



General Conditions of Sales IMCO Premium Foods Ltd. Last Update: 13 February 2017

1. Scope

- 1.1. Our General Conditions of Sales (GCS) exclusively apply for all our offers, deliveries of goods and services vis-a-vis entrepreneurs according to the New Conditions of Sale (2017).
- 1.2. We do not acknowledge any standard business terms of our customers that conflict herewith or vary herefrom except where we expressly consent in writing to the application thereof. Our GCS apply even if we effect performance to the customer without reservations while knowing of terms and conditions of the customer that conflict with or vary from our GCS.
- 1.3. The terms and conditions mentioned on our order confirmations (Sale Invoices) and these GCS take precedence.
- 1.4. These GCS do not apply vis-a-vis consumers as defined in the Irish Law.

2. Offers

- 2.1. All our offers are non-binding and are – if not otherwise agreed – to be understood per kilogram and „free carrier (FCA) Dunboyne, Incoterms (then current version thereof)“ including packaging.
- 2.2. Customer's orders become binding upon our written confirmation or by delivery.

3. Prices, Terms of payment, set-off, default

- 3.1. Unless otherwise agreed in writing, our prices are understood to be FCA plus applicable VAT.
- 3.2. In case of supply agreements changes in duty rates, exchange rates as well as new impacts and measures of higher authority remain reserved. In case of such measures, we are entitled to adjust the purchase price.
- 3.3. Payments have to be carried out net cash (bank transfer) as it was agreed on the Sale Invoice.
- 3.4. Minimum order value is 500.00EUR. In case of orders below said minimum order value, customer may be asked to pay additional fee for the freight of IMCO Premium Foods Ltd.
- 3.5. The customer is not permitted to offset claims of the customer's own against our receivables or to assert rights of retention unless the customer's claims or rights of retention have been established with final, binding legal force or are acknowledged by us or the counterclaim is associated with the goods billed. The customer is free to assert claims that have been excluded by commencing legal proceedings.
- 3.6. We are entitled to effect deliveries that are still outstanding only in exchange for advance payment or provision of security if, after entering into the agreement, we become aware of circumstances that may substantially reduce the customer's creditworthiness and payment of our open receivables from the customer is therefore jeopardized. Further, we are entitled to set due all claims still open for payment and/or rescind from the purchase agreement.
- 3.7. In case of exceedance of payment terms, the customer is in default without further notice. The default interest rate is 9% above the basic rate issued by the Allied Irish Banks. In addition, we are entitled to a default fee of 40.00EUR in accordance with our administration costs. We are entitled to higher damages for delay if such damages occur.

4. Deliveries and transportation risks, force majeure

- 4.1. Delivery time limits are, unless they are expressly agreed in writing as fixed, meant as approximations only and do not constitute fixed deadlines.
- 4.2. In the event of delay or default in delivery, the customer is required to provide us with a reasonable period of at least 2 weeks to rectify the matter. The delivery and performance time limits pursuant to sentence 1 above shall be extended by the duration of the temporary impediment to performance in cases of force majeure and in the event of other circumstances for which we are not responsible.
- 4.3. Unless otherwise agreed, we are entitled to make partial deliveries that are equivalent to at least 25% of the ordered quantity. In the case of contracts that are handled over a longer period (deliveries upon placement of release orders), each delivery is considered to be a distinct and completed transaction. A defective partial delivery or one that is not rendered on time shall have no influence on the portion of the contract that has not yet been executed.
- 4.4. We explicitly reserve to round the quantity ordered up or down by up to 15% with respective adjustment of the purchase price, in order to deliver in packaging units on stock.
- 4.5. All offers and contracts are subject to our receiving of correct, complete, and timely delivery from our own suppliers.
- 4.6. Unforeseen events such as strikes, labour disputes, disruptions in business operations, restrictive actions taken by government agencies, and natural disasters as well as delays in delivery of essential raw materials and components shall extend our delivery time limit by a reasonable amount if and insofar as these impediments, even if they occur during an existing instance of delay or default. In that case customer is not obliged to provide for the (remaining) consideration; we will reimburse for advance payments regarding services not yet carried out. Customer is not entitled to damages.
- 4.7. Unless expressly agreed otherwise in writing, we will ship the goods at the customer's expense and risk.
- 4.8. All deliveries include the necessary packaging. Disposal is either carried out by customer or the respective costs will be added to the purchase price.

5. Quality of goods, Obligation to inspect the goods and notification of defects, claims regarding defects

- 5.1. The intended quality of the goods shall be governed by the contractual agreements. Unless expressly agreed otherwise in writing, however, these do not constitute any representations of characteristics or guarantees.

- 5.2. The quality parameters of the goods supplied shall be in accordance with the product Specification.
 - 5.3. In the event of sales according to a sample, the sample is considered only to be an approximate indication used to depict the characteristics and nature of the goods. Unless expressly agreed otherwise in writing, the characteristics of the sample are not represented or guaranteed.
 - 5.4. In case we sell subject of approved analyses the specifications and quality of the sample are deemed to be agreed, unless the customer does not timely and explicitly object the sample provided in writing. The deadlines therefore is four weeks from the day following the handover of the sample. The costs associated with the investigation shall always be borne by the customer.
 - 5.5. In the case of natural products, biologically based fluctuations in shape, colour, and structure as well as with regard to the content of active ingredients do not represent a defect unless certain parameters agreed in an individual contract are not met or the quality deviation exceeds the usual scope.
 - 5.6. The customer is required to issue a written complaint to us regarding apparent defects in the goods delivered without delay, and in any event within 3 business days after delivery. If a defect does not become apparent until a later time despite the customer's performing a proper check and inspection of the goods upon receipt, the time limit of 3 business days applies as from the time at which the customer becomes aware of the defect. Customer is obliged to examine the goods properly immediately after delivery even in case we provided for samples. In case customer violates aforementioned obligation regarding inspection and notification, products shall be deemed approved.
 - 5.7. Products shall further be deemed approved in case customer proceeds or resells the goods, in case the defect could have been detected in case of proper incoming inspection.
 - 5.8. In the event of timely and legitimate complaints, the customer's claims for defects are initially limited, at our discretion, to delivery of a new item or remedy of the defect. If a cure fails, we are permitted to make another attempt to effect a cure.
 - 5.9. If we fail to effect a cure, the customer is permitted to reduce the purchase price of, at the customer's discretion, to revoke the purchase agreement. Nothing herein shall affect claims for damages pursuant to Sec. 6. hereof.
 - 5.10. If the defect is based on the goods or services provided to us by a third party, the customer's claims are limited to demanding that our claims on the third party be assigned to the customer. Only after the customer has attempted to assert claims on the third party and this process has failed is the customer permitted to assert claims on us.
 - 5.11. Warranty claims against us cannot be assigned.
- ### 6. Liability
- 6.1. We are liable for simple negligence in the event of loss of life, assault, or impairment of health as well as violation of obligations whose fulfilment renders the proper execution of the agreement possible in the first place and that the customer can generally trust will be complied with (essential contractual obligations).
 - 6.2. In all other respects, we are liable only for intent and gross negligence.
 - 6.3. In the event of violation of essential contractual obligations through simple negligence, our liability is, however, limited merely to the foreseeable damage or losses typical of the contract, and does not include consequential damages or losses. All further claims of the customer are excluded.
- ### 7. Special provisions regarding contract manufacturing
- 7.1. Subject of contract manufacturing is the processing or treatment (e.g. repacking) of goods, provided by the customer for the purpose of contract manufacturing at its own expense in the location specified by us.
 - 7.2. The repacking of the goods is made on the basis of the current state of the art. However, unavoidable structural changes occurring especially during repacking are possible.
 - 7.3. The processing losses inevitably occurring during the contract manufacturing are highly dependent on the quality of the raw materials used. Insofar indications on expected losses made before processing are estimates only. We calculate exact input and output weights.
 - 7.4. We only perform a visual inspection of the delivered prior to repack. A further inspection is carried out only if this is agreed in writing.
 - 7.5. We deliver an analysis of the goods processed on customer's demand and at its expense.
 - 7.6. In case it becomes apparent during the repacking, that the processing will be more expensive due to factors inherent in the goods unforseeable at the conclusion of the contract and we notify the customer thereof, both parties are entitled to rescind from the contract, in case they do not come to an agreement.
 - 7.7. The customer guarantees in the way of an independent guarantee promise that due to the nature and labelling of the goods provided to us a proper and safe handling is ensured.
 - 7.8. We are entitled, however not obliged, to take reasonable retain samples of the goods provided by customer. These retain sample shall be deemed as processing losses according to sec. 7.3.
 - 7.9. Regarding the quality of the repacked goods, we do not assume any liability for defects as far as it is based on properties of the goods which we cannot influence such as initial microbiological load, natural or growth-related features, pesticide or heavy metal residue and other extraneous matter.
 - 7.10. The customer agrees to accept the purchased/returned products in writing within 1 week. In case the customer does not comply with aforementioned obligation, the goods shall be deemed accepted.
 - 7.11. The mandatory liability under the Product Liability Act remains unaffected.

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8. Limitation period

8.1. The limitation period for claims regarding defects is one year from the time of delivery of the goods to the customer, except where non-waivable provisions of law require a longer limitation period.

9. Retention of title

- 9.1. The goods delivered by us remain our property until the purchase price has been paid in full.
- 9.2. If the customer has paid the purchase price for the goods delivered by us, but further debts arising out of the business relationship with us have not yet been satisfied in full by the customer, we moreover retain title to the goods delivered until such outstanding debts have been paid in full. This also applies if our individual receivables are placed in a current account.
- 9.3. If the customer processes the goods delivered by us, we shall directly acquire joint title to the newly produced goods in proportion to the invoiced value of the goods delivered by us in relation that of other materials.
- 9.4. If and insofar as the goods delivered by us are combined or blended with material owned by the customer such that the customer's material is to be considered the main material, it is deemed agreed that the customer transfers joint title to such main material to us in proportion to the invoiced value of the goods delivered by us in relation to the invoiced value (or, in the absence of such a value, the market value) of the main material.
- 9.5. At the same time, it is agreed that the customer will keep safe and insure our property that is subject to retention of title and that serves as security, as well as the goods of which we have sole or joint title arising pursuant to Sec. 9.3. and 9.4. hereof, in each case with appropriate labelling thereof, securely, properly and carefully for us at the customer's own expense.
- 9.6. The customer is entitled to resell the goods of which we have sole or joint title in the normal and proper course of business as long as the customer complies in a timely fashion with its obligations arising from the business relationship with us. The customer assigns to us, already at the time of the Parties' entry into the agreement, all receivables arising from the sale of goods to which we have retained title; if and insofar as we have acquired shared ownership in the case of processing, combination or mixing, the assignment takes place in proportion to the value of the goods delivered by us under retention of title in relation to the value of the new goods sold by our customer to its own customers.
- 9.7. The customer is not permitted to pledge items or transfer them to third parties by way of security. In the event of distraint or other interventions by third parties with regard to our property that is subject to retention of title, the customer is required to notify us or without delay so that we can assert and safeguard our rights. If and insofar as the third party is unable to reimburse us for the in-court or out-of-court expenses of pursuing our rights, the customer is liable for the shortfall sustained by us.
- 9.8. At our request, the customer is obligated to provide all necessary information regarding the inventory of the goods owned by us and the receivables assigned to us. The customer is likewise required, at our request, to label the goods owned by us such and to advise its own customers of the assignment.
- 9.9. In the event of delay or default of payment on the customer's part, the customer is no longer entitled to resell or process the goods that are subject to our retention of title. The customer is required to relinquish such goods to us immediately, provide all information regarding items of security, and surrender the documents in this regards. The costs of asserting and safeguarding our rights shall be borne by the customer. Revocation of authorization to sell or process the goods does not in itself constitute rescission of the agreement. Nothing herein shall affect our right to revoke the agreement and demand damages due to non-performance.
- 9.10. If the value of the items of security to which we are entitled exceeds the claims to be secured by a total of more than 20%, we are obligated, at the customer's written request, to release items of security of our choice in the relevant amount for the customer's benefit.
- 9.11. If the retention of title pursuant to the provisions of this Sec. 9. is not valid pursuant to the laws of the state where our products are located, the valid legal form of security that most closely approximates retention of title in such state is deemed agreed between the Parties.

10. Final provisions

- 10.1. Place of performance of our and customer's obligations is Navan.
- 10.2. In order to fulfil written form email is sufficient.
- 10.3. Place of jurisdiction is Navan. We are, however, entitled to file a legal action against the customer in the location in which the customer has its registered office.
- 10.4. The laws of the Republic of Ireland exclusively apply.
- 10.5. Should individual provisions of these General Terms and Conditions be invalid, such circumstance shall not affect the validity of the remaining provisions.