



# GENERAL TERMS AND CONDITIONS OF SALE & DELIVERY

- 1 Scope**
- 1.1 These Terms and Conditions apply to any sale and delivery of Products and/or Services provided by the Seller. The Purchaser's general terms and conditions of purchase or other standard terms shall not apply in relation to the Seller's sale and delivery of Products to the Purchaser, regardless of whether the Purchaser has referred to such terms or conditions in the Purchaser's order or elsewhere.
- 2 Definitions**
- 2.1 Unless otherwise defined herein or the context otherwise requires, capitalised terms used herein shall have the meanings set forth below:
- "Business Day"*  
means a day (other than Saturday or Sunday) on which banks are open for business in Denmark;
- "Party"*  
means either the Seller or the Purchaser;
- "Product"*  
means a product of the Seller which is the subject of an order placed by the Purchaser with the Seller;
- "Purchase Price"*  
means the purchase price for the Products stated in the relevant order confirmation provided by the Seller;
- "Purchaser"*  
means the contracting party who has placed an order with the Seller;
- "Seller"*  
means Kohberg Bakery Group A/S;
- "Services"*  
means any services related to the Product or other services provided by the Seller;
- "Terms and Conditions"*  
means these terms and conditions of sale and delivery including any exhibits and schedules.
- 2.2 In these Terms and Conditions, unless the context otherwise requires, words denoting the singular number include the plural and vice versa.
- 3 Order and Order Confirmation**
- 3.1 All orders placed by the Purchaser with the Seller must be in writing and shall at the minimum specify the type (product name), price and quantity of the Products ordered. Unless otherwise specified in the order, the Purchaser's order shall remain binding upon the Purchaser for a period of twenty one (21) Business Days from the Seller's receipt of the order.
- 3.2 The Purchaser's orders are not binding upon the Seller unless and until the Seller has issued a written order confirmation to the Purchaser. The Purchaser is obliged to react immediately in writing, if the Seller forward an order confirmation not corresponding with the Purchaser's order. If not, the order confirmation is valid and binding.
- 4 Order Modification**
- 4.1 When the Purchaser has placed an order with the Seller, no modifications can be made to the Purchaser's order without the Seller's prior written approval.
- 5 Product Information**
- 5.1 All information and other details in the Seller's catalogues, advertisements, sales or promotional literature, pricelists or elsewhere are not legally binding and shall be considered for guidance only.
- 5.2 The Seller makes no representation or warranty as to the strict similarity or conformity of product samples to the Products.
- 6 Delivery**
- 6.1 *Delivery Terms*
- 6.1.1 Unless otherwise agreed in writing between the Parties, the Seller shall deliver the Products to the Purchaser EXW Haderslev, Denmark in accordance with Incoterms 2020.
- 6.1.2 The delivery date(s) are indicated in the Seller's order confirmation. The stipulated delivery date(s) are for guidance only and the time of delivery shall not be of the essence. A delay in delivery, other than as a result of gross negligence or wilful misconduct on the part of the Seller, does not entitle the Purchaser to any remedies.
- 6.1.3 If no specific delivery date has been indicated in the Seller's order confirmation, the Seller, acting reasonably, is entitled to stipulate a delivery date taking into consideration the quantity and the nature of the Products to be delivered.
- 6.2 *Acceptance of the Products*
- 6.2.1 The Purchaser must inspect the Products delivered upon receipt. The Purchaser is deemed to have accepted the Products delivered unless written notice of rejection specifying the reasons for rejection is given to the Seller within five (5) Business Days after delivery of the Products.
- 6.3 *Delay due to the Purchaser's Circumstances*
- 6.3.1 If the Purchaser is unable to or becomes aware of circumstances that will make the

Purchaser unable to receive the Products, the Purchaser shall inform the Seller before the date of shipment of order from DK-6100 Haderslev and inform a new date of delivery not exceeding 14 days from first confirmed date of delivery.

6.3.1.1 The Seller shall be entitled to issue the relevant invoice and claim payment in accordance therewith, as if delivery had taken place on the delivery date stipulated in accordance with Clause 7.1.2 or 7.1.3. Such stipulated date of delivery shall be considered the date of delivery for the purpose of the agreed delivery terms, in particular with respect to the passing of risk.

6.3.1.2 To the extent the Seller undertakes to make arrangements for storage of the Products, the Purchaser agrees to pay all storage costs, additional handling and transportation costs and any other related costs. The Seller is under no obligation to take care of or store the Products in the event of delayed delivery due to the Purchaser's circumstances.

6.3.1.3 The Seller is entitled to request that the Purchaser accepts delivery of the Products within a specified period of time. If the Purchaser does not accept delivery of the Products within this period of time, the Seller is entitled to cancel the order and to sell the Products to a third party. The Purchaser shall indemnify any costs incurred by the Seller related hereto, including costs incurred under Clause 6.3.1.2.

## **7 Labelling and Packaging**

### *7.1 Labelling and Packaging*

7.1.1 The Seller's standard packaging and labelling is included in the Purchase Price. Non-standard packaging and labelling will be in addition to the Purchase Price, see also Clause 7.2.1.

7.1.2 The Purchaser shall not alter, remove or obliterate the labelling or packaging in which the Seller supplies the Products or any of the Seller's warnings, markings, notices or means of identification which are part of, or affixed to, the Products or the packaging of any of the Products.

### *7.2 Repro and Cliché costs*

7.2.1 In case the Purchaser wishes to have a special packaging for the Products, the Purchaser shall deliver the artwork for this in a high resolution and cover the cliché costs and the repro costs, which will be invoiced separately to the Purchaser. Cliché costs mean the costs relating to the development of production tools used to make the actual print/stamp on the Products. Repro costs mean the costs relating to the preliminary work that provides the basis for the production of the Cliché.

7.2.2 Unless otherwise agreed the Seller shall keep stock of Purchaser's special packaging or raw

material corresponding three (3) months average purchase.

7.2.3 Any unused, no matter the reason, packaging, raw materials or customized goods shall be for the Purchaser's risk and account. Thus the Purchaser shall in any respect hold the Seller harmless for any costs related to such unused Packaging, raw materials or Products. Upon request from the Seller, the Purchaser shall reimburse for the packaging and raw materials at cost price and for the Products at Purchase price.

## **8 Purchase Price, Payment and Interest**

### *8.1 Purchase Price*

8.1.1 The Purchase Price for the Products is stated in the relevant order confirmation.

8.1.2 Unless otherwise stipulated Purchase prices quoted are net-net EXW prices.

8.1.3 The Purchase Price shall be paid strictly in accordance with the payment terms in Clause 8.2.

8.1.4 The Purchase Price covers only the number and quantity of the Products and accessories which are specified in the Seller's order confirmation.

8.1.5 The Seller is entitled to adjust prices at a minimum of 1 time per year.

### *8.2 Payment Terms*

8.2.1 Provided that Seller can achieve Trade Credit Insurance of Purchaser by Astradius all payments shall be made within thirty (30) days after receipt of the invoice issued by the Seller ("Due Date").

8.2.2 The amounts stated in the Seller's order confirmation do not include Value Added Tax (VAT) or other taxes, unless otherwise expressly stated therein.

8.2.3 The Purchaser is not entitled to set off any claim which the Purchaser may have against the Seller against any amount payable to the Seller under these Terms and Conditions, unless such claim has been accepted in writing by the Seller.

### *8.3 Late Payments and Calculation of Interest*

8.3.1 If the Purchaser fails to make any payment under these Terms and Conditions, the Purchaser shall from the Due Date of such payment pay interest of the unpaid amount at a rate of two (2) % per month. Such interest shall be payable without any further notice from the Purchaser to the Seller.

8.3.2 If the Products are to be delivered successively, the Seller is entitled to withhold a delivery, if the Purchaser has defaulted on payment for one or more previous deliveries.

## **9 Retention of Title**

9.1 The title to the Products remains vested in the Seller and shall not pass to the Purchaser until the Products have been paid for in full, including interest to the extent such retention of title is valid under applicable law. The retention of title shall not affect the passing of risk in accordance with Clause 6.1

## **10 Return of Products**

10.1 The Products can be returned to the Seller only if preapproved in writing by the Seller.

## **11 Recall of Products**

11.1 Should the Seller or a competent authority instigate a recall of the Products, the Purchaser shall without delay and in close cooperation with the Seller take all appropriate actions necessary to support an immediate recall of the Products. Such actions may include; but are not limited to: Stopping delivery of the Products and withdrawal of Products from Warehouses.

## **12 Storage**

12.1 The Purchaser is obliged to transport and store the Products under suitable conditions so that the quality and the appearance of the Products are preserved.

12.2 The Seller is not liable for any damage to or destruction of the Products, if the Purchaser has not fulfilled its obligations under Clause 12.1.

## **13 Force Majeure**

13.1 The Seller is entitled to suspend performance of its obligations if such performance is impeded or causes an unreasonable hardship on the Seller due to any extraordinary circumstances beyond the reasonable control of the Seller including, war, terrorism, earthquakes, volcanic eruptions, lightning, storms, hurricanes, cloudbursts, fire, explosions, epidemics, failure of public services, shortage of materials, delays in transport including shipping, shortage of energy, any strike, lockout or other form of industrial action, restrictions or significant legal or political changes laid down by governmental authorities or the European Union etc.

13.2 Notwithstanding any other provisions of these Terms and Conditions, either Party is entitled to terminate an order with immediate effect by written notice to the other Party, if it is clear from the circumstances that the performance will be and is suspended under Clause 13.1 for more than three (3) months.

## **14 Defects**

14.1 The Seller shall in accordance with the provisions of this Clause 14 remedy any defect in the Products resulting from faulty production, raw materials or workmanship.

14.2 The Seller's liability does not cover defects caused by circumstances, which arise after the risk has passed to the Purchaser.

14.3 The Seller's liability is limited to defects which appear within a period of six (6) months from the date of delivery of the Products to the Purchaser. Purchaser must specify Product number, LOT number and best before date.

14.4 The Purchaser shall notify the Seller in writing of a defect immediately after the defect is or reasonably ought to have been discovered, specifying Product number, lot number and best before date.

14.5 After receipt of a written notice in accordance with Clause 14.4, the Seller shall replace the Products without undue delay. The Seller shall bear all costs relating to such replacement. The replacement shall be carried out by the Seller or by a third party on behalf of the Seller. If no defect is found for which the Seller is liable, the Seller shall be entitled to compensation for the work and costs which has incurred as a result of the notice.

14.6 The remedies stated in Clause 14 shall constitute the Purchaser's sole and exclusive remedy in respect of defects in the Products, and the Seller shall have no other liability for defects as stipulated in this Clause 14.

## **15 Liability for Damage caused by the Products (Product Liability)**

15.1 The Seller can only be held liable for bodily injury caused by the Products, if it can be proved that the damage was caused by failure or negligence committed by the Seller or others for whom the Seller is liable.

15.2 The Seller shall not be liable for any damage to property or movables caused by the Products after delivery has taken place and whilst it is in the possession of the Purchaser. Nor shall the Seller be liable for any damage to products manufactured or held by the Purchaser or to products of which the Purchaser's products form a part.

15.3 Should any third party claim damages in accordance with this Clause 15 against one of the Parties, said Party is obliged to immediately inform the other Party hereof in writing. Both Parties are obliged to participate in any action brought before a court or an arbitration tribunal by a third party examining claims for damages lodged against one of the Parties on the basis of damage allegedly caused by the Products. However, disputes between the Purchaser and the Seller shall be settled in accordance with Clause 19.

15.4 The Purchaser shall indemnify and hold the Seller harmless from and against all claims for damages made by any third party against the Seller concerning product liability, to the extent such liability has been disclaimed by the Seller under these Terms and Conditions.

## **16 Limitation of Liability**

16.1 Unless otherwise stated under these Terms and Conditions, the Parties shall not be liable to the other Party for any indirect, special, punitive or incidental damages, including but not limited to loss of profit, loss of revenue, production or operating losses, lost sales or contracts, loss of opportunity, loss of goodwill, or losses relating to marketing activity

arising out of or relating to these Terms and Conditions.

16.2 Notwithstanding any other provision under these Terms and Conditions, the Seller's liability in relation to the Purchaser under these Terms and Conditions can in no event exceed EUR 100,000 per year, including any liability for damages to a third party, such as for example but not limited to product liability.

16.3 The Seller's liability under these Terms and Conditions will cease one (1) year from the time of the wrongful act or omission.

16.4 The limitations of liability under these Terms and Conditions shall not apply where a Party has been found guilty of fraud or other wilful acts or gross negligence, or if such limitation is found to be invalid under applicable law.

## **17 Intellectual Property Rights**

17.1 All intellectual property rights of any kind connected to the Products (whether or not they can be subject to registration and whether or not they are registered or are subject to an application for registration), including, but not limited to rights to inventions, discoveries, patents, utility models, trade marks, collective marks, guarantee marks, logos, designs, trade or business names, titles, domain names, copyrighted works, performances, photographic images, databases as well as rights in proprietary information, data, technology and know-how related rights, and all other rights or forms of protection of a similar nature shall be the exclusive property of the Seller (the "IP Rights").

17.2 Any IP Right of the Seller shall be used only for the purpose of the Purchaser's use of the Products. Any other purpose requires the Seller's written permission.

17.3 To the Seller's best knowledge, none of the IP Rights related to the Products infringes any third party rights. However, the Seller does not make any warranty to that effect. In the event that the Purchaser receives any notice or is otherwise informed of any claim, suit or demand on account of any actual or alleged infringement, unfair competition or similar relating to the Seller's IP Rights in the relevant territory, the Purchaser must immediately notify the Seller thereof, and the Parties are mutually responsible to a reasonable extent to defend any actions against such IP Rights, the content of such defence to be determined by the Seller. The Seller shall bear all costs related thereto, except for the Purchaser's own costs.

## **18 Governing Law**

These Terms and Conditions are governed and construed by and shall be interpreted in accordance with the laws of the Kingdom of Denmark, disregarding the Danish choice of law rules and without regard to the United

Nations Convention of Contracts for the International Sale of Goods (CISG).

## **19 Venue**

19.1 Any dispute or claim arising out of or in connection with the Parties' contractual relationship under these Terms and Conditions which cannot be settled amicably between the Parties is to be settled in accordance with Danish law, before the Maritime and Commercial Court in Copenhagen, Denmark, (Sø- og Handelsretten).

19.2 Notwithstanding the above, if the legal relationship established by these Terms and Conditions is of relevance to an action brought before a court of law or an arbitration tribunal by a third party against the Seller, the Purchaser is obliged to join the action as a party upon request by the Seller.

## **20 Miscellaneous**

### *20.1 Severability*

20.1.1 If any provision under these Terms and Conditions is found to be inconsistent with or void under any applicable law, the validity of the other provisions shall not be affected thereby. In such case the Parties or the court shall replace the ineffective provision with a provision of fundamentally the same content and effect, also taking into consideration any amendments to these Terms and Conditions, which, however, is legally valid, binding, and enforceable under the said law.

### *20.2 Amendments*

20.2.1 These Terms and Conditions can be amended only in writing and if signed by both Parties. Any agreement to suspend or deviate from the obligation in this Clause 20.2.1 must also be made in writing and signed by both Parties.

### *20.3 Entire understanding*

20.3.1 These Terms and Conditions constitute the entire understanding between the Parties in respect of the subject matter under these Terms and Conditions and supersedes all prior agreements, proposals, negotiations and discussions between the Parties relating to it.

### *20.4 Notices between the Parties*

20.4.1 Any communication or notice to be made under these Terms and Conditions shall be provided in writing.

### *20.5 Waiver*

20.6 No waiver by a Party of any breach or non-fulfilment by the other Party of any provision under these Terms and Conditions shall be deemed to be a waiver by that Party in respect of any other breach or non-fulfilment by the other Party whether of a like or a different nature, and no delay or omission by a Party in exercising any right or remedy under these Terms and Conditions or any applicable law shall affect that right or remedy, or constitute a waiver thereof.