

# General terms and conditions of AKO GmbH - EXPORT

## 1. Scope of application

Our general terms and conditions exclusively apply to all deliveries and services unless we have expressly agreed something else in writing with a customer. General terms and conditions of our customer do not apply at all. Our general terms and conditions also apply if we unconditionally supply in full knowledge of contrary or deviating conditions of the customer.

## 2. Offers

All offers are subject to confirmation and are quoted, unless otherwise mentioned in EURO, per kilogram, packaging included and duty paid.

## 3. Orders

The minimum order quantity is 500 kg in original packaging or packaging of 20-25 kg, as well as packaging of 10 x 1 kg spices and 5 x 1 kg herbs. We reserve the right to round an ordered amount up or down in order to be able to supply in subsisting packaging units.

## 4. Payment

Payments have to be made „cash“ within 10 days from invoice dates. The customer is not entitled to set off against counter claims or to establish a right of reservation unless the counter claim or the right of reservation have been acknowledged by us in writing or been finally determined by court. If a customer does not honor obligations of payment or if circumstances justify doubts in his capacity to pay, we are – subject to further claims – entitled to rescind the current contract with the customer as well as other contracts already concluded with him and to make future supplies subject to an advanced payment. In cases where payment deadlines are exceeded we calculate interest in the amount of 10 %-points above the respective base rate of the European Central bank. The right to claim further and higher damages remains reserved.

## 5. Call-off-Contracts

Call-off-Contracts with our customers are only valid subject to lucky arrival at AKO and subject to EU-conform analyses values upon arrival. Call-off-Contracts adhere to a type of product and if agreed – for agreed values of this type of product. They are not related to one special batch. If the customer does not call off the goods within the agreed period of time - or if there is no agreement, within 6 months after conclusion of contract - we will be entitled to set a new appropriate deadline in writing, and to withdraw from the contract should the goods not been called off within the given period. In case the customer is responsible for the delay or undone call-off, we can demand for compensation under these circumstances due to failure.

## 6. Quality of the goods

Goods labelled „original“ and „Original-Import-Rawmaterial“ respectively are goods received from the origin and which are supplied without further treatment. Quality deviations of these goods from goods treated by us do not establish a fault of the goods. Natural or harvest related deviations of the goods regarding shape, colour, structure or the amount of effective substances contained do not establish a fault unless the goods are deviating from express written agreements with the customer in this respect or the deviations are significantly exceeding the usual scope. Differences in weights of +/- 5 % are possible and do not establish a fault.

Samples are nonbinding samples of type, not samples of a fixed lot. Clauses as „as already delivered“ or „as supplied before“ or similar expressions on orders, do exclusively apply to the nature of the goods.

## 7. Defects (Transport Damages and nature of goods)

Apparent faults have to be reported to us in writing immediately, at the latest, however, three days after the goods arrival at the destination. The buyer has to carefully examine the goods immediately after arrival at destination or have it examined, even if samples or specimens had been forwarded beforehand. Potential complaints have to be reported to us in writing immediately, at the latest, however, one week after arrival of the goods at the destination. Hidden faults, which could not be detected upon a timely and careful examination, have to be reported to us in writing immediately, at the latest, however, three days after becoming apparent. In case the above-mentioned obligations to examine and complain are infringed, the goods are deemed approved. The goods are also deemed approved, if the buyer further processes or sells them unless a fault was undetectable upon a proper examination.

## 8. Claims for damages

Claims for damages against us for whatever legal reason, are only available in the following cases: a) Culpable causation of damage to life, body or health, b) gross negligent or intentional causation of another damage, c) simple negligent violation of an essential contractual duty so far as an exclusion of liability would compromise the purpose of the contract. In the last case the liability is limited to foreseeable damages, which are typical for the contract. The maximum damage amount is limited to the invoice amount. Claims pursuant to the product liability act remain unaffected by these stipulations.

## 9. Extended retention of title

Until receipt of all payments from the contractual relation with the customer we retain the title of the supplied goods. A processing or transformation of the goods is performed for us as manufacturer, however, without obliging us. If our (joint) title ceases through joining or mixing, it is already agreed at this stage that the joint title in the new goods or the mixed holding belongs to us in the share of the relevant

value (invoice value) and is transferred to us. The customer keeps our (joint) property free of charge. Goods in which we have (joint) title is hereinafter referred to as retained goods.

The customer is entitled to process and sell retained goods in the ordinary course of business, so far as this happens at the normal conditions of the customer and within an agreement of a retained of title. Pleading and mortgaging of the retained goods is not allowed. The customer assigns claims resulting from a further sale or any other legal reason (e. g. insurances, tort) regarding the retained goods (including all balance claims from open accounts) together with ancillary rights as a security in full amount to us. Until further notice the customer is entitled to collect the claims assigned to us for our account in his own name. Should a third party assert rights regarding the retained goods, the customer will point out our title and advise us immediately, cost and damages are born by the customer. If the customer violated the contract – particularly in case of delay of payment – we are entitiled to rescind the contract and to claim the retained goods back. Upon request the customer has also got to advise us of the names of the debtors of the claims assigned to us.

If the value of our securities exceed all claims together by more than 20 % we are obliged to release securities at our discretion in so far upon the customers request.

## 10. Other reservations

We sign supply and delivery contracts exclusively subject to correct, EU-lawful condition and timely deliveries to us (reservation of supply to us). Changing of customs tariffs, exchange rates, potential additional costs as well as acts of God entitle us to adjustments of purchase price and modification of it.

In cases of act of God as well as incorrect or delayed supply to us and other supply obstacles, which are beyond our control, we will extend the delivery for the time of the obstacle and an adequate transition period thereafter.

In case of presumably permanent obstacle we are also entitled to rescind the contract wholly or partly. In this case the customer is not obliged to perform the (remaining) payment and obtains potential advanced payments on not yet performed deliveries back immediately. The customer is not entitled to claim damages.

## 11. Place of performance and transition of risk

Place of performance for our obligations and the obligations of the customer is Hannover. All sales are EXW Hannover or ex warehouse. Shipment and transport is always at the customer risk. The risk passes onto the customer as soon as the goods were handed out to the transport person – regardless whether it is a person of our enterprise or not. If the customer is delayed with his acceptance the risk is passed onto him. Storage costs occurring after transition of risk are to be borne by the customer.

## 12. Written form

To fulfil the written form transmission by telefax or e-mail is sufficient.

## 13. Packaging

All supplies include the necessary and essential packaging. The disposal has either to be performed by the buyer or the costs are added to the respective sale prices in corresponding amounts.

## 14. Court jurisdiction

Hannover is exclusive court jurisdiction for all disputes against us. Court jurisdiction for all disputes against the customer is either Hannover or the customer seat according to our discretion.

## 15. Applicable law

Notwithstanding individual agreements the legal relations between us and the customer are subject to the following regulations and in the following sequence: These general terms and conditions of AKO, the conditions of „Waren-Verein der Hamburger Börse e. V.“ (which we can supply upon request), the law of the Federal Republic of Germany excluding CISG. In case of doubt the German text of these general terms and conditions applies.

## 16. Severability clause

So far as these general terms and conditions are or should become invalid, this does not affect the validity of the other stipulations. The concerned clause has to be replaced with an individual agreement to be negotiated.