

TERMS AND CONDITIONS OF PURCHASE



GENERAL TERMS AND CONDITIONS OF BACKWELT PILZ GMBH

1. SCOPE

Ordering of raw materials, packaging materials, semi-finished or finished products ("Products") by Backwelt Pilz GmbH ("Pilz") shall be governed solely by the following General Terms and Conditions ("Terms"). The Supplier herewith expressly confirms that its own general terms and conditions, if any, shall not apply; neither shall they apply in the event that Pilz has failed to object to the application of any other general terms and conditions. It is understood and agreed that any reference made by Pilz to any letters by the Supplier in any correspondence with the Supplier shall not be interpreted as an acceptance of such Supplier's general terms and conditions.

2. ORDERS

Pilz shall order products by way of order notes which state the quantity and delivery date requested by Pilz. The Supplier shall confirm such order by stamping and signing it and sending it by fax or e-mail to Pilz. If the Supplier is unable to deliver on the date and/or quantity specified by Pilz, the Supplier shall immediately inform Pilz of such circumstance.

Before receiving the order response, Pilz shall be free at any time to cancel such order without giving any reasons therefor.

No arrangements, collateral agreements, reservations, changes or additions shall be valid except upon the written consent of Pilz. Similarly, any assignment of the order to a third party or subcontracting of the ordered shipment to a third party shall require the prior written consent of Pilz.

3. DELIVERIES

Raw materials and packaging materials shall be delivered solely between 8:00 hrs and 14:00 hrs on Mondays through Thursdays and between 8:00 hrs and 12:00 hrs on Fridays. Semi-finished and finished products shall be delivered at the times and to the place specified in the order.

To the extent that raw materials are not delivered by tank lorries, they shall be delivered solely on clean, undamaged plastic H1 pallets. The plastic pallets supplied shall be swapped at every delivery. All raw materials shall be wrapped in an additional layer of plastic sheeting and shall be free of any dirt or other pollution.

Packaging materials as well as semifinished and finished products shall be delivered solely on EUR-pallets, and the Supplier undertakes to comply with the "pallet-for-pallet" procedure. If the Supplier refuses to swap EUR-pallets upon delivery, such pallets shall become the property of Pilz. The Supplier undertakes to deliver products only on immaculate and undamaged original EUR-pallets which carry the EUR logo.

Each individual pallet of shipped products shall, moreover, carry a proper label as specified by Pilz. The Supplier furthermore undertakes to ship only properly packaged pallets wrapped in cling film and to ensure that pallets are not stacked on top of each other. If products do not meet these requirements, Pilz (or its authorised agent) shall be free to refuse acceptance of such delivery.

When delivering raw materials it should be considered that the goods receiving department is situated on the ground floor so that the delivering lorry must have a lifting platform. Packaging materials as well as semifinished and finished products (merchandise) may be unloaded at the loading ramp at the Pilz premises.

When delivering refrigerated or deep-frozen goods it must be ensured that the cold chain is not interrupted during transport; a temperature check will be performed upon acceptance.

4. PRICES, INVOICING AND PAYMENT

The prices indicated in the order are fixed prices (exclusive of VAT) which shall include any and all expenditures of the Supplier in connection with the delivery of goods and provision of services. This shall include, without limitations, all costs for packaging, transport and insurance of goods and packaging materials supplied as well as all waste disposal costs, if any, and the cost, if any, of participating in the ARA (or a similar waste recycling) system.

Unless otherwise provided for in the order, prices shall be "DAP Delivered at Place", or in the case of non-domestic Suppliers or deliveries from abroad "DDP Delivered Duty Paid", each in accordance with the INCOTERMS 2010.

Upon executing the delivery, the Supplier undertakes to furnish Pilz with an auditable invoice which complies with the provisions of the Austrian VAT Act.

Any invoices issued by the Supplier shall be paid by Pilz not later than 30 (thirty) days after receipt of a lawful and contractual invoice subject to receipt of a fault-free shipment.

In the event that an invoice has an objective or computing fault it shall not constitute a due claim against Pilz on the part of the Supplier and may be returned by Pilz to the Supplier. In such event, the time limit for payment shall start only on receipt of a properly corrected invoice. If the shipment shows any faults or defects, Pilz shall be entitled to refuse payment of the invoice furnished by the Supplier until the order has been properly executed.

Pilz shall be entitled to offset own claims which Pilz may have against the Supplier against claims on the part of the Supplier, even in the event that a claim by Pilz against the Supplier should not yet be due and payable.

If partial shipments have been agreed, any claims on the part of the Supplier for such partial shipments shall become due and payable only upon delivery of the last partial shipment.

5. SUPPLIER'S QUALITY COMMITMENTS

Regarding the orders placed by Pilz, the Supplier shall represent and warrant as follows:

- All products furnished by the Supplier shall comply with any and all applicable Austrian and EU laws, regulations, directives and product specifications.
- The cool or cold chain has never been interrupted during production and transport of the shipped goods (suitable proof in the form of temperature protocols shall be furnished to Pilz at its request).
- All products delivered to Pilz shall be free of any harmful physical foreign substances.
- None of the products need to be labelled under any applicable food regulations governing genetically modified food (at present: Regulation (EC) No. 1829/2003 and Regulation (EC) 1830/2003).
- All products delivered to Pilz shall, without limitations, have all contractually agreed properties and properties covenanted by the Supplier. All raw materials delivered to Pilz and, where applicable, all their component parts shall comply with the guarantees and/or indications of origin stated by the Supplier (including, without limitations, grown by organic farming, originating in Austria, etc.).

6. WARRANTY AND DAMAGES

In the event of a defect (of any kind whatsoever), Pilz shall be entitled to assert claims for warranty or damages against the Supplier. Such claims shall arise, without limitations, if the Supplier fails to meet the quality commitments stated in Section 5. above to their fullest extent or meets them subject to limitations.

Warranty claims or claims for damages in connection with defects shall be filed not later than 24 (twenty-four) months after delivery to Pilz. In the case of latent defects, this period shall commence only when a defect has become recognisable, but not earlier than upon Pilz's acceptance of the delivery. In the case of a defect of title, the said period shall commence on the day Pilz becomes aware of such defect of title.

If the Supplier opts to remedy defects, the said period shall start again after each attempt at remedy on the part of the Supplier.

Sections 377 f of the Austrian Business Enterprise Code (UBG) shall not apply in the relationship between Pilz and the Supplier. Accordingly, Pilz shall be entitled to assert warranty claims and claims for damages even if it fails to file a complaint in respect of a defect.

If any products delivered by the Supplier are defective, Pilz may, at its discretion, request goods in replacement or repair of the defect or a reduction of the price as well as damages or rescission rather than repair. In the event that the Supplier fails promptly to comply with Pilz's request to meet warranty obligations, Pilz shall be entitled, after a reasonable period, to have defects repaired at the Supplier's cost.

The Supplier shall, moreover, be obliged to fully compensate Pilz for any and all loss, cost or expenditure arising to Pilz in connection with a defective shipment, including but not limited to losses by way of the cost of disposal, downtimes, loss of production or investigation costs, and to fully indemnify and hold Pilz harmless for any and all third-party claims in connection with any incidence of defects.

7. PRODUCT LIABILITY, PRODUCT MONITORING AND RECALLS

In the event that Pilz should be held liable under the provisions of the Product Liability Act and such claim of liability should be based on defects in products supplied to Pilz, the Supplier undertakes to fully indemnify and hold Pilz harmless for any and all third-party claims in this connection (including but not limited to third-party claims for damages as well as legal costs, if any, and expert fees).

The Supplier furthermore undertakes to comprehensively monitor the products supplied to Pilz and to promptly notify Pilz in the event that shipped products should be found to be defective.

In the event that Pilz receives such a notice from the Supplier or itself identifies a defect in the Supplier's products, Pilz shall recall products (if they are harmful) which contain raw materials or semifinished or finished products furnished by the Supplier. If such a recall should be carried out the Supplier undertakes to compensate Pilz for any and all expenditures, costs and losses (including but not limited to the cost of disposal or the cost of expert opinions) and lost profits (including but not limited to the consequences of delisting) arising to Pilz in this connection and to fully indemnify and hold Pilz harmless for all of the above.

The Supplier undertakes to mark all products supplied to Pilz in a manner so as to ensure traceability of deliveries (batches) and to keep suitable reference samples. Such reference samples shall be handed over to Pilz (free of charge for Pilz) upon Pilz's request.

Pilz (or a third party authorised by Pilz) shall be entitled to perform audits at the Supplier's production facilities at any time and without prior notice. The Supplier moreover herewith confirms that Pilz's customers shall be similarly entitled to perform such audits at any time at the Supplier's production facilities.

8. ON-DISCLOSURE

The Supplier undertakes absolutely to keep confidential the existence of a contractual relationship with Pilz as well as any of Pilz's business or trade secrets (including but not limited to production methods, recipes and existing production facilities) which may become known to the Supplier in the course of supplying products to Pilz.

The Supplier furthermore undertakes to protect Pilz's intangible property rights (including but not limited to proprietary rights and copyrights). If the Supplier should be furnished with designs or brands (including but not limited to logos) protected by Pilz, the Supplier undertakes to use such designs or brands solely within the scope of shipments to Pilz and not to pass on to any third party such designs or brands or products bearing such designs or brands.

In the event that the Supplier should breach any of its obligations under this non-disclosure clause, the Supplier shall be liable to Pilz for any and all losses arising thereby, including but not limited to lost profits, regardless of the degree of the fault due to the Supplier.

9. RESERVATION OF TITLE

It is expressly understood and agreed that Pilz shall not recognise any reservation of title by any third party with regard to raw materials or packaging materials furnished. Any and all products delivered to Pilz shall become the unconditional property of Pilz upon their handingover to Pilz.

10. APPLICABLE LAW AND VENUE

The contractual relationship between Pilz and the Supplier shall be governed solely by Austrian law (excluding the provisions of International Private Law).

Any dispute arising from or in connection with the delivery relationship shall be settled solely by the court which has jurisdiction with regard to subject matter and is locally competent at the registered seat of Pilz.