

## **Terms of Payment and Delivery**

### **1. General**

- 1.1 The following terms of payment and delivery shall apply for all offerings of Alpenhain as well as deliveries, unless agreed otherwise individually in writing. Any conflicting terms of purchase of the buyer shall apply only following the written confirmation by Alpenhain.
- 1.2 The written specification by Alpenhain as regards the quality shall be decisive. Any samples and specimens serve to describe the product.
- 1.3 All offers of Alpenhain are subject to change.

### **2. Deliveries**

The minimum quantity for each delivery shall be 100kg, and for delivery to foreign countries, one Europool pallet.

### **3. Delivery and transport risk**

- 3.1 Delivery shall be EXW Lehen according to Incoterms 2000.
- 3.2 The transport risk shall pass to the buyer as soon as the goods have been handed over to the shipper or have left our warehouse in order to be shipped. The buyer shall bear the transport risk while the goods are in transit as well as the risk of weight loss, even if caused by Alpenhain's own vehicles.
- 3.3 In the event that shipping becomes impossible without the fault of Alpenhain, the risk shall pass to the buyer upon the notification that the goods are ready for shipment. The sending of the relevant invoice shall constitute the notification that the goods are ready for shipment.

### **4. Delivery periods**

- 4.1 Agreed delivery periods may, for operational reasons, be exceeded by Alpenhain at short notice. In the event of force majeure, strike, lockout, interference by national or international authorities as well as any unforeseeable obstructive events that occurred after contract conclusion and that Alpenhain is not responsible for, the delivery period shall be extended appropriately. The same shall apply, if such events occur in relation to Alpenhain's own suppliers. Moreover, Alpenhain shall be entitled to withdraw from the contract in full or in part. Any claims for damages due to the withdrawal shall be excluded.
- 4.2 The buyer may withdraw from the contract only, if he stipulated a reasonable period for Alpenhain to deliver. Appropriate partial deliveries shall have the effect that any default in delivery, if relevant, is ended.
- 4.3 In the event that the buyer fails to take the goods, Alpenhain, after setting an additional period of 3 days, shall be entitled to withdraw from the contract and to claim damages from the buyer. Alpenhain shall be entitled to sell any goods not taken to third parties and to claim any difference in price as damages from the buyer. The minimum loss shall be 30% of the original selling price, unless the buyer shows that Alpenhain incurred a smaller loss.

## **5. Export customs clearance**

- 5.1 To the extent that the buyer exports the goods or has them exported by businesses engaged by him, he shall treat any documents necessary under the customs and market organisation regulations with the necessary care and shall provide the goods for export processing to the competent entity, complete and in a timely manner. The buyer shall be liable for the conduct of any businesses engaged by him or engaged on the basis of his instructions, in particular shippers and carriers.
- 5.2 The buyer shall be liable to pay damages to Alpenhain for any loss arising from the fact that the documents under section 5.1 above have not been submitted in time or were incomplete and this resulted in a loss of deposit and/or to other subsequent losses for Alpenhain.
- 5.3 In addition, the buyer shall be liable for any loss or damage incurred by Alpenhain due to the fact that the goods intended for export have not left the customs territory of the Community in time, i. e. within 60 days from the acceptance of the export declaration in unaltered condition according to Article 4 of Regulation (EEC) No. 3665/87 and/or such goods have not been imported in unaltered condition to a third country within the prescribed period of 12 months from the acceptance of the export declaration and no exemption under Article 5 of Regulation (EEC) No. 3665/87. Likewise, the buyer shall be liable to Alpenhain for any loss or damage resulting from re-importing the goods into the ECC customs territory, even after active inward processing.
- 5.4 In addition, the buyer shall be liable to Alpenhain for any other actions causing liability for damages within the meaning of the market organisation legislation. Likewise, the buyer shall be liable for any misconduct of businesses engaged by him or engaged on the basis of his instructions, in particular shippers and carriers.

## **6. Prices and payment terms**

- 6.1 Alpenhain Prices are "ex works", excluding packaging, unless stipulated otherwise in the order confirmation. The price list valid on the date of the notification that the goods are ready for shipment shall apply.
- 6.2 The prices stated are charged plus VAT.
- 6.3 Invoices of Alpenhain shall be paid within 8 days from the invoice date and shall be payable without deduction. Payment shall be deemed as made once Alpenhain can dispose of the sum. In case of cheques, payment shall be deemed as made once the cheque has been cashed.
- 6.4 Default in payment occurs automatically without express reminder by Alpenhain 30 days following receipt of the invoice at the latest. In the event of default in payment Alpenhain shall be entitled to interest in the amount of 8% above the relevant base lending rate of Deutsche Bundesbank.
- 6.5 Deliveries to unknown firms can only be made against cash on delivery free of charge or against advance payment. Bills of exchange shall not be considered payment.
- 6.6 In the event that Alpenhain learns of circumstances that call into question the credit worthiness of the buyer, in particular if a cheque is not cashed or the buyer ceases to make payments, or defaults in payment in full or in part then Alpenhain shall be entitled to claim immediate payment of the entire remaining sum owed, even if

cheques have been accepted. In addition, Alpenhain shall in this case be entitled to demand payment against delivery, advance payment or request that a security be provided. If the buyer, following the demand, fails to make payment against delivery, advance payment or to provide a security within a period of one week stipulated by Alpenhain, then Alpenhain may withdraw from the contract or claim damages for non-performance.

- 6.7 The buyer shall be entitled to set off claims only if his counterclaims are legally established by final decision or if they are undisputed or accepted by Alpenhain.
- 6.8 The buyer shall have a right of retention to the extent that his counterclaim arises from the same contract.

## **7. Retention of title**

- 7.1 Until full payment of the purchase price as well as any and all claims including future claims arising from the business relationship, all goods delivered shall remain the property of Alpenhain.
- 7.2 The buyer may not pledge any of the goods under title retention or assign them to third parties as a security.
- 7.3 The buyer may resell the goods in the normal course of business. However, on conclusion of such contract, the buyer assigns to Alpenhain all claims in the amount of the final invoice amount (inclusive of VAT) of all claims of Alpenhain, which he has against his own buyers or third parties, irrespective of whether the goods were resold with or without processing. The buyer may collect such sum even after assignment of the claim. The right of Alpenhain to collect the sum shall remain unaffected thereby. However, Alpenhain agrees not to collect the outstanding sum, as long as the buyer meets his payment obligations from the proceeds and is not defaulting in payment and in particular, if no petition to commence composition or insolvency proceedings has been filed or if payments have not ceased. If, on the other hand, this is the case, then Alpenhain may request that the buyer discloses the assigned claims as well as the relevant debtors and provides all information necessary for collection and supplies any related documentation and informs the debtors (third parties) of the assignment.
- 7.4 In case of attachment or other intervention by third parties the buyer shall inform Alpenhain immediately in writing.
- 7.5 In case Alpenhain's ownership is forfeited due to combining, mixing or processing, it is hereby agreed that ownership of the whole item thus created shall pass to Alpenhain pro rata (invoice amount) until full payment of all sums owed is made.
- 7.6 In case the security provided is in excess of more the 20% of the sums owed, then upon request, Alpenhain at its own option shall release the relevant amount of goods so they are no longer under title retention.
- 7.7 If the buyer breaches the terms of the contract, including but not limited to default in payment, then Alpenhain shall be entitled to claim back the goods without Alpenhain having to declare that they withdraw from the contract.

## **8. Liability in case of defect**

- 8.1 The goods must be inspected immediately upon receipt. For notifications of a defect or any other complaint to be timely, they must be made in writing vis-à-vis Alpenhain

within three days of receipt of the goods. Any hidden defects must be notified in writing within three days of their discovery. Rejected goods must be separated from other goods and be stored properly (fresh produce at 6 - 8° C, frozen foods at - 18°C).

- 8.2 Alpenhain does not require the rejected goods to be returned unless Alpenhain within 3 days of the notification of the defect expressly requests that goods be returned. In case of a legitimate complaint, a replacement will be delivered. Any rejected goods must be set apart and be stored properly in accordance with section 8.1, 4th sentence above. Section 8.3 shall be unaffected thereby.
- 8.3 Alpenhain shall not be liable whatsoever for any defects arising from improper storage, treatment, or processing of the goods by the purchaser.
- 8.4 If the goods differ from the agreed quality, then this shall not constitute a defect, if such difference is immaterial.
- 8.5 Goods will not be taken back by Alpenhain as a gesture of goodwill and likewise no reduction in price will be granted on this basis.
- 8.6 To the extent that there are material defects or defects in title, Alpenhain shall, at its own option, be entitled to rectify the defect or deliver an item free from defects (subsequent performance). Alpenhain may refuse to carry out subsequent performances as long as the purchaser has not met its payment obligations vis-à-vis Alpenhain with regard to that part of the performance that is defect free.
- 8.7 In the event that the subsequent delivery or subsequent rectification fails or is impossible, the purchaser may request a reduction in price or withdraw from the contract.
- 8.8 The purchaser shall be solely responsible for compliance with the legal provisions applicable in the sales territory, in particular the food laws.
- 8.9 The liability for damages is governed by section 9.

## **9. Liability**

- 9.1 Alpenhain shall assume unlimited liability only in case of intent and gross negligence including the intent or gross negligence of representatives or vicarious agents of Alpenhain. To the extent that Alpenhain is not accused of intentional conduct, any liability shall be limited to the foreseeable typical loss or damage.
- 9.2 In the event of a culpable breach of a material contractual obligation (cardinal obligations) Alpenhain, its representatives and vicarious agents shall be liable even in cases of ordinary negligence. In this case the liability shall also be limited to the foreseeable loss or damage typical of the contract. A material breach of a contractual obligation shall be constituted, if the breach of an obligation relates to an obligation the performance of which the purchaser was entitled to rely on and which he actually did rely on.
- 9.3 Any exclusion of liability or limitation of liability of Alpenhain, its representatives or vicarious agents shall not apply to the liability for culpable injury to life, limb or health. Likewise, Alpenhain shall be liable without limitation in cases of covenants and guarantees given by Alpenhain or if it fraudulently conceals a defect. There is also no limitation to liability in case of absolute liability, in particular under the Product Liability Act. The liability under the principle of the entrepreneur's recourse

according to sections 478 and 479 of the German Civil Code (BGB) shall remain unaffected also.

9.4 Unless stipulated otherwise in the above provisions, liability shall be excluded in all other cases, irrespective of the legal basis.

9.5 The same shall apply to claims arising from fault upon contract conclusion.

9.6 For reimbursement of expenses, except the ones under sections 439 II BGB, sections

9.1 to 9.4 shall apply accordingly.

9.7 Any exclusion or limitation of liability shall apply to the legal representatives and vicarious agents of Alpenhain as well.

9.8 None of the above clauses intends to change the burden of proof under statutory provisions or case law.

### **10. Statute of limitations**

Any claims of the purchaser arising from a breach of contract and from tort shall be time-barred within 12 months from the passing of risk. This shall not apply, if the law according to sections 478 and 479 BGB (recourse claims in the distribution chain) stipulates longer periods or if Alpenhain is liable for intentional conduct or gross negligence.

### **11. Secrecy**

11.1 The purchaser agrees to treat strictly confidential any and all information and documents communicated or delivered to him by Alpenhain and not to make such information or documents available to any third parties; this obligation shall survive the duration of the contract. The purchaser agrees to make available such information only to employees who need to know such data or information due to their work area. Such employees must be sworn to secrecy.

11.2 The purchaser agrees not to use the information and documents made available to him for his own purposes or the purposes of third parties, in particular, he agrees not to file any applications for the protection of intellectual property rights.

### **12. Place of performance, legal venue and applicable law**

12.1 The place of performance and legal venue for both parties shall be the registered office of Alpenhain. Alpenhain shall also be entitled to sue at the place of the registered office of the purchaser.

12.2 German law shall apply exclusively; the United Nations Convention on the International Sale of Goods (CISG) shall be excluded, even if the purchaser has his registered office abroad.

### **13. Severability**

If any provision of this contract is or becomes invalid or unenforceable in full or in part, then this shall not affect the validity of the remainder of this contract. The same shall apply, if, after the contract has been concluded, there is a gap in the contract that needs to be filled. Instead of the invalid provision, or to fill the

contractual gap, a provision shall apply that – to the extent permitted by law – comes as close as possible in commercial terms to what the parties to the contract intended by the invalid or unenforceable provision, or in case of a gap, to what they would have intended in the light of the meaning and purpose of the entire agreement, had they been aware of the gap.

ALPENHAIN KÄSESPEZIALITÄTEN  
GmbH Lehen 24, 83539 Pfaffing  
Dezember 2016