

**General Terms and Conditions of Sale and Delivery**  
**of**  
**FreshDetect GmbH**  
(as of February 2017)

**1. Scope of Application**

Sales and deliveries by FreshDetect GmbH ("FreshDetect") shall be made exclusively in accordance with the following General Terms and Conditions of Sale and Delivery ("Terms of Delivery"), which shall be accepted by Customer by the placing of an order or the receipt of delivery. They shall also apply to all future transactions with Customer. The application of Customer's conflicting or supplementary terms and conditions shall be excluded, even if FreshDetect does not expressly object to such terms and conditions.

**2. Conclusion of Contract**

- 2.1 Offers by FreshDetect shall be non-binding. A contract shall not become effective until it has been confirmed by FreshDetect in a written confirmation of order and shall be governed exclusively by the contents of the confirmation of order and these Terms of Delivery. Verbal agreements or promises shall only be valid if an authorized employee of FreshDetect has confirmed them in writing.
- 2.2 FreshDetect retains all rights in the sales documentation (in particular pictures, drawings, data on weight and size) and samples. These items must not be made available to third parties and must be returned to FreshDetect without undue delay on demand.
- 2.3 The field staff of FreshDetect is not authorized to represent FreshDetect. In particular, the field staff cannot conclude contracts and make binding promises concerning the goods to be delivered (Liefergegenstand) ("Goods") or other conditions.

**3. Delivery Periods and Delivery Date**

- 3.4 Delivery dates and delivery periods are only binding if they have been agreed in the contract as binding and Customer has provided FreshDetect in a timely manner with all of the information or documentation required for the performance of such delivery and Customer has made any advance payments in the manner and amount as agreed upon by the parties. Delivery periods agreed upon by the parties shall begin on the date of the confirmation of order. In the event of additional or supplementary contracts entered into at a later date, the delivery periods and delivery dates shall be extended or rescheduled accordingly, as applicable.
- 3.5 Events that are unforeseeable, unavoidable and outside the control and sphere of influence of FreshDetect and for which FreshDetect does not bear responsibility, such as acts of God, war, natural disasters or labour disputes, shall release FreshDetect for the duration of such event from its obligation to make timely delivery or to perform timely. Delivery and performance periods and dates, as the case may be, shall be extended or rescheduled, as applicable, by the length of such disturbance, and Customer shall be informed of the occurrence of such disturbance in a reasonable manner. If the end of such disturbance is not foreseeable, or should it continue for more than two months, each party is entitled to rescind the contract.
- 3.6 With regard to Goods that FreshDetect does not produce itself, the obligation to deliver shall be subject to FreshDetect's correct and timely receipt of such Goods from its suppliers.

- 3.7 If deliveries by FreshDetect are delayed, Customer shall only be entitled to rescind the contract if (i) FreshDetect is responsible for the delay and (ii) a reasonable grace period set by Customer has expired.
- 3.8 Should Customer be in default of the acceptance of delivery or should he be in breach of any other obligations to cooperate with FreshDetect, FreshDetect shall be entitled, without prejudice to its other rights, (i) to reasonably store the Goods at Customer's risk and expense or (ii) to rescind the contract in accordance with the statutory provisions.
- 3.9 FreshDetect may make partial deliveries for good reason if and to the extent this is reasonable for Customer. In particular, partial deliveries shall be deemed reasonable for Customer, if the Customer can make use of the partial delivery within the contractually intended purpose, delivery of the remaining goods as ordered is ensured and no substantial additional expenditure or costs are incurred for the Customer (unless FreshDetect declares to cover such costs). Excess and short deliveries of up to 10% of the order volume shall be deemed permissible.

#### **4. Shipment, Passage of Risk, Transport Insurance**

- 4.1 In the absence of any other instruction by Customer, shipment shall be made using a reasonable method of shipment in the usual manner of packaging.
- 4.2 The risk shall pass to Customer (i) upon delivery of the Goods to the carrier commissioned by FreshDetect [or to the FreshDetect personnel commissioned to arrange for the shipment] in case of a contract of sale involving the shipment of goods, (ii) upon handover to Customer if Customer collects the Goods himself, or (iii) upon handover to a third party if a third party authorized by Customer collects the Goods. Should Customer be in default of acceptance, risk shall pass to Customer upon default. If, in case the Goods shall be collected by Customer or a third party authorized by Customer, and delivery is delayed on grounds for which Customer is responsible, risk shall pass to Customer on the date Customer is notified of the readiness of the Goods for shipment.
- 4.3 A transport insurance shall be taken out only upon request and at the expense of Customer.

#### **5. Prices, Terms of Payment**

- 5.1 Unless the parties have agreed upon a certain price, the price shall be determined by the price list of FreshDetect as applicable at the date of the conclusion of the contract.
- 5.2 If the agreed delivery date is more than four months later than the conclusion of the contract and if, after conclusion of the contract, FreshDetect has incurred unforeseeable cost increases with regard to the Goods for which it does not bear responsibility, FreshDetect shall be entitled, at its reasonable discretion, to pass on such higher costs by increasing the agreed price on a pro rata basis.
- 5.3 Unless otherwise agreed between the parties, all prices of FreshDetect are EXW (Incoterms® 2010) FreshDetect GmbH, Kirchplatz 1, 82049 Pullach exclusive of statutory VAT in the respective applicable amount and do not include any shipment and packaging costs, which will be charged separately. Customer shall bear any public charges such as possible customs duties that may arise in connection with the import of the Goods.
- 5.4 FreshDetect is entitled to issue partial invoices for partial deliveries as defined in section 3.6 hereof.
- 5.5 Each invoice of FreshDetect shall be due for payment without any deductions within 30 days from the date of invoice; if this period for payment lapses unsuccessfully, Customer shall be in

default. Payments by Customer shall not be deemed to have been made until FreshDetect has received such payment.

- 5.6 In the event that Customer is in default, FreshDetect shall be entitled to demand default interest in the applicable statutory amount. Any claims for further damages due to the default shall remain unaffected.
- 5.7 Bills of exchange and checks shall only be taken on account of performance upon special arrangement and without any bank charges or other costs for FreshDetect.
- 5.8 Customer is only entitled to a set-off if his counterclaim is uncontested, ready for decision or has been finally adjudicated.
- 5.9 Customer is only entitled to assert a right of retention to the extent that his counterclaim is based on the same contract and is uncontested, ready for decision or has been finally adjudicated.
- 5.10 If FreshDetect becomes aware of the risk of Customer's impossibility to perform after conclusion of the contract, FreshDetect shall be entitled to make outstanding deliveries only against prepayment or the provision of security. If such prepayments or security have not been rendered even after the expiry of a reasonable grace period, FreshDetect may partially or totally rescind individual or all of the affected contracts. FreshDetect shall remain entitled to assert further rights.

## **6. Retention of Title**

- 6.1 The Goods shall remain the property of FreshDetect until any and all claims of FreshDetect arising from its business relationship with Customer have been paid in full.
- 6.2 In the case of current accounts, this retention of title shall serve as security for the claim for the balance to which FreshDetect is entitled.
- 6.3 Customer shall only be allowed to sell the products subject to retention of title ("Products subject to Retention of Title") within normal and proper business transactions. Customer is not entitled to pledge the Products subject to Retention of Title, grant chattel mortgages on them or make other dispositions endangering FreshDetect's title to such products. Customer hereby assigns its receivables arising from the resale of the products to FreshDetect, and FreshDetect hereby accepts such assignment. Should Customer sell the Products subject to Retention of Title after processing or transformation or joining of such products with other goods or together with other goods, this assignment of receivables shall only be agreed to for an amount equivalent to the price agreed to between FreshDetect and Customer plus a safety margin of 10 % of this price. Customer is granted the revocable authorization to collect in trust the claims assigned to FreshDetect in his own name. FreshDetect may revoke such authorization and the right to resell the products if Customer is in default of the performance of material obligations such as making payment to FreshDetect.
- 6.4 Any processing or transformation of the Products subject to Retention of Title by Customer shall always be performed for FreshDetect. If Products subject to Retention of Title are processed with other goods, FreshDetect shall acquire joint ownership of the new goods in the ratio of the value of the Products subject to Retention of Title to the other processed goods at the time of processing. The new goods created by way of processing shall be subject to the same provisions as applicable to the Products subject to Retention of Title.
- 6.5 Should the Products subject to Retention of Title be joined with other goods, FreshDetect shall acquire joint ownership of the new goods in the ratio of the value of the Products subject to Retention of Title to the other goods at the date of joining. Should the joining of the goods occur in

such manner that Customer's goods are to be viewed as the main goods, it shall be deemed to be agreed that Customer assigns proportionate joint ownership to FreshDetect. Customer shall hold the joint ownership created in such manner in custody for FreshDetect.

- 6.6 Customer shall provide FreshDetect at all times with all desired information concerning the Products subject to Retention of Title or receivables assigned to FreshDetect under this contract. Customer shall immediately notify FreshDetect of any attachments of or claims to the Products subject to Retention of Title by third parties and shall provide the necessary documents in this regard. Customer shall at the same time advise the third party of FreshDetect's retention of title. The costs of a defence against attachments and claims shall be borne by Customer.
- 6.7 Customer is obliged to treat the Products subject to Retention of Title with care for the duration of the retention of title.
- 6.8 Should the realizable value of the securities exceed all of FreshDetect's claims that are to be secured by more than 10 %, Customer shall be entitled to demand a release to such extent.
- 6.9 Should Customer be in default of material obligations such as payment to FreshDetect, and should FreshDetect rescind the contract, FreshDetect may, notwithstanding any other rights, request surrender of the Products subject to Retention of Title and may make use of them otherwise for the purpose of satisfying its matured claims against Customer. In such case, Customer shall grant FreshDetect or FreshDetect's agents immediate access to the Products subject to Retention of Title and surrender the same.
- 6.10 In the case of deliveries to other jurisdictions in which the foregoing provisions governing the retention of title do not have the same effect as in Germany, Customer shall do everything to create equivalent security rights for FreshDetect without undue delay. Customer shall cooperate in all measures such as registration, publication, etc. that are necessary and beneficial to the validity and enforceability of such security rights.
- 6.11 On FreshDetect's demand, Customer is obliged to appropriately insure the Products subject to Retention of Title, provide FreshDetect with the respective proof of such insurance and assign the claims arising under such insurance to FreshDetect.

## **7. Trademarks and Advertising**

- 7.1 Customer shall not perform and may not authorize a third party to perform any act that may endanger the trademarks or other intellectual property rights used by FreshDetect in relation to the Goods. In particular, Customer may not obscure, alter or remove in any manner the trademarks and/or other distinctive features, whether imprinted or attached, that are part of FreshDetect's Goods and may not include or attach any other features.
- 7.2 The entire sales promotional, advertising and sales material ("Advertising Material") provided by FreshDetect shall remain the property of FreshDetect. Customer may use this Advertising Material only in accordance with the instructions of FreshDetect and in relation to the sale of the Goods, and Customer may not authorize any third party to use the Advertising Material.

## **8. Quality, Customer's Rights in case of Defects, Duty to Inspect the Goods**

- 8.3 Upon passing of the risk the Goods shall be of the agreed quality; the quality will exclusively be determined by the specific written agreements concerning the characteristics, features and specifications of the Goods. The Customer acknowledges and accepts as part of the agreed quality of the Product (i) the Product's limited purpose – in particular, that the Product is currently not certified nor suitable to replace laboratory analysis, including without limitation an analysis in accordance with § 64 of the German Food and Feed Code (LFGB) –, (ii) the Product's scope

of use and (iii) application specific limitations to the Products' measuring accuracy , which may be updated by FreshDetect from time to time and shall be handed over to the Customer by FreshDetect as 'application note' in its then-current version prior to the conclusion of each sales contract. Information provided in sales catalogues, price lists and any other informative literature provided by FreshDetect or any other descriptions of the Goods shall under no circumstances constitute a guarantee for any specific quality of the Goods; such specific quality or durability guarantees must expressly be made in writing.

- 8.4 FreshDetect reserves the right to change the Goods slightly with regard to their construction, material and/or finish to the extent their agreed characteristics are not changed hereby.
- 8.5 Irrespective of any possible rights due to defects of the Goods according to the provisions set forth below, Customer shall be obliged to also accept Goods having immaterial defects.
- 8.6 Customer's rights in case of defects of the Goods shall require that he inspects the Goods upon delivery without undue delay and notifies FreshDetect of any defects in writing and without undue delay, but no later than two weeks following delivery; hidden defects must be notified to FreshDetect in writing without undue delay upon their discovery.
- 8.7 In the event of a notification of a defect, FreshDetect shall have the right to inspect and test the Goods to which objection was made. Customer will grant FreshDetect the required period of time and opportunity to exercise such right. FreshDetect may also demand from Customer that he returns to FreshDetect at its expense the Goods to which objection was made. Should Customer's notification of the defect prove to be unjustified and provided Customer has realized this prior to the notification of the defect or has not realized it in a negligent manner, Customer shall be obliged to reimburse FreshDetect for all costs incurred in this respect, e.g. travel expenses or shipping costs.
- 8.8 FreshDetect shall be entitled to remove the defect at its option by remedying the defect or, alternatively, by delivering a replacement, both free of charge to Customer (together "Subsequent Performance").
- 8.9 Customer shall give FreshDetect the necessary reasonable time and opportunity for the Subsequent Performance.
- 8.10 Items that have been replaced by FreshDetect shall, upon its demand, be returned to FreshDetect.
- 8.11 Customer's rights in case of defects shall be excluded in the following events: (i) natural wear and tear, (ii) defects of the Goods due to reasons for which Customer bears responsibility, such as inappropriate or improper use, the non-observance of the operational instructions, incorrect start-up of operation or faulty treatment (e.g. excessive wear), (iii) incorrect assembly and/or installation by Customer or a third party commissioned by Customer, and (iv) the use of unsuitable accessories or unsuitable spare parts or the performance of inappropriate repair works by Customer or a third party commissioned by Customer.
- 8.12 FreshDetect shall bear the costs for shipment, travel, labour and material that accrue for the purpose of a Subsequent Performance. Subsequent Performance does not encompass the installation and removal of the defective Goods; Customer shall bear the installation and removal costs.
- 8.13 Should the Subsequent Performance fail, should such remedy be unreasonable for Customer or has FreshDetect refused such remedy pursuant to Section 439 (3) German Civil Code (*BGB*), Customer may, at its option, rescind the contract in accordance with the statutory provisions or reduce the purchase price and/or claim either damages pursuant to section 9 or the reimbursement of its futile expenses.

- 8.14 The limitation period for Customer's claims for defects shall be twelve months beginning with the handover of the Goods to Customer. The provisions on the statute of limitations of Section 479 BGB shall remain unaffected. For damage claims of Customer due to other reasons than defects of the Goods or for rights of Customer with respect to defects concealed in bad faith or caused intentionally, the statutory limitation period shall apply.
- 8.15 If used Goods are sold, all rights of Customer due to defects shall be excluded, save for Customer's mandatory claims.

## **9. Limitation of Liability and Damage Compensation**

9.1 FreshDetect's obligation to pay damages shall be limited as follows:

- (i) For damages caused by a breach of a material contractual obligation, FreshDetect shall only be liable up to the amount of the typically foreseeable damage at the time of entering into the contract; FreshDetect shall not be liable for damages caused by a breach of a non-material contractual obligation. A material contractual obligation is any obligation, the performance of which in particular facilitates the due implementation of the contract and whose compliance the Customer routinely relies on and may rely on.
- (ii) The limitation of liability as set out above shall not apply to damages caused intentionally or by gross negligence, culpably caused personal injuries nor to any liability under the German Product Liability Act and in case of any further mandatory liability. Furthermore, it shall not apply if and to the extent FreshDetect has assumed a guaranty.

9.2 Customer shall take all reasonable measures necessary to avert and reduce damages.

## **10. Product Liability**

If Customer sells the Goods, whether unchanged or changed, whether after processing, transformation or joining with other goods, Customer shall indemnify FreshDetect in their internal relationship against any product liability claims of third parties if and to the extent Customer is responsible for the defect leading to the liability towards third parties.

## **11. General Provisions**

- 11.1 Customer may assign the rights arising from the parties' contractual relationship to third parties only with FreshDetect's written consent. Section 354a German Commercial Code (*HGB*) shall remain unaffected hereby.
- 11.2 Amendments and supplements to the contract and/or these Terms of Delivery and any side agreements must be made in writing. The same shall apply to the amendment of this written form requirement.
- 11.3 If a provision of the contract and/or these Terms of Delivery is invalid, in whole or in part, the validity of the remaining provisions shall remain unaffected hereby.
- 11.4 Exclusive venue for any and all disputes arising from or in connection with the parties' contractual relationship shall be Munich. FreshDetect is entitled, however, to sue Customer at any other court having statutory jurisdiction.
- 11.5 The laws of the Federal Republic of Germany shall apply to these Terms of Delivery and the parties' contractual relationship to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).