



General terms and conditions of purchase of Hermann Pfanner Getränke GmbH (FN 314034 s)

Hermann Pfanner Getränke GmbH – hereinafter called „Pfanner“ – purchases goods and places orders for work performances according to the present terms and conditions of purchase.

The supplier was made aware of the present terms and conditions of purchase. Unless otherwise explicitly provided in writing in the confirmation of order, no differing agreements will be accepted by Pfanner.

1. General provisions

- 1.1 The present terms and conditions of purchase shall be applicable to all and any - also future - orders and contracts placed by Pfanner, even if the supplier does not refer to them or points out his own general terms and conditions. Any deviation from the present terms and conditions require a written agreement that shall only be valid if signed by an authorized organ of Pfanner.
- 1.2 Irrespective of the unreserved acceptance of confirmations of order or supplies and performances, any possible terms and conditions of the supplier are expressly excepted.

2. Conclusion of contracts

- 2.1 The contract shall be deemed concluded with the reception by Pfanner of the written confirmation concerning the order placed by Pfanner. Until the conclusion of the contract, Pfanner reserves the right to modify or to revoke the order without any costs or other prejudices arising thereof to Pfanner. A retroactive correction of errors in the order placed, also after reception of the confirmation of orders shall be reserved to Pfanner. In the event of partial supplies or partial performances, Pfanner shall be entitled to unilateral termination of contract and hence to the cancellation of the order of further partial supplies.
- 2.2 In case the confirmation of order deviates from the original order placed by Pfanner, the supplier is committed to clearly point this out to Pfanner in written form or to obtain a consent from Pfanner before the delivery of the goods or the performance of the work. Without such a consent, Pfanner shall be entitled to rescind the order at any time. The supplier shall be held liable for the damages resulting there from.

3. Prices

- 3.1 Provided the order or the master agreement does not incorporate a price escalation clause, the prices mentioned are invariant firm prices. Pfanner is only committed to pay those prices that are mentioned in the order or in the master agreement and the corresponding confirmation of order. It shall in no way be admissible to invoice retroactively further transportation and insurance costs, taxes, fees and other charges. Any possible changes in currency exchange rates and currency fluctuations shall be borne by the supplier.
- 3.2 Alterations in prices shall be admissible exclusively after previous written agreement and shall apply only to those parts of a delivery of goods or a performance of work that will be made subsequently to this agreement and/or that are not yet paid.
- 3.3 Unless explicitly otherwise agreed in written form, costs of packaging shall be borne by the supplier. Pfanner shall only be committed to return packages, particularly pallets, only if explicitly agreed upon in writing. All and any costs and charges related to packaging (Green Dot, ARA, etc.) shall be borne by the supplier unless explicitly otherwise agreed upon in writing.

4. Fulfillment of contract and shipment

- 4.1 Unless otherwise provided in written form, the goods shall be shipped duly packed and free of all charges to the place of destination and shipment shall be at supplier's risk. The supplies shall be accompanied by the relevant delivery slips, analyses, certificates, bills of lading, certificates of origin as well as specifications concerning the minimum durability.
- 4.2 Place of fulfillment shall exclusively be the place of shipment destination. Risks of transportation shall only be transferred to Pfanner at the time of handover in the agreed place of destination.
- 4.3 Upon request by Pfanner, the supplier shall be committed to take retain samples and specimens from each delivery and to preserve them during at least six months marked in a way enabling traceability.
- 4.4 Shipping instructions of Pfanner must be observed, particularly the required designations must be applied onto the transport packages and shipment documents must be filled out. Pfanner must be remitted the certificates of conformity (EC 1935/2004 and other) at the latest at delivery. Traceability of the delivery must be guaranteed in any case.

5. Acceptance of the goods

- 5.1 Pfanner reserves the right to check the goods and services supplied upon their receipt as to obvious and visible defects and to accept them only afterwards. However, Pfanner has no obligation to inspect the goods and to submit notices of non-conformity at receipt of the goods.
- 5.2 During the guarantee period as mentioned under section 6. of the present terms and conditions, the supplier renounces the objection of late notice of defects in terms of article 377 UGB (Business Enterprise Code). These provisions are applicable analogously to defects that become known only after this guarantee period.

6. Guarantee and warranty

- 6.1 The guarantee and warranty period shall be 30 months. The term begins to run with the delivery of the goods or the services as agreed.

- 6.2 The supplier assumes the guarantee for the fulfillment of the contract and assures that the goods delivered are in conformity with the agreed and customary features, particularly the technical purchase specifications and that they correspond to the state of the art. In particular, the supplier warrants that the specified indications of origin, certificates, confirmations (Fair Trade, Bio, etc) and the attestations of conformity are true and complete. Specifications transmitted by Pfanner at the latest with the master agreement or with the respective order, shall be deemed bindingly accepted by the supplier.
- 6.3 The supplier warrants that the goods are in conformity with all and any relevant substantive prescriptions, particularly the national and international food regulations and directives as amended and that they are fully negotiable. Upon request by Pfanner, the supplier shall be committed to produce the respective written proves and to make any respective declarations.
- 6.4 In the event of occurring defects the supplier is committed at Pfanner's option, either to replace the defective goods free of charge or to grant a reduction in price for the defective goods. In cases where the supplier does not immediately, completely and in due form meet his obligations in this respect, Pfanner shall be entitled to remedy such defects or to have them remedied at the expense of the supplier or to procure from a third party at the expense of the supplier goods free from defects.
- 6.5 In case of replacement deliveries or of remediation of defects the guarantee and warranty period restarts to run.
- 6.6 In addition, if the goods do not correspond to the order placed, Pfanner is entitled to return the goods at the expense of the supplier and to withdraw from the contract without prejudice to other legal rights.
- 6.7 The supplier assumes towards Pfanner the liability for all and any damages and prejudices resulting from the defect (particularly third party damages, loss of profit and other financial losses).

7. Delivery dates and contractual penalties

- 7.1 Delivery dates shall be binding. Pfanner shall be entitled to refuse early, late or partial deliveries. Deliveries subject to sufficient harvest are explicitly excluded.
- 7.2 As soon as the supplier becomes aware of any possible delay in delivery, he must notify this immediately by phone and subsequently in writing to Pfanner with indication of the probable duration of delay and the reasons therefore.
- 7.3 If the deadline of delivery is missed, Pfanner shall be entitled to deduct a contractual penalty in the amount of 1% of the contract value per calendar week started, however to a maximum of 10% of the contract value, without prejudice to any other legal rights or - even without granting an additional respite - to refuse the acceptance of the goods and to withdraw from the contract. In case the damage or prejudice really incurred due to a late delivery (this shall also include third party damage, loss of profit and other financial losses) exceeds the amount of the contractual penalty, Pfanner shall be entitled to claim full compensation.

8. Invoices

- 8.1 Invoices must correspond to the statutory content and shall be sent by separate mail, i.e. not together with the delivery, to the office of Pfanner at the mailing address A-6923 Lauterach, Alte Landstrasse 10.
- 8.2 Pfanner reserves the right to return without any further treatment any invoices that do not comply with the legal prescriptions. In such cases, the invoices shall be deemed not sent until received again in due form.

9. Terms of payment

- 9.1 Unless any other written agreement was made concerning deviating terms of payment, payment will be made by Pfanner subject to a correct order handling and/or delivery as well as to correct prices and calculations, within a fortnight following the receipt of the invoice with a cash discount of 3% or within 60 days without any cash discount.
- 9.2 In any case of warranty or guarantee claims, Pfanner shall be entitled to withhold the complete payment until fulfillment by the supplier of his warranty or guarantee obligations.
- 9.3 The assignment of claims towards Pfanner shall only be admissible if explicitly consented in writing by Pfanner.
- 9.4 Offsetting of claims by the supplier against claims by Pfanner is explicitly excluded.

10. Compensation for damages and product liability

- 10.1 The supplier shall not be entitled to limit or exclude any claims for compensation as well as any claims under the Product Liability Act. The supplier asserts the existence of an appropriate product liability insurance. Upon request by Pfanner, the existence of such a product liability insurance must be proved.

11. Storage of data

- 11.1 The supplier consents to the communicated data being processed and treated order-related and being stored for automatic processing by Pfanner.

12. Industrial and trade secrets

- 12.1 Data and information communicated by Pfanner to the supplier in connection with orders placed or that the supplier procures himself concerning Pfanner, shall be deemed industrial and trade secrets and shall not be transmitted to third parties.

12.2 In addition, the supplier shall not be allowed to use names and/or products from Pfanner for marketing purposes or to mention such names or products on his own publication including internet, without the prior written consent by Pfanner.

13. Samples, specimens, recipes, etc.

13.1 All and any samples, specimens, recipes, specifications, drawings, moulds, art ready for re-production, etc. made available to the supplier by Pfanner shall remain the sole property of Pfanner and the supplier is not allowed to make them available to any third parties without the prior explicit consent by Pfanner. Upon request by Pfanner, the supplier shall be committed to return them to Pfanner at his own expense.

14. Place of jurisdiction and applicable law

14.1 The legal relationship with the supplier is based on the applicable Austrian substantive law to the exclusion of the UN Convention on the International Sale of Goods.

14.2 The place of jurisdiction shall be the competent court having jurisdiction in Lauterach or in Enns, at Pfanner's option.

14.3 Should one or several provisions of these terms and conditions be held voidable or invalid or become voidable or invalid, the validity of the remaining provisions shall not be affected. An admissible provision shall be deemed agreed upon, if it serves the intended economic purpose of the invalid provision as closely as possible.

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