

## **General Terms and Conditions of Delivery for Purchase Agreements of Karl Bindewald GmbH (Seller)**

### 1. Scope

The following general terms and conditions of Karl Bindewald GmbH ("Seller") apply to all business transactions with our customers ("Buyer(s)").

### 2. Offer and Conclusion of the Contract

The Seller's offers are subject to change without notice and are non-binding. To be effective, declarations of acceptance and all orders must be confirmed by the Seller in writing or by telex.

### 3. Prices, Price Adjustments

Unless otherwise agreed, our deliveries, services and calculations shall be subject to our prices, terms and conditions valid on the date of delivery. Otherwise, the prices quoted in the Seller's order acknowledgement plus the applicable value added tax shall be authoritative.

The Seller reserves the right to adjust the agreed prices even after the conclusion of the contract in the event of increases in the price of raw materials, energy or transport costs, customs tariffs, government intervention, exchange rate changes and other circumstances beyond the Seller's control, if as a result the Seller demonstrably incurs total additional costs of more than 20% before value added tax.

### 4. Time of Delivery and Performance, Default in Acceptance

Delivery dates or deadlines must be agreed in writing. Particularly in the case of partial deliveries at the discretion of the Buyer, the Buyer shall notify the Seller in writing or by telex in good time, i.e. at least two weeks before delivery, of the quantity of malt to be called off as well as the exact date.

If the Buyer is in default of acceptance, the Seller will be entitled to claim compensation for the damage it has incurred; the risk of accidental deterioration and accidental loss shall pass to the Buyer upon occurrence of the default of acceptance. This is without prejudice to the rights under Section 376 of the German Civil Code (HGB).

### 5. Packaging/Shipping

Unless otherwise agreed, the goods shall be packaged and shipped in conformity with the usual commercial practice at the Seller's expense. Delivery and loaned packaging shall remain the property of the Seller, shall be emptied by the Buyer without delay and returned in perfect condition, carriage paid.

### 6. Impediments to Performance

#### 6.1 Force Majeure

"Force majeure" means the occurrence of an event or circumstance which prevents a party from performing one or more of their obligations under the contract, if and to the extent that the Party affected by the impediment proves that: (a) this impediment is beyond their reasonable control, (b) it was not reasonably foreseeable at the time when the contract was concluded and (c) the effects of the impediment could not reasonably have been avoided or overcome by the affected Party.

In the absence of evidence to the contrary, the following events affecting a Party shall be presumed to satisfy the conditions under Section 6.1 (a), (b) and (c) of this clause: (i) war (declared or

undeclared), hostilities, attack, acts of foreign enemies, large-scale military mobilisation; (ii) civil war, riot, rebellion and revolution, military or other seizure of power, insurrection, acts of terrorism, sabotage or piracy; (iii) currency and trade restrictions, embargo, sanctions; (iv) lawful or unlawful official acts, compliance with laws or government orders, expropriation, seizure of works, requisition, nationalisation; (v) plagues, epidemics, natural disasters or extreme natural events; (vi) explosion, fire, destruction of equipment, prolonged failure of means of transport, telecommunications, information systems or power (e.g. due to computer viruses); (vii) general industrial unrest such as boycotts, strikes and lockouts, slowdowns, occupations of factories and buildings.

A party which successfully invokes this clause will be released from their obligation to perform contractual obligations and from any liability for damages or any other contractual remedy for breach of contract from the time when the impediment makes it impossible for the party to perform, provided that this is promptly notified. If the notification is not made immediately, the release shall take effect from the time when the notification reaches the other party. If the impact of the alleged impediment or event is temporary, the consequences set out above will apply only for as long as the alleged impediment prevents the party affected from implementing the agreement. If the duration of the alleged impediment has the effect of substantially depriving the parties of that which they were entitled to expect under the contract, either party shall have the right to terminate the contract by giving notice to the other party within a reasonable period. Unless otherwise agreed, the parties expressly agree that the agreement can be terminated by either party if the impediment lasts for more than 120 days.

## 6.2 Natural Product

Brewer's grain is a climate-dependent natural product. In the event of unforeseeable and significant quantitative and/or qualitative failures of the grain harvest in the Seller's catchment area and corresponding evidence of any breach of contracts for the supply of raw materials, the parties undertake to negotiate an adjustment with regard to delivery quantity, price and specifications.

## 7. GMO

The Seller hereby declares that their products comply with the relevant statutory requirements, in particular, with Regulations (EC) No. 1829/2003 on genetically modified food and feed and (EC) No. 1830/2003 concerning the traceability and labelling of genetically modified organisms, as amended.

## 8. The Buyer's Rights due to Defects

The delivered malt shall be free of defects with the agreed specifications and shall comply with all applicable requirements under the food safety standards and regulations. The Buyer's rights arise from Section 36 of the Standard Terms and Conditions of the German Grain Trade ("Einheitsbedingungen im Deutschen Getreidehandel" (EB)). The analysis of the sample taken at the time of loading shall be authoritative for warranty purposes. If this differs from the analysis of the sample taken by the Buyer at the time of unloading, the findings regarding both samples to be analysed by the testing body of TU Munich/Weihenstephan in Freising will apply.

## 9. Retention of Title

The Seller will retain title to the supplied goods until the purchase price has been paid in full. Insofar as the Buyer processes the goods, the Seller shall be deemed to be the manufacturer, but shall not be subject to the resulting legal obligations. The claims arising from the resale of the goods subject to retention of title are now hereby assigned as collateral. In the event that any third party takes

possession of the goods, the Buyer shall draw attention to the Seller's ownership and notify the Seller immediately.

#### 10. Payment

Unless otherwise agreed, the Seller's invoices shall be payable in full within 30 days of the invoice date; this shall also expressly apply to partial invoices for partial deliveries.

The Seller will also be entitled, despite any provisions of the Buyer to the contrary, to set off payments first against any prior debts of the Buyer. The Seller shall inform the Buyer of the type of set-off they have performed. If costs and interest have already been incurred, the Seller will be entitled to set off the payments first against the costs, then against the interest and finally against the main obligation.

A payment shall only be deemed remitted when the Seller can freely dispose of the amount; in the case of cheques, payment shall only be deemed remitted when the cheque has been cashed. If the Buyer is in default, the Seller will be entitled to claim interest at a rate of eight percentage points above the base interest rate as liquidated damages, as from the date in question. This does not prejudice the Seller's right to prove that the actual loss incurred was higher.

If the Seller becomes aware of circumstances, which call the Buyer's creditworthiness into question, in particular, if a cheque is not honoured, payments are stopped or if any other circumstances relating to the lack of creditworthiness become known, the Seller will be entitled to declare the entire remaining debt due, even if the Seller has accepted cheques. In addition, the Seller may in such cases demand advance payments or collateral security.

The Buyer shall only be entitled to set-off, retention or a reduction in price if the counterclaims have been established through a final court judgement or are undisputed, even when complaints are made or counterclaims are asserted,

#### 11. Liability

Without prejudice to the agreements made in Section 6, the Seller shall be liable for all negligence in the event of a breach of material contractual obligations, however only up to the amount of the foreseeable damage. Claims for loss of profit, saved expenses, third-party claims for damages and claims for other indirect and consequential damages may only be asserted if a characteristic guaranteed by the Seller has the specific purpose of protecting the Buyer against such damage.

The limitations of liability shall not apply to claims arising from fraudulent conduct on the part of the Seller, in the case of liability for guaranteed characteristics, to claims under the German Product Liability Act as well as damage arising from injury to life, limb or health.

Insofar as the Seller's liability is excluded or limited, this shall also apply to the Seller's employees, workers, representatives and vicarious agents.

#### 12. Written Form

All amendments/additions must be made in writing.

#### 13. Applicable Law/Place of Jurisdiction/Exclusion of Court of Arbitration/Validity

Unless otherwise agreed in writing, this contract and all subsequent contracts between the Parties shall be governed by the Standard Terms and Conditions of the German Grain Trade (EB) and the "Supplementary Provisions to the Standard Terms and Conditions of the German Grain Trade (EB)

for Transactions in German Malting Barley ("Zusatzbestimmungen zu den EB für Geschäfte in Deutscher Braugerste") in addition to the provisions of the German Civil Code (BGB), the German Commercial Code (HGB) and the other relevant German and EU legislation to the exclusion of the UN Convention on Contracts for the International Sale of Goods. The contract language is German.

To the exclusion of Section 1 of the Standard Terms and Conditions of the German Grain Trade (EB), the place of jurisdiction for any disputes arising from this agreement is the court at the location of the registered office of the Seller.

All deliveries, services and offers of the Seller shall be made exclusively on the basis of these terms and conditions. This shall also apply to future business relations between the Parties. These terms and conditions will be deemed to have been accepted upon acceptance of the goods at the latest. Any counter-confirmations of the Buyer with reference to their own terms and conditions of business or purchase are hereby rejected.

#### 14. Data Protection Provisions

We only collect data from customers to implement contracts. In doing so, we observe the legal requirements, in particular, the General Data Protection Regulation (GS-DVO) and the German Federal Data Protection Act (BDSG).