

## General Terms of Sale, Delivery and Payment Jäckering Mühlen- und Nahrungsmittelwerke GmbH May 2022

Scope of application: Native Wheat Starch, Vital Wheat Gluten (loose and in sacks)

### I. General

1. The following General Terms of Sale, Delivery and Payment – hereinafter referred to as the “Terms of Business” – apply to the delivery of the products Native Wheat Starch and Vital Wheat Gluten (loose and in sacks) – hereinafter referred to as the “products” – of Jäckering Mühlen- und Nahrungsmittelwerke GmbH.
2. Our Terms of Business apply exclusively. We shall not accept any opposing, deviating or supplementary conditions of the customer, unless we explicitly agree to their application.
3. Our Terms of Business also apply if we perform delivery to the customer without reservation in the knowledge of opposing conditions of the customer or conditions of the customer that deviate from our Terms of Business.
4. Our Terms of Business also apply to all future transactions with the customer, without the need for us to refer thereto in each individual case. The version respectively applicable at the time of contractual conclusion shall be decisive. We shall inform the customer about any changes to our Terms of Business.

## **Quality by Competence**

5. Any deviating, individually negotiated agreements including ancillary agreements, supplements or amendments shall take precedence over these Terms of Business. A written contract or our written confirmation shall be decisive for the content of such agreements.

## **II. Contractual conclusion**

1. Our offers are non-binding and subject to alteration and always require confirmation.
2. By ordering the desired products, the customer submits a binding contractual offer.
3. We are permitted to accept the contractual offer in the order within two weeks from receipt of the order by means of transmitting an order confirmation or delivering the ordered products within the same period.
4. Contractual conclusion occurs subject to the reservation that fulfilment is not obstructed by any hindrances due to national or international provisions, in particular export control regulations as well as embargos or other mandatory statutory regulations, official directives or sanctions.
5. Should the customer withdraw from a concluded contract without justification or refuse to accept products provided, we shall demand 20% of the gross sales price for the damages caused by such withdrawal without prejudice to the possibility to assert higher actual damages. The customer is entitled to prove that no damages or only lesser damages were incurred to us due to cancellation of the order or non-acceptance.
6. We shall retain our ownership rights, copyrights and other protective rights to all depictions, calculations, recipes, drawings and other documents provided by ourselves to the customer and its employees. The customer and its employees may only share these with third parties with our written

## **Quality by Competence**

consent, regardless of whether we have marked these as confidential. The same applies accordingly for the sharing of information on our products, which we have made accessible to the customer and its employees. This does not apply to information that (i) is publicly known or becomes publicly known without the fault of the customer, (ii) is provided to the customer by a third party who was not committed to the duty of confidentiality, or (iii) must be disclosed by the customer due to court orders or official directives.

### **III. Prices, payments and creditworthiness**

1. Our prices are stated in euros in addition to the applicable amount of value added tax, including packaging or loose in tankers, unless otherwise agreed. The applicable statutory amount of value added tax on the invoice date shall be stated separately on the invoice at the time of performance.
2. In the event that public taxes are increased or introduced, or transport, material or production costs increase due to statutory regulations or official directives, within four months after contractual conclusion and prior to delivery, we shall reserve the right to adjust prices. The same applies if other circumstances arise, which were not foreseeable for us at the time of agreeing prices and which change our calculations to such an extent that a corresponding increase in the purchase price appears justified.
3. Unless otherwise agreed, invoices are due and payable within seven days of the invoice date without deduction. Due amounts must be settled by means of cashless payment. An early payment discount must be separately agreed in writing to be valid.
4. The customer's inspection and examination of the delivered products shall not affect the maturity of the remuneration.
5. Should the customer enter into default on payment, all other payment claims against the customer may be declared due.

## **Quality by Competence**

6. We reserve the right to assign our current and future claims arising from the business relationship, including securities due to us, to third parties.
7. In the event of non-compliance with the payment conditions, in particular default, for which the customer is responsible, we may declare all outstanding claims due for immediate payment and retain any outstanding deliveries until the customer has provided advance payment or security for all outstanding deliveries. The customer shall only have the right to set-off or retention to the extent that its claim is legally determined or is undisputed. The rights of the customer in the event of defects remain unaffected.

## **IV. Delivery**

1. Our delivery is performed "ex works Hamm" (Incoterms 2020), unless otherwise agreed in writing in individual cases. We shall take into account the wishes of the customer with respect to the mode and route of dispatch; however, we are not obligated to do so without a separate, explicit agreement.

In the event that the dispatch wishes of the customer result in additional costs – including for an agreed carriage-paid delivery – such additional costs shall be borne by the customer.

2. If dispatch is delayed at the request of the customer or for reasons for which the customer is responsible, we shall store the goods at the cost and risk of the customer. In this case, the notification of readiness for dispatch shall be equivalent to dispatch.
3. Delivery periods or deadlines that are not explicitly agreed as fixed deadlines exclusively concern non-binding information. The delivery period stated by us shall only commence once any preliminary questions in relation to the product specification or special requirements of the

## **Quality by Competence**

customer have been resolved with the customer and are agreed in a binding manner.

4. In the event that a delivery delay for which we are responsible is due to a culpable breach of an essential contractual duty, which jeopardises the fulfilment of the contractual purpose, whereby the fault of our representatives or vicarious agents is also attributable to us, we shall be liable in accordance with the statutory regulations with the proviso that the liability for compensation in this case is limited to the foreseeable, typically occurring damage. If no essential contractual duty is breached with the delivery delay, we shall be liable in accordance with this provision only in the event of intent or gross negligence.
5. We are permitted to render partial deliveries or partial performances within the delivery periods/deadlines we indicate insofar as this is not unreasonable for the customer.
6. Should the customer enter default on acceptance, we shall be permitted to demand compensation for the damage incurred and any additional expenses. The same applies if the customer culpably breaches duties of cooperation. Upon occurrence of default on acceptance, the risk of accidental deterioration or accidental loss shall be transferred to the customer.
7. In the case of deliveries by truck and/or wagon, the customer is required to perform unloading without delay. The costs of any delays in unloading caused by the customer shall be charged to the customer from two hours of waiting time with the demurrage respectively charged by the forwarding agent.

## **V. Notice of defects**

1. Our liability for defects is based on the quality of the products set down in the agreement. All specifications that form a component of the individual agreement are deemed to be the agreement on the quality. Insofar as no

## **Quality by Competence**

specifications have been agreed, the existence of a defect shall be assessed in accordance with statutory regulations.

2. The customer is obligated to inspect the delivered goods for obvious defects without delay. Likewise, the customer is obligated to inspect the dispatch documents for compliance with the order data of the goods upon delivery. Complaints with respect to quantities or shortfalls as well as damages must be promptly recorded on the delivery note or bill of lading upon delivery of the products and confirmed by the signature of the driver.

The customer must notify us in writing of obvious defects promptly after receipt of the products and include detailed information on the nature and extent of the defects. The customer must notify us in writing of defects, which only become evident later in the normal course of business, promptly after discovery and include detailed information on the nature and extent of the defects.

Complaints of defects are only permissible prior to processing of the goods and provide entitlement to a free replacement delivery. Further claims are excluded.

3. Our date of receipt shall be decisive for compliance with the complaint deadline.
4. The customer must make defective products available to us for inspection at its premises. In the event of a violation of the duty to inspect and submit a complaint, the products shall be deemed accepted with regard to the defect concerned.
5. Initially at our discretion, we shall grant warranty by subsequent improvement or replacement delivery for defects in the products delivered. In the event of replacement delivery, the customer undertakes to return the defective item. We shall bear the expenses required for the purpose of subsequent fulfilment, in particular transport, carriage, work and material

## **Quality by Competence**

costs, insofar as these are not increased due to the purchased good having been brought to another place than the place of fulfilment contrary to their purpose (Section 439 of the German Civil Code (*Bürgerliches Gesetzbuch* – BGB)). Such an increase shall be borne by the customer.

6. If the defect cannot be rectified within an appropriate period or if the subsequent improvement or replacement delivery is deemed unsuccessful for other reasons, the customer may choose to demand a reduction of the remuneration (price reduction) or withdraw from the contract. Subsequent improvement shall only be deemed unsuccessful if we have been granted sufficient opportunity to provide subsequent improvement or replacement delivery on two occasions, without achieving the desired success, if the subsequent improvement or replacement delivery is impossible, if this is denied or unreasonably delayed by us, if justified doubts exist regarding the prospects of success or if this is unreasonable on other grounds.

In the event of only a minor breach of contract, in particular for only minor defects, however, the customer shall not be entitled to a right of withdrawal.

7. Should the customer choose to withdraw from the contract due to a legal or material defect following unsuccessful subsequent fulfilment, the customer shall also be entitled to a claim to compensation under the requirements of Section VI.
8. The claims due to defects in the products delivered shall lapse within a period of one year after delivery of the goods. If we, our legal representatives, employees or vicarious agents are responsible for gross negligence or intent or if the culpable fault has injured the life, limb or health of a person, the statutory periods shall apply. The statutory limitation periods for cases of delivery regress pursuant to Sections 478 and 479 BGB shall remain unaffected for deliveries within Germany.

## **Quality by Competence**

9. The assumption of guarantees requires a separate written agreement. Liability shall be determined according to the statutory regulations in conjunction with the guarantee agreement.

## **VI. Liability**

We shall be liable without restriction according to the statutory provisions for damages to life, limb and health, which are due to a negligent or wilful breach of duty on our part or by our employees, legal representatives or vicarious agents, as well as for damages covered by liability under the German Product Liability Act (*Produkthaftungsgesetz* – ProdHaftG). For damages due to wilful or grossly negligent breaches of contract as well as malice on our part or by our employees, legal representatives or vicarious agents, we shall be liable in accordance with the statutory provisions.

We shall not be liable in the event of slight negligence on our part or by our employees, legal representatives or vicarious agents, provided that this does not concern a breach of essential contractual duties. Essential contractual duties are obligations to punctually deliver the products, their freedom from legal defects and such material defects, which impair functionality or suitability for use by more than an insignificant extent, as well as duties of advice, protection and care, which are intended to enable the contractual use of the products by the customer or serve the purpose of protecting the life and limb of the customer's personnel or protecting its property against significant damages (cardinal duties). However, we shall only be liable for damages, insofar as such contractual duties are breached whose violation endangers the fulfilment of the contractual purpose (cardinal duties), to the extent that the damages are typically associated with the contract and are foreseeable. Moreover, indirect damages and consequential damages are only subject to compensation if such damages are typically to be expected in the intended use of the products.

Further liability is excluded regardless of the legal nature of the asserted claim; this also applies in particular to tortious claims or claims to

## **Quality by Competence**

compensation of futile expenses instead of performance; this shall not affect our liability in accordance with Section IV Clause 4 of this contract. Insofar as our liability is excluded or limited, this shall also apply to the personal liability of our employees, personnel, staff, representatives and vicarious agents.

### **VII. Reservation of ownership**

1. The reservation of ownership is intended to secure all our respectively existing current and future claims against the customer arising from the supplier relationship for products in existence between us and the customer (including outstanding balances from a current account relationship limited to this supplier relationship). The products delivered by us to the customer shall remain our property until complete payment of all claims. The products and the relevant goods covered by the reservation of ownership under the following conditions are referred to in the following as "reserved goods".
2. The customer shall store the reserved good for us without charge. The customer is permitted to process and sell the reserved good in the normal course of business until the point of enforcement of the reservation of ownership. Pledges and security assignments on the reserved good are not permitted.
3. The purchase price or wage claim of the customer arising from the resale or further processing of the reserved good shall hereby be assigned to us, with all ancillary rights, in advance. In the event that the reserved good is sold by the customer together with other goods not in our ownership, the assignment of the claim or the assignments of the claims shall respectively only apply in the amount of the value of the reserved good in relation to the value of the other goods. Insofar as the reserved good is processed with items not in our ownership, we shall acquire co-ownership of the new item in the ratio of the value of the reserved good to the value of the other processed items.

## **Quality by Competence**

The same applies if the reserved good is mixed with other items that do not belong to us.

4. The customer is only permitted to the resale or processing of the goods delivered by us in the normal course of business and subject to the condition that the purchase price or wage claim arising from the resale pursuant to Paragraph 2 is transferred to us. Should the customer enter into default on the fulfilment of its payment obligations, it may only dispose over the not yet fully paid reserved goods with our separate consent.
5. The customer is authorised to collect the receivables from the resale or processing despite the assignment. Our authorisation to collect remains unaffected by the authorisation of the customer to collect. However, we shall not collect the receivable ourselves for as long as the customer meets its payment obligations. The customer is obligated to disclose the assignment to the third party at our request and to provide us with the necessary documents for asserting our rights with respect to the third party.
6. Our reservation of ownership is conditional in such a way that the ownership of the reserved good delivered by us is automatically transferred to the customer upon complete payment of all our receivables arising from the business relationship and the customer is entitled to the assigned receivables. We undertake at our option to release the securities to which we are entitled under the above provisions to the extent that their value exceeds the receivables to be secured by more than 10%, provided that a release of the securities is to be effected for such deliveries or their substitute values which are themselves fully paid.
7. In the event of the resale of the goods we have delivered subject to the reservation of ownership, the customer is on its part obligated to agree a reservation of ownership with its customer such that our ownership remains unchanged.

## **Quality by Competence**

8. The customer undertakes to sufficiently insure the reserved good against elemental damages, in particular fire, water, storm, hail and water pipe damage and theft, and to provide evidence of the conclusion of such insurance at our request. The reserved good must be stored and marked such that the reservation of ownership remains effective.
9. Should third parties access the reserved good, in particular by way of seizure, the customer shall be obliged to inform the third party of our ownership without delay and to notify us in order to enable us to assert our property rights. Insofar as the third parties are unable to reimburse us for the judicial or extrajudicial costs that arise in this connection, the customer shall be liable for such costs.
10. In the event that we withdraw from the contract due to a violation of the contract by the customer (enforcement event), in particular payment default, we shall be entitled to demand the return of the reserved good.

## **VIII. Force majeure**

In case of force majeure, i.e. an unforeseeable, severe event such as war, acts of terrorism, unrest, epidemics, pandemics or labour disputes, which lies outside of the sphere of influence of a contractual party and which impairs a contractual party wholly or partially in the fulfilment of its obligations, including fire damages, flooding, strikes or operating disruptions without fault or official instructions and lawful lock-outs, and which prevents a contractual party from complying with its contractual obligations, the affected party must inform the other party without delay about the occurrence or discontinuation of the event of force majeure. The affected party will make every effort to eliminate the event of force majeure and to mitigate its consequences. The contractual parties undertake to adjust the contract to the altered circumstances in good faith. The contractual parties are released from their obligations from the purchase agreement for the duration and to the extent of the direct and indirect effects and also do not owe any compensation in this respect. Moreover,

## **Quality by Competence**

each contractual party may withdraw from the contract if it is foreseeable that a contractually agreed time of fulfilment will be exceeded by more than 12 weeks. The above provisions on force majeure also apply to us if the event of force majeure occurs at our supplier or its upstream suppliers and we are thus unable to perform delivery.

We shall not be responsible for delivery and performance delays due to force majeure, labour disputes, unrest, official measures and other unforeseeable, unavoidable and severe events (e.g. material shortages, shortages of fuel, transport difficulties, difficulties in the supply of energy) – even if these events occur at our suppliers or their upstream suppliers – including in the case of bindingly agreed deadlines and periods. They permit us to postpone delivery or performance by the duration of the impediment plus an appropriate start-up time. We may only invoke the above circumstances if we notify the customer of such impediments without delay. The statutory rights of withdrawal are not excluded by these provisions.

The impossibility of delivery or delay in delivery due to the coronavirus (SARS-CoV-2) shall not result in a claim to compensation in any form.

## **IX. Legal venue, place of fulfilment and applicable law**

If the customer is a merchant, legal entity under public law or a special fund under public law, the exclusive legal venue for all disputes arising from this contract is our registered address in Hamm, North Rhine-Westphalia.

The same applies if the customer does not have a general legal venue in Germany or if their place of domicile or habitual residence is unknown at the time the action is filed. However, we are permitted to also take legal action against the customer at its domicile and/or registered address. In the event of legal action outside Germany, the customer shall bear the costs necessarily incurred due to legal defence or prosecution in the event of its

## **Quality by Competence**

defeat, in particular court costs, lawyer costs, expert costs, travel costs and expenses.

Unless otherwise specified in the order confirmation, our registered address is the place of fulfilment.