



GENERAL CONDITIONS OF SALE ROUQUETTE GmbH (Version 2021)

All sales by Seller to Customer shall be exclusively governed by these General Conditions of Sale, unless otherwise stated in writing by Seller.

1. DEFINITION

"**CMR**" means Contract for the International Carriage of Goods by Road;
"Commercial Terms" means commercial terms that are provided as part of the Seller's quotation.
"Confidential Information" means all information provided by one Party or otherwise made known to the other Party in connection with the Contract, that is not of the public domain, including, but not limited to, prices, payment conditions, products, transformation or manufacturing process, developments, trade secrets, know how, personnel, customers, prospects and suppliers of either Party whether designated as "confidential information" or not by a Party, together with all information derived from the foregoing, but excluding any information (i) independently developed by the receiving party without using the confidential information of the disclosing party, (ii) publicly disclosed by either party other than the receiving Party under no duty of confidentiality or (iii) rightfully in the possession of the receiving party without a duty of confidentiality prior to the receipt of such information;

"**Customer**" means a company within the meaning of section 14 of the German Civil Code (Bürgerliches Gesetzbuch, BGB) which is buying the Product from Seller;
"**Seller**" means either Seller or Customer; "**Parties**" means collectively Seller and Customer;
"**Product(s)**" means the product(s) sold by Seller;
"**Order(s)**" means the order(s) placed by Customer to buy Product from Seller;
"**Seller**" means Rouquette GmbH, a corporation incorporated under the laws of Germany (HRB 15774) having its registered office at Hamburger Allee 14, 60486 Frankfurt am Main, GERMANY.

2. ENTIRE AGREEMENT

2.1 These General Conditions of Sale (the "**Conditions**"), together with the Commercial Terms constituting the entire and exclusive agreement between the Parties and, as referred to herein as the "**Contract Terms**", if there is a conflict between the Conditions and the Commercial Terms, the Commercial Terms shall prevail. All terms and conditions contained or referenced in any prior or subsequent oral or written communication, including, without limitation, terms and conditions contained in an Order or another document issued by the Customer or, which might exist on any other medium designated by the Parties, shall be null and void to the extent that they purport to complete any administrative referencing process and/or to submit any quotation or any other commercial document, whether or not in the context of a bid, which are different from or in addition to the Contract Terms, are hereby rejected and shall not be binding on Seller, and Seller hereby objects thereto.
2.2 Commercial Terms in themselves shall be deemed to be of a non-binding nature, unless otherwise expressly designed as a binding offer.
2.3 No addition to, or alteration or modification of, the Contract Terms shall be valid unless made in writing signed by an authorized representative of each Party specifically referring to the Contract Terms.
2.4 Customer shall be deemed to have full knowledge of the Conditions herein. These Conditions shall apply to all Orders, whether or not referred to in such Order. Except as otherwise agreed in writing, any acceptance of the price stated in the Contract Terms by signature, stamp, signature or email confirmation, or any Order placed afterward will imply the tacit acceptance of all terms of the same and the applicable Conditions referenced herein.

3. COMMERCIAL TERMS, ORDER AND CONFIRMATION ORDER

3.1 Except as expressly provided otherwise in the written Commercial Terms, the quantities indicated in the Commercial Terms are non-binding for both Parties. This means for the avoidance of doubt that acceptance of the Commercial Terms does not constitute a supply agreement in itself and does not create any contractual obligations or contractual rights for performance either for the Seller or for the Customer until Orders are placed accordingly by the Customer and are expressly accepted by Seller.
3.2 The Order placed by Customer is deemed a legally binding order to conclude a contract. Seller will send a confirmation of receipt ("**Confirmation of Receipt**"). Such Confirmation of Receipt only documents that the Order placed by Customer has been received and does not constitute an acceptance of such Order. The stated order is confirmed by Seller only if and only when a formal submission of the declaration of acceptance by Seller, which is sent separately ("**Order Confirmation**"). The content of the Order Confirmation determines the content of the contract ("**Contract**"). Orders placed by the Customer will generally not be accepted if they do not respect the prices, lead times and other terms and conditions indicated by Seller in its non-binding quotation. Unless Customer's Order states otherwise, we can accept it or reject it within 21 (twenty-one) working days (Monday to Friday, regardless of public holidays) from the date on which it is received. After the expiry of this period, the Order is voided and, thus, deemed rejected.
3.3 The Parties may use for the order process an electronic data interchange (EDI) which is a digital instrument allowing to exchange data (offers, contracts etc.) between the Seller and the Customer instead of using paper document or emails. In such a case, Orders will be processed automatically by Seller. In case of incompatibility or rejection of the Order for whatever reason, Seller will inform Customer in due course. The Seller will issue the Confirmation of Receipt and/or the Order Confirmation via EDI.
Orders placed by any other means of communication than EDI shall be issued in writing. Such Orders shall only be considered definitive once a written and signed Order Confirmation has been sent by Seller.

3.4 Seller will supply the Product to the Customer, up to the volume expressed in the Commercial Terms and as per the phasing agreed in the Commercial Terms. Should Customer need more volumes than those expressed in the Commercial Terms, phasing considered, delivery of those extra volumes is subject to availability of the Products and to new Commercial Terms to be agreed between the Parties. Seller cannot be held liable anyhow, for any reason whatsoever, in case Seller is not able to supply Customer with those extra volumes.

4. CANCELLATION OF ORDERS

No cancellation of Orders is permitted by the Customer.

5. QUANTITY, TIMING AND DATE OF DELIVERY

5.1 Seller as expressly provided in the written Commercial Terms, the quantities indicated in the Commercial Terms, are non-binding for both Parties. This means for the avoidance of doubt that acceptance of the Commercial Terms does not constitute a supply agreement in itself and does not create any contractual obligations or contractual rights for performance either for the Seller or for the Customer until Orders are placed accordingly by the Customer and are expressly accepted by Seller.
5.2 Seller will supply the Product to the Customer, up to the volume expressed in the Commercial Terms and as per the phasing agreed in the Commercial Terms. Should Customer need more volumes than those expressed in the Commercial Terms, phasing considered, delivery of those extra volumes is subject to availability of the Products and to new Commercial Terms to be agreed between the Parties. Seller cannot be held liable anyhow, for any reason whatsoever, in case Seller is not able to supply Customer with those extra volumes.
5.3 In each case, delivery times are indicated as precisely as possible but depend on Seller's procurement, production, transport and storage possibilities. Unless the delivery date has been expressly specified in writing as binding, the dates provided by Seller are only estimated delivery dates and are non-binding. Seller will confirm the delivery date when the Products are ready to be dispatched. If it becomes foreseeable for Seller that an estimated delivery date cannot be met, Seller will notify Customer of the delay and inform Customer of the new estimated delivery date. In no event shall the Seller be liable for any delays.
5.4 Delivery dates are extended automatically to a reasonable extent if Customer does not meet its contractual obligations or other duties to cooperate or responsibilities. It is in particular Customer's responsibility to send to Seller in due time and in the correct format all documents, data, samples, models, and any other information and items to be provided by it and, where applicable, to meet the technical, structural, staffing and organisational requirements for the assembly of Products or for similar services (e.g., fitting, installation, commissioning, configuration/adaptation).
5.5 Seller is entitled to provide the Product in part by means of the different lots used by Customer in the context of its contractually agreed intended use, and (b) the provision of the remaining performance is ensured.
5.6 Seller's statutory rights, in particular concerning any exclusion of its obligation to provide performance (e.g. due to the performance and/or subsequent performance (Nacherfüllung) being impossible or unreasonably costly and due to any delay in acceptance or performance on the part of the customer, remain unaffected.
5.7 If, for whatever reason, delivery or performance by Seller is delayed or becomes impossible for it, any liability Seller may have for damages is limited in accordance with clause 13 below.

6. DELIVERY, TRANSPORT AND INSURANCE

6.1 Except as otherwise provided in the Commercial Terms, Products shall be delivered CIP/CIF place of delivery (INCOTERM 2010) as set out in the Commercial Terms.
6.2 Risk of loss will pass to Customer in accordance with the applicable INCOTERM, irrespective of whether title to the Products remains vested in Seller in accordance with clause 7.
6.3 The Product shall be packed for shipment in accordance with Seller's packaging data sheet and any other specification signed by Seller in a manner sufficient to ensure the integrity of the Product. No warranty is given as to compliance with local regulation regarding packaging, except if the specific requirements of the local regulation have been detailed and required by Customer and expressly accepted by Seller in writing.
6.4 When Customer is responsible for the transport in accordance with the INCOTERM applicable due to a deviating agreement in the Commercial Terms:
(a) Customer shall ensure that its carriers are fully compliant with all laws and regulations applicable to them and requirements applicable to EFISC (European Feed and Food Ingredients Safety Certification) or equivalent's standards.
(b) If the shipment involves Products to be exempted from VAT or from any equivalent goods and services tax provisions, Customer shall justify by all means, acceptable by Seller, the reality of the shipment or transport of Products outside the national territory in accordance with the applicable law. Consequently, Customer shall provide Seller with, at first request, all necessary and useful information to determine that the Products are intended to leave the national territory, all proofs of deliveries and shall not assign the right to ship the Products to other entities in the national territory; otherwise Seller will not deliver the Products in the national VAT.
6.5 Customer shall unload tank cars promptly on delivery. Any claim for missing Product and/or transport damage must be lodged in the CMR or any other transport document signed by Customer on receipt of the Product. Picture of transport damage must be immediately sent to the Seller. Evidence as required by the INCOTERM shall be provided by Seller. Seller has any liability for its selection of any carrier (to the extent that this selection has been made with the due care of a prudent businessman), any damage or loss occurring subsequent to delivery, to a carrier, or any actions of any carrier.
6.6 Customer must carefully examine all Products without undue delay upon delivery and in each case before use. Any visible defects, other than missing Products and/or transportation damages, or any defects discovered as a result of such inspection must be notified within five (5) days of the discovery and in any case before use of the Product in writing (by fax or e-mail). Such notification must include pictures of the visible defect. The inspection of the Product after delivery may not be limited to external appearance and components, but may also include an examination of quality and functionality, at least with random samples. If Customer fails to inspect the Product properly or notify Seller of any defects in due time, Seller's warranty obligation and any other liability for the defect concerned is excluded. None of Seller's statements, acts or omissions are to be understood as constituting a guarantee of the absence of any consequences of sections 377 and 381 German Commercial Code and the provisions of this clause.
6.7 With regard to other defects which are not visible or not discovered as a result of a duty inspection according to Section 6.6, the Products are deemed to have been approved by the Customer if Seller does not receive notification of defects within 5 (five) days of the time at which the defect became apparent.

6.8 In absence of notification according to Sections 6.6 and 6.7, Customer shall not be entitled to any remedy. In the event a defect in the Product is discovered for which Seller is responsible as provided in these Conditions, Customer shall not sell, use or mix the Products following such discovery. If Customer establishes that a defect exists, Customer's sole remedy shall be set out in Section 9 or by law.

7. RESERVATION OF TITLE

7.1 Seller reserves title to the Products sold until full payment of all its current and future claims under the Contract and until the end of the ongoing business relationship ("**Secure Claims**").
7.2 The delivered Products remain Seller's property until full payment of the Secured Claims. These Products, or the items that replace them also covered by the reservation of title in accordance with the following provisions, are referred to hereinafter as "**Reserved Goods**".
7.3 If Customer intends to transfer the Reserved Goods to a location outside Germany, it is obliged to meet, without undue delay, any and all statutory requirements there for the creation and maintenance of Seller's reservation of title at its own expense and to inform Seller without undue delay about the aforementioned intention.
7.4 Customer will store the Reserved Goods free of charge and must treat them with care. Any processing and treatment of the Products (section 950 German Civil Code) is always carried out for Seller as manufacturer, on its behalf and for its account, without obliging Seller. Customer does not acquire any ownership. Seller acquires indirect ownership of the new item. If Seller's Reserved Goods are processed into a new item with other goods, Seller acquires co-ownership in the ratio of the invoice value of such Reserved Goods to the value of the new item. In this respect deemed to be Reserved Goods. To the extent that co-ownership arises for Customer as a result of processing, installation or integration, it hereby assigns its rights to Seller and will store the item for Seller with due commercial diligence (kaufmännische Sorgfalt). Seller hereby accepts this transfer of rights. If the Reserved Goods are combined with (section 948 German Civil Code) or integrated into (section 949 German Civil Code) or mixed with items not belonging to Seller, Seller acquires direct co-ownership of the newly created item in the ratio of the value of the Reserved Goods (gross invoice value) to the value of the other combined, integrated or mixed items at the time these are combined, integrated or mixed. To the extent that Seller's Reserved Goods are processed into a new item with other goods, Seller acquires co-ownership (section 947(2) German Civil Code). If one of the other items is to be considered the main item, Customer, to the extent that the main item belongs to it, hereby transfers proportional ownership in the combined item to Seller, which hereby accepts this transfer of ownership.

The Reserved Goods may only be used in the course of business conducted in compliance with the contract, but no default or other breach of contract by Customer. Customer bears the transport costs incurred from the resale of the Reserved Goods, in whatever condition, are hereby assigned to Seller as security together with all ancillary rights. Customer is entitled to collect the receivables until Seller revokes its authorisation, which Seller may do at any time. The authorisation to collect receivables also the case if Seller attaches the Reserved Goods. Customer bears the transport costs incurred from the Seller taking back the Reserved Goods. Seller may realise the Reserved Goods taken back by itself. The proceeds from this realisation will, after Seller has deducted an appropriate amount for the costs of realisation, be set off against the amounts Customer owes to Seller.
7.6 Seller is not bound by the contract if the goods are not received in the agreed quantity or if use them for sale-and-leaseback transactions. If the commencement of insolvency proceedings is filed for and/or third parties obtain access to the Reserved Goods (e.g. attempts at attachment), Customer must clearly indicate its own ownership of them without undue delay and notify Seller without undue delay so that it can enforce its rights. If the commencement of insolvency proceedings is filed, Seller is entitled to demand a list of its Reserved Goods.

8. WARRANTY

8.1 Unless stated or supplemented otherwise in these Conditions, the relevant statutory provisions apply to Customer's rights in the event of material defects and defects in title (including incorrect or defective incorporation of the Product into the customer's system).
8.2 For food Products, unless formally instructed by the Customer otherwise, Products will be manufactured in compliance with applicable European and German general food regulations.
8.3 Seller warrants that (subject to the other provisions of these Conditions), upon delivery the Product meets its specifications as specified by all material aspects, including quality and structure of the Product and its components, and that the Product is free from material defects and conforms to the specifications for the Products unless otherwise mutually agreed in writing between Customer and a qualified representative of Seller's quality and regardless any reference to Customer's specifications in the Order. Any descriptions, illustrations or information contained in Seller's publications or advertising are issued as a guide only for the purpose of giving an approximate idea of the Products and are not to be taken as a guarantee. Seller will not be liable for any claims or damages arising from a representation as to the accuracy of such materials. Unless expressly agreed otherwise, (a) Seller's Products and services only have to comply with the statutory requirements applicable in Germany and (b) Customer alone is responsible for the integration and further processing of Products (including their integration into the customer's system). Both the quality and structure of Products and variations caused by processing do not constitute defects unless such characteristics are expressly guaranteed as properties or the quality deviation goes beyond the normal level.
8.4 Seller warrants that any services associated with the Product performed by it, on its behalf, as well as those performed by its subcontractors, will be performed with reasonable care and skill.
8.5 In case of bulk delivery, there is no warranty after the unloading of the Product by Customer, unless Customer proves the responsibility of Seller.

8.6 If, after receipt of a written notice asserting non-compliance, Seller determines that Product did not meet its specifications, Seller may, at its discretion, choose to: (a) replace the Product, at its cost, with a written authorization from Seller, deliver such Product to a facility designated by Seller. Seller shall at its option replace the Products or return to Customer a credit in the amount of the price paid for the Products. This replacement or refund does not apply to Products misused or damaged because of accident or improper handling, shipping damage, or alterations outside of Seller's facilities. Seller's liability for replacement, repair or remedy for Products, whether under warranty, contract, tort (including negligence), or otherwise, is expressly limited to the foregoing, and shall not in any event exceed the original invoiced price of the Products. As herein provided and upon the expiration of the period specified above, all such liability shall terminate. Any such refund or replacement is conditional on the Customer's written specifications and the Product being returned to Seller in good condition and provided the destruction is proven by Customer. Seller has the right to demand and test samples of any Products in relation to which Customer makes a quality claim, as well as inspect the site Customer has stored such Products.

8.7 In case of a defect, Seller reserves the right to remedy defects dependent on Customer paying any purchase price which may be due. Customer is, however, entitled to withhold an appropriate part of the payment proportionate to the (alleged) defect during the rectification measures.
8.8 Seller shall not be liable according to this Section 8 if:
(a) Customer makes any further use of such Products after giving a notice of defect;
(b) the defect arose because Customer failed to follow Seller's instructions, including, without limitation, any instructions relating to the movement, storage, handling or use of the Products or, if there are none, good trade practice.
8.9 Quality or shelf-life guarantees are only issued by Seller in writing.

8.10 Seller makes no warranty of any kind, express or implied, statutory or otherwise, concerning the Products, including, without limitation, the implied warranties of fitness for a particular purpose or merchantability or the results to be derived from the use of the Products. Customer assumes all risks and liability for the use of the Products.
8.11 Seller makes no warranty of any kind, express or implied, statutory or otherwise, concerning the Products, including, without limitation, the implied warranties of fitness for a particular purpose or merchantability or the results to be derived from the use of the Products. Customer assumes all risks and liability for the use of the Products.
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10.3 In the case of such events, delivery deadlines are automatically extended for the duration of the event plus an appropriate lead time. Seller is also entitled to withdraw from the Contract if such events make it significantly more difficult or impossible for itself to render performance and are not merely temporary. If the event of such a nature causes a delay caused by such an event, Customer can no longer be reasonably expected to accept the performance, it can also withdraw from the Contract by giving written notice of this without undue delay; Customer can no longer be reasonably expected to accept performance only if the expected new delivery date is later than 30 calendar days after the originally envisaged delivery date is unforeseeable.