

General Terms and Conditions of Sale of Variomeat GmbH

to companies

Article 1

Application

(1) All deliveries, services and offers of Variomeat GmbH (hereinafter referred to as "Seller") shall be made exclusively on the basis of these General Terms and Conditions of Delivery. They are an integral part of all contracts concluded between the Seller and his contractual partners – who are exclusively entrepreneurs within the meaning of Article 14 of the German Civil Code (BGB) – (hereinafter also referred to as the "Client") for the deliveries or services offered by him. They shall also apply to all future deliveries, services or offers to the Client, even if they have not been agreed to again separately.

(2) Terms and conditions of the Client or third parties shall not apply even if the Seller does not separately object to their validity. Should the Seller refer to a communication containing or referring to terms and conditions of the Client or a third party, this shall not constitute an agreement to the validity of those terms and conditions.

Article 2 Offer and conclusion of contract

(1) All offers submitted by the Seller are subject to change and non-binding, unless they are expressly marked as binding or contain a specific acceptance period. The Seller may accept orders or commissions within 14 days of receipt.

(2) The legal relationship between the Seller and the Client shall solely be governed by the written purchase contract as well as these General Terms and Conditions of Delivery. The contract shall fully reflect all contractual agreements between the contracting parties. Oral commitments made by the Seller prior to the conclusion of this contract are not legally binding and any oral agreement between the contracting parties shall be replaced by the written contract, unless it is expressly stated that they shall continue to be binding.

(3) Additions and amendments to agreements entered into, including these General Terms and Conditions of Delivery, must be made in writing to be effective. The Seller's employees, with the exception of managing directors or authorised signatories, are not entitled to make oral agreements that deviate from the written agreement. . Transmission by telecommunication, in particular by e-mail, shall be sufficient to comply with the written form, provided that a copy of the signed declaration is transmitted.

(4) Information provided by the Seller on the object of the delivery or service (e.g. weights, dimensions) as well as our representations of the same (e.g. drawings and illustrations) are only approximately authoritative, unless usability for the contractually intended purpose requires exact conformity. They are not guaranteed characteristics, but descriptions or identifications of the delivery or service. Customary deviations and deviations due to legal regulations or that represent technical improvements are permissible, insofar as they do not impair usability for the contractually intended purpose.

(5) The Seller shall retain ownership or copyright of all offers and cost estimates submitted by him as well as drawings, illustrations, calculations, brochures, catalogues and other documents and aids made available to the Client. The Client may not make these items, or their content, available to third parties, disclose them, use them himself or through third parties or reproduce them without the express consent of the Seller. At the request of the Seller, the Client shall return these items to the Seller in full and destroy any copies made if they are no longer required by him in the ordinary course of business, or if negotiations do not lead to the conclusion of a contract. An exception to this is the storage of electronically provided data for the purpose of general data backup.

§ 3 Prices and payment

(1) Prices apply to the scope of services and deliveries listed in the order confirmations. Additional or special services shall be charged separately. All prices are quoted in EUR ex works, and exclude packaging, statutory value added tax, customs duty for export deliveries as well as fees and other public charges.

(2) Provided that the agreed prices are based on the Seller's list prices and delivery is planned more than four months after conclusion of the contract, the Seller's list prices valid at the time of delivery shall apply (with deduction of any agreed percentage or fixed discount).

(3) Invoices are payable within 14 days without any deduction, unless otherwise agreed in writing. The date of payment shall be determined by the date of receipt by the Seller. Payment by cheque is excluded – unless agreed separately in individual cases. If the Client does not pay when due, the Seller shall charge interests at 9 percentage points above the base rate. Any right to claim higher interest and further damages in the event of default shall remain unaffected.

(4) Offsetting against counterclaims of the Client or the retention of payments due to such claims is only permissible insofar as the counterclaims are undisputed, have been legally established or arise from the same order under which the delivery in question was made.

(5) The Seller shall be entitled to perform or render outstanding deliveries or services only against advance payment or the provision of security if, after the conclusion of the contract, circumstances become known to the Seller, which are likely to substantially reduce the creditworthiness of the Client and which therefore jeopardises the payment of the Seller's outstanding claims by the Client under the respective contractual relationship (including under other individual orders to which the same framework agreement applies).

§ 4 Delivery and delivery period

(1) Deliveries are made ex works.

(2) Deadlines and dates for deliveries and services promised by the Seller are always only approximate, unless a fixed deadline or date has been expressly promised or agreed. If shipment has been agreed, delivery periods and delivery dates refer to the time of handover to the forwarding agent, carrier or other third party commissioned with transport.

(3) The Seller may – without prejudice to his rights arising from default on the part of the Client – demand from the Client an extension of delivery and service deadlines or a postponement of delivery and service dates by the period during which the Client fails to meet his contractual obligations towards the Seller.

(4) The Seller shall not be liable for impossibility of delivery or for delays in delivery insofar as these have been caused by force majeure or other events unforeseeable at the time of conclusion of the contract (such as operational disruptions of all kinds, difficulties in the procurement of materials or energy, transport delays, strikes, lawful lockouts, shortages of labour, energy or raw materials, difficulties in obtaining necessary official permits, official measures or the failure of suppliers to deliver, to deliver correctly or on time) for which the Seller is not responsible. Provided that such events make it significantly more difficult or impossible for the Seller to deliver or perform and the hindrance is not only of a temporary nature, the Seller shall be entitled to withdraw from the contract. In the event of temporary hindrances, the delivery or service deadlines shall be extended or postponed by the period of the hindrance plus a reasonable lead time. Unless the Client can reasonably be expected to accept the delivery or service as a result of the delay, he may withdraw from the contract by means of an immediate written declaration to the Seller.

(5) The Seller shall only be entitled to make partial deliveries if

- the partial delivery is usable for the Client within the scope of the contractual intended purpose,
- the delivery of the remaining ordered goods is ensured, and
- the Client does not incur any significant additional expense or costs as a result (unless the Seller agrees to bear these costs).

(6) Should the Seller be in default with a delivery or service or should a delivery or service become impossible for the Seller, for whatever reason, the Seller's liability for damages shall be limited in accordance with Article 7 of these General Terms and Conditions of Delivery.

Article 5 Place of performance, dispatch, packaging, transfer of risk, acceptance

(1) Unless otherwise stipulated, the place of performance for all obligations arising from the contractual relationship is Rietberg, Germany.

(2) The method of dispatch and the packaging are subject to the dutiful discretion of the Seller.

(3) The risk shall pass to the Client at the latest upon handover of the delivery item (determined by the start of the loading process) to the forwarding agent, carrier or other third party designated to carry out the shipment. This shall also apply if partial deliveries are made or if the Seller has assumed other services (such as shipping or installation). If dispatch or handover is delayed as a result of a circumstance whose cause lies with the Client, the risk shall pass to the Client from the day on which the delivery item is ready for dispatch and the Seller has notified the Client of this.

(4) Storage costs following the transfer of risk shall be borne by the Client. In the event of storage by the Seller, storage costs shall amount to 0.25% of the invoice amount of the delivery items to be stored per elapsed week. The right to claim and provide evidence of further or lower storage costs is expressly reserved.

(5) The shipment shall only be insured by the Seller against theft, breakage, transport, fire and water damage or other insurable risks at the express request of the Client and at the Client's expense.

Article 6 Warranty, material defects, inspection obligation upon receipt of goods

The Seller guarantees as follows, to the exclusion of all other claims for performance, warranty and compensation of whatever kind and on whatever legal grounds, and subject to the provisions of Article 8: Normal weight loss during transport is not considered a defect; invoicing shall always be based on weight at departure. Following the transfer of risk, any weight loss shall be borne by the Buyer.

The Buyer is obliged to inspect incoming goods for defects immediately, at the latest within 24 hours of delivery or, if the goods are opened within this period, at the latest 2 hours after opening the vacuum package or other packaging. Visual inspection is not sufficient for frozen goods. The Buyer must thaw random samples to check the quality. Identifiable defects must be reported to the Seller immediately – at the latest within 24 hours of discovery – by telephone first, followed in writing or by fax or e-mail on the same day. The Buyer is also obliged to notify the Seller of any reasonable suspicion of a significant defect, even if further investigations have to be carried out to verify the suspicion. A breach of any of these ancillary obligations shall result in the Buyer's liability for damages. If the Buyer is a merchant, any breach of these obligations to inspect and give notice of defects shall also result in the goods being considered as approved. In addition, if a Buyer who is not a merchant violates these obligations, any warranty claims shall be excluded unless the Seller is still able to take recourse against the subcontractor on account of the defect. In the event of damage during transport, the Buyer shall ensure claims for compensation against third parties. Complaints must be made to the transport company in good time, and representatives of the transport company must be called in to assess the damage. Processing and/or further shipment of the goods by the Buyer shall lead to the exclusion of any claims for defects. In the event that liability for defects has been affirmed in accordance with the above provisions, the Buyer shall be entitled to rectification of defects or replacement delivery at the Seller's discretion. If the Buyer returns the goods for this purpose, he must ensure proper packaging and safe transport. The Buyer shall bear any risk of damage or loss during transport. Rectification of defects and replacement deliveries in the event of notification of a defect shall only be made as a gesture of goodwill, without any further legal claims on the part of the Buyer arising therefrom, unless the Seller expressly admits that the goods are defective.

If rectification and/or replacement fail at least twice, the Buyer is entitled to reduce the purchase price appropriately or to withdraw from the contract. However, withdrawal shall be excluded if the defect is of minor importance.

If, in the event of a return of the goods by the Buyer following a complaint, it is found that the complaint was unjustified, the Seller shall be entitled to invoice the costs of shipping and packaging, as well as a reasonable fee for the inspection of the goods. This reasonable fee shall amount to at least €50.00, but not more than 20% of the value of the goods.

The Seller is only obliged to take back goods if he is permitted to do so within the framework of the import regulations of the country of dispatch. If a return is not possible, the Buyer shall bear the costs of disposal.

Returned goods must be handled by the Buyer properly and in accordance with the regulations of the country of dispatch. Improper handling of the goods by the Buyer, storage or transport under non-EC regulations excludes the Seller from taking back the goods.

The warranty shall not apply if the Client modifies the delivery item or has it modified by a third party without the Seller's consent and this makes it impossible or unreasonably difficult to remedy the defect. The Client shall bear any additional costs of remedying the defect resulting from such modification.

Article 7 Liability for damages due to fault

(1) The Seller's liability for damages, irrespective of the legal grounds, in particular due to impossibility, delay, defective or incorrect delivery, breach of contract, breach of duties during contract negotiations and tort, shall be limited in accordance with the provisions of this Article 7, provided that the Seller is at fault.

(2) The Seller shall not be liable in the event of simple negligence on the part of his executive organs, legal representatives, employees or other vicarious agents, unless this involves a breach of material contractual obligations. Material contractual obligations are the obligation to deliver and install the delivery item in due time, its freedom from defects of title as well as such material defects that impair its functionality or usability more than insignificantly, and advisory, protective and custodial obligations that are intended to enable the Client to use the delivery item in accordance with the contract or are intended to protect the life and limb of the Client's personnel or to protect the Client's property from significant damage.

(3) Insofar as the Seller is liable for damages on the grounds of and in accordance with Article 7 (2), this liability shall be limited to damages which the Seller foresaw as a possible consequence of a breach of contract at the time of conclusion of the contract, or which he should have foreseen by exercising due care. Indirect damage and consequential damage resulting from defects in the delivery item are also only eligible for compensation insofar as such damage is typically to be expected when using the delivery item as intended.

(4) The exclusions and limitations of liability described above shall apply to the same extent in favour of the organs, legal representatives, employees and other vicarious agents of the Seller.

(5) The limitations of this Article 7 do not apply to the Seller's liability for intentional conduct, guaranteed characteristics, injury to life, limb or health or under the German Product Liability Act.

Article 8 Reservation of title

(1) The following agreed reservation of title serves to secure all current and future claims of the Seller against the Buyer arising from the delivery relationship existing between the contracting parties concerning the sale of meat, meat products and raw materials of animal origin as well as slaughter by-products.

(2) The goods delivered by the Seller to the Buyer shall remain the property of the Seller until full payment of all secured claims. The goods as well as the goods covered by the reservation of title taking their place in accordance with the following provisions are hereinafter referred to as "Reserved goods".

(3) The Buyer shall store the Reserved goods for the Seller free of charge.

(4) The Buyer is entitled to process and sell the Reserved goods in the ordinary course of business up to the enforcement event (paragraph 9). Pledges and transfers of ownership by way of security are not permitted.

(5) Should the Reserved goods be processed by the Buyer, it shall be agreed that said processing is carried out in the name and for the account of the Seller as manufacturer and that the Seller shall acquire direct ownership or – if the processing is carried out from materials of several owners or the value of the processed item is higher than the value of the reserved goods – co-ownership of the newly created item in the ratio of the value of the Reserved goods to the value of the newly created item. In the event that no such acquisition of ownership should occur on the part of the Seller, the Buyer hereby assigns his future ownership or co-ownership – in the above-mentioned ratio – of the newly created item to the Seller as security. If the Reserved goods are combined or inseparably mixed with other items to form a uniform item and if one of the other items is considered to be the main item, the Seller shall, insofar as the main item belongs to him, transfer to the Buyer pro rata co-ownership of the uniform item in the ratio specified in sentence 1.

(6) In the event of resale of the Reserved goods, the Buyer hereby assigns to the Seller by way of security the claim against the Purchaser arising from the resale (if the Seller is a co-owner of the Reserved goods, in proportion to the co-ownership share). The same applies to other claims that take the place of the Reserved goods or otherwise arise with regard to the Reserved goods, such as insurance claims or claims in tort in the event of loss or destruction. The Seller revocably authorises the Buyer to collect any claims assigned to the Seller in his own name. The Seller may only revoke this authorisation when the enforcement event occurs.

(7) If third parties access the Reserved goods, in particular by way of seizure, the Buyer shall immediately draw their attention to the Seller's ownership and inform the Seller thereof, in order to allow the Seller to enforce his ownership rights. If the third party is not in a position to reimburse the Seller for the judicial or extrajudicial costs incurred in this context, the Buyer shall be liable to the Seller for these.

(8) The Seller shall release the Reserved goods as well as the items or claims replacing them insofar as their value exceeds the amount of the secured claims by more than 50%. The Seller shall decide on the items to be released.

(9) Should the Seller withdraw from the contract in the event of a breach of contract by the Buyer (enforcement event), in particular for default of payment, the Seller shall be entitled to demand the return of the Reserved goods.

Article 9 Final clauses

(1) If the Client is a merchant, a legal entity under public law or a special fund under public law, or if he has no general place of jurisdiction in the Federal Republic of Germany, the place of jurisdiction for any disputes arising from the business relationship between the Seller and the Client shall be Rietberg, Germany, or the registered office of the Client, at the Seller's discretion. Rietberg shall however be the exclusive place of jurisdiction for actions against the Seller in such cases. Mandatory statutory provisions on exclusive places of jurisdiction shall remain unaffected by this provision.

(2) Contractual relations between the Seller and the Client shall be governed exclusively by the law of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods of 11.4.1980 (CISG) shall not apply.

(3) Insofar as the contract or these General Terms and Conditions of Delivery contain loopholes, those legally effective provisions shall be deemed agreed to fill these loopholes which the contracting parties would have agreed in accordance with the economic objectives of the contract and the purpose of these General Terms and Conditions of Delivery if they had known about the loophole.

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