



Version 02 SC – 09.2019

## General Terms and Conditions Sales

of 11er Nahrungsmittel GmbH and the 11er Verwaltungs GmbH for the sale of potato products and merchandise

### Art. 1 Scope

11er Nahrungsmittel GmbH and the 11er Verwaltungs GmbH (hereinafter: 11er) supplies only businesses (hereinafter: Customers). By placing an order with 11er, the Customer acknowledges the validity of the current version of these General Terms and Conditions (GTC) published online at [www.11er.at/en/agb](http://www.11er.at/en/agb). Customer GTC are expressly excluded.

### Art. 2 Offers and Prices

All offers are non-binding and only apply for as long as stocks last. Prices are quoted exclusive of all taxes and contributions and apply solely to the sales unit specified. The validity of time-limited offers is always calculated in relation to the agreed delivery date and not from the time the order is placed.

Standard articles must be ordered at least 3 days before the desired delivery date; the delivery period for other products will be correspondingly longer.

### Art. 3 Delivery

Unless otherwise agreed, 11er shall deliver the products sold ex works. Transport costs shall be charged to the Customer.

The transport risk shall pass to the Customer when the shipment is handed over to the first carrier. 11er shall be deemed to have fulfilled its delivery obligation by actually delivering the products sold to the carrier.

The transport risk shall therefore be borne by the Customer. Any defects or deterioration in the quality of the goods occurring after the goods have actually been delivered from the factory to the carrier shall therefore be accounted for by the Customer.

The Customer shall undertake to receive the products ordered at the time and place agreed. The Customer shall issue the necessary delivery instructions in due time in order to facilitate the delivery.

**11er Nahrungsmittel GmbH**  
Galinastraße 34  
6820 Frastanz, Austria  
T: +43 (0)5522 51521-0  
F: +43 (0)5522 51521-5  
[www.11er.at](http://www.11er.at) / [info@11er.at](mailto:info@11er.at)

**Bankverbindung**  
Raiffeisenlandesbank Vorarlberg  
Waren- und Revisionsverband  
reg. Gen.m.b.H. in Bregenz  
IBAN: AT17 3700 0000 0002 5023  
BIC: RVVGAT2B

**UID-Nummer:**  
ATU64421806  
**Firmenbuch:**  
FN 207308s  
Landesgericht Feldkirch

If the Customer defaults on acceptance or other obligations after receiving a reminder, 11er shall be entitled to withdraw from the contract and claim compensation. Reminders will be sent by fax, courier, post, or e-mail. The reminder shall set the Customer an appropriate deadline within which the Customer's contractual obligations shall be fulfilled. 11er may earmark the products sold to the Customer, store them at the Customer's expense, and request payment of the purchase price.

11er shall withdraw from the contract by making a separate declaration. If no such declaration is made, the contract shall remain in force.

In the event of a withdrawal, the Customer shall undertake to return any goods not handed over at 11er's headquarters (on the grounds of an alternative agreement) to 11er at the Customer's risk and expense.

The Customer's contractual obligations may also be enforced in court without the prior issue of a reminder.

#### **Art. 4 Payment**

All receivables shall be paid without deductions within 14 days of receipt of invoice. All payments shall be offset against the oldest debt, first against interest, then against expenses/collection costs, and finally against the capital.

#### **Art. 5 Default on Payment**

In the event of default on payment, the Customer shall undertake to pay statutory default interest (Art. 456 UGB – Austrian Commercial Code) at a rate 9.2% above the applicable base rate. Moreover, the Customer shall undertake to reimburse the costs incurred by 11er as a result of involving a collection agency and a lawyer.

For as long as the Customer is in default of payment, 11er shall be entitled to withhold further deliveries of goods to the Customer even if these are based on other orders. Withheld products must only be delivered against advance payment.

In the event of the Customer defaulting on payment, 11er may grant an 8-day extension. If this deadline expires without result, 11er shall be entitled to withdraw from the contract.

Should 11er withdraw from the contract on valid grounds, the Customer shall undertake to compensate 11er for all damages incurred.

#### **Art. 6 Complaints**

Complaints should be lodged immediately, within 8 days of delivery at the latest. The Customer must clearly describe any defects and return the products to 11er together with this description, except in cases where 11er expressly agreed to a price reduction beforehand.

11er shall be entitled to exchange the defective products for defect-free products of the same type within 8 days of the defective products being returned, thus eliminating any right on the Customer's part to withdraw from the contract. In such cases, 11er shall bear the costs of

returning the defective products and delivering the replacements. However, the Customer shall continue to bear the transport risk.

If 11er acknowledges the defect but does not replace the goods, the Customer shall be entitled to withdraw from the contract relating to the relevant (partial) delivery; however, the Customer may not withdraw from any contracts relating to other orders. On withdrawing from the contract, the Customer shall not be entitled to any compensation beyond reimbursement of the transport costs.

If 11er repudiates the defect within 8 days of the goods being returned, 11er shall undertake to keep an adequately sized sample of the returned goods for examination until the presence of any defects has been clarified.

### **Art. 7 Liability and Compensation**

Claims for compensation from 11er and its vicarious/performing agents are excluded insofar as there was no wilful intent, gross negligence or culpa in eligendo.

11er's liability in the event of unsuitable or delayed deliveries or non-delivery shall be limited to the sales price or the invoice value of the unsuitable, delayed, or undelivered goods. In no instance and on no grounds shall 11er be held liable for consequential damages, business losses or any form of damage other than that mentioned.

### **Art. 8 Retention of Title**

All products supplied shall remain the property of 11er until the invoice amount has been paid in full. All products are therefore supplied subject to retention of title.

In the event of default on payment, deferment of payment or insolvency on the Customer's part, 11er shall be entitled to take back the products and to enter the property and buildings of the Customer and of third parties for this purpose.

### **Art. 9 Product Liability**

11er shall accept no liability for personal injury or material damage suffered by the Customer or any third party in connection with 11er's contractual obligation to supply goods as per the sales contract unless the injury or damage was caused deliberately or by gross negligence on 11er's part.

The Customer shall undertake to indemnify 11er for third-party compensation claims relating to personal injury or material damage suffered by third parties in connection with the products supplied. Moreover, the Customer shall compensate the Vendor for all costs and damages incurred in connection with any claim defined in this paragraph.

With regard to personal injury, the limitation/indemnification described in the preceding paragraphs only applies insofar as this is permitted by the laws of the country in which the injury occurred.

**Art. 10 Offsetting**

The customer is not entitled to offset any claims against claims of 11er. However, 11er is entitled to offset its claims against any claims of the customer.

**Art. 11 Insolvency**

If insolvency proceedings are opened on the Customer's assets and the company remains in business, 11er shall be entitled to deliver its goods solely against advance payment, irrespective of any previous payment agreements.

**Art. 12 Data Protection**

11er shall electronically store and process the Customer data relevant to the business relationship and shall refrain from forwarding this data to other companies. Companies affiliated with 11er are excluded from this provision. When collecting receivables from or asserting claims against the Customer, the necessary data shall be forwarded to the collection agency or lawyer. This data specifically includes application data, address data, historical data on compliance with payment terms, and historical data relating to undisputed receivables that remained unpaid after they became due.

**Art. 13 Advertising**

The Customer shall consent to receive all kinds of advertising (e.g. mail, electronic media) from 11er. If the Customer chooses to unsubscribe from this advertising, the Customer shall accept that, for organisational reasons, the advertising material will still be delivered for some time after the subscription is cancelled.

**Art. 14 Applicable Law and Place of Jurisdiction**

It is herewith agreed that Feldkirch shall be the sole place of jurisdiction for any legal disputes arising between 11er and the Customer. Only Austrian law shall apply.

**Art. 15 General**

If 11er's General Terms and Conditions are also published in other languages and there are any discrepancies between the different language versions, the German version shall be decisive.