

## **General Terms and Conditions Danone Deutschland GmbH**

As at: 01/2024

### **1. General**

a) These Terms and Conditions of Sale form the basis of all offers and deliveries made by Danone Deutschland GmbH (Danone) to business partners (Buyers) who are not consumers within the meaning of Section 13 of the German Civil Code (BGB), unless otherwise agreed in writing in individual cases.

b) These Terms and Conditions of Sale shall become part of the contract upon order or, at the latest, upon acceptance of the ordered goods without objection.

c) Deviating, conflicting or supplementary general terms and conditions shall not become part of the contract unless their validity is expressly agreed in writing.

d) Counter-confirmations by the Buyer with reference to its terms and conditions of business or purchase are hereby contradicted.

### **2. Offers and Conclusion of Contract**

a) Danone's offers are free and non-binding.

b) Orders are deemed to have been accepted if they are either confirmed by Danone in writing or executed immediately after receipt of the order or on time.

c) In this case, the Danone invoice is deemed to be the order confirmation.

d) Documents belonging to the offer, such as illustrations, weights and dimensions, are only approximate unless they are expressly designated as binding. Danone reserves the right to make technical changes as well as changes to the shape, colour, smell, taste and/or weight within reason.

### **3. Orders**

The binding delivery contract is concluded upon acceptance of the order, by delivery or by notice of dispatch from Danone to the Buyer. Article or delivery quantity discrepancies between the order and the notice of dispatch will also be delivered, as soon as and insofar as in stock, after prior notice of dispatch from Danone.

### **4. Prices**

a) The prices for the products are in EUROS exclusive of VAT, taxes, import duties, other governmental charges, exclusive of shipping/freight/warehousing or packaging costs and, unless otherwise agreed between the parties, exclusive of the costs (if any) incurred for the return of packaging materials, all of which shall in each case be borne by the Buyer.

b) Unless expressly agreed otherwise, the prices stated in the respective valid price list at the time of delivery shall apply. Additional deliveries and services as well as bonuses and discounts will be charged separately.

c) Danone reserves a right of increase in the event that, for reasons for which Danone is not responsible, performance can only be effected after the expiry of a 4-month period following receipt of the order.

d) In the case of agreed fixed prices for a certain period, Danone is entitled to adjust these accordingly in the event of an increase in the underlying labour costs, raw material prices, transport costs or changes in the law (including with regard to taxes); this increase must be notified to the Buyer two (2) months in advance. In the case of orders that have already been bindingly accepted and whose delivery is only possible after the price adjustment, the Buyer shall be granted a right of withdrawal.

e) The shipping costs for medical nutrition products are listed in each case in the "Shipping Costs" table, which can be viewed on request and/or on the Danone website under General Information. For an order value of more than EURO 150.00 (excluding VAT), the shipping costs listed above will not be charged for shipping within Germany. Shipping costs may vary for special services (e.g. express delivery or scheduled delivery) depending on the destination.

### **5. Terms of Payment**

a) Invoice amounts are due without deduction 14 days after the invoice date or receipt of the invoice data via EDI/Telebox/mail; this also applies to partial deliveries.

b) Payments shall be made - unless another method of payment has been agreed in writing - exclusively by way of direct debit from a bank account of the Buyer (Direct Debit Process). The date of payment shall be the date on which the amount is received by the seller.

c) In the case of agreed bank transfers and cheques, the day of the value date at Danone will be deemed to be the payment date. New customers are only supplied against direct debit.

d) Alternatively, the Buyer may grant the seller a SEPA Core Mandate/SEPA Corporate Mandate. Costs incurred due to non-payment or reversal of the direct debit shall be borne by the Buyer, as long as the non-payment or reversal was not caused by Danone.

e) Danone's invoices are to be checked by the Buyer upon receipt. Invoice complaints must be made to Danone within 14 days of receipt of the invoice by the Buyer. Otherwise, the contents of the invoice shall be deemed approved.

f) Only undisputed or legally established claims or claims based on the same contractual relationship entitle the Buyer to set-off or retention.

## **6. Default**

a) The Buyer is already in default of acceptance through our literal offer of acceptance if it has previously declared that it will not accept the performance. Failure to specify a delivery window on the agreed delivery date shall also be deemed a refusal of acceptance. If the payment deadline is exceeded, interest shall be charged at a rate of 9 percentage points above the statutory base rate. Reminder fees are due for reminders. Discount and collection charges shall be borne by the Buyer. Furthermore, after setting a grace period of 14 days, a lump-sum compensation falls due in the amount of 15 % of the purchase price, in addition to interest and judicial collection costs. Danone expressly reserves the right to prove further damage and collection costs and to claim compensation therefor; the Buyer shall be entitled to prove that no damage has occurred at all or that such damage is considerably less than the lump sum.

b) In the event of default in payment or unjustified refusal of acceptance and/or reasonable doubt as to the Buyer's solvency or creditworthiness, Danone is authorised - without prejudice to any other rights - to demand securities or advance payments for outstanding deliveries or to deliver only against cash on delivery and to declare all claims arising from the business relationship immediately due and payable. Should an application be made to open insolvency proceedings against the Buyer's assets, all of the seller's claims shall become due immediately. If the advance payments or securities have not been provided even after the expiry of a reasonable grace period, Danone may withdraw in whole or in part from individual or all contracts concerned.

## **7. Deliveries**

a) The delivery dates result from our written order confirmation. The delivery dates and delivery periods stated therein are approximate dates and shall only be deemed binding if they have been expressly designated as binding in writing.

b) Subsequent changes to the delivery dates on the part of the Buyer shall only be binding on the seller if the seller has expressly confirmed them in writing; in this case, the Buyer shall be obliged to compensate the seller for any additional costs. In any case, however, changes to the delivery dates 24 hours before an agreed delivery are excluded.

c) In any case, delivery periods and dates are subject to correct and timely delivery to us. Danone's compliance with its delivery obligations is conditional upon the timely and proper fulfilment of the Buyer's preliminary obligations.

d) Danone is entitled to make partial deliveries.

e) Delays in delivery can only give rise to a claim for damages if the parties have expressly agreed on a fixed delivery date; the amount of damages may in no case exceed 10% of the invoice price of the respective products.

f) Deliveries will be made at the Buyer's risk by a carrier appointed by Danone excluding unloading. Transport is at the risk and peril of the Buyer.

g) The transfer of defective goods to third parties, against payment or free of charge, is not permitted. The customer shall take appropriate precautions to prevent the transfer of defective goods to third parties. Goods which are the subject of a complaint must be stored and handled properly. Returns can only be made with our express consent. If the Buyer nevertheless sells the goods, whether unchanged or modified, the Buyer shall indemnify Danone internally against product liability claims by third parties if and to the extent that the Buyer would itself be liable externally for the defect giving rise to the liability.

## **8. Warranty and Liability**

a) Unless otherwise expressly agreed in writing, the information and illustrations contained in order confirmations, brochures and other documents as well as the provision of samples and other product-related statements serve only as a general product description.

b) Any shortages must be noted on the delivery note directly to the transport person upon delivery of the goods.

c) In addition to the statutory grounds for refusal, Danone is also entitled to refuse subsequent performance if and as long as the Buyer has not sent the rejected goods to Danone at Danone's request or has not made them available for inspection; the Buyer is not entitled to withdraw from the contract or reduce the purchase price due to such refusal. The Buyer shall not be entitled to any defect rights if the goods have been tampered with or modified without Danone's consent, unless the Buyer proves that the defect was not caused by such tampering or modification.

d) Danone's obligation to pay damages shall be limited as follows:

- Danone shall only be liable for damage resulting from the breach of a material contractual obligation or committed with intent or gross negligence.
- for culpably caused bodily injury as well as for liability under the Product Liability Act and in the event of other mandatory liability facts. Furthermore, it does not apply if and to the extent that Danone has assumed a guarantee.
- Delays in delivery can only give rise to a claim for damages if the parties have expressly agreed on a fixed delivery date; the amount of damages may in no case exceed 10 of the invoice price of the respective products.

e) The Buyer undertakes to reasonably cooperate with and assist Danone in the event of any recall with respect to

Danone's products and to comply with any reasonable guidelines or instructions issued by Danone in this respect.

f) Liability for defects is excluded if the defect is due to improper use and/or improper handling/utilisation/storage of the goods or is due to a subsequent, improper modification of the goods. Danone draws the Buyer's attention in particular to the fact that with PET bottles odours can penetrate the bottles from the outside, possibly affecting the organoleptic output level. The goods must be stored indoors in a dry place protected from light, dust, water damage and the effects of the weather and free from frost. They must not be stored near other products with a strong odour such as detergents, tyres, fuels, etc. In accordance with legal regulations, the goods have an optimum shelf life (BBD), beyond which the quality may gradually deteriorate. Any liability of Danone for damage due to improper storage of the goods by the Buyer is excluded.

g) Insofar as an EAN code is affixed to the goods, care shall be taken to ensure proper reproduction and legibility; however, no liability for this shall be assumed by the seller.

h) Without prejudice to the other provisions of these Terms and Conditions of Sale, any warranty claims of the Buyer arising out of or in connection with these Terms and Conditions of Sale or the offers made or orders placed or contracts entered into pursuant to these Terms and Conditions of Sale shall in any event expire after one (1) year from the date of delivery of the products. Excluded from this are claims for damages due to injury to life, body or health and/or claims for damages due to gross negligence or intentional damage caused by Danone. In this respect, the statutory limitation periods shall apply.

### **9. Storage and Transport of the Goods**

a) All transport packaging must be taken back and registered by the Buyer vis-à-vis the end customer.

b) Baby liquid foods are sensitive to frost. The goods must not be stored and transported below 10°C. Unless special storage or transport instructions are to be observed for individual articles, the products are to be stored in a cool and dry place, not below 10°C, in accordance with the usual conditions for foodstuffs.

c) Drinking and tube feeds are sensitive to frost and heat. Unless special storage or transport instructions are to be observed for individual products, the products should be stored in a dry, cool place (5-25°C) and protected from direct sunlight.

d) All products must be protected during their storage and distribution. They must be stored in a dry, closed and cool room protected from light, dust, water damage, bad weather and frost. They must not be stored near other strong-smelling products, such as detergents, tyres, fuels, etc. Our products carry an expiry date, after which an

increasing reduction in quality may occur. The handover of the storage of our products entails the handover of the above-mentioned obligations in terms of storage. We cannot accept any responsibility in the event of their non-compliance.

e) The Buyer undertakes to fully comply with the legal requirements imposed on the trade in food and medical products, in particular with regard to food safety and traceability, and to provide Danone, upon request, with information on the processes used to comply with these requirements. In the event of a necessary product recall, the Buyer undertakes to provide Danone with all information required for the traceability of the products concerned.

f) The Buyer undertakes to forward to Danone any complaints and objections from consumers regarding Danone's products in a timely and comprehensive manner.

### **10. Returns**

a) Returns outside the warranty right are voluntary and only permitted if the form provided for this purpose has been used. Danone charges a handling fee per return.

b) When sending the return request, the original delivery note or invoice number as well as the batch number and the best before date of the goods must be indicated.

c) Only goods from direct purchases that are in marketable condition and in their original packaging will be taken back. This means that packages, labels and contents must be intact and the batch numbers legible. For natural mineral waters and soft drinks, only unopened pallets can be taken back. In addition, the quality assurance requirements must have been met and the goods must not have left the Buyer's sphere of influence.

d) Goods that have already expired will not be taken back. Preparations and packaging sizes that have not been on the market for more than 6 months are excluded from return, as are goods that are no longer usable.

e) The Buyer may only return the goods after written confirmation by Danone. The risks and costs of the return transport to the place specified by Danone are borne by the Buyer.

f) If the return conditions set out in these GTC are met (a - e)), Danone will reimburse up to 90% of the original invoice value within 10 working days of receipt of the returned goods. Returns will only be compensated with a credit note.

g) If the quantities and the condition of the goods on return do not correspond to the return request approved by Danone, Danone reserves the right to return the goods carriage forward at the risk and expense of the Buyer and to adjust the value of the refund accordingly.

## **11. Retention of Title**

a) The delivered goods remain the property of Danone until full payment of all claims arising from the existing business relationship, as well as from previous or future business relationships. In the case of a current account, the retained title shall serve as security for the balance due to Danone.

b) The retention of title also extends to the products created by processing, mixing or combining the delivered goods at their full value. Danone is considered a manufacturer. If, in the event of processing, mixing or combination with goods of third parties, the latter's right of ownership remains, Danone acquires co-ownership in proportion to the invoice values of these processed goods.

c) The Buyer is authorised to dispose of the purchased goods in the ordinary course of business as long as it is not in default. However, the retention of title does not release the Buyer from its liability for accidental loss or for deterioration of the goods after the transfer of risk or possession. All expenses necessary to maintain the quality of the goods shall be borne by the Buyer.

d) The Buyer acknowledges in any case - even in the event of its own terms and conditions of purchase conflicting with the foregoing - the following retention of title to the goods of Danone.

e) Pledges or transfers of ownership by way of security are not permitted. The Buyer hereby assigns to Danone all claims arising from the resale of the goods in total or in the amount of any co-ownership share. Danone hereby accepts the assignment. Danone revocably authorises the Buyer to collect the claims assigned to it for its account in its own name. Danone reserves the right to collect the claim itself as soon as the Buyer fails to duly meet its payment obligations or defaults in payment. Danone is entitled to disclose the assignment to the Buyer's customers. Danone undertakes to release the securities to which it is entitled to the extent that the value of the security exceeds the claims to be secured by more than 20%.

f) The Buyer is not authorised to assign for the purpose of debt collection by way of factoring unless the factor is simultaneously obliged to effect the counter-performance in the amount of the seller's share of the claim directly to the seller for as long as the seller still has claims against the Buyer.

g) In the event of access by third parties to the goods subject to a retention of title, the Buyer must point out Danone's ownership and notify Danone without delay. The costs of a defence against such access and claims shall be borne by the Buyer.

h) In the event of conduct by the Buyer in breach of the contract - in particular in the event of default in payment - we shall be entitled to take back the goods subject to retention of title or, if applicable, to demand assignment of the Buyer's claims for return against third parties. The repossession initially serves only as security and is not a

withdrawal from the contract unless we declare this in writing.

i) If the Buyer defaults on material obligations such as payment to Danone, Danone may, without prejudice to any other rights, demand the return of the products subject to a retention of title and otherwise dispose of them for the purpose of satisfying any claims due against the Buyer. In such case, the Buyer shall immediately grant Danone or Danone's agents access to the products subject to a retention of title and surrender them.

j) Pallets not invoiced by Danone will remain the property of Danone at all times and must be returned to Danone in good condition within 30 days of delivery. If the Buyer does not return these pallets or other packaging materials in good condition within 30 days after delivery, Danone is entitled to charge the Buyer for them at cost price.

## **12. Packaging subject to deposit**

a) Returnable packaging subject to deposit (glass bottles, crates, pallets, etc.) and accessories subject to deposit (wedges, trays, etc.) shall remain the property of the Seller which, after deposit of the deposit amount, shall only be handed over to the Buyer on loan and only for use as intended. It is to be handled with special care. The empties are to be returned within the usual circulation times, returnable bottles sorted in appropriate boxes. Damaged or heavily soiled empties as well as empties that do not match the Seller's in shape, color, size or mouth are excluded from return.

b) In the event of a changeover of empties or discontinuation, old empties still in circulation will only be taken back within a period of nine months after notification of the changeover of empties, in the same way as full empties were delivered. For empties which are not returned at the due date or which are excluded from return, it is agreed that the Seller may invoice the replacement price of brand-new empties (new daily value) valid at the time of settlement, less a flat-rate reduction of 20%, offsetting any deposit credit of the Buyer. Instead of the replacement price, the Seller may also demand delivery of similar empties. Upon termination of the business relationship, the Buyer shall be obliged to return the empties even without a separate request.

c) In order to secure the Seller's ownership of the returnable empties and the claim for return, a deposit shall be charged in accordance with the respective valid price lists or statutory provisions. Deposit amounts are not discountable. The buyer remains obligated to return the empties despite the deposit of deposit money. In the event of proper return, the deposit money shall be refunded in the amount deposited.

d) Claims against the Seller for refund of the deposited deposit money cannot be assigned. Nor is the Purchaser



entitled to establish deposit refund claims against the Seller with third parties.

e) In the event that during the fine count in the Seller's warehouses a difference is found between the refunded deposit money and the returned empties, the Seller reserves the right to assert this difference against the Buyer.

f) The Seller shall keep a special deposit account for the deposit paid by the Buyer. The empty goods balances sent by the Seller to the Buyer shall be deemed accepted, provided that the Buyer has been informed about the possibility of objection and the Buyer does not object within one month after receipt of the empty goods balance. The final settlement of the deposit account shall be made upon termination of the business relationship.

### **13. Force Majeure and Hardship**

a) Notwithstanding any provision to the contrary in these Terms and Conditions of Sale, Danone shall not be liable to the Buyer for any loss or damage which the Buyer may suffer directly or indirectly as a result of the delivery of products by Danone being prevented, hindered, delayed or made more difficult, expensive or unprofitable due to unforeseeable and unavoidable circumstances or events beyond Danone's control, such circumstances and events of force majeure including, but not limited to, the following a. war, riots, strikes, lockouts, labour disputes and struggles, accidents, epidemics and pandemics, breakdown of machinery or equipment, fire, flood, storm, difficulty or increased cost in obtaining labour, materials or transportation or any other circumstance affecting the supply of the products or of raw materials required for the products through Danone's usual sources of supply or the manufacture of the products by Danone's usual means or the delivery of the products through Danone's usual delivery channels or means.

b) If the interests of either party are materially and disproportionately affected as a direct result of force majeure, the parties shall, at the written request of the affected party, promptly meet to determine whether such hardship exists and what changes, if any, to the terms of the contract are necessary in that event to initiate appropriate measures to mitigate, remove or avert such hardship, whereby such measures shall take into account the interests of both parties.

c) If delays resulting from force majeure exceed the period of eight weeks, both parties shall be entitled to withdraw from the contract with regard to the affected scope of performance. There are no other claims.

### **14. Qualification**

In the interest of patient safety, prescribable balanced diets specifically developed and offered for patients with rare inborn errors of metabolism or pharmacoresistant epilepsies can only be dispensed to those resellers who are

qualified to dispense them because they are aware of the special needs and risks of these small patient groups. The prerequisite is that the professional management in the dispensing company has successfully completed a degree in human medicine or pharmacy or, in addition to a degree in nutritional sciences (ecotrophology, trophology, dietetics) or professional training as a dietician, has successfully completed the advanced training "Certificate Course in Congenital Metabolic Diseases (VDD)", because in the event of confusion or dispensing of the wrong product, severe health damage, in some cases irreversible damage, up to and including possible death of the affected patient is to be expected.

### **15. Food Monitoring**

In the event that a governmental authority objects to the foodstuffs delivered by Danone to the Buyer, the Buyer is obliged to inform Danone immediately. Furthermore, in the event of sampling, the Buyer will ensure that a second sample is taken from the same lot, officially sealed and secured for Danone as a counter sample.

### **16. Trademark Rights**

All trademarks of Danone or its group remain the exclusive property of Danone or its group. Any use of the trademarks other than for the purpose of resale requires the prior written consent of Danone. The Buyer undertakes to refrain from any action that may have a negative impact on the reputation of the Danone trademarks.

### **17. Confidentiality**

The Buyer is obliged to keep confidential the information obtained in the course of the business relationship vis-à-vis third parties, including affiliated companies, which are not entrusted with the performance of the legal relationship between Danone and the Buyer, including the sales prices, and to oblige its employees dealing therewith accordingly.

### **18. Compliance**

Both parties represent that they will comply with the principles and requirements of legal anti-corruption, data protection and antitrust regulations and ensure that their subcontractors understand and apply them. The parties undertake to accept and comply with the Danone Code of Conduct for Business Partners. The Danone Code of Conduct is available at <http://www.danone.de/footer/allgemeine-informationen.html>. When marketing breast-milk substitutes, the Buyer undertakes to comply with the legal requirements.

### **19. Other Provisions**

a) The law of the Federal Republic of Germany shall apply to these General Terms and Conditions and the entire legal relationship between the seller and the Buyer. The application of the United Nations Convention on Contracts

for the International Sale of Goods of 11/04/1980 (CISG) is excluded.

b) The place of jurisdiction is Frankfurt am Main.

c) The place of performance for all deliveries is Danone's place of business or the warehouse or plant from which the shipment is made. The place of payment is Danone's place of business.

d) Should individual provisions of these Terms and Conditions of Sale be or become invalid in whole or in part, this shall not affect the validity of the remaining provisions. The parties undertake to replace the invalid or valid provision with a provision that comes as close as possible to the economic purpose of the invalid provision.