

General Terms and Conditions of Sale
of Westfälische Lebensmittelwerke Lindemann GmbH & Co. KG, 32255 Bünde
(as of 30.08.2009)

1. Deliveries shall be made at the agreed prices. The prices in question are so-called „net prices“ within the meaning of the German Value Added Tax Act in addition to which the valued added tax (VAT) in the applicable statutory amount is shown separately.
2. The prices may be raised at the appropriate rate in the event of an increase in import and export duties or any other taxes applicable at the time the contract is concluded to the primary products of the goods or to the goods themselves. The same shall apply to the duties under the EC Market Regulation on Fats and similar institutions, to the rise in prices for consumable supplies including energy, for the rise in packaging costs in case delivery was effected including containers as well as to special costs conditioned by freight difficulties with regard to primary products. When selling „carriage paid“ the Buyer has to pay the extra freight charges if such are incurred due to the increase in freight tariffs after the conclusion of contract. Freight surcharges conditioned by partial deliveries which possibly were accorded to the Buyer, low water, high water and ice surcharges as well as any other similar extra charges shall be at the Buyer's expense. Unless a fixed price agreement was arrived at reasonable price changes as a result of changed prices for raw materials, wages and cost of distribution taking effect 3 months or more after the conclusion of the contract shall remain reserved.
3. a) The Seller shall be released from the compliance with the contractual delivery times if and when circumstances occur at home and abroad which hinder us in purchasing raw materials, manufacturing, delivering or loading. This includes in particular all difficulties regarding the raw materials (e.g. by delays in harvesting), governmental measures affecting the procurement of foreign currencies, riots, strikes, strike action, lockouts, machine failures, any other operational stoppages, lack of fuel, consumable supplies and energy, shortage of packaging material, lack of vehicles, hindrance or suspension of shipping, other loading and transportation difficulties with regard to the raw materials or the despatch of goods. In the particular case or in cases of a similar kind the Seller may postpone the agreed delivery time by the duration of the obstruction or a part thereof. An appropriate notice shall have to be served immediately to the Buyer in writing or via telex, there is incidentally no requirement as to form. In case the obstruction lasts longer than one month then the Seller shall have the right to wholly or partially withdraw from the contract. A declaration to this effect shall have to be made in writing within the 14 days to follow.
b) In case of fire damages, destruction of the factory facilities or a part thereof or of the warehouses, the outbreak of epidemic diseases, the non-delivery on the part of the pre-suppliers of primary products, due to government action or acts of God, of energy, consumable supplies as well as packaging material the Seller shall immediately inform the Buyer in writing or via telex. The Seller shall be free to either deliver goods equivalent to his own make or to declare this particular contract wholly or partially rescinded. Unless a notification to this effect is served at the latest 30 calendar days after occurrence of one of the events named above then the Seller shall only be entitled to postpone the delivery time by the duration of the obstruction or a part thereof.
c) In the event of the outbreak of war, mobilisation, imposition of a blockade, coming into effect of export and import bans in countries of delivery or destination, seizures or any other equitable action of domestic and/or foreign agencies the Seller shall be released from the obligation to fulfil the contract if and when this action affects the contract with the Buyer either indirectly or directly. Section 3. b) last sentence applies accordingly.
d) In the cases a), b) and c) the Seller shall not be obliged to replace deliveries not effected by goods purchased from third party sources unless the Buyer bears the extra costs incurred and accepts the delivery delays arising out of such action.
4. If the despatch to the agreed place of destination is carried out or arranged to be done by us then the transport insurance shall be accepted by us in line with our usual conditions. For the rest and in all other cases, in particular collection by the Buyer, the latter shall bear the risk ex place of performance.
5. Upon receipt the goods shall have to be examined with regard to the correct quantity and/or the weight or volume, respectively, as stated and any damages; damages shall have to be notified right away, complaints regarding quantity or weight without delay.
Quality defects shall have to be notified immediately, yet not later than 8 days after receipt of the goods. This does not only apply to hidden defects which need to be notified immediately upon their discovery. The minimum delivery value shall be 100.00 €
Late complaints shall be excluded. Warranty claims shall be barred by the statute of limitations 12 months after the effected handover of the goods delivered by us if the Buyer is an entrepreneur, governmental entity or a special governmental estate within the meaning of sec. § 310 para. 1 BGB (German Civil Code).
6. If items are provided with European Article Numbers (EAN) or their representations in the bar code we only guarantee the correct allocation of the EAN. In the event of non-legibility of a bar code a guarantee shall be assumed only to the extent the error rate corresponding to the general state of the art is exceeded in the overall quantity of the articles concerned produced by us based on the regulations of the Centrale für Coorganisation GmbH, Cologne (CCG) made known accordingly. We shall not assume any liability for consequential damages unless the damage is verifiably due to gross negligence on our part or on the part of our vicarious agents.
7. Unless explicitly agreed upon otherwise in the contract payment shall have to be effected within a fortnight without deduction. If payments are made later than agreed upon then for the interim period the customary bank interests and commissions for unsecured credits shall be charged without the necessity of a special notice of default and without prejudice to the assertion of any further claims for damages. All goods shall be delivered subject to retention of title and remain our property until paid for in full; this shall also apply to any future claims – including any balance claims – resulting from the business relation with the Buyer. The Buyer may dispose of them in the ordinary course of business that is true, yet must not pledge nor assign them as collateral nor dispose of them in any other way.
We shall be entitled in case of serious doubts as regards the Buyer's financial solvency or his default of payment as well as in case of the institution of bankruptcy or composition proceedings against the Buyer's estate to claim back the goods at any time, also without any notification of a period of grace – in case of a default of payment after a grace period notification – or declaration of withdrawal from the contract to an extent as deemed necessary to cover all our payment claims. For this purpose we shall be entitled to enter the rooms in which the goods are stored and to repossess the goods; the costs involved shall be borne by the Buyer.
If the goods are wholly or partially resold then all claims arising out of the resale against the third party including all ancillary rights for securing a debt shall devolve upon us without requiring a special agreement with us or the third party.
For as long as the Buyer meets his obligation to pay us in due form he will be authorised until further notice to collect the claims devolved upon us for the sake of security. This collection authorisation shall be restricted to the effect that the disposal of such claims shall be permissible only concurrent with the handover of the receipts to us; the amount of the receipts is to be at least equal to the amount due to us from the claims devolved upon us for the sake of security. We are entitled to revoke this collection authorisation in particular if and when serious doubts as to the solvability of the Buyer arise. With the suspension of payments on the part of the Buyer the afore-mentioned collection authorisation shall automatically expire. At our request, in particular in case of the revocation or expiration of the collection authorisation, the buyer shall be obliged to immediately make the debtors of the assigned claims known to us and to furnish us all the information requested for the enforcement of our rights and to hand over the respective documents. We may advise the debtors of the assignment.
The retention of our title to the goods is in such a way subject to a resolute condition that upon payment in full of all our claims arising out of the business relation with the buyer the title to the goods subject to retention shall pass without further ado to the buyer. At the buyer's request we shall release the goods assigned to us as collateral at our discretion insofar as their value exceeds the debts to be secured by 20%.
The buyer shall be entitled to offset only insofar as the buyers counterclaim is acknowledged, undisputed or assessed in a legally binding judgement. The buyer is entitled to claim retainer rights only to the extent such rights are based on the same transaction.
8. In compliance with § 26 of the Federal Data Protection Act it is pointed out to the Orderer/Buyer that the data generated in connection with his business relation with us shall be stored for our purposes and also by third parties commissioned by us with whom we cooperate.
9. The minimum order value amounts to 100 €.
10. Place of performance for the delivery is the Seller's factory at D-32255 Bünde. Place of performance for payments is D-32255 Bünde.
11. If upon conclusion of this contract new obligations of whatever kind are imposed on the Seller by orders of any authority or an officially established agency which affect the sale or the delivery of the goods sold against this contract then the changes or modifications, respectively, of these terms arising out of such requirements shall be considered as having been agreed upon by the contracting parties.
12. Court of jurisdiction is D-32255 Bünde unless another exclusive court of jurisdiction is agreed upon, optionally the Buyer may also resort to the court having jurisdiction over the place of business of the accused. This contract shall be governed by the laws of the Federal Republic of Germany excluding the Convention on Contracts for the International Sale of Goods (CISG).
13. Our terms of sale as stated above form part of our contracts and individual delivery agreements. The legal ineffectiveness of individual provisions of our terms of sale or the delivery agreement shall not affect the validity of the other provisions. An ineffective provision shall be replaced by a provision coming as close as possible to its economic content. These terms and conditions of sale shall apply exclusively. Differing or contrary terms shall not apply except if expressly agreed upon in writing.
14. To comply with certain social and environmental standards the Business Social Compliance Initiative (BSCI) as of November 2006 in its entirety without any change or abolishment of individual provisions by the Buyer/Supplier is to be observed and complied with. The exact wording of the BSCI code of conduct is on request available from us free of charge or in the Internet at www.bsci-eu.com.