

1. General – Area of Application

1.1 All present and future legal relations between SAHM GmbH + Co. KG ("Seller") and the Buyer will be subject to the present Terms and Conditions unless otherwise formulated in the order confirmation or other attached special terms and conditions. Other, differing general terms and conditions of the Buyer are deemed conflicting and hence herewith opposed.

1.2 The legal relationship between Seller and Buyer is only governed by our written order confirmation, including these General Terms and Conditions. This defines all agreements made on the subject matter of the contract between the parties. All oral promises made by Seller before the conclusion of the contract are not legally binding and all oral agreements between the parties will be substituted by written contract, unless the parties did expressly state that they should remain effective in a legally binding manner. For purpose of evidence all agreements made by Seller and Buyer on performance of this contract shall be recorded in written form. To comply with the written form requirement facsimile transmission is sufficient, but not e-mails.

1.3 Trade representatives or similar persons are not authorized to give or receive legally binding declarations for the Seller.

2. Formation of contract, subject matter of contract and documentation

2.1 The quotations offered by the Seller will be subject to change. The right to the intermediate sale of stock on offer will in all cases be retained. The contract will materialize with the Buyer's receipt of the Seller's written order confirmation or the despatch of the goods by the Seller. Dates will only be binding where the Parties have expressly agreed in writing that they are binding.

2.2 The quality, description and any other specifications, particularly those relating to the indication of the serving size and material composition of the products, shall, where available, correspond to the written order confirmation issued by the Seller and/or the statutory requirements in the country that the Parties have agreed upon as the country of destination governing use of the product. If no country of destination has been agreed upon, the registered office of the Buyer shall be deemed the country of destination and the Seller shall be required to comply with the legal requirements of said country.

2.3 A claim to the return of submitted samples or drawings will only exist if the Buyer has specifically reserved the right of return and bears the costs of said return.

2.4 Models, moulds, negatives and printing templates, will still remain the property of the Seller if billed to the Buyer at cost price. The Seller will retain the title and copyright to quotations, drawings, illustrations and other documents; these will only be rendered accessible to third parties subject to the prior written consent of the Seller.

2.5 If products are manufactured and/or delivered in line with the drawings or quality samples of the Buyer, the Buyer will be liable for the outcome of breaches of existing third-party industrial property rights.

3. Terms of delivery

3.1 The delivery period will be specified in good faith. It will commence on the day given in the order confirmation, yet at the earliest on the day on which the Buyer has provided the Seller with all technical data required to provide the contracted service and any other details. The Seller will in any case reserve the right of self-supply.

3.2 To a reasonable extent, the Seller will be entitled to deliver in instalments.

Partial deliveries are deemed to be reasonable if

- such delivery is usable for the customer as per the intended purpose of the contract,
- the delivery of the products ordered is secured and
- such delivery is not connected with any additional expenses and costs for the Buyer (unless the Seller agreed to bear any additional costs).

3.3 In the case of force majeure, with strikes or lockouts, the delivery deadline will be lengthened accordingly if the Seller is prevented by such circumstances from fulfilling its obligations. The same will apply in the case of difficulties in procuring materials, disruptions in operations, lack of means of transport, intervention on the part of the authorities, problems with the supply of energy and such like, where these situations are attributable to other unforeseeable exceptional circumstances for which the Seller is not to blame. The Seller will also be able to make reference to such circumstances as defined in sentence 1 and sentence 2 if they occur with its own suppliers. If the said circumstances render delivery or the provision of a service impossible or unfeasible, the Seller will be released from its duty to deliver. In the event delivery is delayed for more than 2 (two) months, the Buyer will be entitled to cancel the contract. If the delivery period is lengthened, the Buyer will not be able to derive any claims to compensation from this.

3.4 The duty of the Seller to deliver will be suspended for as long as the Buyer has failed to pay due invoices including any interests and costs still owed or if it becomes apparent that the Seller's claims in respect of the Buyer are jeopardized by lacking efficiency on the part of the Buyer. This will also apply to arrears from other contracts between the Contracting Parties if these originate in perpetual business relations and the various contracts appear to be a natural unit in terms of time or context factors. The right to retention will be ruled out if its assertion would be unreasonable and disproportionate.

4. Material Defects

4.1 The Buyer's claims to material defects will require that the Buyer has complied properly with its own obligation to inspect deliveries as defined in Section 377 HGB [German Commercial Code] and has filed its objection with the Seller in written form as swiftly as possible – as a rule inside the space of 5 (five) working days of delivery and/or with concealed defects as soon as these are discovered. The objection is considered received on the date of receipt at the Seller.

4.2 Any claims of the Buyer for defects will be ruled out if these are insignificant. An insignificant material defect is specifically given if the value or the suitability of the item for customary use is only minimally reduced.

A material defect does not prevail in the following cases: a) excess deliveries or short deliveries as compared to the contracted volume for delivery within reason, being understood that an excess delivery or a shortfall is deemed reasonable up to the extent of 10%; b) unless explicitly assured, minor, technically related differences in colour, strength, decoration, material or other minor differences as compared to the submitted final drawings, machine proofs or reference samples.

4.3 Deliveries of grey salt-glazed beer mugs are always as sorted in quality after leaving the furnace.

4.4 The Seller guarantees that the products correspond to the agreed specifications. The Seller accepts no responsibility for the products being suitable for use outside the country of destination agreed upon pursuant to subsection 2.2 and for their compliance with any legal requirements of any third country.

4.5 In respect of defective products, the Seller will be free to choose between a re-delivery and providing remedy (subsequent fulfilment). Any subsequent fulfilment will be ruled out if it generates unreasonable costs for the Seller.

4.6 In the case the subsequent fulfilment is not successful, is rejected, unreasonable, or if the Buyer has set a period of grace in vain for the Seller to provide subsequent fulfilment, or if the setting of a period of grace is not necessary, the Buyer will be entitled to call for a reduction in price or to cancel the contract. The right to call for compensation or for the refund of futile disbursements will remain unaffected hereby.

4.7 The Seller will attend to its obligations with the diligence of a prudent businessperson. The Seller will be liable for the defect-free condition of the products for a period of 12 months as from delivery – with the exception of instances of malicious concealment.

5. Rescission and Compensation in place of Performance

5.1 If the Seller fails to perform as due or as contracted ("breach of duty"), the Buyer will only be entitled to rescind the contract or to call for compensation in place of performance if a) the Seller's breach of duty is not insignificant, b) the Buyer requests the Seller in written form to perform within an appropriate period of time of at least 14 (fourteen) days and c) the Seller has nevertheless failed to perform within this period of time. Sections 323 (2) to (6), 326 (5) BGB [German Civil Code] and Section 281 (2) to (5) will not be affected hereby. The specific performance owed, for which reason the period of time is to be set, will be described in detail when setting said period of time (qualified setting of date).

5.2 Should the Seller still not have performed inside the period of time set by the Buyer or failed to have done so as contracted, the Seller will then be able to set an appropriate time interval for the Buyer to declare whether or not the Buyer still insists on performance. Until the decision of the Buyer has been taken, the Seller will not be bound to perform.

6. Despatch and transfer of risk

6.1 Unless otherwise specifically arranged, the duty of the Seller to deliver will be deemed fulfilled with despatch ex-works of the Seller. Irrespective of the means of transport used, the products will be transported at the expense and risk of the Buyer. This will also apply to free house deliveries and deliveries at the same location. Insurance cover for transport and other issues will only be provided if explicitly requested by the Buyer and at the expense of the Buyer.

6.2 Failing specific arrangements, paperboard containers and crates will be charged at cost price and not taken back. Pallets will be provided on loan or charged on basis of a separate agreement. Transport packaging will only be taken back subject to the provisions of the law.

6.3 If the products are ready for despatch or collection and if despatch or collection is delayed for reasons for which the Seller is not responsible, the risk will pass to the Buyer upon its receipt of the notification of readiness for despatch. Moreover the invoice may be issued immediately and will be due for immediate payment. In this case, the products will be stored at the expense of the Buyer. The right of the Seller to call for collection will not be affected hereby.

6.4 In cross-border traffic, the INCOTERMS of the International Chamber of Commerce in Paris will apply in complement in the version applicable at the respective time of delivery or performance. In cases of doubt, the Incoterm EXW ex-works of the Seller will be deemed contracted.

7. Liability

7.1 The Seller will only be liable – irrespective of the legal reason – if damages have been caused through its own fault in breaching a major contracted duty that endangers achieving the purpose of the contract or are attributable to the gross negligence or wilful intent of the Seller or to the absence of an assured quality.

7.2 If the Seller is liable for the breach of a major contracted duty without the prevalence of gross negligence or wilful intent, liability will be restricted to the scope of damages that would have to be typically anticipated by the Seller upon finalizing the contract in view of the circumstances known to the Seller at this point in time. As a rule, the foreseeable, typically incurred damages will amount up to the value of the goods delivered subject to contractual relations.

7.3 The Seller shall not be liable if the Buyer imports the delivered products (or has them imported) into a country other than the country of destination defined in subsection 2.2 and if claims are asserted against the Buyer due to a breach of the law of this third country in respect of the composition, appearance or design of the products, particularly in relation to serving size and/or the content of lead, cadmium and other substances.

7.4 Claims to compensation for damages subject to the Product Liability Act and for injury to life or limb will not be affected hereby.

8. Prices and Modalities of Payment

8.1 The prices shown on the order confirmation will apply. The Seller will be able to raise its prices appropriately if there is more than six weeks between finalization of contract and delivery. The prices will then be calculated according to the price lists valid on the date of delivery. In cases of long-term debt relations, the Seller's prices will be those that are valid on the day of delivery.

8.2 Unless otherwise arranged, all prices will be ex-works, plus transport, packaging, customs levies and the respective VAT applicable by law.

8.3 Invoices will be due for payment in euros inside 14 days of the date of invoice at 2% discount or inside 30 days of the date of invoice in full.

8.4 Payments of the Buyer will be offset as defined in Sections 366, 367 BGB.

8.5 Payment will only be deemed effected when the Seller is able to dispose of the amount in question. The receipt of cheques and bills will always only be as conditional payment. In the case of a cheque, payment will only be deemed rendered once the amount of the cheque is credited to the Seller's account. In each case the Seller reserves the right to accept bills of exchange. Discount and bill charges will be borne by the Buyer and due for immediate payment.

8.6 The Buyer will only be entitled to offset if the counterclaims have been declared final and absolute or are undisputed.

9. Retention of Title

9.1 All products delivered will remain the property of the Seller until the Buyer has settled all claims – irrespective of the legal grounds thereof – derived from business relations.

9.2 If the products have been delivered as intended to a location situated in the Federal Republic of Germany or brought to such location by the Buyer, the following will apply: We grant the Buyer permission, which may be revoked, to resell the contracted item in customary business transactions. This right will lapse in the event payments are ceased. The Buyer herewith now assigns the Seller all claims to payment together with the ancillary rights to which it is entitled from resale as security for the Seller's claims to payment. The Seller herewith accepts said assignment. The assigned claims will serve to secure all claims defined in No. 9.1.

9.3 This assignment will apply irrespective of whether the products are resold without or after further processing.

The Buyer will be entitled to collect the assigned claims to payment for as long as the Seller has not revoked said authorization. The collection authorization will lapse, without any explicit revocation, if the Buyer ceases to render payment. At the request of the Seller, the Buyer will immediately inform the Seller in written form of the party to whom it sold the products and detail the claims from said resale to which it is entitled, as well as issue the Seller at its own expense with publicly certified deeds concerning the assignment of the claims to payment. In cases of justified interest, the Seller will be able to inform the purchaser of the reserved goods in question of its own assigned claim to payments.

9.4 If the products are consigned as intended to a location outside the Federal Republic of Germany or brought to such place by the Buyer, the following will apply in addition to the provisions of No. 9.2.: The Buyer will ensure that title to the products in question is effectively protected in the country in which the products are situated or to which they have been brought. In the event certain acts are thus required (for example specific labelling of the products or entry into a local register), the Buyer will undertake these in favour of the Seller. Should it prove necessary for the Seller to become involved herein, the Buyer will inform the Seller immediately. Furthermore the Buyer will also inform the Seller of all important circumstances that are of relevance to as wide a protection as possible of the property of the Seller. In particular, the Buyer will provide the Seller with all documents and information necessary in order to assert the rights derived from the reserved property title. The provisions of this No. 9.3 will apply accordingly if local law at the location in which the products are now situated renders it difficult to arrange an effective retention of title, creating a legal status for the Seller that provides equally effective or other suitable protection of title as far as this is legally possible.

9.5 The Buyer will not be entitled to dispose otherwise of the products to which the Seller retains title or to dispose of the claims to payment assigned to the Seller; in particular the Buyer will not be able to pledge or assign the products by way of collateral. The Buyer will inform the Seller immediately of any third-party attachments, third-party measures of compulsory enforcement or other legal impediments relating to the products/claims to payment belonging in whole or in part to the Seller.

9.6 At all times the Seller will be entitled to call for the surrender of the products belonging to the Seller, if the Buyer defaults in payment or if its financial situation seriously deteriorates. Should the Seller make use of this right, a rescission of contract will only prevail if this is explicitly declared by the Seller, irrespective of any other mandatory provisions of the law.

9.7 The delivered products will be stored separately from the Buyer's other goods as far as this is possible on the premises of the Buyer. The products will be appropriately secured and insured against fire, theft and destruction by the Buyer at its own expense.

10. Concluding Provisions

10.1 The place of fulfilment will be the registered office of the Seller.

10.2 The exclusive place of jurisdiction for all claims derived from or in connection with the present contract will be Montabaur. The Seller will, however, be entitled to choose to bring action against the Buyer at its general place of jurisdiction.

10.3 German law will apply exclusively. The application of the United Nations Convention on Contracts for the International Sale of Goods (UN Sales Convention) will be ruled out.