

General Terms and Conditions of FELIX KOCH OFFENBACH Couleur und Karamel GmbH

1 Applicability

FELIX KOCH OFFENBACH Couleur und Karamel GmbH (hereinafter referred to as FKO) exclusively acts on the basis of the following General Terms and Conditions. These contract terms shall also apply to follow-up orders. The inclusion of the General Sales Conditions of the contract partner is expressly rejected. The General Terms and Conditions of FKO shall also apply even if FKO performs the supply of goods to the customer without reservation whilst being aware of deviating or conflicting conditions.

2 Offers

All offers made by FKO are without obligation and subject to prior sale unless they are expressly characterised as binding, or if they include a defined period of acceptance. FKO can accept orders or contracts within 14 days upon receipt.

3 Place of performance, transportation, insurance

1) All supplies are ex works or ex relevant stock in Germany unless otherwise separately agreed. The transportation costs including the costs for insurance for the appropriate means of transportation normally used by the supplier are borne by the customer.

The customer has the right to choose a means of transportation other than the one proposed by the supplier against payment of the additional costs.

2) The shipment shall be effected in the type of packaging ordered by the customer.

3) At the customer's discretion FKO shall provide transport insurance coverage for the supply; the arising costs are borne by the customer.

4 Delivery

1) The correct and timely delivery to us by our suppliers remains reserved. This shall also apply if neither FKO nor the supplier are at fault, or if FKO is not obliged to ensure the procurement in the individual case.

FKO is exempted from the obligation to deliver without compensation if FKO is permanently prevented from meeting the obligation by governmental measures taken at the goods' place of origin or by supranational organisations, acts of war or natural disasters.

2) In the event of lawful strikes and lockouts, if an independent supplier is affected, also in the event of such unlawful labour disputes, a period of delivery shall extend by the duration the business was interrupted resulting from each of these events.

3) In case of later contract amendments which can influence the period of delivery, the latter shall extend accordingly unless special agreements have been achieved in this respect.

4) If the customer fails to meet the obligation to co-operate in due time, the period of delivery shall also extend accordingly.

5) FKO is entitled to perform partial deliveries. The supply of additional quantities of up to 10% of the agreed quantity is permitted.

5 Price, payment, default and confirmation of arrival of goods (entry certificate)

1) All prices are subject to payment of the statutory value added tax at the rate valid for the period of performance.

2) The purchase price shall immediately become due upon delivery without deduction unless otherwise especially agreed for the individual order.

3) In so far as timely graduated deliveries are included in the contract, the purchase price shall become due upon each partial delivery.

4) The customer shall engage to pay related interest in the amount of 9% above the basic interest rate pursuant to section 247 BGB (Bürgerliches Gesetzbuch - German Civil Code), in case of payment default FKO reserves the right to assert a further claim for damages due to delay. FKO is entitled to exert a due right of retention also in case of payment default of the customer with regard to previous deliveries.

5) The customer shall be entitled to set-off or retention rights only in so far as this claim is of legal force or undisputed. In the event of defects in the delivery the counter claims of the customer remain unaffected, in particular pursuant to section 6 para. 3 sentence 2 of these GTC.

6) Should it become apparent after the conclusion of the contract that FKO's claim for payment is jeopardised by the customer's inability to perform, FKO can generally, at their discretion, after an adequate time period has elapsed, demand security by payment against concurrent delivery. If the time period has elapsed without achieving the desired success, FKO can rescind the contract.

7) The customer who receives the goods outside the boundaries of the Federal Republic of Germany but within the EC shall send a written confirmation without delay to FKO signed by an authorised representative stating that the object of delivery has arrived in another country of the Community. This confirmation shall state the quantity of the object of delivery and its commercial designation, the place and month of receipt of the object elsewhere in the Community, and the date of issue of the confirmation.

6 Warranty

1) The quality and condition of the goods supplied shall be governed by the specification and description of the object of delivery provided by FKO with the offer or confirmation note. The contract parties agree that the goods are free of defects if they meet the conditions given in the specification. The delivery of reduced quantities of up to 10% of the contractually agreed quantity does not represent a defect.

2) The customer immediately and thoroughly inspects the goods received for defects prior to their processing and, when they occur, instantly notifies FKO of visible defects.

Hidden defects shall instantly be notified to FKO as soon as they are detected.

3) In case the delivered goods are defective, the customer can initially demand to remedy or replace them solely as subsequent performance. The deadline set for subsequent performance shall consider the time period FKO requires to re-procure the goods from the same country of origin the defective goods originate from.

4) The expenses incurred for the examination and subsequent performance, in particular the costs for transportation, travel and material (except: disassembly and installation costs) shall be borne by FKO provided a defect actually exists. However, if the demand to remove a defect raised by the purchaser appears to be unjustified, FKO can claim the reimbursement of the costs incurred in this from the purchaser.

5) In urgent cases, for instance, if the operational safety is put at risk or to avoid disproportionate high damages, the purchaser is entitled to remove the defect itself and to demand from FKO the reimbursement of expenses objectively necessary for this. FKO shall instantly be informed if such self-remedy is taken, if possible in advance. The right of self-remedy does not apply if FKO were entitled to refuse such subsequent performance in accordance with the statutory provisions.

6) FKO is entitled to make the subsequent performance due dependent on the purchaser paying the purchase price due. The purchaser, however, is entitled to retain a part of the purchase price appropriate in proportion to the defect.

7) If the subsequent performance has failed or if an adequate time period to be set by the purchaser for the subsequent performance has elapsed without achieving the desired result or has become irrelevant in accordance with the statutory provisions, the customer can, at its discretion, rescind the contract, demand the reduction of the consideration, or claim damages as provided for by statutory regulations observing the regulations in section 7 of these GTC. However, if the defect is of minor importance the right of rescission shall not apply.

8) The assignment or pledge of warranty claims without transfer of title of the goods to third parties is excluded.

9) The customer is obliged to inform FKO immediately in full if it is faced with warranty claims asserted by its customer.

7 Liability

1) FKO shall not be liable for slight negligence, including slight negligence of their executives and all agents in so far as obligations are not concerned which are indispensable for the achievement of the purpose of the agreement or on the fulfilment of which the customer could rely.

2) As a matter of principle, FKO shall not be liable for damages which are not typical for the contract, unforeseeable or controllable by the contract partner unless the customer can in particular rely specifically on their avoidance.

In particular, FKO shall not be liable for damages caused by undue operation or lack of monitoring of the customer's systems used to process the contractual products.

3) All limitations of liability shall also apply to the liability arising from fault when entering into the contract, other breaches of duty, or on account of claims in tort to replace material damages pursuant to section 823 BGB. In addition, FKO shall not be liable for consequential damages due to a defect for which liability for other breach of duty applies, unless the other contract party could rely on the due performance of a duty based on a special relationship of confidentiality, or if obligations are concerned which are of the essence.

4) The limitations of liability shall not apply for damages arising from injury to life, body or health if FKO is liable for the breach of duty.

5) The limitations of liability resulting from section 7 point 1) to 3) shall not apply if FKO has fraudulently withheld a defect or assumed a guaranty for the condition of the goods. The same shall apply for customer claims according to the German Product Liability Act.

6) Our products are manufactured and traded in accordance with EU law. Buyers outside the EU have to check for themselves the legal conditions with regards to the use/application in the country of destination outside the EU. FKO shall not assume any liability in this respect. Not all of our suppliers, store keeper and forwarding agents are IFS certified. In cases where such certification is missing, our suppliers, store keeper and forwarding agents confirm compliance with IFS requirements in writing. FKO conducts spot checks to verify the compliance with IFS requirements in audits held at the premises of suppliers, store keeper and forwarding agents.

8 Retention of title

1) The ownership of the goods delivered shall remain with FKO until payment in full has been received for all debts arising from this business relation. The retention of title shall also apply to a possibly used current account relationship and also with regard to balance claims.

2) The customer is entitled to sell or process the conditional goods in the ordinary course of business; a pledge or transfer of the goods as a guaranty is not permitted. This authorisation shall not apply if the goods are resold to customers who have excluded the assignment of payment claims raised against them, or who have in any case limited it with regard to the share of the performance received from FKO.

3) The customer shall already now assign to FKO the receivables from reselling the conditional goods or the receivables arising from whatever legal ground (e.g. section 950 BGB). FKO accepts the assignment. Notwithstanding the assignment and FKO's right of collection, the customer shall be entitled to collect the debts as long as it meets its obligations towards FKO and shall not be in payment default, is not subject to the institution of insolvency proceedings, does not become insolvent, or if it becomes apparent after entering into the contract that FKO's payment entitlement is endangered by the customer's inability to perform.

The customer shall inform FKO of the information required for the collection of the assigned debts on demand and notify its customer of the assignment. The assignment of the customer's purchase price claim towards its customer to third parties is excluded up to the amount of the debt

owing to FKO. FKO is entitled to demand the delivery of the unpaid goods as soon as the payment default arises.

4) The processing or transformation of the object of delivery by the customer shall always be made on behalf of FKO as the producer. If the object of delivery is processed together with other objects not owned by FKO, FKO shall acquire joint ownership in the new object in proportion of the value of their goods to the proportion of the value of the goods of other suppliers. If the mixing or processing of the goods is made in such a way as to consider the customer's object and the object of the customer's buyer as the main object, it shall be deemed as agreed that the customer assigns the joint ownership in the new object pro rata to FKO. The customer or the customer's buyer shall preserve FKO's property.

5) Points 1) to 3) shall apply accordingly for the objects newly created by processing, mixing or transformation.

6) Should a bill of exchange liability of FKO be established in connection with the payment of the purchase price by the customer, then the retention of title as well as the underlying receivable from the delivery of goods shall not expire before the customer honours the bill of exchange as drawee.

9 Limitation

1) By way of derogation from section 438 para. 1 no. 3 BGB, the general limitation period for claims arising from defects in goods or title shall be one year from delivery. In so far as acceptance is agreed, the limitation period shall commence with the acceptance.

2) Any special statutory regulations for real return rights of third parties (section 438 para. 1 no. 1 BGB), fraudulent intent of the seller (section 438 para. 3 BGB) and for recourse claims in case of final delivery to a consumer (section 479 BGB) shall remain unaffected.

3) The above limitation periods shall also apply for contractual and non-contractual claims of the purchaser for damages that arise from a defect in the goods, unless the application of the regular statutory limitation period (sections 195 and 199 BGB) would result in a shorter limitation period in the individual case. The limitation periods of the German Product Liability Act remain unaffected in any case. Otherwise, the statutory limitation periods shall exclusively apply for claims of the purchaser for damages pursuant to section 7 para. 4 and 5).

10 Guaranty - Intellectual property rights

The customer ensures by way of an independent guaranty that it is the exclusive rights holder in the designs and specifications passed to FKO for the purpose of manufacture of products. If patent rights, copyrights or trade mark rights shall be asserted by third parties against FKO in this respect, the customer shall hold FKO free from any such costs and claims.

11 Choice of law, legal venue

1) This contractual relationship shall be governed by the law of the Federal Republic of Germany.

2) Place of performance for all obligations under this contractual relationship shall be the registered office of FKO. The court competent for the registered office of FKO shall have exclusive jurisdiction over all disputes rising out of the contractual relationship, and, at FKO's discretion, also the customer's court.

3) All agreements of the parties on the contractual relationship including the amendment of this clause require the written form.

12 Data processing

The customer takes notice that FKO stores information gathered from this contractual relationship in accordance with section 25 BDSG (Bundesdatenschutzgesetz – German Federal Data Protection Act) and reserves the right to transmit the information to third parties (suppliers, insurance companies, protection providers, transporters) in so far as this is required for the fulfilment of the contract.

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