



## **General Terms of Business for Pinzgau Milch Produktions GmbH**

### **1. Scope**

These General Terms of Business ("GTB", retrievable in the internet under <https://www.pinzgau-milch.at/service/>) apply to all deliveries and services of Pinzgau Milch Produktions GmbH. Deviations from these terms are binding only if they have been agreed with us or we have acknowledged them in writing. Side agreements and any purchasing conditions of the buyer will be valid only if they have been confirmed in writing or acknowledged by authorised representatives of our company who have been entered in the Commercial Register, and will apply only to the individual transaction in question. The Customer acknowledges these GTB at the latest when the first order for goods is placed. These conditions will also apply to additional orders and deliveries even if the conditions are not agreed on or sent again.

Finding individual provisions of these GTB to be invalid will not invalidate the remaining provisions or any contracts concluded on the basis of the remaining provisions. If a provision is found invalid, it must be replaced, at our discretion, by a valid one that comes closest to the meaning and economic purpose of the invalid provision.

### **2. Prices**

Our sales prices are FCA Incoterms® 2020 from our production facilities in Maishofen and do not include any VAT, which must be paid in the respective statutory amount. Any discounts, rebates, credit for goods, etc. are calculated from the sales prices excluding VAT. For deliveries outside Austria, the respective export and import duties or customs will also be incurred.

If we generally increase the price for the goods concerned between contract conclusion and delivery, we may invoice the increased price. In this case, the buyer may withdraw from the contract in writing immediately after the price increase. Any increase in ancillary costs, such as freight rates, insurance premiums, customs, complications in purchasing or instances of force majeure that complicate contract fulfilment, etc., entitle us to raise our prices accordingly without this entitling the buyer to withdraw.

Invoices will be issued exclusively in euros, and any exchange rate risk or money transaction expenses will be borne by the buyer.

### **3. Shipping; Risk assumption**

Unless otherwise agreed in writing, the shipping method and route of dispatch will be at our discretion. Unless otherwise agreed in writing, the price risk will be transferred to the buyer as soon as the goods are ready for dispatch, or, if the buyer delays acceptance, once we are ready to ship.

An additional charge will be made for special transport packaging, pallets and the like. If any receptacles, pallets, etc. have been invoiced separately but will be taken back in return for payment, the customer must keep them safe until they are actually returned. We are not obligated to take back in return for payment any special transport packaging, pallets, etc., that we cannot use.

#### **4. Notice of defects**

The goods will be handed over to the buyer by providing the goods to be picked up or shipped on the ramp of our business premises in Maishofen. The buyer or its agents shall inspect the goods for defects, possibly through random sampling, at the ramp of our business premises in Maishofen, failing which all warranty and damage compensation claims will be forfeited. The buyer or its agents shall without undue delay give written notice of any qualitative or quantitative defects in the goods, including a precise description of those defects, while certifying the defect in situ, failing which the goods will be deemed accepted by the buyer. The buyer or its agents shall give written notice of hidden defects within 24 hours after their discovery, including a precise description of those defects, while certifying those defects. If the notice of defect is not issued on time or at all, the buyer will lose its warranty claims or damage compensation claims or both (§ 377 UGB (Austrian Commercial Code)). However, the statutory assumption period under § 924 ABGB (Austrian General Civil Code) will end on expiry of the goods' minimum storage life. Once the buyer has determined a defect, no further disposal over the goods is permitted without our express consent. Giving notice of defect will not exempt the buyer from its payment obligation. The contested goods may not be returned without our prior written consent (this does not apply to any samples, models, etc., that we request). If the goods are returned nevertheless, we must be compensated for any costs we incur as a result. The buyer may not derive any claims or other legal consequences from a takeover of the returned goods. Neither will our inspection of the defect entitle the buyer to any claims or other legal consequences.

#### **5. Warranty; Liability**

If a notice of defects is issued promptly, properly and justifiably, we shall at our discretion and under consideration of the buyer's interests fulfil our warranty obligation by making a subsequent delivery or repair, granting a price reduction or replacement delivery (exchange) or taking back the goods in return for a refund of the purchase price. Any other claims against us, especially claims to replacement of direct damage, consequential damage or damage sustained by third parties, will be expressly excluded to the extent permitted by law. The buyer shall pass on to its customers these restrictions of our liability, and shall obligate those customers to do the same, down to the end buyer, so that the application of our limited liability is guaranteed down to the end buyer.

#### **6. Payment terms**

We must receive full payment for our invoiced purchase prices, including those for partial deliveries, by their due dates. The payment date will be deemed the value date of the invoiced amount into our recipient account. If payment is late, we will charge default interest amounting to 5% above the respective bank interest rate for overdraft facilities. Noncompliance with the payment conditions entitles us to withdraw from the contract without setting a grace period and demand compensation for damages due to nonperformance.

The buyer may neither withhold payments due to the buyer's alleged counterclaims which we have not acknowledged, nor set off our claims against such counterclaims. The buyer may not assign its claims against us to third parties without our prior written consent.

If the customer's payment is late, the customer must compensate for all costs incurred by debt collection through third parties, and for pre-procedural and procedural expenses and the like.

## **7. Retention of title**

The delivered goods will remain our property until the buyer's obligations have been completely fulfilled, especially the obligation to pay the purchase price along with allowable expenses and interest, fees, charges, etc. In the event of qualified default in payment by the buyer, we may recover the goods and we or our agents must be granted access to the buyer's premises. The buyer may have disposal over the goods, or sell them, as part of proper business management. Extraordinary disposals, such as pledges or chattel mortgages, are not permitted. If our goods are processed, mixed or combined with other material, we will acquire co-ownership of the products that arise thereby, in proportion to the value of our goods to the other material. If the goods subject to retention of title are pledged, the buyer shall inform us thereof without undue delay, support us in securing our rights, and compensate us for all costs incurred in this regard, especially those connected to an appeal process.

## **8. Force majeure**

Incidents of force majeure that affect us or one of our upstream suppliers will entitle us to suspend deliveries for the duration of the hindrance plus an appropriate start-up period or withdraw from the contract according to their impact. If the outbound delivery is delayed by more than three months due to the effects from force majeure, the buyer may withdraw from the affected part of the delivery within two weeks.

Incidents of force majeure include without limitation all effects from forces of nature (such as earthquakes, avalanches, storm-related events, lightning, frost, storms and floods), war, terroristic attacks, laws, official interventions, seizure, transport disruptions, bans on export, import and transit, international payment restrictions, shortage of raw materials, energy failure, breakdowns (such as explosions, fire, strikes and sabotage) and all other events that could be prevented only through disproportionate costs and economically unfeasible means.

## **9. Data privacy**

The customer agrees that the data disclosed within the scope of the order and order processing will be collected, processed, stored and used for the purposes of our bookkeeping, contract execution, and for internal market research and marketing purposes. We will use the data to fulfil statutory provisions, process payment transactions, and for advertising purposes. The vicarious agents of Pinzgau Milch Produktions GmbH are obligated to comply with the data protection act. Furthermore, our data privacy statement for business partners (<https://www.pinzgaumilk.at/data-protection-partner/>) will apply.

## **10. Law**

The purchase contract and the legal relationship with the buyer will be subject exclusively to Austrian substantive law under the exclusion of the conflict of law rules. The application of the United Nations Convention on Contracts for the International Sale of Goods is excluded.

### **11. Place of fulfilment**

The place of fulfilment for the delivery of the goods, and the place of performance for the payment, is exclusively our registered office in Maishofen.

### **12. Place of jurisdiction**

The court having subject-matter jurisdiction for the provincial capital of Salzburg is agreed as the international venue for disputes arising directly or indirectly from the respective contract, and for disputes over the issue of effective contract conclusion. Only the ordinary Austrian courts are agreed.

### **13. FCA Incoterms® 2020**

FCA Incoterms® 2020 or “Free Carrier” states that the seller shall deliver the goods ready for shipment to the carrier chosen by the buyer at an agreed location. This location can be a specific port or hub of the carrier. With the FCA Incoterms® 2020, the seller bears all costs and risks up until the goods are loaded onto the agreed carrier. Thereafter, the buyer bears the costs and risks associated with the delivery of the goods. In short, the seller must deliver the goods cleared for export to the place specified by the buyer in the contract of sale. FCA Incoterms® 2020 is versatile because it can be applied regardless of the means of transport.

Seller's obligations under the FCA Incoterm

- Delivery of the goods and necessary documents
- packaging and wrapping
- Transportation in the country of origin
- customs in the country of origin
- Departure fee
- Obligations of the buyer under the FCA Incoterm
- cost of the goods
- Internationale Fracht
- International Freight
- customs on import
- Transport in the country of destination
- Payment of Fees

If you still have doubts about whether FCA Incoterm is the right solution for your ocean freight shipment, give us a call. Our import and export representatives will be happy to help you make the right choice.