

# OKA Import – Export Lebensmittel GmbH

## SALES AND PAYMENT CONDITIONS



### §1

#### Validity of the Conditions

1. All offers, acceptances and confirmations of OKA Import – Export Lebensmittel GmbH (hereafter to be referred to as OKA), as well as all deliveries and services of OKA, shall take place on the basis of the Sales and Payment Conditions. These shall also be valid for all future business relationships, also if these are not expressly agreed again. The customer shall also recognise them for subsequent deliveries with the execution of the contract at the latest. Conditions of the customer that differ from these shall not be valid. Counter-confirmations of the customer with reference to its business or purchasing conditions shall be contradicted by this.
2. All agreements concluded between OKA and the customer for the purpose of carrying out the contract shall be recorded in writing in the contract.

### §2

#### Conclusion of the Contract

1. The offers of OKA shall be subject to alteration and non-binding. Declarations of acceptance and all orders shall require confirmation in writing or by telex form OKA in order to be legally effective. The customer shall be obliged to check the confirmation immediately following receipt for its correctness, in particular with regard to details of volume, quantity, time and price, and to indicate any differences and unclear points in writing without delay.
2. Completions, amendments and subsidiary agreements shall only be effective if they have been confirmed in writing by OKA.
3. Details of measurement, weight, quality and volume, delivery date and delivery location, quality controls and quality specimens shall only be binding if this is expressly agreed in writing. Details of quality and product specifications shall only serve the goods description, though they shall not represent any assurance of characteristics.
4. The sales staff of OKA shall not be authorised to make oral subsidiary agreements, or to give oral assurances that extend beyond the content of the written contract.

### §3

#### Delivery Period

1. Delivery deadline shall only be binding if they are designated as binding and have been confirmed in writing.
2. OKA shall not be at fault, also in the case of agreed binding periods and deadlines, for delays in delivery and services occurring as a result of acts of God and as a result of events that fundamentally impede delivery by OKA or that make delivery impossible, in particular strikes, lock-outs, official orders and other excusable stoppages, also if these occur at suppliers of OKA or their sub-contractors. Delivery deadlines shall be readily extended by the duration of the hindrance in addition to a reasonable subsequent delivery period. There shall be a basic subsequent period of 8 days in all cases of agreed deadlines or periods.
3. Should the hindrance for which OKA is not at fault last longer than 3 months, OKA shall be entitled to withdraw either fully or partially from the contract due to the unfulfilled part. The same shall be true for the customer after a subsequent period of 2 weeks. Should the delivery period be extended or should OKA be released from its obligation as a result of the withdrawal, the customer shall not be able to derive any damage compensation claims from this. OKA shall only be able to cite the circumstances quoted if the customer notifies it immediately and if the reason for the hindrance was indicated.
4. OKA shall be entitled to part-deliveries and part-services at any time.
5. The observance of the delivery and service obligation by OKA shall presuppose the prompt and orderly fulfilment of the obligation of the customer.
6. Should the customer not take delivery of the good, OKA shall be entitled, after setting a subsequent period of 1 week, to withdraw from the contract or, where OKA has refused further fulfilment of the contract by setting the subsequent period and has announced damage compensation claims, to demand damage compensation from the customer. OKA shall be entitled to dispose otherwise of goods that have not been accepted, and to demand the revenue differences as damages from the customer. The minimum damages shall be 30% of the original sale price, where the customer is able to prove that OKA has incurred lower damages.

### §4

#### Risk of Transport

1. The risk shall be transferred to the customer as soon as the good has been passed over to the person carrying out the transport, or has left the safekeeping of OKA for the purpose of dispatching. Should the customer be supplied directly by an upstream supplier of OKA, the risk shall pass from OKA with the transferral of the good to the person carrying out the transport on the side of the upstream supplier. Should dispatch become impossible without OKA being at fault, the risk shall be passed over to the customer with the notification or readiness for dispatch. The sending of the appropriate invoice shall represent the time of the notification of readiness for dispatch.

### §5

#### Notice of Defects and Warranty

1. The customer shall be obliged to examine the good immediately after its arrival and, where a defect or a difference of volume exists, to indicate this specifically to OKA without delay and in writing within an exclusion period of 24 hours at the latest in the case of highly perishable goods such as fresh products, or within an exclusion period of 8 days in the case of long-shelf-life products. OKA shall be notified of defects that cannot be discovered within this period even with careful checking immediately after their discovery and in writing. After the combination, commingling or further processing of the good, warranty claims shall be excluded with regards to those defects which would have been recognisable on the required examination of the goods delivered by OKA and of the combined, commingled or further processed product.
2. Where a defect exists, OKA shall be entitled by its own choice to remove the defect or to make a replacement delivery. Should the removal of the defect fail, or should OKA not be prepared to remove the defect or make a replacement delivery or not be in a position to do so or delay this beyond a reasonable period for reasons for which OKA is at fault, the customer shall be entitled by its own choice to demand reduction of the payment or withdrawal from the contract.
3. Any additional claims of the customer, and in particular damage compensations claims, shall be excluded. This shall not be the case if the damage based upon behaviour of OKA that is intentional or grossly negligent or that results from the absence of an assured characteristic.
4. Reports about the quality of the goods shall be sought exclusively from a milk industry inspection and test institution (MUVA), to be selected and determined by OKA. The reports shall be binding for both sides.

### §6

#### Reservation of the Right of Ownership

1. The good shall remain property of OKA until payment has been made in full. The good shall remain the property of OKA in commercial transaction until the fulfilment of all debts from the current account, including balance of account debts, to which OKA is entitled from the customer for every legal reason either now or in the future.
2. The customer shall be entitled to process and dispose of the conditional commodity in orderly commercial transaction, so long as it is not delayed. Pledges or assignments as security shall not be admissible. The customer shall, for the sake of insurance, now assign to OKA in full the debts arising from the further sale or another legal reason (insurance, unlawful act) in relation to the conditional commodity (including all balance of account debts from the current account). OKA shall revocably authorise the customer to debit the assigned debt for invoice by OKA in its own name. The direct debiting shall only be able to be revoked if the customer does not meet its payment commitments in an orderly fashion. After revocation of the direct debiting, the customer shall be obliged to notify OKA of the third-party debtor and their obligations, and to indicate to these the assignment of the debt.
3. In case of access of third parties to the conditional commodity, in particular attachments, the customer shall be obliged to refer to the property of OKA and to notify OKA immediately. Insofar as the third party is not in position to repay OKA the judicial or out-of-court costs arising in this context, the customer shall be liable for these.
4. In case of behaviour by the customer in violation of the contract, in particular payment delay, OKA shall be entitled to confiscate and collect the good or where necessary to demand assignment of the rights of the purchaser towards third parties to recover possession. In the recovery and the attachment of the conditional commodity, there shall be no withdrawal from the contract.
5. On demand of the customer, OKA shall release all previously cited securities by its own choice and transfer these to the customer, when the nominal value of the securities persistently exceeds the debts of OKA by more than 20%.

### §7

#### Customs clearance for Export

1. Insofar as the customer itself exports the good or has the good exported by companies authorised by it, it shall be obliged to treat the documents necessary in the sense of the customs and market regulation legislation with the required care and to deliver these promptly and in full to the office responsible for the processing of the export of the good. The customer shall be liable for the behaviour of the companies authorised by it or on its instruction, in particular for forwarding agents and haulage contractors.
2. The customer shall be obliged to compensate OKA for damages resulting from documents not being delivered in accordance with Point 1 or not being delivered completely or promptly and where this leads to security losses and/or other subsequent damages for OKA.
3. The customer shall also be liable for all damages incurred by OKA as a result of the good determined for export not leaving the custom zone of the Community promptly within a period of 60 days following acceptance of the export registration and in an unchanged condition according to Article 7 of the EEC VO1 800/1999, and/or is not imported into a third country within the foreseen period of 12 months following acceptance of the export registration in an unchanged condition. The customer shall also be liable to OKA for all damages resulting from re-importing of the goods, also after active processing, into the customs zone of EEC.
4. The customer shall additionally be liable to OKA for all other forms of behaviour damaging to repayment in the sense of market regulation legislation. The customer shall also be liable for all absent behaviour of those companies authorised by him or on his instruction, in particular forwarding agents and haulage contractors.

### §8

#### Restriction of Liability

Damage compensation claims from positive breach of an obligation, from fault at the time of conclusion of the contract and from unauthorised behaviour, are excluded both against OKA and against its assistants and vicarious agents, insofar as there exists no intentional or grossly negligent behaviour. This shall be the case also for damage compensation claims due to non-fulfilment, although only insofar as the compensation is demanded by indirect or damages that are a result of defects, insofar as the liability is based upon an undertaking, which should cover the customer against the risk of such damages. All liability shall be restricted to the damages foreseeable at the time of conclusion of the contract. This shall not affect claims according to the Law on Product Liability and other claims from product liability.

### §9

#### Payment

1. The invoice shall be issued on the day of delivery, or readiness of the goods for dispatch. Should the customer not agree with the content of the invoice, he shall have to advise OKA of this in writing within an exclusion period of 7 days. After this, the invoice shall count as having been accepted.
2. Insofar as not otherwise agreed, invoices of OKA shall be payable without reduction 7 days after the invoice date.
3. Payment shall count as having been made only if OKA is able to again access to the amount. In the case of cheques, payment shall count as having been made only when the cheques has been cashed.
4. OKA shall be entitled, despite agreements of the customer to the contrary, the charge payments initially to the customer's prior liability. Should costs and interest already have been incurred, OKA shall be entitled to charge the payments firstly to the costs, then to the interest and finally to the principal thing. OKA shall have to inform the customer about differing charges.
5. OKA shall be entitled to refuse to accept or change cheques. Acceptance always takes place only as a means of payment. Discount charges shall always be charged to the customer and be due immediately.
6. Should payment of the invoice amount not be made within 7 days of the invoice date, the customer shall have to pay interest after the due date on the invoice amount from the 8<sup>th</sup> day at the level of the interest rate charged by the commercial banks for open current account credits. The customer shall only be entitled to pay lower rates of interest if he is able to prove a correspondingly lower charge. Substantiation of the obligation to make interest payments shall not require a reminder by OKA.
7. Should circumstances be recognised by OKA that put in doubt the credit worthiness of the customer, in particular if a cheque is not cashed or if the customer suspends its payments or is fully or partially delayed in doing this, OKA shall be entitled to demand the total remaining debt, also in cheques are accepted. In this case, OKA shall also be entitled to demand simultaneous payment, advance payments or security payment. Should the customer not meet the simultaneous payment, advance payment or security payment within a period of 2 weeks as set by OKA on demand of OKA, then OKA shall be able to withdraw from the contract or demand damage compensation due to non-fulfilment.
8. The customer shall only be entitled to offset, restraint or reduction, also if notices of defects or counterclaims are validated, if the counter-claims are legally established or are indisputable. The customer shall be entitled to restraint at all times due to counter-claims from the same contractual relationship.

### §10

#### Data Protection

OKA shall be entitled to save, process and transfer to third parties data about the customer, insofar as this is necessary in the framework of a contract or relationship of trust similar to the contract, or serves the justified interests of OKA, a third party or the general public.

### §11

#### Applicable Law, Place of Jurisdiction, Partial Invalidity

1. The law of the Federal Republic of Germany shall be valid for these Business Conditions and the total legal relationship between OKA and the customer. The validity of the unified UN Purchasing Law (CISG) is expressly excluded.
2. Insofar as the customer is fully qualified merchant in the sense of the German Commercial Code, a judicial person of the public law or a public-legal special fund, either Munich or Kempten, according to the choice of OKA, shall be the place of jurisdiction for all disputes resulting either directly or indirectly from the contractual relationship.
3. Should a regulation in these Business Conditions or a regulation in the framework of other agreements be or become ineffective, the effectiveness of all other regulations or agreements shall not be affected by this in any way.