

# General Terms and Conditions of Purchase (for deliveries inside Germany)



## 1. General

1.1 All our orders and contracts are subject exclusively to these General Terms and Conditions of Purchase. Differing, opposing or additional General Terms and Conditions of Business belonging to the seller are not a part of this contract, even with knowledge thereof, unless their validity is explicitly agreed to in writing. This also applies if any conditions to the contrary are attached to or named in the seller's quotation or order confirmation. The unquestioned acceptance of a delivery by us does not represent acceptance of the seller's conditions, even with knowledge of any opposing conditions or conditions which are different from our terms and conditions of purchase.

1.2 Quotations are to be provided in writing and at no charge to us.

1.3 Orders are only binding if they are granted in writing from our management. This also applies for extensions and modifications. We can refuse acceptance and payment of deliveries which do not take place in accordance with proper written orders. Should there be any ambiguity in our order, then this must be clarified by the seller in writing.

1.4 We may object to fulfilment of services owed to us carried out by third parties.

## 2. Delivery, Default in Delivery, Default in Acceptance

2.1 Agreed delivery periods and deadlines are considered to be binding and must be adhered to unconditionally.

2.2 Calendar-based delivery deadlines are fixed deadlines insofar as this is agreed separately; a default in delivery is considered to have occurred in this case directly after the agreed delivery day has been missed without reminder.

2.3 In the case of a default in delivery by the seller, we are entitled to request 0.3% of the contract total per working day of default as compensation, however altogether no more than 5%. The seller is however permitted to provide evidence that no damage at all has been incurred by the purchaser due to the default or that the damage claimed is considerably less. Further claims to compensation due to a delay in a service or payment of an agreed contractual penalty are not affected by this provision. Instead of the service, we can withdraw from the contract and request compensation for our unsuccessful efforts, within the provisions of the law.

2.4 As soon as the seller anticipates that he may not be able to adhere to agreed delivery periods or deadlines, then he must immediately make this known in writing, stipulating the reasons and expected duration of the delay. This notification does not however release the seller from his obligations in accordance with the above Figures 2.1 and 2.2. Insofar as we have agreed explicitly and in writing to a specified extension to the agreed delivery periods and deadlines, then the newly agreed periods and deadlines, for which all provisions of this Figure 2 apply, take the place of the originally agreed delivery periods and deadlines.

2.5 A default in acceptance implies that, having set a reasonable time period, the seller formally requests acceptance by us of the object of delivery. If we are hindered in accepting the delivery due to force majeure or due to circumstances which we cannot avoid despite reasonable care (e.g. industrial action, malfunctions), then we can refuse acceptance or request delivery at a later date without this leading to claims for the seller against us.

2.6 The Lactoland Trockenmilchwerk GmbH safety and conduct provisions which are appropriately made known to the seller and his agents upon entering the purchaser's premises are to be observed and respected.

2.7 Should these safety and conduct provisions be disregarded, then the lorry drivers, suppliers and any persons responsible are liable.

2.8 Should deliveries take place before the date given to us, then we reserve the right to return the goods or to invoice the seller for costs arising from temporary storage and to change the dates of the invoices accordingly. The seller bears the transportation risks in all cases. The risk of accidental loss only passes to us when we have explicitly confirmed takeover of the delivered goods in writing.

## 3. Condition of the Object of Delivery

The condition of the object of delivery is agreed as the following: all deliveries and part deliveries are to be delivered in the same quality and composition as the tests (samples) and/or specification previously presented by the seller and tested and accepted by us.

## 4. Guarantee, Rights in the event of Defects

4.1 We are entitled to statutory warranty claims, in full. The purchaser is entitled to choose between correcting the fault or remanufacture in all cases. Improvement work is considered to have failed after the first unsuccessful attempt. The seller is obligated to bear all expenditure necessary for the purposes of fault correction or replacement delivery.

4.2 § 377 Paragraph 1 to 4 of the German Commercial Code (Handelsgesetzbuch) (immediate examination and notification obligation) applies, providing that we are obligated to examine the object of delivery for obvious defects within a period of two weeks of delivery (insofar as this is feasible within our course of business) and to inform the seller of any visible defects within one week of discovery. Should a defect only become evident later, then we are obligated to inform the seller within one week of its discovery. The above provisions remain unaffected.

4.3 The seller guarantees that the goods delivered by him correspond to the German legal provisions as regards content, packaging and declaration.

4.4 Should the seller not fulfil the obligations accepted with contract confirmation or not fulfil them fully, then we are entitled, within the provisions of the law, to withdraw from the contract and to request compensation.

4.5 By way of derogation from § 438 Paragraph 1 No. 3 of the German Civil Code (Bürgerliches Gesetzbuch), the general limitation period for claims for defects amounts to three years from transfer of risk. Insofar as acceptance is required, the statute of limitations begins with acceptance.

4.6 In the case of machine deliveries, the seller guarantees in particular that the delivered items correspond to the German law on technical equipment, the technical regulations (e.g. German Accident Prevention Provisions) and all other relevant provisions. The seller furthermore guarantees that the German legal provisions will be respected during delivery and assembly. The seller must have the goods to be delivered approved by a recognised testing authority (TÜV or equivalent testing institute) before delivery and must attach the test certificate to the contract confirmation. All parts which are required for faultless function of the unit but which are not included in the quotation or delivery, are delivered and installed for us without additional cost.

## 5. Seller's Liability

The seller is liable for the faults of his legal representatives, agents and aides in accordance with the legal provisions, in particular in cases of slight negligence.

## 6. Transfer of Ownership

6.1 The ownership of the delivered objects passes to us according to the agreement made, but at the latest upon delivery. Insofar as the seller has included in his conditions an agreement on title retention, the ownership passes to us as soon as we have paid the purchase price for the delivered goods. We hereby explicitly object to any enhancement or extension of the title retention.

6.2 An assignment of the seller's purchase price claim against us to third parties is only effective with our explicit consent.

## 7. Violation of Property Rights

7.1 The seller guarantees that the goods delivered by him do not violate any domestic or foreign property rights of any nature. The seller bears the responsibility for any damage which may arise from such a violation.

7.2 If a third party claims against us for this reason, then the supplier is obligated to exempt us from these claims at first written request, insofar as he is responsible for the violation of the property rights.

## 8. Payment Conditions

8.1 The price given in the order is binding. In the absence of a differing, written agreement, the price includes delivery DDP to the recipient plant (Incoterms 2010), including packaging.

8.2 Insofar as not explicitly agreed otherwise with the seller in writing, payment takes place, at our choice, either 14 days after receipt of invoice and goods with a 3% discount, or within 60 days of receipt of invoice and goods, net and in full.

8.3 Due to EDP technical reasons, invoices can only be processed and paid by us if they include the order number given in our order exactly; the seller is responsible for any consequences resulting from non-compliance with this obligation.

## 9. Offsetting and Assignment

9.1 The seller is only entitled to offset with claims which are undisputed, determined by law, or disputed but ready for judgement.

9.2 The assignment of claims against Lactoland Trockenmilchwerk GmbH is only effective with our written agreement.

## 10. Product Liability

10.1 Insofar as the seller is responsible for product damage, he is obligated to exempt us from damage compensation claims from third parties at first request, insofar as the cause lies within his domain and organisation and he is himself liable as regards third parties.

10.2 In this context, the seller is also obligated to refund any expenditure in accordance with §§ 683 and 670 of the German Civil Code, resulting from or in connection with a claim by a third party, including a recall carried out by us.

## 11. Liability of Lactoland Trockenmilchwerk GmbH and the Krüger Group

Lactoland Trockenmilchwerk GmbH belongs to the Krüger Group. The Krüger Group and therefore also Lactoland Trockenmilchwerk GmbH is only liable for compensation – for whatever legal cause – insofar as the violation of duty is caused by intent and gross negligence. In the event of slight negligence, we are furthermore only liable for damage arising from loss of life, bodily injury or damage to health, as well as for damage resulting from a violation of a fundamental contractual obligation (obligations whose fulfilment makes possible due and proper execution of the contract in the first place and on the adherence to which the contractual partner can and does consistently rely) – in the latter case, our liability is however limited to compensation of foreseeable, typically arising damage.

## 12. Other Agreements

12.1 The insurance for the shipments is only paid by us if it is explicitly stipulated by us upon issuing of the contract.

12.2 Insofar as it is claimed back corresponding to the agreements, the packaging is to be noted as returnable packaging on the invoice. Despite this, should the seller invoice the packaging which is made available by way of a loan, then this packaging is to be treated as returnable packaging and sent back freight paid.

12.3 The seller is obligated to stipulate our order number on all shipment papers and delivery notes.

12.4 All drawings and documents, which are ceded to the contractor for the manufacture of the goods or which have been created by him according to our information, are our property and may not be used for other purposes or made accessible to third parties.

## 13. Data protection

13.1 The Seller provides approval to us collecting, processing and using data derived from the contract or the execution of the contract.

13.2 We shall ensure that the Seller's data is treated confidentially in accordance with the applicable data protection regulations.

13.3 The Seller is obliged, when sharing personal data of its employees – with Lactoland, to inform said employees prior to the exchange of such information. This is in line with the valid data protection regulation. Lactoland have no obligation to the employee/s.

## 14. Place of performance, place of jurisdiction and applicable law

14.1 The place of performance for all deliveries and other performances by the Seller shall be the destination point specified by the Purchaser.

14.2 If the Seller is a merchant within the meaning of the HGB [German Commercial Code], a legal person under public law or a separate fund constituted as a public-law entity, the exclusive place of jurisdiction for all disputes arising out of the contractual relationship with the Seller shall be our registered office. The same applies if the Seller has no general place of jurisdiction in Germany. We are, however, also entitled to institute proceedings at the place of performance of the delivery obligation.

14.3 The law of the Federal Republic of Germany shall apply to all legal relations between us and the Seller. The provision of the UN Convention on Contracts for the International Sale of Goods shall not apply.

## 15. Fighting terrorism

Lactoland Trockenmilchwerk GmbH shall execute the directive against Osama bin Laden, Al-Qaida and the Taliban ((EU) Directive no. 881/2002 with amendments) and against other persons and organisations suspected of terrorist activities (Directive no. 2580/2001 with amendments) with respect to the checking of name lists.

## 16. Severability clause

If individual provisions of the contract with the contractor, including these conditions of purchase, are legally invalid in whole or in part, the validity of the remaining provisions shall remain unaffected. The provisions that are invalid in whole or in part shall be replaced by provisions that emulate the commercial purpose of the invalid provisions as closely as possible.