

LIFEBRANDS Natural Food GmbH Terms and Conditions for Business Transactions with Companies

- Last Updated May 2007 -

1. General Terms, Scope

- a) Our Terms and Conditions as described in the following shall apply to the exclusion of all others to all contracts entered into with other companies. The contract partner's terms and conditions will not apply overall unless we have specifically consented to their application in writing. This will also apply to any clauses that are not conflicting with our Terms and Conditions. Our Terms and Conditions will also apply exclusively when we render services without reservation even though we are aware that any of the contract partner's clauses may be conflicting.
- b) Our Terms and Conditions will also apply for all future business transactions with the contract partner.

2. Quotes, Orders and Prices

- a) Our quotes are subject to change and not binding until we have issued a confirmation of the order in writing. We reserve the right to withdraw a quote we have issued insofar as we did not declare the quote as binding in writing for a specific period of time.
- b) In ordering the goods, the customer declares as binding that he wishes to procure said goods. We are entitled to accept the contract offer in the order within two weeks upon receipt in our company. The order confirmation will be issued either in writing or in the supply of the goods to the contract partner.
- c) The contract will be concluded conditionally subject to the punctual and correct supply to ourselves by our suppliers. This will only apply if the failure to supply cannot be attributed to us. We will notify the contract partner immediately if his order cannot be filled because we have not been supplied correctly or punctually. In this case, the sales contract will be considered as not concluded. We do not assume any risk of procurement.

- d) All prices will be calculated in euros insofar as no other currency has been agreed upon.
- e) Insofar as nothing to the contrary has been agreed upon, the prices on our currently valid price lists will apply, plus the currently valid VAT/sales tax. Any previously issued price lists and catalogs automatically lose their validity when any changes are made. In case of doubt, the prices indicated in our order confirmations are net prices, to which the currently applicable VAT/sales tax must be added.
- f) The prices for supply – insofar as nothing to the contrary has been agreed upon – are ex warehouse Hamburg. FOB prices do not include port fees and customs duties. Additional services will be charged separately.
- g) The return and disposal of packaging and crates or similar containers is not included in the prices and will be charged separately to the contract partner.

3. Terms of Payment

- a) Insofar as nothing to the contrary has been agreed, payment on invoices is due without any deduction within 14 days of receipt of invoice net cash. Cash discount deductions will only apply if these have been agreed upon separately. Should the contract partner neglect to pay the invoice within 14 days of receipt of said invoice, he shall be considered as in default of payment without any separate reminder. Should the contract partner default on payment, we are entitled to charge interest on arrears in the amount of 8 percentage points p.a. above the basic interest rate of the European Central Bank. Claiming any other damages caused by the delay will remain unaffected.
- b) Our employees, particularly sales representatives in the field, are not entitled to accept any payments.
- c) Payment via draft can be effected by separate agreement only. Payment transfers, drafts and checks will not be accepted in place of performance, but as payment on account. In the event of payment via transfers, drafts and checks, payment will not be considered as

completed until the bank has validated said payment and credited the sum to our account. Discount and encashment charges will be borne by the contract partner. We accept no liability for timely presentation and protest.

- e) The contract partner will not be entitled to set-off and retention rights unless his counterclaims have been declared legally binding, uncontested or recognized by us.
- f) If upon conclusion of the contract it becomes apparent that our claim on the return service from the contract partner is endangered due to the contract partner's inability to perform, then we are entitled to withhold our services until the contract partner has provided his return service or a security thereof. Should the contract partner fail to render the complete return service or suitable security thereof within one week of our demand to do so, we are entitled to withdraw from the contract. Section 323 BGB (German Civil Code) will apply. Our right to demand damages as defined by the legal regulations remains unaffected.
- g) The contract partner cannot assign any claims he may have based on our business relationship to a third party without our written consent. Section 354 a HGB (German Commercial Code) remains unaffected.

4. Delivery

- a) Place of performance for our supply is Hamburg, even if we assume responsibility for sending the goods at the request of the contract partner. The risk for delivery is transferred to the contract partner when the goods are handed over for shipping insofar as no other arrangements have been made in writing. This will also apply if "free" or "carriage free" delivery has been arranged and/or we perform the delivery ourselves.
- b) Insofar as no written agreements have been made for the type of shipping and/or the shipping company, we have the freedom of choice.
- c) The contract partner will bear the shipping costs if no other agreement has been made in writing. If the delivery is made "free" or "carriage free", the contract partner will bear

the costs incurred in connection with the delivery that cannot be attributed to our fault for any detours or when the help of other shipping companies is required.

- d) Delivery dates are not binding unless we have in writing and expressly agreed to assume responsibility for the observation of said dates. The delivery date will be deemed as observed when the goods are handed over to the shipping company with the proper papers during the delivery period.
- e) If we are not able to observe the delivery period, the contract partner is entitled and obliged to set us an appropriate period of grace in writing. This period of grace will be at least 14 days. Following the expiration of the period of grace without successful delivery, the contract partner is entitled to withdraw from the contract. In cases of acts of nature beyond our control, both parties cannot withdraw from the contract until a period of two months in total has expired, unless this period of grace is unacceptable for one of the parties for special reasons.
- f) Compensation instead of performance can only be demanded by the contract party in the event of delays in delivery under the legal conditions and under the restrictions described in No. 5 f and g. In addition, a prerequisite for claims of compensation instead of performance is the fact that the contract partner notifies us when setting the legally required period of grace that he will make claims to compensation in the event that the delivery/performance does not take place.
- g) Insofar as no other agreement has been made, we are entitled to perform partial deliveries.
- h) If the contract partner requires a delay in delivery, the risk will be transferred to the contract partner ten days after he is notified of our willingness to deliver. If and as long as our storage capacity allows, we will agree to store the goods. The contract partner will pay an appropriate sum for this service. In this case, we will assume no liability for the stored goods or for damages that may occur due to incorrect storage unless these can be attributed to intent or gross negligence (limitation of liability possibly invalid).

- i) Packaging prepared on the order of the contract partner can result in production-related excess or short deliveries of up to 10%. They are to be accepted by the contract partner accordingly.

5. Liability/Damages

- a) The delivered goods are to be checked for completeness and freedom from defects by the contract partner without delay. The contract partner is obliged to have an accredited laboratory take and test samples of the goods in a representative amount within two weeks of delivery.
- b) Short deliveries, incorrect deliveries and outwardly visibly damaged goods must already be noted on the receipt of delivery. All claims must be made to us without delay in writing. Should the contract partner neglect to meet these obligations, the goods will be considered as accepted, unless the defect is such that it was not possible to identify it upon initial examination. If a defect that was impossible to identify initially becomes apparent later, the contract partner is obliged to specify such defect immediately upon detection, i.e. to enter a complaint with an exact description of the goods affected and an exact description of the type of complaint involved. Should he neglect to meet this obligation, the goods will also be considered as accepted with respect to this defect.
- c) Complaints and reproofs made to third parties, e.g. to sales representatives or shipping agents, do in no way constitute complaints or reproofs made in due form and in due time.
- d) Rights to claim damages for defects do not apply for insignificant deviation from the agreed condition or for insignificant impairment of usability.

Deviations of the ordered or delivered goods from the order, particularly with respect to material and design, color and/or weight do not constitute defects when they remain within acceptable limits. There may be color differences between the photo and the actual article, which also does not constitute a defect. Only actual samples are binding. The dimensions and weights listed in the

accessories are approximate values. They are not binding and a deviation within acceptable limits also does not constitute a defect.

Claims to damages for defects by the contract partner can only be considered when the contract partner is able to prove that these damages had already been caused at the time the risk was transferred.

- e) In the event of a complaint about defective goods received in due time and for just cause, we are entitled to take back the defective goods at our own discretion and to replace them with goods according to the contract or – insofar as this is possible and acceptable for the contract partner – to repair said goods. In the event that we repair or replace these goods, the provisions on deliveries according to No. 4 d) to i) will apply accordingly.
- f) If we are not willing or able to repair or replace goods that are claimed as defective with just cause and within the required period within an appropriate period of grace, the contract partner is entitled at his own discretion to withdraw from the contract or to demand a reduction of the purchase price.
- g) Our liability for damages, regardless of the legal grounds (including tort claims), is based on the legal regulations insofar as the damages are the result of intent or gross negligence on our part, or on the part of our representatives or vicarious agents. Liability for simple negligence is excluded insofar as there is no culpable breach of a major contractual obligation or we haven't assumed any guarantee or procurement risk. This liability limitation does not apply to damages resulting from injury to life, body or health of a person on in cases of liability according to the provisions of the Product Liability Act.
- h) Damage claims against us are limited to typical, foreseeable damages. This does not apply to claims based on intentional or grossly negligent acts on our part, or on the part of our representatives or vicarious agents. This liability limitation does not apply to damages resulting from injury to life, body or health of a person on in cases of liability according to the provisions of the Product Liability Act.

- i) If the delivered goods are rejected by the contract partner or by one or several third parties, we must be notified immediately. This also applies in the case of internal blocks, recall actions or public warnings with respect to the products delivered by us. Should this information not be communicated to us without delay, any warranty claims and damages claims against us will be excluded.

6. Statute of Limitations

For sales contracts, any claims made by the contract partner will be restricted to the following periods of limitation:

- a) Warranty claims made by the contract partner according to Section 437 BGB (German Civil Code) are subject to a limitation period in cases conforming to Section 438 Para. 1 Line. 3 BGB of one year following the delivery to the goods purchased.
- b) Claims made by the contract partner for damages due to breach of obligation that are not based on defects of the goods purchased (Section 280 BGB) are subject to a limitation period of one year starting with the legal beginning of the limitation period.
- c) No. 6 a) and b) do not apply in the cases of Section 438 Para. 1 Lines 1 and 2 BGB, of Sections 478, 479 BGB as well as for damages claims resulting from an injury of life, body or health of a person. They do not apply further in cases in which intent or gross negligence is involved on our part or on the part of our legal representatives or vicarious agents.

7. Retention of Title

- a) The following retention of title shall apply for all business transactions that deal with the supply of goods.
- b) All goods supplied are conditional goods and their title shall remain vested in us until the purchase price has been paid in full and any other claims already resulting from the business transaction and any incidental claims in close connection with the delivered goods (interest on arrears, damages caused by delay) have been duly settled. The

addition of individual items to an open account as well as the balancing of the account and the acceptance of the same shall not affect the retention of title. In the event of a delay in payment by the contract partner, we are entitled, after withdrawing from the contract, to take back the conditional goods, which the contract partner is obliged to duly hand over to us.

- c) Should the conditional goods be processed by the contract partner to create a new product or any other chattel, this processing is done for us without any obligation on our part; the new product becomes our property. If the goods are processed together with other goods not provided by us, we become co-owners of the new product in the proportion of the value of the conditional goods to the other goods at the time they were processed. If the conditional goods are combined, mixed or blended with goods not supplied by us according to Sections 947, 948 BGB, we become co-owners in accordance with the applicable legal regulations. Should the contract partner obtain sole ownership of the combination, mixture or blending, he will already transfer co-ownership to us according to the proportion of the conditional goods to the other goods at the time of the combination, mixture or blending. In these cases, the contract partner will be obliged to store the goods owned or co-owned by us free of charge, as they are also conditional goods in the sense of the following provisions.
- d) Should conditional goods be sold by the contract partner, either alone or together with goods not supplied by us, the contract partner will already assign all receivables ensuing from the sale in the amount of the value of the conditional goods with all ancillary rights to us. We accept this assignment. Should we be co-owners of the conditional goods, the assignment of the receivables will cover the amount that corresponds to our proportional share of the co-ownership.
- e) The contract partner is entitled to the sale or use of the conditional goods only in the conventional, proper course of business and only provided that the receivables assigned to us in advance are actually transferred to us. The contract partner is not entitled to any other disposal of the conditional goods,

particularly pledging as collateral or transfer by way of security.

Should the contract partner default on payment, he is not entitled to sell the goods unless he instructs the buyer to pay the purchase price directly to us.

- f) The contract partner is authorized to collect the assigned receivables, subject to revocation. We will not make use of our own collection authority as long as the contract partner meets his payment obligations. At our request, the contract partner will be required to name the debtors of the assigned receivables including their address and to advise them of the assignment. We are authorized to notify the debtors of the assignment ourselves.
- g) The contract partner must notify us immediately of any processes of foreclosure by third parties on the conditional goods or on the assigned receivables, providing us with all necessary documentation, in particular a copy of the foreclosure form. At the same time, the contract partner is obliged to send us an affidavit in which he declares that the goods seized in the foreclosure are goods supplied by us to which we have retained the title. The contract partner will bear all the costs of our intervention against the foreclosure process.
- h) With suspension of payment or application or opening of insolvency proceedings or execution of an amicable arrangement with creditors pertaining to debt settlement, the right to resale or use of the conditional goods will expire, along with the authorization to collect any assigned receivables. The authorization to collect any assigned receivables will also expire in the event of a check or draft protest.
- i) Should the value of the collateral provided exceed the claims to be secured from the supply transactions by more than 10%, the contract partner can request reassignment or release up to this limit. Once all our claims against the contract partner for supply transactions have been settled in full, the ownership of the conditional goods and the assigned receivables will pass over to the contract partner.

8. Applicable Law, Place of Performance, Legal Venue

- a) The law of the Federal Republic of Germany will apply for these Terms and Conditions and the entire legal relationship between the parties with the exclusion of international private law and the UN Law for the Sale of Goods. This will also apply to shipments across national borders.
- b) The legal venue for all disputes resulting directly or indirectly from this contractual relationship is Hamburg insofar as the contract partner is a merchant, a legal entity as defined by public law or by the public separate estate.
- c) Insofar as nothing else to the contrary has been agreed, the place of performance is also our corporate headquarters.