

# Terms of sale and delivery of Cosun Beet Company GmbH & Co. KG

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## § 1 General

- (1) Our terms of sale and delivery apply exclusively; conditions of the customer which are non-conforming, or which act as an extension of our terms of sale and delivery, have no validity in relation to ourselves. This also applies even if we do not object to them explicitly, or if we implement the delivery to the customer without reservation in knowledge of such conditions.
- (2) All agreements between ourselves and the customer are laid down in the written documents of which these terms of sale and delivery form a component part.
- (3) Our terms of sale and delivery also apply for all future business with the customer.
- (4) Our terms of sale and delivery apply only with respect to registered traders as specified by § 24 AGBG.

## § 2 Quote and prices

- (1) Our quotes are non-binding.
- (2) The prices are understood including packaging, insofar as delivery of loose goods has not been arranged or is not standard. The legal VAT tax is not included in our prices; it is identified separately in the bill at the legal rate applicable on the day of the address of the invoice.
- (3) If public charges of any type are increased or newly introduced later than six weeks after contract conclusion, the raw material or production costs are increased, or if other circumstances for which we are not responsible influence our costs calculation, we can carry out a corresponding increase of the purchase price.
- (4) In case of EU sugar price changes, the price can be renegotiated.

## § 3 Delivery

- (1) Delivery results from written requisition of the customer, provided that nothing other has been arranged. If the delivery is on the basis of requisition, our delivery is implemented within two workdays following the day of receipt of the requisition by ourselves, provided that nothing other has been arranged. The customer may not refuse partial deliveries.
- (2) Compliance with delivery schedules presupposes an undisturbed operating process in our works and unobstructed dispatch and transport carriage possibilities. In case of circumstances for which we are not responsible, such as e.g. force majeure events, labor dispute actions, traffic interruption and hindrance, lack of transport resources, raw materials, resources and operating materials or operational failures of any type in our own company or in the companies associated with the completion, as well as obstacles caused through official dispositions which complicate the delivery, the delivery schedule is extended by the time of the persistence of the respective disturbance. The customer can resign from the contract or demand claim for damages because of failure after we have come into delay, when he sets for us in writing an adequate additional period of time, with threat of resignation, and this has elapsed without success. The resignation in case of failure of fulfillment within the additional period of time must be submitted in writing.
- (3) The delivery is arranged CPT "freight-free" to the contractually-agreed destination, in accordance with Incoterms 2000.

## **§ 4 Acceptance**

(1) The customer is obliged to accept the purchased goods within the arranged delivery schedule. If the customer does not comply with his acceptance obligation within the arranged delivery schedule, we are then entitled to place the affected quantities into storage at the expense and risk of the customer, without requiring a further period of time settlement. If no other agreement concerning the acceptance of a quantity to be supplied in parts has been reached, the goods are supplied in approximately equal monthly partial quantities.

(2) In case of the supply of loose goods, the customer has to provide for trouble-free condition of the filling lines, valves and filling containers before acceptance. Damages which arise e.g. due to inaccurate filling capacity specifications, technical deficiencies or erroneous operation of the filling or positioning equipment of the customer, are not replaced under any circumstances.

(3) Costs and damages, in particular additional transportation costs which arise due to inadmissible non-acceptance of our delivery, are at the expense of the customer refusing the acceptance, insofar as they are not due to gross negligence or intent on our part.

## **§ 5 Packaging**

Our own packaging may be reused only after the identification with our company symbol has been removed, as well as the name and goods designation in business traffic. Pallets which remain with the customer are set into account by us, insofar as the customer does not provide the carrier with other pallets and implements a transfer to us by exchange.

## **§ 6 Guarantee**

(1) The warranty claims of the customer, which are based on redhibitory defects, presuppose that this has come about following proper investigation and complaint obligations as laid down in § 377, 378 HGB. Deficiencies are to be communicated to us in writing. The party to whose disadvantage the result acts bears the costs of a revision, e.g. for analyses.

(2) Insofar as the customer processes, mixes or has sold on any goods, he can demand a reduction of the purchase price only for the affected part of the goods, however, not reconversion or additional delivery.

(3) In case of entitled and proper customer complaint, we are obliged to exchange the goods, or, if this is not possible, to take them back and to reimburse the purchase price.

(4) The customer's complaint applies only to the goods complained about in each case, without affecting the acceptance obligation of the customer concerning the remaining contract quantities.

(5) Goods complained about may be returned only with the explicit consent of the vendor, and only to the address as determined by the vendor.

## **§ 7 Liability**

(1) Insofar as nothing other arises, anything other than the claims of the customer designated in the above clauses is excluded - regardless of which legal grounds. Therefore we are not liable for damages which did not arise in case of the supplied objects themselves, in particular we are not liable for loss of profit or other asset damage of the customer. The above contracting out of statutory liability does not apply insofar as the cause of the damage can be attributed to intent or gross negligence. Furthermore, it does not apply if the customer can make damage restitution

claims for failure because of the lack of a guaranteed feature. Finally, it does not apply in the case where we culpably violate an obligation which is important for the contract.

(2) Our replacement obligation is limited in every case to the replacement services of our product liability insurance. We are prepared to concede to the customer the right to inspect our insurance policy if he so desires.

(3) Our liability is limited to the foreseeable damage in every case.

(4) Insofar as our liability with regard to claims for damages is excluded or limited in accordance with the above Paragraphs 1 to 3, this applies also for all claims based on defects on contract closing, violation of secondary obligations, claims from product liability pursuant to § 823 BGB, and further bases of the claim. The above regulation does not apply for non-modifiable claims, such as on the basis of the product liability law.

(5) Insofar as our liability is excluded or limited, this also applies for the personal liability of our contractors, employees, agents and assistants

### **§ 8 Information, sample**

(1) All information about processing and application possibilities, as well as technical consultations and other specifications, also in accordance with patent law, are implemented by ourselves according to best knowledge, however are non-binding subject to exclusion of any liability. They also do not exempt the customer from his obligation to check the products with regard to suitability for the operational purposes intended by him.

(2) Our samples apply as non-binding type and inspection samples. Analysis specifications are to be considered as approximations only.

### **§ 9 Payment**

(1) Bills are to be paid by the customer within 10 days following delivery, without deduction.

(2) The day of payment received is considered as the day on which the vendor can have access to the invoice amount, free of any expense

(3) If a customer exceeds the date of required payment as laid down in the above Paragraph (1), he is considered to be in delay, at the latest at this time. Following the onset of delay, the customer is obliged to pay interest at the legal rate (8% above the base interest rate). Any liability in accordance with this specification is excluded, insofar as the customer can verify to us that he is not responsible for the onset of delay. If we are able to verify a higher damage caused by delay, we are authorized to make this applicable.

(4) In case of the onset of culpable delay, purchase price installments still open become due immediately. Insofar as a deterioration of investment of the customer has occurred pursuant to § 321 BGB, in particular in the case of the suspension of payment or the situation of where an application is made for opening of indemnity or bankruptcy proceedings, we can optionally make applicable the rights described in § 321 BGB or resign from the contract with instant effect. In the latter case, we are entitled to demand the instant return of the supplied goods from the customer, and to fetch these from the customer or to have them fetched through agents.

(5) The customer is entitled to set-off and retention rights only if his counter-claims are determined as legally-binding, are undisputed or are recognized by us as valid. The customer is authorized to the practice of a right of retention only if his counter-claim is based on the same contractual condition.

## **§ 10 Reservation of ownership**

(1) All deliveries are implemented subject to reservation of ownership, in accordance with the following stipulations:

(2) The supplied goods remain the property of the vendor until the customer has paid all claims arising from the business relationship - also those arising in future.

(3) The customer is obliged to handle the goods carefully; in particular he is obliged to adequately insure the goods, at his own expense, for the reinstatement value against every insurable damage (in particular against fire, water, storm, theft, liability etc.); he submits his claims from the contracts of insurance in advance to the vendor who accepts this assignment. Provided that inspection work is necessary, the customer must carry out such work in good time at his own expense.

(4) A processing or reorganization of the goods is always implemented for us as manufacturers, however without any obligation for us. If our sole ownership is cancelled through combination with other objects, then it is considered as already arranged that the (co-)ownership of the customer to the unified object is transferred to us in accordance with the value content (invoice value). The customer guarantees our (co-)ownership free of charge. The customer also transfers to us the claims for the assurance of our claims against him, which arise with respect to a third party through the combination of the goods with other movable objects. Our acquired (co-)ownership, according to the specifications of this paragraph, to the processed, reformed or combined goods likewise passes to the customer in the same manner as the ownership of the goods supplied by us.

(5) The customer is entitled to sell on the goods in a proper business transaction. However, he now transfers to us all claims with respect to his customer or third parties, which have arisen for him from the sale, in the amount of the invoice (including VAT tax), and this is independent of whether the goods were sold on before or after processing. The customer also remains authorized to the redemption of these claims after the assignment. Our authority to call in the claim ourselves remains unchanged by this. However, we are obliged not to call in the claim for as long as the customer complies with his obligations to pay from the arranged net earnings, has missed no payments and in particular has not made any application for the opening of bankruptcy proceedings or composition proceedings, or there exists no case of suspension of payment. However, if such is the case, we can demand that the customer makes known to us the transferred claims and their debtors, as well as all information necessary for the collection, the associated documents and that he informs the debtors (third parties) of the assignment.

(6) Any other utilization of the goods, in particular a security transference or pledge, is not permitted to the customer. The claims transferred at us can be pledged or transferred to third parties only with our approval.

(7) In case of attachments or other interventions of third parties, the customer has to immediately inform us of this in writing, so that we can bring an action in accordance with § 771 ZPO. Insofar as the third party is not able to reimburse us the legal and extrajudicial costs of an action, pursuant to § 771 ZPO, the customer is liable for the losses which have arisen to us.

(8) Insofar as the value of the securities granted to us exceeds our claims by more than 20%, we are obliged, on request by the customer, to the reassignment and release of securities according to our choice.

In case of full payment of our claims arising from the business relationship, the transferred claims, as well as our ownership of the reservation goods, pass to the customer.

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### **§ 11 Place of performance and place of jurisdiction**

Place of performance for the delivery is our works in Anklam. Stralsund is place of performance for payment (also checks), and is exclusively place of jurisdiction in case of possible disputes. The contractual relationship is subject to the laws of the Federal Republic of Germany.

### **§ 12 Partial effectiveness**

If individual stipulations of these terms of sale and delivery should be invalid, or if they should become invalid, the validity of the remaining conditions is not affected by this.