



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

Hermann Pfanner Getränke GmbH – hereinafter called „Pfanner“ – sells goods according to the present terms and conditions of sale.

The customer was made aware of the present terms and conditions of sale. Unless otherwise explicitly provided in writing in the confirmation of order, no differing terms and conditions were agreed upon.

1. General provisions

The present terms and conditions of sale shall be applicable to all and any - also future - deliveries by Pfanner. Contradictory terms and conditions of business and/or of purchase of the customer shall only be applicable if explicitly agreed upon in writing by Pfanner.

2. Offer and conclusion of contracts

- 2.1 Offers by Pfanner shall be non-binding and subject to change, particularly concerning the delivery times and the prices. Pfanner is entitled to adapt prices, provided the relevant facts upon which are based the price calculations, especially purchase prices of raw materials, will change. Any possible changes will be immediately notified to the customer.
- 2.2 The contract shall be deemed concluded with the order placed by the customer (offer) and the written acceptance thereof by Pfanner (confirmation of order) or with the delivery of the goods. In case the confirmation differs from the order placed, this shall be deemed a new non-binding offer by Pfanner.
- 2.3 Modifications or amendments of an order placed must be confirmed in writing by Pfanner.
- 2.4 Pfanner explicitly reserves the right to modify the recipes of its products and the design of packages even after the respective contract conclusion.

3. Fulfilment of contract and shipment

- 3.1 Unless otherwise explicitly provided for in written form, the delivery times are subject to change. Pfanner always endeavours to respect the indicated delivery times. As the agreed delivery dates are based on the given situation at the time of the placing of the order and under the provision that there will be normal opportunities for material acquisition and production, the delivery times will be adapted in case of events of any kind whatsoever, that might ensue delays in delivery. Pfanner will inform the customer as soon as possible about any changes of delivery times.
- 3.2 Delivery ex works shall be deemed made as of the notification of the customer about the goods being ready for shipment. If Pfanner has agreed to arrange for the delivery, delivery shall be deemed effected as soon as the goods are unloaded in the convened place of destination (ramp). The customer shall ensure an orderly acceptance of the goods in the place of destination. If the customer does not accept the goods, he will be in default of acceptance. Pfanner shall then be entitled to store the goods at the expense of the customer.
- 3.3 Marginal exceedances of delivery deadlines shall be admissible without the customer being entitled to any claim whatsoever. The claiming of any possible rights in the event of a delivery delay, shall only be admissible after an adequate grace period, that has to be granted in written form.
- 3.4 Pfanner is entitled to make partial deliveries.
- 3.5 Unless other provisions have been agreed upon, the transportation and loading means (europallets, etc.) used for the customer remain the property of Pfanner. They must be restored successively to Pfanner with the acceptance of the goods or they must be exchanged through means of at least equal quality. Transport and loading means that will not be restored or exchanged, as well as damaged transport and loading means will be invoiced to the customer.

4. Acceptance of the goods

- 4.1 The customer has to check the deliveries immediately upon their receipt as to completeness and to defects. Notification of any possible defects has to be made in written form immediately upon delivery.
- 4.2 If the customer is in default of acceptance or if the acceptance of the delivery is delayed for other reasons due to the customer, Pfanner shall be entitled to claim compensation for costs that have arisen for any additional expenditures (e.g. storage costs, truck demurrage charges, etc.).

5. Warranty

- 5.1 Pfanner warrants that the goods are in conformity with the agreed quality and with all and any relevant food regulations and directives applicable in Austria and in the European Union. A warranty in excess thereof will be excluded.

- 5.2 The deadline for warranty claims and claims for compensation shall be six months as of delivery or partial delivery. Hidden defects must be claimed at the latest within three months after their detection. After the expiry of the minimum durability of the products, warranty claims and claims for compensation shall be excluded.
- 5.3 In warranty cases, Pfanner shall be entitled to remediate or to exchange the defective goods. A reduction in price is only admissible if there will be no replacement delivery. The customer shall not be entitled to further claims in excess thereof.
- 5.4 Notices of defect have to be submitted exclusively in written form.
- 5.5 Warranty claims and claims for compensation shall be limited in any case to the invoiced value of the supplied and defective goods unless otherwise provided for by compulsory statutory prescriptions.
- 5.6 Pfanner shall be liable for any damages resulting from non-fulfilment, for delays or other reasons only in the event of deliberate or of gross negligence by Pfanner. Any further compensation for damages, particularly the compensation for indirect damages, for consequential harms caused by a defect, pecuniary damages of third parties and for loss of profit are explicitly excluded by the present.
- 5.7 Product liability by Pfanner is explicitly excluded unless persons have been injured bodily. In such a case, Pfanner must assume the liability as prescribed by the legal requirements.

6. Prices and terms of payment

- 6.1 Prices mentioned in the confirmations of order shall be authoritative. If prices have not explicitly been convened, the scheduled prices by Pfanner, indicated in Euros and applicable at the time, when the contract is agreed upon, plus the statutory VAT, shall apply. Any customs duties, taxes, charges or other expenses, incurring in connection with the supply of goods must be borne by the customer, unless explicitly otherwise agreed upon.
- 6.2 Unless otherwise mentioned in the confirmation of order, payments have to be effected to Pfanner within seven days without any deductions whatsoever. Deductions of cash discounts or other discounts shall only be admissible if explicitly agreed upon in written form.
- 6.3 Pfanner shall be entitled to request advance payments or a security for its claims provided the customer is a new customer, if the customer has a low degree of creditworthiness or if his creditworthiness has worsened significantly.
- 6.4 In case of a default in payment, default interest in the amount of 1% per month will become applicable. Moreover, the respective customer must compensate Pfanner for reminder charges and for the costs accruing due to the pursuing of the claim in court through mandated lawyers.
- 6.5 The customer shall not be entitled to withhold payments for any reasons whatsoever or to offset them against counterclaims unless these counterclaims have been explicitly acknowledged by Pfanner or established legally binding by a court.
- 6.6 All payments shall be first set off against interest and costs and then against the oldest claims.
- 6.7 Invoices from Pfanner shall be deemed accepted if they are not explicitly objected to within at least seven days after receipt by the customer.

7. Reservation of title

- 7.1 Pfanner reserves the ownership of all products supplied until full payment is made on all payment claims (goods subject to retention of title). The customer shall be entitled to resale the goods unless he is in default of payment.
- 7.2 In case a third party claims the goods supplied that are subject to retention of title, the customer must inform Pfanner immediately.
- 7.3 If Pfanner exercises his right of retention of title, the customer must compensate Pfanner for the costs caused by the pick-up and the return transport to the shipping site, particularly the transportation costs.

8. Miscellaneous provisions

- 8.1 The legal relationship is based on the applicable Austrian substantive law to the exclusion of the UN Convention on Contracts for the International Sale of Goods.
- 8.2 The place of jurisdiction shall be the competent court having jurisdiction in Lauterach. Pfanner shall also be entitled to sue the customer at the court having general jurisdiction in his place of residence.
- 8.3 All and any industrial and trade secrets of which the customer has got knowledge during the business relation, must be kept secret. The customer must take care that this obligation is transferred to his employees and ensure that they will also maintain strict confidentiality.
- 8.4 The customer consents to the communicated data being processed and treated order-related and being stored for automatic processing by Pfanner.
- 8.5 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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