General Terms and Conditions

for Deliveries and Services

of
Lackmann Fleisch- und Feinkostfabrik GmbH
Erlenstrasse 23, 77815 Bühl

Status: July 2021

---

1. Scope of Application

1.1. Our General Terms and Conditions (GTC) apply exclusively. Where these contain no provisions, statutory law applies. We do not recognize any terms and conditions of the contracting partner that conflict with, deviate from our GTC, or deviate from statutory law to our disadvantage, unless we have expressly agreed to their validity in writing. Our GTC also apply if we perform contractual services or make deliveries without reservation in the knowledge of conflicting or disadvantageous terms and conditions of the contracting partner.

1.2. Our GTC also apply to all future transactions with the contracting partner.

1.3. Our GTC apply only vis-à-vis entrepreneurs, legal entities under public law, or special funds under public law within the meaning of § 310(1) BGB (German Civil Code).

---

2. Offers and Estimates; Subsequent Changes to the Contract

2.1. Our offers and cost estimates are—unless expressly designated as binding—subject to change and non-binding.

2.2. We reserve all rights in and to all offer and contract documents, in particular drafts, drawings, illustrations, etc., insofar as such rights are not granted to the contracting partner by the purpose of the contract or by express agreement. These documents must be returned to us without delay upon request if we are not awarded the order. The contracting partner may not assert any right of retention in this respect.

2.3. We endeavor to take into account a post-contract change request of the contracting partner regarding the deliveries and/or services, to the extent reasonably feasible for us in light of our operational capacities.
If the review or implementation of the change affects the contractual balance of performance (remuneration, deadlines, etc.), the contractual arrangements must be promptly adjusted in writing.
We may also demand reasonable additional remuneration for reviewing whether and under what conditions the desired change can be implemented, provided we point out the need for such review and the contracting partner places the corresponding review order.

---

3. Orders, Prices, Terms of Payment, Reservation of Subsequent Performance

3.1. Orders are processed only if placed **online** in our B2B online shop (www.shop-lackmannlb.de) by registered customers.

3.2. We reserve the right to reasonably increase our prices if cost increases occur after conclusion of the contract for reasons beyond our control, in particular due to collective bargaining agreements or changes in material prices. We will furnish proof of such changes upon request.

3.3. Unless otherwise agreed, our prices are **ex works** and exclude postage, shipping, freight, packaging, insurance, loading or unloading. VAT is charged additionally at the statutory rate. If shipment and/or unloading takes place at the contracting partner's request, the risk nevertheless passes **ex works** to the contracting partner.
Minimum order value for **frozen-goods assortment**: net €700—then delivery within Germany is free of shipping costs. For the remaining assortment (excluding frozen goods), delivery within Germany is free of shipping costs from a **full pallet position**, i.e., **from 500 kg** (Euro/DD pallet), of which at least **60 kg** must be meat and sausage products. Exempt from the minimum order quantity are **fresh** fruit, vegetables, berries, and cosmetic/personal-care products.

3.4. Unless otherwise agreed, payments by the contracting partner are due immediately without deduction. Cash discount (Skonto) requires a special written agreement. The contracting partner will be in default—without further declaration by us—ten days after the due date if payment has not been made. Statutory provisions apply to the consequences of default.

3.5. We may demand reasonable installment payments plus the applicable VAT thereon.

3.6. Bills of exchange and checks are accepted for payment only; bills of exchange only by prior written agreement. Discount charges, fees, and costs associated with collection are borne by the contracting partner and due immediately. Performance occurs only upon redemption of the checks/bills and our release from any liability.

3.7. The contracting partner may set off only with counterclaims that are res judicata, undisputed, or acknowledged. A right of retention may be exercised only if the counterclaim arises from the same contractual relationship.

3.8. The contracting partner agrees to receive invoices **exclusively by email**. A claim to an original paper invoice exists only against reimbursement of costs currently **€0.99** per invoice.

---

4. Delivery/Service Time; Non-attributable Delays; Delay; Impossibility; Default of Acceptance; Breach of Duties to Cooperate

4.1. Stated delivery/service periods are fixed dates only if expressly designated as such.

4.2. Compliance with delivery/service obligations, in particular delivery dates, presupposes:
— timely and proper fulfillment of any duties to cooperate by the contracting partner, especially receipt of documents and information to be provided by the partner;

— clarification of all technical details;
— receipt of agreed installments / opening of agreed letters of credit;
— availability of required approvals and licenses.
The defense of non-performance is reserved.

4.3. **Delays not attributable to us:**
4.3.1. We are not responsible for delays due to the following impediments (unless we have expressly assumed a procurement risk or guarantee specifically regarding deadlines), including where such impediments occur at our suppliers or their subsuppliers: force majeure; impediments arising after contract conclusion or becoming known to us without fault only thereafter; where we prove they were not foreseeable and not avoidable with due care and that no fault lies with us for failing to assume/avert such risks. In particular: lawful industrial action (strikes/lockouts), operational disruptions, shortage of raw materials, lack of operating/auxiliary materials.

4.3.2. Claims for damages by the contracting partner due to delays under 4.3.1 are excluded.

4.3.3. In the event of a **permanent** impediment under 4.3.1, each party may terminate the contract immediately by rescission in accordance with law.

4.3.4. In the event of a **temporary** impediment under 4.3.1, we may postpone delivery/service for the duration of the impediment plus a reasonable lead-time. If we prove unreasonable hardship, we may rescind. The partner's right of rescission is governed by 4.5. § 323(4) BGB applies to our right of rescission; for the partner's right, § 323(4)–(6) BGB apply. Consequences follow § 326 BGB and its references; any non-owed deliveries/services already rendered by the partner may be reclaimed under §§ 346–348 BGB.

4.4. **Delays attributable to us:**
4.4.1. **Damages in addition to performance** (§ 280(2) in conjunction with § 286 BGB): absent intent or gross negligence by us/our legal representatives/agents, we owe a lump-sum delay compensation of **0.5%** of the net invoice amount of the delivery/service affected by the delay for each full week of delay, capped at **5%** of the net invoice amount. In cases of gross negligence, liability is limited to the foreseeable, typical damage.

4.4.2. **Damages in lieu of performance** (§ 281 BGB): liability is limited to the foreseeable, typical damage unless the delay is due to an intentional or grossly negligent breach by us/our representatives/agents.

4.4.3. The above limitations do not apply where:
— the partner contractually made the persistence of its performance interest dependent on timely performance (fixed transaction);
— due to our delay the partner may assert loss of interest in further performance;
— we have expressly assumed a procurement risk or a guarantee specifically regarding deadlines.

4.5. If we prove the delay is not attributable to us, the partner's right of rescission exists only if:
— the contract ties the persistence of performance interest to timeliness (fixed transaction), or
— the partner proves its performance interest has lapsed or continuing the contract is unreasonable due to the delay.
Otherwise § 323(4)–(6) BGB applies; legal consequences per §§ 346 et seq. BGB.

4.6. **Impossibility.** Where our deliveries/services are impossible, we are liable under law with the following cap: absent intent or gross negligence by us/our representatives/agents, our liability for damages and futile expenses is limited **in total to 20%** of the net invoice amount; in cases of gross negligence, to the foreseeable, typical damage. This cap does not apply where we have assumed a procurement risk. The partner's statutory right to rescind in case of impossibility remains unaffected.

4.7. We may make partial deliveries/services to the extent reasonable for the partner.

4.8. The partner undertakes to accept deliveries during normal business hours Monday to Friday, 8:00–18:00. Our driver has a maximum of **15 minutes** for unloading. If the partner is in default of acceptance/collection/call-off (including partial deliveries), if unloading is delayed for reasons attributable to the partner, or if the partner culpably breaches other duties to cooperate, we may—without prejudice to further statutory rights—claim compensation for the resulting damage, including additional expenses. Further claims remain reserved.

---

5. Passage of Risk; Insurance

5.1. Where sales law applies, the risk of accidental loss or deterioration passes to the partner when the delivery is handed over to the person/entity designated for collection or execution of delivery, but at the latest upon leaving our works (**Incoterms 2020 EXW**). For deliveries by our own vehicles by special agreement, **Incoterms 2020 DAP** (delivered at named place) at the customer's location applies. Loading/unloading is not owed by us. If, at the partner's request, loading/unloading nevertheless occurs, the partner bears the risk alone.

5.2. In case of default of acceptance/call-off/collection by the partner, or if our delivery/service is delayed for reasons attributable to the partner, the risk passes to the partner at the time such default occurs or when delivery/service could have occurred if the partner had acted properly.

5.3. On the partner's request and at its expense, the delivery will be insured from the passage of risk against theft, breakage, fire, water, transport damage, and other insurable risks.

---

6. Retention of Title

6.1. We retain title to the items delivered ("reserved goods") until receipt of all payments arising from the business relationship. Retention also extends to the acknowledged balance if we book claims in a current account (current-account retention). If our liability on a bill of exchange is created for payments to us for the reserved goods, retention does not expire until our liability on the bill expires; in a check-bill procedure, retention extends to redemption of the bill accepted by us and does not expire by crediting of the received check.

6.2. The partner may resell the reserved goods in the ordinary course of business; however, it hereby **assigns** to us all claims against its customers or third parties from the resale in the amount of the final invoice value (including VAT) of our claims. If the partner includes such claims in a current account with its customer, the current-account claim is assigned in the amount of the acknowledged balance; the same applies to the "causal" balance in insolvency.

The partner remains authorized to collect the assigned claims. Our right to collect remains (subject to insolvency law), but we undertake not to collect while the partner duly performs and is not in default and no insolvency petition or cessation of payments exists. Security transfer or pledging is **not** covered by the resale authorization.

6.3. If our obligation under 6.2 not to collect lapses, we may—subject to insolvency law—revoke the resale authorization and take back the reserved goods and/or demand assignment of the partner's surrender claims against third parties. Taking back the reserved goods constitutes rescission. We may—subject to insolvency law—realize the reclaimed goods after prior warning and deadline; proceeds shall be credited to the partner's liabilities less reasonable realization costs. We may also revoke the collection authority and require disclosure of assigned claims/debtors, provision of documents, and notification to debtors.

6.4. The partner must notify us **without undue delay in writing** of damage to or loss of the reserved goods and of any change of possession/location. The same applies to attachments or other interventions by third parties so we can bring an action under § 771 ZPO; if the third party cannot reimburse court/extrajudicial costs, the partner is liable. If release is achieved without proceedings, the partner must also bear the costs, as well as costs for recovery.

6.5. Processing or transformation of reserved goods by the partner is always carried out **for us**. If processed with other items not belonging to us, we acquire co-ownership of the new item in proportion to the value of the reserved goods (final invoice amount incl. VAT) to the values of the other processed items at the time of processing/transformation. The same applies to items created thereby; the partner receives an expectancy right corresponding to that in the reserved goods.

6.6. If reserved goods are inseparably mixed/combined with items not belonging to us, we acquire co-ownership in proportion to values at the time of mixing/combining. If the partner's item is deemed the principal item, it is deemed agreed that the partner transfers co-ownership to us proportionally. The partner holds sole/co-ownership in custody for us.

6.7. Upon resale after processing/transformation, the partner in advance assigns to us its remuneration claims in the amount of the final invoice value (incl. VAT) of our claims. If we have only co-ownership under 6.5/6.6, the partner's claim is assigned in proportion of our final invoice amount (incl. VAT) for the reserved goods to the final invoice amounts of the other goods not belonging to us. Otherwise 6.2–6.4 apply accordingly.

6.8. If retention of title or assignment is ineffective under the foreign law where the goods are located, an equivalent security customary in that jurisdiction is deemed agreed. If the partner's cooperation is required to establish such rights, it must take all necessary actions upon our request.

6.9. The partner must handle the reserved goods with care and maintain them at its own expense; in particular, insure them at replacement value against theft, robbery, burglary, fire and water damage in our favor. The partner hereby assigns to us all insurance claims relating to the reserved goods; we accept the assignment. Our further performance/damage claims remain unaffected.

6.10. The partner also assigns to us claims against third parties arising from the combination of the reserved goods with real property.

6.11. We undertake, at the partner's request, to release securities to the extent the realizable value of our securities exceeds the secured claims by more than 10%; we may choose which securities to release.

---

7. Acceptance

7.1. Where the law on contracts for work and services applies, the partner is obliged, at our option, to carry out **written preliminary acceptance** at our premises and/or **written acceptance** at its works as soon as the item is completed or—if contractually agreed—after testing has taken place. Acceptance may not be refused due to minor defects. Acceptance is deemed to have occurred if the partner fails to carry it out within a reasonable period set by us despite being obliged to do so.

7.2. Upon acceptance, our liability for obvious defects ceases unless the partner reserved corresponding rights upon acceptance.

7.3. We may demand partial acceptances if no material reasons militate against them and if reasonable for the partner.

---

8. Description of Performance; Liability for Defects

8.1. The characteristics listed in our performance descriptions define the properties of our deliveries/services conclusively. These descriptions constitute, in case of doubt, **agreements on characteristics**, not guarantees or warranties. Statements made by us in connection with this contract generally do **not** contain guarantees in the sense of stricter liability. Only **express written** statements by us are decisive for any guarantees/warranties.

8.2. No warranty is assumed for damage resulting from: unsuitable/improper use or operation, natural wear and tear, faulty or negligent handling, unsuitable operating materials, chemical/electrochemical/electrical influences (unless attributable to us), improper changes by the partner or third parties without our prior approval. Defect claims also do not exist after expiry of the **minimum shelf life (MHD)**.

8.3. No defect claims exist in case of only **insignificant** deviation from agreed quality or only insignificant impairment of usability.
Complaints are considered **only** if made **in writing within 24 hours** of receipt of the goods! Return of complained goods is possible only in original packaging and within **14 days**! Deliveries of **fruit and vegetables** must be inspected **immediately** upon delivery; later complaints will not be processed. Goods must be **recounted** upon receipt. Goods remain our property until full payment. Hidden defects (e.g., production faults) must be reported **immediately** in writing; returns in such cases are accepted at most **up to 5 days before MHD**. The following details are required: customer number, item number, MHD, quantity, weight, reason for complaint. If any of these are missing, the claim will not be processed until properly completed. The partner must hand our driver at the next delivery **written proof** of a properly made complaint for verification. Returns are accepted only if goods are in original packaging, free of customer labels, and unopened. In cases of voluntary returns without a

legal obligation, transport, picking, and other costs must be reimbursed; time incurred is charged at **€40/hour net plus VAT**.

8.4. Where a defect exists, we may, at our option, **remedy** the defect or **replace** the item. If one or both types of subsequent performance are impossible or disproportionate, we may refuse them. We may also refuse subsequent performance as long as the partner has not fulfilled payment obligations to a degree corresponding to the defect-free portion of the performance.
We must bear the necessary costs of subsequent performance (transport, travel, labor, materials) unless increased by moving the item to a place other than the place of performance, except where such relocation corresponds to intended use. We may have defects remedied by third parties. Replaced parts become our property.

8.5. In case of impossibility or failure of subsequent performance, culpable or unreasonable delay, serious and final refusal by us, or unreasonableness for the partner, the partner may—at its option—**reduce the price** or **rescind** the contract.

8.6. Unless otherwise provided in 8.8 and 8.9 below, further claims by the partner connected with defects—on whatever legal grounds (in particular damages for defects and breaches of duty, tort claims for property damage, and claims for reimbursement of expenses)—are **excluded**; this applies especially to damage outside the delivery items (e.g., to other property of the partner) and to loss of profit.

8.7. The exclusion in 8.6 does **not** apply:
8.7.1. to damage from injury to life, body, or health due to culpable breach by us/our representatives/agents;
8.7.2. to mandatory liability under the Product Liability Act;
8.7.3. in cases of fraudulent concealment of a defect, assumption of a guarantee, or warranty of characteristics, where the covered defect triggers liability;
8.7.4. in case of culpable breach of a material ("cardinal") duty; absent intent/gross negligence, liability is limited to the foreseeable, typical damage;
8.7.5. to other partner claims for damages in lieu of performance attributable to us; absent intent/gross negligence, liability is limited to the foreseeable, typical damage;
8.7.6. to other damage due to intentional or grossly negligent breach by us/our representatives/agents; absent intent, liability is limited to the foreseeable, typical damage.

8.8. For reimbursement of expenses, 8.7 applies mutatis mutandis.

8.9. Statutory rules on the burden of proof remain unaffected by the above provisions of Section 8, in particular 8.7–8.9.

8.10. We are entitled to request proof of compliance with the **cold chain**. If the buyer has not fulfilled its obligations to us to the statutory extent, we may reject defect notifications. For defect notices **from five days before MHD or later**, it is presumed that the defect was caused by improper storage; to rebut, the partner must submit with the notice a **complete temperature-control log** for the goods from delivery to the partner.

---

9. Liability for Ancillary Duties

If, due to fault on our part/our representatives/agents, the delivered item cannot be used contractually as a result of omitted or incorrect pre-contractual proposals and advice or other contractual ancillary duties (in particular operating and maintenance instructions), 8.7–8.10 above apply accordingly, with other claims excluded.

---

10. Overall Liability; Partner's Rescission

10.1. The following applies to claims outside liability for defects. Our statutory or contractual rights and claims are neither excluded nor limited.

10.2. For liability in damages—subject to separately regulated liability for delay (4.4) and impossibility (4.6)—8.7 and 8.8 apply accordingly. Any further liability in damages—regardless of the legal nature of the claim—is excluded. This applies in particular to claims for damages in addition to performance and in lieu of performance due to breaches of duty, and to tort claims for property damage under § 823 BGB.

10.3. The limitation in 10.2 also applies insofar as the partner demands reimbursement of expenses.

10.4. Fault of our legal representatives and agents is attributable to us.

10.5. Statutory rules on the burden of proof remain unaffected.

10.6. Where liability on our part is excluded or limited, this also applies to the **personal** liability of our employees, workers, staff, representatives, and agents.

10.7. The partner may rescind the contract within statutory limits only if we are responsible for the breach. In the cases under 8.6 (failed subsequent performance, etc.) and impossibility, statutory requirements remain; for rescission due to delay, 4.3.3, 4.3.4, and 4.5 above apply. Upon our request, the partner must declare within a reasonable time whether it rescinds due to the breach or insists on performance.

---

11. Rights to Know-How

Existing or contract-performance-derived secret, high-value, and advanced knowledge (know-how) and any associated intellectual property rights belong—subject to separate agreement and/or the partner's usage rights arising from the purpose of the contract—**exclusively to us**.

---

12. Weight, Returnable Containers, Third-Party Rights

12.1. Normal weight loss during transport is borne by the partner. Any additional weight discrepancies must be reported **immediately upon receipt** by fax, or if unreasonable, by phone, and noted/acknowledged on the consignment note or delivery note upon delivery.

12.2. The partner must return returnable containers in the same quantity/type/value as received, and in a condition compliant with hygiene regulations. If, upon delivery, the partner cannot provide corresponding empties, it must **immediately and at its own expense** settle the empties account. In case of default, we may, besides claiming delay damages and after a grace period, refuse to take back and demand monetary damages.

12.3. We do not warrant that our delivery items or their resale do not infringe third-party rights; however, we warrant that we are **not aware** of such third-party rights in the delivery items.

---

13. Limitation Periods

13.1. The limitation period for claims and rights due to defects—on whatever legal ground—**is one year**; in multi-shift operation, the period is **six months**. Not applicable in cases of §§ 438(1) No. 1, 438(1) No. 2, 479(1), and 634a(1) No. 2 BGB, for which a **three-year** period applies.

13.2. The periods under 13.1 also apply to all damages claims against us connected with a defect, regardless of the legal basis. For other damages claims not connected with a defect, the period in 13.1 sentence 1 applies.

13.3. The periods under 13.1 and 13.2 do **not** apply: in cases of intent; fraudulent concealment of a defect or assumption of a guarantee of quality (in cases of fraud, statutory periods apply without the fraud-related extension); for damages claims due to injury to life, body, health, or freedom; under the Product Liability Act; for grossly negligent breach; or for breach of material contractual duties. Statutory periods apply in these cases.

13.4. Unless expressly provided otherwise, statutory provisions on commencement, suspension, tolling, and recommencement remain unaffected.

13.5. Claims for reduction and exercise of the right of rescission are excluded once the claim to subsequent performance is time-barred. In that case, however, the partner may refuse payment to the extent it would be entitled to rescind or reduce.

---

14. Assignment by the Contracting Partner

Claims against us relating to our deliveries or services may be assigned only with our **prior written** consent.

---

15. Place of Performance; Venue; Governing Law; Intra-Community Acquisition; Severability

15.1. Unless otherwise agreed, the **place of performance** is exclusively our business location.

15.2. If the partner is a merchant under the German Commercial Code, a legal entity under public law, or a special fund under public law, the **venue** for all obligations arising from or in connection with the contractual relationship—including bill of exchange and check matters—is our business location or, at our option, the partner's location. This venue agreement also applies to partners domiciled abroad.

15.3. All rights and obligations arising from or in connection with the contractual relationship are governed **exclusively** by the law of the Federal Republic of Germany, without regard to conflict-of-law rules and with exclusion of the UN Sales Convention (CISG, 11 April 1980).

15.4. Should any provision of these GTC or any provision within other agreements between us and the partner be or become invalid, the validity of all other provisions/agreements shall not be affected.

15.5. Contracting partners from EU Member States are obliged to compensate us for any damage that may arise in the case of **intra-Community acquisition**
— due to tax offenses by the partner itself; or
— due to incorrect or omitted information by the partner regarding circumstances relevant for taxation.