

Conditions of Sale and Delivery

1. The General Terms and Conditions of Sale and Delivery of HENRY LAMOTTE FOOD GmbH (Seller) are intended exclusively for use with business firms. They apply exclusively for all offers made by the Seller and for all contracts concluded with the Seller. Terms and conditions of the Purchaser which deviate, contradict or supplement the same shall only apply if the Seller has expressly consented to such terms in writing. A contract shall only come into existence with the written confirmation of order of the Seller. No verbal ancillary agreements are made. The Seller reserves the right to cancel the contract in the event of incorrect or late self-supply through its supplier. This shall not apply if the Seller has expressly assumed the supply risk. The sales prices may be adjusted and increased corresponding to the ratio calculated by the Seller in the event of an increase in the national or international public levies or freight costs applicable for the contract products at the time of the conclusion of the contract, or in the case of their being newly introduced. The statutory VAT is to be added to the sales prices quoted.
2. Recognizable defects are to be notified by the Purchaser in writing immediately, hidden defects immediately, but no later than 3 working days following delivery. Complaints as to hidden defects may only be made so long as it is possible for the Seller to make a control check. Failure to lodge a complaint within the specified time limits shall preclude any claim of the customer in relation to defects. In the case of defects in the goods, the Seller shall, at its option, undertake remedial measures or make replacement delivery. The option shall not exist in the case of recourse under § 478 BGB [German Civil Code]. In the event of the final failure of the remedial measures or replacement delivery, the Purchaser may, at its option, demand a reduction in the price (abatement) or rescission of the contract (cancellation) and damages. In the case of a defect being only insignificant, the Purchaser shall have no right of cancellation. Should the Purchaser, following the failure of measures of subsequent performance, elect to claim damages, the amount of such damages shall be limited to the difference between the purchase price and value of the defective item. This shall not apply if the Seller has fraudulently induced the breach of contract. Public expressions, sales puff or advertising by the Seller or the manufacturer do not represent any contractual undertakings in relation to the properties of the goods. The Seller does not grant the Purchaser any warranties within the meaning of the law. Manufacturer warranties remain unaffected hereby. The limitation period for material and legal defects shall be one year, commencing with the passing of risk. In the case of recourse against the supplier under § 478 BGB, the statutory period of limitation shall apply.
3. The Purchaser shall not be entitled to any further claims above and beyond the rights granted to it in these Terms and Conditions; in particular, it shall not be entitled to any claims for damages arising from fault in concluding the contract (culpa in contrahendo), other breaches of duty or from tortious acts. The exclusion of liability shall not apply where a claim for damages is based on the wilful intent or gross negligence of the Seller, its legal representative or vicarious agent, or in the case of a breach of a fundamental contractual duty on the part of the Seller, its legal representative or vicarious agent. In the case of culpable breach of fundamental contractual duties by the Seller, its legal representative or vicarious agent, the Seller shall only be liable for the reasonably foreseeable damage typical for the type of contract. The Seller shall not be liable for any damage not suffered by the object of delivery. Further, the exclusion of liability shall not apply in the case of damage arising from injury to life, body or health which results from a negligent breach of duty of the Seller or a deliberate or negligent breach of duty of its legal representative or vicarious agent, and in cases in which, under the Product Liability Act, liability exists in the case of defects in the object of delivery for injury to persons or for material damage to privately used objects. The same shall apply where the Seller has given a warranty as to the properties of the goods, or has expressly assumed the supply risk. Claims to damages arising from this contractual relationship may only be asserted within the preclusive period of 1 year from the commencement of the statutory period of limitation.
4. Cases of force majeure shall entitle the Seller – regardless of its other rights – to cancel the contract, either in whole or in part, where they are of not insignificant duration. Cases of force majeure shall include e.g. war, riot, unrest, import and export restrictions, official measures, interruptions in operations for which the party is not responsible, strike, lockouts, interruptions of the traffic routes, natural catastrophes such as e.g. extraordinary heat, wetness or frost periods and other events which make it impossible or unreasonable for the Seller to perform the contract. In any case, correct and punctual supply to ourselves reserved.
5. The Seller reserves title to the goods it has supplied until payment has been made in full in respect of all claims arising from the business relationship. Until payment has been made in full in respect of all claims arising from the business relationship, the Purchaser shall be obliged to handle the goods with care and to inform the Seller immediately of any seizure of the goods by third parties, as, for instance, in the case of a levy of execution, or of any damage to or destruction of the goods, a change in possession of the goods or of the filing of an application for the opening of insolvency proceedings in relation to the assets of the Purchaser. In the case of conduct on the part of the Purchaser in breach of the contract, in particular in the case of default in payment or in the case of a breach of a duty under this provision, the Seller shall be entitled to reclaim possession of the goods without cancelling the contract. The Purchaser shall be entitled to resell the goods in the normal course of business. It assigns to the Seller already now all claims in the amount of the invoice sum which accrue to it against its customers or third parties through the resale. The Seller accepts the assignment. Following the assignment, the Purchaser shall be entitled to collect the debt. The Seller reserves the right to collect the debt itself as soon as the Purchaser fails properly to fulfil its payment obligations towards the Seller, becomes in default of payment vis-à-vis the Seller, ceases payments or an application is filed for the opening of insolvency proceedings in relation to the assets of the Purchaser. In the cases described in the 5th sentence, the Purchaser shall be obliged to provide the Seller with the information and documents necessary to collect the debts and, at the request of the Seller, to notify the third party debtor of the assignment. The processing or refashioning of the purchased item by the Purchaser is always carried out for the Seller. Should the purchased item be processed together with other objects not belonging to the Seller, the Seller shall acquire co-ownership in the new item in the ratio of the value of the purchased item to the other objects processed or refashioned at the time of the processing or refashioning. In relation to the object created through processing or refashioning, the same shall apply in all other respects as for the purchased item delivered subject to reservation of title. Should the purchased item be mixed inseparably with other objects not belonging to the Seller, the Seller shall acquire co-ownership in the new item in the ratio of the value of the purchased item to the other objects mixed at the time of the mixing. Should the mixing occur in such manner that the item of the Purchaser is to be regarded as the main item, it is deemed as agreed that the Purchaser assigns to the Seller proportional co-ownership. The Purchaser shall keep in safe custody for the Seller such sole or co-ownership property thus arising.
6. Should the Purchaser be in default with a payment, the Seller shall, in relation to further deliveries, in addition to its statutory claims, have a right of retention and the right to demand payment in advance for the same. The Purchaser shall not be entitled to exercise any right of set-off or retention unless its counter-claims have been judicially determined and become final and legally binding, or they are undisputed or recognized by the Seller. The Purchaser shall only be entitled to exercise a right of retention to the extent that its counter-claim is based on the same contractual relationship.
7. Deliveries are made ex works unless otherwise agreed.
8. In the first priority, the provisions of these General Terms and Conditions of Sale and Delivery of the Seller shall apply. If and in so far as these contain no provisions, the following shall apply by way of supplementary provisions of the General Terms and Conditions of Business of the Waren-Verein der Hamburger Börse e.V., Hamburg [Association of the Foreign and Wholesale Trade]. The Purchaser shall, upon request, receive a copy of the relevant terms and conditions from the Seller and expressly agrees to their application. In the lowest priority, if and in so far as the provisions in accordance with sentences 1 and 2 do not apply, the law of the Federal Republic of Germany shall apply.
9. In the case of contracts with a Purchaser having its registered office within the Federal Republic of Germany where the goods are delivered only within the Federal Republic of Germany (domestic contract). In the case of contracts with a Purchaser having its registered office outside the Federal Republic of Germany, in the case of delivery of the goods from a foreign country into the Federal Republic of Germany, from the Federal Republic of Germany into a foreign country or in the case of delivery of the goods exclusively abroad (trans-border commerce), all legal disputes arising from the business relationship shall be decided by a court of arbitration, namely on the basis of the Rules of Arbitration of the Waren-Verein der Hamburger Börse e.V., Hamburg [Association of the Foreign and Wholesale Trade]. The Purchaser shall, upon request, receive a copy of the relevant terms and conditions from the Seller and expressly agrees to their application. The Seller reserves the right, at its option, to submit the dispute to an ordinary court of justice. With regard to the court venue, reference is made to Clause 9, para. 1. Should the Purchaser wish to sue the Seller, it must first give the Seller the opportunity of exercising its option. At the request of the Purchaser, the Seller shall exercise its option prior to the institution of legal proceedings. Should the Seller fail to exercise its option or to exercise the same within 7 days following receipt of the request of the Purchaser, the dispute shall be decided in accordance with Clause 9, para. 2, 1st sentence by a court of arbitration.