

CONDITIONS OF SALE FOR BUSINESS



GENERAL TERMS AND CONDITIONS OF SALE FOR BUSINESS TRANSACTIONS WITH BACKWELT PILZ GMBH (below: Pilz)

Within the scope of its sale of goods to customers, Pilz shall contract solely on the basis of these General Terms and Conditions. The customer hereby confirms that the validity of its own opposing or differing General Terms and Conditions (of Sale or Order) shall be explicitly excluded. If Pilz should remain silent after receiving opposing or differing general terms and conditions, this must not be seen as an acknowledgement of such general terms and conditions.

If goods are sold within the scope of the “Click and Collect” system, these General Terms and Conditions shall apply subject to the special provisions provided in Item 11. below.

1. ORDERS AND ENTITLEMENT TO CONTRACT

Any offer made by Pilz shall be non-binding. Orders from customers shall be submitted in written form and require to be acknowledged in writing by Pilz or by delivery of the ordered goods. Acknowledgement on the part of Pilz shall bring about a contractual relationship with Pilz. Acceptance of an offer shall not give rise to a continuous obligation between Pilz and the customer, unless otherwise agreed. Any employees of Pilz shall act solely as (non-representing) agents, unless they have been explicitly and in writing authorised by Pilz to conclude contracts. For reasons of certainty, Pilz shall at all times be entitled to require a written confirmation of any order.

2. COLLECTION OF GOODS

All goods ordered from Pilz shall be collected by the customer during the working hours kept by Pilz (Mondays to Thursdays between 8:00 hrs and 16:00 hrs and Fridays between 8:00 hrs and 12:00 hrs), where Pilz shall announce the date and time of collection in its order acknowledgement. Goods shall be collected by the customer at the date and time notified by Pilz. As a rule, Pilz will not load or deliver goods. In the event that loading or delivery of goods should be individually agreed with the customer, the latter shall bear the risk ex works. Such delivery shall thus be made uninsured and at the customer’s risk ex works.

Pilz shall be entitled to change the ordered amounts or batches if required due to production or packaging reasons, but shall inform the customer in good time. Any dates and times of delivery exceptionally notified by Pilz (see previous paragraph) shall as a rule be non-binding, unless explicitly otherwise agreed in a given contract.

3. DEFAULT IN ACCEPTANCE

If the customer defaults in accepting goods (failure to collect goods, see Item 2. above), Pilz shall, at its discretion, be free to rescind the contract subject to a grace period of two (2) weeks.

In case of a default in acceptance, the customer shall have to compensate Pilz for any and all losses arising from such default, including but not limited to any storage and disposal costs, regardless of whether Pilz rescinds the contract. Moreover, the defaulting customer shall have to pay any higher list price applicable on the day of the actual collection of the goods, regardless of any agreement made in an individual contract.

4. PRICES

The customer shall be obliged to pay the price for the ordered goods according to the price list applied by Pilz on the day of the order plus VAT, unless another price has been explicitly agreed with the customer.

Pilz reserves the right to make changes to the said price list, for reasons including but not limited to changes in transport or labour costs, or changes in the economic framework conditions. All prices shall be net, without VAT, ex works, and shall not include any costs for packaging, storage, transport or disposal of the goods. Pilz will provide standard euro-pallets on loan. If such pallets are not returned by the customer with three months of collection of the goods, Pilz shall be entitled to charge € 10.00 (ten euros) for each pallet.

5. PAYMENT

Any goods supplied by Pilz shall be paid without any deduction not later than eight (8) days of the date of the invoice. In the event of a default in payment, the customer undertakes to pay default interest of a rate applicable for business transactions (Section 352 UGB [Austrian Commercial Code]).

The customer shall not be entitled to offset any counterclaims against claims for payment to Pilz or retain any payment (regardless of the cause), unless such counterclaims are acknowledged by Pilz or finally established by a court.

6. RESERVATION OF TITLE

Pilz shall retain title to all goods supplied until the full price has been paid by the customer (reservation of title).

If the customer resells any goods, it undertakes to assign to Pilz any claims resulting from such resale subject to the reservation of title by Pilz and to clearly inform such customer's contractual partner upon entering the contract that the goods are subject to a reservation of title, and to have the contractual partner enter an appropriate note on the assignment in its books. The customer undertakes to store the goods bought by it with the diligence of a prudent business manager and to bind this obligation over to its contractual partner.

7. COMPLAINTS, LIMITATION

The customer shall promptly check all goods collected by it for any defect, damage or shortfalls and notify Pilz immediately of any complaints (notice of complaint under Section 377 UGB). If the customer fails to complain it shall lose the right to file claims for warranty, for damages due to the defect and claims from a mistake as to the goods being free of any defect.

If the customer complains to Pilz about a defect, it shall have to prove that the cold chain was completely and properly maintained. In derogation of Para 1 of Section 933 ABGB (Austrian Civil Code), it is understood and agreed that any and all claims due to defects due to causes within the control of Pilz (including but not limited to warranty and damages) shall become statute-barred one year after the earliest collection date notified to the customer.

8. LIABILITY LIMITED TO INTENT AND GROSS NEGLIGENCE

Any liability of Pilz shall be limited to intent and gross negligence. Pilz shall not in any event be liable to compensate a purely pecuniary loss or lost profit, irrespective of the fault, if any, of Pilz.

9. THIRD PARTY RIGHTS

If production is carried out according to the customer's information or instructions, thereby breaching any third-party patent rights, design rights or trademark rights whatsoever, the customer shall be liable to Pilz for any loss or lost profit, if any, accruing to Pilz.

10. MISCELLANEOUS

The customer undertakes not to discuss with or disclose to or inform in any way whatsoever any third party of any trade secrets or other confidential information about Pilz, any details about Pilz products, services and production methods, and to ensure that all its employees and agents are bound over to this non-disclosure obligation. This non-disclosure obligation shall survive the termination of the contractual relationship between Pilz and the customer.

The place of performance of any and all obligations between Pilz and the customer shall be Schrems in Lower Austria. Any disputes arising between Pilz and the customer shall be settled by the court which has factual and local jurisdiction for Schrems/Lower Austria.

Any claims arising from or in connection with the contractual relationship between Pilz and the customer shall be settled under Austrian law (expressly excluding the conflict of law provisions).

No oral collateral agreement, supplement or amendment of these General Terms and Conditions or other order documents shall be valid except when made in writing and signed by all parties. This shall also apply to the requirement of the written form.

If any provision(s) of these General Terms and Conditions should be or become ineffective, this shall not affect the effectiveness of the other provisions. In such an event, the contracting parties agree to replace the ineffective provision(s) by one or more contractual provisions which is/are as near as possible in content to the ineffective provision(s). The customer understands and agrees that the data disclosed to Pilz for the purpose of performing the contractual relationship shall be saved by way of automated data processing.

11. SPECIAL PROVISIONS FOR “CLICK AND COLLECT”

If goods are sold through the “Click and Collect” system, the provisions of Items 1. through 10. of these General Terms and Conditions shall apply, except as otherwise provided in this Item 11.:

- Orders shall be given by sending a filled-in online order form to Pilz, specifying the type and quantity of the baked goods ordered and the day of collection.
- The order form shall be sent to Pilz not later than one workday before the day of collection.
- Incoming orders shall be acknowledged by Pilz by way of an electronic acknowledgement to the customer, with a contractual relationship brought about only upon sending this electronic acknowledgement. If Pilz fails to respond to incoming orders (for whatever reason) and does not send an appropriate acknowledgement to the customer, the customer must not deduce that a contractual relationship has been brought about.
- Ordered baked goods may be collected from the premises of Pilz only on the following days and times: Mondays and Wednesdays from 8:00 hrs to 16:00 hrs, and Fridays from 8:00 hrs to 12:00 hrs.
- Due to operational circumstances at Pilz, ordered baked goods may be collected solely on the days specified in the order form from the premises of Pilz. Any baked goods not collected on such day shall be otherwise disposed of by Pilz. If the customer should not be able to collect its goods on the specified day, it undertakes to inform Pilz as soon as possible.
- Collected baked goods shall be paid upon collection either in cash or by card (credit or debit card).