

GENERAL CONDITIONS OF
SALE ROQUETTE GmbH (Version 2023)

All sales by Seller to Customer shall be exclusively governed by these General Conditions of Sale, unless otherwise stated in writing by Seller.

1. DEFINITION

“CMR” means Contract for the International Carriage of Goods by Road.
“Commercial Terms” means commercial terms that are provided as part of the Seller's quotation.
“Confidential Information” means all information provided by one Party or otherwise made known to the other Party in connection with the Contract and for which, that relates to the business, affairs, price, payment conditions, products, transformation or manufacturing process, development, trade secrets, know how, personnel, customers, prospects and suppliers of either Party whether designated as “confidential information” or not by a Party, together with all information derived from the foregoing, but excluding any information (i) independently developed by the receiving party without using the confidential information or (ii) rightfully in the possession of the receiving party without a duty of confidentiality prior to the receipt of such information.
“Customer” means a company within the meaning of section 14 of the German Civil Code (Bürgerliches Gesetzbuch, BGB) which is buying the Product from Seller;
“Party” means either Seller or Customer, “Parties” means collectively Seller and Customer;
“Product(s)” means the product(s) sold by Seller;
“Order(s)” means the order(s) placed by Customer to buy Product from Seller;
“Seller” means Roquette GmbH, a corporation incorporated under the laws of Germany (HRB 15774) having its registered office at Hamburger Allee 14, 60486 Frankfurt am Main, GERMANY.

2. ENTIRE AGREEMENT

2.1 These General Conditions of Sale (the “Conditions”), together with the Commercial Terms contain the entire and exclusive agreement between the Parties, and are referred to herein as the “Contract Terms”. If there is a conflict between the Conditions and the Commercial Terms, the Commercial Terms shall prevail. All terms and conditions contained or referenced in any prior or subsequent oral or written communication, including, without limitation, the Seller's quotation, shall be deemed to be part of the Contract, and the Parties, or which might exist on any platform designated by the Customer, the Seller will be forced to accept in order to be able to complete any administrative referencing process and/or to submit any quotation or other commercial document in compliance with the Contract Terms. Any terms and conditions not included in the Contract Terms, are hereby rejected and shall not be binding on Seller, and Seller hereby agrees thereto.

2.2 Commercial Terms in themselves shall be deemed to be of a non-binding nature, unless otherwise expressly provided in the Contract Terms.
2.3 No addition to, or alteration or modification of, the Contract Terms shall be valid unless made in writing signed by an authorized representative of each Party specifically referring to the Contract Terms.

2.4 Customer shall be deemed to have accepted the Contract Terms by placing an order or by accepting to all Orders, whether or not referred to in such Order. Except as otherwise agreed in writing, any acceptance of the price stated in the Commercial Terms from Seller by return signature or email confirmation, or if the Order placed otherwise will imply the tacit acceptance of all terms of the same and the applicable Conditions referenced herein.

3. COMMERCIAL TERMS, ORDER AND CONFIRMATION ORDER

3.1 Except as expressly provided otherwise in the written Commercial Terms, the quantities indicated in the Commercial Terms are non-binding for both Parties. This means for the avoidance of doubt that acceptance of the Commercial Terms does not constitute a supply agreement in itself and does not create any contractual obligations or contractual rights for performance either for the Seller or for the Customer until Orders are placed accordingly by the Customer and are expressly accepted by Seller.

3.2 The Order placed by Customer is deemed a legally binding order to conclude a Contract. Seller will send a confirmation of receipt of the Order and confirm the date of delivery of the Product. If the Order is not accepted by Customer has been received and does not constitute an acceptance of such Order, unless expressly stated otherwise. The Contract is concluded only by the formal submission of the declaration of acceptance by Customer, which is submitted to the Seller. The Order and the Contract are different from an order or in addition to the content of the Contract (“Contract”). Orders placed by the Customer will generally not be accepted if they do not respect the prices, lead times and other terms and conditions indicated in the non-binding quotation. Unless Customer's Order is accepted by Seller, the Seller is not bound by the Order. The Seller's quotation (Monday to Friday, regardless of public holidays) from the date on which it is received. After the expiry of this period, the Order is voided and, thus, deemed rejected.

3.3 The Parties may use an electronic data interchange (EDI) which is a digital instrument allowing to exchange data (offers, contracts, etc.) between the Seller and the Customer instead of using paper documents or emails. In such a case, Orders will be processed automatically by Seller. In case of inapplicability or rejection of the Order by Seller, the Seller will notify Customer in due course. The Seller will issue the Confirmation of Receipt and/or the Order Confirmation via EDI.

3.4 Orders placed by any other means of communication than EDI shall be issued in writing. Such Orders shall only be considered definitive once a written and signed Order Confirmation has been sent by Seller.
3.5 Seller will supply the Product to the Customer, up to the volume expressed in the Commercial Terms and as per the phrasing agreed in the Commercial Terms. Should Customer need more volumes than those expressed in the Commercial Terms, they must be ordered separately. The Seller's obligation to supply the Products and to new Commercial Terms to be agreed between the Parties. Seller cannot be held liable anyway, for any reason whatsoever, in case Seller is not able to supply Customer with those extra volumes.

4. MODIFICATION OR CANCELLATION OF ORDERS

Customer may not cancel, alter, or suspend delivery of the order below lead time, except with Seller's written consent, such modification or cancellation being subject to any surcharge. No cancellation is permitted after the shipment of the Products.

5. QUANTITY, TIMING AND DATE OF DELIVERY

5.1 Except as expressly provided otherwise in the written Commercial Terms, the quantities indicated in the Commercial Terms are non-binding for both Parties. This means for the avoidance of doubt that acceptance of the Commercial Terms does not constitute a supply agreement in itself and does not create any contractual obligations or contractual rights for performance either for the Seller or for the Customer until Orders are placed accordingly by the Customer and are expressly accepted by Seller.
5.2 Subject to clause 5.1 above, Seller will supply the Product to the Customer, up to the volume expressed in the Commercial Terms and as per the phrasing agreed in the Commercial Terms, when relevant, as per the forecast to be agreed between the Parties. The Seller's obligation to supply the Products and to new Commercial Terms to be agreed between the Parties. Seller cannot be held liable anyway, for any reason whatsoever, in case Seller is not able to supply Customer with those extra volumes.
5.3 The Customer acknowledges and accepts that, on a quarterly basis, any quantity of products not called for by the Customer as per the phrasing for such quarter and the agreed lead time will not be reserved to the Customer and therefore may not be available to it at any later date. Accordingly, the quantity negotiated in the Commercial Terms will be reduced without any recourse of action against Seller, except as determined and provided by Seller.

5.4 In each case, delivery times are indicated as precisely as possible but depend on Seller's procurement, production, transportation and acceptance of the order. It is in particular Customer's responsibility to send to Seller in writing as binding, the dates provided by Seller are only estimated delivery dates and are non-binding. Seller will confirm the delivery date when the Products are ready to be dispatched. If it becomes foreseeable for Seller that an estimated delivery date cannot be met, Seller will notify Customer of this without undue delay and inform Customer of the new estimated delivery date. In no event shall the Seller be liable for any delays.
5.5 Delivery dates are extended automatically to a reasonable extent if Customer does not meet its contractual obligations or other duties to cooperate or responsibilities. It is in particular Customer's responsibility to send to Seller in due time and in the correct format all documents, data, samples, models, and any other information and terms to be provided by it, and where applicable, to meet the technical, structural, staffing and organisational requirements for the delivery of the Product. Seller will not be liable for delays, if the delay is caused by a configuration/adjustment.
5.6 Seller is entitled to provide partial performance (a) partial performance may be used by Customer in the context of its contractual use; (b) the provision of the remaining performance is ensured.
5.7 Seller's statutory rights, in particular concerning any extension of its obligation to provide performance (e.g. due to the performance and/or subsequent performance (Nacherfüllung) being impossible or unreasonable) and due to any delay in acceptance or performance on the part of the Customer, remain unaffected.
5.8 If, for whatever reason, delivery or performance by Seller is delayed or becomes impossible for it, any liability Seller may have for damages is limited in accordance with clause 13 below.

6. DELIVERY, TRANSPORTATION AND INSPECTION

6.1 Except as otherwise provided in the Commercial Terms, Products shall be delivered CIF/CIF place of delivery (INCOTERM 2020) as set out in the Commercial Terms.
6.2 Risk of loss will pass to the Customer when the applicable INCOTERM, delivered of whatever title to the Products remains vested in Seller in accordance with clause 7.
6.3 The Product shall be packed for shipment in accordance with Seller's packaging data sheet or any other specification signed by Seller in a manner sufficient to ensure the integrity of the Product. Unless otherwise agreed, warranty regarding the packaging of the Product is only given as to compliance with local legislation in the manufacturing and shipping countries.
6.4 When Customer is responsible for transport in accordance with the INCOTERM applicable due to a deviating agreement in the Commercial Terms:

- Customer shall ensure that its carriers are fully compliant with all laws and regulations applicable to them and requirements applicable to EFISC (European Feed and Food Ingredients Safety Certification) or equivalent standards.
- As a matter of principle, national VAT is applicable and due on the price of the sale of goods/services, whatever can be the VAT status of Customer (registered or not for VAT purposes). As an exception, some shipment involving can be exempted from VAT or from any equivalent goods and services tax provisions subject to conditions provided by law. In this case, and upon formal acceptance of the Seller, Customer shall justify by all means, acceptable to Seller, the exemption from VAT or from any equivalent goods and services tax provisions, in accordance with the applicable law. Consequently, Customer shall provide Seller with, at first request, all necessary and useful information to determine that the Products are intended to leave the national territory, all profits of deliveries and shipment shall be paid to the Seller and to other entities in the national territory; otherwise Seller will submit the delivery of Products to national VAT.
- In case of no show on the pickup list agreed in advance between the Parties, a lump sum may be applied by the Seller to the Customer for the use of the Seller's transport resources.
- Customer shall unload tank cars promptly on delivery. Any claim for missing Product and/or transport damage must be lodged in the CMR or any other transport document signed by Customer on reception of the Product. Picture of transport damage must be submitted to the Seller. Except as required by the applicable INCOTERM, in no event shall Seller have any liability for its selection of any carrier (to the extent that the selection has been made with the due care of a prudent businessman), any damage or loss occurring subsequent to delivery, to a carrier, or to the goods, shall be borne by the Customer.
- Customer must carefully examine all Products without undue delay upon delivery and in each case before use. Any visible defects, other than missing Products and/or transportation damages, or any defects discovered as a result of such inspection, shall be notified without delay to the Seller for discovery and in each case before use of the Product in writing (by fax or email). Such notification must include pictures of the visible defect. The inspection of the Product after delivery may not be limited to external appearance and delivery documents, but must also include an examination of quality and quantity, at least with random samples. If Customer fails to inspect the Product properly or to notify Seller of any defects in due time, Seller's warranty obligation in relation to liability for the defect concerned is excluded. None of Seller's statements, acts or omissions are to be understood as constituting any waiver of the requirements and legal consequences of sections 377 and 381 German Commercial Code and the provisions of this clause.
- For bulk Products, following the unloading, the weight of the Product transferred into the Customer's tanks might vary from plus or minus 0.5% compared to the weight reported on the transport document. For sake of clarity, weight ascertained by dispatch weight is used for invoicing. Under no circumstances, such fluctuation will allow Customer to claim additional shipment and/or seek compensation in whatever form.
- With regard to other defects which are not visible or not discovered as a result of a duly inspection according to Section 6.6, the Product may be deemed to be defective if the Customer or Seller does not notify in writing of detection of defects within 5 (five) days of the time at which the defect became apparent.
- In the event a defect in the Product is discovered for which Seller is responsible as provided in these Conditions, Customer shall not sell, use or use the Products following such discovery. If Customer establishes that a defect exists, Customer's sole remedy shall be as set out in Section 8 or by law.

7. RESERVATION OF TITLE

7.1 Seller reserves title to the Products sold until full payment of all its current and future claims under the purchase contract and any ongoing business relationship (“Secured Claims”).
7.2 The delivered Products remain Seller's property until full payment of the Secured Claims. These Products, or the items that replace them also covered by the reservation of title in accordance with the following provisions, are referred to hereinafter as the “Reserved Goods”.
7.3 If Customer intends to transfer the Reserved Goods to a location outside Germany, it is obliged to meet, without undue delay, any and all statutory requirements there for the creation and maintenance of Seller's reservation of title and to inform Seller without undue delay about the aforementioned intention.
7.4 Customer will store the Reserved Goods free of charge and must treat them with care. Any processing and treatment of the Products (section 960 German Civil Code) is always carried out for Seller as manufacturer, on its behalf and for its account, without obliging Seller. Customer does not acquire any ownership rights, direct or indirect ownership of the new item. If Seller's Reserved Goods are processed into a new item with other goods, Seller acquires co-ownership in the ratio of the invoice value of such Reserved Goods to the value of the other goods. The new item is in this respect deemed to be the Reserved Goods. To the extent that co-ownership arises for Customer as a result of processing, installation or integration, it hereby assigns its rights to Seller and will store the item for Seller with due commercial diligence (kaufmännische Sorgfalt). Seller hereby accepts this transfer of rights. If the Reserved Goods are combined with Reserved Goods or integrated into them (section 948 German Civil Code) or mixed with items not belonging to Seller, Seller acquires direct co-ownership of the newly created item in the ratio of the value of the Reserved Goods (gross invoice value) to the value of the other combined, integrated or mixed item. If the Reserved Goods are integrated or mixed, the Reserved Goods are to be seen as the main item. Seller acquires direct sole ownership (section 947(2) German Civil Code). If one of the other items is to be considered the main item, Customer, to the extent that the main item belongs to it, hereby transfers its proprietary interest in the combined item to Seller, which hereby accepts this transfer of ownership.
7.5 The Reserved Goods may only be resold in the course of business conducted in compliance with regulations, but no longer if Customer is in default or has stopped making payments. Customer's claims arising from the resale of the Reserved Goods, in whatever condition, are hereby assigned to Seller as security together with all ancillary rights. Customer is entitled to collect the receivables until Seller revokes its authorisation, which Seller may do at any time. The authorisation to collect receivables also expires without requiring express revocation in the event of default, contested cheques or bills of exchange, and if Customer stops making payments. At Seller's request, Customer must notify this assignment to its clients and provide Seller with the documents required to enforce the claim.
7.6 If Seller withdraws from the contract in accordance with the applicable statutory provisions due to conduct of Customer in breach of the contract, in particular due to payment default (enforcement event), Seller is entitled to demand the return of the Reserved Goods. If the Reserved Goods are not returned to Seller, Seller is entitled to the latest indicated in its demand for the return of the Reserved Goods; this is also the case if Seller attaches the Reserved Goods. Customer bears the transport costs incurred for the Seller taking back the Reserved Goods. If the Reserved Goods are taken back by the Customer, the Seller is entitled to reimbursement of the transport costs. If the Seller has deducted an appropriate amount for the costs of realisation, be set off against the amounts Customer owes to Seller.

7.7 Customer is not entitled to pledge the Reserved Goods, transfer ownership of them as security or use them for sale-and-leaseback transactions. If the commencement of insolvency proceedings is filed for and/or third parties obtain access to the Reserved Goods (e.g. attempts at attachment), Customer must clearly indicate its insolvency to Seller and inform Seller of the commencement of insolvency proceedings. If the commencement of insolvency proceedings is filed for, Seller is entitled to demand a list of its Reserved Goods.

8. WARRANTY

8.1 Unless stated or supplemented otherwise in these Conditions, the relevant statutory provisions apply to the Reserved Goods in the event of material defects and defects in title (including incorrect or short deliveries, but not for Products, unless formally instructed by the Customer otherwise, and formally agreed by Seller. Products will be manufactured in compliance with applicable European and German General Food regulations.
8.2 For pharmaceutical Products, the specifications specified in the Product Specification Sheet, our Products have been designed and assessed only for oral routes of administration. Any other usage or intention to use the Product in any other route of administration by the Customer shall be under its sole responsibility.
8.3 Seller does not warrant that the Products are free of contamination, impurities, or other defects. In their initial packaging will comply in all material respects with (i) Seller's standard specifications for the Products and with (ii) the applicable regulation in the manufacturing country and the delivery country, unless otherwise mutually agreed in writing. Customer shall be responsible for the correct use of the Products, quality and regardless any reference to Customer's specifications in the Order. Any descriptions, illustrations or information contained in Seller's publications or advertisements are issued or published for the sole purpose of giving an approximate idea of the Products and are not intended to constitute a warranty. Seller does not warrant that the Products are free of contamination, impurities, or other defects. 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