

## **Terms of Delivery and Payment**

### **1. General provisions**

1.1 The following terms of delivery and payment shall apply exclusively to all Alpenhain offers and deliveries, unless otherwise agreed in writing in individual cases. Alpenhain shall not accept any conflicting terms and conditions of purchase of the purchaser. Deviating terms and conditions shall only apply if confirmed in writing by Alpenhain.

1.2 Alpenhain's offers shall be subject to change. Offers shall only become binding when Alpenhain has confirmed the acceptance of the order or has carried out the delivery.

Alpenhain shall reserve the property rights and copyrights to all documents provided by Alpenhain within the context of the offer process, especially offers, descriptions and illustrations. Before passing them on to third parties, the purchaser shall obtain Alpenhain's express written consent.

1.3. Alpenhain shall be entitled to award subcontracts for the fulfilment of the order without prior consultation with or consent of the purchaser.

1.4 Alpenhain shall also be entitled to transfer rights and obligations arising from this contract.

1.5 These terms of delivery and payment shall only apply to companies within the meaning of Section 14 of the German Civil Code (*BGB*).

### **2. Deliveries**

The minimum purchase per delivery shall be 100 kg for fresh goods, 250 kg for frozen goods, and one Europool pallet for deliveries abroad.

### **3. Shipping and transport risk**

3.1 Delivery shall be FCA ex works Lehen according to Incoterms 2020.

3.2 The transport risk shall pass to the purchaser as soon as the goods have been handed over to the carrier or have left our warehouse for the purpose of shipping. Transport risk and weight loss during transport shall be at the purchaser's expense.

3.3 If shipping becomes impossible through no fault of Alpenhain, the risk shall be transferred to the purchaser upon the notification of readiness for shipment. The sending of the corresponding invoice shall constitute the notification of readiness for shipment.

### **4. Delivery time**

4.1. The delivery date given by Alpenhain shall be provisional. Deadlines shall only be binding if they have been expressly agreed in writing.

4.2 Agreed delivery times may be exceeded by Alpenhain at short notice for operational reasons. Furthermore, the delivery time shall be extended appropriately in the event of force majeure, strikes, lockouts, intervention by national or international authorities as well as all unforeseeable obstacles occurring after the conclusion of the contract for which Alpenhain is not responsible. This shall also apply if these circumstances occur at Alpenhain's suppliers.

Alpenhain shall also be released from the respective performance obligations if and to the extent that, as a result of circumstances attributable to COVID-19, either the service cannot be rendered or cannot be rendered in due time.

Alpenhain shall inform the purchaser of the beginning and end of such circumstances as soon as possible.

4.3 Reasonable partial deliveries shall end any default in delivery.

- 4.4. If the purchaser does not accept the goods, Alpenhain shall be entitled, after setting a grace period of 3 working days, to withdraw from the contract and to claim damages from the purchaser. Alpenhain shall be entitled to sell goods that have not been accepted elsewhere and to claim any difference in proceeds as damages from the purchaser. The minimum damage shall be 30% of the original sales price, unless the purchaser proves that Alpenhain has suffered less damage.
- 4.4. Apart from that, Alpenhain's liability due to default shall be determined exclusively according to clause 9.
5. Export customs clearance
- 5.1 If the purchaser exports the goods itself or has them exported by companies commissioned by it, it undertakes to handle the documents required under customs and market regulation law with due care and to submit them in due time and in full to the office responsible for processing the export of the goods. The purchaser shall be liable for the conduct of the companies commissioned by it or on its instructions, especially for forwarding agents and carriers.
- 5.2 The purchaser shall be obliged to compensate Alpenhain for any damage resulting from documents according to clause 5.1 not being submitted, not submitted in full or not submitted in due time and this resulting in the loss of security deposits and/or other consequential damage for Alpenhain.
- 5.3 In addition, the purchaser shall be liable for any damage suffered by Alpenhain as a result of goods intended for export not leaving the customs territory of the Community in due time and in an unaltered condition within 60 days of acceptance of the export declaration and/or not being imported into a third country in an unaltered condition within the period provided for this purpose after the acceptance of the export declaration and no exemption applies.
- 5.4 The purchaser shall furthermore be liable to Alpenhain for any other form of action that is detrimental to reimbursement within the meaning of the market regulation law. To this extent as well, the purchaser shall be liable for any misconduct of the companies commissioned by it or on its instructions, especially forwarding agents and carriers.
6. Prices and payment terms
- 6.1 Unless otherwise stated in the order confirmation, Alpenhain's prices shall be "ex works" excluding packaging. The price list valid on the day of notification of readiness for shipment shall be authoritative.
- 6.2 The stated prices shall be charged plus the statutory value added tax.
- 6.3 Alpenhain's invoices shall be due for payment within 8 days of the invoice date and without any deductions. The payment shall only be deemed made when Alpenhain can dispose of the amount. In the case of cheques, the payment shall only be deemed made when the cheque has been cashed.
- 6.4 Default of payment shall occur without an explicit reminder by Alpenhain 30 days after receipt of the invoice. In the event of default of payment, Alpenhain shall be entitled to charge interest in the amount of 9% above the respective base rate of the Deutsche Bundesbank.
- 6.5 Deliveries to unknown companies can only be made against cost-free cash on delivery or advance payment. Bills of exchange shall not count as payment.
- 6.6 If Alpenhain becomes aware of circumstances that call into question the creditworthiness of the purchaser, if e.g. a cheque is not honoured or if the purchaser ceases to make its payments or is in default of payment in whole or in part, Alpenhain shall be entitled to demand immediate payment of the entire remaining debt, even if cheques have been accepted. In this case, Alpenhain shall also be entitled to demand delivery in stages, advance payments or a collateral security. If the purchaser does not comply with Alpenhain's request for delivery in stages, advance payment or provision of a collateral security within a period of 1 week set by Alpenhain, Alpenhain can withdraw from the contract or claim damages for non-performance.

- 6.7 The purchaser shall only be entitled to set-off rights if its counterclaims are established as final and absolute, undisputed or acknowledged by Alpenhain.
- 6.8 The purchaser shall only be entitled to rights of retention insofar as its counterclaim is based on the same contractual relationship.
- 7. Reservation of ownership**
- 7.1 The delivered goods shall remain the property of Alpenhain until the purchase price and all claims arising from the business relationship by then have been paid.
- 7.2 The purchaser shall not be entitled to pledge or assign by way of security the goods that are subject to reservation of ownership.
- 7.3 The purchaser shall be entitled to resell the purchased item in the ordinary course of business. However, the purchaser shall assign to Alpenhain upon the conclusion of this contract any and all claims in the amount of the final invoice sum (including the statutory value added tax) of Alpenhain's claim which accrue to it from the resale against its buyers or third parties, regardless of whether the purchased item has been resold without or after processing. The purchaser shall remain authorised to collect this claim even after the assignment. This shall not affect Alpenhain's authority to collect the claim itself. However, Alpenhain undertakes not to collect the claim as long as the purchaser meets its payment obligations from the collected proceeds, is not in default of payment and, in particular, no application for the opening of composition or insolvency proceedings has been filed and the purchaser has not suspended its payments. If this is the case, however, Alpenhain can demand that the purchaser informs Alpenhain of the assigned claims and their debtors, provides all information necessary for collection, hands over the relevant documents and informs the debtors (third parties) of the assignment.
- 7.4 In the event of seizures or other interventions by third parties, the purchaser shall inform Alpenhain immediately in writing.
- 7.5 If Alpenhain's ownership expires due to combination, mixing or processing, it is hereby agreed that the ownership of the new uniform object created in this case shall be transferred to Alpenhain in proportion to the value (invoice value) until all claims are paid in full.
- 7.6 Should the claims be over-collateralised by more than 20%, Alpenhain shall, upon request, release the goods from the reservation of ownership to the corresponding extent at its discretion.
- 7.7 If the purchaser acts contrary to the contract, especially if it is in default of payment, Alpenhain shall be entitled to demand the return of the goods without the need for Alpenhain to declare its withdrawal beforehand.
- 8. Liability for defects**
- Alpenhain shall be liable for material defects and defects of title of the delivery by excluding further claims – subject to clause 9 – as follows:
- 8.1 The quality described in writing by Alpenhain shall be decisive for Alpenhain's liability. Samples and patterns shall serve only as non-binding examples. Alpenhain shall not assume any guarantees, especially not for a contractually agreed quality.
- 8.2 The goods shall be inspected immediately upon receipt. Notices of defects and other complaints shall only be considered made in due time if they are reported to Alpenhain in text form within 3 working days after receipt of the goods. Hidden defects shall also be reported in text form within 3 days of discovery. If the purchaser fails to give notice, the goods shall be deemed approved.
- 8.3 Rejected goods shall be separated and stored properly (fresh goods at 2-7° C, frozen goods at -18° C).

- 8.4 Alpenhain shall waive the right to return rejected goods, unless Alpenhain expressly requests a return within 3 days after the notification of defects. If the complaint is justified, a replacement delivery shall be made. Rejected goods shall be separated and properly stored in accordance with clause 8.1, sentence 4. Clause 8.3 shall remain unaffected.
- 8.5 Alpenhain shall not accept any liability for defects for which Alpenhain is not responsible, especially for those caused by improper storage, handling or processing of the goods by the purchaser.
- 8.6 A deviation from the agreed quality shall not be deemed a material defect if it is insignificant.
- 8.7 Insofar as material defects or defects of title exist, Alpenhain shall be entitled to remove the defect or to deliver a defect-free item (subsequent performance). Alpenhain shall be entitled to choose the subsequent performance. Alpenhain may refuse subsequent performance as long as the purchaser does not fulfil its payment obligations towards Alpenhain to an extent that corresponds to the defect-free part of the performance.
- 8.7 Should the subsequent delivery or rectification fail or be impossible, the purchaser may demand a reduction in price or withdraw from the contract. The purchaser shall be obliged to declare within a reasonable period of time, upon Alpenhain's request, whether it will exercise its right to withdraw from the contract. The right of withdrawal may only be exercised if the identified defect is significant. The right of withdrawal shall expire if the purchaser fails to declare its withdrawal 14 days after receipt of the notification of rejection, failure or impossibility of the subsequent performance at the latest and has been informed by us beforehand that the right of withdrawal expires.
- 8.8 The purchaser shall be solely responsible for its compliance with the regulations applicable in the sales region, especially the food law requirements.
- 8.9 Further claims based on defects shall be determined exclusively in accordance with clause 9.
- 9. Total liability**
- 9.1 Alpenhain shall be liable without limitation only for intention and gross negligence, including intention or gross negligence of Alpenhain's representatives or vicarious agents. Unless Alpenhain is accused of intentional behaviour, its liability shall be limited to the foreseeable damage typical for this type of contract.
- 9.2 In case of a culpable violation of essential contractual obligations (cardinal obligations), Alpenhain, its representatives and vicarious agents shall also be liable for slight negligence. In this case as well, Alpenhain's liability shall be limited to the foreseeable damage typical for this type of contract. A contractual obligation is essential if the breach of duty relates to an obligation on the fulfilment of which the purchaser has relied and was indeed permitted to rely.
- 9.3 The exclusion or limitation of Alpenhain's liability and the liability of Alpenhain's representatives or vicarious agents shall not apply to liability for culpable injury to life, body or health. Likewise, Alpenhain shall be liable without limitation if it issues guarantees and assurances or maliciously conceals a defect. Liability arising from strict liability offences, especially according to the German Product Liability Act, shall not be limited. Furthermore, any liability according to the principles of recourse of the entrepreneur according to Sections 478 and 479 *BGB* shall remain unaffected.
- 9.4 Unless otherwise stipulated above, any further liability – irrespective of the legal grounds – shall be excluded.
- 9.5 The same shall apply to claims arising from culpa in contrahendo.
- 9.6 Clause 9.1 to 9.4 shall apply accordingly to reimbursements of expenses, except for those according to Section 439 II *BGB*.
- 9.7 Any exclusion or limitation of liability shall also apply to all legal representatives and vicarious agents of Alpenhain.

9.8 None of the above clauses is intended to change the statutory or judicial allocation of the burden of proof.

## 10. Limitation

The purchaser's claims based on breach of contractual duty and tort shall become statute-barred within 12 months from the transfer of risk. This shall not apply if the law according to Sections 478 and 479 *BGB* (right of recourse in delivery recourse) prescribes longer periods or Alpenhain is liable due to intention or gross negligence.

## 11. Confidentiality

11.1 The purchaser undertakes, also beyond the term of the contract, to keep all information and documents provided by Alpenhain strictly confidential and not to make them accessible to any third party. The purchaser undertakes to make this information accessible only to those employees who, on the basis of their area of work, require knowledge of such data or information. Employees shall be sworn to secrecy.

11.2 The confidentiality obligation shall not apply to information that was already lawfully known to the receiving party prior to its transmission or that has been developed by the receiving party independently of the information conveyed.

Furthermore, a confidentiality obligation shall not apply if disclosure to authorities or within the context of legal proceedings becomes necessary.

11.3 Unless otherwise agreed, documents may also be sent unencrypted by e-mail, unless they contain personal data of third parties.

11.4 Upon request, any information made accessible shall be returned or erased. Until the end of the liability for defects, this obligation shall not apply to data made accessible by the customer which are relevant to the outcome of the contract.

11.5 The purchaser undertakes not to use the information and documents made accessible to it for its own purposes or for third parties, and not to make any applications for industrial property rights.

## 12. Place of performance, place of jurisdiction and applicable law

12.1 Place of performance and place of jurisdiction for both parties shall be Alpenhain's registered office. Alpenhain shall also be entitled to bring an action at the purchaser's registered office.

12.2 German law shall apply exclusively to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG), even if the purchaser has its registered office abroad.

## 13. Severability clause

Should any provision of this contract be or become invalid or unenforceable in whole or in part, this shall not affect the validity of its remaining provisions. The same shall apply if it turns out after the conclusion of the contract that it contains a loophole that needs filling. Instead of invalid provisions or to fill loopholes in the contract, a regulation shall readily apply which – as far as legally permissible – comes closest in economic terms to what the contracting parties had intended with the invalid or unenforceable provision or, in the case of loopholes that need filling, would have intended according to the purpose of the entire contract if they had known of the loophole when concluding the contract.

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