

# General Terms and Conditions of BEWITAL petfood GmbH & Co. KG

## Section 1 Scope

1. The following general terms and conditions – 'GTC' herein – apply exclusively to entrepreneurs, entities under public law or special funds within the meaning of Sections 14 and 310 (1) of the German Civil Code (Bürgerliches Gesetzbuch – BGB).
2. All goods, services and offers of BEWITAL petfood GmbH & Co. KG ('BEWITAL petfood' herein) are provided exclusively on the basis of these GTC. Contrary or deviating terms and conditions are deemed effective only if they were expressly accepted by BEWITAL petfood in the individual case. The contracting party's terms and conditions are not recognized even if they are not expressly contradicted or goods are accepted and paid for.
3. Individual agreements entered into with the buyer in particular cases (including side agreements, addenda and amendments) have priority over these GTC in every case. Subject to proof to the contrary, a written contract or written confirmation by BEWITAL petfood is determinative of the content of such agreements.
4. The applicable version of these terms and conditions also applies to all future contracts.
5. Amendments to these terms and conditions will be announced to the contracting party in text form in each case. If the contracting party does not object in writing within four weeks of receipt, the amendments are deemed approved.

## Section 2 Contract formation

1. The offers of BEWITAL petfood are subject to change without notice and nonbinding unless they are expressly characterized as binding. Technical and other changes remain reserved. The ordering of goods by the buyer is considered a binding offer. Acceptance may be expressed either in text form (e.g., by a confirmation of order) or by delivery of the goods to the buyer. The contract is concluded with the content of the confirmation of order by BEWITAL petfood unless the recipient promptly objects to this. To be effective, addenda, amendments and side agreements require the written confirmation of BEWITAL petfood; communication in text form is sufficient.
2. The contract is formed subject to our right to withhold performance or to perform only to the extent possible in case of improper delivery by our supplier. The contracting party shall be informed if performance is impossible due to a lack of availability. The consideration shall be promptly refunded.
3. BEWITAL petfood reserves the ownership or copyright to all offer documents, images, drawings, calculations and other documents used by BEWITAL petfood. This also applies to such written documents which are designated 'confidential'. Prior to disclosure to third parties, one's own use or use by third parties, the contracting party needs the express consent of the holder of the right.

## Section 3 Prices and payment terms

1. The prices apply to the scope of goods and services recited in the order confirmation. Additional or special services are invoiced separately. Unless otherwise agreed, the prices are in euros ex works. The cost of packaging and shipping, statutory value-added tax and, for exports, duty as well as fees and other public charges are invoiced and shown separately.
2. Unless otherwise agreed in writing, the invoiced amount must be paid in full and received at BEWITAL petfood within thirty days. Checks are not treated as payment until they are cashed. During default, interest is payable on the purchase price at the applicable statutory default interest rate. BEWITAL petfood reserves the right to claim further loss caused by default. The right to commercial default interest with respect to merchants (Section 353 of the German Commercial Code – HGB) remains unaffected.
3. The contracting party is allowed to apply counterclaims to offset the amount owed or to withhold payments based on such claims only to the extent the counterclaims are undisputed or legally established. The buyer's right to withhold a portion of the purchase price commensurate with the deficiency remains unaffected.
4. BEWITAL petfood is at all times – even in the course of an ongoing business relationship – entitled to undertake delivery, in whole or in part, only on advance payment. BEWITAL petfood shall notify of a corresponding condition no later than order confirmation.

## Section 4 Delivery deadline and delayed delivery

1. The delivery deadline shall be individually agreed on or indicated by BEWITAL petfood upon order acceptance.
2. If BEWITAL petfood is unable to meet binding delivery deadlines for reasons beyond its control (impossibility of performance), BEWITAL petfood will immediately inform the buyer and simultaneously advise the buyer of the estimated new delivery deadline. If performance is also impossible within the new delivery period, BEWITAL petfood is entitled to rescind the contract in part or in full; BEWITAL petfood will promptly refund any consideration that has already been paid by the buyer. In this sense, performance is considered impossible in particular in the case of untimely delivery to BEWITAL petfood by its own supplier, if BEWITAL petfood has entered into a congruent cover transaction, if neither BEWITAL petfood nor its supplier is at fault or if BEWITAL petfood is not obligated to the provisioning in the individual case.
3. The occurrence of a delayed delivery by BEWITAL petfood is determined according to the legal regulations. However, a reminder notice by the buyer is required in each case. If BEWITAL petfood is delayed in delivery, the buyer may demand lump-sum compensation for its loss occasioned by the delay. The liquidated damages shall amount to 0.5% of the net price (delivered value) for each completed calendar week of delay, but altogether not more than 5% of the delivered value of the goods that are delivered late. BEWITAL petfood is permitted to prove that the buyer has not incurred any loss or only significantly less loss than the above lump-sum amount. The damages claim is then reduced accordingly.
4. The rights of the buyer under Section 7 No. 8 of these GTC and its own legal rights, especially in case of an exemption from the obligation to perform (e.g., based on impossibility or unreasonableness of the performance and/or cure), remain unaffected.

## Section 5 Delivery, passage of risk, acceptance, default of acceptance

1. Delivery occurs ex works, which is also the place of performance for the delivery and any cure. At the buyer's request and expense, the goods will be shipped to a different destination (sale by dispatch). Unless otherwise agreed, BEWITAL petfood is entitled to determine by itself the manner of shipment (particularly carriers, shipment method, packaging). Arrangements in deviation from this must be agreed to in writing.
2. The risk of accidental destruction and accidental deterioration of the goods passes, at the latest, upon delivery to the buyer. However, in the case of a sale by dispatch, the risk of accidental destruction and accidental deterioration of the goods as well as the risk of delay already passes upon delivery of the goods to the hauler, the carrier or the person or institution otherwise designated to execute the shipment. If acceptance is agreed to, this is decisive for the passing of risk. Apart from that the statutory provisions of the law on contracts for work and services apply accordingly to the agreed acceptance of goods. Delivery or acceptance correspond if the buyer is in default of acceptance.
3. If the buyer is in default of acceptance, fails to cooperate or if the delivery of BEWITAL petfood is delayed for other reasons that are attributable to the buyer, BEWITAL petfood is entitled to demand compensation for the resulting loss, including additional expenditures (such as storage costs).

## Section 6 Retention of ownership

1. BEWITAL petfood retains ownership of the sold goods until full payment of all present and future claims of BEWITAL petfood under the purchase agreement and an ongoing business relationship (secured claims).
2. The goods subject to retention of title may not be pledged to third parties or be assigned as security until full payment of the secured claims. The buyer shall notify BEWITAL petfood in writing without delay when an application has been filed for the institution of insolvency proceedings concerning its assets or to the extent third parties execute (e.g. attachments) against the goods that belong to BEWITAL petfood.
3. When the buyer acts in breach of contract, particularly by failing to pay the purchase price when due, BEWITAL petfood is entitled to withdraw from the contract in accordance with statutory provisions and/or reclaim the goods based on the retention of ownership. The request for surrender of the goods is not at the same time tantamount to rescission; on the contrary, BEWITAL petfood is entitled to simply reclaim the goods while reserving the right of rescission. If the buyer fails to pay the purchase price when due, BEWITAL petfood may assert these rights only if BEWITAL petfood has previously set a reasonable term of payment, which lapsed without success, or the setting of such a deadline may be dispensed with under the statutory provisions.
4. Until rescission under (c) below, the buyer is authorized to continue to sell and/or process, in the ordinary course of business, the goods that are subject to retention of ownership. In such case, the following provisions apply in supplement:
  - (a) The retention of title extends to the full value of the products which results through the processing, commingling or combination of goods wherein BEWITAL petfood is considered to be the manufacturer. If, in the case of processing, commingling or combination with third-party goods, third parties retain title, BEWITAL petfood acquires joint ownership in relation to the invoice values of the processed, commingled or combined goods. Apart from that, the same is true for the resulting product as for the goods that are delivered subject to retention of title.
  - (b) Pursuant to the above paragraph the buyer already assigns to BEWITAL petfood as security, in full or to the extent of any joint ownership share, all claims arising from the resale of the goods or products. BEWITAL petfood accepts the assignment. The buyer's duties mentioned in No. 2 of this section apply also in view of the assigned claims.
  - (c) The buyer remains empowered to collect the claim along with BEWITAL petfood. BEWITAL petfood undertakes to refrain from collecting the claim as long as the buyer meets its payment obligations toward BEWITAL petfood, there is no deficiency in its capacity to perform and BEWITAL petfood does not enforce its retention of title through the exercise of a right under No. 3 of this section. However, if this is the case, BEWITAL petfood may demand that the buyer advises BEWITAL petfood of the assigned claims and who owes them, gives full particulars that are needed for collection, hands over the associated documents and informs the debtors (third parties) of the assignment. Moreover, in such case, BEWITAL petfood is entitled to revoke the buyer's authority to continue to sell and process the goods that are subject to retention of title.
  - (d) If the realizable value of the securities exceeds the claims of BEWITAL petfood by more than 10%, BEWITAL petfood shall release securities of its choice if requested by the buyer.

## Section 7 Warranty

1. The buyer's rights for material defects and defects of title are governed by statute unless otherwise provided below. In all cases, the special statutory provisions governing final delivery of unprocessed goods to a consumer remain unaffected, even if the consumer has processed them (supplier regress pursuant to Section 478 BGB). Claims arising under supplier regress are excluded if the defective goods were processed by the buyer or another entrepreneur.
2. The primary basis of BEWITAL petfood's liability for defects is the agreement entered into on the qualities of the goods. All product descriptions and manufacturer information that are subject of the individual contract or which were publicly disclosed by BEWITAL petfood (particularly in catalogues or on its own website) at the time of contract formation are treated as a stipulation on the qualities of the goods.
3. If the qualities were not stipulated, the statutory provisions are to be employed for assessing whether a defect exists (Section 434 (1) second and third sentences BGB). However, BEWITAL petfood assumes no liability for public statements of the manufacturer or other third parties (e.g. statements in advertising), which the buyer has indicated to us were not critical factors for its purchasing decisions.
4. BEWITAL petfood is strictly not liable for defects that the buyer is aware of at the time of conclusion of the contract or which is not known through gross negligence (Section 442 BGB). The buyer's claims for defects further require that it has fulfilled its statutory duties to inspect and give notice of defects (Sections

377, 381 HGB). Goods designated for processing must in each case be inspected immediately before processing. If a defect is apparent upon delivery, upon inspection or at any subsequent time, BEWITAL petfood must be promptly notified of this in writing. In every case, obvious defects must be reported to BEWITAL petfood in writing immediately upon delivery, and defects which are not identifiable at inspection must be reported to BEWITAL petfood promptly upon discovery. If the buyer fails to provide the proper inspection and/or notification of defects, the liability of BEWITAL petfood is excluded under statute for the defect that is not reported or that is not timely or properly reported.

5. If the delivered item is defective, BEWITAL petfood may first elect whether to cure through correction of the defect (repair) or through delivery of a defect-free article (replacement). The right of BEWITAL petfood to refuse to cure under the statutory requirements remains unaffected.

6. BEWITAL petfood is entitled to condition its obligation to cure upon the buyer's payment of the purchase price that is due. However, the buyer is entitled to retain a portion of the purchase price that is reasonable in relation to the defect.

7. The buyer must give BEWITAL petfood the time and opportunity needed to effect the cure owed; the buyer must, in particular, surrender the goods complained of for purposes of inspection. In the case of replacement, the buyer shall return the defective article to BEWITAL petfood in accordance with the statutory provisions. Cure shall not involve either the removal of the defective article or reinstallation if BEWITAL petfood was not originally obligated to perform the installation.

8. When an article is actually defective, BEWITAL petfood will absorb or reimburse the necessary expenses for purposes of inspection and cure in accordance with the statutory provision, particularly the cost of transport, travel, labour and materials as well as removal and installation costs, if applicable. Otherwise BEWITAL petfood can request that the buyer reimburses the costs incurred as a result of the unjustified demand for cure of a defect (particularly inspection and transportation costs), unless the lack of a defect was not identifiable for the buyer.

9. In urgent cases – for instance, when operational safety is compromised or to avert excessive damages – the buyer has the right to cure the defect by itself and demand reimbursement from BEWITAL petfood for the objectively necessary expenditures for this. BEWITAL petfood must be promptly notified of such self-help, preferably in advance. The right to engage in self-help does not exist if BEWITAL petfood would be entitled under the statutory provisions to refuse to effect a corresponding cure.

10. If the cure has failed, if a reasonable, buyer-set deadline to effect the cure has expired without success or if the cure is unnecessary according to the statutory provisions, the buyer may rescind the purchase agreement or reduce the purchase price. However, there is no right of rescission in the case of a slight defect.

11. The buyer's claims for damages or for reimbursement of expenditures incurred in vain shall also exist for defects only in accordance with Section 8 and are otherwise excluded.

#### **Section 8 Miscellaneous liability**

1. Unless otherwise treated in these GTC, including the following provisions, the liability of BEWITAL petfood for breach of contractual and non-contractual duties is defined by statute.

2. For damages within the scope of fault-based liability – regardless of the legal grounds – BEWITAL petfood shall be liable for intentional acts and gross negligence. Subject to statutory limitations of liability (e.g. for the exercise of care in one's own affairs; negligible breach of duty), BEWITAL petfood's liability for ordinary negligence shall be only

a) for damages arising from injury to life, body or health,

b) for losses arising from the breach of a material contractual obligation (an obligation whose fulfilment makes the proper performance of the contract at all possible and upon whose fulfilment the contracting party regularly does and may rely); in such case, however, BEWITAL petfood's liability is limited to reimbursement of foreseeable, typically incurred loss.

3. The limitations of liability arising under No. 2 of this section also apply to breaches of duty by or for the benefit of persons for whose fault BEWITAL petfood is responsible by law. They are inapplicable to the extent BEWITAL petfood has fraudulently concealed a defect or has warranted the qualities of the goods, nor do they apply to claims of the buyer under the German Product Liability Act (Produkthaftungsgesetz).

4. For a breach of duty that does not consist of a defect, the buyer can rescind or terminate only if BEWITAL petfood is responsible for the breach of duty. The buyer has no free right of termination. Apart from this, the statutory requirements and legal consequences apply.

#### **Section 9 Limitation of actions**

1. In deviation from Section 438 (1) No. 3 BGB, the general limitation period for claims arising from material defects and defects of title is one year from delivery. If acceptance has been agreed to, the limitation period begins upon acceptance.

2. The above limitation period of the law on the sale of goods also applies to contractual and non-contractual damages claims of the buyer based on a defect in the goods unless the application of the regular statutory limitation (Sections 195, 199 BGB) would result in a shorter limitation period in individual cases. However, damages claims of the buyer pursuant to Section 8 No. 2, sentences 1 and 2(a), and under the Product Liability Act shall lapse exclusively in accordance with the statutory limitation periods.

#### **Section 10 Choice of law, judicial venue**

1. The law of the Federal Republic of Germany, with the exclusion of international uniform law, particularly the UN Convention on Contracts for the International Sale of Goods, applies to these GTC and the contractual relationship between BEWITAL petfood and the buyer.

2. If the buyer is a merchant within the meaning of the German Commercial Code, a legal entity under public law or a special fund under public law, the exclusive, also international, judicial venue for all disputes arising directly or indirectly from the contractual relationship is the locale of the registered office of BEWITAL petfood at Südlohn-Oeding, Germany. The same applies when the buyer is an entrepreneur within the meaning of Section 14 BGB. BEWITAL petfood is,

however, in all cases also entitled to institute legal proceedings at the place of performance for the delivery obligation under these GTC or at the general judicial venue of the buyer. Overriding statutory provisions, particularly on exclusive jurisdictions, remain unaffected.

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