

General Sales and Delivery Terms

1. Scope of validity and general provisions

(1) These General Sales and Delivery Terms (the Terms) apply for all agreements concluded between MOLKEREI AMMERLAND eG and the Buyer as well as all other deliveries and services. They shall likewise be applicable for all future business relationships with the Buyer, even if not expressly agreed upon again.

(2) Upon placement of the order, but at the latest upon receipt of the goods, the Buyer accepts these Terms. Deviating Terms on the part of the Buyer that were not expressly accepted in writing by MOLKEREI AMMERLAND, shall not be binding for MOLKEREI AMMERLAND; this shall also apply, if MOLKEREI AMMERLAND did not expressly object to the applicability of said terms.

2. Offers and contract conclusion

(1) Offers by MOLKEREI AMMERLAND are subject to change and not binding. Orders are only accepted upon written order confirmation by MOLKEREI AMMERLAND. The issuing of an invoice shall equal a written order confirmation to this end.

(2) Delivery promises by MOLKEREI AMMERLAND refer to approximate volumes. MOLKEREI AMMERLAND is entitled to deliver up to 10 % more or less than the contractually agreed amount. Partial deliveries by MOLKEREI AMMERLAND are only admissible, if this excess or short delivery is reasonable for the Buyer.

3. Prices

The prices of MOLKEREI AMMERLAND result from the price list that is valid on the date of delivery. The stated prices include free delivery and exclude VAT in the respective legal rate, unless expressly otherwise agreed upon in individual cases.

4. Payment, payment default, set-off and right of retention

(1) Invoices shall be paid within the term agreed upon. In the event of payment default, MOLKEREI AMMERLAND is entitled to charge default interest 5 % above the base rate by the European Central Bank; in the event of claims for payment towards companies, MOLKEREI AMMERLAND is entitled to charge default interest 8 % above the base rate of the European Central Bank. In any case, MOLKEREI AMMERLAND shall be entitled to claim a higher damage caused by the default upon providing evidence thereof.

(2) Payments only become effective upon receipt on one of the accounts of MOLKEREI AMMERLAND. MOLKEREI AMMERLAND accepts payment orders, cheques and bills of exchange as payments. Payments by bill of exchange have to be separately agreed upon. The Buyer shall bear the discount and bill charges.

(3) Should the Buyer default on a payment obligation, all claims on the part of MOLKEREI AMMERLAND shall fall due for payment immediately. All respites end. For the duration of the default MOLKEREI AMMERLAND is entitled to make the delivery of goods subject to a final payment to the amount of the respective value of the goods. MOLKEREI AMMERLAND is entitled to terminate the further handling of the order and make the continuation subject to whether the Buyer provides security to the amount of the full order value. To this end MOLKEREI AMMERLAND shall set the Buyer an appropriate time limit with the declaration that MOLKEREI AMMERLAND will either refuse to fulfil the performance after expiry of the term and claim damages due to non-performance or withdraw from the contract.

(4) The provisions in paragraph (3) shall also apply, if such an essential deterioration of the Buyer's financial circumstances occurs after conclusion of the contract that the fulfilment of all MOLKEREI AMMERLAND's claims resulting from the entire business relationship is endangered or the Seller gets to know such facts after conclusion of the contract.

(5) The Buyer may only offset claims that have been legally established as final and absolute. The Buyer shall only be entitled to a right of retention, if it is based on the same contractual relationship.

5. Delivery and delivery times

(1) Delivery dates and times shall only be binding, if confirmed in writing by MOLKEREI AMMERLAND.

(2) MOLKEREI AMMERLAND shall not be responsible for consequences (e.g. exceeding delivery dates) that were caused by unforeseeable events outside its sphere of influence. Circumstances of this kind mainly are war, mobilisation, boycott, strikes, fire, difficulties in material procurement or transport (e.g. in the event of raw material or fuel shortages, export and import limitations, disturbance of traffic etc.).

(3) If MOLKEREI AMMERLAND is responsible for exceeding binding delivery dates or terms, the Buyer is only entitled to withdraw from the contract or claim damages due to non-performance after expiry of an appropriate respite.

(4) If the Buyer is responsible for the delivery delay, he shall bear the costs incurred by storage. The Buyer's obligation to pay the purchase price in due time shall remain unaffected thereof. After expiry of an appropriate respite, MOLKEREI AMMERLAND shall be entitled to withdraw from the contract or claim damages due to non-performance.

6. Passing of risk

The risk passes to the Buyer as soon as MOLKEREI AMMERLAND has handed over the goods to the person that performs the transport or the Buyer himself in case of pick-up. This shall also apply if the Buyer does not bear the transport costs by way of exception.

7. Retention of title and assignment of future claims

(1) MOLKEREI AMMERLAND retains the title to the goods until all MOLKEREI AMMERLAND's claims towards the Buyer resulting from the business relationship as well as future claims from contracts concluded at the same time or later have been settled. This shall also apply, if individual or all claims on the part of MOLKEREI AMMERLAND have been included in a current account and the balance has been drawn and accepted.

(2) The Buyer is only entitled to resell the goods that are subject to the retention of title in the ordinary course of business, if he herewith assigns MOLKEREI AMMERLAND all claims resulting from the resale towards Buyers or third parties. If the goods that are subject to a retention of title are disposed of unprocessed or after processing or in connection with items of which the Buyer is the exclusive owner, the Buyer herewith assigns the full amount of the claims resulting from the resale to MOLKEREI AMMERLAND. If the Buyer disposes of goods that are subject to a retention of title – after being processed together with other goods of which MOLKEREI AMMERLAND is not the owner – the Buyer herewith assigns the claims resulting from the resale to the amount of the value of the goods that are subject to a retention of title with all ancillary rights and priority before the rest.

MOLKEREI AMMERLAND accepts the assignment. The Buyer shall remain to be entitled to collect the claims after the assignment has taken place. The authorisation of MOLKEREI AMMERLAND to collect the claims itself shall remain unaffected thereof. However, the Seller undertakes not to collect the claims as long as the Buyer duly fulfils his payments and other obligations. MOLKEREI AMMERLAND may demand from the Buyer the disclosure of the assigned claims and the debtors thereof, all the information necessary for the collection, hand-over of all corresponding documentation and that the debtors are informed of the assignment.

(3) A possible treatment or processing of the goods subject to the retention of title by the Buyer on behalf of MOLKEREI AMMERLAND does not entail any commitment for the latter. If the goods that are subject to a retention right are processed, combined, mixed or mingled with other goods that do not belong to MOLKEREI AMMERLAND, MOLKEREI AMMERLAND is jointly entitled to the new thing in the relation of the value of the goods subject to the retention of title and the remaining goods at the time of being processed, combined, mixed or mingled. If the Buyer acquires the sole ownership of the new thing, the Contract Partners agree that the Buyer grants MOLKEREI AMMERLAND co-ownership of the new thing in relation to the value of the processed, combined, mixed or mingled goods that are subject to a retention title and safekeeps said goods for MOLKEREI AMMERLAND free of charge.

(4) Should a liability be created on the part of MOLKEREI AMMERLAND that is based on a bill of exchange in connection with the payment of the purchase price by the Buyer, the right of retention as well as the claim from the goods delivery it is based on do not expire before the bill is not honoured by the Buyer as drawee.

(5) If the value of the existing securities exceeds the claims that are to be secured by more than 5 %, MOLKEREI AMMERLAND undertakes to provide release in so far upon the Buyer's demand.

8. Notice of defects

(1) The Buyer undertakes to immediately check the goods upon receipt. The respective carrier shall be notified of possible losses and damages and must certify them. The documentation shall be submitted immediately to MOLKEREI AMMERLAND.

(2) Complaints will only be considered by MOLKEREI AMMERLAND, if the Buyer notifies MOLKEREI AMMERLAND thereof in writing immediately, but at the latest within 48 hours after receipt of the goods. For hidden defects, the Buyer shall immediately submit a written complaint, but at the latest within 14 days after discovery of the defect. The receipt of the notification by MOLKEREI AMMERLAND shall be decisive for compliance with the terms.

(3) Notices of defects do not affect the maturity of the purchase price.

(4) Towards companies a warranty for the delivery of used goods shall be excluded, for the delivery of new things the warranty period towards companies shall be limited to one year after hand-over.

9. Limitation on liability

Damage claims against MOLKEREI AMMERLAND, regardless of the legal reason, particularly due to breach of duties resulting from the contractual obligation or tortious acts, shall be excluded. This does not apply as far as a mandatory statutory liability exists, particularly

- in cases of intent and gross negligence,
- in cases of injury of life, body or health,
- due to the granting of a guarantee for the existence of a certain property of the goods,
- in case of breach of essential contractual duties or
- in terms of the product liability law.

The regulations stated above do not involve a change of the onus of proof to the Contract Partner's disadvantage.

10. Place of performance and place of jurisdiction

(1) Place of performance for deliveries is the respective dispatch point, for payments Wiefelstede/ Dringenburg.

(2) Place of jurisdiction for all disputes in connection with contracts that were concluded on the basis of these Terms and the resulting legal consequences, including disputes regarding the validity of these General Sales and Delivery Terms or the valid inclusion thereof into the contract, shall be Oldenburg as long as the Buyer is a merchant who has been entered as such in the commercial register or a legal entity under public law or a special fund under public law. This place of jurisdiction shall also be applicable for all duties resulting from a bill of exchange.

(3) MOLKEREI AMMERLAND is nevertheless entitled to take action at the Buyer's domicile.

11. Applicable law

German law shall be applicable, apart from the regulations of the Viennese UN Convention on Contracts for the International Sale of Goods, the regulations of the Uniform Law on the International Sale of Goods as well as the Uniform Contract of Sale Act.

12. Data processing

MOLKEREI AMMERLAND points out that the Buyers' data are processed electronically within the company (§26 Federal Data Protection Act).

13. Final provisions

(1) Supplements and changes to contracts require written form for their validity. This also applies for changes to the requirement of written form itself.

(2) As far as provisions in these Contract Terms or a contract that is based on these Terms should be or become entirely or partially invalid or impracticable, this shall not affect the validity of the remaining provisions. In such a case the Parties will replace the invalid or impracticable provisions with a provision that is as near as possible to the economic purpose of the invalid or impracticable provision.

(3) These general sales and delivery terms are also available in a German version. In case of doubt, the German version shall prevail.