

## **EASYFOOD'S GENERAL TERMS OF SALE AND DELIVERY**

### **1. Application**

- 1.1 These general terms of sale and delivery (hereinafter referred to as the "Terms") apply to all supplies of products (hereinafter collectively referred to as the "Product"/"Products") made by Easyfood A/S (business reg. no. 25652762) (hereinafter referred to as the "Seller") to the customer (hereinafter referred to as the "Buyer").
- 1.2 The Terms take precedence over any conflicting provisions in the Buyer's order, acceptance and/or the Buyer's general terms of purchase, also in cases where the Seller does not object to such conflicting provisions.

### **2. Information in the Seller's material and formation of contract**

- 2.1 Information about the essential characteristics of the Products is provided in the Seller's product catalogue. For additional information or for answers to questions to the existing information, please contact the Seller at [info@easyfood.dk](mailto:info@easyfood.dk). Information in the Seller's catalogues, brochures, advertisements, photographic material, price lists, etc., is for guidance only and not binding on the Seller. The Seller is not responsible for misprints and all Products are subject to availability.
- 2.2 Products may be ordered by phone, email or EDI to the Seller.
- 2.3 All agreements made between the Seller and the Buyer (hereinafter referred to as "Contracts") require a written order confirmation from the Seller to be enforceable and binding on the Seller.

### **3. Intellectual property rights**

- 3.1 Pictures, drawings, specifications, recipes, technical data and other intellectual property rights pertaining to the Products or procured by the Seller remain the Seller's property. The Buyer shall treat the information as confidential and is not entitled to disclose, copy and/or pass on the information to third party without the Seller's prior written acceptance.
- 3.2 In the event of the Buyer's breach of clause 3.1, the Seller is entitled to claim compensation for its loss from the Buyer. In addition, the Seller is

entitled to obtain an injunction, without provision of security, against the Buyer's unlawful activities.

#### **4. Price and terms of payment**

- 4.1 All the Seller's prices are stated in DKK Ex Works the Seller's address, see INCOTERMS 2010, exclusive of VAT, duties and packaging, unless otherwise specified in writing by the Seller.
- 4.2 All prices are current prices and only ruling on the date of order. The Buyer is invoiced the price ruling at the date of order.
- 4.3 The terms of payment are net cash on delivery, unless otherwise specified in the Seller's order confirmation.
- 4.4 If the Buyer pays late, the Seller is entitled to charge 2 per cent interest on the overdue amount per commenced month plus the reminder fees applicable at any time.
- 4.5 The Buyer may solely withhold payments or set off counterclaims if and to the extent that the Buyer's counterclaim is admitted by the Seller or has been established by a judgment/settlement.

#### **5. Retention of title**

- 5.1 The following has been agreed with respect to supplies to the Buyer domiciled in other countries than Germany:
  - 5.1.1 The Seller retains title to the Product until all outstanding amounts have been paid, in particular any specific unpaid balances which are owed to the Seller as part of the business relationship with the Buyer. The Seller is entitled to insure for the Buyer's account the Product against theft, damage, fire, water damage and other damage unless the Buyer has verifiably taken out such insurance.
  - 5.1.2 If the Buyer breaches the Contract, in particular in the event of payment default, the Seller is entitled, after the service of written notice, to repossess the Product. This does not constitute cancellation of the Contract. The Buyer is obliged to inform the Seller without delay of any matters relating to the retention of title, in particular measures regarding distraint on property or actual interference with the retention of title.

- 5.2 The following has been agreed with respect to supplies to the Buyer domiciled in Germany:
- 5.2.1 Any Product supplied remains the Seller's property until it has been paid.
- 5.2.2 Supplied Products remain the Seller's property until all claims under the business relationship have been paid.
- 5.2.3 In the event of processing of the Products supplied, the Buyer does not obtain title to the products made. The processing is free of charge for the Seller. In the event that the retention of title should still lapse, the Buyer and the Seller already now agree that the title to the Products passes to the Seller at the time of processing and the Seller accepts the transfer. The Buyer stores the product made free of charge for the Seller.
- 5.2.4 In the event of processing of products still belonging to third party, the Seller acquires co-ownership of the products. The extent of such co-ownership is determined by the difference between the invoice value of the Products supplied by the Seller and the invoice value of the other products.
- 5.2.5 The Buyer hereby assigns to the Seller its claims relating to resale of Products subject to the Seller's retention of title, also if the Products have been processed, and the Seller accepts the assignment.
- 5.2.6 If the processed product, in addition to components supplied by the Seller, only contains components belonging to the Buyer or delivered with the so-called "simple retention of title", the Buyer assigns the total claim relating to the resale to the Seller.
- 5.2.7 In other cases, i.e. if the Buyer has assigned a claim to more suppliers, the Seller is entitled to a share of the Buyer's claim equal to the difference between the invoice value of the components supplied by the Seller and the invoice value of the other components which have formed part of the processing.
- 5.2.8 Upon the Buyer's request the Seller is obliged to, at its own option, release security to which the Seller is entitled under the above provisions if and to the extent that the realisable value of the security exceeds the secured claims by more than 20%.

5.2.9 The provisions in this clause 5.2 are subject to the law of the Federal Republic of Germany, with the exception of German conflict of laws rules and with the exception of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

## **6. Delivery, passing of risk and delay**

6.1 Any stated times of delivery are for guidance only, unless otherwise specified in the Seller's order confirmation. Subsequent changes or addenda to the Contract annul the earlier agreed times of delivery and a new guiding time of delivery will apply, unless otherwise specified in the Seller's order confirmation.

6.2 The risk of the Product passes to the Buyer upon delivery of the Product, cf. clause 6.3.

6.3 Delivery of Products, including part delivery, is made in accordance with the delivery clause Ex Works the Seller's business address, see Incoterms 2010, unless otherwise specified in the Seller's order confirmation.

6.4 Part delivery of Products is permitted unless otherwise agreed in writing.

6.5 If delivery of the Product or a part thereof is delayed in relation to a guiding time of delivery or a time of delivery specified in the Seller's order confirmation, the Buyer shall specify in writing a reasonable time for delivery, which may, however, not be less than 5 working days. If delivery still does not take place within the reasonable time specified, the Buyer is entitled to terminate the Contract with respect to that part of the supply which is delayed, however, not with respect to any future/earlier supplies, regardless of whether such future/earlier supplies might have been comprised by the same Contract.

6.6 If the Contract is terminated in whole or in part, the Buyer may claim compensation for the direct loss suffered as a result of the delay, however, maximum an amount equivalent to 10 per cent of the agreed price for the delayed part of the delivered Product. No claim for compensation of any other kind may be set up as a result of delay.

6.7 Guiding times of delivery or a time of delivery specified in the Seller's order confirmation will be postponed in case of events which are beyond

the control of the Seller and which could not be foreseen at the time of formation of the Contract ("Force Majeure") as defined in clause 10.2.

## **7. Defects**

7.1 The Seller only provides a guarantee for the Product if and to the extent that the Seller has guaranteed in writing the Buyer certain characteristics of the Products.

7.2 The Buyer is obliged to inspect the Products immediately upon delivery. Upon manifestation of any defects, the Buyer is obliged to inform the Seller in writing immediately and in case of fresh Products within four (4) hours after delivery and in case of frozen Products within 24 hours after delivery, including a detailed description of the nature and extent of the defect. The Buyer is simultaneously obliged to keep the Product that it intends to claim defective in order for the Seller to be able to check the Product. If the Buyer fails to inspect the Product or to inform the Seller of any defects as stated above, regardless of whether the Buyer has discovered or ought to have discovered the defect, the Buyer is not entitled to set up claims on account of such defect at a later date.

7.3 At the Seller's own option, defects may be remedied by replacement, price reduction or crediting the Buyer with the defective Product.

7.4 If the defect is remedied by the Seller, cf. clause 7.3, no further claims for compensation may be set up on account of the defect. The Seller is not liable for damage to the Product.

7.5 Notwithstanding clause 7.4, the Buyer is entitled to terminate the Contract with respect to the defective part of the supply in the event that the defect is material. In such events, the Buyer may claim compensation for the direct loss suffered as a result of the defect, however, maximum an amount equivalent to 10 per cent of the agreed price for the defective Product. Except as provided for in this clause 7.5, no further claims for compensation may be set up on account of defects.

## **8. Product liability**

8.1 The Seller is liable for product liability damage pursuant to the Danish rules on product liability in force at any time.

- 8.2 The Seller is not liable for operating loss, lost earnings, lost savings, indirect loss or consequential loss resulting from product liability.
- 8.3 The Seller's product liability will never exceed the Seller's insurance cover for the specific damage under the Seller's product liability insurance.
- 8.4 If product liability to third party should be imposed on the Seller, the Buyer is obliged to indemnify the Seller to the same extent as the Seller's liability is limited according to these Terms. The limitations of the Seller's liability do not apply if the Seller's product liability is attributable to gross negligence or intent.

## **9. Limitation of liability in other cases than product liability**

- 9.1 The Seller is in no circumstances liable for operating loss, lost earnings, lost savings or indirect loss or consequential loss.

## **10. Force majeure**

- 10.1 The Seller's obligation to perform the Contract is postponed and the Seller is exempt from liability if and to the extent that the Seller is prevented from performing its obligations due to events which are beyond the control of the Seller and which could not be foreseen at the time of formation of the Contract ("Force Majeure" as defined in clause 10.2).
- 10.2 Force majeure includes, but is not limited to war, terror and vandalism, natural disasters and unusual weather conditions, including powerful storms, rain, snow, etc., service interruptions on site of any kind which have a disruptive effect on the Product, fire, lack of raw materials or energy supply, strikes or lawful lockouts, non-delivery or delayed delivery from the Seller's sub-contractors due to Force Majeure as defined in this clause. 10.2.
- 10.3 The Seller is obliged to inform the Buyer without undue delay in the event of Force Majeure. In the event of Force Majeure, either party bears its own costs resulting from the Force Majeure event.
- 10.4 If a Force Majeure event continues uninterrupted for six (6) months or more, or if it is obvious that it will, either party is entitled to terminate

the Contract by written notice to the other party without this resulting in liability for the terminating party.

## **11. General provisions**

- 11.1 The Buyer is not entitled to assign the Buyer's rights or obligations under the Contract to third party without the Seller's written consent.
- 11.2 If one or more of the provisions of the Contract are unenforceable because they are contrary to mandatory law or not recognised for some other reason, that shall not affect the validity of the other provisions of the Contract. The unenforceable provision(s) must be replaced by a gap-filling provision which as far as possible complies with the intention and will behind the unenforceable provision(s).

## **12. Governing law and dispute resolution**

- 12.1 Unless otherwise expressly specified in these Terms, any dispute arising out of or in connection with the Terms, the parties' Contract or otherwise between the Seller and the Buyer, including disputes regarding the existence and validity of the Contract, must be settled pursuant to Danish law with the exception of Danish conflict of laws rules.
- 12.2 If the Buyer's principal place of business is inside the EU, any dispute must be settled by the Court in Kolding, Denmark.
- 12.3 If the Buyer's principal place of business is outside the EU, any dispute must be settled by arbitration in Kolding, Denmark. The arbitration is administrated by the Danish Institute of Arbitration in accordance with the rules of arbitration procedure in force at the time when such proceedings are commenced.