

## Standard Terms and Conditions of Business (AGB) of Arctis Tiefkühl-Backwaren GmbH, Ehningen

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### § 1 General Provisions

The following Standard Terms and Conditions of Business apply to all offers, offer acceptances and sales. They apply with respect to businessmen and other entrepreneurs, public law legal entities and public law special funds; with respect to other persons they shall apply insofar as is permissible by law. All and any terms and conditions of the customer deviating from these Terms and Conditions are rejected; such terms and conditions shall only become effective with respect to Arctis if we explicitly agree to them in writing.

### § 2 Conclusion of the Contract

1. All offers are non-binding unless we explicitly state that the offer is binding. The period for which our offers are binding can be for a limited period of time. Furthermore other offers are, in principle, to be understood as a proposal to make an offer.
2. Insignificant deviations in the goods as regards form, colour and / or weight are reserved; they do not constitute a defect insofar as they are customary in the trade and reasonably acceptable for the customer. Sales documents and content in our Internet shop do not constitute warranted characteristics, they merely constitute a request to make an offer and serve the customer's guidance.
3. By placing a purchase order for the goods, the customer makes a binding declaration that it wishes to acquire the goods ordered. Arctis has the right to accept the offer inherent in the purchase order within a two week period after receipt thereof. Acceptance can be declared either in writing, by issuing the invoice or by delivering the goods.
4. If the customer places the order for the goods by electronic transmission, the obligation to confirm the order pursuant to Section 312 e (1) German Civil Code (BGB) with the exception of Section 312 e (1) no. 4 BGB is explicitly excluded.
5. Insofar as Arctis accepts the customer's purchase order, delivery of the goods shall be arranged immediately after receipt of the purchase order within the statutory time period (Section 147 BGB). The contract is concluded by virtue of acceptance of the purchase order. Conclusion of the contract is subject to the reservation that we receive correct and punctual supply from our suppliers. This only applies in the event that we are not accountable for non-supply, in particular in case of entering into a transaction with congruent coverage (kongruentes Deckungsgeschäft) with the supplier. The customer will be informed without undue delay of the non-availability of performance. Counter-

performance already effected by the customer will be refunded without undue delay. If Arctis is prevented from performing a supply obligation due to the occurrence of unforeseeable events relating to Arctis or its suppliers, and if it was not possible to prevent such an occurrence, e.g. war, natural catastrophes and force majeure, despite application of the care to be reasonably expected under the circumstances, then the delivery period shall be extended appropriately. Arctis shall also inform the customer hereof without delay. Statutory claims of the customer shall remain unaffected hereby.

### § 3 Reservation of title

1. We reserve title to the goods pending full payment of all claims under a current business relationship.
2. The customer is obliged to inform us without undue delay of any seizure of the goods by third parties, for instance in the case of attachment (Pfändung), and of any damage to or destruction of the goods. The customer must notify us without undue delay of a change of possession of the goods and if the customer itself relocates its domicile.
3. If the customer acts in breach of contract, in particular in the event of default of payment or breach of an aforementioned duty, we have the right to withdraw from the contract or to demand return of the goods.
4. The customer has the right to resell the goods in the normal course of business. The customer assigns to us now already all claims in the amount of the invoice value to which the customer is entitled from the resale to a third party. We accept the assignment. After assignment the businessman is authorized to collect the claim. We reserve the right to collect the claim ourselves as soon as the customer fails to duly comply with its payment obligations and is in default of payment. If we assert our rights under the reservation of title, then the customer must disclose to us the names of the customers of the resold goods and the amount of the claim resulting from such resale.
5. Defences and objections to the claim for return to which we are entitled or to the claims assigned to us under the terms hereof are excluded. In order to establish which goods are subject to reservation of title, we have the irrevocable right to access the customer's warehouse ourselves or to have it accessed by an authorized agent.

### § 4 Remuneration

1. The prices indicated in our offer shall apply subject to the proviso that no changes have been made to the offer. The prices are subject to the respective amount of statutory Value Added Tax. Prices

quoted are free domicile within the Federal Republic of Germany unless otherwise provided for in the offer.

2. The customer undertakes to pay the purchase price immediately upon receipt of the invoice, unless otherwise agreed. After expiry of the specified period the customer is in default without any reminder being required. During the period of default the customer shall bear interest on the monetary debt at a rate 8 percentage points above the base rate of interest (Section 288 BGB) with effect from the due date up until full payment of the claim. The customer has the right to prove that the default did not cause any or only less damage.

3. The customer only has a right of offset if the customer's counterclaims have been established as final and binding by a court of law or if they have been recognized by us.

4. We can revoke payment terms which are practised or agreed at any time by giving reasonable advance notice.

5. If, after the agreement has been entered into, Arctis should become aware of facts which, in its due commercial judgment, allow the conclusion to be drawn that the customer's financial or credit situation is deteriorating, in particular default of payment to other suppliers, then Arctis has the right to demand advance payment or security and, in the event that this is refused, to withdraw from the contract, whereby payments for any part performance already rendered become due immediately. Notwithstanding any other claims or rights, in the event of default of payment, Arctis has the right to give notice of termination of the contract or to withdraw from the contract, to claim damages and / or, for the period of arrears of payment, to make further supplies under the same legal relationship conditional upon advance payments pending payment of the outstanding claim, and / or after a further reminder with an extended time period for performance set to no avail, without any warning of refusal (Ablehnungsandrohung) being required, to cancel the residual quantity in whole or in part.

#### § 5 Dispatch and delivery, passing of risk

1. Goods are delivered, in principle, from the registered office of the Company in Ehningen, Germany.

2. Part deliveries which Arctis is, in principle, permitted to undertake without notifying the customer, must be regarded as supplies in their own right which can be invoiced separately.

3. Unless there is an agreement given by Arctis in writing indicated as binding, delivery dates and periods are merely agreed as being approximate, they do not constitute a delivery promise. If the agreed delivery date is not adhered to, claims for compensation by the customer on account of a

negligent breach of contract are excluded. If punctual delivery is prevented by unforeseeable events or events for which there was no fault of Arctis, e.g. by force majeure, disturbance in production, dispatch or transport, the delivery date shall be extended appropriately in accordance with duration of the impediment, insofar as it is reasonably acceptable for the customer. If, as the result of such circumstances, execution of the contract is not reasonably acceptable for one of the parties, this party may withdraw from the contract by giving advance notice of at least one week. Claims for damages are excluded in such cases.

4. If the customer is in default of acceptance, this is tantamount to delivery of the goods. If the goods are dispatched to the customer, the risk of accidental loss and accidental deterioration pass to the customer when the goods are dispatched to the purchaser, at the latest when the goods leave the Arctis warehouse. This applies irrespective of whether the goods are sent from the place of performance and irrespective of who bears the freight costs.

5. Transport packaging and other packaging within the meaning of the German Packaging Ordinance (Verpackungsverordnung) is not taken back.

#### § 6 Warranty and exclusion of liability

1. We confirm that the composition, quality, packaging, declaration and goods specifications of all the goods delivered by us are in compliance with the provisions of statute. In the event of defects in the goods pursuant to Section 434 BGB, Arctis shall, at its discretion, either rectify the defects or supply a replacement.

2. The precondition for this is that the customer examined the goods delivered in accordance with Section 377 German Commercial Code (HGB) immediately upon receipt thereof. Any complaints must be made to Arctis in writing without undue delay after discovery thereof, but within 2 days at the most, in any event prior to further sale or processing. Any further statutory obligations shall remain unaffected. The warranty is inapplicable if this time period is not adhered to. Pending verification, the goods must be stored and treated appropriately. Return deliveries that are returned without prior agreement and without our consent cannot be accepted. Complaints with respect to the defects are to be established and certified by the delivery personnel without undue delay. The purchaser is obliged to make the purchased goods relating to the complaint or samples thereof available to Arctis on demand. The warranty is inapplicable in the event of culpable refusal.

3. Claims by the customer on account of expenses necessary for supplementary performance are excluded, insofar as the expenses are increased because the goods supplied by us are subsequently

taken to a location other than the registered office of the customer, unless such relocation is in accordance with the designated purpose of the goods.

4. The limitation period for claims on account of defects is 12 months after delivery of the goods to the customer.

5. If the supplementary performance should be to no avail, the customer may, in principle, at the customer's election, demand a reduction to the remuneration (Minderung) or withdraw from the contract. If the customer asserts its right to withdraw from the contract on account of a defect as to quality and following the failure of supplementary performance, the customer has no additional right to claim damages on account of the defect. If, following the failure of supplementary performance, the customer elects to claim damages, the goods remain with the customer and ownership thereof passes to the customer. The amount of damages is limited to the difference between the purchase price and the value of the defective goods.

6. Insofar as Arctis is not the manufacturer of the goods delivered, warranty claims may only be asserted against Arctis to the extent to which the manufacturer is liable to Arctis. Furthermore, the precondition for this is compliance by the customer with its own duties, in particular compliance with the duty to make a complaint in respect of a defect (Rüge). The general limitations of liability set forth in § 7 below apply to the claims for damages.

#### § 7 Limitations of liability

1. Any further claims by the customer, in particular claims for damages, including incidental or consequential damages, are excluded irrespective of the legal ground. This does not apply if

a) Arctis is liable under mandatory provisions of law for instance of product liability law,

b) Arctis has fraudulently concealed a defect or given a guarantee,

c) the damage was based on intent or gross negligence on the part of Arctis, its statutory representatives or persons engaged in the performance of an obligation of Arctis, or on a negligent breach of material contractual duties by such persons, or

d) a culpable breach of duty by Arctis, its statutory representatives or persons engaged in the performance of an obligation of Arctis led to physical or health damage.

2. In the case of slight negligence the amount of Arctis' obligation to compensate is limited to that of foreseeable damage typical of the type of contract.

3. The foregoing provisions apply accordingly to direct claims by the customer against the statutory representatives of Arctis or persons employed by Arctis in performance of its obligations.

4. The limitation period for claims for damages by the customer on account of a defect is 12 months after delivery of the goods. This does not apply if the claim is on account of fraudulent intent (Arglist).

#### § 8. Data protection

We hereby inform the customer and the customer takes note of the fact that Arctis only uses the personal data collected during the course of its business activity to process and administer the contractual relationship.

In this connection Arctis explicitly undertakes to comply with all laws and legal regulations governing data security and data protection.

Such data protection laws include without limitation the German Federal Data Protection Act (Bundesdatenschutzgesetz (BDSG)) and statutory regulations at EU level as amended.

#### § 9 Final provisions, place of performance and jurisdiction

1. Place of performance is Ehningen, Germany.

2. The laws of the Federal Republic of Germany shall apply to the exclusion of the UN Treaty on Contracts for the International Sale of Goods.

The courts with jurisdiction at the registered office of Arctis have sole jurisdiction over all disputes arising out of this Agreement. This shall also apply if the customer has no general place of jurisdiction in Germany or if its domicile or normal place of residence is unknown at the time when legal action is taken.

3. At its discretion Arctis also has the right to take action at the court with jurisdiction at the registered office of the purchaser or at any other court which can be competent under national or international law. In the event of claims being assigned by Arctis, the assignee also has the right to select the court with jurisdiction.

4. If individual provisions in these Terms and Conditions should be or become ineffective or unenforceable or if they should contain a gap, the effectiveness of the remainder of the provisions shall remain unaffected thereby. The contracting parties undertake to replace any ineffective or unenforceable or missing provisions by a provision approximating most closely the meaning and

economic purpose and also the will of the contracting parties. In case of doubt the German version of these Terms and Conditions shall prevail.