



## **General terms and conditions**

### **1. Scope of application**

The following terms and conditions (of sale and supply) apply to all supplies of Wback. Divergent terms and conditions, in particular terms and conditions of purchasing of the purchaser, will only become valid, if expressly agreed in written form by the parties.

### **2. Conditions of supply**

Our offers are prior to change. Prototypes and examples are not binding. They characterize the goods generically, but do not define or constitute their specific characteristics. Variations from prototypes, examples or earlier deliveries and qualities as well as dimension allowances, that during the production and processing of the raw materials are technically unavoidable, do not entitle the purchaser to reject goods.

Scheduled delivery dates are without obligation unless confirmed in written form. Wback keeps the term of delivery if the goods leave the works of Wback within the term of delivery or Wback inform the purchaser about the willingness to ship.

Agreements of fixed dates are excluded. Such agreements are considered as not agreed.

The terms of delivery extend adequately through activities in the context of labor disputes, in particular strikes or lockouts as well as unpredictable barriers that cannot be influenced by Wback, if those barriers have a considerable effect on the production or delivery. Wback is not responsible for the above mentioned circumstances even if they happen while Wback is in default. In important cases Wback will inform the purchaser about the beginning and ending of such barriers as soon as possible.

Also business holdups of any sort and delivery difficulties without fault of Wback, as for example loss of material and ingredients supplies or power supply, damages caused by water or fire, unpredictable failure of machines or equipment or acts of god, entitle Wback to defer the delivery for the term of disablement and a reasonable start-up period or to withdraw from the contract all or part concerning the not fulfilled contract part. Wback shall inform their purchaser as soon as possible at the start and end of such hindrance.

The purchaser is entitled to ask Wback, if Wback intends to withdraw from the contract or to deliver within a reasonable time. The purchaser is entitled to withdraw from the contract if Wback do not respond.

Wback is entitled to partial delivery. The purchaser is not entitled to reject partial deliveries. In this respect the purchaser has no claim for damages.

The risk passes to the purchaser at the latest by the handover of the goods to the hauler or freight carrier or by leaving the works of Wback. That applies as well in case of part delivery or in case Wback bears the freight charges. It is left to the purchaser to procure transport insurance or other insurances. If the shipment is delayed because of circumstances, that the purchaser is responsible of, the risk passes to the purchaser by the day of readiness for shipment.

### **3. Conditions of payment**

The prices stated by Wback are net prices quoted ex works, unless otherwise expressly agreed.

Wback allows a date of payment of 10 days from date of invoice without cash discount deduction, unless otherwise agreed. The payment is to be made in the manner, that Wback has the amount at its disposal on the due date. The purchaser bears the costs of the payments. The purchaser may only retain due counterclaims, that are undisputed or legally recognized, or offset such counterclaims.

In the event of payment delay, delay interest of a reasonable rate, at least a rate customary in banking, is due and payable. In either case, Wback is entitled to demand the statutory interest rate according to § 288 BGB (German Civil Code).

If Wback decides to accept a draft or check, this is on account of payment and not in lieu of performance. Wback is entitled to cancel the expansion for payment implied in the draft or check acceptance anytime and ask for payment. With acceptance of a draft or check the customary in banking discount and cashing charges will be charged and have to be paid in cash immediately by the purchaser. Note taxes and discount charges are always on purchaser's account.

Drafts or checks are only credited under reserve. Wback does not warrant presenting or entering a protest in time. In case of a note protest, promissory note of the purchaser or not immediate payment of a protested acceptance by another, all our draft or check claims become due immediately notwithstanding if they are own acceptances or by another.

If the Purchaser does not fulfil these conditions of payment or if the financial situation of the purchaser has substantially deteriorated or if the purchaser does not meet its obligations to Wback – even if it is an obligation from another contract – on schedule and according to the agreement, all our claims become due immediately notwithstanding the life of a discounted draft. Furthermore Wback is entitled to deliver against prepayment or security deposit only and to withdraw from the contract after a new appropriate deadline – even after partial payment – or to claim damages for non-performance and to refuse the own performance, irrespective of the right to retract the goods delivered subject to the reservation of title. Wback reserves the right to

request for information about the purchaser.

The setoff against counterclaims of the purchaser is only allowed, if the claims are undisputed or legally recognized. Fulfillment of payments only takes effects if made directly to Wback. Employees and agents are allowed to accept payments with specific written authority only.

#### **4. Warranty and liability**

For deficiency Wback is liable as follows:

Claims or complaints have to be asserted in written form within a period of one week after goods receiving at the ship-to location. After the deadline the goods are considered as accepted. The same applies, if converting of the goods is started or continued.

Deficiency, that is unknowable within the period of one week in spite of diligent inspection, have to be notified in writing after detection immediately, by the best before date at the latest. Warranty claims are excluded in case the goods were not stored or transported properly.

In case of justified notification about deficiency in due time, Wback at its own choice will fix the deficiency or deliver new products free from defects against return of the deficient products immediately. Wback bears the costs of the supplementary performance. This does not apply to by the purchaser caused increased expenses; in particular Wback does not bear transportation costs, that are increased as a result of a transportation to a different place than the place of performance.

In case the supplementary performance fails the purchaser is entitled at his own choice to withdraw from the contract or to ask for a reduction of the the purchasing price. The supplementary performance is considered as failed in case Wback has attempted the supplementary performance unsuccessfully twice or in case of a delivery of new products that are defect as well.

Complained products may not be converted or worked without express approval by Wback and have to be stored properly for evidence preservation. Things manufactured using complained products have to be preserved.

Our recommendations for handling have to be verified by the purchaser for suitability for the intended purpose. Technical advices, information and recommendations for handling are performed to the best of the knowledge. They do not represent assurances and assurances may not be derived from them. Concerning the handling of our products the purchaser is responsible for the compliance with statutory or magisterial regulations.

This responsibility includes current mandatory identifications by the authorities and regulated by law (f.e. according to the ,Lebensmittel-Informationsverordnung –

LMIV'). In particular the purchaser is responsible for violation of regulations under public law and third rights concerning wrapper and foils, which the purchaser has told Wback to use during the process of production.

Any compensation for damages is excluded, unless Wback did

- a) act deliberately or grossly negligent,
- b) conceal fraudulently the deficiency of the purchased product or
- c) give a guaranty for the condition of the goods or
- d) have acted carelessly against significant contractual obligations (cardinal obligation).

Furthermore Wback is liable for culpable injury to life, body or health. This also applies to the obligatory liability under the Product Liability Act (Produkthaftungsgesetz).

The liability of Wback for damages is limited to contract specific, foreseeable damages, unless Wback did deliberately neglect its duties.

The amount of the claim for the predictable damage of the typical contract is limited regards a careless act against cardinal obligations

## **5. Retention of title and other securities**

Any delivery takes places with retention of title. The property in the goods passes on to the purchaser after complete fulfilment of all claims from the business connection with the purchaser.

In case of the goods being converted or assembled with other goods Wback is considered as the manufacturer. If the goods are used for the production of a new object and also several other goods are used for this production and these goods are also delivered subject to retention of title, Wback acquires a co-ownership share of the new product at the ratio of the value of the goods delivery by Wback and the value of the other used goods at the time of the manufacturing.

The purchaser, who is mercantilist, may resell the delivered goods under conditional sales in the regular course of business only. Hereby he assigns all claims from resells on customers in full to Wback as security for the purchase price claim. Hereby Wback accepts the assignment . The Purchaser is authorized to receive accounts out of the sales until cancelation.

In case the value of the goods delivered subject to the reservation of title and the assigned claims exceeds the value of the claims of Wback against the purchaser by more than 20 %, Wback will release the exceeding securities by its own choice on demand.

The purchaser has to inform Wback in written form immediately about seizures or

other enforcements concerning the assigned claims or the goods delivered subject to the reservation of title in order that Wback is able to take adequate legal steps early enough.

## **6. Industrial property and similar rights**

In the event objects were produced according to the designation of the purchaser, he takes responsibility that no industrial property or similar right of a third party will be violated by the manufacture. The purchaser is liable for any damage arising from claims of industrial property or similar rights.

All rights of patents, utility models, design patents, trademarks, configurations and other industrial property and similar rights and copyrights for the object of agreement remain to the holder of right.

## **7. Jurisdiction, place of performance and miscellaneous**

For both parties the place of performance shall be the place where the goods are delivered, that is Bönen or, in case the goods are delivered in Leipheim,

In case the purchaser is merchant in terms of a commercial code, the place of jurisdiction shall be Hamm/Germany or at the choice of Wback the venue of the purchaser.

The contractual relationship between Wback and the purchaser shall be governed by the law of Germany only excluding the application of foreign law.

Should any part of this agreement be invalid for any reason, the rest of the agreement shall remain unaffected and valid. The invalid part has to be replaced by the parties with a corresponding text, which is valid and equivalent as possible to the intended meaning.