



General Terms and Conditions of Sale, Delivery and Payment for Viba Sweets Group*

I. Validity of the terms and conditions

1.) These GTC for business customers apply to all deliveries and services to entrepreneurs within the meaning of Section 14 of the German Civil Code (Bürgerliches Gesetzbuch, BGB) – hereinafter referred to as the ‘Buyer’ – that are not processed via the online shop. Entrepreneurs within this meaning include all legal entities under public law, special funds under public law or entrepreneurs who, when concluding the purchase contract, are working in a commercial or self-employed capacity.

2.) Deliveries, services and offers from Viba sweets Group* – hereinafter referred to as the ‘Seller’ – shall be provided exclusively on the basis of the following General Terms and Conditions. These shall apply, as amended, to all future business relationships, even if they are not expressly agreed in each individual case. The General Terms and Conditions shall be deemed to have been accepted at the latest on acceptance of the goods or service. Counterconfirmations by the Buyer with reference to their general terms and conditions or terms and conditions of purchase are hereby expressly contradicted. Other general terms and conditions of the Buyer shall not apply even if the Seller has not expressly objected to them.

3.) Deviations from these General Terms and Conditions shall only be effective if the Seller confirms them in text form.

4.) In the event of changes, the GTC shall apply in the version valid when the contract is concluded.

II. Offers

1.) All representations of the Seller’s goods and services are non-binding. By ordering, the Buyer shall be submitting a binding offer to conclude a contract. The contract shall then be concluded by acceptance on the part of the Seller.

2.) All contracts and agreements, e.g. subsidiary agreements, shall require the confirmation of the Seller in text form; this shall also apply to orders placed through the Seller’s representative.

3.) Specified dimensions and quantities for loose goods are approximate. The fill level of the packaging may deviate from illustrations in catalogues or other advertising and sales documents, in particular for technical reasons.

III. Prices, packaging

1.) All prices are net prices to which statutory VAT at the rate in force at the time must be added. Additional services shall be charged separately.

2.) Unless otherwise agreed, prices shall be duty unpaid ex works, including standard packaging.

3.) With respect to the Buyer’s own designs and special designs, all print preparation costs shall be payable by them. The Buyer shall provide the Seller with the final artwork for printing and receive the galley or press proof for review and clearance for printing. The Seller shall not be liable for errors overlooked by the Buyer or for the accuracy and completeness of the text, unless these errors are obvious, or for minor colour deviations, insofar as these are reasonable for the Buyer. The Buyer shall give the Seller a binding order quantity, specifying the expected sales quantities; the packaging material in each case shall be ordered by the Seller according to this specification, where 10% over-delivery or under-delivery shall be accepted by the Buyer. Unaccepted small quantities that exceed this limit shall be reimbursed at the purchase price plus any printing or processing costs. The Buyer shall be entitled to demand the return of this unused packaging. Custom packaging shall be paid for by the Buyer in one sum after printing. The Seller and supplier must be notified in writing of any changes to the printed image three months in advance. Remaining stocks of the packaging material with the old printed image must be used up in this period or purchased at the offer price.

4.) The drafts, samples and documents created by the Seller are their intellectual property and may not be shared with third parties or made accessible in any other form. They may not be imitated or duplicated. Being invoiced for the designs shall not entitle the Buyer to imitate or use them.

5.) If a delivery is made or a service provided as instructed by the Buyer and this violates the rights of third parties, the Buyer shall be obliged to immediately indemnify the Seller against the resulting obligations and damages and to provide security for any further receivables.

IV. Transfer of risk, delivery, acceptance

1.) The risk of accidental loss and accidental deterioration of the item sold shall pass to the Buyer no later than the point at which the Seller has delivered the item to the freight forwarder, carrier or other person or institution responsible for carrying out delivery; this shall also apply if partial deliveries are made or if the Seller has taken on other services, such as delivery costs or carriage. At the request and expense of the Buyer, the Seller shall insure the delivery against theft, damage in transit, fire and water or other damage.

2.) The Buyer shall be in default of acceptance at the latest if they are not willing to accept contractual performance by the Seller or culpably delay delivery. In this case, risk shall be transferred to the Buyer at the latest on the day the Seller informs the Buyer that the goods are ready for dispatch. However, the Seller shall be obliged to take out the insurance requested by the

Buyer at the latter’s request. The Seller shall be entitled to demand a reasonable advance payment for any insurance and storage costs incurred.

3.) At the request of the Buyer, the Seller shall ship the goods to the place specified by the Buyer. The transport route and the mode of transport shall be determined by the Seller based on expediency.

4.) If a delivery is made on Euro pallets, the pallets must be immediately replaced in the same number and quality or returned carriage paid in the same number and quality within 30 days of delivery. If this deadline is not met, the pallets shall be charged to the Buyer at the Seller’s cost price.

5.) Irrespective of the regulation in paragraph 1, the Buyer shall be obliged to note any transport damage on the consignment note and to immediately inform the Seller thereof, sending a copy of the consignment note.

6.) Within Germany, delivery shall be free of charge for goods worth more than EUR 150.00; if the goods are worth less than EUR 150.00, we shall issue an invoice for the proportion of the freight costs within Germany as defined on submission of the offer. Additional costs for fast, express, express parcel and international deliveries shall be borne by the Buyer in the amount of the difference.

7.) At temperatures of more than 25°C, the Seller shall have the right to stop the transport with the usual freight forwarders. If the customer expressly wants the goods to be sent, they shall be required to bear the additional costs for the refrigerated transport needed for that purpose. The Seller shall not be liable for damage caused by weather conditions after leaving the production facility, unless it has acted intentionally or with gross negligence.

V. Delivery and performance time

1.) The Seller’s delivery and performance times shall be subject to proper, i.e. correct and timely delivery to the Seller itself; this shall not apply if the Seller is responsible for this circumstance.

2.) In cases of force majeure – examples of which particularly include fire damage, storms, floods, strikes, lawful lockouts, boycotts and disease (including epidemics and pandemics) – insofar as a risk level of at least ‘moderate’ has been defined by the Robert Koch Institute, the affected contracting party shall be released from their obligation to deliver, perform or accept for the duration and to the extent of the hindrance. This shall also apply if cases of force majeure affect the Seller’s suppliers or their sub-suppliers. This shall also apply if time limits or deadlines have been expressly agreed in writing or in text form. Such circumstances shall entitle the Seller to postpone the delivery or performance for the duration of the hindrance plus a reasonable start-up time or to withdraw from the contract in whole or in part because of the part that has not yet been fulfilled. Section 313 BGB shall be observed mutatis mutandis.

3.) If delivery or performance is delayed by more than one month for the reasons mentioned under 1.) and 2.), measured against the fulfilment time originally owed, the Buyer shall be entitled – after a reasonable grace period – to withdraw from the contract with regard to the part that has not yet been fulfilled, stating the reasons for this. If the delivery time is extended or the Seller released from their obligation, the Seller shall be liable to a limited extent according to the regulations under VII. In the cases set out in the above-mentioned items 1.) and 2.), the Seller shall be obliged to immediately inform the Buyer about the circumstances mentioned therein and the expected delays in delivery and performance, and, in the event of withdrawal, any consideration already paid must be reimbursed immediately.

4.) If delivery is delayed at the request of the Buyer, the Seller shall be entitled, after having set a reasonable deadline that has passed without result, to otherwise dispose of the delivery item and to supply the Buyer within a reasonably extended deadline, provided that the Seller announces this to the Buyer when setting the deadline.

5.) The Seller shall be entitled to make partial deliveries and provide partial services to a reasonable extent.

6.) For deliveries outside of the Federal Republic of Germany, the International Commercial Terms as amended shall apply; delivery is Free Carrier (FCA) our warehouse.

VI. Cancellation of orders, lump-sum compensation

The cancellation of an order shall require the Seller’s consent. In this case, the Seller shall be entitled to demand a processing fee of up to 5% of the total order value (net), including additional costs for special requests, without further proof of damage. This shall not apply if the Buyer proves that no damage was incurred or that the damage was significantly lower. This shall not exclude further and other claims; however, lump-sum compensation must be taken into account.

VII. Liability, claim for defects

1.) The following limitations of liability shall not apply to damage based on a grossly negligent or intentional breach of obligations on the part of the Seller, its legal representative or vicarious agent or in the event of injury to life, limb or health. The statutory provisions shall apply without restriction to these claims. Furthermore, the following limitations of liability shall not apply to any

*Scope of Application:

Viba sweets GmbH, Confitserie Heilemann GmbH, HUSSEL Confitserie GmbH, arko | HUSSEL GmbH.



Seller liability in the event of the fraudulent concealment of a defect, from the acceptance of a guarantee or a procurement risk and under the German Product Liability Act (Produkthaftungsgesetz).

2.) If the Seller, its legal representatives or vicarious agents are required to pay for damage caused by slight negligence on the basis of statutory provisions, notwithstanding the provision under VII. 1.), liability shall be limited to the breach of essential contractual obligations, such as those that the purchase contract, based on its content and purpose, is intended to impose on the Seller, or where the fulfilment of which is essential for the proper execution of the purchase contract and on compliance with which the Buyer regularly relies and may rely. This liability shall be limited to typical damage foreseeable at the time the contract is concluded.

3.) The Buyer must notify the Seller of any defects without undue delay, but at the latest within 48 hours of receiving the goods. Defects that cannot be discovered within the period even after careful inspection must be reported to the Seller immediately after discovery.

4.) The Buyer must make the rejected goods available for inspection by a representative of the Seller.

5.) If the complaint is justified, the Seller shall provide a replacement for the defective goods. If replacement deliveries are not made after a reasonable period, the Buyer can choose to reduce the purchase price or withdraw from the purchase contract. There are no other defect rights – in particular claims for damages – notwithstanding the regulation under VII. 1.).

6.) Warranty claims against the Seller may be asserted only by the direct Buyer and cannot be assigned.

7.) Defect claims shall lapse after 1 year.

VIII. Retention of title, security assignment

1.) The Seller is hereby granted the following securities until all receivables are settled – including all current account balance receivables – to which the Seller is entitled against the Buyer, now or in the future, for any legal reason: The goods shall remain the property of the Seller (reserved goods). The Buyer shall be entitled to sell the reserved goods in the ordinary course of business provided that it is not in default. With respect to receivables that arise from resale or another legal reason – e.g. insurance, tort – the Buyer assigns here and now all claims arising from the reserved goods, including all current account balance receivables, to the Seller as a precaution. The Seller revocably authorises the Buyer to collect in its own name receivables assigned to the Seller for the latter's account. The Buyer shall not be entitled to dispose of the receivable in any other way, e.g. by way of assignment. This collection authorisation can only be revoked if the Buyer does not properly meet its payment obligations. At the Seller's request, the Buyer must then inform its customers of the assignment. It shall also be obliged to inform the Seller of customer names and the amount of the assigned receivables. In addition, it must provide the Seller with all information the latter requires to assert its claim to the assigned receivables. If third parties take hold of the reserved goods, e.g. by seizure, the Buyer shall notify them of the Seller's title and immediately notify the Seller.

2.) In the event of breach of contract by the Buyer, in particular default in payment, the Seller shall be entitled to take back the reserved goods or, if necessary, to demand that the Buyer's surrender claims against third parties are assigned to the Seller. The Seller's taking back or seizing the reserved goods shall not constitute withdrawal from the contract.

3.) On full payment of all of the Seller's receivables from the business relationship, the Seller's title to the reserved goods and the assigned receivables shall automatically be transferred to the Buyer.

4.) The Seller undertakes to release the securities to which it is entitled under the above provisions (retention of title and assignment of security) at its discretion at the request of the Buyer to the extent that the value of the reserved goods not yet sold and the assigned receivables exceed the value of the receivables to which the Seller is entitled by more than 20%. The Seller shall be obliged to waive retention of title if the Buyer has indisputably settled all receivables in connection with the object of purchase and has provided other appropriate security for the remaining receivables from the current business relationship.

IX. Payment

1.) Invoices must be paid within 14 days of receipt. After this period, the Buyer shall be in default without a reminder to that effect, unless it is not responsible for the non-performance. 2.) Payment shall only be deemed to have been made when the Seller can dispose of the amount without objection and conditions. In the case of cheques, payment shall only be deemed to have been made when the cheque has been cashed. 3.) Payment using bills of exchange shall not be permitted. 4.) The Seller shall be entitled to charge interest at a rate of 9% above the base interest rate from the time the default occurs. The Seller shall otherwise be at liberty to assert a claim for compensation for any higher damage that has been specifically incurred.

5.) If the Buyer is in default, the Seller shall be entitled to claim a contractual penalty of 0.5% of the invoice value per day of default, but no more than 15% of the invoice value. The contractual penalty shall be offset against default interest.

6.) If the Buyer does not meet its payment obligations, in particular if its cheque cannot be cashed or if it stops making payments, the Seller shall have the right to declare the entire remaining debt due and to demand immediate payment. If the Seller becomes aware of other circumstances that call into question the creditworthiness of the Buyer, it shall be entitled to demand cash payment against return of the cheque. In these cases, the Seller shall also be entitled to demand advance payments and security deposits.

7.) The Buyer shall only be entitled to the offsetting of payments, refusal of performance or retention if its counterclaims have been finally established by a court of law or are undisputed.

8.) If several invoices are outstanding, payments shall be offset in line with statutory repayment provisions (Sections 366, 367 BGB).

X. Code of Conduct for Business Partners

The Buyer agrees to follow the Seller's Code of Conduct, which can be found at <https://www.viba-sweets.de/code-of-conduct>.

XI. Data processing

Our privacy policy can be found here: <https://viba-sweets.de/datenschutz/> (in German only)

XIII. Place of performance, applicable law, place of jurisdiction

1.) The place of performance and – in the case of merchants, legal entities under public law or special funds under public law – the place of jurisdiction for all claims arising from the business relationship and concerning the formation and effectiveness of contracts shall be the District Court of Meiningen. However, the Seller may also appeal to the courts competent for the Buyer's registered office.

2.) The law of the Federal Republic of Germany applies to these General Terms and Conditions of Sale, Delivery and Payment and to all other legal relationships between the Buyer and the supplier. The United Nations Convention of 11 April 1980 on Contracts for the International Sale of Goods (CISG or 'UN Sales Convention') shall not apply.

XIV. Severability clause

Should a provision in these General Terms and Conditions or a provision within the scope of other agreements be or become invalid or void, this shall not affect the validity of all other provisions or agreements.

*Scope of Application:

Viba sweets GmbH, Confitserie Heilemann GmbH,
HUSSELE Confitserie GmbH, arko | HUSSELE GmbH.