

# Terms of Delivery

of

## YOGI TEA GmbH

May 1<sup>st</sup>, 2022

### § 1 Scope of Application

- (1) Our TERMS OF DELIVERY apply exclusively. We do not accept terms that contradict or deviate from our terms unless we have agreed to their applicability expressly in writing.
- (2) Our TERMS OF DELIVERY are applicable only in relation to customers who deal with us in the scope of their commercial or vocational activities (entrepreneurs).
- (3) These Terms of Delivery replace all previous versions.

### § 2 Qualification

- (1) YOGI TEA GmbH is certified to the standards of "IFS Broker".
- (2) All YOGI TEA suppliers have undergone a qualification process in regard to food and/or product safety. Suppliers, which are neither IFS-certified nor certified to other GFSI-recognized standards like BRC and FSSC22000, are examined by YOGI TEA in an elaborated qualification process. Only if its result is satisfactory, a supplier will be approved by the Yogi Tea GmbH.

### § 3 Pricing

- (1) Our prices are net prices in Euro plus the statutory value added tax (if applicable).
- (2) We grant discount for early payment only, if agreed upon in writing.

### § 4 Minimum Order Value & Terms of Payment

- (1) The minimum order value for YOGI TEA GmbH Hot Tea products is 1.500 € net, unless agreed upon differently in writing.  
Ordering modalities for YOGI TEA® Cold Tea products ("RTD") are laid down in the "RTD Delivery Conditions". Latest version is applicable.
- (2) The purchase price is due within eight calendar days from the invoice date with no deduction, unless agreed upon differently in writing.
- (3) We make deliveries to new customers only after prepayment unless mutual agreement on other payment conditions has been reached.
- (4) Our customer may only initiate counterclaims against us, which have been established by a non-appealable court-decision or which we have acknowledged.

### § 5 Delivery and Examination

- (1) Products are delivered in the following manner:
  - YOGI TEA GmbH Hot Tea products in shipping units on Euro-pallets with only uniform layers
  - YOGI TEA® Cold Tea products ("RTD") according to the "RTD Delivery Conditions"

- (2) For ecological reasons we preferably ship full pallets. Adjustments to placed order volumes will only be made in consensus with the customer.
- (3) Place of delivery is our warehouse ("ex-factory"), unless agreed upon differently in writing.
- (4) Outwardly visible damages, wrong deliveries or shortfalls must be documented directly with the acceptance on the letter of consignment by a note describing the damages and the quantities concerned and the note must be confirmed by the signature of the driver of the delivery vehicle. We must be notified of the deviations without delay (including photos as proof), however not later than within 5 working-days after receipt of the shipment via email or by fax +49 40 423011-88.
- (5) Rejected products may only be returned after we have communicated our consent in writing by fax or email.

## **§ 6 Liability for Defects**

- (1) With respect to defects of quality and title (including wrong delivery and shortfalls) the statutory provisions apply, insofar as nothing different is laid down in the following. In any case, the special statutory provisions for the final delivery of the product to a consumer (recourse to the supplier in accordance with §§ 478, 479 German Civil Code) remain unaffected.
- (2) Claims of the buyer for defects require that they have met their statutory (§§ 377, 381 German Commercial Code) and contractual obligation to inspect and notify.
- (3) Where a defect of the purchased product is given, the customer is entitled to rectification by requiring us to fix the defect or to supply a new faultless product. In urgent cases the buyer has the right to correct the defect and require from us compensation for the necessary expenditure. We are to be informed about such self-rectification immediately, where possible in advance.
- (4) If the rectification fails or a period fixed by the buyer for the rectification has passed in vain or is not required under statutory law, the buyer is entitled after his choice to execute the rescission of the contract or to reduce the purchase price. There is, however, no right of rescission based on a negligible defect.
- (5) Claims of the buyer for compensation of damages or expenditures in vain are only given in accordance with the following § 7 while all others are excluded.

## **§ 7 Further Liability**

- (1) Unless otherwise stipulated in these TERMS OF DELIVERY, we are liable for the violation of contractual and extra contractual obligations in accordance with the respective statutory law.
- (2) We are liable for damages – for whatever legal reason – in cases of intent and gross negligence. In cases of simple negligence, we are liable only for
  - a) damages resulting from the violation of life, body, or health,
  - b) for damages resulting from the violation of a contractual core obligation (obligation, the performance of which is necessary to allow at all for the orderly fulfilment of the contract and in the observance of which the contractual partner will typically trust and on which they may trust); in this case our liability is limited to the compensation of foreseeable and typically occurring damages.
- (3) The limitations of liability resulting from sub-paragraph (2) do not apply, insofar as we maliciously conceal a defect or have given a guarantee concerning the quality of the product. The same applies for claims of the buyer in accordance with the Product Liability Statute.

- (4) For a violation of an obligation, which is not a defect, the buyer may only recede or terminate the contract if we negligently violated the obligation.
- (5) Insofar as our liability for damages is excluded or limited, this applies also with respect to the personal liability of our employees, representatives, and subcontractors.

## **§ 8 Statute of Limitation**

- (1) The statute of limitation for claims arising from defects of quality or title is one year after the delivery. If a declaration of acceptance is agreed this period begins with this declaration. The special statutory provisions for hand over claims of third parties based on property rights (§ 438 Subchapter 1 Sentence 1 German Civil Code), in cases of maliciousness of the seller (§ 438 Subchapter 3 German Civil Code) and for claims in the recourse to the supplier in cases of final delivery to a consumer (§ 479 German Civil Code) remain unaffected.
- (2) The aforementioned statutes of limitation apply as well to contractual and extra-contractual claims of the buyer to damages, which are based on a defect of the product, if the application of the regular statutory statute of limitation would not lead to a shorter period of limitation. The statutes of limitation of the Product Liability Code remain in any case unaffected. For claims for the compensation of damages in accordance with § 6 the statutory statutes of limitation apply in any case.

## **§ 9 Reservation of Ownership Rights**

- (1) We reserve the ownership of the sold products until we have received all payments due under the sales contract. In case of a violation of contractual obligations by our customer, in particular delayed payment, we are entitled to require the return of delivered products. If we require the return of the product this is our rescission from the contract. After the recall of the product, we are authorised to its realization. The customer is to be given credit for the proceeds from the realization, minus the appropriate costs of the realization.
- (2) The customer is entitled to sell the purchased product in the due course of the customer's business.
- (3) Until the full settlement of our claims, all claims of our customer arising from the disposition over our products towards his customers or third parties are assigned to us up to the amount of our full invoiced claim (including taxes and possibly accrued interest).
- (4) Despite the transfer of the claim to us our customer remains authorised to collect it. We may directly demand payment of the transferred claim where the customer does not fulfil all financial obligations, in the case of cessation of payment, or when insolvency has been filed for.
- (5) If the preceding is the case, we can require that the customer communicates us the transferred claims and their debtors, as well as all data useful for the collection of the claims, and that they inform the debtors of the transfer of the claims to us.
- (6) In case of any seizing of products or claims by a third party or other interferences our customer must inform us immediately in writing, so that we can raise an ownership complaint. As far as the third party is not able to refund to us the court costs and other costs the complaint procedure the customer is obligated to do so.
- (7) We commit ourselves to release collateral upon the requests of the buyer as far as their value exceeds the claims which are secured more than twenty percent.

## **§ 10 Marketing**

- (1) Our logos, texts, pictures, posters, diagrams, and the like may exclusively be used for the promotion of our products and their style and content may not be significantly altered. Their use should be coordinated with us. Any such use may not violate applicable local law. Objections to the use of any types of marketing materials shall be communicated by the customer to us without delay. We can require the discontinuation of the distribution of materials or any other use at any time.
- (2) Registered trademarks may be reproduced only in such a way, as they are registered. With each reproduction the fact of the registration must be indicated.
- (3) Provided that these terms and the current version of YOGI TEA GmbH's 'Online Communication Guideline' are complied with, the customer may sell our products online via its own website, including where such sales are generated through permitted forms of online advertising (e.g., online display, search and social media advertising). It is not permitted to sell our products on a third-party online marketplace, except as expressly authorised by YOGI TEA GmbH.
- (4) If selling YOGI TEA GmbH products to trade customers for onward retail sale, the customer must inform such trade customers that for their retail sale of those products they must comply with the afm. 'Online Communication Guideline'.

## **§ 11 Choice of Law, Arbitration Procedure**

- (1) German Law applies excluding the rules on renvoi in the rules on the conflict of laws and excluding the UN Convention on Contracts for the International Sale of Goods.
- (2) If the customer is a merchant, any dispute, controversy, or claim arising out of, or in relation to this contract, including regarding the validity, invalidity, breach, or termination thereof, shall be resolved by arbitration in accordance with the Swiss Rules of International Arbitration of the Swiss Arbitration Centre in force on the date on which the Notice of Arbitration is submitted in accordance with those Rules. The number of arbitrators shall be one or three. The seat of the arbitration shall be Basel, unless the parties agree on a city in another country. The arbitral proceedings shall be conducted in English. We are, however, entitled to file court actions where the customer is registered in the commercial register or has a place of business.

## **§ 12 Severability Clause**

- (1) The invalidity or the ineffectiveness of a provision in this agreement does not affect the remaining provisions.
- (2) The parties will replace the void provisions by others which are in economic and legal terms as similar as possible.

- End of the Terms -