

# MIMI'S GARDEN

## ORGANIC

### **General Terms and Conditions**

of

Glücksmoment GmbH

#### I. Scope of Application

Any deliveries, services and offers by Glücksmoment GmbH – hereinafter called "Supplier" – shall exclusively be performed under the following general terms and conditions, which conditions shall also apply to all future business relations even if not expressly agreed again. Such terms and conditions shall be deemed accepted at the latest upon taking delivery of the goods or service. Any counterconfirmations by the customer with reference to its general terms and conditions or its conditions of purchase are hereby expressly rejected.

#### II. Offers

Any offers by the Supplier shall be subject to change without notice and not binding. This shall also apply to all indications of measure, weight and contents in the Supplier's catalogues, leaflets and price lists.

#### III. Prices, Packing

1. All prices are net prices to which the applicable legal turnover tax has to be added. Any additional deliveries and services shall be invoiced separately.

2. Unless otherwise agreed upon, prices are duty unpaid ex works, including normal packing.

#### IV. Acceptance, Delivery, Time of Delivery, Passage of Risk

1. The customer shall be obligated to take delivery of the goods. As a major duty of performance within the scope of the interrelation, the obligation to take delivery shall be performed immediately.
2. Any delivery and performance dates specified by the Supplier shall be subject to proper, i.e. correct and on-time delivery to the Supplier; they shall be deemed met when readiness for shipment at the Supplier's plant is announced.
3. Passage of risk to the customer is at the latest upon shipment of the goods; this shall also apply in the case of part shipments or if the Supplier has assumed further obligations, e.g. the cost of transportation or the delivery. Notwithstanding the aforesaid, the customer shall be obligated to note any transport damage in the consignment note and notify the Supplier of such damage without delay by sending it a copy of such consignment note.
4. The Supplier shall insure the consignment against theft, transport damage, fire damage, damage by water and other damages at the request and expense of the customer.
5. At the customer's request, the Supplier shall deliver the goods to the location specified by customer. The shipping route and the shipping means are fixed by the Supplier under convenience aspects.
6. In case shipment is delayed due to circumstances the customer is responsible for, passage of risk to the customer shall be as from the date the goods are ready for shipment. After unsuccessful expiration of a reasonable time limit fixed by the Supplier, the latter shall be entitled to dispose of the delivery item otherwise and supply the customer within a reasonably extended time limit.
7. The Supplier shall not be responsible for any delays in delivery and performance due to force majeure and to circumstances considerably impeding the Supplier's performance or making it impossible for it to perform – including in particular strike, lock-out, boycott, official regulations, even if such events occur with suppliers of the Supplier or such suppliers' subcontractors – even in the event that time limits and dates have been agreed. Such events shall entitle the Supplier to postpone delivery or performance by the duration of the impediment plus a reasonable start-up period or to cancel the contract in whole or in part with regard to the non-performed part, provided that the customer is informed of such impediment without delay. In the case of an impediment lasting for more than one month, the customer shall, after

expiration of a reasonable period of grace, be entitled to cancel the contract with regard to the non-performed part. In case the period of delivery is extended or the Supplier is discharged of its obligation, the customer may not deduce any claims for damages from this.

8. The Supplier shall to a reasonable extent be entitled to part deliveries and part performance.
9. In case delivery is on industrial pallets, such pallets have to be replaced immediately in the same quantity and quality or returned, freight prepaid, in the same quantity and quality within 30 days from delivery. Otherwise, the Supplier shall be entitled to charge the pallets to the customer at cost price.

#### V. Warranty

1. Only the Supplier's product specification shall generally be deemed agreed as the goods' quality. Any additional public statements, sales talk or advertising by the Supplier shall not be deemed a quality description of the goods in conformity with the contract. The Supplier does not grant any guarantee for legal purposes.
2. The customer shall inform the Supplier in writing of any defects immediately, however, at the latest within eight days of receipt of the goods. Any defects which the customer is not able to discover within the time limit of eight days even under careful inspection have to be communicated to the Supplier in writing immediately after discovery.
3. The customer agrees to give the Supplier forthwith the opportunity to convince itself of the defects of the non-conforming goods by inspection.
4. In the case of any justified complaints, the Supplier shall replace the defective goods or deliver any missing quantities subsequently (subsequent performance). In case substitute delivery or subsequent delivery should fail after a reasonable time, the customer may at its option either request a reduction in the purchase price or withdraw from the contract; this shall also apply if the Supplier refuses subsequent performance or in case such subsequent performance should be unacceptable for the customer. The right to withdraw from the contract shall be excluded in the case of any only minor violation of contract.

5. Any warranty claims shall become statute-barred after the expiration of one year from the date of delivery, unless the Supplier has maliciously concealed a defect. This shall also apply to any defects within the meaning of Clause 2, Subclause 2.
6. Only the actual customer shall be entitled to any warranty claims vis-à-vis the Supplier, which claims are non-assignable.
7. The above clauses shall finally regulate the Supplier's warranties.

## VI. Reservation of Ownership

1. The Supplier is granted the following securities by the customer until all the claims – including any outstanding balance from current account – the Supplier is now and in future entitled to on whatever legal basis have been satisfied:  
The goods remain the property of the Supplier (conditional commodity).  
The customer shall be entitled to sell the conditional commodity in the due course of business unless it is in default. The customer shall even now fully assign any claims arising from resale or any other legal ground, e.g. insurance, tortuous act, with regard to the conditional commodity, including all claims from current account, to the Supplier for securing purposes; the Supplier shall accept such assignment. The Supplier shall revocably authorise the customer to collect the claims assigned to the Supplier for account of the Supplier in its own name. The customer is not entitled to dispose of the claim in another way, e.g. by assignment. The authorisation to collect may only be revoked if the customer does not meet its obligations properly. At the Supplier's request, the customer has to inform its buyers of the assignment. The customer shall further be obligated to provide the Supplier with the names of the buyers and the amount of the assigned claims and furnish any information required to assert such assigned claims.
2. In case the customer should not properly or not at all fulfil its contractual obligations, the Supplier may, after a previous warning and the unsuccessful expiration of a time limit of fourteen days, withdraw the authorisation to collect and disclose the claims to the third-party debtors as well as request the surrender of possession of the conditional commodity and, where appropriate, the assignment of the customer's right to recover possession against any third parties.

3. In the event of third-party access to the conditional commodity, for example by attachment, the customer has to draw attention to the Supplier's ownership and inform the latter immediately.
4. Apart from the Supplier's ownership of the conditional commodity, any assigned claims will automatically be transferred to the customer upon complete payment of all the Supplier's claims from the business relationship.

## VII. Payment

1. All invoices have to be paid without deduction at the latest within **14** days after the date of invoice.
2. Any payment shall not be deemed effected until the amount is free from any pleas and unconditionally available to the Supplier. If payment is effected by cheque, payment is not to be deemed effected until the drawee bank has paid the cheque.
3. Payment by bills of exchange is not permissible.
4. In the event of the customer's default, the Supplier shall be entitled to demand immediate payment in cash. In case the Supplier learns after conclusion of contract that the customer's financial situation has essentially deteriorated, it shall also be entitled to demand immediate payment in cash against return of cheques. In such cases, the Supplier shall also be authorised to demand advance payment and the provision of collateral.
5. The customer shall only be entitled to setoff provided that its counterclaims are undisputed or have been recognised finally.

## VIII. Limitation of Liability

1. Except for any damages caused by injury to life, body and health, the Supplier shall only be liable with regard to damages caused by itself and/or its vicarious agents in the case of an intentional or gross negligent breach of duty, unless a contractual duty which is essential due to the nature and subject of the contract is violated.

2. In the case of any slightly negligent breach of duty, the Supplier's liability shall be restricted to the typical foreseeable average damage.

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

1. The material laws of the Federal Republic of Germany shall apply to the present general terms and conditions as well as to any other legal relationship between the customer and the Supplier.
2. The place of jurisdiction for all legal disputes arising directly or indirectly from the contractual relationship, its materialisation or its interpretation, shall be Arnsberg, provided that the customer is a businessman within the meaning of the German Commercial Code, a legal public law entity or public special assets, or has its domicile abroad. The parties to the agreement shall also be entitled to file a suit at the defendant's place of general jurisdiction.
3. The place of performance with regard to all claims arising from the contractual relationship is D-59494 Soest.

X. Partial Invalidity

In case any of the provisions of these terms and conditions or any provision within the context of other agreements should be or become ineffective, this shall not affect the validity of the other provisions or agreements.