



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

Version effective until 30 April 2018 (1.-9.3) – Please note our new version effective from 1 May 2018

1. Application of these Conditions

1.1 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. Any purchase conditions or other general conditions of the customer shall not apply.

1.2 Should any of the provisions of these conditions be or become invalid, it shall be replaced by the corresponding statutory provisions. Under no circumstances the affected provision shall be replaced by terms and conditions of the customer.

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

2. Conclusion of Contract

2.1 Offers made by Rassau Seafood GmbH are subject to change and non-binding.

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.

2.3 Oral side agreements do not exist.

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. Delivery dates and terms are estimated. An agreed delivery term is effective ex warehouse (INCO-Terms 2000).

3.2 In case of force majeure or other circumstances for which Rassau Seafood GmbH is not responsible – even if they occur with its suppliers – an agreed delivery date is reasonably prolonged as long as Rassau Seafood GmbH is prevented from effecting delivery. If such circumstances make the delivery or other performance impossible or unreasonable, Rassau Seafood GmbH shall be under no further obligation to effect delivery or performance. If the delivery is delayed for more than 1 month, Rassau Seafood GmbH and the customer are entitled to rescind from the contract. Any claims for damages of the customers are precluded within the limits of no. 7 (Liability) below.

3.3 Any damages of the customer arising from a delayed delivery for which Rassau Seafood GmbH is responsible, are limited to a maximum amount of 5% of the gross value of the respective part of the total delivery. In case of default in delivery, the customer may rescind from the agreement if delivery has not been effected within a reasonable performance period to be set by the customer. Any claims for default in delivery, in particular for damages, are excluded within the limits of no. 7 (Liability) below.

4. Shipping of Goods and Transfer of Risks

Delivery is effected by Rassau Seafood GmbH ex warehouse. The risk of transport and shipping is with the customer, even if Rassau Seafood GmbH accepts separately to bear transport costs or obtain transport insurance.

5. Prices and Payment Terms

5.1 Unless otherwise agreed, prices apply ex warehouse of Rassau Seafood GmbH (INCO-Terms 2000). In each case the V.A.T. in effect at the time of conclusion of the contract shall also be payable. Our prices already contain a discount for transport packaging removal. Payments are due 2 weeks after invoice date and without cash discount ("Skonto"). Payments are only effected if credited in time to Rassau Seafood's account.

5.2 As of the due date, any commercial customer is obliged to pay interest on the invoice amount with a rate of 8 % above the applicable "Basiszinssatz" (Base Interest Rate) as well as a cost contribution for each reminder in the amount of € 3.00. The customer is entitled to proof that Rassau Seafood GmbH has incurred costs per reminder in an amount less than € 3.00.

5.3 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.

5.4 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 the financial situation of the customer has deteriorated significantly or can objectively be expected to deteriorate significantly.

6. Quality and Warranty

6.1 Any public advertising or product description given by third parties and/or Rassau Seafood GmbH is not binding and shall not be considered as contractually agreed product specification. Product descriptions by Rassau Seafood GmbH do not constitute any guarantee or express representation, unless included in a specific separate agreement.

6.2 Rassau Seafood GmbH accepts no warranty in case of improper storage by the customer. Delivered goods must be protected against sunlight and temperature changes, and must be stored in a proper manner.

6.3 The customer is obliged to examine the delivered goods – or partial delivery – immediately, at the latest within 48 hrs after delivery, duly and at his costs, and to inform Rassau Seafood GmbH immediately (orally with written confirmation) of any defects or deficiency in quantity. If it is apparent that the goods are not in conformity with the contract description, the buyer may not remove them, nor have them removed, from the place of inspection before their kind and quality have been established conclusively in a survey report. Notice of any obvious defects or deficiencies in quantity must be given in a preclusive period of 60 hrs after receipt of the goods by the customer. Any warranty claims for obvious defects or deficiencies in quantities are precluded after this preclusive term has elapsed. Notice of any hidden defects must be given to Rassau Seafood GmbH immediately after detection.

6.4 Warranty claims of the customer are – at the option of Rassau Seafood GmbH – limited to return of goods against credit of invoice 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.

6.5 Any warranty claims of the customer are time-barred one year after transfer of risk (no. 4 above).

6.6 The above restrictions of customer's warranty claims in nos. 6.1, 6.2, 6.4 and 6.5 do not apply, if warranty claims are caused by intentional acts or gross negligence of Rassau Seafood GmbH, its representatives, employees or the vicarious agents, or if culpable acts of Rassau Seafood GmbH, its representatives, employees or vicarious agents have caused death or personal injury. Any further claims of the customer, in particular for compensation or damages, are excluded within the limits of no. 7 (Liability) below.

7. Liability of Rassau Seafood GmbH

7.1 The following restrictions and exclusions of liability apply for all contractual and all concurring tortuous claims.

7.2 Liability of Rassau Seafood GmbH for damages of any kind is excluded. This exclusion of liability does not apply for damages, which Rassau Seafood GmbH has caused by intentional acts or by gross negligence, for damages which result from death or personal injury as well as for damages which are caused by breach of fundamental contractual obligations.

7.3 In case of negligent breach of fundamental contractual obligations, the liability of Rassau Seafood GmbH – with the exception of damages arising from death or personal injury – is limited to such damage which is typical for the contract and reasonably be foreseeable.

7.4 Any claim for damages caused by slight negligence of Rassau Seafood GmbH are precluded, if the customer has not commenced judicial proceedings within a preclusion period of 3 months after the claim has been rejected by Rassau Seafood GmbH or its insurer, provided that with the rejection of claim the customer has been informed about such preclusion period.

7.5 The above exclusion and limitation of liability in nos. 7.1 to 7.4 also apply for the liability of Rassau Seafood GmbH for its representatives, employees or vicarious agents, as well as for the personal liability of such representatives, employees and vicarious agents. It does not apply to claims based on the Statute for Product Liability.

8. Retention of Title

8.1 The delivered goods shall remain the property of Rassau Seafood GmbH pending full payment of the invoice amount and any and all other payment claims of Rassau Seafood GmbH against the buyer under the mutual business relationship, regardless whether such claims exist at the time of delivery or arise thereafter.

8.2 The delivered goods under retention of title must be stored separately. In case of default on payment, the customer is obliged to return without delay the delivered 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.

8.3 Until revocation by Rassau Seafood GmbH, the customer is entitled to process or resell the delivered products in its ordinary course of business. Any and all claims arising from a resale or other disposition of the delivered goods are hereby assigned with all attached rights and securities to Rassau Seafood GmbH. Rassau Seafood GmbH hereby accepts this assignment. If the delivered goods are sold or disposed of together with other products, the above assignment is an assignment of first ranking amount which is equivalent of the invoice value of the delivered goods.

8.4 The customer is entitled to collect the assigned payment claims within its ordinary course of business, as long as the customer complies with its payment obligations to Rassau Seafood GmbH. Any assignment of such claims against the third party, any pledging or other encumbrance of the assigned claims are prohibited. The prohibition of assignment is also applicable to assignments for the purpose of debt collection.

8.5 If a customer does not comply with its payment obligations under the business relationship, if the delivered goods are ceased by a third party, or if the customer is required to apply for insolvency, the authority to process or resell the delivered goods ceases. The same applies for the authority to collect payment claims from the resale of delivered goods. The customer is obliged to inform Rassau Seafood GmbH immediately about any of such circumstances. Rassau Seafood GmbH is entitled to examine books and documents of the customer in order to determine the debtors from a resale of products and the amounts owed, unless the customer gives complete information to this effect without delay. Any amounts received by the customer after the authority to collect payment has ceased, are collected by the customer on behalf of, and must be immediately forwarded to Rassau Seafood GmbH.

8.6 If the actual value of all securities transferred to Rassau Seafood GmbH exceeds the total amount of the secured payment claims against the customer by more than 10 %, Rassau Seafood GmbH shall release partial securities at its choice to the customer upon first demand up to such limitation. The evaluation of securities shall be based on fails values achievable in an enforced sale.

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

9.1 Place of performance for payment and delivery is Hamburg.

9.2 Exclusive place of jurisdiction for both parties is Hamburg. Rassau Seafood GmbH is also entitled to file suit against the customer at customer's place of business.

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