

## **GENERAL TERMS AND CONDITIONS OF SALE UNIFINE F&Bi**

### **1. Applicability**

- 1.1 These terms and conditions are used by Unifine Food & Bake Ingredients GmbH, hereinafter referred to as "Unifine F&Bi".
- 1.2 These terms and conditions apply to all offers by and all agreements with Unifine F&Bi.
- 1.3 The applicability of any general terms and conditions, with whatever name or format, used by the Buyer is hereby explicitly rejected.
- 1.4 Deviation from these general terms and conditions can only be made by further written agreement.
- 1.5 Where these conditions deviate from extraordinary provisions, agreed in writing, the extraordinary provisions, agreed in writing, shall prevail.

### **2. Offers and orders**

- 2.1 All quotations, proposals and offers are free of obligation, unless otherwise agreed in writing.
- 2.2 The Buyer is legally bound by any order it places, either orally, written or electronically (e.g. via e-mail, internet or EDI). Unifine F&Bi is legally bound upon written confirmation of the order, or upon start of execution of the order.
- 2.3 Unifine F&Bi reserves the right to require security from the Buyer before accepting and executing an order.

### **3. Prices**

- 3.1 All prices are excluding VAT, based on an Ex Works delivery (in accordance with the latest version of the Incoterms, issued by the International Chamber of Commerce), in the local currency of Unifine F&Bi, unless stipulated otherwise by Unifine F&Bi in writing.
- 3.2 Unifine F&Bi shall pass the costs related to the introduction and/or increase of import duties, VAT and other taxes and levies on the product, the requisite raw and/or ancillary materials, the delivery or any other increase of costs occurring after the conclusion of the agreement on to the Buyer in full.

### **4. Delivery**

- 4.1 The delivery times given by Unifine F&Bi are estimations only. Unless Unifine F&Bi is in default exceeding the delivery time, for whatever reason, does not entitle the Buyer to claim damages or to fail to comply with any obligation it entered into.
- 4.2 Unless explicitly agreed otherwise in writing, deliveries shall be made Ex Works, as defined in the most recent edition of the Incoterms, issued by the International Chamber of Commerce.
- 4.3 Buyer is not allowed to change the delivered products partly nor in full, or to give the product another brand name and /or packaging, unless agreed otherwise in writing.

### **5. Quality**

- 5.1 The products and associated services shall be delivered in the description, quality and quantity as agreed upon, and shall comply with samples provided to Buyer by Unifine F&Bi, subject to minor, technically unavoidable differences.
- 5.2 Unifine F&Bi warrants that the composition and quality of the products to be delivered shall comply in all aspects with the legal and other governmental requirements of the country where the products are produced, that are valid upon conclusion of the agreement.
- 5.3 Unifine F&Bi warrants that the products are appropriate for the purpose as specified in the technical specifications and at the label of the product.

### **6. Inspection and Complaints**

- 6.1 The Buyer is obligated to adequately inspect the goods delivered without undue delay upon receipt, in any event prior to treatment or processing, as regards compliance with the quality or type stipulated in the agreement.
- 6.2 Complaints regarding the quantity of products delivered and other defects visible upon delivery must be reported without undue delay upon delivery on accompanying documents. Complaints

with regard to defects not visible upon delivery must be reported clearly in writing without undue delay after discovery of the defect. Unifine F&Bi deals with complaints provided the complaint has been made within the mentioned term and the product has been stored in the appropriate and/or prescribed manner. Complaints submitted after the terms mentioned will not be dealt with. In case Unifine F&Bi so requests, Buyer is obligated to return the products complained of to Unifine F&Bi.

- 6.3 Deficiencies to part of the products, do not entitle Buyer to reject the entire delivery.
- 6.4 If the products contain a defect subject to warranty obligation, Unifine F&Bi shall be entitled to remove the defect at its option by remedying the defect or delivery of a replacement, both free of charge to Buyer. Buyer shall give Unifine F&Bi the necessary reasonable period of time and opportunity for remedying the defect or delivering a replacement
- 6.5 The period of limitations for claims for defects shall be twelve months from the hand-over of the products to Buyer.

## **7. Goods returned**

- 7.1 In order to ensure that any goods returned are properly handled the Buyer shall coordinate the return of the goods with Unifine F&Bi.
- 7.2 Unless agreed otherwise in writing, goods are returned for the account and risk of the Buyer. If the complaint is justified, Unifine F&Bi shall reimburse the Buyer the costs for returning the goods.

## **8. Force majeure**

- 8.1 Force majeure entitles Unifine F&Bi, after having notified the Buyer in writing, to suspend performance, without the Buyer being entitled to damages.
- 8.2 Force majeure includes every event that is unforeseeable, unavoidable and cannot be attributed to Unifine F&Bi.
- 8.3 Force majeure includes, but is not limited to, war, risk of war, revolt, hostage, molest, fire, water damage, flood, natural disaster, railway strike, defect means of transportation, accumulation of orders, work strike, sit-down strike, lock-out, labour shortage, shortage of raw materials, in- and export obstructions, governmental measures, defects to machinery, breakdown of electricity, lack of sufficient stock and in general circumstances that are hindering to the orderly production of Unifine F&Bi and the delivery to Buyer.
- 8.4 If the delivery is delayed more than three months as a result of force majeure, both the Buyer and Unifine F&Bi shall be entitled to terminate the agreement.
- 8.5 If the force majeure occurs when the agreement has already been executed in part and if the remaining delivery is delayed more than three months, the Buyer shall retain the products delivered and pay the purchase price owed.

## **9. Liability**

- 9.1 Subject to the provisions in the following paragraph 2 of this Article Unifine F&Bi's statutory liability for damages shall be limited as follows: (i) For damages caused by a slightly negligent breach of a material contractual obligation Unifine F&Bi shall only be liable up to the amount of the typically foreseeable damage at the time of entering into the agreement and (ii) Unifine F&Bi shall not be liable for damages caused by a slightly negligent breach of a non-material contractual obligation.
- 9.2 The limitation of liability as set out above does not apply to any mandatory statutory liability (in particular to liability under the German Product Liability Act) or to any liability for a specific guarantee granted by Unifine F&Bi nor to any liability for culpably caused personal injuries.
- 9.3 The Buyer shall indemnify Unifine F&Bi against claims of third parties to compensate damage for which Unifine F&Bi is not or could not be liable towards the Buyer on the basis of the provision in the previous paragraphs of this Article.

## **10. Packaging**

- 10.1 All returnable packaging, such as but not limited to loading boards, boxes, crates containers, is provided to Buyer on loan. Unifine F&Bi can charge a deposit on the packaging to Buyer.
- 10.2 Unless the Buyer demonstrates otherwise upon receipt, the Buyer shall be deemed to have received the packaging in good condition. Unifine F&Bi shall charge the costs of repairing damage to packaging to the Buyer. Loss of packaging shall also be charged to the Buyer.
- 10.3 Unifine F&Bi continues to be the owner of all returnable packaging under all circumstances; the Buyer shall not sell it or dispose of it in any other way.
- 10.4 Returnable packaging must be kept on disposal of Unifine F&Bi by Buyer. Unifine F&Bi shall take care of taking back the packaging that is not intended for single use.
- 10.5 Non-returnable packaging is part of the product delivered and shall not be taken back by Unifine F&Bi.

## **11. Payment**

- 11.1 Unless agreed otherwise in writing and unless indicated otherwise on the invoice, Buyer must pay the invoice within 14 days after the date of invoice, without the Buyer being entitled to any discount not explicitly agreed upon. Payment is effected when the money is available to Unifine F&Bi.
- 11.2 As long as previous deliveries have not been paid in full, Unifine F&Bi is entitled, if there is a risk of Buyer's impossibility to perform, to require cash payment or payment in advance, and to suspend further delivery until such cash payment or advance is effected.
- 11.3 After expiry of the payment term mentioned in the first paragraph of this Article Buyer shall be in default without further notice required. Unifine F&Bi shall be entitled, without further notice of default, to charge interest based on the statutory rate of interest. Interest shall be charged as from the first day that Buyer is in default of its payment obligations.
- 11.4 All costs associated with collection, such as postage, telephone and internal processing fees, as well as all court costs and costs for (extra)judicial legal assistance, including costs not liquidated in court resulting from Buyer's default, shall be for the account of the Buyer.
- 11.5 Unifine F&Bi shall be entitled to set off any amounts payable by her to Buyer against any amount that Buyer owes to Unifine F&Bi or to any company affiliated with Unifine F&Bi.
- 11.6 Buyer is only entitled to a set off if its counterclaim is uncontested or has been finally adjudicated. Further, Buyer is only entitled to assert a right of retention to the extent that its counterclaim is based on the same contract and is uncontested or has been finally adjudicated.

## **12. Termination**

- 12.1 Without prejudice to its right to demand performance and/or damages, Unifine F&Bi is entitled to dissolve the agreement with the Buyer in whole or in part, without any requirement of judicial intervention, and without owing the Buyer any payment in that respect, and in the case of dissolution in part, suspend the delivery to the Buyer, if the Buyer fails in any respect to comply with its obligations notwithstanding a warning letter and grace period, ceases to do business or if its financial situation deteriorates materially or under other, similar, circumstances.

## **13. Retention of title**

- 13.1 All products delivered by Unifine F&Bi remain property of Unifine F&Bi until the Buyer has fulfilled all its obligations towards Unifine F&Bi regarding the relevant, past and future similar deliveries, as well as accompanying work performed or to be performed by Unifine F&Bi, or related to any claims of Unifine F&Bi against the Buyer due to the Buyer's failure to comply with its obligations towards Unifine F&Bi. Until such time, the Buyer holds the products for Unifine F&Bi.
- 13.2 Until that time, the Buyer is only entitled to alienate or process the goods if such acts are part of its normal and regular business operations.
- 13.3 In case Buyer forms a new product with or out of the delivered products in the normal course of business, before full payment in accordance with paragraph 1 of this article, then Buyer forms

the new product on behalf of Unifine F&Bi and Unifine F&Bi will have ownership of the newly formed product. Should the goods be joined or mixed with other products, Unifine F&Bi shall acquire joint ownership of the new goods in the ratio of the value of the delivered goods to the other products at the date of joining or mixing. Should the joining or mixture of the goods occur in such manner that Buyer's products are to be viewed as the main goods, it shall be deemed to have been agreed that Buyer shall assign proportionate joint ownership to Unifine F&Bi. Until payment in full Buyer will hold the products for Unifine F&Bi.

- 13.4 Should Buyer be in default of material obligations such as payments to Unifine F&Bi, Unifine F&Bi is authorised notwithstanding any other rights to repossess the products that she owns and after rescission of the contract, realize them for the purpose of satisfying its matured claims against Buyer. In such case the Buyer now grants authority to Unifine F&Bi to that end, including the right to enter the location where the products are stored and to remove the products. All costs associated will be for the account of the Buyer.
- 13.5 All products and packaging held by the Buyer which originate from Unifine F&Bi are always deemed to be those listed on the outstanding invoices, at least to the extent that the quantity of products held by the Buyer does not exceed the quantities listed on the outstanding invoices as regards type and composition.

#### **14. Disputes**

- 14.1 All disputes between the Buyer and Unifine F&Bi, including those relating to the mere collection of the amount payable by Buyer, shall in first instance be adjudicated by the competent court in the district where Unifine F&Bi is domiciled, which court shall be exclusively competent.

#### **15. Applicable law**

- 15.1 All agreements with Unifine F&Bi are exclusively governed by the laws of Germany. The applicability of the Vienna Sales Convention (United Nations Convention on Contracts for the International Sale of Goods) is explicitly excluded.

#### **16. Miscellaneous**

- 16.1 The Buyer shall keep confidential the existence, nature and contents of the agreement, along with other corporate information and shall not disclose or use any information regarding that without the prior written permission of Unifine F&Bi.
- 16.2 In the event one or more provisions of these general terms and conditions prove to be entirely or partially non-binding, the remaining provisions of these general terms and conditions remain in force between the parties. The invalid provisions shall be replaced by provisions which are binding and which, in view of the object and purport of these general terms and conditions, deviate as little as possible from the provisions being replaced.