

General Terms and Conditions for the Purchase of Raw Materials and Consumables

§ 1

Applicability

- 1.) All supplies, services and offers of the supplier shall be provided on the basis of these General Terms and Conditions of Purchase as amended from time to time. These Terms and Conditions form an integral part of all contracts concluded by us - in our own name or as agent for our customers – with our suppliers for the provision of supplies and services offered by them. They shall also apply to all future supplies, services or offers provided to us, even if their applicability is not agreed upon separately again.
- 2.) General terms and conditions of suppliers shall not apply, even if we do not explicitly object to their applicability in an individual case, and even if we accept deliveries from suppliers without reservation despite our knowledge of general terms and conditions of the supplier that differ or deviate from our General Terms and Conditions of Purchase.
- 3.) Our General Terms and Conditions of Purchase only apply vis-à-vis entrepreneurs, legal persons under public law and special funds under public law.

§ 2

Orders

- 1.) Unless our **orders** explicitly specify a commitment period, we shall be bound by our offers for one week from the date of the offer. The time at which we receive the declaration of acceptance of the order shall be authoritative for determining whether the order has been accepted in time.

- 2.) The supplier shall inform us, in writing, in advance of any changes in the production of goods. Such changes may not be made without our prior written consent.
- 3.) All drafts, calculations, project models, estimates of cost etc. of the supplier shall be provided free of charge and shall not be binding on us, even if such services or supplies are usually provided against payment.
- 4.) All necessary commercial documents, in particular delivery notes and invoices, must state our order numbers.

§ 3

Prices, Payment Conditions, Assignments

- 1.) Unless otherwise agreed, the price shown in the order shall be deemed to be in EURO.
The price is binding. Value added tax shall be stated separately. The price shown includes free delivery including packaging, transport costs and insurance. Packaging material shall only be returned upon separate agreement. For imported goods the price shall be deemed to include customs, taxes and, where applicable, inspection costs.
- 2.) Delivery notes and invoices must indicate the order number shown in the order. The supplier shall be liable for all consequences resulting from the failure to comply with this obligation, unless the supplier proves that it is not responsible for these consequences. No goods will be accepted without a delivery note and without an indication of the order number.
- 3.) Unless it is agreed to the contrary we will pay the purchase price within 14 days of the date of delivery and receipt of the invoice with a 3% discount, or net within 30 days of receipt of the invoice.
- 4.) We reserve all rights of set-off or retention provided by applicable law. We may also offset claims of our affiliates which were assigned to us.

- 5.) Claims against us may not be assigned, unless the assignment is made within the scope of an extended reservation of title.

§ 4

Delivery, Passing of Risk, Acceptance

- 1.) The delivery time (date or period of delivery) specified in the order is binding.
- 2.) If circumstances occur or become apparent which indicate that the delivery time cannot be met, the supplier shall immediately notify us thereof in writing.
- 3.) If the latest date for delivery can be determined from the contract, the supplier shall be in default at the end of this date, without the need for a reminder.
- 4.) In case of default in delivery we shall be entitled to all statutory rights, in particular the right to rescind the contract and claims for damages, including consequential damages, futile expenses and loss of profits, if the respective requirements are satisfied. Without prejudice to any other rights that we may have, the supplier shall pay liquidated damages at a rate of 0.1% of the delivery value per day up to a maximum of 5 % of the order value. The supplier may prove that no damage or a substantially lower damage has been caused by the delay.
- 5.) Unless otherwise agreed, partial deliveries are not allowed.
- 6.) Where goods are supplied, risk shall pass to us at the time the goods are handed over to us at the agreed place of destination, even if it was agreed that the goods shall be shipped to another place than the premises of the supplier.
- 7.) The supplier shall, at its own cost, provide all tools and hoists required for delivery and assembly.

§ 5**Transport, Storage, Packaging****I.****General Provisions**

- 1.) On the date of delivery the supplier shall provide us with delivery notes with detailed information on quantity and weight. In case of partial deliveries the remaining quantities still to be delivered shall be specified. The delivery note shall also indicate the gross and net weight.
- 2.) Upon our request, the supplier shall, at its own cost, take back packaging of all kind, in particular transport packaging.
- 3.) Where multi-way packaging (pallets, boxes etc.) is used, we will, if so agreed, return packaging of the same type and quality.
- 4.) In the case of goods with a limited shelf life the supplier shall indicate the best-before date and in the case of goods with specific storage or disposal requirements the supplier shall indicate such requirements, in each case clearly visible at the respective good and the packaging as well as in all documents executed in preparation of or accompanying deliveries. To facilitate quantity controls, each outer packaging and shipping unit shall indicate the content quantity.

II.**Specific Provisions Applicable to Foodstuffs**

- 5.) Without prejudice to the statutory requirements, the Supplier shall in any event ensure that perishable food and raw materials that require cooling are delivered to us in compliance with the statutory requirements regarding transport and storage, and guaranteeing the core temperatures set forth in the specifications.

- 6.) Without prejudice to the statutory requirements, the supplier shall in any event transport and store frozen goods at a maximum temperature of - 22°C. The core temperature of such goods must not exceed - 18°C.
- 7.) If food is supplied, the supplier shall take retention samples from each batch supplied immediately before the food is filled into the transport container and shall preserve these retention samples until the expiry of the minimum duration date. We may, at any time, request samples for follow-up analyses.
- 8.) Products, for which a minimum durability date or a use-by date has to be indicated, shall be delivered in good time to ensure that the agreed remaining shelf life shall be guaranteed.
- 9.) Wrapped/ packaged goods are delivered in Euro-boxes. If goods are delivered in cartons, the cardboard boxes shall be in perfect hygienic condition. The type of packaging will be specified when the purchase order is made or in our respective product specification. Foils coming into direct contact with the food shall be coloured in blue.
- 10.) Euro-boxes in which goods are transported shall only be delivered stacked on plastic pallets, preferably Euro-H1. The Euro-boxes and pallets shall be in perfect hygienic condition and must not show any sign of damage.
- 11.) The tare weights of the pallets and all packaging will be deducted when determining the net weight.
- 12.) All goods supplied will be inspected in the incoming goods area by a skilled employee. In case of complaints, in particular due to a failure to comply with the aforementioned requirements or other requirements set forth in these General Terms and Conditions or provided by applicable law, the goods concerned will either be accepted with reservations only or rejected. Rejected goods shall be taken back and removed by the supplier's transport personnel.
- 13.) Defective goods or goods that are not fit for human consumption may be returned or disposed of by us at the risk and cost of the Supplier.

§ 6**Quality Assurance, Control, Obligations to Inform**

- 1.) We exclusively buy food raw materials and food, whose production is controlled by a certified quality assurance system – including a HACCP-concept and a contingency plan – and that is produced in accordance with good manufacturing practice (GMP). The supplier and its sub-suppliers must be certified to IFS, BRC, DIN EN ISO 22000, DIN EN ISO 9001 and/or possess a USDA-Approval.
- 2.) The supplier shall, on its own initiative, provide all valid evidence that is required in this respect. In addition the supplier shall designate all relevant contact persons in charge of quality assurance and give us their current mobile phone numbers.
- 3.) The supplier shall provide any information and details requested by us and such information and details shall be truthful and complete. The supplier shall at all times keep such information and details up to date and immediately and on its own initiative inform us of any changes regarding any information provided.
- 4.) We may, at any time during normal business hours carry out inspections and quality controls (supplier audits) at the supplier's business or other premises, or arrange for such inspections and quality controls to be carried out. In order to systematically evaluate the supplier, we will, upon consultation, regularly carry out supplier audits or appoint an expert to do so.
- 5.) The supplier takes retention samples from all batches of goods to be supplied which we are authorised to access, in accordance with the statutory requirements and according to a plan to be coordinated with us.
- 6.) In accordance with the statutory requirements and according to a plan to be coordinated with us, the supplier shall, at its cost, procure that microbiological, chemical and physical tests of the batches of goods to be delivered are carried out by an approved and accredited

specialist laboratory. At our request, the results of such tests and studies shall be provided to us free of charge.

- 7.) If a test or study report mentioned in the previous paragraph gives reason to believe that one or more of the the goods supplied are not merchantable, the supplier shall immediately and on its own initiative submit the report in question. We are entitled to appoint an institute to carry out follow-up examinations at the cost of the supplier.
- 8.) The supplier shall bear any and all consequential costs, e.g. due to recalls, caused by deviations in quality for which the supplier is responsible and/or incorrect tests, and shall compensate us for any such costs. If any bacteriological limit values are exceeded, the supplier shall reimburse us for all examination costs incurred as a result thereof. In addition the supplier shall pay a handling fee of 100.00 EUR as compensation for our additional expenses. The supplier shall be entitled to prove that no damage or a lower damage has been incurred by us.
- 9.) Depending on the result of our inspection of the incoming goods we reserve the right to notify the veterinary authority responsible for the supplier's business.
- 10.) If the food raw materials or food to be supplied contain genetically modified organisms the supplier shall separately inform us thereof before the conclusion of the purchase agreement.
- 11.) If the food raw materials or food to be supplied contain substances classified as allergenic in accordance with Annex III to the European directive 2000/13/EC the supplier shall separately inform us thereof before the conclusion of the purchase agreement. Prior notification shall also be given by the supplier if it has reason to believe that the food raw materials or food to be supplied might inadvertently contain such substances classified as allergenic.

§ 7**Scope of delivery, Quality****I.****General**

- 1.) The goods ordered are free from defects if they comply with our specifications and all other information provided as well as the generally accepted rules of food production and all relevant food legislation.
- 2.) Changes in the composition or labelling of products or in the design of the packaging as compared to the order require our prior written consent. Otherwise we are entitled to consider such changes in the composition or labelling of products or in the design of the packaging as defects.
- 3.) The supplier shall take all measures with regard to the goods supplied that are necessary with regard to environment protection and accident prevention. In addition, it shall comply with all requirements set by the authorities or provided by applicable law – in particular the ordinance regarding hazardous working material. We are entitled to request submission of a certificate from the competent employers' liability insurance association certifying that all provisions on the prevention of accidents, in particular the BSCI-standards have been complied with.
- 4.) All standards that may exist with regard to the goods supplied and / or parts thereof shall be complied with. This applies in particular to the following standards, as amended from time to time:
 - a. ISO, IEC, EN, DIN, VDE and technical regulations established by other regulators,
 - b. VBG regulations for the prevention of accidents,
 - c. Law on technical work equipment ([German] Equipment and Product Safety Act - *Geräte-/Produktsicherheitsgesetz*),
 - d. Safety of machinery DIN EN 292 and DIN EN 294,
 - e. DIN EN 60204-1 Electrical equipment of machines,
 - f. DIN EN 50081 and DIN EN 50082 Electromagnetic compatibility,

- g. 9. [German] Machinery Ordinance (GPSGV),
- h. [German] Food Hygiene Regulation (LMHV),
- i. VDMA-guideline on Food Hygiene,
- j. VO 1935/2004 (on materials and articles intended to come into contact with food).

Hinweis: Zu vorstehender Aufzählung werden Sie uns noch, wie mit Herrn Trilling am 17.05.2013 erörtert, weitere zu ergänzende Vorschriften zuarbeiten.

If, in individual cases, deviations from one of these norms or from the order of priority set by the above list are necessary, the supplier shall obtain our prior written consent. The giving of such consent does not release the supplier from any of its warranty obligations.

The supplier shall provide evidence of compliance with the applicable provisions on accident prevention by means of the „GS“-mark or the „CE“-mark, together with a declaration of conformity in accordance with EN 45014.

- 5.) All documentation, declarations, tests and marking required in this respect are included in the scope of delivery.

II.

Provisions for the Supply of Food

- 6.) The following provisions shall additionally apply to the supply of food or food ingredients:
 - a.) Prior to delivery to us, the supplier shall carry out an inspection of the goods supplied and, where applicable, produced by the supplier to check compliance with all statutory provisions applicable to the goods. The supplier shall be liable to us for compliance, in particular, with the provisions of the [German] Food and Feed Code (LFGB), the [German] Regulation on Maximum Residue Limits (*Rückstands-Höchstmengenverordnung*) and all other provisions of the food laws of Germany and the European Union, in each case as amended from time to time. The supplier shall guarantee that all goods ordered are merchantable within the meaning of applicable food law.

b.) The supplier guarantees that it will not supply products that contain or consist of genetically modified organisms (GMO) or that have been produced from GMOs or contain ingredients that have been produced from GMOs. The same applies to additives and flavours. The foregoing is subject to the exemptions and exceptions set forth in the regulations (EC) No. 1829/2003 and 1830/2003, in each case as amended from time to time. The supplier shall ensure that its sub-suppliers also comply with this obligation.

c.) If the supplier has reason to believe that goods to be supplied have product-related defects or are otherwise defective, deviate from our specifications, may not be of merchantable quality or that there may be more than insignificant variations with regard to the agreed product quality, the supplier shall immediately notify us thereof, before it informs any third party of such circumstances. In such case the goods must not be delivered. Goods that are nevertheless delivered may be rejected by us without further inspection. All further measures deemed necessary in such circumstances shall be coordinated with us. This applies in particular if the supplier considers the issuance of a recall or warning. If the supplier considers itself under an obligation to recall goods, it shall provide us with all necessary data.

If goods ordered come from organic production, the supplier shall ensure that the provisions of the regulation (EC) No. 834/2007 on organic production and labelling of organic products are complied with during production, processing, import and marketing.

d.) Packaged food must be produced and packaged in accordance with the provisions laid down in the regulations (EEG) No. 2092/91 and (EC) No. 834/2007. The supplier shall be audited and certified by a recognized eco control body at least once a year. The supplier shall immediately and on its own initiative send us the respective current certificate. This shall also apply to all further current certificates and the respective certificate of EC-conformity.

III.**Provisions for Goods that are Subject to the REACH-Provisions**

- 7.) If goods to be supplied are subject to the REACH-provisions within the meaning of the regulation (EC) No. 1907/2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals the supplier shall ensure that any and all provisions and conditions regarding the placing on the market and the delivery of such goods to us are complied with.

The Supplier shall immediately inform us if goods delivered by it, or the primary or secondary packaging of such goods contain substances that are subject to the REACH provisions.

§ 8**Warranty, Notice of Defects**

- 1.) We will examine incoming goods for deviations in quality or quantity within a reasonable period of time. The commercial duty to examine shall be fulfilled by a thorough visual inspection of the goods supplied and an examination of the documents to be provided by the supplier, in particular the analytical reports regarding the batches supplied. We are under no obligation to carry out our own laboratory tests.
- 2.) Any notice of defect is deemed to have been given in time if given within 5 business days after receipt of the goods or, in case of hidden defects, within 5 business days after discovery of the defect.
- 3.) We reserve all rights and remedies resulting from material defects or defects of title provided by applicable law.

Recoverable damages include the costs incurred by us due to the fact that, in terms of food law, the goods supplied are not free of defects as well as all costs resulting from product analyses and laboratory tests that have become necessary as a result of such defect. In ad-

dition, the supplier shall reimburse us for all take-back, recall and other disposal costs that have been caused by the defective product supplied by the supplier.

- 4.) Acceptance or approval of drawings or samples provided shall not constitute a waiver of our warranty claims.
- 5.) As soon as our written notification of defect reaches the supplier the statute of limitations with regard to warranty claims shall be suspended. In case of removal of defects or replacement the warranty period for any items repaired or replaced will recommence, unless we had to conclude from the supplier's behaviour that the supplier did not consider itself to be under an obligation to remedy the defect or deliver a replacement but carried out the measure as an accommodation only or for similar reasons.
- 6.) The period of limitation for all warranty claims shall be 36 months from the passing of risk.

§ 9

Product Liability

- 1.) If any claim or suit is brought against us based upon product liability, the supplier shall indemnify and hold us harmless from and against all claims, that are based on a defect of the supplied contract products and that are brought against us under the product liability laws of Germany, any EU member state or third country, if and to the extent that the cause of the damage originates from within the sphere of responsibility of the Supplier. The same applies to recourse claims of third parties who have satisfied claims for damages brought by any person who has suffered damage. The foregoing does not apply in cases of fault-based liability to the extent that no fault can be attributed to the supplier. In such cases the supplier shall indemnify and hold us harmless from and against all costs, including expenses for necessary product recalls and reasonable legal expenses.
- 2.) We will notify the supplier of any claims that are brought against us in respect of the supplied products and will also make all necessary documents available to the supplier. The

supplier shall declare within 10 business days from receipt of these documents if we are to admit or reject such claims.

- 3.) The supplier shall maintain product liability and recall insurance with coverage of at least € 15,000,000.00 (in words: fifteen million Euros) for any one occurrence and shall, even after complete fulfilment of all obligations under the contract, maintain such insurance coverage for a period of ten years after the processed goods are placed on the market by us. We may at any time request the supplier to provide current proof of proper insurance.
- 4.) In case of a recall of any goods supplied to us, the supplier shall immediately inform us in writing of such recall, the reasons for the recall and the further line of action. For this purpose the supplier shall provide all relevant data and take adequate action to make sure that the information provided has really come to the attention of our personnel in charge.
- 5.) If the authorities make a substantiated allegation that the goods present a health hazard or lack merchantability or if such allegations are made in the national media, we are entitled to rescind the contract for any article concerned and return goods that have already been supplied at the supplier's cost and risk.

§ 10

Reimbursement of Further Costs

In the event of a complaint about the contract products by the authorities which is based on a manufacturing defect or any other circumstances attributable to the supplier, the supplier shall, without prejudice to any other rights that we may have based on defective performance of the supplier, bear all costs incurred by us as a result of official sampling or investigations. This obligation to bear the costs also includes the costs of any necessary recalls. In such cases, the supplier shall also bear or reimburse all legal costs.

§ 11**Intellectual Property Rights**

- 1.) The Supplier shall be liable for the fact that neither the goods supplied by him nor their onward supply, processing or use by us violate any intellectual property rights of third parties, in particular utility models, patents or licenses.
- 2.) The supplier shall indemnify and hold us and our customers harmless from and against any claims brought by third parties based on the infringement of intellectual property rights and shall bear all costs incurred in this respect.
- 3.) In the case of conflicting third party rights, the Supplier shall, at its own expense, obtain from the holder of the rights, also for the benefit of us, the approval or license to supply, process and use the goods.
- 4.) The period of limitation for all claims under this §11 shall be 10 years from the conclusion of the contract.

§ 12**Retention of Title, Provision of Items, Tools**

- 1.) We retain title to all goods and parts that we provide to the supplier. Any processing or transformation of such items by the supplier will be carried out on our behalf. If any reserved goods are processed together with other items that are not owned by us, we will acquire a joint right of ownership of the new thing, in the proportion that the value of the reserved good(s) bear(s) to the other items processed at the time of processing.
- 2.) If goods or parts provided by us are culpably damaged or destroyed while in the supplier's sphere of responsibility, the supplier's liability shall also extend to the repair or replacement of such parts or goods provided.

- 3.) We retain title to all tools paid or provided by us. The supplier undertakes to use the tools solely for the manufacture of the goods we ordered. The supplier shall treat and store all tools owned by us that are located at the supplier's factory with the diligence of a prudent businessman. In addition, the supplier shall, at its own cost, insure these tools at replacement value against the risks of fire, water and theft. At the same time, the supplier hereby already assigns to us all compensation claims it may have under this insurance policy and we hereby accept the assignment. The supplier shall, in good time and at its own cost, perform any necessary maintenance and inspection of our tools as well as all necessary repairs. The supplier shall immediately notify us of any incidents which may occur.

§ 13

Secrecy

- 1.) The supplier agrees to keep secret all information gained in the context of the cooperation, unless such information is in the public domain, has been lawfully obtained from a third party or developed independent of a third party; and further agrees to solely use such information for the purposes of this contract. The proprietary information includes, in particular, technical data, know-how, purchased quantities, prices and information on products and product developments, on current and future research and development projects and all of our business data.
- 2.) In addition, the supplier shall keep in strictest confidence all illustrations, drawings, calculations and other documents it receives, and shall not disclose the same to third parties without our prior written consent, unless the information contained therein is common knowledge.
- 3.) If necessary, the supplier shall impose a corresponding secrecy obligation on its sub-suppliers.
- 4.) At any time at our request, any in any event at the latest when the contract ends, all information originating from us (including any copies or records made) and items lent to the supplier shall be immediately returned to us in full, unless these are still required by

the supplier for the performance of its contractual obligations. We reserve all rights to such confidential information, including copyrights, industrial property rights, patents, utility models etc.

- 5.) Products manufactured according to designs, documents, models etc. provided by us or according to specifications marked as confidential may be used by the supplier solely for the purposes stipulated in the contract; in particular such products may not be offered or supplied to third parties.

§ 14

Final Provisions

- 1.) Orders may not be subcontracted by the supplier without our prior written consent.
- 2.) As soon as the Supplier ceases to make payments or if a provisional insolvency is appointed or insolvency proceedings are opened, we are entitled to rescind the contract, in whole or in part.
- 3.) The contractual relationships shall be exclusively governed by the laws of Germany, to the exclusion of its conflict of law rules and the United Nations Convention on Contracts for the International Sale of Goods (CISG, UN-Sales law).
- 4.) The place of jurisdiction shall be 33378 Rheda-Wiedenbrück, Germany. In addition we are also entitled to bring an action at any other permissible place of jurisdiction.
- 5.) The place of performance for all obligations arising from the supply agreement shall be the respective designated place of delivery.
- 6.) Should any part of these General Terms and Conditions of Purchase be invalid, the validity of the other provisions shall not be affected thereby. Invalid provisions shall be automatically replaced by the relevant statutory provisions.