



Standard Terms and Conditions of Sale and Delivery

Stand November 2016

§ 1 General provisions, scope

- (1) The delivery of goods and performance of services as well as all quotations provided by Göbber GmbH ("Göbber") shall be provided exclusively on the basis of these Standard Terms and Conditions of Sale and Delivery ("T&C"). These T&C shall apply only to contractual partners ("Customers") who are corporate entities, public law entities or funds under public law within the meaning of Section 310 (1) German Civil Code [Bürgerliches Gesetzbuch; "BGB"].
- (2) These T&C shall form an integral part of all contracts entered into by Göbber with its Customers for the deliveries and services offered by it. These T&C shall also apply to all future deliveries, services or offers provided to the Customer without separate new agreement thereof.
- (3) These T&C shall apply exclusively. Any deviating, conflicting or supplementing standard terms and conditions of the Customer shall become an integral part of the contract only if and to the extent that Göbber expressly agrees to their applicability. This requirement of consent by Göbber shall apply in any event, including in cases where, for example, Göbber has unconditionally delivered items to the Customer while being aware of the Customer's standard terms and conditions.
- (4) Göbber points out, and the Customer is aware of the fact, that the products purchased from Göbber must be in conformity with the (food-related) legal requirements of the country into which the goods are to be sold as agreed between Göbber and the Customer, and that the Customer may therefore not be allowed, as the case may be, to resell those products, either directly or indirectly, into other countries. Any resale shall be at the Customer's risk.
- (5) Any reference to statutory requirements shall serve clarification purposes only. To the extent not directly amended or expressly excluded herein, the statutory requirements shall always apply, even without any such clarification.

§ 2 Quotations and conclusion of contract

- (1) All quotations submitted by Göbber are subject to change and non-binding unless they are expressly designated as binding or are subject to a specified acceptance period.
- (2) The Customer may place purchase orders in writing (including by fax or e-mail), electronically (EDI) or by telephone. The Customer's purchase order shall be deemed a binding offer to enter into a contract. Unless provided otherwise in the purchase order, Göbber shall be entitled to accept this offer to enter into a contract within fourteen (14) days of receipt thereof by Göbber.
- (3) Göbber's acceptance may be stated either in writing (including by fax/e-mail), such as in the form of an acknowledgement of order, electronically (EDI) or by delivery of the goods to the Customer. The written acknowledgement of order or, in the event of immediate delivery of the goods to the Customer, the content of the Customer's purchase order shall be authoritative in determining the scope of delivery and the obligation of Göbber to provide the delivery and services, unless the Customer has accepted without changes a binding offer submitted by Göbber.

§ 3 Product quality, samples, guarantees

- (1) Unless expressly agreed otherwise in writing, the quality of the products shall be exclusively as set forth in Göbber's product specifications. The quality and declaration of Göbber's products are, in any case, in conformity with the applicable food legislation.
- (2) The characteristics of samples shall be binding only if they have been expressly agreed as representing the quality of the products.
- (3) Any specifications as to quality and shelf-life and any other information shall be deemed guarantees only if this has been agreed upon and expressly designated as such.

§ 4 Products made to Customer's specifications

- (1) In cases where Göbber customizes products according to the Customer's specifications (such as recipes), the Customer shall warrant that Göbber, by the production or the sale thereof, will not violate any third party rights (including, but not limited to, industrial property rights). The Customer shall, upon first request, indemnify and hold Göbber harmless from and against any and all claims justifiably asserted by third parties in this context against Göbber, and shall, upon first request, indemnify and hold Göbber harmless from and against any costs resulting from the defense against rights asserted by third parties.
- (2) Unless expressly agreed otherwise in writing, Göbber shall be entitled to make products customized according to the Customer's specifications also for third parties and to deliver those products to them.
- (3) In cases where Göbber provides samples of the products customized according to the Customer's specifications, the Customer shall examine those samples without delay for their conformity with its specifications and for their suitability for the intended use. Unless Göbber receives a complaint within two (2) weeks of delivery of the samples, those samples shall be deemed approved and released for production. Göbber shall, however, be entitled to suspend the production of goods ordered until receipt of a written confirmation of release for production.

§ 5 Prices and payment terms

- (1) Prices stated by Göbber and its price lists shall be subject to change unless expressly specified as binding by Göbber in writing. Unless agreed otherwise in

writing, all prices shall be in Euro, free Customer's place of delivery specified in Göbber's acknowledgement of order (including packaging, freight and other transport costs), plus any applicable statutory value-added tax.

- (2) If the prices agreed upon are based on Göbber's list prices, the list prices applicable at the date of the purchase order shall apply.
- (3) Unless agreed otherwise in writing, invoices shall be paid within thirty (30) days from the date of invoice and delivery of the products without any deduction. The date of receipt of payment by Göbber shall be deemed the date of payment. Checks shall be considered payment only after clearance. Payment by bill of exchange is excluded.
- (4) The Customer shall be deemed in default of payment upon expiration of the term of payment. The purchase price shall bear interest during the period of default at the statutory interest rate as applicable from time to time, but no less than nine (9) percentage points above the base rate. Göbber reserves the right to assert further damages on the grounds of default.
- (5) The Customer shall be entitled to set-off or to a right of retention only to the extent that its claim has been finally and conclusively adjudicated or is uncontested.
- (6) Göbber shall be entitled to provide outstanding deliveries or perform outstanding services only against payment in advance or provision of security if after the conclusion of the contract Göbber becomes aware of circumstances that might substantially impair the creditworthiness or solvency of, or performance by, the Customer (e.g., in the event of arrears, poor credit standing according to credit reporting agencies, petition for the institution of insolvency proceedings), which jeopardize the payment by the Customer of Göbber's claims outstanding under the respective contractual relationship (including under other individual orders that are subject to the same master agreement). In addition to this, Göbber shall be entitled in accordance with the law to withhold performance and – after setting a grace period, where applicable – to rescind the contract; statutory provisions regarding the expendability of setting a grace period shall remain unaffected thereby (in particular Section 321 BGB). If this involves contracts for items that are not fungible (custom-made items), Göbber may rescind the contract immediately. If there are doubts regarding the Customer's solvency, Göbber shall further be entitled to revoke any previously granted credit periods and to call due immediately all receivables from the Customer.
- (7) If there are several claims outstanding from the Customer, Göbber shall be entitled to set off any payment received against the oldest of such outstanding claims.

§ 6 Delivery and delivery period

- (1) Deliveries shall be made free Customer's place of delivery (Clause 5 (1)) unless expressly agreed otherwise in writing.
- (2) Göbber shall be entitled to provide and invoice partial services or deliveries unless a homogenous service or item has to be provided under the contract.
- (3) Any time limits and dates for the performance of services or delivery of items announced by Göbber shall always be considered approximate and subject to change unless a fixed date or fixed period has been expressly promised or agreed upon. Contracts where time is of the essence shall not be concluded. In cases where shipment has been agreed upon, delivery periods and delivery dates shall refer to the time of delivery to the forwarding agent, freight carrier or other third party commissioned to carry the goods. Compliance with delivery periods and delivery dates shall be subject to our own proper and timely provisioning.
- (4) Göbber shall not be liable for the impossibility of, or delay in, delivering items or performing services to the extent that such impossibility or delay is caused by force majeure or other events beyond Göbber's control that were not foreseeable at the time of entering into the contract (such as disruptions of operations of any kind; difficulties in procuring material or energy; delays in transportation; strikes, legal lockouts; shortage of labor, energy or raw materials; difficulties in obtaining the required governmental authorizations; governmental actions or omissions; or in cases where Göbber's suppliers fail to make delivery, ship the wrong items or deliver late). If Göbber is unable to observe binding delivery periods for the above mentioned reasons beyond its control, it shall notify the Customer accordingly without delay and, at the same time, communicate the new anticipated delivery period. If the performance is not available even within the new delivery period, Göbber shall be entitled to rescind the contract in whole or in part; any compensation already paid by the Customer shall be reimbursed by Göbber without delay. In the event that the delivery or the service is not reasonably acceptable to the Customer due to the delay, the Customer may rescind the contract by immediate written notice to Göbber.
- (5) The question of whether Göbber is in default of delivery or performance of services shall be determined in accordance with the law. However, a warning notice from the Customer is required in any event. Should Göbber be in default of delivery or performance of services, or if it is unable to make delivery or provide services, regardless of the reason therefor, Göbber's liability shall be limited to damages pursuant to Clauses 10, 11 of these T&C.
- (6) Load carriers (in particular Euro pallets) must be exchanged by the Customer directly at the time of delivery or returned free of charge within fourteen (14) days. Only machine-ready Grade A or B pallets will be accepted. Otherwise, Göbber shall be entitled to charge a handling fee per exchange according to its price list plus costs for each Euro pallet that is not returned or not in the quality grade specified above; this shall apply regardless of the Customer's right to prove to Göbber that much lower or no expenses have been incurred, and regardless of Göbber's right to claim damages exceeding the aforesaid.



§ 7 Retention of title

- (1) Göbber reserves title to the products delivered by it until full payment of all current and future claims Göbber has under each of the contracts and an ongoing business relationship, regardless of the cause in law of such claims (secured claims).
- (2) The products subject to retention of title may neither be pledged to third parties nor transferred by way of security until the secured claims have been fully paid. If third parties access the goods subject to retention of title, in particular by attachment thereof, the Customer shall advise them without delay of Göbber's title to such goods and shall notify Göbber accordingly in writing in order to enable Göbber to enforce its title.
- (3) The Customer must handle the products subject to retention of title with care. The Customer shall have public liability insurance. The Customer now hereby assigns to Göbber any claims it has against its insurer or third parties in the event of damage. Göbber accepts this assignment.
- (4) In the event of breach of contract by the Customer, in particular if the Customer fails to pay the owing purchase price, Göbber shall be entitled to rescind the contract in accordance with the law, and/or to demand the surrender of the products subject to retention of title. A request for surrender shall not automatically be deemed a rescission; Göbber shall rather be entitled to simply demand surrender of those products and reserve the right to rescind the contract. If the Customer fails to pay the purchase price when due, Göbber may assert those rights only after having set a reasonable period for Customer to make payment and that period has lapsed without payment being made, or if such additional period can be dispensed with according to the law.
- (5) The Customer shall be entitled until further notice to resell and/or process the products subject to retention of title in the ordinary course of its business. In that case, the following provisions shall apply in addition:
 - a) The retention of title shall extend to the full value of the products resulting from processing, blending or combination of Göbber's products, and Göbber shall be deemed the manufacturer thereof. Should third parties retain title to their products in the event of processing, blending or combination with those third-party products, Göbber shall acquire co-ownership in proportion to the invoiced values of the processed, blended or combined products. In all other respects, the same rules as those applicable to the products delivered subject to retention of title shall apply to the newly created product.
 - b) The Customer now hereby assigns to Göbber by way of security any claims against third parties resulting from the sale of the items or products and does so for the full amount thereof, or, as applicable, in the amount of Göbber's co-ownership according to the preceding paragraph. Göbber accepts this assignment. The obligations of the Customer stated under (2) above shall also apply with regard to the assigned claims.
 - c) The Customer shall retain its right alongside Göbber to collect the claims. Göbber undertakes that it will not collect those claims for as long as the Customer complies with its payment obligations to Göbber, is not in default in payment, no petition for the institution of insolvency proceedings has been filed, and there are otherwise no shortcomings with regard to the Customer's capacity to perform. If, however, this is the case, Göbber shall be entitled to demand that the Customer provides it with all information regarding the assigned claims and their debtors including information required to collect, and provides Göbber with the necessary documents, and informs the debtors (third parties) of the assignment.
 - d) If the realizable value of the collateral provided (by way of security) exceeds Göbber's claims against the Customer by more than ten percent (10%), Göbber shall upon the Customer's request release items of collateral at Göbber's choice.

§ 8 Customer's obligation to examine the products and its rights in the event of defects; communication in the event of a crisis

- (1) The delivered products must be examined carefully without delay upon their delivery to the Customer or to a third party designated by the Customer. The products shall be deemed approved by the Customer with regard to obvious or other defects that could have been detected upon a prompt careful examination unless Göbber receives a written notice of defects within two (2) weeks of delivery. As far as other defects are concerned, the products shall be deemed approved by the Customer unless Göbber receives a notice of defects within two (2) weeks of the date at which the defect became apparent; if, however, that defect could, under normal use, have been detected earlier by the Customer, then this earlier date shall be the date at which the notice period starts to run. Upon Göbber's request, the rejected products shall be returned to Göbber, carriage paid. If the notice of defect was justified, Göbber shall reimburse the cost of the least expensive shipping method; this shall not apply if those costs are higher because the products are located at a different place than that of its intended use.
- (2) In the event of defects, Göbber shall first be obligated and entitled to either rectify the defect or, at Göbber's discretion, provide replacement within a reasonable period of time.
- (3) The warranty shall not extend to natural changes of the products. Moreover, Göbber shall not be liable for defects that are based on Customer specifications, for example, with regard to the composition of the products, or products made to the Customer's instructions. In addition to this, Göbber shall not be liable for defects, claims or damages sustained by the Customer based on self-labeling or due to modifications or processing of the products insofar as Göbber has not expressly authorized these measures in writing or is responsible for those defects, claims or damages.
- (4) If a defect is based on Göbber's fault, the Customer shall have a claim for damages or, as the case may be, compensation of futile expenses only in accordance with Clauses 9, 10 hereof; all other claims shall be excluded.

- (5) If the Customer is made aware of an incident, a consumer complaint or complaints by regulatory bodies that trigger the justified suspicion that the products delivered by Göbber are unsafe (Art. 14 Regulation 178/2002/EC), the Customer shall notify Göbber accordingly without delay.

The Customer shall not take any measures in response to consumers or the general public or make any promises or give statements to the regulatory authorities (such as product warnings or product recalls) without first having consulted Göbber and having received Göbber's consent, unless there is imminent danger.

§ 9 Liability for damages based on fault

- (1) Göbber's liability for damages and compensation of expenses, regardless of the cause in law, in particular based on impossibility of performance, default, defective or wrong delivery, breach of contract, violation of obligations during contract negotiations, and tort, shall, where the liability is based on fault in each case, be limited in accordance with Clauses 9, 10 of these T&C.
- (2) Göbber shall not be liable for slight negligence of its corporate bodies, legal representatives, employees or any other persons employed by it in the performance of its obligations, provided that this does not involve damages for the violation of an essential contractual obligation (i.e., an obligation whose fulfillment will allow for a proper performance of the contract in the first place, and on whose observance the other party has relied and may rely as a matter of course). In this case, the liability shall, however, be limited to the compensation of foreseeable damages typical of that type of contract.
- (3) The exclusions and limitations of liability set forth above shall equally apply in favor of Göbber's corporate bodies, legal representatives, employees and any other persons employed by Göbber in the performance of its obligations as well as to the companies affiliated with Göbber.
- (4) The limitations set forth in this Clause 9 shall not apply to the liability of Göbber for willful misconduct and gross negligence, deceit, warranted qualities, wrongful death, personal injury or harmful health effects, or any liability under the Product Liability Act.

§ 10 Statute of limitations

- (1) The general limitation period for claims due to defects of quality and in title shall be one (1) year from delivery. In cases where the parties have agreed on an acceptance of the delivered goods, the limitation period shall start to run upon acceptance. Mandatory statutory special provisions regarding the limitation of claims shall apply regardless (in particular Sec. 438 (1) No. 1, No. 2, (3) BGB, Sec. 444, 479 BGB).
- (2) The limitation period pursuant to paragraph 1, 2 of this Clause shall also apply to contractual and extra-contractual claims of the Customer for damages based on a defect of the products, unless the application of the regular statutory limitation period (Sec. 195, 199 BGB) would result in shorter periods in individual cases. Other claims of the Customer shall become statute-barred one (1) year after the start of the statutory limitation period.
- (3) Claims of the Customer for damages based on the violation of essential contractual obligations pursuant to Clause 9 (2) hereof, as well as all claims of the Customer for the reasons stated in Clause 9 (4) hereof shall become statute-barred exclusively in accordance with the statutory provisions on the statute of limitations.

§ 11 Statutory requirements

- (1) Unless agreed otherwise in individual cases, the Customer shall be responsible for the observance of all statutory and regulatory requirements regarding the importation, transportation, storage and use of the products.
- (2) The Customer guarantees that within the scope of the business relationship with Göbber (specifically when using the delivered products and their packaging) it will always act in accordance with all applicable rules of law, in particular those relating to food. Should the Customer violate any such rules of the law, it shall be liable for any direct or indirect damage thereby sustained by Göbber.

§ 12 Miscellaneous

- (1) These T&C and all legal relationships between Göbber and the Customer shall be governed by the laws of the Federal Republic of Germany without regard to the provisions of the UN Sales Convention and conflict of laws provisions.
- (2) The court having venue and subject-matter jurisdiction at Göbber's place of business shall be the competent court to decide on any disputes arising directly or indirectly from the contractual relationship. Göbber shall, however, also be entitled to file action against the Customer at the Customer's general place of jurisdiction. Any mandatory statutory rules on exclusive places of jurisdiction shall not be affected by this provision.
- (3) Should any one or several provisions of these T&C turn out to be ineffective, void or incomplete, the effectiveness of the remaining provisions of these T&C shall not be affected thereby. To replace such ineffective, void or incomplete provision, Göbber and the Customer shall, in order to fill those lacunae, agree upon legally effective provisions that they would have agreed upon considering the economic goal of the contract and the purpose of these T&C had they been aware of the lacuna. If the ineffectiveness or invalidity of a provision is based on a measure of performance or time (period or deadline), the aforesaid provision shall apply *mutatis mutandis* to a legally permitted measure of time or performance in lieu of the ineffective or invalid one.