

# GENERAL TERMS AND CONDITIONS

for deliveries

**Rauner Fruchtsäfte-Konzentrate e.K. Inh. Jürgen Schwenk**  
Hesselbachstraße 10, 75242 Neuhausen, Germany

as of May 2018

## 1. Scope of Applicability

- 1.1 All business dealings shall be governed by the following **General Terms and Conditions** exclusively; as far as they do not contain any provisions, the statutory rules shall apply; Customer's terms to the contrary to or deviating from our **General Terms and Conditions** to our detriment shall be valid only if expressly confirmed by us in writing. Our **General Terms and Conditions** shall also apply if we are aware of Customer's terms to the contrary to or deviating from our terms to our detriment but unconditionally effect delivery to the Customer.
- 1.2 Our **General Terms and Conditions** shall only apply with respect to traders, judicial persons under public law or public utility funds as defined by para. 310 cl. 1 BGB (German Civil Code).
- 1.3 Our **General Terms and Conditions** shall also apply for future business with the Customer.

## 2. Contract Conclusion, Contract Content

- 2.1 Our offers and quotations are – if not expressly defined as firm - subject to change without notice.
- 2.2 Unless otherwise agreed upon, we unrestrictedly reserve any and all rights with regard to all documents concerning offers and quotations. Documents concerning offers shall be returned to us at our request without delay if the order is not placed with us. Customer may not assert a right of retention.
- 2.3 We reserve the right to amend the goods in the following manner even after conclusion of contract , if this is acceptable for the Customer:
- product changes relating to permanent product advancement and product improvement;
  - minor and insignificant variations relating to colour, form, design, measures, weights or quantities;
  - deviations customary in the trade.
- 2.4 We are only obliged to pay compensation under Section 122 BGB insofar as the fault is ours.

## 3. Prices, Terms of Payment

- 3.1 Unless otherwise agreed upon, our prices are **ex works** and do not include postage, despatch, freight, packaging, insurance, performance for installation and assembly costs. In addition to this, the legally prescribed VAT shall be charged.
- 3.2 Payments are due within 30 days of the date of invoice, free of charge to our payment centre. An invoice is issued as soon as the delivery leaves our company.
- 3.3 If payment has not been made within 30 days of the date of invoice, we will regard the contracting partner as being in arrears, with no further explanation provided.
- 3.4 The Customer may set off only such claims as are undisputed or unappealable. Customer shall be entitled to perform his right of retention only insofar as his counterclaim is based on the same contractual relationship.

## 4. Term of Delivery or Performance, Obstacles to Delivery beyond our responsibility, Delay in Delivery or Performance

- 4.1 The dates of delivery and performance shall only be deemed to be fixed dates if they are expressly laid down as such. The customer accepts longer terms of delivery in case of products not in stock and if we have to accept longer terms of delivery against our vendor.
- 4.2 Compliance with obligations of delivery and performance, especially delivery dates, requires
- timely and properly performance of any Customer's obligations to co-operate, especially with respect to the receipt of documentation and information to be supplied by the Customer,
  - clarification of all technical details with Customer,
  - receipt of down payments or the opening of letters of credit which may have been agreed upon,
  - submission of any necessary administrative permits and licences.
- We reserve the right to plead non-performance of the contract.
- 4.3 Delivery dates shall be deemed to have been observed when the goods are delivered "ex works" within the stipulated term.
- 4.4 Obstacles to our Delivery or Performance beyond our responsibility:

- 4.4.1 Delays in Delivery or Performance due to the following causes shall not be within our responsibility - unless we exceptionally assumed the risk or granted a guarantee specifically with regard to the date of delivery/ performance or any other delay - the same shall apply if such obstacles occur at our suppliers or their sub-suppliers:  
circumstances of 'Force Majeure' as well as any other obstacles of delivery and performance  
> which occur after conclusion of the Contract or which we learn only after the conclusion of the Contract for no fault attributable to us, and  
> with regard to which we prove that they could not have been foreseen and avoided by us even with the application of the utmost, reasonable care, and that we have no obligation to bear the risk of the occurrence of such obstacles or to actively or passively avoid them.
- 4.4.2 In the event of delays in delivery or performance under no. 4.4.1 above, any claims for damages of the Customer are excluded.
- 4.4.3 In the event of a definitive obstacle to delivery or performance within the meaning of no. 4.4.1. above, either party is entitled to immediately rescind the Contract according to the statutory regulations.
- 4.4.4 In the event of a temporary obstacle to delivery or performance within the meaning of no. 4.4.1., we shall be entitled to postpone delivery/ performance for as long as the disturbance may last, plus a reasonable start-up time.
- 4.5 We are entitled to effect partial deliveries and performances, as far as Customer can reasonably be expected to accept them.
- 5. Delivery, Passing of Risk, Culpable breach of duties of cooperation**
- 5.1 With exclusion to euro- pallets, we will not take back any packing. The customer is obliged to dispose the packing on its own account.
- 5.2 The risk of an accidental loss or of an accidental deterioration shall pass to the Customer as soon as the goods have been delivered to the person or institution designed to pick up or execute the delivery, no later, however, than when the goods leave our company. Deterioration shall be in case of non- proper or remoted original packing, such as for example in case of opening of original packing of battery etc.
- 6. Retention of Ownership**
- 6.1. We retain ownership to all objects of delivery ("retention delivery") until we receive full payment of all sums owed to us originating from the business relation with the Customer. The retained ownership shall be deemed collateral for the total account payable to us (current account retention) until all current liabilities have been discharged.  
If retention delivery is paid by way of a bill of exchange from which follows a liability on our part the retention of ownership shall only become extinct if and when our liability under a bill of exchange becomes extinct as well; if payment by way of cheque/ bill procedure has been agreed upon with the Customer the retention of title shall also include the honouring of the bill of exchange accepted by us by the Customer and shall not be forfeited once the cheque received has been credited to our account.
- 6.2 The Customer shall have the right to resell the retention delivery in the ordinary course of business; however, as early as today Customer shall assign to us all claims that he may have against his Customers or against third parties on account of the resale to the amount of the invoice total (including VAT) of our claims. If the Customer includes the claims from a resale of the retention delivery in a current account business relation existing with his Customer, this current account claim shall be assigned to us to the amount of the acknowledged balance; the same shall apply for the "causal" balance if the Customer becomes insolvent. The Customer shall still have the right to collect the assigned claims after they have been assigned. Subject to the rules and regulations under the insolvency law, our right to collect claims ourselves shall remain unaffected; however, we undertake not to collect claims as long as the Customer does not breach his contractual obligations, especially observes his obligation of payment, is not in delay in payment nor has filed for the opening of an insolvency procedure or generally has ceased payments.  
Under the right of resale, the Customer shall not be entitled to pledge or in any way charge by way of security any of the products.
- 6.3 If our undertaking not to collect claims under no. 6.2 above ceases to exist, we shall have the right - subject to the rules and regulations under the insolvency law - to withdraw the right of resale and to require the Customer to assign to us the right to recovery he may have against third parties, or to take back the retention delivery after expiry of a reasonable delay set by us; the Customer shall be bound to surrender the objects of delivery; no right of retention may be asserted by the Customer against this right to recovery. Taking back the retention delivery constitutes a rescission of the Contract.  
After having threatened to do so and after setting a deadline, retention delivery which has been taken back by us for before-mentioned reasons may - subject to the rules and regulations under the insolvency law - be reasonably resold and/ or used by us; the proceeds thereof shall be credited against the liabilities of the Customer - less reasonable exploitation costs.  
Under the conditions stated entitling us to revoke the Customer's right of resale, we may also revoke the collection authorisation and may require the Customer to disclose to him the claims assigned as well as the debtors of such claims; furthermore, we may require the Customer to disclose to us all information necessary for collection, to submit the relevant documentation and to notify the debtors (third parties) of the assignment.
- 6.4 In case of damage or loss of the retention delivery as well as in case of a change of domicile or of property, the Customer shall immediately notify us hereof in writing; the same applies for pledges or other interventions of third parties so that we are in a position to bring an action under Article 771 ZPO (German Code of Civil Procedure). If the third party is in no position to reimburse the judicial and extra-judicial costs incurred by us under Article 771 ZPO, the Customer shall be liable for the loss incurred us. If the release of the retention delivery is achieved without legal proceedings, costs hereby incurred may also be charged to the Customer, herein included costs of regaining pledged retention delivery.

- 6.5 Any processing or transformation of the products purchased by the Customer shall always be deemed to be on our behalf. If the retention delivery is processed with other goods, which are the property of any person other than us, the product thereof shall be deemed to be owned in common with that other person, our share in the common property depending on the ratio of the total amount charged by us for the retention delivery plus VAT - in case of business done under the 'facon principle' depending on the ratio of the total amount charged by us for facon work plus VAT - to the purchase price (invoice totals incl. VAT) of the other goods processed at the time of the processing or transformation.  
Furthermore, the provisions applicable for the retention delivery shall also apply for the product of such processing or transformation. With respect to the product of such processing or transformation, the Customer shall acquire expectant rights corresponding to the expectant rights to the retention delivery.
- 6.6 If the retention delivery is inseparably mixed or combined with other goods which are the property of any person other than us, the product thereof shall be deemed to be owned in common with that other person, our share in the common property depending on the ratio of the total amount charged by us for the retention delivery plus VAT - in case of business done under the 'facon principle' depending on the ratio of the total amount charged by us for facon work plus VAT - to the purchase price (invoice totals incl. VAT) of the other goods which have been mixed or combined, at the time of the mixing or combining. If the mixing or combination of the products has been done in such a way that the product of the Customer is to be considered to be the main product it is agreed that the Customer assigns to us co-ownership of such product on a pro rata basis. The Customer shall keep such property owned either exclusively by us or owned in common with another person properly stored for us.
- 6.7 If our retention delivery is resold after having been processed or transformed in any way, as early as today, the Customer shall assign to us as security his claims resulting from the resale of such retention deliveries up to the invoice total (including VAT) of our claims.  
If, on account of the processing or transformation of or of the mixing or combination of the retention delivery with other goods which are the property of any person other than us, we have only acquired co-ownership pursuant to the above clauses 6.5 or 6.6, the claim to the purchase price of the Customer shall only be assigned to us in advance depending on the ratio of the total amount charged by us for the retention delivery plus VAT - in case of business done under the 'facon principle' depending on the ratio of the total amount charged by us for facon work plus VAT - to the invoice totals of the other goods which are not our property.  
Furthermore, provisions as laid down in clauses 6.2. - 6.4. above shall apply correspondingly for claims assigned to us in advance.
- 6.8 If under the laws of a foreign country within the borders of which the retention delivery is located, a reservation of ownership or an assignment is not legally effective, the security provision corresponding to reservation of ownership or assignment in this legal sphere shall be deemed to have been stipulated.  
If co-operation of the Customer is required in order to create such rights, the Customer shall be bound at our request to take all measures necessary in order to constitute and maintain such rights.
- 6.9 The Customer shall treat the retention delivery properly and keep it in good repair; in particular, the Customer shall at his expense sufficiently insure the retention delivery against theft, robbery, burglary, fire and water damage. As early as today, the Customer shall assign to us all rights resulting from such insurance and relating to the retention delivery. We accept such assignment.  
Furthermore, we reserve all rights to assert his claims for performance or claims for damages.
- 6.10 Upon request of the Customer, we undertake to release the securities we are entitled to as far as the recoverable value of such securities exceeds the value of our claims to be secured by more than 10 %. We shall have the right to select the securities to be released at his own discretion.
- 7. Description of Quality, Warranty**
- 7.1 The specifications contained in our description of deliveries and performances exhaustively and ultimately define the quality of our deliveries and performances.
- 7.2 No warranty shall be accepted in case of delivery of used products or in case of improper or inadequate use or stocking. The customer is furthermore –before the use of the products- obliged to study the respective safety instructions.
- 7.3 The Customer may only assert warranty claims if he has duly observed his statutory duties (§ 377 HBG – German Commercial Code) to examine and to give notice of defects in time.
- 7.4 In case of a defect of the Product, we are entitled to correct the performance, at our option, either by remedy of the defect or delivery of a substitute object of delivery without defects. If one of these two means of correction of the performance is impossible or unreasonable, we are entitled to refuse such correction. Replaced parts shall become our property.
- 7.5 In case of impossibility or failure of the correction of performance, faulty or unacceptable delay of the correction or final and serious refusal to correct on our part or in case that correction can not reasonably be expected to be tolerated by the Customer, Customer shall have the option to either reduce the purchase price (Price Reduction) or to rescind the Contract (Rescission).

7.6 If the contractual regulations on the requirements for and consequences of remedying the defect, discounting and withdrawing do not include any conditions or deviating conditions, then the statutory regulations on these rights shall apply.

7.7 The claims of the contracting partner to compensation for losses or expenses associated with defects are governed, regardless of the legal nature of the claim, and especially in relation to claims for defects and breach of obligations or claims in tort, by the following regulations in sub-sections 7.7.1 up to and including sub-section 7.8.

7.7.1 In accordance with statutory regulations, we are liable for losses due to intent, due to gross negligence by legal representatives of the company or by leading employees, in cases of culpable injury to life, limb or health, in the case of defects or other circumstances which were deliberately concealed or defects, the absence of which was guaranteed or where a guarantee of quality or any other kind of warranty was given.

7.7.2 Under statutory regulations, we are also liable even in the case of minor negligent breach of material contractual obligations by our legal representatives, leading employees or other agents; however, our liability is limited to the type of losses typical of the contract and which could reasonably have been foreseen.

7.7.3 The foresaid does not affect our liability under the Product Liability Act.

7.7.4 Unless otherwise regulated in the foregoing sub-section 7.7, all other claims are precluded.

7.8 Statutory regulations on the burden of proof are not affected by the foregoing regulations in clause 7.7.

#### **8. Term of Prescription**

The term of prescription for rights and claims based on defects of the deliveries or performances – no matter of which legal nature with exclusion to used products– shall be one year. Used products will be sold in a used manner and without any warranty.

#### **9. Assignment**

Customer shall assign claims against us in connection with our performances only with our prior written consent.

#### **10. Place of Performance, Place of Jurisdiction, Applicable Law, Safeguarding Clause**

10.1 Place of performance shall be our principal place of business exclusively, unless otherwise agreed upon.

10.2 If Customer is a merchant pursuant to the HGB (Commercial Code), judicial person under public law or public utility fund, place of jurisdiction for all liabilities resulting from the contractual relationship - herein included liabilities from cheques and bills of exchange - shall either be our principal place of business or, at our option, the location of the Customer. This agreement as to the place of jurisdiction shall also apply for Customers having their location in a foreign country.

10.3 For all rights and obligations resulting from the contractual relationship between us and the Customer German law, excluding UN Sales Convention (CIS convention on contracts for the international sale of goods of April 11, 1980), shall apply exclusively, without regard to German collision rules.

10.4 Should individual provisions of these General Terms and Condition for Purchase and Delivery or individual provisions of other agreements concluded with us be or become invalid, this shall not affect the validity of the other provisions or agreements.