

TOPAS GmbH

Standard Terms and Conditions for Customers

Standard Terms of Delivery and Payment (as at January 2016)

1. Scope of Application

- (1) These Standard Terms and Conditions apply to all deliveries and performance provided by TOPAS GmbH (hereinafter referred to as the “Company”) in relation to third parties (hereinafter referred to as the “Buyer”), including deliveries and performance arising from future business transactions.
- (2) Divergent, conflicting and supplementary terms of delivery and payment of the Buyer shall not become an integral part of the agreement even if they are known, unless express written consent is given to their application.
- (3) Amendments and divergences from these Terms and Conditions have to be in writing in order to be valid.
- (4) Orders placed and acceptance of delivery shall be deemed recognition of these Terms and Conditions.

2. Offer, Acceptance, Confirmation of Orders

- (1) Offers made by the Company are subject to change as regards the delivery, the delivery period and prices.
- (2) Orders may be accepted by the Company within 14 days of receipt. Acceptance shall take place by way of a written order confirmation or by way of delivery.
- (3) If the order confirmation differs from the order, the Buyer’s consent shall be deemed given unless he objects promptly in writing.

3. Place of Performance, Delivery

- (1) The head office of the Company is the place of performance.

- (2) Deliveries shall be made on the basis of EXW place of performance (INCOTERMS 2010) unless otherwise agreed expressly.
- (3) The risk shall pass to the Buyer as soon as the goods have been offered to him at the place of performance.
- (4) Delivery is subject to the proviso of correct and timely delivery made to the Company by its suppliers. All cases of force majeure and measures taken by the authorities, industrial action as well as other occurrences the Company cannot prevent shall release the latter from its obligation to deliver. The Company is entitled to deliver on the next possible delivery date provided acceptance of the delivery is still possible for the Buyer. Otherwise the Company is entitled to withdraw from the agreement. The Company is liable for other delays in delivery only in case of its own gross negligence and intent.
- (5) Additional costs incurred due to specific delivery requests of the Buyer shall be at the latter's expense.
- (6) The Company is entitled to make partial deliveries. The present Terms and Conditions in their entirety apply to such deliveries.
- (7) Deliveries ordered shall be made on the next possible date, unless otherwise agreed.
- (8) Delivery dates shall only be binding if they are confirmed in writing by the Company. Where shipment is agreed, delivery periods and delivery dates relate to the date of handing over to the haulage company, the freight carrier or other third party commissioned with the shipment.

4. Prices

- (1) Unless otherwise agreed, all prices are net prices (without deductions) ex works (EXW - Incoterms 2010) plus VAT as provided for by law. Subject to other individual agreements, invoices shall be issued at the Company's sales prices in force on the date of the order. The weight determined according to trade practices when the goods are despatched shall constitute the basis of invoicing. Any shrinkage during shipment shall be at the Buyer's expense.
- (2) For orders within Germany, prices for all of Topas GmbH's brands' products are inclusive of all package-recycling related fees imposed by the *Verpackungsverordnung* and *Duales System*. For products exported outside Germany, any such fees must be borne by the Buyer in accordance with local rules and regulations.

5. Examination Obligation and Obligation to Notify Defects

- (1) The Buyer shall immediately examine the goods at his expense upon delivery at the agreed destination or upon handing over in case of collection
 - a) with regard to quantities, weight and packaging and shall record any complaints in this respect on the delivery note, the bill of lading or on the receipt, and
 - b) shall conduct a representative quality check at least by means of a spot check by opening the packaging (cartons, sacks, cans, films etc.) insofar as necessary, and shall examine the goods as to their external qualities, smell and taste, in which respect frozen goods are to be thawed in small quantities to enable spot checks.
 - c) to verify by means of appropriate spot checks whether the defect discovered is an individual case or whether there is a production or treatment defect affecting the entire consignment of goods.
- (2) The following formal requirements and set periods shall be observed by the Buyer when providing notification of defects:
 - a) Notification shall be provided by the end of the working day after delivery of the goods at the agreed destination or after handing over. Where a hidden defect is notified, which remained hidden despite a duly conducted initial examination according to para. 1(b) above, the following applies: Notification shall be provided by the end of the working day after discovery of the defect, but no later than two weeks after delivery and/or handing over of the goods.
 - b) Detailed notification has to be received by the Company in writing, by telegram, telex or fax within the above-mentioned periods. Notification of defects by telephone is not sufficient. Defects notified to sales representatives, brokers or agents are irrelevant.
 - c) The notification has to specify the nature and extent of the alleged defect.
 - d) The Buyer shall keep the allegedly defective goods at the examination site for inspection by the Company, its suppliers or experts it consults. Where defects in chilled or frozen goods are notified, the Buyer shall store such goods in accordance with the relevant statutory requirements.
- (3) Complaints relating to quantities, weight and packaging of the goods are excluded in the absence of a complaint recorded on the delivery note, bill of lading or receipt in accordance with para. 1(a) above. Moreover, complaints are excluded as soon as the Buyer mixes, forwards, resells or commences with the preparation or processing of the goods supplied, or has otherwise interrupted the traceability of the goods.

- (4) Goods about which no formally correct and timely complaint is submitted shall be deemed authorized and approved.

6. Warranty und Liability

- (1) The Company warrants that the goods comply with the contractually agreed specifications and the mandatory legal provisions of the European Union relating to the goods.
- (2) The Buyer alone is entitled to make claims based on defective delivery; such claims are inalienable.
- (3) Unless otherwise expressly agreed, information about products does not constitute warranted qualities, but, rather, merely descriptions or designations. A warranted quality exists only if it is specifically designated as being a “warranted quality”.
- (4) The Company is not liable for natural shrinkage during shipment or for brine shrinkage or fluctuations customary in the trade in the qualities or appearance of the goods. The Buyer shall bear the natural weight loss (e.g. tissue fluid) resulting from the unique nature of the goods.
- (5) Minor divergences in form, colour, taste and texture cannot be excluded in the bio-products manufactured and/or sold by the Company and, therefore, do not constitute defects.
- (6) Liability of the Company for material defects, incorrect delivery, shortfalls in quantity etc. is excluded in case of failure to notify defects within the set periods mentioned in Clause 5(2) above.
- (7) The Buyer is entitled to the rectification of defects, repairs or provision of a replacement [*Nacherfüllung*], provided justified defects are notified. This claim may be averted by the Company by means of rectification of defects or delivery of a defect-free replacement product to the original destination. If the rectification of defects, repairs or provision of a replacement is unsuccessful or does not take place within a reasonable period determined by the customer, then the Buyer may choose to withdraw from the agreement or reduce the purchase price. The Buyer is not entitled to claim damage resulting from defects unless the Company or its vicarious agents caused the damage intentionally or through gross negligence.

7. Duties of Care Under Food Law

- (1) In observing his duties of care the Buyer is obliged to conduct quality control checks.
- (2) In order to restrict the manufacturer’s liability, the Buyer is obliged to provide promptly to the Company all information it receives that indicates the existence of product defects (especially customer complaints), and to

provide prompt and comprehensive assistance to the Company in recall campaigns.

- (3) The Buyer is also obliged to examine the goods delivered as to whether or not there is a divergence between the declaration and the goods supplied.
- (4) If, upon delivery, the Buyer discovers a divergence from the declaration or a defect that limits or excludes the marketability of the goods under food law, he shall notify the Company promptly, by the end of the day after the day on which the defect was discovered. The Company is entitled to charge the Buyer for losses incurred owing to failure to notify.
- (5) If the Buyer discovers a defect, it shall take appropriate precautions to prevent the inadvertent release, further processing or further sale of the goods.

8. Taking of Samples

- (1) If food monitoring authorities or other institutions authorized accordingly under statutory regulations take samples of the goods delivered by the Company and/or by way of drop shipping, the Buyer shall ensure that in each case the person obtaining the sample leaves a sealed control sample behind and issues written confirmation of the taking of samples.
- (2) The Buyer shall then keep the control sample appropriately and fresh for as long as possible, shall notify the Company promptly about the sample taken and shall provide a copy or duplicate of the certificate on taking of the sample. Losses possibly incurred by the Company owing to failure to provide information about samples taken or through inappropriate storage of the control sample shall be borne by the Buyer.

9. Rented Packaging / Loading Aids

- (1) Exchangeable pallets (e.g. Euro pallets or Düsseldorf pallets), rented containers and rented boxes shall remain the property of the Company.
- (2) They shall be unloaded and emptied as fast as possible and returned to the Company in proper condition.
- (3) The Company reserves the right to charge a deposit for packaging materials. If packaging is not returned, the Company may charge additional amounts based on the daily value of its own suppliers.

10. Retention of Title

- (1) All deliveries shall be made subject to retention of title. Title shall only pass to the Buyer when he has satisfied all his liabilities arising from the business relationship with the Company. This also applies where the

purchase price for certain deliveries of goods identified by the Buyer has been paid.

- (2) In case of ongoing invoices, the retention of title can, if necessary, serve as security for outstanding amounts owed to the Company.
- (3) Should cheques be issued in payment, payment shall only be deemed made when they are honoured.
- (4) Where goods subject to retention of title are resold, the Buyer now assigns the resulting claims for outstanding amounts to the Company. The assigned claims for outstanding amounts serve as security for the Company until all its claims for outstanding amounts resulting from the business relationship with the Buyer have been satisfied.
- (5) The Buyer shall notify the Company without undue delay of interventions by third parties with the goods to which title is retained by the Company. The costs of such interventions shall be borne by the Buyer.
- (6) If the Buyer defaults on payment, the Company may collect from him the goods delivered subject to retention of title. The Buyer hereby irrevocably waives any defence or pleas he could raise if the Company avails itself of this right.
- (7) The retention of title shall not release the Buyer from liability for the loss or accidental deterioration of the goods after they have passed into his possession.
- (8) The goods subject to retention of title shall be adequately insured by the Buyer at his expense against fire, water, theft, etc.: The Buyer and the Company agree that all rights and claims of the Buyer against insurance companies based on insurance of the goods to which title is retained are assigned to the Company as security until all the latter's claims for outstanding amounts arising from business relations with the Buyer have been satisfied.
- (9) The Company shall, at the Buyer's request, release security to the extent that the realizable value of security accruing to the Company exceeds the claims to be secured by more than 20%, not just temporarily. The Company shall select the security to be released at its discretion. When determining the realizable value, the Company shall in principle assume the individual purchase price of the goods subject to retention of title, plus VAT. However, taking into account the circumstances of the individual case, the Company reserves the right to determine the realizable value of the security in a different manner in order to thus take appropriate account of its security interests.

11. Payment

- (1) The invoice amount shall fall due upon receipt of the invoice but not before delivery of the goods. Payable net without deductions.
- (2) Deferrals are subject to the written consent of the Company.
- (3) If payment has not been received by the Company within a period of 7 days or after the agreed payment date following receipt of the invoice or delivery of the goods, or if a direct debit or a cheque issued by the Buyer is not honoured by his bank, then the Company may require statutory default interest at the rate of 8% above the relevant basic interest rate per annum as well as the costs of issuing a warning notice as of the date on which payment falls due. Other damage may also be claimed.
- (4) If the Buyer defaults on payment, the Company may refuse to perform all ongoing transactions and to enter into new transactions. The Company is entitled to count instalment payments made by the Buyer against his other obligations in relation to the Company, even if conflicting provisions of the Buyer exist. No right of retention may be claimed against claims of the Company for outstanding amounts that are due for payment; a setoff may only be made against claims that are undisputed or have been established by final judgment.

12. Data Protection

- (1) It is pointed out by the Company that it stores customer data required for the purpose of the transaction such as the name, address, orders etc. electronically in a data-processing facility. Such data is protected against abuse in accordance with the provisions of the German Federal Data Protection Act (BDSG). The Buyer agrees to the storage of such data.

13. Venue und Applicable Law

- (1) The head office of the Company is the venue.
- (2) The statutory provisions of the Federal Republic of Germany apply exclusively.

14. Final Provisions

- (1) Should one or more provisions in these Terms and Conditions be invalid, this shall not affect the validity of the remaining provisions hereof.
- (2) In that case the Company and the Buyer shall replace the invalid provision with a provision which comes as close as possible economically to the invalid provision.