

W. Kündig & Cie AG, Zurich

General Conditions of Sale and Delivery - Switzerland

Status 07 November 2022

1. Area of application

These General Terms and Conditions of Sale and Delivery (GTSD) apply to all sales of W. Kündig & Cie AG, Stampfenbachstrasse 38, 8006 Zurich, Switzerland, registered in the Commercial Register of the Canton of Zurich under number CHE-102.206.323 (hereinafter referred to as "Kündig", "we", "us", etc.), of dry products, frozen products and threshed fruit for customers domiciled in Switzerland.

Any other terms and conditions of contract deviating from the GTSD namely also those which the customer declares to be applicable together with the acceptance of the contract, shall only be valid if and to the extent that they have been expressly accepted by us in writing.

The GTSD apply in the valid version at the time of the conclusion of the contract. We reserve the right to change these GTSD at any time.

By concluding the contract, the buyer confirms that he has read the AVL and agrees with them.

2. Ranking

This sale is subject to the following order of priority:

- The specifications and conditions written in the sales contract.
- The form contracts and vendor terms specified in the sales contract.
- This GTSD.

3. Inclusion of industry practices

The parties shall recognise the current version of the Swiss Grain Exchange Lucerne Practices, unless otherwise agreed in these GTSD or in the additional contractual documents. In the event of any conflict between the Swiss Grain Exchange Lucerne Practices and these GTSD including all related contractual elements, the GTSD including all related contractual elements shall take precedence over the Swiss Grain Exchange Lucerne Practices.

Insofar as Incoterm terms are used, the current version of the Incoterms at the time of the conclusion of the contract is always meant.

4. Subject of sale and scope of services

The object of sale and the scope of the service to be provided by us shall be bindingly defined in the sales contract.

We reserve the right to deviate from the conditions stipulated in the sales contract insofar as this is required by mandatory legal provisions.

5. Prices and price adjustments

Unless otherwise agreed, our prices are always net ex works or ex warehouse, in Swiss francs and include value added tax and other mandatory public charges. All prices include packaging and freight charges to the place of performance, unless otherwise agreed.

All prices listed in the sales contract are calculated on the basis of the current prices at the time the sales contract is drawn up.

The buyer is aware that the prices for the goods listed in the sales contract can change considerably due to current developments. If, after conclusion of the contract, public levies of any kind are increased or newly introduced, if transport costs, raw material costs or production costs increase due to statutory provisions or official orders, or if other circumstances for which we are not responsible, such as increased procurement costs due to war, pandemics, epidemics or other events changing the procurement market, change the calculation, we may make a corresponding increase in the purchase price if the prices of the goods increase by more than 10 percent. In this case we will adjust the prices of the affected goods by this factor. The buyer may request in writing the submission of invoices from our suppliers in order to be able to check whether the conditions for a price adjustment have been met. This clause exclusively regulates and compensates for the price fluctuations listed. The price adjustments do not include the costs that may arise, for example, due to other delays in the performance of the contract.

6. Payment sbedingungen

Unless expressly agreed otherwise in writing, our invoices are to be paid by the buyer within 30 calendar days of the invoice date without deduction. We reserve the right at any time, contrary to the contractually agreed payment period, to provide the service only against advance payment.

The place of performance for payment is our place of business or the place of business of the bank specified by us. Payment shall be deemed to have been made in full when the amount payable for the respective service has been credited to our account without reservation and free of charges. All charges for the transfer shall be borne by the buyer.

The purchaser is only entitled to offset, deduct or withhold the purchase price with regard to counterclaims that have been legally established or acknowledged by us in writing.

If payment is not made in accordance with the contract, the purchaser shall be in default without a reminder. In this case, we shall be entitled to demand interest from the due date at the debit interest rate charged by our house bank (min. 8%). We reserve the right to claim further damages.

If the same buyer is in arrears with the payment of several invoices, the older debt shall be repaid first.

If the buyer is in arrears with at least one payment for a partial delivery, we are entitled to withhold further partial deliveries until the outstanding invoices have been settled in full.

If a significant deterioration in the financial circumstances of the customer occurs after the conclusion of the contract or if we become aware of such a deterioration, we shall be entitled to demand personal and real securities for all outstanding invoices, including those not yet due. If the buyer does not meet this demand within a reasonable period of time, we are entitled to withdraw from the contract immediately. If there is no economic interest in withdrawing from the contract, we may, at our discretion, either withdraw from the contract after expiry of the deadline or demand damages for non-performance.

7. Delivery conditions

The delivery dates are based on the agreement in the sales contract. Unless otherwise agreed, amendments to the sales contract shall result in the cancellation of the previously agreed dates and periods.

In the event of short-term delivery impairments such as strikes, lockouts, operational disruptions, war, natural disasters, pandemics, epidemics, shipping obstructions or other events for which we are not responsible, the delivery and performance deadlines shall be automatically extended by the corresponding duration of the impairment.

Partial deliveries shall be made on the basis of a separate agreement between us and the Buyer, in cases of delivery disruptions or at the express request of the Buyer. The call-off by the buyer must be made at least ten days before the desired delivery date.

In the case of road transport, the place of performance shall be the domicile of the buyer or the place of delivery agreed in the sales contract. In the case of rail transport, the agreed railway station shall be deemed to be the place of performance. For all other types of transport, the place of delivery agreed in the sales contract shall be the place of performance.

8. Delivery quality and quantity

The quality and condition of the goods determined at the time of loading at the place of departure and recorded on the delivery documents as well as the weight determined at the time of loading at the place of departure and recorded on the delivery documents shall be decisive for the fulfilment of our contractual services. The weight of the packaging is not included in the contractual quantity.

The quantity listed in the sales contract refers to the total delivery. If individual parts of the total delivery (e.g. individual packaging units) show deviations in weight, this shall not constitute a defect provided that the total delivery quantity corresponds to the contractual quantity.

All goods sold by us shall be subject to obvious quality and weight differences correctly determined by the buyer at the place of receipt at the beginning of unloading. Weight differences due to defective means of transport require a fact-finding by third parties (transport agents, official bodies, experts, etc.).

9. Freight costs

If freight costs change between the conclusion of the contract and the delivery of the goods due to official measures or due to high and low water surcharges, express freight, towing costs, ice surcharges or special freight costs of any kind, these changes shall be borne by/for the benefit of the buyer. If the seller changes the contractually stipulated freight parity, any freight differences shall be reimbursed or charged to the buyer.

10. Default of acceptance

If the goods are not collected by the buyer in due time or if they are not accepted when offered in accordance with the contract or if they are not called off in due time in the case of partial deliveries, the buyer automatically falls into default of acceptance without further ado. In this case, we are entitled to set a written grace period of at least 3 days. If this period of grace expires unused, we shall have the choice of effecting the subsequent delivery by keeping the goods available in one of our warehouses at the buyer's expense and charging storage costs of CHF 1 per pallet/day for frozen products and CHF 0.20 per pallet/day for dry products, or by waiving the subsequent performance and claiming damages for non-performance.

We shall notify the Buyer in writing immediately after the unused expiry of the grace period how the option is to be exercised.

11. Warranty

Upon delivery, the buyer must immediately inspect the quality and condition of the goods and, if defects are found, notify us immediately - at the latest, however, at the start of unloading. Insofar as the internal quality of the delivery is to be determined by special examinations (chemical or technical analyses or the like), the period for notification of defects shall be extended by the time required for the special examination to be arranged without delay in the ordinary course of business, but not beyond 15 working days.

If the purchaser fails to inspect the goods immediately and to give notice of defects in good time, the delivery or goods shall be deemed to have been approved without reservation, unless the defects were not recognisable during the purchaser's normal inspection. If defects are discovered at a later date which were not recognisable during the normal inspection, the purchaser must notify us in writing immediately after discovery, otherwise the delivery or the goods shall be deemed to have been approved without reservation. In the case of hidden defects, notification must be made to us within 2 working days of their discovery at the latest. The right to claim for defects expires 30 working days after delivery of the goods.

Weight deviations up to the legally prescribed permissible minus deviation shall not be remunerated. In the case of container/silo truck transports, the buyer hereby acknowledges the risks of weight loss from these types of transport. The weight determined by us shall be accepted by the parties as correct insofar as calibrated instruments are used.

The buyer can only demand a reduction if the qualitative reduction in value does not exceed 5% of the value of the goods. In this case, we reserve the right to take back the delivery at our discretion and to immediately provide a replacement at the agreed prices and conditions. The costs of taking back the goods shall be borne by us. However, if the qualitative reduction in value is greater than 5% of the value of the goods, we are entitled, at our own discretion, to declare within a period of 10 working days after receipt of the Buyer's written notification whether we will make a one-off replacement delivery. If we make a declaration within this period that we will not make use of the right to make a replacement delivery, the purchaser may either accept the goods with the acknowledged reduced value or demand cancellation of the purchase contract. In this case, any damages to be paid shall be limited to the price difference and the demonstrably incurred expenses and cash outlays.

The purchaser's warranty claim against us shall lapse completely as soon as the purchaser or third parties make changes to the goods, unless the purchaser can prove that the defect is not attributable to the changes.

12. Unloading of the means of transport and storage

Means of transport are to be unloaded by the buyer within the period stipulated by the transport company. Any additional costs incurred by delay shall be borne by the buyer.

13. Mandatory Stock

Unless expressly agreed otherwise in writing, deliveries ex compulsory warehouse shall be deemed to have been fulfilled in accordance with the contract and shall also be subject to the practices of the Swiss Grain Exchange Lucerne.

14. Measures taken by the authorities

Any consequences and obligations affecting us as a result of official measures shall be borne by or in favour of the purchaser. We shall take the necessary precautions within the scope of our duty of care to limit the costs.

15. Liability

We are liable for intent and gross negligence. Any further liability, in particular liability for slight negligence and liability for auxiliary persons and substitutes, is excluded or excluded to the extent permitted by law.

In particular, we are not liable for:

- Damage that has not occurred to the delivery item, in particular not for
- the costs resulting from loss of production as well as consequential damages of any kind resulting from the use of the defective goods.

16. Retention of title

The goods delivered by us shall remain our unrestricted property until full payment of the purchase price, reimbursement and ancillary claims for the delivered goods as well as all further existing and future payment claims against the buyer arising from the respective business and legal relationships between us and the buyer during the continuation of our reservation of title, namely our reservation of title shall also continue to exist in the event of the inclusion of our individual claims in a current account as well as in the event of balancing and acknowledgement of balances in this respect.

Our retention of title shall also extend to those new goods which are created in the future by using the goods delivered by us by their treatment or processing and/or by their combination or mixing with other goods. To the extent that the title to these new goods retained by us does not continue by operation of law, any title or co-ownership accruing to the Buyer in these new goods shall immediately pass from the Buyer to us at the time of accrual as security for our present and future claims against the Buyer referred to above. At the same time, it is agreed that the buyer shall keep our reserved and security property safe, properly and carefully stored and insured for us at his own expense, in each case under appropriate marking.

We are entitled to make a corresponding entry in the retention of title register at the buyer's registered office if such an entry is required by law.

Until revocation on our part, which is permissible at any time in the event of default of payment on the part of the purchaser, the purchaser shall be entitled to resell the goods in the normal course of business. The buyer is not permitted to pledge the goods or assign them as security to third parties without our prior written consent.

In the event of seizures or other interventions by third parties, the buyer must notify us immediately in writing so that we can protect our rights and take the necessary legal steps. Insofar as the third party is not in a position to reimburse us for the judicial and extrajudicial costs of a lawsuit, the buyer shall be liable for the damage incurred by us.

In any case of resale by the buyer of the goods encumbered with our rights, all claims arising on the part of the buyer against his customers in this respect, together with all ancillary and security rights, are hereby assigned to us simultaneously by way of security.

A revocation of the buyer's powers of disposal in the event of default in payment shall not have the meaning or effect of a withdrawal from the contract and shall give rise to the buyer's obligation to immediately surrender to us the goods and collection amounts encumbered with our rights as well as to provide us with all information about our securities and to hand over to us all documents relating thereto. Costs for intervention measures to protect our security rights as well as for assertion against the buyer and third parties shall be borne by the buyer.

If the value of the securities to which we are entitled exceeds the claims to be secured by more than 20% in total, we are obliged, at the written request of the purchaser, to release securities to be selected by us in the amount of the 20% excess value for the benefit of the purchaser.

17. Force majeure

If we are unable to perform our obligations under this contract due to an impediment beyond our control which could neither have been foreseen nor prevented at the time of the conclusion of the contract, such as strikes, war, fire, floods, embargoes, pandemics, epidemics, earthquakes or similar events, we shall not be deemed to have breached the contract.

If we are of the opinion that such an impediment affecting the performance of the contract has occurred, we are obliged to notify the buyer immediately, whereby we are to be informed about the details of this impediment, in particular about its duration and influence on the performance of the contractual obligations.

If such an obstacle affecting the performance of the contract lasts longer than three months, either party may withdraw from the contract without notice.

18. Assignment

We reserve the right to assign or pledge to third parties any claims due from the Buyer in connection with this contract, including any instalments due and interest on arrears.

We are also entitled to transfer individual rights or obligations from this contract to a third party without the consent of the buyer.

19. Final provisions

Changes, additions or cancellations of provisions of these terms and conditions must be made in writing and agreed to by both parties in order to be valid. An amendment to this obligation shall in turn require a written agreement in order to be valid.

Should one or more provisions of these terms and conditions be or become invalid, this shall not affect the validity of the remaining provisions.

Swiss law shall apply exclusively. The application of the conflict of laws rules and the UN Convention on Contracts for the International Sale of Goods is excluded.

Unless otherwise agreed, our contracts shall be subject to arbitration by the Swiss Grain Exchange Lucerne, place of jurisdiction Lucerne.