



General Terms and Conditions of Sales and Delivery of Rassau Seafood GmbH for Commercial Customers

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1. Application of these Terms and Conditions

1.1 These General Terms and Conditions are valid solely towards entrepreneurs. The contractual partner (hereinafter: "customer") confirms with his order, that he is an entrepreneur and does not purchase the goods for private use. An entrepreneur is a natural or a legal person or an association with legal capacity that, at the time a legal transaction is concluded, exercises its commercial or independent professional activity.

1.2 Unless agreed otherwise by individual agreement, these Terms and Conditions shall apply exclusively to the entire business relationship between Rassau Seafood GmbH and its customer, including the future relationship. Any purchase conditions or other general conditions of the customer shall not apply, unless otherwise explicitly agreed in writing. It is not an explicit agreement if Rassau Seafood GmbH only refers to a letter or document which contains or refers to the general conditions of the customer.

1.3 Rassau Seafood GmbH may modify its General Terms and Conditions with effect for the entire future business relationship with the customer after having informed the customer in writing. The modification will be considered approved, if the customer does not send his appeal against the modification in written form within six weeks after the announcement of the modification. Rassau Seafood GmbH will inform the customer about this consequence particularly, when announcing the modification.

1.4 Should any of the provisions of these General Terms and Conditions be or become invalid, the validity of the remaining provisions shall not be affected thereby. The provision shall be replaced by the corresponding statutory provisions. In this case the affected provision shall not be replaced by terms and conditions of the customer. The same applies in case of a gap in these General Terms and Conditions.

1.5 These General Terms and Conditions also apply to any framework agreement and to all single orders between Rassau Seafood GmbH and the customer.

1.6 In case of discrepancies, the German version of these Terms and Conditions prevails.

2. Conclusion of Contract, Written Form

2.1 Offers made by Rassau Seafood GmbH are subject to change and non-binding before conclusion of the contract.

2.2 The customer is bound by any order placed. Unless confirmed otherwise in writing by Rassau Seafood GmbH, orders are accepted by the invoice/order confirmation which is issued by Rassau Seafood GmbH and forwarded to the customer with delivery. Concerning the content of orders and agreements only the written confirmation/invoice sent by Rassau Seafood GmbH is binding, as long as the customer has not appealed the confirmation/invoice in written form without delay. In any case the appeal is not without delay, if Rassau Seafood GmbH does not receive the appeal within seven days after the customer has received the confirmation/invoice.

2.3 Oral side agreements do not exist. To become effective, modifications and amendments of the contract, excluding a modification in terms of clause 1.3 have to be confirmed by Rassau Seafood GmbH in writing. This applies equally for deviations from the contractual written form requirement.

2.4 Terminations, settings of deadlines, declarations of rescission, demands for reducing the purchase price or for compensations are only valid when made in writing.

3. Delivery, Date of Delivery

3.1 The delivery obligation of Rassau Seafood GmbH and any agreed delivery terms are subject to Rassau Seafood GmbH receiving orderly and timely self-supply. If Rassau Seafood GmbH made a congruent cover transaction, but still its supplier does not deliver at all or does not deliver on time, the goods which Rassau Seafood GmbH needs to fulfill its supply obligations arising from the contract with the customer and if Rassau Seafood GmbH is not responsible for the incorrect and delayed self-supply, the customer has the right of rescission from the contract with Rassau Seafood GmbH. According to the provisions in clause 8. (Liability) Rassau Seafood GmbH is not liable for potential damages. Rassau Seafood GmbH has to inform the customer about the incorrect or delayed self-supply, as soon as Rassau Seafood GmbH takes notice.

3.2 Delivery dates and terms are estimated. An agreed delivery term is effective ex warehouse (INCO-Terms 2010).

3.3 In case of any delays in delivery caused by malfunctions Rassau Seafood GmbH is not responsible for, official measures or force majeure or other circumstances for which Rassau Seafood GmbH is not responsible – even if they occur with its suppliers – an agreed delivery date with the customer is reasonably prolonged as long as Rassau Seafood GmbH is prevented from effecting delivery. National or international sanctions, employment disputes including strikes and lawful lookouts in the business of Rassau Seafood GmbH or at the suppliers of Rassau Seafood GmbH are also considered as force majeure. If such circumstances make the delivery or other performance impossible or aggravating and if the obstruction is not only temporary, Rassau Seafood GmbH is entitled to rescind from the contract. The obstruction is not only temporary if the delivery is delayed for more than 1 month. In case of only temporary obstructions, delivery dates and terms shall be extended / postponed by the period of obstruction plus an appropriate starting period. If it is unreasonable for the customer to accept delivery or performance due to the delay, the customer may rescind from the contract by giving immediate written notice to Rassau Seafood GmbH. Any further claims for delay in delivery or for impossibility of delivery, especially claims for damages, are precluded within the limits of clause 8 (Liability) below.

4. Shipping of Goods and Transfer of Risks

4.1 Delivery is effected by Rassau Seafood GmbH ex warehouse. The risk of transport and shipping is with the customer (in accordance with clause 4.2), even if Rassau Seafood GmbH accepts separately to bear transport costs and/or obtains transport insurance at the customer's expense.

4.2 The risk for delivery passes onto the customer at the latest with handover of the delivery (beginning of the loading process) to the forwarding agent, the carrier or any other person or institution charged with the execution of the shipment. If the shipment or handover is delayed due to circumstances caused by the customer, the transfer of risks to the customer passes from the date upon which the goods are ready for shipment as reported by Rassau Seafood GmbH to the customer.

5. Prices, Payment Terms, Delay, Off-Setting and Right of Retention

5.1 Unless otherwise agreed, prices apply ex warehouse of Rassau Seafood GmbH (INCO-Terms 2010). In each case the statutory V.A.T. in effect at the time of conclusion of the contract shall also be payable. The prices of Rassau Seafood GmbH already contain a discount for transport packaging removal.

5.2 If not agreed otherwise, payments must be made within 2 weeks as of receipt of the invoice without any deductions and free of transaction charges to the account of Rassau Seafood GmbH. For an effective and punctual payment receipt on Rassau Seafood GmbH's account shall be decisive. If the customer is a merchant and the transaction is a business transaction for him, interests of 9 percentage points over the German basic rate of interests ("Basiszinssatz") has to be paid as of the due date.

5.3 With delay of the customer, Rassau Seafood GmbH is obliged to demand for interests on the invoice amount with a rate of 10% above the applicable German basic rate of interests ("Basiszinssatz") as well as a cost contribution for each reminder in the amount of € 5.00. The customer is entitled to proof that Rassau Seafood GmbH has incurred costs per reminder in an amount less than € 5,00.

5.4 The customer may not withhold payment of the invoice amount by declaring an off-set with counterclaims or a right of retention, unless the counterclaim of the customer is undisputed or established by binding court judgement.

5.5 Even if a certain payment term has been granted, Rassau Seafood GmbH is entitled to demand immediate payment of all outstanding invoice amounts and/or make further deliveries dependent on prepayments, if, after the conclusion of the contract, circumstances become known to Rassau Seafood GmbH which are of a nature to considerably reduce the creditworthiness of the customer and which jeopardize the payment of outstanding claims held by Rassau Seafood GmbH against the customer from the relevant contractual relationship (including those from other individual orders, for which the same frame contract applies).

6. Retention of Title

6.1 The delivered goods shall remain the property of Rassau Seafood GmbH until full payment of any of Rassau Seafood GmbH's claims related to the business relationship with the customer, existing at the time of the conclusion of the contract, is done (reserved goods).

6.2 The delivered goods under retention of title must be stored separately and treated carefully and correctly. In case of default on payment or in case of a breach of contract, the customer is obliged to return without delay the reserved goods to Rassau Seafood GmbH, without Rassau Seafood GmbH having to rescind from the sales agreement. The same applies in case of a significant deterioration in the financial affairs of the customer. The request for returning the reserved goods and taking the reserved goods back does not mean the rescission of the contract.

6.3 Pledges or transfer of ownership to third parties by way of security of the reserved goods and the assignment or pledging of expectancy rights are excluded. In case of distraint or confiscation of the reserved goods including the execution of landlords' right of distress and other disturbances of Rassau Seafood GmbH's security rights, Rassau Seafood GmbH has to be notified immediately. In case of an intervention of Rassau Seafood GmbH, the costs are at the expenses of the customer, if they cannot be acquired by the third party.

6.4 In case the customer acquires the reserved goods for the purpose of reselling he is entitled to sell the goods in the ordinary course of his business. In case the customer acquires the reserved goods for the purpose of connecting with other goods or processing and the subsequent reselling he is entitled to sell the manufactured goods in the course of his ordinary business. In case the reserved goods are not destined for reselling respectively processing with subsequent reselling a reselling is not permitted without the prior written consent of Rassau Seafood GmbH. A reselling is also prohibited if the payment claim resulting from the reselling is captured by former acts of disposal by the customer in favor of third parties, e.g. by way of global assignment.

6.5 The payment claims resulting from a reselling of the reserved goods are now assigned with effect to the time the payment claims arise in full amount and with all ancillary and security rights to Rassau Seafood GmbH. Rassau Seafood GmbH herewith accepts the assignment. The third party debtors have to be informed about the assignment by the customer without delay. On demand, the customer has to hand over a certificate of assignment to Rassau Seafood GmbH. The customer may – provided that he fulfills his payment obligations towards Rassau Seafood GmbH – collect the payment claims resulting from the reselling on his own account and the ordinary course of his business. Any assignment of a payment claim resulting from reselling is excluded.

6.6 The customer's right to process and to resell the reserved goods as well as the right to collect payment claims lapses upon delay of payment by the customer for more than one month, suspended payment, seizure of reserved goods, the opening of insolvency proceedings or any out of court or court proceedings regarding the customer's assets. Any payments regarding the assigned claims up to the amount of all secured claims of Rassau Seafood GmbH in accordance with clause 6.8 received

by the customer after the authority to collect payment has ceased, shall be collected by the customer on behalf of Rassau Seafood GmbH and must be immediately forwarded.

6.7 The customer is obliged, at his own expense, to adequately insure the reserved goods for their original value and to the usual extent, in particular however, against loss or damages caused by fire, storm, water and theft and to provide evidence of such insurance protection to Rassau Seafood GmbH upon request. The customer herewith assigns to Rassau Seafood GmbH his claims against the insurer and/or third parties he has in connection with the reserved goods. The assignment is limited to the value of the reserved goods. Rassau Seafood GmbH herewith accepts the assignment. Paying the complete purchase price for the delivered goods is the condition subsequent for the assignments in accordance with this clause 6.7. The customer has to inform the insurance about the assignment of the claims. Accordingly the other conditions agreed on in the scope of the retention of title are valid.

6.8 If and when the secured claims of Rassau Seafood GmbH are more than momentarily secured by reserved goods and/or assignment by more than 110 % Rassau Seafood GmbH shall release security rights up to the aforementioned limit upon the customer's request. Rassau Seafood GmbH is entitled to decide which security rights shall be released. The customer has to inform Rassau Seafood GmbH in the context with this clause 6.8 about all necessary information without delay.

6.9 As far as the retention of title is not effective due to the law of the country where the delivered reserved goods are located, the customer is obliged to provide another security of equal value to Rassau Seafood GmbH. If the customer does not meet this obligation, Rassau Seafood GmbH may claim all claims of payment against the customer – independent from the terms of payment – to be due.

7. Quality and Warranty

7.1 Any public advertising or product descriptions given by third parties and/or Rassau Seafood GmbH is not binding and shall not be considered as contractually agreed product specification, unless agreed otherwise between Rassau Seafood GmbH and the customer in written form. Product descriptions by Rassau Seafood GmbH do not constitute any guarantee or express representation, unless otherwise agreed in writing.

7.2 Rassau Seafood GmbH delivers food with limited durability. The customer is obliged to examine the delivered goods – or partial delivery – immediately after receiving, at the latest within 48 hours after delivery, duly and at his costs, and to inform Rassau Seafood GmbH immediately both orally (previously) and in writing about any defects, wrong delivery or deficiency in quantity. For this notification applies a limitation period of 60 hours after receipt of the delivery. Hidden defects must be reported to Rassau Seafood GmbH in writing immediately after discovery. For the notification of hidden defects applies a limitation period of 60 hours after discovery. If the customer breaches his obligations in accordance with this clause 7.2 he loses his warranty claims concerning the respective defect.

7.3 If it is apparent that the goods are not in conformity with the contract description, the customer may not remove them, nor have them removed, from the place of inspection before their kind and quality have been established by an independent expert jointly selected by Rassau Seafood GmbH and the customer. The expert's result is binding for both Parties.

7.4 Any quality deficiency of a part delivery does not give a right to return the remaining quantity unless the customer can prove that the receipt of the remaining quantity is unacceptable taking into account the existing circumstances.

7.5 Delivered goods must be protected against sunlight and temperature changes, and must be stored in a proper manner. Damage caused by external influence, improper treatment or storage by the customer are excluded from the warranty.

7.6 Warranty claims of the customer are – at the option of Rassau Seafood GmbH – limited to return of goods against credit of invoiced amount or replacement delivery. If replacement is not successful or cannot be effected within a reasonable time period, the customer may at his choice either rescind from the order from the particular delivery or demand a price reduction.

7.7 The customer is only entitled to recourse against Rassau Seafood GmbH as far as he has not concluded any agreements with his consumers exceeding statutory claims due to defects.

7.8 Any warranty claims of the customer are time-barred 1 year after delivery.

7.9 Restrictions of customer's warranty claims do not apply, if the law prescribes longer periods in accordance with Sec. 438 par. 1 No. 2 German Civil Code (buildings and material for buildings), Sec. 445 b par. 1 German Civil Code (regress claims) and Sec. 634 a par. 1 No. 2 (defect in construction) or in case longer periods apply mandatory according to the German Act on Product Liability, in cases of a willful or grossly negligent breach of duty by Rassau Seafood GmbH, if a defect is fraudulently concealed and in cases of injury of life, body or health.

7.10 Apart from that, clause 8. (Liability) shall apply to any claims for damages. More extensive or other claims based on defects than those specified in this clause 7. against Rassau Seafood GmbH are excluded.

8. Liability of Rassau Seafood GmbH

8.1 The liability of Rassau Seafood GmbH occurring from contract or law is excluded, unless otherwise agreed below.

8.2 The exclusion of Rassau Seafood GmbH's liability in accordance with clause 8.1 does not apply

- for damage Rassau Seafood GmbH has caused deliberately or grossly negligent;
- if and to the extent that Rassau Seafood GmbH is liable concerning to the mandatory regulations of the German Act for Product Liability;
- if and to the extent that Rassau Seafood GmbH has given a warranty as to quality or durability and damage from the breach of the warranty occurred;
- in cases of culpable injury of life, body and health.

8.3 In cases of minor and ordinarily negligence of Rassau Seafood GmbH its liability – unless Rassau Seafood GmbH is not already liable in accordance with clause 8.2. - is limited to infringements of essential contractual obligations. In those cases the liability of Rassau Seafood GmbH is limited to the typical damage foreseeable for Rassau Seafood GmbH upon conclusion of the contract or upon committing the infringement. Essential contractual obligations are all obligations which have to be performed because otherwise the proper execution of the contract is not possible and on which the customer relies upon and indeed is entitled to rely upon.

Rassau Seafood GmbH is not liable for damages exclusively located at the customer's risk area. Further, if and to the extent the damage is caused by the customer or one of his agents not following the instructions for use, for example stored the delivered goods in a wrong way, cooled them improperly or mixed with goods from other suppliers, changed the goods or used inappropriate materials or substances.

8.4 Claims for damage of the customer due to minor or ordinary negligence of Rassau Seafood GmbH in accordance with the above stated clauses 8.2 and 8.3 are excluded in any case, if not claimed in court within three months after rejection of the claims with a corresponding notice by Rassau Seafood GmbH or by its insurance company.

8.5 All claims for damages caused by negligence of Rassau Seafood GmbH in accordance with clauses 8.2 and 8.3 expire corresponding to the provisions in clauses 7.8 and 7.9. Deviating clause 7.8, the beginning of the limitation period for claims, which are not claims for defects, is determined by the statutory regulations.

8.6 The above mentioned exclusions and limitations of liability apply as well for the liability of Rassau Seafood GmbH, its institutions, employees, agents as well as the personal liability of institutions, employees and agents of Rassau Seafood GmbH.

9. Compliance with German Provisions

The goods comply with the legal provisions in Germany. If the customer wants to sell or use the goods in other countries than in Germany, he shall make sure, that the goods comply with the law in the respective foreign country.

10. Prohibition of Assignment

The assignment of the customer's claims against Rassau Seafood GmbH shall only be assigned to third parties after the written consent of Rassau Seafood GmbH.

11. Severability Provisions

Should one or more of the provisions of the contract concluded between Rassau Seafood GmbH and the customer be or become invalid, due to reasons not based on statutory provisions for General Terms and Conditions, the validity of the remaining provisions shall not be affected thereby. The invalid provision shall be replaced retroactively by the valid provision, which comes closest to the commercial purpose intended by the Parties when concluding the contract. The same applies in case of a gap in the General Terms and Conditions.

12. Place of Performance, Place of Jurisdiction, Applicable Law

12.1 Place of performance for payment and delivery is Hamburg, Germany.

12.2 Litigations shall only take place in front of ordinary courts. If customers are merchants, legal entities under public law or special funds under public law, the place of business of the customer shall be an additional place of jurisdiction. Lawsuits against Rassau Seafood GmbH can only be filed in the judicial district of Hamburg, Germany. Hamburg, Germany, is the place of jurisdiction as well, if the customer is a non-merchant with no general place of jurisdiction on national territory, moves his residence after conclusion of the contract out of the Federal Republic of Germany or Rassau Seafood GmbH does not know residence or habitual residence at the time of filing a lawsuit.

12.3 German law applies with the exclusion of the UN Convention on the International Sale of Goods (CISG).

13. Confidentiality

13.1 The customer is obliged to keep information about the know-how of Rassau Seafood GmbH regarding processing, recipe, origin and storage of the goods, he got to know during the commercial relationship, strictly confidential and shall use it only for the contractual purposes. This obligation is valid for the duration of the commercial relationship. Additionally, it is valid for another five years after termination of the commercial relationship. General public knowledge, which demonstrably was available to the general public at the time of disclosure or became available to the general public thereafter, was disclosed to the customer by a third party without any obligation of confidentiality, was already known to the customer at the time of disclosure, was developed independently from the knowledge of Rassau Seafood GmbH by the customer or if and to the extent the customer or one of the customer's employees is obliged under an act or by decision of a court or administrative authority to disclose Confidential Information and/or to inform about it, is not included in this provision.

13.2 In every case of a culpable breach of the obligation in accordance with clause 13.1 by the customer, he has to pay a contractual penalty set by Rassau Seafood GmbH with reasonable discretion. The customer may verify the reasons and the amount of the contractual penalty by judicial decision. The enforcement of further claims for damages is not affected.