

## **General Terms and Conditions of Sale**

### **of PepsiCo Deutschland GmbH**

#### **I. Scope**

1. These General Terms and Conditions of Sale apply to all business relations with our customers ("Buyer"). The General Terms and Conditions of Sale only apply if the Buyer is an entrepreneur (Section 14 of the German Civil Code), a legal entity under public law or a special fund under public law within the meaning of Section 310 Paragraph 1 of the German Civil Code.
2. Our General Terms and Conditions of Sale apply exclusively. Any deviating, conflicting or supplementary general terms and conditions of the buyer will only become part of the contract if and to the extent that we have expressly agreed to their validity. This consent requirement also applies if the buyer refers to his general terms and conditions when placing the order and we have not expressly objected to the general terms and conditions.
3. These General Terms and Conditions of Sale apply to contracts for the sale and/or delivery of movable items ("goods"). It does not matter whether we manufacture the goods ourselves or purchase them from suppliers (§§ 433, 650 BGB). Unless otherwise agreed, the General Terms and Conditions of Sale apply in the version valid at the time of the buyer's order or in the version last communicated to him in text form as a framework agreement for similar future contracts, without us as the seller having to refer to them again in individual cases.
4. Individual agreements made with the buyer in individual cases (including subsidiary agreements, additions and changes) and information in our order confirmation take precedence over these General Terms and Conditions of Sale. The content of such agreements is determined, unless there is evidence to the contrary, by a written contract or our written confirmation.
5. Legally relevant declarations and notifications from the buyer regarding the contract (e.g. notifications of defects, setting of deadlines, withdrawal or reduction) must be made in writing, i.e. in text form (e-mail). Further statutory formal requirements and other evidence remain unaffected.

#### **II. Offer and conclusion of contract**

1. Our offers are non-binding and subject to change. This also applies if we have provided the buyer with calculations, estimates and other

product descriptions or documents (also in electronic form). We reserve ownership and copyright to all documents provided to the buyer in connection with the order. These documents may not be made available to third parties unless we give the buyer our express written consent to do so.

2. When the buyer orders the goods, this is a non-binding contractual offer in accordance with Section 145 of the German Civil Code (BGB). If the order does not state otherwise, we are entitled to accept this contractual offer within two weeks of receipt. There is no need for us to expressly reject the buyer's offer.
3. Acceptance of the contract offer can be declared either in writing (e.g. by an order confirmation) or by delivery of the goods to the buyer.

#### **III. Prices and payment arrangements**

1. Unless otherwise agreed in writing in individual cases, our prices ex warehouse at the time of conclusion of the contract apply, plus statutory VAT. VAT is shown separately on the invoice. Price list and invoice are issued in EUR. If no fixed price agreement has been made, reasonable price changes due to changes in wage, material and distribution costs remain reserved for deliveries that take place 3 months or later after conclusion of the contract.
2. Any customs duties, fees, taxes and other public charges shall in any case be borne by the buyer.
3. Payment of the purchase price must be made exclusively to the account specified in the invoice or to another location. The deduction of a cash discount is only permitted by special agreement, which must be in writing.
4. Unless otherwise agreed, the purchase price is due and payable within seven days of receipt of the invoice. Receipt of payment is deemed to be the timely direct debit payment, or the credit to our account in the case of bank transfer. However, we are entitled at any time, even within the framework of an ongoing business relationship, to make a delivery in whole or in part only against advance payment. We will declare a corresponding reservation at the latest with the order confirmation.

5. The buyer is in default if the above payment deadline expires. A separate reminder is not required. During the default, the purchase price will be subject to interest at the applicable statutory default interest rate according to Section 288 Paragraph 2 of the German Civil Code (BGB) in the amount of nine percentage points above the respective base interest rate. We reserve the right to assert further damages for default. In the case of merchants, our claim to commercial default interest according to Section 353 of the German Commercial Code (HGB) remains unaffected.
6. If, after conclusion of the contract, it is foreseeable that our claim to payment of the purchase price is at risk due to a lack of performance on the part of the buyer (e.g. by filing for insolvency proceedings), we are entitled to refuse performance and, if necessary after setting a deadline, to withdraw from the contract in accordance with the statutory provisions (Section 321 of the German Civil Code). The statutory provisions on the dispensability of setting a deadline remain unaffected in this respect.

#### **IV. Retention rights**

The Buyer shall only be entitled to rights of set-off or retention if his claim has been legally established or is undisputed and his counterclaim is based on the same contractual relationship.

#### **V. Delivery period and delay of delivery**

1. The delivery period will be specified by us when we accept the order and is normally 4 working days from acceptance of the order.
2. In the event that we are unable to meet contractually agreed delivery deadlines for reasons for which we are not responsible, we must inform the buyer of this fact immediately and at the same time provide the expected or new delivery deadline. If a delayed delivery cannot be made due to the unavailability of the service even within the newly announced delivery period, we are entitled to withdraw from the contract in whole or in part; we must immediately reimburse any consideration already provided by the buyer (in the form of payment of the purchase price). The unavailability of the service is the case, for example, if our supplier has not delivered on time, if we have concluded a congruent hedging transaction, if there are other disruptions in the supply chain (for example due to force majeure) or if we are not obliged to procure in the individual case.
3. Whether we as the seller are in default of delivery is determined by the statutory provisions. However, a prerequisite for a delay in delivery on our part as the seller is a reminder from the buyer. In the event that a delay in delivery is in place, the buyer can claim flat-rate compensation for the damage caused by the delay. The flat-rate compensation amounts to 0.5% of the net price (delivery value) for each completed calendar week of the delay, but a maximum of 5% of the delivery value of the goods delivered late.

We reserve the right to provide appropriate evidence that the buyer has suffered no damage or only less damage than the above flat rate.

4. The rights of the buyer according to Section IX of these General Terms and Conditions of Sale as well as our statutory rights, in particular in the event of an exclusion of the obligation to perform (e.g. due to impossibility or unreasonableness of the performance and/or subsequent fulfillment), remain unaffected.

#### **VI. Delivery, transfer of risk, acceptance, default of acceptance**

1. Delivery is ex warehouse. The warehouse is the place of performance for delivery and any subsequent performance. If the buyer wants the goods to be sent to a different destination (sale by dispatch), he must bear the costs of shipping. If nothing has been contractually agreed, we can decide on the type of shipping (packaging, shipping route, transport company) ourselves.
2. When the goods are handed over to the buyer, the risk of accidental loss and accidental deterioration is transferred to the buyer. In the case of a sale by dispatch, the risk of accidental loss of the goods, accidental deterioration of the goods and the risk of delay are transferred when the goods are delivered to the forwarding agent or freight carrier. If the buyer is in default of acceptance, the goods are deemed to have been handed over.
3. In the event that the buyer is in default of acceptance or our delivery is delayed for other reasons for which the buyer is responsible, we have a claim against the plaintiff for compensation for the damage incurred, including additional expenses (e.g. storage costs).

#### **VII. Retention of title**

1. We reserve title to the delivered goods until full payment of all our current and future claims arising from the purchase contract and an ongoing business relationship (secured claims).
2. Until the secured claims have been paid in full, the goods subject to retention of title may not be pledged to third parties or transferred as security. The buyer must notify us immediately in writing if an application for the opening of insolvency proceedings is made or if third parties (e.g. by seizure) access the goods that are our property. If the third party is unable to reimburse us for the legal and extrajudicial costs of a lawsuit in accordance with Section 771 of the Code of Civil Procedure, the buyer is liable for the loss we incur.
3. In the event of a breach of contract by the buyer, in particular in the event of non-payment of the purchase price when due, we are entitled to withdraw from the contract in accordance with the statutory provisions and/or to demand the return of the goods on the basis of retention of title .
4. The buyer is authorized, until revoked, to resell the goods subject to retention of title in the

ordinary course of business. In this case, the following provisions apply in addition:

- a. The buyer hereby assigns to us, for security purposes, all claims against third parties arising from the resale of the goods or products in the amount of the final invoice amount agreed with us (including VAT). We accept the assignment. The buyer's obligations listed in VII. 2. also apply with regard to the assigned claims.
  - b. The buyer remains authorized to collect the claim alongside us. As long as the buyer meets his payment obligations to us, there is no lack of performance on the part of the buyer and we do not assert the retention of title by exercising a right in accordance with VII. 3., we undertake not to collect the claim. If we assert the exercise of a right in accordance with VII. 3., we can demand that the buyer disclose the assigned claims and their debtors, and that the buyer provides all information necessary for collection, hands over the associated documents and informs the debtors (third parties) of the assignment. In addition, we are entitled to revoke the buyer's authority to resell and to process the goods subject to retention of title.
  - c. In the event that the realizable value of the securities exceeds our claims by more than 10%, we will release securities of our choice at the buyer's request.
5. The buyer is obliged to treat the purchased item with care as long as ownership has not yet been transferred to him.

#### **VIII. Rights in case of defects**

1. The statutory provisions apply to the buyer's rights in the event of material and legal defects, unless otherwise specified below.
2. Agreements that we have made with buyers regarding the quality and the intended use of the goods (including accessories and instructions) generally form the basis of our liability for defects within the scope of the warranty. A quality agreement includes all product descriptions and manufacturer information that are the subject of the individual contract or that were made public by us (in particular in catalogs or on our website) at the time the contract was concluded. In the event that no quality was agreed, it must be assessed according to the provisions of Section 434 Paragraph 3 of the German Civil Code (BGB) whether a defect exists. Against this background, it should be noted that public statements made in advertising or on the label of the goods take precedence over statements made by other third parties.
3. We are not liable for defects that the buyer knows about at the time of conclusion of the contract or that he is grossly negligent in not knowing about.
4. The buyer's claims for defects only exist if the buyer has complied with his statutory inspection and notification obligations (§§ 377, 381 HGB). A written notification must be made to us immediately if a defect becomes apparent during

delivery, inspection or at a later point in time. Obvious defects must be reported in writing within 7 (seven) working days of delivery and undetectable defects within the same period of time from the discovery of the defects. In the event that the buyer neglects or does not fulfill his obligation to properly inspect and/or report defects, liability on our part for the defect that is not reported or not reported in a timely manner or not reported properly is excluded in accordance with the statutory provisions.

5. The buyer's claims for reimbursement of expenses in accordance with Section 445a Paragraph 1 of the German Civil Code (BGB) are excluded. Claims for damages or claims for reimbursement of wasted expenses by the buyer (Section 284 of the German Civil Code) exist even in the event of a defect only in accordance with Sections IX and XV.

#### **IX. Limitation periods**

1. The general limitation period for claims resulting from material or legal defects is one year from delivery, in deviation from Section 438 Paragraph 1 No. 3 of the German Civil Code (BGB).
2. The above limitation periods under sales law also apply to contractual and non-contractual claims for damages by the buyer that are based on a defect in the goods, unless the application of the regular statutory limitation period according to Sections 195 and 199 of the German Civil Code (BGB) would lead to a shorter limitation period in the individual case.

#### **X. Food monitoring**

The buyer is obliged to inform us immediately if a government agency objects to goods that we have delivered to him under food law. The buyer will also ensure that if the government agency takes the goods, a second sample is taken from the same batch, officially sealed and separated by the buyer for us as a counter sample and stored until we collect it.

Otherwise, the relevant statutory provisions apply.

#### **XI. Empties**

1. The empties intended for reuse (reusable empties), such as bottles, crates, containers, KEGs, bins, pallets and pallet baskets (with the exception of loan pallets), are our non-saleable property, which is only loaned to the buyer after the deposit has been paid and only for the intended use. To secure our ownership of the empties and the right to return them, we charge a deposit in accordance with the current price lists, plus VAT, which is due together with the purchase price of the delivered goods. Deposit amounts cannot be discounted. The buyer remains obliged to return the empties despite depositing a deposit. If the goods are returned properly, we will refund the deposit to the buyer in the amount deposited. The buyer cannot assign claims against us for reimbursement of the deposited deposit to third parties.
2. The empties must be returned within the usual turnaround times. Empties will only be taken back and credited to the extent that full goods have

been delivered by us or our vicarious agents. The empties balances sent by us to the buyers are deemed to be accepted provided that we have informed the buyer of his right to object and the relevant deadline and the buyer does not object within one month. The final settlement of the deposit balance will take place in the event of termination of the business relationship.

3. In the event of a changeover or discontinuation of the empty packaging, old empty containers still in circulation in reusable packaging will only be taken back within 9 months of notification of the changeover to the extent that full containers were delivered. When the business relationship ends, the buyer is obliged to return the empty containers without a separate request.

## **XII. One-way deposit**

PepsiCo Deutschland GmbH has joined the deposit system of DPG Deutsche Pfandsystem GmbH in order to fulfil its packaging obligations. The collection and reimbursement of deposits is based on the DPG's current terms and conditions of participation.

## **XIII. Export**

For goods intended for export, our invoices generally show the applicable VAT for all containers and, for disposable containers, the system operator's applicable disposal fees. After presentation of an export certificate, we will refund the VAT and disposal fees to the buyer. Prior agreement is required before our goods can be exported.

## **XIV. Confidentiality**

The parties undertake to keep all business and trade secrets confidential. These may only be made available to third parties under the obligation to maintain further confidentiality to the extent that this is absolutely necessary to fulfil the contractual obligations.

## **XV. Other Liability**

1. Unless otherwise stated in these General Terms and Conditions of Sale, including the following provisions, we as the seller shall be liable for breaches of contractual and non-contractual obligations in accordance with the statutory provisions.
2. Within the scope of liability based on fault, we are liable for damages, regardless of the legal basis, only in the case of intent and gross negligence. In the case of simple negligence, we are liable, subject to statutory limitations of liability (e.g. care in our own affairs; insignificant breach of duty), only:
  - a. for damages resulting from injury to life, body or health
  - b. for damages resulting from the violation of a material contractual obligation (obligations whose fulfilment enables the proper execution of the contract and on whose compliance the contractual partner relies and may rely). However, our liability in this case is
  - c. limited to compensation for foreseeable, typically occurring damage.

3. The liability limitations arising from XV.2 also apply to third parties and in the event of breaches of duty by persons whose fault we are legally responsible for. If a defect was fraudulently concealed and a guarantee was given for the quality of the goods, the liability limitations do not apply. This also applies to claims by the buyer under the Product Liability Act.
4. The buyer may withdraw or terminate the contract due to a breach of duty that does not result from a defect only if we as the seller are responsible for the breach of duty.
5. The buyer is not entitled to terminate the contract. Otherwise, the statutory requirements and legal consequences apply.

## **XIV. Choice of law and jurisdiction**

These General Terms and Conditions of Sale and the contractual relationship between us as the seller and the buyer are governed by the law of the Federal Republic of Germany, excluding international uniform law, in particular the UN Convention on Contracts for the International Sale of Goods.

The place of jurisdiction for all disputes arising from or in connection with these General Terms and Conditions of Sale is Frankfurt am Main.

## **XVII. Final provisions**

1. Should individual provisions of the contract or these General Terms and Conditions be invalid or unenforceable, this shall not affect the validity of the remaining provisions. The invalid or unenforceable provision shall be replaced by an effective and enforceable provision whose effects come closest to the economic objective that the parties were pursuing with the invalid or unenforceable provision. This shall also apply if the contract or these General Terms and Conditions prove to be incomplete.
2. Any changes or additions to the General Terms and Conditions or the contract are only valid if they are agreed in writing. This also applies to any changes to this written form clause.
3. The buyer acknowledges this and consents to the processing of his data for business purposes, including the transfer of data to third parties, insofar as it is necessary for the performance of the contract, § 6 and § 7 GDPR.
4. These terms and conditions are available in German and English. The German version is the only legally binding version. The English version is for customer convenience only.

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