

# **Terms & Conditions of Pro Pet Austria Heimtiernahrung GmbH**

## **I. Applicability, Written Requirements:**

The Pro Pet Austria Heimtiernahrung GmbH company – henceforth referred to as “Pro Pet Austria” – conducts business exclusively on the basis of the following Terms & Conditions. These Terms & Conditions are an integral component of each contract entered into by Pro Pet Austria. Individual contracting partners of Pro Pet Austria are henceforth referred to as the “Contracting Partner”. Agreements, other than as listed below, will not be regarded as entered into, other than if this has been expressly stipulated in writing. In order to have any validity, verbal amendments, subsidiary agreements or assurances require the written endorsement of entities authorized to represent Pro Pet Austria, as entered in the company register and with the company’s authorized signature.

Any conditions set forth by the Contracting Partner, which stand in contradiction to these Terms & Conditions, are void, other than if an amendment is made by mutual agreement and in conformity with the above formal written requirements.

## **II. Contract Accomplishment:**

The contracting partner’s order constitutes a firm offer. Pro Pet Austria has the option, at its discretion, of accepting this offer within 2 weeks by sending an order confirmation, or by sending the ordered goods to the contracting partner by the stipulated deadline.

## **III. Prices and Payment Conditions:**

Prices as cited in the contract are always in Euro, or in another currency as agreed upon by the parties, and are, unless otherwise stipulated, ex warehouse/works of the Pro Pet Austria company.

The prices are, unless otherwise expressly stipulated in writing, net price excluding Value Added Tax.

Bills from the Pro Pet Austria company are due net upon receipt of invoice, in so far as no other payment arrangements have been stipulated.

Payments to Pro Pet Austria only then have a discharging effect if they are made, either by funds transfer to the bank account cited in the bill, or in cash to an agency authorized to accept such payments under commerce laws. Other persons are not authorized to make collections, unless they are able to demonstrate financial authority as per those formal requirements cited in point II. 2..

Receipt of payment is regarded as that day, upon which the payment is actually received by Pro Pet Austria; in the case of a bank transfer, this will be the date upon which the payment was credited to Pro Pet Austria’s banking institution.

Bank drafts or checks will only be accepted conditional upon actual receipt of payment. All attendant charges, fees and expenses are born by the contracting partner.

Issuance of own or third-party drafts does not yet constitute payment, nor does it provide a basis for any claims to a potential cash discount.

Should the contracting partner be a commercial entity, the withholding of payments due to assertion of warrantee claims is not permitted. Consequently, the payment term will not be extended due to any assertion of warrantee claims.

If a cash-discount period has been agreed upon, the payment period begins upon dispatch of the invoice by Pro Pet Austria. Any warrantee claim or assertion of counter-claim neither interrupts nor delays the cash-discount period.

Pro Pet Austria is entitled to utilize payments which it receives for whatever obligations it deems fit and regardless of any allocation declarations to the contrary. These may include collections fees for pursuing its claims, fees, expenses incurred in attempts to locate a person or persons, interest and/or interest on arrears and, finally, the principal due.

Should the contracting partner be a commercial entity, the contracting partner thereby obligates himself, in the event of payment default, to compensate in full all collection fees, expenses and cash expenditures related to the collection of the debt, so that Pro Pet Austria under no circumstances incurs expenses, of whatever nature, for the collection of said debt.

The contracting partner is not entitled to off-set demand for payment from Pro Pet Austria with demands of his own. Claims deriving from the contractual relationship with Pro Pet Austria may only be ceded to third parties if meeting the formal requirements of point II. 2. and having obtained the appropriate expressed consent.

With regards to payments by instalment, the instalment schedule will be stipulated null and void. In the event of late or incomplete payment, even if of a single instalment, the entire open amount will become due immediately and in full.

#### **IV. Delivery Deadlines :**

1. The delivery period begins upon receipt of the order or, if otherwise stipulated, upon dispatch of the order confirmation by Pro Pet Austria, though not before receipt and clarification of all documentation by the contracting partner. Compliance with the delivery deadline is contingent upon the contracting partner fulfilling all contractual obligations, in particular compliance with all stipulated payment conditions.

2. The delivery period is deemed to have been complied with if the order is ready for dispatch by the stipulated deadline, or, if so stipulated, has been delivered.

3. Partial shipments are permissible. Those waiting periods associated with partial or erroneous shipments do not entitle the contracting partner either to rescind the contract, or to assert claims for damages (for loss of earnings and the like), unless Pro Pet Austria gives its expressed, written consent for the billing of such costs as per II. 2.

In the event that Pro Pet Austria is culpable for failing to comply with the delivery deadline, Pro Pet Austria shall be granted an appropriate grace period and informed of this by registered letter.

The delivery deadline is extended commensurate to actions taken as part of labor disputes, in particular strikes and lock-outs, as well as in the event of unforeseen impediments beyond the control of Pro Pet Austria, in so far as such impediments can be demonstrated to have had substantial impact upon the timely performance of the contract in its entirety, or upon that portion of the contract which is currently due. This also applies when said circumstances affect sub-contractors. Pro Pet Austria is also not responsible for said aforementioned circumstances, if they occur during an already on-going delay. In important cases, Pro Pet Austria will notify the contracting partner as soon as possible with regards to the beginning and end of these types of impediments.

#### **V. Retention of Property Rights:**

All goods remain the property of Pro Pet Austria until payment of the stipulated price, together with any incidental charges, has been made in full. As long as any debts remain pursuant to contracts between Pro Pet Austria and the contracting partner, the contracting partner may not sell, rent, lease, mortgage, give away or transport overseas the goods in question. Until payments for billing have been received in full, Pro Pet Austria has the right to satisfy itself as to the status and condition of the goods.

Should the goods be impounded by a third party, the contracting partner is obliged to inform Pro Pet Austria by registered letter. This should include the impound report and a sworn declaration of contents, averring that the impounded goods are identical with those delivered by Pro Pet Austria and upon which there is still an amount due. In the event of insolvency or legal settlement, the contracting partner is obliged to notify Pro Pet Austria immediately and to single out all objects and outstanding bills to which Pro Pet Austria still holds claim.

Intervention costs are to be born by the contracting partner.

The impounding of goods to which Pro Pet Austria continues to hold claim, in no way constitutes a waiver of property rights. In the event that Pro Pet Austria avails itself of its property rights, the contracting partner does, even at this time, give its irrevocable consent to Pro Pet Austria picking up the goods it had delivered, at any time and without any further consent from the contracting partner.

Resale of any goods upon which Pro Pet Austria continues to hold claim, is only permissible if it continues to uphold inherent property rights.

Pro Pet Austria is entitled to resell to third parties those goods which it has reclaimed, without any verification of the commensurateness of the sale price. The proceeds from the sale of reclaimed goods shall be deducted from the original amount due.

The expense incurred due to assertion of property rights, in addition to applicable interest and fees, shall be compensated to Pro Pet Austria by the contracting partner or will be off-set against the already rendered purchase price.

#### **VI. Warrantee:**

To avoid loss of warrantee rights, the contracting party must inspect goods with utmost care and report in writing any defects within 3 days of receipt of said goods.

If there is an actual instance of indeterminate obligation, Pro Pet Austria may disburden itself of any claims to rescind the contract or reduce the price commensurately, if it exchanges the defective goods for ones free of defect in a timely fashion.

Any further warrantee claims are excluded. If Pro Pet Austria should proffer an exchange of goods and the contracting partner fails to consent to the proffered exchange in a timely fashion, Pro Pet Austria will then be freed of warrantee obligation; in particular, the contracting partner is not entitled to bill Pro Pet Austria for the cost of acquiring replacement goods.

For goods, which Pro Pet Austria itself obtains from subcontractors, Pro Pet Austria can, of its choosing, either fulfil those warranty obligations incumbent upon it as per this section, or cede its warranty claims against the supplier to the contracting partner. In the latter case, Pro Pet Austria indemnifies itself against any and all warranty or damage claims.

#### **VII. Delivery**

Delivery of goods is, unless otherwise stipulated, at the expense of the contracting partner. Pro Pet Austria will make every effort to comply precisely with delivery deadlines. The contracting partner may derive no claims due to deadline extensions.

#### **VIII. Compensation for Damages, Penalty Clause:**

With respect to any damages or any agreed-upon forfeiture penalties, Pro Pet Austria is only liable if the contracting partner is able to prove the former's gross or wilful negligence. Should the contracting partner be the consumer, this limitation of liability does not apply to personal damages.

Furthermore, Pro Pet Austria is not liable to the contracting partner for loss of earnings or other financial damages.

The delivered goods offer only that degree of safety, which can be expected based on general regulations and/or specifications provided by the sub-contractor. In the instance of legal product liability, liability for material damages is limited to such damages as are suffered by the consumer. The limitation of liability transfers in its entirety to any and all customers, the latter being obliged to further transfer said liability to any subsequent consumers.

#### **IX. Rescission by Pro Pet Austria, Penalty Clause:**

Pro Pet Austria is entitled, in the event of default by the contracting partner and without any obligation to grant grace periods, to rescind the contract. In this instance, Pro Pet Austria is entitled to assert its claim for a forfeiture penalty equivalent to 20 % of the stipulated total price. The contracting party must also make good any damages beyond this, in particular when Pro Pet Austria has already produced the goods, or has commenced production thereof, or said goods are already ready for shipment, if the total damages exceed the aforementioned 20 % of the stipulated total price.

Pro Pet Austria is furthermore entitled to rescind the contract if, subsequent to the contract coming into legal effect, doubts arise with regards to the contracting partner's performance of the contract. In the case of such a declaration of rescission, the

contracting partner shall have no right of legal redress.

#### **X. Damage in Shipping:**

In the event of any damage incurred during shipping, it is necessary to have an official damage report issued immediately (by the railway, postal service, shipping company). At the time of acceptance, goods should be inspected at once for any potential damage. In the event of damage, the nature of the damage must be confirmed on the waybill by the carrier. If goods are returned and it proves that the complaints were not justified, charges for shipping costs, as well as commensurate compensation for the inspection of the goods, will be billed.

#### **XI. Returns:**

Product returns are only accepted if a previous agreement has been made to do so with Pro Pet Austria.

#### **XII. Place of Performance, Seat of Jurisdiction, Applicable Law:**

For both contracting parties, the place of performance is the headquarters of Pro Pet Austria. Both contracting parties stipulate that, for all legal disputes resulting from this contract, Austrian laws will apply, as will the jurisdiction of the competent local court in 4020 Linz, Austria.