

## 1. Validity of the Terms and Conditions

**1.1.** All deliveries, services and offers of the German companies of ARYZTA Group Germany (hereinafter referred to as ARYZTA) shall be made exclusively on the basis of these General Terms and Conditions of Sale and Delivery (GTC), unless expressly agreed otherwise in writing. These GTC are intended for use in business transactions with entrepreneurs.

**1.2.** The following companies belong to ARYZTA Group Germany: Aryzta Bakeries Deutschland GmbH, ARYZTA Food Solutions GmbH, Hiestand Deutschland GmbH.

**1.3.** These GTC apply exclusively. The validity of any terms and conditions used by the Purchaser shall be excluded even if ARYZTA, being aware of such terms and conditions, does not expressly object thereto and / or carries out the delivery without reservation. They shall also apply to all future deliveries, services and offers of ARYZTA to the Purchaser, even if they are not separately agreed upon again. The Purchaser expressly acknowledges these GTC. By accepting a delivery or an offer, these GTC are also recognized for further delivery relationships with ARYZTA, irrespective of their express position.

## 2. Offers and conclusion of contract

**2.1.** Contractual offers of ARYZTA are non-binding.

**2.2.** Orders of the Purchaser may be placed in writing (including by fax or e-mail), electronically (EDI), by telephone or via the Web-Shop, if offered by ARYZTA, and shall be binding. ARYZTA may accept orders by written confirmation or by delivery of the goods ordered.

**2.3.** The scope of and the obligation to perform the deliveries and services shall be determined by the written order confirmation or, in case of immediate delivery to the Purchaser, by the contents of the delivery note.

## 3. Product quality, samples and specimen, warranties

**3.1.** Unless otherwise expressly agreed in writing, the quality of the products shall be determined exclusively in accordance with ARYZTA's product specifications. Quality of samples and specimen shall only be binding if they have been expressly agreed in writing as the quality of the products.

**3.2.** Statements as to quality and durability as well as other statements shall only be guarantees if they are agreed as such in writing and expressly designated as such.

## 4. Manufacture of products according to Purchaser's specifications and third party rights

**4.1.** To the extent that ARYZTA manufactures and supplies products according to the Purchaser's specifications, e.g. according to the Purchaser's recipe, the Purchaser warrants that ARYZTA does not infringe any third party rights (in particular copyrights, patent rights, design rights or trademark rights) by manufacturing and / or distributing such products. The Purchaser shall indemnify ARYZTA upon first request against all claims asserted by third parties against ARYZTA for alleged infringement of rights and any costs resulting from the defense against rights asserted by third parties. Furthermore, the Purchaser shall be liable to ARYZTA for any damage arising therefrom and for any loss of profit.

**4.2.** Unless otherwise agreed in writing, ARYZTA shall be entitled to manufacture and deliver to third parties products manufactured in accordance with the Purchaser's specifications.

**4.3.** ARYZTA shall be entitled to suspend the production of commissioned goods until receipt of a written release confirmation by which the Purchaser confirms conformity with its specifications and suitability for the intended use.

## 5. Shipping, delivery terms and scope of delivery

**5.1.** Unless otherwise agreed, loading and shipping shall be uninsured at the risk of the recipient ex works. The risk shall pass to the Purchaser as soon as the purchased goods have been handed over to the person carrying out the transport. In case of agreed free domicile

deliveries, the risk shall pass to the Purchaser when the goods are handed-over to the Purchaser / made available to the Purchaser.

**5.2.** ARYZTA is entitled to change ordered quantities or batches in case of production or packaging requirements, but must inform the Purchaser thereof in due time.

**5.3.** Delivery dates provided by ARYZTA are not binding. The agreement of fixed delivery dates and deadlines must be in writing in each case.

**5.4.** ARYZTA shall be entitled to partial deliveries and partial service, provided that such partial delivery and partial service are reasonable for the Purchaser.

**5.5.** ARYZTA shall not be liable for impossibility or delays in delivery or service for which ARYZTA is not responsible or insofar as such impossibility or delays are caused by force majeure or other events not foreseeable at the time of conclusion of the contract, such as e.g. operational disruptions of any kind, difficulties in the procurement of material or energy, transportation delays, strikes / labor disputes, riots, lawful lockouts, shortages of labor, energy and raw materials, difficulties in obtaining necessary official permits, official measures or non-delivery, incorrect, incomplete or late delivery by suppliers. ARYZTA shall inform the Purchaser without undue delay of the non-availability of the product or of any delays in delivery and, to the extent possible, notify the Purchaser of a new expected delivery date. If the service or delivery is not possible within the new delivery period, ARYZTA shall be entitled to withdraw from the contract in whole or in part, without this giving rise to any claims on the part of the Purchaser. If the Purchaser cannot reasonably be expected to accept the delivery or service as a result of the delay, the Purchaser may withdraw from the contract by giving notice to ARYZTA without delay. In the event of withdrawal, any advance payment already made shall be refunded to the Purchaser without delay.

**5.6.** The occurrence of a delay in performance or delivery delay shall be determined in accordance with the statutory provisions. In any case, a reminder from the Purchaser is required.

## 6. Default of acceptance, compensation

**6.1.** If the Purchaser is in default of acceptance, ARYZTA may set a grace period of not more than 3 days and, after expiry of this period, withdraw from the contract and claim damages.

**6.2.** ARYZTA shall be entitled to charge 5% of the lost net sales as liquidated damages. ARYZTA reserves the right to assert further damages and further statutory claims. In this case, the lump sum shall be credited against a claim for damages in the amount.

## 7. Prices

**7.1.** Prices shall be based on the individual price agreements or, in the absence of such agreements, on the price list valid on the day of delivery. Changes are reserved. Unless otherwise agreed (e.g. delivery free-domicile), the prices are net without VAT ex works and do not include the costs for delivery, freight packaging, return and disposal of production and transport packaging and the recycling system "Grüner Punkt".

**7.2.** Upon collection of palletized goods, the Purchaser / Goods Recipient is obliged to return exchangeable loading equipment in the same quantity, type and quality to the transport company used by ARYZTA or to ARYZTA step by step. For Euro-Pool pallets, quality according to Gütegemeinschaft Paletten e.V. classification at least Class B = UIC quality standard 435-2 applies, which have a machine, conveyor and high rack suitability. Damaged loading equipment will not be taken back. The burden of proof that loading equipment has already been accepted damaged in individual cases lies with the Purchaser / Good recipient. If, despite the setting of a deadline with a threat of refusal on the part of ARYZTA, no return is made to ARYZTA at one of the ARYZTA loading points, ARYZTA shall be entitled to demand as compensation the actual value of pallets not returned plus any replacement costs of the corresponding number of pallets. ARYZTA shall be entitled

to assign the claim to the transport company. The use of pallet service companies (e.g. DPL) is excluded.

#### **8. Payment, late payment, fulfillment**

**8.1.** Unless otherwise agreed in writing in advance, the purchase price shall be due for payment immediately without any deductions. Discounts are only permissible if these have been expressly agreed in writing in advance. The date of receipt by ARYZTA shall be decisive for the date of payment.

Upon expiry of the payment deadline, the Purchaser shall be in default even without a separate reminder. In the event of default, ARYZTA shall be entitled to claim default interest at the statutory rate. ARYZTA reserves the right to claim further damages caused by default.

**8.2.** In the event of default in payment, ARYZTA shall be entitled, without prejudice to further rights, to demand securities or advance payments and to make all claims due immediately. In the event of arrears on part of the Purchaser, ARYZTA shall not be obliged to deliver ordered goods.

**8.3.** The Purchaser shall only be entitled to invoice reductions, to set off or to exercise a right of retention if the counterclaims have been legally established or are undisputed. The Purchaser shall only be authorized to exercise a right of retention if its counterclaim is based on the same contractual relationship.

**8.4.** In the event of several outstanding claims of the Purchaser, ARYZTA shall be entitled to set off payments against the oldest outstanding claim.

#### **9. Retention of title, assignment by way of security**

**9.1.** ARYZTA retains title to goods or items delivered until all claims arising from the business relationship, including future claims, have been settled. The retention of title is conditional to the extent that ARYZTA relinquishes ownership of the goods subject to retention of title upon complete satisfaction of the respective outstanding total claim of ARYZTA against the Purchaser.

**9.2.** If third parties gain access to the goods subject ARYZTA's retention of title, in particular by way of seizure, the Purchaser shall immediately notify such third party of ARYZTA's ownership and shall immediately inform ARYZTA thereof in writing in order to enable ARYZTA to enforce its ownership rights.

**9.3.** The Purchaser shall keep the goods subject to retention of title free of charge, treat them with care and insure them adequately at its expense against destruction and deterioration. The Purchaser hereby assigns to ARYZTA any claims it may have against its insurance company or third parties in the event of damage. ARYZTA accepts this assignment.

**9.4.** The Purchaser may resell the goods subject to retention of title only in the ordinary course of business. The Purchaser shall reserve the conditional ownership to which it is entitled vis-à-vis its customers until the latter have paid the purchase price in full. The claims arising from the resale or any other legal reason with respect to the goods subject to retention of title are assigned to ARYZTA as security, together with all ancillary rights in the amount of the value of the respective goods subject to retention of title that have been resold. ARYZTA accepts this assignment.

**9.5.** The Purchaser shall remain authorized to collect the claim in addition to ARYZTA. ARYZTA undertakes not to collect the claim as long as the Purchaser meets its payment obligations towards ARYZTA, is not in default of payment, no application for the opening of insolvency proceedings has been filed and there is no other deficiency in its ability to pay. In the event of default in payment ARYZTA shall be entitled to disclose the assignment and to collect the claim itself. In this case, the Purchaser shall be obliged, at ARYZTA's request, to provide information about the assigned claims and their debtors, to provide all information required for collection and to hand over the relevant, required documents free of charge.

**9.6.** If the realizable value of all security interests exceeds the secured claims of ARYZTA by more than 10%, ARYZTA shall, at the Purchaser's request, release securities of the corresponding amount and at its option.

**9.7.** ARYZTA shall be entitled to enter the Purchaser's warehouse itself or through authorized agents in order to determine the goods subject to the retention of title.

**9.8.** ARYZTA shall be entitled to demand the return of goods subject to retention of title even without setting a grace period in the event of default on the part of the Purchaser, if an application has been made to open insolvency proceedings against the Purchaser's assets. In case of cessation of payments or application for opening of insolvency proceedings, the Purchaser shall immediately mark goods subject to retention of title or store them separately. The Purchaser shall no longer be entitled to sell them.

#### **10. Duty of inspection, complaints**

**10.1.** The Purchaser shall carefully inspect the goods for defects and shortages immediately after delivery and, if necessary, notify ARYZTA in writing of any defects within 3 working days, otherwise, deliveries shall be deemed approved by the Purchaser with respect to obvious defects, shortages and other defects that would have been apparent upon immediate, thorough inspection. With respect to other defects, the products shall be deemed approved by the Purchaser if the notice of defect is not received by ARYZTA within 3 working days after the date on which the defect became apparent.

**10.2.** In the event that the Purchaser claims defects and notifies ARYZTA thereof, the Purchaser shall prove that the cold chain has been properly maintained without any gaps. Furthermore, the Purchaser shall keep the goods available for inspection by ARYZTA or by ARYZTA agents. The Purchaser is obliged to store and handle the goods properly.

#### **11. Liability for defects**

**11.1.** Warranty claims of the Purchaser shall only exist if the Purchaser has duly complied his obligations to inspect and give notice of defects pursuant to Section 377 of the German Commercial Code (§ 377 HGB) and Clause 10 of the GTC. Warranty claims shall not exist in the case of only insignificant deviation from the agreed quality or in the case of only insignificant impairment of usability. The warranty does not extend to natural changes in the products. Furthermore, ARYZTA shall not be liable for defects, complaints or damage incurred by the Purchaser through self-labeling or changes or processing of the products, unless ARYZTA has expressly agreed to such measures in writing or ARYZTA is responsible for the defects, complaints or damage.

**11.2.** In the event of defects in the products or services purchased from ARYZTA, ARYZTA shall, at its own discretion and within a reasonable period of time, first be obliged and entitled to remedy the defect or to make a replacement delivery. If a defect is due to ARYZTA's fault, the Purchaser's claims for damages or reimbursement of futile expenses shall only exist in accordance with Clauses 13, 14 of these GTC and shall otherwise be excluded.

**11.3.** The application of section 478 para. 1 German Civil Code (§ 478 Abs. 1 BGB - right of recourse of the entrepreneur) remains unaffected. The Purchaser's right to claim damages instead in lieu of performance in accordance with the statutory provisions and these GTC shall also remain unaffected. The Purchaser's right of recourse against ARYZTA pursuant to § 478 BGB (recourse of the entrepreneur) shall exist only to the extent that the Purchaser has not entered into any agreements with its customers exceeding the statutory claims for defects.

**11.4.** The expenses incurred for the purpose of subsequent performance shall be borne by the Purchaser to the extent that they are increased by the fact that the deliveries are brought to another location than the Purchaser's branch office, unless such shipment is in accordance with their intended use.

**11.5.** Insofar as ARYZTA acts merely as an intermediary, ARYZTA shall, upon delivery, only inspect in a manner customary in the trade by

random sampling with regard to the integrity of the packaging, quantity, article and temperature. With regard to all other parameters (in particular quality, hygiene, freshness, shelf life/best-before date, labeling), the inspection is carried out by the Purchaser. ARYZTA must be notified of any defects within 3 working days, so that ARYZTA can report defects to the manufacturer or supplier of the goods in due time.

ARYZTA is entitled to assign its claims against the manufacturer or supplier to the Purchaser in due form. In this case, the Purchaser may assert claims against ARYZTA only after it has failed with the extrajudicial assertion of such claims against the supplier or manufacturer.

**11.6.** Warranty claims can only be asserted if the best-before-date of the delivered goods has not yet expired and a product-specific, proper storage (in particular compliance with the cold chain) is proven by the Purchaser.

**11.7.** If the Purchaser becomes aware of an incident, a consumer complaint or a complaint by the supervisory authorities, which gives rise to the reasonable suspicion that the products delivered by ARYZTA are unsafe (Article 14, Regulation 178/2002 / EC), the Purchaser shall immediately inform ARYZTA. The Purchaser shall not take any action with respect to consumers or the general public, or make any commitments or statements (for example, product warnings or recalls) to the regulatory authorities, without ARYZTA's prior consent, unless there is imminent danger.

## **12. Exclusion of the right of withdrawal**

The Purchaser may withdraw from the contract within the framework of the statutory provisions only if ARYZTA is responsible for the breach of duty. In such a case, the Purchaser shall declare within a reasonable period of time after ARYZTA's request whether it will withdraw from the contract due to the breach of duty or insist on delivery. In the event of defects, however, the statutory provisions shall apply.

## **13. Compensation for damages**

**13.1.** Other claims of the Purchaser, in particular for damage compensation, shall exist only to the following extent:

- a) ARYZTA shall be liable without limitation for wilful misconduct and gross negligence.
- b) ARYZTA shall be liable for ordinary negligence - except in the event of injury to life, body or health - only if material contractual obligations (cardinal obligations) are breached. The liability is limited to the contract-typical and foreseeable damage.
- c) Liability for indirect and unforeseeable damage, loss of production and use, loss of profit, loss of savings and financial damage due to claims by third parties shall be excluded in the case of ordinary negligence - except in the event of injury to life, limb or health.
- d) Any further liability other than that stipulated in these GTC is excluded - irrespective of the legal nature of the asserted claim. However, the foregoing limitations or exclusions of liability shall not apply to any mandatory statutory liability regardless of fault (e.g., under the Product Liability Act) or to liability under warranty independent of fault.
- e) Insofar as liability is excluded or limited pursuant to the above, this shall also apply to the personal liability of ARYZTA's workers, employees, representatives, executive bodies and auxiliary persons.

**13.2.** Liability for damage not occurring to the delivery items themselves is excluded, unless such damage is based on the absence of warranted characteristics.

## **14. Limitation**

**14.1.** The limitation period for claims arising from material defects and defects of title – irrespective of the legal grounds – shall be one year. Mandatory special statutory provisions on the limitation period shall remain unaffected.

**14.2.** Claims for damages of the Purchaser based on the violation of essential contractual obligations as well as all claims of the Purchaser

pursuant to clause 13.2. of these GTC, shall become statute-barred exclusively according to statutory limitation periods.

## **15. Loaned Objects**

Objects, which ARYZTA lends to the Purchaser within the scope of the business relationship shall be returned in a cleaned and proper conditions at the end of business relationship or upon request by ARYZTA, which may not be arbitrary.

## **16. Confidentiality and data protection**

**16.1.** The Purchaser shall treat all business transactions of ARYZTA of which it becomes aware as strictly confidential and shall neither disclose any of these Confidential Information to any third party nor use it for purposes other than the business relationship without obtaining ARYZTA's prior written consent.

**16.2.** The Purchaser acknowledges and agrees that ARYZTA may, in accordance with the applicable statutory provisions, collect, store, process, use and delete all data of the Purchaser arising from the business relationship within the scope of the intended purpose. The data concerns e.g. contact person, address, further contact details (telephone, e-mail), delivery item and invoice data. ARYZTA shall ensure that the Purchaser's interest worthy of protection are not impaired.

**16.3.** Further details can be found in the privacy policy published on the ARYZTA website <https://aryzta.de/datenschutz/> in accordance with the EU General Data Protection Regulation (GDPR).

## **17. EDI procedure**

Insofar as an electronic data exchange (introduction, implementation, processing of EDI) take place, a separate EDI agreement is to be signed by the Purchaser, from which further details of the EDI procedure result.

## **18. Anti-corruption clause**

The Purchaser shall comply with all applicable laws, statutes, regulations relating to anti-corruption, anti-bribery, anti-money laundering, slavery and human-trafficking ("Compliance Requirements") and shall not take or refrain from taking any action that would cause Purchaser to violate any of the Compliance Requirements.

## **19. Place of performance, choice of law, place of jurisdiction**

**19.1.** These GTC and all legal relations between ARYZTA and the Purchaser shall be governed by the laws of the Federal Republic of Germany, excluding the UN Convention on Contracts for the International Sale of Goods (CISG) and the conflict-of-laws rules of private international law, unless other laws are mandatory. Unless directly amended or expressly excluded in these GTC, the statutory provisions shall apply.

**19.2.** Place of performance for all legal transactions shall be the registered office of the ARYZTA company. Place of jurisdiction shall be, at the discretion of ARYZTA, Leipzig or Frankfurt am Main or the competent court for the registered office of the ARYZTA company.

**19.3.** The contractual language shall be German.

## **20. Severability clause**

If any one or more of the provisions of these GTC is or becomes invalid, such provision or division shall to that extent be deemed not to form part of these GTC, but the validity and enforceability of the remaining terms shall not be affected. In such event, each of the parties shall enter into negotiations to amend such provision so that it is valid and legal as amended and carries out the original intent of the parties to the maximum extent possible.

In the event of a conflict, the Special Conditions, if agreed, shall prevail over the GTC.