

## **GENERAL TERMS AND CONDITIONS of BENEIO ProtiGreen GmbH**

### **1. Scope of application**

**1.1** These General Terms and Conditions apply for purchase contracts concluded by BENEIO ProtiGreen GmbH (hereinafter: BENEIO) – with enterprises (hereinafter: Buyers).

**1.2** General terms and conditions of business of Buyer do not apply, unless BENEIO explicitly acknowledges them in writing. Unconditional deliveries of goods to Buyer do not imply that his general terms and conditions of business are acknowledged.

**1.3** These General Terms and Conditions shall also apply for contracts concluded with a Buyer in future who has already acknowledged them in an ongoing business relationship after gaining knowledge of them.

### **2. Contact conclusion**

**2.1** Proposals addressed to a wider customer circle and made via information sources available to them are solely a non-committal invitation to order. In this case, a contract is deemed concluded by virtue of order confirmation or delivery after receipt of the order. If BENEIO prepares individual Buyer-specific proposals, these shall be bindingly effective according to the proposal contents. A contract comes into being in this case by virtue of an order with the same contents. An order deviating from the proposal is subject to confirmation by BENEIO.

**2.2** Purchase contracts that have come into being obligate Buyer to accept and pay for ordered quantities.

**2.3** Changes and additions to contracts that have come into being with Buyer in writing must also be confirmed in writing.

### **3. Reservation of title**

**3.1** BENEIO invariably delivers goods under reservation of title (conditional goods). In an ongoing business relationship with Buyer, the goods remain the property of BENEIO until all claims of BENEIO against Buyer from the business relationship are fully settled. This also includes all claims of BENEIO arising in future from the business relationship.

**3.2** If the sole ownership of BENEIO is destroyed by virtue of processing the conditional goods, BENEIO acquires co-ownership in the new item in the proportion of the value of the conditional goods in the processed goods.

**3.3** Buyer is entitled to resell the goods in orderly business. Buyer herewith assigns to BENEIO claims arising for Buyer against his customers or third parties from resale of the conditional goods up to the invoice value or corresponding to the conditional goods value. Buyer remains entitled to collect this receivable also after the assignment. This does not impair the authority of BENEIO to collect the receivable itself. However, BENEIO obligates itself to not collect the receivable for as long as Buyer fulfils his payment obligations from the received revenues and does not fall into arrears with payment. But in the case that this does happen, BENEIO can demand that Buyer discloses the assigned claims and their debtors, provides statement of all details necessary for collection and hands over to BENEIO the pertaining documents.

**3.4** BENEIO shall be entitled to demand that the conditional goods be surrendered in the event of conduct by Buyer in breach of contract, especially default with payment. Buyer is obligated to this in the case of default with payment if BENEIO has withdrawn from the purchase contract

for this reason. BENEО is entitled to realise the goods after withdrawal and repossession of the goods due to default with payment.

**3.5.** Buyer is obligated to notify BENEО immediately of interventions, e.g. attachments, by third parties in the conditional goods. Buyer must indicate the proprietary right of BENEО to bailiffs or other third parties and notify such an attachment to BENEО immediately in writing with the attachment protocol. Buyer bears all costs necessarily incurred in order to annul a right of lien.

**3.6** Buyer is obligated to keep the conditional goods in an orderly condition and to store them such that they do not suffer damage.

**3.7** BENEО commits to release sureties founded according to the foregoing conditions inasmuch as the value of said sureties exceed the value of the secured claims by 20%.

#### **4. Prices, Offsetting, Withholding**

**4.1** Those prices agreed at contract conclusion apply. They are understood as exclusive statutory VAT. This is accounted additionally at that rate in effect at delivery.

**4.2** Buyer can only offset with a claim that is uncontested, established with lawful finality or acknowledged by BENEО.

**4.3** Buyer is only entitled to exercise a right of withholding if this right is founded in the same contract relationship.

**4.4.** The prices are firm until a specific date however BENEО has the right to adjust prices where BENEО experiences increased costs of providing the products to the customer due to:  
(a) Governmental intervention, including but not limited to, governmental orders or policies, changes in taxes, tariffs, rebates and currency exchange.

(b) Uncontrollable raw material cost increases due to energy shortage, product shortages or breakdowns in manufacturing outputs and unforeseen increase costs of importing products for the benefit of the customer rendering the terms of the contract economically unviable.

(c) Increased costs of transportation The supplier has the right to adapt the prices on a quarterly basis if the transport costs increased or decreased by at least 20% versus transportation costs at the date of the contract; referring to the Xeneta Shipping Index. If these transportation quotations vary as mentioned in this paragraph, the supplier has the right to adapt the price.

#### **5. Delivery, Passage of risk**

**5.1** The goods are delivered within an appropriate period of time unless specific or calculable calendar periods or dates are agreed contractually.

**5.2** Unless agreed otherwise in the purchase contract, goods are generally delivered EXW/FCA pursuant to Incoterms® 2020 ICC.

**5.3** BENEО is entitled to make reasonable partial deliveries in an appropriate scope. The respectively delivered quantity is invoiced. BENEО must assume additional transport costs incurred as a result.

**5.4** In the case of EXW/FCA deliveries from German factories: If the buyer requests that invoicing is carried out as an intra-Community delivery that is exempt from VAT (Art. 138 EU Directive 2006/112), the buyer is required to confirm to the seller within 3 weeks after acceptance of the goods, in which month and to which destination the goods have been delivered to another country of the Community territory. For this purpose, the seller will send

the buyer a “entry-certificate”. Otherwise, upon expiry of the deadline, statutory VAT to be paid at the time of delivery in Germany will be added to the respective invoice amount.

## **5.5 Bulk loadings**

For bulk loadings, only the weight registered by BENE0 ProtiGreen GmbH in Obrigheim/Eppingen is taken into account for invoicing. The weighbridge in Obrigheim/Eppingen being controlled once a year by an official German authority.

## **6. Acceptance obligations of Buyer**

Buyer is obligated to accept the goods within the agreed delivery period or at the agreed point in time of delivery. If Buyer is in default with acceptance or culpably breaches other cooperation duties, then BENE0 shall be entitled to store the goods at the cost and risk of Buyer and demand compensation of additional expenditure incurred as a result. Furtherreaching statutory rights and entitlements are reserved. The risk of coincidental destruction or coincidental deterioration passes to Buyer in the event of acceptance default.

## **7. Delayed delivery**

**7.1** The agreed delivery period or delivery time prolongs appropriately if it cannot be kept due to force majeure, labour disputes or other occurrences over which BENE0 has no influence. BENE0 will inform Buyer immediately of such an occurrence and notify its ending if foreseeable. If the delay lasts for longer than 30 days, either contract party is entitled to withdraw from the contract with respect to the not yet fulfilled portion of the contract, but with other statutory claims preserved.

**7.2** Buyer is entitled to assert damage compensation claims according to section 10 if BENE0 is in default with delivery because BENE0 is answerable for the circumstances causing the delayed delivery. The right of Buyer to withdraw in the case of default is subject to the statutory provisions. Unless the case is an exception according to law, Buyer must first grant BENE0 an appropriate subsequent period to perform. On demand, Buyer will inform BENE0 within an appropriate period of time whether he wishes to exercise his right of withdrawal.

## **8. Payment obligations of Buyer**

**8.1** Buyer must make payment in accordance with the concluded agreements. If no particular individual payment conditions are agreed, the invoice amount must be paid following delivery within 15 days reckoned as from the date of the invoice by bank transfer or cheque without deduction. Payment is deemed as made when BENE0 can dispose over the amount shown in the invoice.

**8.2** If Buyer is in default with payment, BENE0 is entitled to demand default interest to the statutory amount and to assert further damages such as and including the costs for dunning and higher interest charges after default came into being. The statutory default interest rate of 8 percentage points over the respective basic lending rate applies.

## **9. Liability for deficiencies, Statutory period of limitation**

**9.1** Buyer is obligated within the context of the commercial examination and complaint duty pursuant to § 377 HGB (*German Commercial Code*) to notify BENE0 in writing of deficiencies in the goods immediately after Buyer has promptly inspected them following delivery in orderly business, but no later than within **5 working** days after receiving delivery. Other deficiencies that cannot be discovered within this time even with careful inspection must be reported in writing immediately on discovery. Buyer must accord BENE0 opportunity to inspect the deficient condition.

**9.2** Buyer shall be entitled to demand subsequent fulfilment in the event that a deficiency exists. Buyer must accord BENE0 sufficient time to do so, unless this is superfluous in the individual case because of exceptional reasons provided for by law. Purposes of use of Buyer of which BENE0 is unaware and for which BENE0 has not made any generally accessible statements or agreements with Buyer do not constitute a deficiency. BENE0 assumes no responsibility for the suitability of the goods for approval under legislation governing foodstuffs or for other specific stipulations of the respective national foodstuffs legislation if Buyer brings the goods to other countries and inasmuch as Buyer has not been given corresponding assurances in this respect.

**9.3** If the subsequent fulfilment fails or if BENE0 has unjustifiably refused subsequent fulfilment, then Buyer shall be entitled to declare withdrawal or demand reduction if the statutory prerequisites for this are given. If the deficiency of the goods constitutes solely a minor breach of duty, then Buyer is only entitled to reduction.

**9.4** Damage compensation claims of Buyer due to deficiencies are subject to section 10.

**9.5** The claims of Buyer for deficiencies are statute-barred after one year has lapsed since delivery, unless the claim is founded in wilful conduct on the part of BENE0 or if deficiencies were maliciously concealed.

**9.6** If Buyer resells the goods and these are purchased by consumers as defined in the meaning of § 13 BGB (*German Civil Code*), then in the case of deficiencies Buyer is entitled to the unabridged statutory rights of recourse provided for by law in the purchase of consumer goods and also the limitation periods for expenditure compensation claims given from §§ 478, 479 BGB.

## **10. Other liability**

BENE0 is liable for damages, irrespective of legal grounds, only in cases of wilful conduct, gross negligence, or culpable injury to life, limb, health and breach of health protection laws, or for deficiencies that were maliciously concealed or which BENE0 guaranteed did not exist or if product liability law stipulates mandatory liability for injury to persons or material damage to privately used property. In the case of breach of essential contract duties, BENE0 shall also be liable for minor negligence, but limited in amount to that damage typically and reasonably foreseeable for the contract. Buyer has no further-reaching claims, especially not for payment of contract penalties or flat rate damage compensation claims that were not agreed.

## 11. Export requirements

Each contracting Party (i) represents and warrants that, neither it nor any person or entity that owns or controls it or is owned or controlled by it, is a designated target of economic trade sanctions promulgated by the USA, EU, UN, Switzerland or the country of origin of the goods ("Sanction Laws"); and (ii) undertakes that it and its agents and representatives will fully comply with all applicable Sanction Laws in their performance hereunder. The contracting Parties will also fully comply with the applicable national and international regulations of anticorruption the applicable requirements of any Money Laundering Laws and agree explicitly to waive cash payments.

The Buyer will inform BENEEO immediately on first request about the agents, representatives and subcontractors needed to fulfil the obligations under this contract while respecting the necessary confidentiality; each agent, representative and subcontractor needed has been checked in advance to comply with the national and international regulations of anti-corruption and export regulations (corruption check). A documented report about the corruption check will be sent to BENEEO, if asked for. The contracting Parties agree that an agent, representative or subcontractor planned to fulfil or assist to fulfil the obligation under this contract by the Buyer can be rejected by the Seller in written form, if BENEEO has a suspicion of an offence of the legal requirements to be observed by this contract. Buyer has the possibility to remove the suspicion by providing sufficient documentation to the contrary.

Each Party undertakes that the goods will not directly or indirectly originate from, be provided by or transported on a vessel, or with any carrier, owned, controlled, flagged or chartered by any country, person or entity that would cause the other Party to be in contravention of applicable Sanction Laws or export regulations.

Notwithstanding any other provisions of this Agreement, the contracting Parties will not take any measures or refrain from taking any measures which are contrary to and may be sanctioned in accordance with the applicable export regulations of the Contracting Party or its own national export regulations. This includes also the means of transport used and the delivery routes of the transportations.

Buyer shall on demand indemnify BENEEO against all liabilities, cost, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by Seller arising out of or in connection with any breach of Buyer's warranty. In this clause reference to "BENEEO" shall include BENEEO's corporate affiliates, and this clause shall be for benefit of BENEEO and each such corporate affiliate, and shall be enforceable by each such corporate affiliate, in addition to BENEEO.

## 12. Jurisdiction, Applicable law

**12.1** The contract is governed by the laws of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods (CISG) of 11 April 1980 does not apply.

**12.2** Place of jurisdiction is the court of law responsible at the registered business domicile of BENEEO. BENEEO can also choose to bring legal action against Buyer at his general place of jurisdiction instead.

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