announcement of the stop of payment.

#### **5. Terms of Payment**

- 5.1. All payments have to be transmitted to the bank account announced by the Pflieger - bakery, without whatsoever deductions.

- 5.2. If the purchaser in writing has ordered the goods, the entire purchasing price including all taxes has to be prepaid into the account announced by the bakery Pflieger and immediately after the acceptance of the order.

## **6. Force Majeur**

- 6.1. If the bakery Pfleger is not able to deliver contract goods, or to fulfill its services due to force majeure, the bakery Pfleger is obliged to contact and inform their respective contracting partners within an appropriate period of time. Furthermore the bakery Pfleger is not liable for delay or deficiency of distributors in a case of force majeure.
- 6.2. In such cases, the bakery Pfleger may withdraw partly or fully from the contract and is not obliged to compensate for the produced damage. In any case the bakery Pfleger does not have to fulfill any obligations during the period of the force majeure.

## **7. Obligation to Give Notice of Defects**

- 7.1. The contracting partner is obliged to inspect all contracting goods, respectively services for deficiencies and completeness immediately after deliverance or respectively supply of the service. If there are non-obvious defects, the contracting partner is obliged to notify, contest and explicitly specify those in writing, within one week. Exceeding of this period leads to the annulment of any right to claim.
- 7.2. In case of latent defects the same terms apply as soon as knowledge of those defects evolves.
- 7.3. A claim of defects does not entitle the contracting partner to partly or fully detain payment.

## **8. Allocation of Goods**

- 8.1. If no other written agreements are made, all services and deliveries of the bakery Pfleger will be allocated ex works in Weiz, Austria. Hence, the delivery of goods has to be organized by the purchaser himself.  
Delays of the bakery Pfleger delivery do not entitle the contracting partner to bring in claims. The bakery Pfleger is entitled to deliver contracting goods partly, or respectively partly fulfill services.
- 8.2. The bakery Pfleger is in any case entitled to delay the allocation of contracting goods or the provision of services, until the contracting partner met all his obligations.
- 8.3. The allocation of goods ex works may be delayed by an appropriate period due to collective action, particularly strikes, lockout, force majeure and if unanticipated obstructions occur which are neither self-inflicted nor negligent.
- 8.4. If the contracting partner or/and its distributor do not accept the delivery of goods at the time and place agreed upon in the contract and if this delay is not caused by a negligent or deliberate action of the bakery Pfleger, the bakery Pfleger is entitled to store the goods at the contracting partner's expenses and risk.
- 8.5. An insurance of all contracting goods is only provided if it is demanded in writing by the contracting partner and only on the contracting partners cost, if not agreed differently in writing.  
The transfer of risk comes upon at the moment the goods are provided and is independent of who is receiving them. The contracting partner of the bakery Pfleger does explicitly agree that third parties, employed by the bakery Pfleger, e.g. distribution partners, receive the contracting goods for the contracting partner.
- 8.6. If not agreed differently in writing, all transports of contracting goods will be carried out at the contracting partner's expenses and risk. The transport will be carried out by a carrier/shipper at the purchaser's option.

## 9. Costs/Charges/Packing

If not agreed differently in writing, all costs are net costs ex works (not including taxes and dues by law), without single packing, without discounts and without transport fees.

- 9.1. All costs are budget prices, if commodity prices and production costs change due to reasons not within the company's control between the conclusion of the contract and the accomplishment of the service and hence additional costs arise, the bakery Pfleger is entitled to adapt the prices accordingly. This is not valid if the period between issuance of the contract and the accomplishment of the service is shorter than 3 months.
- 9.2. For provision of additional services, e.g. further training sessions, the hourly wage rate of bakery Pfleger applies. Hence, additional services will be charged separately.
- 9.3. The contracting partner is obliged to pay default interest at an interest rate of 10% if the date of payment is exceeded. In case of delinquency, the purchaser is obliged to pay all the default interest as well as the reminder fees, intervention costs and attorney fees. Warranty claims by the purchaser do not entitle the purchaser to retain agreed payments. In case of a lawsuit, the bakery Pfleger is entitled to levy all expenses for collection, intervention costs, and reminder fees and default interest.
- 9.4. If deferred payment is agreed, the debtor is automatically given a notice of default interest as soon as he is behind on payments for more than 2 weeks.
- 9.5. All the baking-mixtures are packed in standardized 25kg packages.

## 10. Liability / Warranty

- 10.1. The bakery Pfleger extends warranty to consumers according to the ABGB. The warranty will be guaranteed by choice of the bakery Pfleger, either by replacement of the deficient delivery or by reduction of price. The replaced goods have to be sent back to the bakery Pfleger free of charge by request.  
The period of warranty is in all cases 6 months (to companies).  
The warranty will not be extended or interrupted by corrections or attempts of corrections.  
If the deliveries of the contracting goods or/and performance of services are carried out in parts, the period of warranty will only begin with the accomplishment/performance of the corresponding delivery/service.
- 10.2. The bakery Pfleger can only grant a warranty if the contracting partner has met all contracting obligations.  
Any liability or warranty for third parties, such as distributors, is excluded.  
Damages caused by wantonly negligence or negligent treatments are excluded from the warranty.
- 10.3. A particular recall of a company as a result of claim of warranty by a customer (§ 939 b ABGB) is amicably limited to a legal period of warranty according to § 933 ABGB.  
In case the bakery Pfleger performs a correction or replacement, the contracting goods have to be accessible during the common business hours; a failure to do so will be seen as a default of acceptance by the contracting partner.
- 10.4. The bakery Pfleger is not liable for loss of profit of the contracting partner as well as consequential damage.

### **11. Charging / Assignment**

Charging with counterclaim, e.g. claim for compensation and/or restraint of payment by the contracting partner, for whatsoever reason, is excluded.

The bakery Pfleger is in power of netting and restraint charges.

### **12. Privacy**

The bakery Pfleger is entitled to save and use personal data of the contracting partner at their will.

The contracting partner obliges for himself and for all his assistants as well as legal successors to keep all information he acquired in the course of the contract fulfillment strictly confidential adverse third parties.

### **13. Jurisdiction / Place of Fulfillment**

All jurisdictional arguments with the contracting partner, which refer to concluded contracts, validity of those, as well as the validity of the conclusion of contract and effects and after-effects will only be adjudicated at the responsible court in the judicial district of the bakery Pfleger. If agreed upon in writing, the arguments may also be held at the responsible court at the judicial district of the contracting partner.

Place of fulfillment is the bakery Pfleger's place of residence.

### **14. Choice of Law / Severability Clause / Waiver of avoidance**

All contracts between the bakery Pfleger and the contracting partner are exclusively subject to Austrian law.

If contracts become invalid or become/are inexecutable, parts that are not affected by the invalidity remain valid. The invalid terms will be replaced automatically by valid and executable regulations, which fulfill the intended purpose as good as possible.

An application of the United Nations convention on contracts for the international sale of goods is excluded.

The contracting partner waives, within the barriers of cogent law, the right to appeal against concluded contracts claiming that they are not valid or have not been concluded validly.

*Bakery Pfleger  
Represented by Franz Pfleger*