

General Terms and Conditions of Business (Sales)

§ 1 Area of Application

- (1) The following Terms and Conditions of Business shall apply to all sales agreements concluded between LACTOPROT DEUTSCHLAND GMBH (hereinafter „LACTOPROT“) and its business Customers (hereinafter “Customer”) (B2B).
- (2) All sales conducted by LACTOPROT for the Customer are made solely on the basis of these Terms and Conditions of Business. This shall also apply in the event that the Customer has his own Terms and Conditions of Business. In this case, any concurring Terms and Conditions of Business of the Parties shall be valid. Statutory law shall be valid in place of any deviating Terms and Conditions of Business. Should the Terms and Conditions of Business of one party contain stipulations to a subject, which the Terms and Conditions of Business does not, then these stipulations shall be an integral part of the agreement.
- (3) The scope and the properties of the delivery and the services shall be solely defined in LACTOPROT’s offer or its written confirmation of order unless otherwise expressly agreed upon. All amendments and subsidiary agreements must be confirmed in writing.

§ 2 Offer

- (1) Any offers or inquiries of the Customer shall only be deemed to have been accepted if LACTOPROT has declared its acceptance thereof in writing or by fax. Quantities, quality and properties of the goods shall be defined in the sales specification.
- (2) The following shall apply if the Customer has agreed on a successive delivery: LACTOPROT shall have the right of retention of a new delivery in accordance to § 320 (1) of the Civil Code of the Federal Republic of Germany if the limit as agreed upon with the Customer is exceeded through the new order. The limit shall be the amount, which LACTOPROT must deliver as an advance performance without the immediate payment by the Customer.
- (3) Furthermore, LACTOPROT shall have the right of retention to an agreed upon delivery if the Customer is not able to supply the current proof of an accredited and certified credit insurer.
- (4) LACTOPROT’s offers are not binding. Patterns, samples or specifications (such as weights, pictures, descriptions, etc.) supplied in the sales specification show the goods as best as possible. Should there be deviations between the sales specification and the specifications in the offer, the specifications of the last offer or respectively the last confirmation of order shall be decisive.
- (5) LACTOPROT has the right to alter the description of the goods in regards to the described properties so that the respective current statutory requirements are observed.
- (6) Any agreements regarding quantities or quality, which deviate from the sales specification of the goods and services shall not be binding until they have been confirmed in writing. This shall also apply the specifications made by suppliers and LACTOPROT’s employees. Estimates of costs and freight specifications shall not be binding until LACTOPROT has confirmed these in writing.
- (7) The specification of properties of the goods and services are not a guarantee of any kind. Guarantees must be expressly designated as such.

§ 3 Safety Regulations / Product Properties

- (1) All specifications made by LACTOPROT regarding the processing, storage, labeling and use of the goods must be observed by the Customer. A deviation from these specifications can be deemed to be an injury of applicable regulations. The Customer shall carry the sole responsibility for the observance of the processing, storage, labeling and usage specifications in accordance to LACTOPROT’s instructions. In the event of a defect, the Customer shall carry the burden of proof that this defect would have appeared even if he had observed LACTOPROT’s instructions.

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- (2) Should the goods be used and/or processed outside of the Federal Republic of Germany, the Customer shall be responsible for the observance of any applicable statutory regulations that apply in that respective country. Deviations thereto must be expressly agreed upon.
- (3) In the event that the final destination and place of delivery is not within the territory of the European Union, LACTOPROT shall warrant the observance of the regulations of the Codex Alimentarius of the FAO. Deviations thereto must be expressly agreed upon.
- (4) The sales, processing and storage specifications for the goods shall be described in the respective specification of the goods.
- (5) The Customer is not owed the achievement of any business and economic goals.
- (6) **Compatibility:** At the conclusion of the agreement the Customer is aware that LACTOPROT only tests and warrants the autarkic chemical foodstuffs properties of the goods delivered by LACTOPROT. The properties of the goods in a systemic combination with other foodstuffs, in a mixture with other chemicals and/or in a manufacturing process shall only be warranted insofar as LACTOPROT has been expressly informed of the manufacturing procedures of the goods and of the respective agents, which are to be combined or processed with the delivered goods, in writing. LACTOPROT shall not be responsible for the results of the manufacturing processes, which the Customer carries out on his own authority, unless otherwise expressly agreed upon.

§ 4 Customer's Duties to Cooperate

- (1) The Customer's duties to cooperate, as designated in the offer or the confirmation of order, are principal obligations. LACTOPROT shall inform the Customer when LACTOPROT will not be able to perform a contractual obligation on time due to the fact that the Customer has not fulfilled his duties to cooperate.
- (2) LACTOPROT has the right to set a deadline for the Customer to fulfill his duties to cooperate. Should the Customer continue to refrain from fulfilling his duties to cooperate, LACTOPROT shall have the right to cancel the agreement and demand the compensation of damages.

§ 5 Delivery

- (1) The delivery by LACTOPROT is conditional to the correct and timely delivery of LACTOPROT itself insofar as LACTOPROT is not responsible for the missing availability of the goods or individual constituent parts required for the production thereof. The Customer has the right to claim damages for the failure of performance if he has set LACTOPROT a deadline for the fulfillment thereof on threat of termination of the agreement.
- (2) In the event of delivery delays due to force majeure, sovereign intervention, natural catastrophes, war, insurgencies, strikes in LACTOPROT's company or in that of a supplier or transportation company or due to any other circumstances, for which LACTOPROT is not responsible, LACTOPROT has the right to deliver the goods when the reason for the delayed delivery has been removed. Both Parties have the right to terminate the agreement in whole or in part, if one of the occurrences mentioned above shall cause a delay in the delivery for more than two months after the agreed upon delivery date. The Parties are exempted from asserting further claims.
- (3) The term of delivery shall not begin before the day the confirmation of order has been dispatched. Furthermore the term of delivery shall not begin before the Customer has provided the necessary documents, licenses, etc. and has paid the agreed upon down payment. The duties to cooperate as defined by LACTOPROT must be fulfilled.
- (4) The delivery shall be accomplished by making the goods available to the Customer at the location specified in the agreement. The term of delivery shall be observed if the delivered goods have left the works before the term is expired or if the Customer has been informed that the goods are ready for shipment.

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- (5) If the deliveries are on call, the deliveries shall be made in as even amounts as possible for the duration of the agreement, unless otherwise agreed upon. Upon termination of the on call period of time, LACTOPROT has the right to deliver the remaining quantity of goods immediately. If the delivery is accepted at a later time, LACTOPROT has the right to charge the then current price.
- (6) The right to make partial deliveries is expressly agreed upon, if in observance of the contractual goals such partial delivery is reasonable for the Customer.
- (7) If a different place of delivery has been agreed upon, the goods shall be made available to the Customer at this place. Should LACTOPROT not deliver the goods on time the Customer must give LACTOPROT a written notice of additional respite. After this period of time, the Customer has the right to assert damages instead of the delivery and to terminate the agreement if LACTOPROT has not delivered the goods.
- (8) LACTOPROT shall store the goods at the expense and risk of the Customer if the Customer is in default with the acceptance thereof. LACTOPROT shall insure the goods during the period of default of acceptance if the Customer so requests. If LACTOPROT gives the Customer a notice with a fixed period of time for the acceptance and the threat of termination of the agreement, LACTOPROT has the right to terminate the agreement and to demand compensation for damages if the goods are not accepted.
- (9) Should LACTOPROT be in default with the delivery, LACTOPROT shall be liable for the damages incurred by the Customer due to the default. The liability shall be limited to 15 % of the value of the goods. The liability shall not be limited to this amount if the delay was caused willfully or by gross negligence; if a guarantee promise was breached; or if life, limb or health have been injured. The limitation of liability does not apply to claims arising out of the Product Liability Act of the Federal Republic of Germany.

§ 6 Transfer of Risk, Receipt and Acceptance

- (1) If the Customer is responsible for the transportation of the goods, the risk of the accidental loss of the goods shall be carried by the Customer as soon as the goods have been given to the forwarding agent, rail freight carrier, postal service or the Customer himself or as soon as the goods have been made available for collection. Unless otherwise agreed upon, the term of delivery shall have been observed if the ordered goods are ready for delivery, and the Customer has been informed thereof.
- (2) If LACTOPROT assumes responsibility for transporting the goods, the risk of accidental loss shall be carried by the Customer, as soon as the goods have been dispatched. This shall also apply in the event that partial deliveries shall be made. Other services of LACTOPROT, such as the coverage of transportation costs, delivery or installation, do not affect this transfer of risk.
- (3) In the event of transportation damages LACTOPROT and the acting forwarding agent must be notified immediately in some verifiable form. This is a secondary contractual obligation of the Customer.
- (4) If the Customer is responsible for the delay of the transportation, the transfer of risk shall take place on the day on which the goods are ready for delivery.
- (5) § 377 of the Commercial Code of the Federal Republic of Germany is to be observed. The Customer shall take a reasonable number of samples of the delivered goods immediately upon delivery. The goods shall not be considered to be deficient if on the arithmetic average the delivered goods have the agreed upon quality and no statutory regulations are broken.
- (6) Should LACTOPROT have doubts about the results reported by the Customer in regards to the quality of the delivered goods, new samples shall be taken and tested according to DIN EN ISO/EC 17025 by a public certified agency in the Federal Republic of Germany or in an institution with similar expertise. LACTOPROT shall carry the costs for the services of the certified agency if it is discovered that the goods are deficient; the Customer shall carry the costs if the goods delivered fulfill the contractually agreed upon standard.

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- (7) If a liquid product is delivered, all notices of deficiency must be received by LACTOPROT immediately upon receipt of the goods by the Customer before the goods are removed from the tank, processed and passed on to third parties. If a sample is taken, then a reasonable number of samples must be taken, secured and stored in reasonable amounts. LACTOPROT is to be given notice of the sampling immediately.

§ 7 Prices

- (1) Due the nature of LACTOPROT's operations, the prices can vary from the prices originally listed in the offer. These are price increases that cannot be influenced by LACTOPROT, and are a result of custom of trade. LACTOPROT shall have the right to pass on this price increase to the Customer if the costs of supplies for constituent parts or personnel costs have demonstratively increased after the agreement was concluded and LACTOPROT is not responsible for this increase. Unexpected changes of taxes, import duties and export duties or foreign exchange fluctuations can cause such price increase, which can be passed on to the Customer. As soon as LACTOPROT has obtained knowledge of such a change of such a price factor, LACTOPROT shall immediately inform the Customer of the price increase and explain the grounds for the price increase.
- (2) Unless otherwise agreed upon, LACTOPROT shall calculate all listed prices "ex works". The goods shall be delivered palletized or in any other typical transportation packaging. Prices quoted do not include the payable VAT, valid at the time of date of delivery. Furthermore, the prices do not include transportation, insurance or installment costs.
- (3) Additional costs incurred due to the amendment of the original commission shall be carried by the Customer. Amendments must be requested by the Customer to LACTOPROT immediately in writing, at the latest seven days before the agreed upon delivery date. Amendments of the agreement must be accepted and confirmed by LACTOPROT in writing.
- (4) The weights and measures ascertained by Lactoprot at the time the risk is passed to the Customer shall be relevant for the calculation of the price.
- (5) The Customer is responsible for the customs clearance. LACTOPROT shall carry the costs of the customs warehousing in Hamburg, Germany. The Customer shall bear the costs of the money transfers, particularly the bank charges and the charges for the transfer of the monies.
- (6) If the goods are sold to a foreign market the Customer is responsible for the payment of any fiscal charges, particularly all taxes.
- (7) The Customer shall only have the right to set off claims, which are undisputed by LACTOPROT or have been legally recognized.
- (8) VAT: The VAT shall only be paid by Lactoprot if it has been expressly agreed upon. If the Customer does not submit the certificate of export on time, LACTOPROT shall proceed as if LACTOPROT was obligated to pay the VAT according to the German VAT regulations. In this event LACTOPROT shall include the VAT in the invoice for the goods, or the Customer shall subsequently be invoiced for the VAT alone.

§ 8 Reservation of Ownership

- (1) The goods shall be delivered under conditional sale. The owner's title to the delivered goods shall not be transferred to the Customer until all bills arising out of the trade relation have been settled. The Customer has the right to process and sell the goods with reserved ownership in the course of his proper business operations.
- (2) The assertion of the ownership rights by LACTOPROT shall not be deemed to be the termination of the agreement unless LACTOPROT expressly declares otherwise.
- (3) If the goods are mixed, combined or processed with other goods, LACTOPROT shall become co-owner thereof proportionally to the invoice value of the delivered goods to the other goods at the time of the mixing, combining or processing. § 947 sub clause 2 of the Civil Code of the Federal Republic of Germany is barred. LACTOPROT has the right to recall the goods

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delivered under conditional sale or alternatively demand the assignment of any claims of possession towards third parties, and then realize the goods at the expense of the Customer if the Customer acts contrary to the contractually agreed upon terms. Before LACTOPROT recalls the goods, the Customer must be given notice with a reasonable term of respite. The recall or garnishment of the goods delivered under conditional sale by LACTOPROT shall not be deemed to be revocation of the agreement. The revocation must be expressly declared.

- (4) The Customer shall be obligated to store the goods delivered under conditional sale free of cost and must maintain the proper condition of the goods at his own expense. The goods must be insured against fire and water damages and theft. The Customer must notify LACTOPROT immediately if the goods are pledged or transferred as security.
- (5) Any claims originating from the resale of the goods delivered under conditional sale (including all claims balances in the current account) or any other legal grounds (insurance/tort) shall be assigned to Lactoprot by the Customer at this time, in proportion to the value of the goods delivered under conditional sale as security. However, the assignment shall not exceed 110% of the unsettled claim.
- (6) In the case of a garnishment or any other interference by a third party, the Customer shall give LACTOPROT notice so that LACTOPROT shall be able to file a law suit according to § 771 of the Code of Civil Procedure of the Federal Republic of Germany.
- (7) LACTOPROT shall be obligated to release its respective securities at the request of the Customer insofar as the viable value of the securities exceed the value of the claims of LACTOPROT. LACTOPROT has the right to choose which securities it would like to release.

§ 9 Warranties

- (1) The pertinent statutory regulations of the Federal Republic of Germany shall exclusively be applicable to all complaints regarding the quality of the goods. The inspection of the goods must be carried out according to the procedure described in § 64 LFGB (Lebensmittel- und Futtermittelgesetzbuch = Food and Feed Code of the Federal Republic of Germany) or the practices handbook of the VDLUFA (Verband Deutscher Landwirtschaftlicher Untersuchungs- und Forschungsanstalten = Association of German Agricultural Examination and Research Institutions).
- (2) If the Customer gives notice of defects, LACTOPROT shall have the right to attempt to remedy the defects in a reasonable number of times and within a reasonable time period. Should the attempts to remedy the defects fail, the Customer shall have the right to demand a reduction of the price or revoke the agreement and/or assert damages claims at his option.
- (3) The Customer shall not have the right to revoke the agreement or assert damages claims in the case of negligible defects.
- (4) The Customer shall not have the right to assert warranty claims if the defect has been caused by the normal aging process when implemented for the intended purpose.
- (5) The Customer shall carry the burden of proof that LACTOPROT is responsible for the deficiency of the delivered goods if the deficiency has been caused by storage thereof not in accordance to LACTOPROT's directions or through the processing or use of the goods in a manner other than such that the Customer previously informed LACTOPROT.
- (6) The warranty period is 12 months upon delivery of the goods. The warranty period for damage claims shall also be 12 months, if LACTOPROT has not acted willfully or grossly negligent; no claims arising out of the injury of life, limb or health are asserted; or no guaranteed promise is affected. The limitation of liability does not apply to claims arising out of the Product Liability Act of the Federal Republic of Germany.
- (7) If the Customer processes the goods delivered by LACTOPROT, he shall carry the burden of proof that he has not thereby caused the deficiency.

§ 10 Compensation Claims

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- (1) LACTOPROT shall only be liable for negligently caused pecuniary losses in the amount as agreed upon by the Parties. This limitation of liability shall not apply to willfully or gross negligently caused damages, damages to life, limb and health, or by breach of a guaranteed promise. Claims based on the Product Liability Act of the Federal Republic of Germany shall not be affected.
- (2) Compensations claims shall become statute-barred within twelve months upon the Customer's knowledge thereof. This shall not apply if the damages incurred remain intentionally or gross negligently unknown to him. This limitation of liability shall not apply to willfully or gross negligently caused damages, damages to life, limb and health, or by breach of a guaranteed promise. Claims based on the Product Liability Act of the Federal Republic of Germany shall not be affected.

§ 11 Non-Disclosure

- (1) Neither Party shall disclose any confidential information, especially the business and operational secrets to which a Party becomes knowledgeable in the course of the execution of this Agreement. Such privileged information shall not be passed on or utilized in any manner. This applies towards all non-authorized third parties, which include non-authorized employees of either Party, if the information is not disseminated for the purpose of the fulfillment of the contract.
- (2) In case of doubt, the respective Party is obligated to seek the consent of the other Party before the privileged information is passed on to a third party.
- (3) The obligations of non-disclosure shall not apply to such facts that are demonstrably evident, that belong to the known state of technology, to which the respective Party has obtained knowledge of before the information was divulged by the other Party, or to such information disclosed by the Customer and then subsequently be a third party not bound by a non-disclosure agreement to LACTOPROT.

§ 12 Data Protection

- (1) The Customer has been extensively informed of the scope, the place, and the purpose of the collection, processing and use of personal data required for the execution of orders. The Customer hereby expressly consents to the collection, processing and use of personal data.

§ 13 General

- (1) The invalidity of any part or stipulation of this Agreement or a respective supplementary agreement shall not affect the validity of the remaining Agreement and supplementary agreements thereto.
- (2) The Parties agree that this Agreement shall be governed and construed in accordance with the laws of the Federal Republic of Germany.
- (3) If the Customer is a businessman as defined by the Commercial Code of the Federal Republic of Germany (Handelsgesetzbuch) the place of jurisdiction for all legal relations is Hamburg, Germany.
- (4) In the case of uncertainties in regards to the translation, the interpretation of this Agreement and the Annexes or in any other case of doubt, the German text of the respective agreement shall prevail.